

SUPREME COURT OF NIGERIA
11TH JULY, 2001. SC. 28/2001
CORAM:- M. L. UWAI, CJN, A. G. KARIBI-WHITE,
S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
M. E. OGUNDARE, E. O. OGWUEGBU, JJSC.

THE HON. ATT.-GENERAL OF THE
FEDERATION
AND

... ... PLAINTIFF

THE HON. ATT.-GENERAL OF ABIA
STATE & 35 ORS.

... ... DEFENDANTS

ACTIONS – Cause of action – Definition of – Reasonable cause of action – May be held by court to exist - Though the action is unlikely to succeed (H5)

ACTIONS – Dispute – Averments in pleading as to existence of a dispute – Are to be taken as true *ex facie* – Towards sustaining the action (H1)

ACTIONS – Frivolity of – Issues raised by the statement of claim – Are not frivolous or vexatious – To warrant granting of the preliminary objections (H9)

ACTIONS – Procedural irregularity – As to commencing action by originating summons – Being merely directive – Can be waived by the Supreme Court – In the interest of justice under O. 10 r. 1(1) (H8)

CONSTITUTIONAL LAW – Interpretation of a section – Raising any question of law or fact – Creates a dispute – That requires judicial determination (H7)

CONSTITUTIONAL LAW – Separation of powers – Interpretation of s. 3(1) of the Constitution – Is a judicial function and not a legislative function – National Boundary Commission may have concurrent powers - In respect of the said section (H4)

JURISDICTION – *Supreme Court – Constitutional Law – Dispute involving at least the interpretation of s. 162(2) of the 1999 constitution – Vests the court with jurisdiction - Even where the other issues might not be justiciable (H2)*

LOCUS STANDI – *Federal government – Federation account – Existence of justiciable dispute with defendants – Grants it the locus to sue (H6)*

PARTIES – *Misjoinder – Where the decision is likely to affect some of the defendants – They are rightly joined – As necessary parties (H3)*

FACTS

The plaintiff, representing the Government of the Federal Republic of Nigeria, Filed a statement of claim to commence proceedings in the original jurisdiction of the Supreme Court under S. 232 of the 1999 Constitution. The action is against the 36 Attorneys-General of all the States of Nigeria. Plaintiff made various averments in respect of the Federation account and claimed a determination of the seaward boundary of a littoral state for the purpose of calculating the amount of revenue accruing to the Federation account directly from any natural resources derived from such state pursuant to the proviso to S. 162(2) of the Constitution.

Eleven out of the 36 defendants have raised preliminary objections in their statements of Defence challenging the court's jurisdiction to hear the suit. These are the 1st, 3rd, 4th, 6th, 9th, 10th, 12th, 27th, 28th and 32nd defendants. The grounds of objections which were several and varied include allegations that the suit is academic, that non-Littoral States not being parties ought to be struck out, that the action does not disclose a reasonable cause of action, that the plaintiff lacks locus standi to bring the action, etc.

HELD (Dismissing the preliminary objections per lead ruling of **UWAIS CJN**, Karibi-Whyte JSC dissenting)

Actions - Averments in pleadings

1. It is clear that paragraph 10 of the Statement of Defence in this case, which is quoted above, has expressly averred that there is a dispute or controversy between the Plaintiff and 3rd, 6th, 9th, 10th, 24th, 27th, and 28th defendants on the facts averred in paragraph 8 of the Statement of Claim. By the decision of this Court in the case of *Adeyemi v Opeyori*, (supra), those averments are to be taken as true ex facie for the purpose of the present exercise. I am, therefore, satisfied that there is a dispute between the plaintiff and the littoral States as defendants in this case. (p. 2617 E)

Jurisdiction - Dispute involving interpretation of the Constitution

2. These provisions clearly show that this Court has the jurisdiction to interpret not only the provisions of section 162 subsection (2) but also all the other provisions of the Constitution whether on appeal or in exercise of its original jurisdiction under section 232 subsection (1). The dispute in the present case, as shown above, involves at least the interpretation of section 162 subsection (2) of the Constitution. Surely, that is a justiciable issue, apart from anything else being claimed by the plaintiff. The fact that the other issues might not be justiciable, which is arguable, cannot deny the Court the jurisdiction to interpret section 162 subsection (2) of the Constitution. Any issue which calls for the interpretation of the Constitution is obviously justiciable unless otherwise provided by the Constitution. The end result of the interpretation may not entitle the plaintiff to the relief sought but then that is another matter; and it is not a ground to contend that the claim is not justiciable or that the Court lacks the jurisdiction to hear the case. (p. 2618 H)

Parties - Misjoinder

3. I need only to add that it is possible that the decision given by this Court, in the event of its coming to consider the substantive issue in this case, is likely to affect the non-littoral States. The proviso to section 162 subsection (2) of the Constitution relates to the distribution of the Federation Account and the non-littoral States are constitutionally entitled to

share in the distribution of the Federation Account. I am satisfied, therefore, that there is no misjoinder of the parties in making the non-littoral States parties to this case since they are necessary parties to the case. (p. 2620 D)

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Separation of powers

4. Section 3 subsection (1) of the Constitution provides that there shall be 36 States in Nigeria; and subsection (2) of thereof provides-

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"(2) Each State of Nigeria named in the first column of part 1 of the first Schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that Schedule."

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Surely, this Court is competent to interpret these provisions of the Constitution. In doing so it is not usurping the powers of the Legislature or the Executive but exercising its powers under the Constitution which could be same or concurrent with that of the Commission. I see no conflict in this case between the powers of the Supreme Court and those of the Commission. If there were any, the Constitution being supreme to the Act its provisions will in that case prevail over those of the Act - See section 1 subsection (3) of the Constitution. (p. 2621 E)

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Definition of cause of action

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5. A cause of action has been defined to mean the fact or facts which establishes or gives rise to a right of action and that it is the factual situation which gives a person the right to judicial relief. It is sufficient for a court to hold that a cause of action is reasonable once the Statement of claim in a case discloses some cause of action or some question fit to be decided by a judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. I therefore, hold that there is a reasonable cause of action in the present case because the Statement of Claim has disclosed enough facts to give rise to a cause of action.

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(p. 2622 G)

Locus standi - Federal government

6. The Federal Government has the constitutional right and legal obligation to have share in the Federation Account. It needs only to indicate that a justiciable dispute exists between it and the defendants to have the locus to sue. To argue that the plaintiff must show that he has the consent of the Federal Legislative and the Federal Judiciary to bring this action is to ignore the provisions of section 20 of the Supreme Court Act, Cap. 424, which sates-

"20. Any proceedings before the Supreme Court arising out of a dispute referred to in section 212 (1) (i.e. section 232 (1) of the Constitution and brought by a against the Federation or a State shall-

(a) In the case of the Federation be brought in the name of the Attorney-General of the Federation;

(b) In the case of a State be brought in the name of the Attorney-General of the State;" (p. 2624 D)

Constitutional law - Interpretation of a section

7. The question may be asked: does the dispute as to the interpretation of the provisions of section 162 subsection (2) of the Constitution not involve any question (whether of law or fact) on which the existence or extent of legal right depend? The answer to the question has been given in the affirmative earlier in this ruling. There is undoubtedly a dispute as stated in paragraphs 8 and 10 of the Statement of Claim that is appropriate for judicial determination. The dispute is certainly not one which only political decision can resolve. It is real on the face of the Statement of Claim and substantially admitting of specific relief - see A-G of Bendel State's case (supra). (p. 2625 E)

Actions - Procedural irregularity

8. The objection raises only a procedural irregularity. Despite the purported irregularity the 27th defendant, like all the other defendants in the case, has filed a Statement of Defence in answer to the plaintiff's Statement of Claim. The irregularity does not occasion any inconvenience to the 27th defendant or any defendant in the case. It is only an issue of technicality. As argued by the plaintiff, the provisions in Order 6 rule 3

(1) are by the use of the word "may" only directive and not mandatory and so can be overlooked. At any rate, we can waive the irregularity under Order 10 rule 1 (1) of the Rules, which provides

"1 - (1) *The Court may where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof.*"

Since steps have been taken by the 27th defendant as well as all the defendants to file statements of defence, to uphold the objection and strike out the action will not disqualify the plaintiff from taking the appropriate steps to reinstitute the action. It will only have the effect of delaying the action and this will not be in the best interest of the public particularly as the case concerns the interpretation of the Constitution - See Johnson v Aderemi, 13 WACA 297 - 298. (p. 2626 D)

Actions - Frivolity of

9. Finally objection has been raised by the 1st defendant that the suit is academic and, therefore, it is frivolous, vexatious and speculative. Going by all the foregoing it cannot, in opinion be right to say that the issues raised by the Statement of claim are academic nor can it be properly contested that the suit is frivolous and vexatious or speculative. I see no substance in this objection.

On the whole I do not find any preliminary objections substantiated. Accordingly they are all overruled and are hereby dismissed. (p. 2627 B)

NOTABLE POINTS OF INTEREST

KARIBI-WHYTE JSC (Dissenting)

1. Defendant is not estopped from raising a point of law

It is clear from the words of r.6 (1) that a defendant is not estopped from raising a point of law or of fact on which he relies for the dismissal of an issue arising from the action or of fact on which he relies for the dismissal of an issue arising from the action or of dismissing the action because he had already filed his defence as was hitherto the case and held in Aina v. Trustees of Nigerian Railway Corporation (1970) 1 All

NLR.281. On the current rules above stated, the Court can still peremptorily dismiss the suit even after the close of pleadings without hearing evidence, where the Plaintiff's statement of claim discloses no cause of action. – See Onibudo v. Akibu (1982) 7 SC.60 (p. 2630 D)

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2. A court only has the duty to consider the claim

A court is only interested in and has a duty to consider the claim before it properly framed. It is not concerned with and should not be drawn into consideration of the motives or reasons for bringing a claim before it, which may be diverse and conflicting. Where however, there is ambiguity, it may accept the part of the endorsement, which has meaning and can be construed as a claim. The Court is duty bound to strike out inappropriate words or sentence. It seems to me preposterous to read into the claim endorsed on this writ of summons a claim for the purpose of calculating the amount of revenue accruing to the Federation account directly from any natural resources derived from that State. This, as stated by Plaintiff, being the purpose for bringing the claim cannot in my considered opinion also be a claim. The purpose so stated has not been so indicated as a claim even by the Plaintiff. It is difficult to conceive that this can be done through oral argument without amending the writ of summons. If the purpose for bringing an action is raised into the status of a claim by the Court, suo motu the Court would be framing a claim for the Plaintiff. This will be in conflict with its status and position of an unbiased and impartial arbiter. (p. 2631 F)

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3. When a statement of claim will go to no issue

It cannot be too seriously argued that as a matter of general principle any statement of claim not predicated upon a claim in the writ of summons goes to no issue and cannot be supported by any evidence. It is admitted the statement of claim if related to the claim in the writ if different amends the claim in the writ of summons. Similarly the statement of claim in this case which is not referable to any claim on the writ of summons goes to no issue. I therefore, am of the firm opinion that Plaintiff's claim is limited and confined to the determination of the seaward boundary of

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littoral States. I so hold. (p. 2632 F)

4. Court is entitled to strike out misjoined parties

There is therefore a misjoinder of parties in this action.

B Accordingly, this court is entitled to strike out the 28 non-littoral States from the suit in compliance with the provisions of Order 11 r.5 (3), which provides as follows –

C “The Court may at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name or names of any party or parties, whether as Plaintiffs or defendants not properly joined be struck out.”

D Having held that the names of the non-littoral States have been improperly joined, I hereby order that they be struck out from the suit. I resolve this issue in favour of the preliminary objection. (p. 2637 G)

REPRESENTATION

(1) Chief Bola Ige, SAN, Attorney-General of the Federation, with him (2) E Alhaji Abdullahi Ibrahim, SAN, (3) Mrs. T. A. Osinuga – S-G (4) Dr. Maxwell Gidado (5) O. Kumuyi – DDCL (6) Mrs. A. Soetan – Asst. Chief LO (7) U.S. Haruna – PLO (8) Dayo Apata – PLO (9) Prof. Deji Adekunle (10) J.A. Akinola (11) J.I. Nweze (12) Dan Nwanyanwu (13) Lateef F Ogunlayi (14) Prof. I. A. Ayua for the plaintiff.

ABIASTATE

(1) Awa U. Kalu, SAN, Hon. Attorney-General, with him (2) C.O. Akpamgbo, SAN (3) Olisa Agbakoba, SAN (4) N.U. Chianakwalam, Miss SG/PS (5) N. Amaonwu, Mrs. DLD (6) Chief M. A. A. Ozekhome (7) Ken G Ahia (8) John Ukpai – SSC (9) I.C. Nwachukwu – SSC (10) C.H. Ahuchaogu – SSC (11) U.N. Onyeoku, Miss for the 1st defendant.

ADAMAWASTATE

(1) Otsi W. Dah, Attorney-General, with him (2) Mahmud A. Bello, S-G H (3) Yakubu S. Ngbale, DCL for the 2nd defendant.

AKWAIBOMSTATE

(1) Effiong D. Bob – Attorney-General, with him (2) Chief A. Ekong Bassey, SAN (3) Atim Ekpo (Mrs.) – Sol.-Gen. (4) Eno Isangedighi – DCL

(5) Uko Udom (6) Goddy Umoh (7) Ime Inyang for 3rd defendant
ANAMBRASTATE

(1) Mrs N. J. Obika (Solicitor-General / Perm Sec.), with her (2) D.O.C. Amaechina (Asst. Chief Legal Officer) for the 4th defendant

BAUCHISTATE

B

(1) Habibu I. Shall, S-G., with him (2) H.D. Mohammed, DCL for the 5th defendant

BAYELSA STATE

(1) M.E.W. Ziworitin, Solic.-Gen., with him (2) C.J. Ayabowei (3) H.P.M Apeli –Ag. Director Civil Lt. (4) Femi Falana Esq. (5) Hon. Talford Ongolo (6) Abila Sylvenus Esq. (7) Olatunde Ayeni Esq., (8) A.O. Deworitshe Esq. (9) D.M. Kemebigha, Esq. for the 6th defendant.

C

BENUE STATE

(1) Aondoaver Angweh, Hon. Attorney-General, with him (2) S. D. Ato, Solicitor-General (3) S.C. Egede, Asst. Director, Civil Litigation, for 7th defendant.

D

BORNO STATE

(1) Alhaji Shettima Liberty, with him (2) Alhaji Muhammed Kolomani (3) E Yunusa Paiko (4) Mustapha Bulamo (5) Fatima Kwaku (6) Mrs. Lydia Aggilari (7) Mohammed Monguni (8) T.D. Dibal – DCL (9) Laminu Bukar (10) T.K. Gubio, for the 8th defendant

E

CROSS RIVER STATE

(1) Nella Andem-Ewa (Mrs.) Attorney-General CRS. With her (2) Chief Victor Ndoma-Egba (3) Mrs. V.J.O. Azinge, (4) Fernando. E. Otudor, Esq., D. Comm. L. (5) Joseph Efa Esq., D. Civil Lit. (6) Lionel Garrick Esq. S.S.C. 1 (7) Humphrey Ikegwuonu, Esq. for the 9th defendant.

F

DELTA STATE

G

(1) Prof. A.A. Utuama (A.G. & C.J), with him (2) D.C. Maidoh (S-G) (3) G. Owrhienyefa (D.C.L.) (4) O. Pedro (5) A. Mudiaga Odje for the 10th defendant

EBONYI STATE

H

(1) Chief Okeagu Ogadah, Hon. Attorney-Gen. With him (2) S.U. Ewa _ PLO, S-G, (3) O.U. Ogbonna – PLO, (4) A.A. Okalo, SLO for the 11th defendant

EDO STATE

(1) Chief S.O. Ekhabafe – A-G with him (2) Alfred Eghobamien, SAN (3) Mrs. Efe Ikponwonba _ S.G. (4) P.G. Nyamali (5) Mr. B.O. Kalu, DCL (6) Rotimi Edematie (7) Fred Agbaje (8) Rotine Ademarkin (9) Hauwa Ibrahim for the 12th defendant

B

EKITI STATE

(1) Obafemi Adewale, Attorney-Gen., with him (2) Chief R.M. Essan, SAN (3) C.I. Akintayo, Solicitor Gen. (4) L.B.Ojo, DCL (5) Ronke Funmilayo, SLO (6) Yinka Esan (7) Wale Fapolimda for the 13th defendant.

C

ENUGU STATE

(1) Dr. M.E. Ajogwu, SAN A-G / Comm. for Justice, with him (2) C.A. Onaga (Mrs) Ass. Chief Legal Office (3) Emeribe V.C. Esq., Senior Legal Officer (4) K. Kunyang for 14th Defendant

D

GOMBE STATE

(1) Emmanuel Ishaku Lateef, DCL Gombe State, with him (2) Robinson A. Labatak, DDCL Gombe State for the 15th defendant

E

IMO STATE

(1) J.T.U Nnodi, Hon. A.-G., with him (2) M.N. Oparaechie, S-G/PS (3) A.A. Igwe, Legal Officer (4) O.C. Olumba for the 16th defendant.

JIGAWA STATE

(1) Mrs M.A. Abdullahi – Hon. A-G. with her (2) M. M. Ehuaibu, S-G (3) Salisu Abudu, PSC for the 17th defendant

F

KADUNA STATE

(1) M.S. Aminu – Attorney-Gen., with him (2) G.B. Kore – DCL for the 18th defendant

G

KANO STATE

(1) Balarabe M. Bello, Hon A.-G for Kano State, with him (2) F.A. Landa, DCL (3) Aminu Adamu Aliyu, A.D.P.P for the 19th defendant.

KATSINA STATE

H

(1) Shema Shehibi Ibrahim, Hon. A.-G, with him (2) I.B. Gafai, B.P.P. (3) Ahmed Abby, S.S.C for the 20th defendant.

KEBBI STATE

(1) A. I. Kangiwa (A.G), with him (2) B.U. Likita (DCL) for the 21st

defendant.

KOGI STATE

(1) Mallam Abdullahi Haruna, (A-G), with him, (2) Osa Obayomi, DLD for the 22nd defendant

KWARA STATE

(1) T.S. Ashaolu, Hon. A.-G., Kwara State, with him (2) Mrs. F. D. Lawal DCL, Kwara State for the 23rd defendant.

LAGOS STATE

(1) Prof. O. Osibajo, A.G. with him (2) Dr. O. Ajayi, SAN (3) Mr. S. O. Ishola, DCL (4) Mrs. O.A. Olayinka, D-D Comm. Law (5) Mr. A Ipaye (6) Mr. O Olaniyan (7) Adeyemi Oluwole for the 24th defendant

NASARAWA STATE

(1) Adabson T.S. PII – A-G with him (2) A. Akika, - S.G. (3) M. J. Agum DCL (4) S. B Baira _DLD (5) I. Usman – PSC (6) M. Gbaje – S.C for the 25th defendant

NIGER STATE

(1) Abbas Bello, Solicitor-General with him (2) Ndaji Wali (ACL) for the 26th defendant.

OGUN STATE

(1) Chief Oluseyi Oyebolu, Attorney-General, with him (2) Ms. A.A. Akinwande – Director, Civil Litigation for the 27th defendant

ONDO STATE

(1) Chief Dele Odegengbe – A.-G & C.J. Ondo with him (2) A.O. Adebuseye, Director Civil Litigation for the 28th defendant.

OSUN STATE

(1) Dr. Yemi Kayode – Adedeji, Attorney-General with him (2) A.O. Adeniji – Chief State Counsel for the 29th defendant

OYO STATE

(1) A.A. Lawal, A.-G with him (2) A.I. Raheem, L.O. for the 30th defendant

PLATEAU STATE

(1) Daniel Longji, A.-G with him (2) Luka Fwangyil – S.G. (3) S. M. Shuibu – DCL for the 31st defendant.

RIVERS STATE

2610 A-G Federation v. A-G Abia State (2001) 7 KLR

(1) Mrs. A.R. Cokey-Gam, A.G. with her (2) Mr. R.N Godwin – Asst Direct., Ministry of Justice Civil Litigation (3) Associate Prof. E.S. Nwuche (4) Dr. Ibhia Lucky Worum for the 32nd defendant
SOKOTO STATE

B (1) A. A. Sanyinna (Hon. – A.G.) for the 33rd defendant.
TARABASTATE

(1) B.Y. Riki (H.A.G.) with him (2) J.U. Yakubu, DCL (3) R. I. Shimfe (S.G.) for the 34th defendant
YOBESTATE

C (1) Saleh Samanja, D.P.P, with him (2) M.M. Suleh, D.C.L for the 35th defendant
ZAMFARASTATE

(1) Ahmed Bello Mahmoud, (Attorney-General), with him (2) Kabiru D Umaru, DCL for the 36th defendant.

CASES REFERRED TO

A-G Bendel State v A-G of the Federation & 22 Ors. (1981) 10 S.C. 1

E A-G Federation v A-G of Imo State & 2 Ors. (1983) 4 N.C.L.R. 178.

Adeyemi v Opeyori, (1976) 10 N.S.C.C. 455 at p. 464

Egbe v Adefarasin, (1987) 1 NWLR (Part 47) 1

Irene Thomas & Ors v. Olufoseye, (1986) 1 NWLR (Part 18) 669

F Onibudo v. Akibu (1982) 7 SC.60

Onwonta v. Minaise (1952) 14 WACA.77

Madukolu v. Nkemdilim (1962) 1 All NLR.587

Liman v. Mohammed (1999) 9 NWLR.116

G Omoborimola II v. Military Governor Ondo State (1998) 14 NWLR.89

STATUTES & RULES REFERRED TO

Constitution of Nigeria 1999, ss. 232(1), 212(1), 162(2), 6(1), 3(1), 1(3).

National Boundary Commission etc. Act Cap. 238 LFN 1990

H Supreme Court Rules 1985 O.5 r. 1(a), O.3 rr. 2(2) & 6(1), O.6 r. 3(1), O.10 r. 1(1).

BOOKS REFERRED TO

Constitutional Law Cases and Materials, 7th Edition, by Professors Dowling and Gunther p. 163.

Toward Natural Principles of Constitutional Law, by Professor Wechsler, an article published in 73 Harvard Law Review, 1,7,9 Selected Essays 1938-62 (1963) at pp. 463 and 468

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LEAD JUDGMENT BY UWAIS CJN

Pursuant to the provisions of Order 3 rule 3 of the Supreme Court Rules, 1985, the Attorney-General of the Federation filed a Statement of Claim in this Court in order to commence proceedings in the original jurisdiction of this Court under section 232 of the Constitution of the Federal Republic of Nigeria 1999, against the thirty six Attorneys-general of all the States of the Federal Republic of Nigeria. The Statement of Claim avers as follows:-

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"1. The Plaintiff is the Attorney-general of the Federation and brings this action as the representative of Government of the Federal Republic of Nigeria.

2. The 1st to the 36th Defendants are the Attorneys-General of each of the 36 states which along with the /Federal Capital Territory Abuja, comprise the Federal Republic of Nigeria. Each defendant is sued as the representative of the Government of each State.

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3. Section 162 (1) of the Constitution of the federal republic of Nigeria, 1999 (hereafter referred to as "the Constitution") provides that the Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenue subject to certain exceptions which are not material to this case collected by the Federation.

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4. Pursuant to the provisions in Section 162 (2) of the Constitution and subject to certain conditions therein specified, the President of the federal Republic of Nigeria is required to table before the National Assembly proposals for revenue allocation.

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5. By a proviso to the aforementioned section 162 (2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.

6. *The Plaintiff states that in the context of section 162 (2) of the Constitution the expression "principle of derivation" means the principle that revenue accruing to the Federation Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.*

7. *The Plaintiff further states that the proviso to Section 162(2) of the Constitution requires that any approved formula for revenue allocation from the federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the government of the State or territory where such resources are located.*

8. *By reason of the facts pleaded in paragraphs 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to section 162 of the Constitution:-*

a) *The natural resources located within the Boundaries of any state are deemed to be derived from that State;*

b) *In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward Boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland water within the State;*

c) *The natural resources located within the territorial Waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

d) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

9. *In further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Fed-*

eral Government of Nigeria and not the Government of any of the States comprised in the Federal Republic of Nigeria that has power to:-

(i) *exercise legislative, executive, or judicial powers over the entire area designated as the "territorial waters of Nigeria" pursuant to the provisions of the Territorial Waters Act, Cap. 428, Laws of the Federation of Nigeria 1990, as amended.* B

(ii) *exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the "Exclusive Economic Zone" pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 110, Laws of the Federation of Nigeria, as Amended.* C

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo, and rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States.* D

WHEREUPON the Plaintiff claims:-

A determination by this Honourable Court of the seaward boundary of a Littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from the State pursuant to the proviso to Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999." E

All the defendants except the 29th and 30th have filed Statements of Defence. Eleven out of the 36 Defendants have raised preliminary objections in their Statements of Defence challenging the jurisdiction of this Court to hear the suit. These are the 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 27th, 28th, and 32nd defendants. The grounds of the preliminary objections varied. They however include the following:- F

(1) *That the suit is academic, frivolous, vexatious and speculative;* G

(2) *that the non-littoral States are not parties to the suit and ought to be struck out,*

(3) *That the original jurisdiction conferred on the Supreme Court does not extend to the realm of International Law;* H

(4) *That the Supreme Court has no jurisdiction to entertain the Plaintiff's claim or grant the reliefs sought as the Constitution vests the power upon the National Assembly only to determine the formula for revenue allocation including allocation on the basis of principle of derivation;*

(5) *That the plaintiffs's claim for the Supreme Court to determine the boundary of the littoral States is not justiciable since the Court has no jurisdiction to determine State boundaries.*

(6) *That the plaintiff's action does not disclose a reasonable cause of action.*

(7) *That the plaintiff's claim does not establish the existence of a valid dispute whether of law or fact; nor disclose the existence or extent of a legal right.*

(8) *That the plaintiff lacks the locus standi to bring the action.*

(9) *That the suit raises political question and is an abuse of judicial process;*

(10) *That the action is not properly constituted and is incurably defective on grounds of misjoinder of non-littoral States in the suit;*

(11) *That the Supreme Court lacks the jurisdiction to grant the relief sought and to interpret section 162 subsection (2) of the Constitution including the proviso thereof;*

(12) *That the action is premature as the President of the Federal Republic of Nigeria has not yet tabled any proposal for revenue allocation before the National Assembly in accordance with section 162 sub section (2) of the Constitution;*

(13) *That delimitation, demarcation or adjustment of boundaries between States is the responsibility of the Executive or the Legislature;*

(14) *That it is not proper for the plaintiff to start the action by filing a Statement of Claim instead of issuing an originating summons;*

(15) *That there is no legislation the interpretation of which will enable the Supreme Court determine the seaward boundary of littoral States; and*

(16) *That any determination of the seaward boundary of a Littoral State is tantamount to the Supreme Court delimiting the international maritime boundary of the Federal Republic of Nigeria, which is beyond the juridical competence of the Court.*

On the 9th April, 2001 when the case came up for mention, we directed the parties to each file brief of argument in respect of the grounds of their preliminary objection and the plaintiff to file one brief of argument in reply to all the eleven defendants' briefs. This has been done. At the hearing of the objections, all the parties adopted the arguments in their briefs. With the exception of the 4th and 12th defendants, learned counsel also argued orally in expatiation of the briefs.

I intend to deal with all the grounds of objection under the following headings-

JURISDICTION

Learned counsel for the eleven defendants have argued that the provisions of section 232 of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as "the Constitution") require that there must be a dispute between the Federation and the States before this Court can exercise its original jurisdiction. They argued further that the dispute must involve any question of law or fact on which the existence or extent of a legal right depends. That there is no dispute apparent from the Statement of Claim to justify this action. The Court, therefore, lacks the jurisdiction to hear the case.

The plaintiff contends that in determining whether this Court has the jurisdiction to hear the case it needs to look at the Statement of Claim and the relief sought by it only, as laid down by the decision of this Court in *Adeyemi v Opeyori*, (1976) 10 N.S.C.C. 455 at p. 464 per Idigbe, JSC and *Izenkwe v Nnadozie*, 14 WACA 361. He stated that the dispute or controversy which brought about the action relates to the discharge by the President of the Federal Republic of Nigeria of his responsibilities under section 162 of the Constitution. That paragraphs 6 and 7 of the Statement of Claim touch on the principle of derivation under section 162 subsection (2) of the Constitution. That the action is necessary mainly because there is a very serious dispute between the

Federal Government and some of the State Governments as to the seaward boundary of the States which are by the sea. This in turn creates a controversy as to whether natural resources located offshore of the Nigerian coastal belt must be treated as Federal or belonging to the littoral States. It is submitted that paragraphs 8 and 10 of the Statement of Claim read together establish the dispute between the Federal Government and the States which challenge the jurisdiction of the Court on the ground that there is no dispute.

Now section 232 subsection (1) of the Constitution provides:-
 "232 (1) *The Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.*"

It follows, therefore, that for this Court to exercise its original jurisdiction in a civil case between the Federation and State(s) or between States, there must be-

- (a) a dispute between the Federation and a State or States;
- (b) the dispute must involve a question of law or fact or both;
- and
- (c) the dispute must pertain to the existence or extent of a legal right.

What constitutes a dispute under section 212 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1979, which has exactly the same provisions as section 232 subsection (1) in question, had been considered by this Court in the cases of *Attorney-General of Bendel State v Attorney-General of the Federation & 22 Ors.*, (1981) 10 S.C. 1 and *A-G of the Federation v A-G of Imo State & 2 Ors.*, (1983) 4 N.C.L.R. 178. In *Attorney-General of Bendel State's* case, Bello, JSC (as he then was) stated as follows on pp. 48 to 49 thereof:-

"To invoke the original jurisdiction of this Court there must be a dispute as so qualified between the Federation and a State or between States.

The issue of jurisdiction was contested on three grounds. Firstly,

that there is no dispute which affected the interest of the Federation and Bendel State between the plaintiff (Bendel State) and the Federation. Secondly,

I think the first point may be easily disposed of from the definition of the word "dispute". The Oxford Universal Dictionary defines it as 'the act of arguing against, controversy, debate, contention as to rights, claims and the like or on a matter of opinion ...'

I also held as follows on p. 320 thereof:-

"It is well established principle of the interpretation of constitution that the words of a constitution are not to be read with stultifying narrowness - United States v Classic, 313 U.S. 299 and Nafiu Rabi'u v The state, (1980) 8-11 S.C. 130 at pp. 148 -149. The word 'dispute' in section 212 (1) should therefore be given such meaning that will effectuate rather than defeat the purpose of that section of the Constitution. Webster's New Twentieth Century Dictionary, 2nd Edition, provides that 'dispute' is synonymous with controversy, quarrel, argument, disagreement and contention."

It is clear that paragraph 10 of the Statement of Defence in this case, which is quoted above, has expressly averred that there is a dispute or controversy between the Plaintiff and 3rd, 6th, 9th, 10th, 24th, 27th, and 28th defendants on the facts averred in paragraph 8 of the Statement of Claim. By the decision of this Court in the case of Adeyemi v Opeyori, (supra), those averments are to be taken as true ex facie for the purpose of the present exercise. I am, therefore, satisfied that there is a dispute between the plaintiff and the littoral States as defendants in this case.

The next question is: whether the dispute involves a question of law or fact or both? The preliminary objectors have variously argued that the plaintiff's claim has not established the existence of a valid dispute whether of law or fact nor disclosed the existence or extent of a legal right.

The dispute, as stated in the Statement of Claim concerns the sharing of "Federation Account" based on the principle of derivation as provided under section 162 subsection (2) to determine who benefits or

shares in the allocation of revenue accruing from the natural resources located offshore the coastal area of Nigeria. In my opinion, the dispute involves at least a question of law, (if not fact), which is the interpretation of section 162 subsection (2) of the Constitution, in particular the proviso thereof which directly affects the littoral States and indirectly the non-littoral States.

The last question is: whether the dispute pertains to the existence or extent of a legal right? The short answer to this is provided by the dictum of Bello, JSC in the case of A-G of Bendel State v A-G of the Federation & 22 Ors., (supra) at p. 50 thereof, viz:-

"It is clear from the two sections (of the 1979 Constitution) that the plaintiff has a constitutional right to a portion of any amount standing to the credit of the Federation Account. It follows, therefore, that the dispute between the plaintiff (Bendel State) and the Federation involves a question on which the extent of a constitutional right of the plaintiff depends. I do not think any authority is required to say that constitutional right is a legal right within the purview of section 212 of the (1979) Constitution." (interpolation mine for clarity).

The next point on jurisdiction is that this Court has no jurisdiction to entertain the plaintiff's claim or grant the relief sought or to interpret section 162 (2) of the Constitution including the proviso thereof because the dispute is non-justiciable.

As has been shown above, section 232 (1) of the Constitution vests this Court with the jurisdiction to determine any dispute between the Federation and States. In addition, section 6 (1) of the Constitution vests in the Supreme Court the judicial powers of the Federation and subsection (6) thereof provides that the powers vested-

"(a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;
(b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;"

These provisions clearly show that this Court has the juris-

dition to interpret not only the provisions of section 162 subsection (2) but also all the other provisions of the Constitution whether on appeal or in exercise of its original jurisdiction under section 232 subsection (1). The dispute in the present case, as shown above, involves at least the interpretation of section 162 subsection (2) of the Constitution. Surely, that is a justiciable issue, apart from anything else being claimed by the plaintiff. The fact that the other issues might not be justiciable, which is arguable, cannot deny the Court the jurisdiction to interpret section 162 subsection (2) of the Constitution. Any issue which calls for the interpretation of the Constitution is obviously justiciable unless otherwise provided by the Constitution. The end result of the interpretation may not entitle the plaintiff to the relief sought but then that is another matter; and it is not a ground to contend that the claim is not justiciable or that the Court lacks the jurisdiction to hear the case.

Misjoinder of Parties

It has been canvassed that the 28 non-littoral States joined by the plaintiff in the action are wrongly joined since they have no seaward boundary and ought to be struck out from the case. It is also argued that since the action is not properly constituted it is incurable defective on grounds of the misjoinder of the non-littoral States.

The plaintiff submits that all the States of the Federation are likely to be affected by whatever answer this Court gives to the true meaning of the proviso to section 162 (2) of the Constitution. Reliance is placed on the judgment of this Court in the case of *A-G. of Bendel State v Attorney-General of the Federation; (1981) ALL NLR (Part 2) 1* where it was held-

"Any party that might be affected by the decision of the Court in a suit ought to be joined. It is therefore proper to join the States that are satisfied with the manner and form the 1981 Act was enacted even though there is no apparent dispute between them and the plaintiff."

The same issue as canvassed here by the preliminary objectors was raised in *A-G of Bendel State v A-G of the Federation & 22 Ors., (supra)*. Fatayi-Williams, CJN dealt with the question as follow on p. 24

thereof:-

"Moreover, since all and each of the States in the Federation have a stake in what its legal share of the revenue should be it is only fair and just that such States should be joined in the suit.

B *Some of the States may agree that the procedure should be challenged while others may not. It is for each State to come to court and say so and for the Court to adjudicate as to whether any legal right pertaining thereto has been infringed during the exercise of the legislative power by the National Assembly. For this reason I hold that there is a dispute*
 C *between the Government of Bendel State and the Federal Government, that the dispute involves not only questions of law or fact, but also the constitutional right of Bendel State Government. Furthermore, it is fair, just and proper for all the other defendants sued or joined by the order of*
 D *court, to be heard when the claims of Bendel State are being considered by this Court. (Italics mine).*

I need only to add that it is possible that the decision given by this Court, in the event of its coming to consider the substantive
 E **issue in this case, is likely to affect the non-littoral States. The proviso to section 162 subsection (2) of the Constitution relates to the distribution of the Federation Account and the non-littoral States are constitutionally entitled to share in the distribution of the Federation Account. I am satisfied, therefore, that there is no misjoinder**
 F **of the parties in making the non-littoral States parties to this case since they are necessary parties to the case.**

Seaward Boundary of littoral States:-

G It has been contended that the plaintiff's claim seeking this court to determine the boundary of the littoral States is not justiciable since the Supreme Court has no jurisdiction to determine the boundaries of the States and that only the National Boundaries Commission has the power to do so. It is also argued that the delimitation, demarcation or adjust-
 H ment of the boundaries between States is the responsibility of the Executive or the Legislative and since under the Constitution there is separation of powers between the three arms of government, namely, the Executive, the Legislature and the Judiciary, the Supreme Court will be usurp-

ing the function of the Executive or the Legislative, if it should grant the relief sought by the plaintiff by determining the seaward boundaries of the littoral States. It is further canvassed that the determination of the coastal boundary of a State touches on law of the Sea and therefore comes under the realm of international law for which the supreme Court lacks jurisdiction. That only the International Court of Justice at the Hague has such jurisdiction, it is emphasised.

In reply, the plaintiff submitted that States are made up of areas stated against them in the Second Schedule to the Constitution as provided by section 3 subsection (2) of the Constitution. That the areas of each State are made up of local government areas but that there are no local governments on the high seas to determine the seaward boundary of the littoral States. That it is untenable to suggest that the Constitution has created States without boundaries; the littoral States have seaward boundaries and these are what the Court is being called upon to determine. It is submitted that this can be done by examining the provisions of the Constitution.

The main thrust of this suit is the interpretation of the Constitution and not the determination of inter-State boundaries as provided by the National Boundary Commission etc. Act, Cap. 238 of the Laws of the Federation, 1990. **Section 3 subsection (1) of the Constitution provides that there shall be 36 States in Nigeria; and subsection (2) of thereof provides-**

"(2) Each State of Nigeria named in the first column of part 1 of the first Schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that Schedule."

Surely, this Court is competent to interpret these provisions of the Constitution. In doing so it is not usurping the powers of the Legislature or the Executive but exercising its powers under the Constitution which could be same or concurrent with that of the Commission. I see no conflict in this case between the powers of the Supreme Court and those of the Commission. If there were any, the Constitution being supreme to the Act its provisions will in that case prevail over those of the Act - See section 1 subsection (3)

of the Constitution.

There cannot be a boundary dispute between the Federation, which consists of all the States of the Federation, and individual States whether littoral or otherwise since the boundaries are the same - See
B Section 2 subsection (2) of the Constitution which provides that "*Nigeria shall be a Federation consisting of States and a Federal Capital Territory.*"

The seaward boundary of Nigeria as well as the international
C boundaries of Nigeria are the subject of international law in the event of dispute between Nigeria and any of its neighbouring countries or between Nigeria and any other Nation States vis-a-vis its territorial waters or the high seas. Nigerian Courts including the Supreme Court may not have jurisdiction over such a dispute but international tribunal like the
D international Court of Justice in the Hague.

The situation in this case is not the same. Any dispute between the Federation and a State or States is within the ambit of the jurisdiction of the Supreme Court as provided by section 232 subsection (1) of the
E Constitution. It is, therefore, a misconception to argue that the dispute in this case is beyond the jurisdiction of the Supreme Court and can only be determined by an international tribunal.

Cause of Action

The 4th and 6th defendants contend that the action brought by
F the plaintiff does not disclose a reasonable cause of action. It is also argued that the action is premature as the President of the Federal Republic of Nigeria has not yet tabled any proposal for revenue allocation before the National Assembly in accordance with the provisions of section
G 162 subsection (2) of the Constitution. Also that there is no legislation, the interpretation of which will enable the Supreme Court to determine the seaward boundary of the littoral States.

**A cause of action has been defined to mean the fact or facts
H which establishes or gives rise to a right of action and that it is the factual situation which gives a person the right to judicial relief - see Egbe v Adefarasin, (1987) 1 NWLR (Part 47) 1. It is sufficient for a court to hold that a cause of action is reasonable once the**

Statement of claim in a case discloses some cause of action or some question fit to be decided by a judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out - see Moore v Lawson, 31 TLR 428 CA; Wenlock v Moloney, (1965) W. L. 1238 B and Irene Thomas & Ors v. Olufoseye, (1986) 1 NWLR (Part 18) 669.

I therefore, hold that there is a reasonable cause of action in the present case because the Statement of Claim has disclosed enough facts to give rise to a cause of action. Although the President of the Federal Republic of Nigeria is yet to present a bill to the National Assembly on revenue allocation in accordance with the provisions of Section 162 (2) of the Constitution, there is already an "existing" law on the subject, viz, Allocation of Revenue (Federation Account, etc.) Act, D Cap. 16 of the Laws of Nigeria, 1990 as amended by the Allocation of Revenue (Federation Account etc.) (Amendment) Decree (Act) 1992 No. 106 of 1992. In my opinion, the action is not therefore premature. At any rate it is the plaintiff's contention that the claim could be proved by E mere reference to the provisions of the Constitution. On the other hand, if the action is premature the likely event is that the plaintiff will fail to prove his case; however, as shown by the aforementioned authorities, that is not a ground on which we should hold that there is no reasonable F cause of action.

Locus Standi

The 9th defendant argues that the plaintiff lacks the locus standi to bring the action because the Statement of Claim does not plead that the plaintiff's civil right and obligation, with regard to the plaintiff's share of the Federation Account, has been affected by the provisions of the Allo- G cation of Revenue (Federation Account etc.) (Amendment) Decree No. 106 of 1992.

The 4th defendants contends that the plaintiff has no locus standi H because he pleaded in paragraph 1 of the Statement of Claim that he brings the action as a representative of Government of the Federal Republic of Nigeria which consists of the Executive, Legislature and the

Judiciary. For him to have locus standi he must show that each of the three arms of government has given him its consent to bring a representative action in accordance with order 3 rule 1 and Order 5 rule (1) (a) of the Supreme Court Rules, 1985.

B In reply, the plaintiff's submits that section 232 (1) of the Constitution vests this Court with special jurisdiction to deal with dispute between the Federation and State or States and between States. The case is between the Federation and the States and not as between individuals. That the defendants have overlooked this fact. Citing A-G of C Ondo State v A-G of the Federation & Ors, 1983 NSCC 512, the plaintiff submitted that once it is between the parties in the case then, a locus standi has been established.

D I have already held in this ruling that there is a justiciable dispute in this case involving the legal right of the plaintiff. **The Federal Government has the constitutional right and legal obligation to have share in the Federation Account. It needs only to indicate that a justiciable dispute exists between it and the defendants to have the locus to sue - A-G of Bendel State v A-G of the Federation & 22 Ors. (supra) at p. 157 per Obaseki, JSC.**

F To argue that the plaintiff must show that he has the consent of the Federal Legislative and the Federal Judiciary to bring this action is to ignore the provisions of section 20 of the Supreme Court Act, Cap. 424, which sates-

G *"20. Any proceedings before the Supreme Court arising out of a dispute referred to in section 212 (1) (i.e. section 232 (1) of the Constitution and brought by a against the Federation or a State shall-*

(a) In the case of the Federation be brought in the name of the Attorney-General of the Federation;

(b) In the case of a State be brought in the name of the Attorney-General of the State;"

H Political Question

The 9th defendant argues that the case raises political question because of the averments in the Statement of Claim by the plaintiff and the Statements of Defence by the defendants. *Constitutional Law cases*

and Materials, 7th Edition by Professors Dowling and Gunther was cited with particular reference to p. 163 thereof. The defendant also referred to *Toward Neutral Principles of Constitutional law*, by professor Wechsler, an article published in 73 Harvard Law Review, 1, 7, 9 Selected Essays 1983 - 62 (1963) at pp. 463 and 468.

The 4th defendant submits that Section 162 subsection (3) of the Constitution gives the National Assembly the power to prescribe a new revenue allocation formula and the plaintiff is asking the Supreme Court to do the same by urging the Court to provide the manner of distribution of the Federation Account, thus usurping the powers of the National Assembly. That the matters which the National Assembly would take into consideration in prescribing a new formula for the allocation of the Federation Account are political. That the Supreme Court cannot deal with a political question. The case of *Onuoha v Okafor & Ors*, (1983) 14 NSCC is cited in support of the argument.

The plaintiff replies that it is untenable to canvass that the Statement of Claim raises a political issue. He argues that the plaintiff's claim is a justiciable dispute which satisfies the criteria laid down by this Court in the case of *A-G. Of Ondo State v. A-G of the Federation &., (supra)* per Nnamani, JSC.

The question may be asked: does the dispute as to the interpretation of the provisions of section 162 subsection (2) of the Constitution not involve any question (whether of law or fact) on which the existence or extent of legal right depend? The answer to the question has been given in the affirmative earlier in this ruling. There is undoubtedly a dispute as stated in paragraphs 8 and 10 of the Statement of Claim that is appropriate for judicial determination. The dispute is certainly not one which only political decision can resolve. It is real on the face of the Statement of Claim and substantially admitting of specific relief - see A-G of Bendel State's case (supra).

Procedural Irregularity

The 27th defendant raised the preliminary objection that it is not proper for the plaintiff to start the action by filing a Statement of Claim

instead of issuing an originating summons. He refers to Order 3 rules 2 (2) and 6 (1) of the Supreme Court Rules, 1985 in support of the objection.

The plaintiff replies that Order 3 rule 6 (1) of the Supreme Court Rules, 1985 is permissive and not mandatory. That there is, therefore , no justification for the defendant to say that the case must be commenced by originating summons.

Now, Order 3 rule 6 (1) states:-

"In any proceedings where the Court has original jurisdiction, any party claiming any legal or equitable right and the determination of the question whether it is entitled to the right depends on the construction of the Constitution of the Constitution or any other enactment may apply for the issue of an originating summons for the determination of such question of construction and for a declaration as to the right claimed and for any further or other relief."

The objection raises only a procedural irregularity. Despite the purported irregularity the 27th defendant, like all the other defendants in the case, has filed a Statement of Defence in answer to the plaintiff's Statement of Claim. The irregularity does not occasion any inconvenience to the 27th defendant or any defendant in the case. It is only an issue of technicality. As argued by the plaintiff, the provisions in Order 6 rule 3 (1) are by the use of the word "may" only directive and not mandatory and so can be overlooked. At any rate, we can waive the irregularity under Order 10 rule 1 (1) of the Rules, which provides

"1 - (1) The Court may where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof."

Since steps have been taken by the 27th defendant as well as all the defendants to file statements of defence, to uphold the objection and strike out the action will not disqualify the plaintiff from taking the appropriate steps to reinstitute the action. It will only have the effect of delaying the action and this will not be in the best interest of the public particularly as the case concerns the

interpretation of the Constitution - See Johnson v Aderemi, 13 WACA 297 - 298; Adejumo v Governor of Lagos State, (1970) 1 All N.L.R. 183 at p. 185 and A-G of Bendel State v A-G of the Federation & 22 Ors., (Supra) at ap. 148 - 150, 194-195 and 225 - 227.

Finally, objection has been raised by the 1st defendant that the suit is academic and, therefore, it is frivolous, vexatious and speculative. Going by all the foregoing it cannot, in opinion be right to say that the issues raised by the Statement of claim are academic nor can it be properly contested that the suit is frivolous and vexatious or speculative. I see no substance in this objection.

On the whole I do not find any preliminary objections substantiated. Accordingly they are all overruled and are hereby dismissed. I make no order as to costs.

KARIBI-WHYTE JSC

This ruling is on the preliminary objection to the jurisdiction of this Court in the action brought by the Federal Attorney-General on behalf of the Federal Government against the 36 States of the Federation as Defendants. The defendants are also contending that the non-littoral States ought not to have been joined with the littoral States as defendants.

The action came up for mention on the 9th April, 2001. Parties were ordered to file and filed their briefs of argument in support of their preliminary objections and Plaintiff was also ordered and filed a reply. The Court fixed 21st May, 2001 for argument on the preliminary objection. With the exception of the 4th and 12th Defendants learned Counsel expatiated orally on their briefs of argument. They urged dismissal of Plaintiff's suit. Learned Attorney-General of the Federation opposed. After argument on that day, the Court reserved ruling for the 11th July, 2001.

I have read the leading ruling of the learned Hon. Chief Justice. I have found it difficult to reconcile my understanding of the law and the exposition in the decided cases of the accepted, well settled principles of the law as applicable to the factual situation of this case, the constitutional position of the courts and the exercise of the jurisdiction in the determi-

nation of the rights granted by the Constitution, with the reasoning and conclusions of the Hon. Chief Justice in his ruling.

I have therefore decided to state concisely, even if somewhat in extenso my reasons for holding a different view. The leading ruling has B stated the provisions of the statement of claim. I do not want to repeat them. I adopt them.

Applicable rules of practice and procedure

The suit which gave rise to this preliminary objection was brought C by the Attorney-General of the Federation of Nigeria as Plaintiff in a writ of summons claiming against the defendants jointly and severally for,

“a determination by the Supreme Court of the Seaward bound-
ary of a littoral State within the Federal Republic of Nigeria, for the
purpose of calculating the amount of revenue accruing to the Federation
D Account directly from any natural resources derived from that State pur-
suant to section 162(2) of the Constitution of the Federal Republic of
Nigeria 1999.” (underlining is mine).

By section 232(1) of the Constitution of the Federal Republic E Nigeria 1999 suits by the Government of the Federation of Nigeria against any of the constituent states of the Federation, or any suits brought by one State of the Federation against another state or the Federal Govern- ment can only be commenced in the Supreme Court.

F This is in the exercise of its original jurisdiction. Section 232(1) afore- said provides as follows –

“(1) The Supreme Court shall, to the exclusion of any other
court, have original jurisdiction in any dispute between the Federation
and a State or between States if and in so far as that dispute involves any
G question (whether of law or fact) on which the existence or extent of a
legal right depends.”

The Supreme Court is an appellate court and the final court of H appeal – See S.233(1) and S.235 Constitution 1999. The rules of proce- dure applicable to the exercise of this original jurisdiction of the court is provided in Order 3 of the Rules of the Supreme Court 1985 as amended in 1999. Order 3 r.1 provides as follows –

“In the exercise of the original jurisdiction of the Court, where

no provision exists in the Rules, the practice and procedure of the Court shall be conducted in substantial conformity with the practice and procedure for the time being observed in the Federal High Court."

As Order 3 of the Rules of this court has not provided for rules governing joinder of parties to a suit, resort would be had to the provision B of Order 11 rules 3, and 5(3) of the Federal High Court (Civil Procedure) Rules which are as follows –

"3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the C alternative and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment."

5(3) *The Court may, at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name or names D of any party or parties whether as plaintiffs or defendants, improperly joined, be struck out."*

In accordance with the provisions of Order 3 rr.3, 5(3) of the Rules of this Court, the Plaintiff filed and served his statement of claim. E All the defendants have also filed their statements of defence to the claim of the Plaintiff. Eleven of the Defendants namely 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 27th, 28th and 32nd have in their Statements of Defence raised preliminary objections to the jurisdiction of this Court to F hear the suit. This they are allowed to do by virtue of the provisions of Order 36 rr. 6(1)(2)(3), 7 of the rules of the Federal High Court (Civil Procedure) which provide,

"7. If it appears to the Court that the decision of any question or G issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause, or make such other order or give such judgment therein as may be just."

Order 36 r.6 (1)(2)(3), which enables application to be brought H for the trial of issues or questions provides –

"(1) The Court may order any question or issue arising in a cause or matter, whether of fact or law, or partly of fact or partly of law,

and whether raised by the pleadings or on disagreement as to document that should be put in evidence or otherwise, to be tried before, at or after the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

B (2) *An order under this rule may be made on application by a party or by the Court or a Judge in Chambers on its or his own motion.*

(3) *Application by any party for the Order shall be by Motion on notice stating the question or issue sought to be tried.”*

C All the preliminary objections before us have been raised by way of motion on notice to the Plaintiff and/or stated as distinct averments in the statement of defence. This is in compliance with the provisions of Order 36 r.6 sub rules (1)(2)(3) reproduced above.

D It is clear from the words of r.6 (1) that a defendant is not estopped from raising a point of law or of fact on which he relies for the dismissal of an issue arising from the action or of fact on which he relies for the dismissal of an issue arising from the action or of dismissing the
E action because he had already filed his defence as was hitherto the case and held in Aina v. Trustees of Nigerian Railway Corporation (1970) 1 All NLR.281. On the current rules above stated, the Court can still peremptorily dismiss the suit even after the close of pleadings without hearing
F evidence, where the Plaintiff’s statement of claim discloses no cause of action. – See Onibudo v. Akibu (1982) 7 SC.60 Onwonta v. Minaise (1952) 14 WACA.77

Consideration of the Preliminary Objections

G In my opinion, the proper and most rewarding approach in considering the preliminary objections by the parties and the replies to them by the Attorney-General and the non-littoral States who share his views in the matter is the claim before the Court. First to give a meaningful construction of the claim as endorsed in the writ of summons. Secondly, to consider the propriety of the joinder of the parties. Thirdly, to determine the issue of jurisdiction. I concede that the ideal in any judicial determination where jurisdiction is raised as an issue, is first to determine that issue, which is undoubtedly fundamental to adjudication – See

Madukolu v. Nkemdilim (1962) 1 All NLR.587. But in this case because of the ambiguity in the endorsement of the claim in the writ of summons it is essential for a proper understanding of the claim to begin with and determine that issue first.

I now proceed to analyse the claim before the Court as endorsed on the writ of summons.

Analysis of the Claim in the writ of summons

The claim as endorsed on the writ of summons is for “a determination by this Honourable Court of the seaward boundary of a littoral state within the Federal Republic of Nigeria, for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to section 162(2) of the Constitutional of the Federal Republic of Nigeria 1999” (underlining mine). The endorsement of the claim is in two parts.

There seems to me the first part, which makes a demand only for a determination of the seaward boundary of a littoral state within the Federal Republic of Nigeria. The second part, which follows thereafter, is obviously not a claim since it does not call for a determination but merely the reason for seeking the determination of the seaward boundary of a littoral state.

A claim endorsed on a writ of summons is a legal demand as one’s own, the assertion of right for the determination of the court. A court is only interested in and has a duty to consider the claim before it properly framed. It is not concerned with and should not be drawn into consideration of the motives or reasons for bringing a claim before it, which may be diverse and conflicting. Where however, there is ambiguity, it may accept the part of the endorsement, which has meaning and can be construed as a claim. – See Liman v. Mohammed (1999) 9 NWLR.116 The Court is duty bound to strike out inappropriate words or sentence – See Omaborimola II v. Military Governor Ondo State (1998) H 14 NWLR.89.

It seems to me preposterous to read into the claim endorsed on this writ of summons a claim for the purpose of calculating the amount

of revenue accruing to the Federation account directly from any natural resources derived from that State. This, as stated by Plaintiff, being the purpose for bringing the claim cannot in my considered opinion also be a claim. The purpose so stated has not been so indicated as a claim even
 B by the Plaintiff. It is difficult to conceive that this can be done through oral argument without amending the writ of summons. – See Liman v. Mohammed (supra), Onifade v. Oyedemi (1999) 5 NWLR.54. If the purpose for bringing an action is raised into the status of a claim by the
 C Court, suo motu the Court would be framing a claim for the Plaintiff. – See Liman v. Mohammed (1999) 5 NWLR.54. This will be in conflict with its status and position of an unbiased and impartial arbiter.

The statement of claim of the Plaintiff was relied upon in amplification of the endorsement of the writ of summons and to argue that the
 D purpose so indicated has any relationship with the claim, which is the determination of the seaward boundary of littoral States. I have not found any correlation between the endorsement and a substantial part of the statement of claim with the exception of para.8(b), there is nothing
 E touching on the claim.

There is no doubt the determination of the claim will affect the calculation of Federal revenue envisaged. However, that will only be so after determination of the claim. One questions whether such reasoning
 F raises the issue of the purpose indicated to the status of a claim where no legal demand or assertion of right has been made on the endorsement on the writ of summons?

It cannot be too seriously argued that as a matter of general principle any statement of claim not predicated upon a claim in the writ
 G of summons goes to no issue and cannot be supported by any evidence. It is admitted the statement of claim if related to the claim in the writ if different amends the claim in the writ of summons. Similarly the statement of claim in this case which is not referable to any claim on the writ
 H of summons goes to no issue. I therefore, am of the firm opinion that Plaintiff's claim is limited and confined to the determination of the seaward boundary of littoral States. I so hold. Any other consideration will be preposterous and manifestly inconsistent with the fundamental prin-

ciples of adjudication. The view here adopted is supported by the Plaintiff's answer to the submission of the 3rd Defendant & 32nd Defendant when he stated that "what the President seeks in a pronouncement of the Supreme Court is as to the seaward boundary of a littoral State. It is after a pronouncement is made on this that the issue of natural resource derivation can be determined. Hence, this latter issue could not have been a claim before this court. B

I have held that the only claim properly before the Court is the claim for a determination of the seaward boundary of a littoral State. I shall hereafter in all my consideration of the ruling be confined to and limited by the claim as validly endorsed on the writ of summons. I will therefore consider anon whether the non-littoral States joined as defendants can be properly joined in law. C

The issue of Misjoinder D

I now proceed to consider the joinder of parties to the claim, which in my opinion is not properly before the court. There is a misjoinder of the non-littoral States.

The following defendants have challenged the joinder of the non-littoral States to the claim against the littoral States, on the ground of misjoinder of parties. These are the 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 27th, 28th and 32nd Defendants. E

The real object of seeking to join defendants in an action is to facilitate the trial of the claim or claims against them. This is clearly brought out by the provisions of the enabling rules of practice. Order 11 rule 3 of the Federal High Court Rules prescribing the circumstances enabling all persons who may be joined as defendants provides that, F

"3. *All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment*" G

It is obvious from the above provision that a proper joinder in accordance with the rule requires the Plaintiff to allege the existence of a right to relief against all the persons joined; so that judgment may be H

- given against them, jointly, severally or in the alternative without any amendment. The implication is that Plaintiff must make a claim against all the parties joined, and must seek reliefs from each of them. To be entitled to be joined the party seeking to be joined should be prosecutable
- B as the defendant in the action. Thus the object of the rule is to prevent a multiplicity of actions by enabling a Plaintiff to proceed in the same action against all persons whom he alleges he has the same relief – See Ekun & ors. v. Messrs. A. Younan & Sons & Anor. (1959) WRNLR.190.
- C It is necessary for Plaintiff to show that all parties joined in the suit will be entitled to a share of interest in the subject matter of the suit and are parties whose presence is necessary for the effectual and proper determination of the case. – Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982) 12 SC.1 – See JIA Enterprises v. B.C.I.C. (1962) 1 All NLR.363.
- D It is not sufficient if all a party has is a mere interest in the result of the action. – See Christopher Okafor v. B. Nnodi (1963) NNL.R.42. This is because there must be a dispute between the parties giving rise to the right of action. The fact that a dispute will arise subsequently after the
- E Plaintiff had obtained judgment which will give rise to a cause of action is merely speculative and will not be sufficient reason to enable a joinder – See Okafor v. Nnodi (supra), Awani v. Erejuwa II (1976) 11 SC.307.
- F A distinction should be made and this Counsel for the Defendants have also pointed out, between a party who is merely interested in the outcome of the suit against who there can be no claim or relief sought, See Guda v. Kitta (1999) 12 NWLR.21 Aromire v. Awoyemi (1972) 2 SC.1 and a necessary party, against who there can be a claim or relief, and who would be irreparably prejudiced if he is not joined in the action.
- G That is one of the tests in determining whether to join a person as a party to an action – See Oduola v. Coker (1981) 5 SC.197. Whereas the former cannot be joined as a defendant, the latter who is a necessary party is entitled to be joined. Another test for the determination whether
- H several defendants can be joined is that the claims and reliefs against the defendants should be the same, and that the defences to the claim of the Plaintiff against the defendants can be tried together in the same suit. – See Okafor v. Nnaife (1973) 3 SC. 85.

The Plaintiff has in the writ of summons and paragraphs 8(b) and 10 of the statement of claim sought only reliefs against the littoral states of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers States who dispute the averment in paragraph 8 of the statement of claim. By the ordinary principle of construction, expressio unius est exclusio alterius, the rest of the 28 States not mentioned are excluded – See Att.-Gen. Bendel State vs. Aideyan (1989) 4 NWLR (pt.118) African Ivory Ins. Co. Ltd. v. Commissioner of Insurance (1998) 1 NWLR.646. Accordingly, the exercise of jurisdiction for determination of the seaward boundary of the littoral States sought can only be limited to the littoral States expressly named in paragraphs 8(b) and 10 of the statement of claim. This is because these are the only States against whom claims have been made and relief was being sought.

It is now fairly settled law that it is the cause of action as endorsed on the writ of summons that determines the proper parties before the Court – See Okoye v. NC & FC (1991) 6 NWLR.501 Afolayan v. Ogunrinde (1990) 1 NWLR.396. It cannot be disputed that since no claim has been made and no relief was being sought against the non-littoral States, with whom the Plaintiff has no dispute, they cannot be joined with the littoral States – See Afolayan v. Ogunrinde (1990) 1 NWLR. (pt.127) 369. The relief claimed is only against littoral States. It is clear from the statement of claim that the joinder of the twenty-eight non-littoral states against whom Plaintiff has no dispute, has made no claim and sought no relief are not necessary for the determination of the action between Plaintiff and the littoral States. The presence of the non-littoral States whose defence to the Plaintiff's action is adverse to the defence of the littoral States is very likely to confuse the trial, make the proceedings unwieldy and cause unnecessary delay.

It cannot be disputed as has been urged by learned counsel for the Defendants that where there is no dispute between Plaintiff and the non-littoral States, there is no legal right which Plaintiff seeks to enforce against them and there is no justifiable dispute. – See Elendu v. Ekwoaba (1998) 12 NWLR. 320. In the absence of a justifiable dispute between Plaintiff and the twenty-eight non-littoral States, this Court lacks and

cannot exercise jurisdiction over them. – See Adesanya v. President of the Federal Republic of Nigeria (1981) 12 NSCC.146. It was submitted in argument before us that the non-littoral States are legitimately interested in the result of the action by the Plaintiff for the determination of the seaward limit of the littoral States since such a determination was likely to affect the calculation of the revenue accruing to the Federation and to that extent the share to be allocated to the States. The decision of this court in AG of Bendel State v. AG of the Federation & ors. (1981) 10 SC.1 was cited in support of the submission. The instant case is clearly distinguishable. In A-G Bendel State v. A-G for the Federation, the distribution of the revenue of the Federation in issue was common to all the States ordered to be joined, and the determination of the suit was a matter beneficial to all. The States not joined were therefore necessary parties. In the instant case the issue is peculiar to the littoral states who are necessary parties. The non-littoral States who are not necessary parties will not be affected by the determination.

There is some element of misconception of the law on the issue relied upon for this submission. It is not disputed that, and of course the 28 non-littoral states are interested in the outcome of the litigation between Plaintiff and the littoral States. That however, does not make them necessary parties to the action. There is no direct benefit, which will result from the determination. Plaintiff joining the non-littoral defendants to the suit must show that the defendants have a present direct existing interest in the determination of the suit. – See In re Ojukwu (1998) 5 NWLR.673. A contingent case, which is merely an interest in futuro will not be sufficient. – See In re Yinka Folawiyo & Sons (1991) 7 NWLR.237; Chinweze v. Masi (1989) 1 NWLR.254, Ige v. Farinde (1994) 7-8 SCNJ.284, Inane, speculative and hypothetical issues can only but be academic. Our courts have invariably and consistently declined to decide academic constitutional questions – See Atake v. Afejuku (1994) 9 NWLR.379; Nkwocha v. Gov. of Anambra State (1984) 6 SC.362. This is because as I have already pointed out, that Plaintiff has made no claim against them, and has sought no relief from them. Indeed there is no dispute between Plaintiff and the non-littoral Defendants. There is clearly

no basis for a joinder.

In Nnodi v. Okafor (1963) NNLR.42, Plaintiff applied to join an insurance company as a defendant. The action was against the servant of the defendant who was the driver of the motor vehicle in an action for damages for negligence. The ground for the joinder was that the defendant was insured with the insurance company. It was held that the application must fail because there was no dispute between the Plaintiff and the insurance company and none could arise unless and until the Plaintiff had obtained judgment against the defendant.

The position in this case of the non-littoral Defendants is even weaker. A determination of the seaward limit of the boundary of the littoral states per se cannot confer a right of action on non-littoral States, who do not fall within the same category. It is true that a possible review of the formula for revenue allocation may result from the determination. But that is a speculation which cannot give rise to a cause of action. – Ogbuehi v. Gov. of Imo State (1995) 9 NWLR (417) 53 Oyinloye v. Esinkin (1999) 10 NWLR.540. The Non-littoral defendants are only nursing a hope, which may or may not materialise. For the reasons herein stated the conclusion is inescapable that the 28 non-littoral States joined in this action are not necessary parties to the action. Plaintiff has conceded that there is no dispute with them, no claim has been made against them. There is no doubt therefore this Court cannot exercise any jurisdiction over them within the meaning of section 232(1) of the Constitution 1999 which provides for the exclusive exercise of jurisdiction

“in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence of a legal right depends.”

There is therefore a misjoinder of parties in this action.

Accordingly, this court is entitled to strike out the 28 non-littoral States from the suit in compliance with the provisions of Order 11 r.5 (3), which provides as follows –

“The Court may at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name or names of any party or parties, whether as Plaintiffs or defendants not properly

joined be struck out.”

Having held that the names of the non-littoral States have been improperly joined, I hereby order that they be struck out from the suit. I resolve this issue in favour of the preliminary objection.

B The Issue of jurisdiction.

I now turn to the issue of want of jurisdiction which has been the main contention of the littoral States and as I have stated earlier some of the non-littoral States. Several and varied arguments have been put forward ranging from the issue of the locus standi of the Plaintiff, non-justiciability, of the subject matter of the dispute, to there being no dispute, the action being premature, the precondition for exercise of the right of action having not been satisfied or whether the court was being called to decide a political question.

D I have stated already that the exercise of the original jurisdiction of this Court is derived from the provisions of section 232(1) of the Constitution 1999. Analysis of the section discloses that the original jurisdiction so conferred is with respect to any dispute between the Federation and a State or between States, which involves any question (whether of law or fact) on which the existence of a legal right depends.

The focus of this jurisdiction is on disputes between parties, the Federation and States or between States. It cannot be suggested that the subject matter of the exercise of jurisdiction is unlimited and at large. The expression that dispute involves any question (whether of law or fact) on which the extent of a legal right depends, does not enable exercise of jurisdiction in every matter whatsoever. Accordingly, Section 232(1) only enables the exercise of jurisdiction vested in the Courts. Hence there can be no jurisdiction in respect of matters excluded by statute or constitution expressly – See Barraclough v. Brown (1897) AC.615. Accordingly, there must be

- H** 1. *A justiciable dispute between the parties.*
2. *The dispute must be between the Federation and a State or between States of the Federation*
3. *The dispute must be that in which the existence or extent of a legal right of the Federal Republic of Nigeria or legal right of a state is*

involved.

4. *The claim must relate to the establishment of such rights which have been violated or a threat to their violation.*

The exercise of this jurisdiction invariably involves the exercise of the judicial powers of the Constitution 1999. Hence a proper construction of the amplitude of the exercise of the original jurisdiction of this Court requires a reading together of section 232(1) and section 6(6)(b) of the Constitution 1999. Thus construed it is confined to the exercise of jurisdiction within the judicial powers of the Constitution.

The contention in this case is whether this court has jurisdiction to hear the claim of the Plaintiff against the defendants? To answer this question it is necessary to show that the claim must disclose a justifiable dispute between the parties, and a relief against the defendants. This will depend also upon the claim disclosing a cause of action in the Plaintiff giving rise to a locus standi. The 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 13th, 14th, 16th, 27th, 28th and 32nd defendants have in their briefs of argument, and oral arguments listed and relied on a varied catalogue of grounds taken together or separately why this court cannot exercise jurisdiction to entertain the claim of the Plaintiff against the Defendants.

The grounds for the preliminary objection raised fall into two categories – There are grounds which raise the issue of the competence of the court to hear the action, such as relating to the subject matter of the action namely

- i. The subject matter being a boundary dispute
- ii. The subject matter pertains to international law
- iii. The subject matter within the competence of the legislature
- iv. The subject matter involves the determination of political question.

Issues concerning competence of the Plaintiff to bring the action are that

- i. There is no locus standi in the Plaintiff to bring the action.
- ii. There is no cause of action in the Plaintiff
- iii. The action is premature
- iv. The action is frivolous, speculative and an abuse of The judi-

cial process.

I have already discussed the objection relating to grounds of joinder of the non-littoral States as parties to the action. The ensuing discussion is concerned with the issue of the jurisdiction to entertain the
B suit. I have confined my consideration of the objection to jurisdiction to the claim before the court and the relief sought in the statement of claim.

The jurisdiction of the Court

(a) Whether there is a justiciable

dispute

C The contention of the eleven defendants in this case is that the exercise of the original jurisdiction of the court is founded on the existence of a justiciable dispute between the Federation and the State or States or between two States. Again such dispute must involve determi-
D nation of any question of law or fact on which the existence or extent of a legal right depends. They contend that there is no dispute in the averments in the statement of claim to support the action, accordingly the Court lacks the requisite jurisdiction.

E The submission of Plaintiff in support of jurisdiction is that the statement of claim and the relief sought clearly show that the court has jurisdiction. Counsel relied on Adeyemi v. Opeyori (1976) 10 N.S.C.C.455 at p.464 and Izenkwe v. Nnadozie 14 WACA.361 for the submission.
F Plaintiff argued that the dispute or controversy relied upon for this action relates to the discharge of the President of the Federal Republic of Nigeria of responsibilities under Section 162 of the Constitution 1999. The averments in paragraphs 6 and 7 of the statement of claim touch on the principle of derivation under section 162(2) of the Constitution 1999. It
G was submitted that,

There is a very serious dispute between the Federal Government and some of the State Governments as to the seaward boundary of those littoral States. It was argued that in turn creates a controversy as to
H whether natural resources located offshore the Nigerian coastal belt must be treated as Federal or belonging to littoral States. A combined reading of paragraphs 8 and 10 of the statement of claim establishes the dispute between the Federal Government and the States challenging the jurisdic-

tion of the Court.

I have already outlined the essential ingredients for the exercise of the original jurisdiction of this Court. It is important for a determination of the issue to consider the meanings of the expression “dispute” and “existence or extent of a legal right within Section 232(1) of the Constitution 1999. The word “dispute”, and expression “extent of a legal right” in section 232(1) in pari materia with section 212(1) was the subject matter of the construction in Att-Gen. of Bendel State v. Att-Gen. of the Federation & ors.(1982) 3 NCLR.1 at p.56 where the word dispute was construed to mean a justiciable dispute. A justiciable dispute must involve any question of law or fact, on which the existence or extent of a legal right depends.

Again, in Att-Gen. of the Federation v. Att-Gen. of Imo State & ors. (1982) 13 NSCC.567, it was stated that to invoke the original jurisdiction of this court, there must be a justiciable dispute between the Federation and the defendant State or States, and that the dispute must involve the determination of a legal right.

The matter was further explained in Att-General of Ondo State v. Att-Gen. of the Federation (1983) 14 NSCC.512 at p.521 where it was stated, that the state which complains of and which seeks to invoke section 212(1) of the Constitution must have a legal right (either based on the Constitution, statute law or some other law) which is injured or threatened.”

These decisions clearly establish the well settled law that only a justiciable dispute between the Federal Government and State, or between States will enable the invocation of the original jurisdiction of this Court. It is important to point out that in Att-Gen. of Bendel State v. Att.Gen of the Federation & ors. (supra) the court accepted the distinction between a justiciable dispute or controversy which gives a right of action from a mere dispute of a hypothetical, academic or abstract nature which does not. A justiciable dispute must be a real and substantial controversy admitting of a specific relief through a decree of a conclusive character. This is to be distinguished from an opinion advising what the law would be in a hypothetical situation.

It is now appropriate to examine the writ of summons and the statement of claim to determine from them whether a justiciable dispute is disclosed.

The word jurisdiction means the authority the court has to decide matters before it or to take cognisance of matters presented in a formal way for its decision. – See Ndaeyo v. Ogunnaya (1977) 1 SC.11. National Bank v. Shoyoye (1977) 5 SC.181. Plaintiff has submitted, relying on the averments in paragraph 10 of the statement of claim that there is dispute between Plaintiff and the 3rd, 6th, 9th, 10th, 24th, 27th and 28th. Defendants on the facts averred in paragraphs 8 to 10 of the statement of claim which read as follows –

“8. By reason of the facts pleaded in paragraphs 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-

(a) The natural resources located within the boundaries of any State are deemed to be derived from that State;

(b) In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State;

(c) The natural resources located with the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;

(d) The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria Are subject to the provisions of any treaty or other Agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.

9. In further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of the States

comprised in the Federal Republic of Nigeria that has power to:-

(i) *exercise legislative, executive, or judicial powers over the entire area designated as the “territorial waters of Nigeria” pursuant to the provisions of the Territorial Waters Act, Cap.428, Laws of the Federation of Nigeria 1990, as amended.*

B

(ii) *exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the “Exclusive Economic Zone” pursuant to the provisions of the Exclusive Economic Zone Act, Cap.110, Laws of the Federation of Nigeria, as Amended.*

C

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States.*

D

WHEREUPON the Plaintiff claims:-

A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to Section 161(2) of the Constitution of the Federal Republic of Nigeria, 1999.”

It is a fundamental principle of law that the claim of the Plaintiff determines the jurisdiction of the court, and not the defence of the defendant. – See Adeyemi v. Opeyori (1976) 9-10 SC.31, Izenkwe v. Nnadozie (1953) 14 WACA.361. The claim of the Plaintiff is for a determination of the seaward boundary of the littoral States. The only averment in the statement of claim which relates to this claim is paragraph 8(b) which states that the seaward boundary of each of the said states is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State.” All the other averments, apart from paragraph 9 which aver the powers of the Federal Government and, 10 which is the relief are averments concerning the location and control of natural resources.

G

H

There is accordingly no averment of a dispute between the par-

ties, the existence of a right in the Plaintiff and the violation of such right by the Defendant which gives right to an action. – See Aromire v. Awoyemi (1972) 1 All NLR (pt.1) 101, Ume-Ezeoke v. Makarfi (1982) 3 NCLR.663, Emiator v. Nigerian Army (1999) 12 NWLR.362, Ogunmokon v. Military Administrator, Osun State (1999) 3 NWLR.261. No relief has been claimed against the non-littoral states in the statement of claim having been excluded in paragraphs 8 and 10 of the statement of claim as the States with which Plaintiff has no dispute. The Court can therefore not in the absence of any dispute exercise jurisdiction – See Badejo v. Federal Ministry of Education (1996) 8 NWLR (pt.464) 15, Aromire v. Awoyemi (1972) 1 All NLR (pt.1) 101; Kalio v. Daniel-Kalio (1975) 2 SC.15.

(b) The existence of a legal right

It is also relevant for the determination of this preliminary objection to determine the existence or extent of the legal right of the Plaintiff in the claim. This is a requirement of Section 232(1) of the Constitution 1993. As I have already stated, the claim before the Court is the determination of the seaward boundary of the littoral states. The reasons for bringing the action, not being a claim, is not subject matter for determination.

There are no averments in the statement of claim of the existence or extent of the legal right of the Plaintiff in the determination of the boundary of the littoral states. The averment in paragraph 9 which claims exclusive legislative, executive and judicial authority of the Federal Government over the territorial waters of Nigeria, and the Exclusive Economic Zone has not averred that the littoral States are not an integral part of the Federation of Nigeria. The legal right of the Plaintiff in the relation to the claim against the defendants has not been averred. These averments are therefore not relevant.

Plaintiff claims and avers a dispute with the littoral States. There is nothing in the statement of claim which shows the nature of the dispute, the injury to Plaintiff, resulting from the acts of the Defendants or any threat to the enjoyment of such legal right. The rights claimed to be threatened is that of the share of the revenue from the Federation Account. What is before us is an entirely different matter, namely the deter-

mination of the seaward boundary. A dispute will only arise when the littoral States perform acts affecting the constitutional right of the federal Government with respect to the seaward boundary of their States. No such situation has arisen. – See Governor of Oyo State v. A-G of the Federation (1983) 4 NCLR.495.

The interpretation of the provision of section 162 relating to the sharing of the revenue accruing to the Federation is not a claim before the court and cannot confer jurisdiction on the Court. – See Madukolu v. Nkemdilim (1962) 1 All NLR.587.

In my opinion founded on analysis of the claim of the Plaintiff and the averments in the statement of claim there are no facts disclosing a justiciable dispute. There is undoubtedly a disagreement between the parties on the issue of the seaward boundary of the limit of littoral States. This mere disagreement of parties per se does not confer a justiciable dispute on the court – See A-G. Eastern Nigeria v. A-G. Federation (supra). The Plaintiff is required to establish a legal right in himself which has been violated or an injury or threat to such injury to that right by the Defendant. Plaintiff having failed to establish any of these essential requisites has not shown the existence of a dispute. – See Att-Gen Ondo State v. A-G of the Federation (supra).

I shall now consider the specific issues concerning the subject matter of the claim relating to jurisdiction.

(i) **Determination of Boundary** The issue of the determination of the seaward boundary of littoral States, has given rise to a lot of legal issues which bristle with subtleties. The contention of the Defendants in this case is that Plaintiff lacks the requisite jurisdiction to determine the matter because there is no justiciable dispute between Plaintiff and the Defendants giving rise to the claim to the determination of the boundary. Arguing that the power to delimit boundaries having been vested in the Executive or the Legislature through the Agency of the National Boundaries Commission, the courts will be violating the letter and spirit. It was also submitted that there is no jurisdiction because this is a matter of the separation of the exercise of constitutional powers and functions. The exercise of the jurisdiction will tantamount to the usurpa-

tion by the court of the exercise of the powers vested by the constitution in the Legislature and the Executive. It was also submitted that there is no jurisdiction because the determination of a coastal boundary touches on the law of the sea and therefore within the subject matter of International Law and falls under the realm of International Law.

In answer to these submissions Plaintiff submitted that States are made up of the areas stated against them in accordance with Section 3(2) of the Constitution and the second schedule. These include the local governments in the littoral States, the areas of which do not extend to the High seas. There are no local governments in the High Seas. The inference that the Constitution has created local governments without boundaries was rejected as untenable. The Court is now called upon to determine the seaward boundaries of the local governments of these littoral States. It was submitted that this can be done by examining the provisions of the Constitution.

The claim of the Plaintiff is for the determination of the seaward boundary of the littoral States. This undoubtedly is the subject matter before the Court. The Plaintiff has in paragraph 8(b) of the statement of claim averred that “the seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State.

Defendants deny this averment. The contention of the Plaintiff that the determination of the seaward boundary of littoral States is an interpretation of provisions of the Constitution is fairly difficult to comprehend. The relevant provisions of the Constitution sought to be construed in relation to the claim has not been referred to and there are no averments in the statement of claim of the issue to be construed. It is well settled that a pleading must be sufficient, comprehensive and accurate— See Ayo James v. Midmotors Nigeria Co. Ltd. (1978) 11 & 12 SC.31 at p.63. Plaintiff having not averred sufficient facts in support of the claim cannot be allowed to raise and rely on the issue contended. Indeed Plaintiff has admitted that there is a very serious dispute as to the seaward boundary of the littoral States, but that the determination of the boundary was being sought because of the matter of the sharing of rev-

enue. Obviously, this is an admission of a boundary dispute.

In the determination of the objection the Court takes into account the subject matter which is the adjustment of the boundary of littoral States. Section 8(2) of the Constitution 1999 has vested in the Legislature matters relating to boundaries. For the purpose, the Legislature has enacted the National Boundary, etc. Commission Act Cap.238 with the specific functions of determining and intervening in any boundary dispute that may arise between Nigeria and any of her neighbours or between any two States of the Federation with a view to settling such a dispute – Section 3(a). It cannot be disputed that the adjustment of boundaries, being sought in the instant case, is a boundary dispute.

It is important to take cognisance of the fact that the extent of the Territorial Waters and of the Exclusive Economic Zone were fixed by Acts of the Legislature – See Territorial Waters Act Cap.428 and Exclusive Economic Zone Act. Cap.116 Laws of the Federation of Nigeria, 1999. Why then not the Boundary of littoral States? The section did not provide for boundary disputes between the Federation and any state or states. Accordingly the National Boundary Commission is the only competent body to determine boundary disputes between States of the Federation. In Adesina v. The Commisisoner Ifon/Itobu Boundary Commission, Osogbo (1996) 4 SCNJ.112, 120, Adio JSC held that a High Court has no jurisdiction to determine boundaries between two communities under the Local Government Law, Cap.69, Laws of Western Nigeria. It is pertinent to state that there can be no Federation with littoral State and seaward boundary in the absence of the littoral States.

Understandably since the Federation is constituted by all the 36 States of the Federation, there cannot be a dispute between the Federation as a whole and any of the States, all of who are integral and inseparable parts and are co-owners of the Federation.

By analogy with the ownership of communal land by all members of the family who are co-owners, as a claim for declaration of title is not maintainable against a member of the family in respect of family land, so the Federal Government cannot maintain an action for the determination of the boundary of a State – See Salawu Yoye v. Olubode (1974)

All NLR.657 at p.657. Implicit in the concept of co-ownership is the presumption that all the co-owners are as of right part owners of the whole.

The Federal Government which represents all the constituent States of the Federation holds in trust and exercises the powers of the Federation for and on behalf of all the states. It can therefore not bring an action against any of the parts of the Federation.

I am unable to accept the contention that the determination of the “seaward boundary” of a littoral State is a matter of international law and within the jurisdiction of international courts. It is well accepted that only Nation States are subjects of international law and subject to the jurisdiction of international Courts. – See The Reparation of Injuries Case ICJ Reports (1949), 179. However, the component states of a country as these defendant states, are integral parts of the country and are subject to the municipal laws and the domestic courts of the country. Accordingly, where the subject matter before the court can be shown to be justiciable the fact that it has an international flavour will not deprive the Courts of the country of their jurisdiction. Unfortunately the claim in this case has not been shown to be justiciable.

The subject matter being for the determination of the seaward boundary of a littoral State has no nexus with international law. The claim is merely for a determination of the “seaward” “boundaries” of littoral States. That is the true territorial boundaries seaward of the country.

(ii) **Political Question** It was submitted by the 9th Defendant that the case raises a political question. These are questions which are thorny in nature and could be better resolved extra-judicially by agencies constitutionally vested with jurisdiction to do so. Plaintiff submitted that the statement of claim did not raise a political issue. It was contended that the claim was justiciable and satisfied the criteria laid down in A-G of Ondo State v. A-G of the Federation & ors. (supra). The consensus is that any attempt by the courts to exercise jurisdiction in political issues would lure it into a political thicket from which it will be difficult to extricate itself. Finkelstein in an article in 37 Harvard Law Review (1924)

338 at p.344 has suggested that Political questions are those matters of which the Court at a given time, will be of opinion that it is impolitic or inexpedient to take jurisdiction. The Courts have traditionally refused to exercise jurisdiction where they have felt that the exercise of judicial power was inappropriate – See Attorney-Gen. of Eastern Nigeria v. A-G of the Federation (1964) 1 All NLR.224. The dispute in the instant case relates to a matter vested in the legislature. Our system of government and our constitutional structure entrenches the exercise of separation of constitutional powers among the three equal and separate departments of the Constitution. The exercise by usurpation of one of the constitutional functions of the other is very likely to result in conflicts and productive of a constitutional crisis. – See Attorney-General of Anambra State v. Okafor (1992) 2 NWLR.396 Garba v. FCSC. (1988) 1 NWLR.449 Musa v. Hamza & ors. (1982) 3 NCLR.299.

In determining whether the matter before the court involves a political question it is important to consider the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination. The Constitution has in the instant case vested the determination of boundary disputes in the political departments. By the obvious absence of a legislative provision governing any boundary dispute between the Federation and the states, it has left that issue for political determination through appropriate legislation and executive action. “The Constitution has” as stated by Justice Frankfurter in the United States decision of South v. Peters 339 U.S.276 (1950) “ left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action, and ultimately on the vigilance of the people in exercising their political rights.” This is the position in this country and backed by our Constitution. Besides, the Courts are ill-equipped to engage in the question of determining boundaries when they have no materials for the exercise. Courts are only equipped to determine disputes where the lines of contention between parties have been drawn. Its machinery is not designed to find its solution in an uncharted sea. Hence in such situations of the exercise of jurisdiction which are

not judicial there must be some tolerable level of judicial self-limitation in the cases which trench upon the exercise of the constitutional powers of the legislature and the executive. I agree with the Defendants that the determination of the subject matter of this action in the circumstances will involve taking political decisions. These are decisions which the courts have neither the experience, wisdom, facilities, nor responsibility to undertake. The decision even if embarked upon will be academic- See Onuoha v. Okafor & ors. (1983) 14 NSCC.494 at p.507, Union Bank of Nigeria Ltd. v. Edionseri (1988) 2 NWLR.105.

Competence of Plaintiff to bring the action

I now turn to the question of the competence of Plaintiff to bring the action. I shall consider in this part of the question whether Plaintiff has a cause of action, the issue that the action is premature, locus standi of the Plaintiff and whether the action is an abuse of the judicial process.

It was the contention of the 4th and 6th Defendants that the action of the Plaintiff does not disclose a reasonable cause of action. It was also submitted that Plaintiff has no locus standi, and that the action is an abuse of the judicial process. Plaintiff in answer contended that the submission is misconceived. The learned Att-General submitted that Plaintiff had locus standi under the Constitution to initiate the suit and that the statement of claim disclosed a real and justiciable dispute. I shall now consider the question whether there is a cause of action.

Whether there is a cause of action

The competence of the Plaintiff to institute the action lies entirely on their being a cause of action. A cause of action has been defined in several decisions of this Court. Concisely put it has been defined to mean the aggregate of fact or facts which put together establishes or gives rise to a right of action. It is the factual situation which gives to the Plaintiff the right to a judicial relief. See Egbe v. Adefarasin (1987) 1 NWLR (pt.47) 1, Akilu v. Fawehinmi (No.2) (1989) 2 NWLR.122; Green v. Green (1987) 3 NWLR.480; Patkum Industries Ltd. v. Niger Shoes Mfg. Co. Ltd. (1988) 5 NWLR. 138.

What are the factual situations as averred in the statement of

claim which gives to Plaintiff a right of action? The averments in paragraphs 4, 5, 6, 7, 8(a)(b)(c)(d), 9, 10 of the statement of claim, which are all that was pleaded did not refer to the factual situation which has given rise to the action. They also do not give to Plaintiff a right to relief. Accordingly Plaintiff's writ of summons and statement of claim have not given rise to a cause of action. – See Ogbimi v. Oloto (1993) 7 NWLR (pt.304) 128 Akintola v. Solano (1986) 2 NWLR (pt.24) 596, Kwarra State Ministry of Agriculture & ors. v. Societe Generale Bank & ors. (1998) 11 NWLR.574 at p.578.

Learned Attorney-General of the Federation has argued that since there is an existing law on the subject matter in the Allocation of Revenue (Federation Account, etc.)(Amendment) Decree (Act) 1992 No. 106 of 1991, the fact that the President of the Federal Republic of Nigeria is yet to present a Bill to the National Assembly on revenue allocation in accordance with the provisions of section 162(2) of the Constitution 1999 did not render the action premature.

With the greatest respect this seems to me a clear misunderstanding of the claim in the writ of summons. The claim is not for the interpretation of the formula for revenue allocation and does not concern any determination of that issue which was not a claim before the Court. The question whether the action is premature, should concern the claim for the determination of the seaward boundary of the littoral states which was the claim before the Court.

A dispute as to the seaward boundary of the littoral states can only properly arise after the National Boundary Commission vested with jurisdiction to determine the issue had so determined ; and if the determination is subject matter of dispute between Plaintiff and the littoral States. At any rate, section 3(a) of the National Boundary Commission Act has not provided for the determination of boundary dispute between the Federal Government and any of the constituent States. The action is therefore premature and is incompetent. – See Adesola v. Abidoye (1999) 14 NWLR (pt.637) 28. The action is obviously premature and not ripe for litigation.

Whether Plaintiff has Locus Standi

The objection of lack of locus standi has been raised by the 4th and 9th Defendants on two different grounds. Whereas the 4th Defendant relies on the fact that Plaintiff who had sued in a representative capacity, had not been shown to have obtained the consent of the other arms of the Government and accordingly had not complied with the provisions of Orders 3(1) 5(1) (a) of the Rules of the Supreme Court, 1985. The 9th Defendant contends that Plaintiff has not averred in his statement of claim how his civil rights and obligations with regard to his share of the Federation Account has been affected by the provisions of Allocation of Revenue (Federation Account, etc.) (Amendment) Decree. No. 106 of 1992.

The learned Att-General for the Federation in reply contended that Plaintiff has locus standi. He relied on Section 232(1) of the Constitution 1999 which vests special jurisdiction in this Court with respect to disputes between the Federation and a State or States. This case is between the Federation and States and not between individuals. It was submitted relying on A-G. of Ondo State v. A-G. of the Federation & ors. (1983) 2 SCNLR.269 that once a real dispute between the parties is established, there is locus standi.

The locus classicus of locus standi in actions before our courts in the decision of this Court in Adesanya v. President of the Federal Republic of Nigeria (1981) All NLR. (Reprint).

1. Locus standi is defined to mean the legal right of a party to an action to be heard in a litigation before a court of law or tribunal. The expression encompasses the legal capacity to institute, initiate or commence an action in a competent court of law or tribunal without inhibition obstruction or hindrance from any person or body whatsoever including the provision of any existing law. The locus standi raises the question whether the person whose standing is in issue is the proper person to seek an adjudication of the issue. It is not whether the issue itself is justiciable; or whether the case was likely to succeed. The issue is whether the Plaintiff has sufficient legal interest, that is, whether there is a breach of the civil rights and obligations of the Plaintiff. – See Ogbuehi v. Governor of Imo State (1995) 9 NWLR. (pt.417) 53; Adesanya v.

Shagari (1981) 2 NCLR.358 Madukolu v. Nkemdilim (1962) 1 All NLR.587. There is no issue more fundamental in the entire process of adjudication than that of access to justice.

The twin factors to be considered in determining locus standi, are that (i) Plaintiff must be able to show that his civil rights and obligations have been or is in danger of being violated or infringed, and (ii) Plaintiff must have a justiciable dispute with the Defendant. These two factors must co-exist to establish the locus standi of the Plaintiff.

In the instant case it has not been shown that the civil rights and obligations of the Plaintiff have been violated or infringed or are in danger of being violated or infringed. I have been unable to find the wrongful act committed by the Defendants against the Plaintiff which will give Plaintiff a right of action. It is also difficult to conceive how the determination of the seaward boundary of a littoral State, can violate or infringe the legal right of the Plaintiff. I have not found any civil right of the Plaintiff in the averments in the statement of claim. I have already held that the Plaintiff, the littoral States, and the non-littoral States, are integral members and co-owners of the Federation of Nigeria which Plaintiff represents. Plaintiff therefore has no locus standi and cannot therefore bring any action for a declaration against the littoral States for the determination of the subject matter of the co-ownership – See Yoye v. Olubode (1974) All NLR. The Plaintiff therefore lacks the locus standi to bring the action.

Necessity of Consent

On the submission of the 4th Defendant that Plaintiff needs the consent of the other departments of the Constitution for the validity of the action, section 20(a) (b) of the Supreme Court Act, Cap.424 is a complete and conclusive answer. It provides –

“20 Any proceedings before the Supreme Court arising out of a dispute referred to in section 212(1) (now section 232(1) of the Constitution and brought by or against the Federation or a state shall

(a) in the case of the Federation be brought in the name of the Attorney-General of the Federation;

(b) in the case of a State being brought in the name of the Attor-

ney-General of the State.”

The abuse of the judicial process

The 1st Defendant has submitted that the action of the Plaintiff against the Defendants is frivolous, academic, vexatious and speculative and that it is an abuse of the judicial process. Analysis of the writ of summons and statement of claim and the trend of the action appears to justify the criticism.

The critical factors in the determination of whether an action is an abuse of the judicial process are considerations of the circumstances for bringing the suit, the reasons for doing so, the grounds relied upon for instituting the action and the desirability for instituting the action. The endorsement on the writ of summons and the averments in paragraphs of the statement of claim demonstrate unequivocally the academic nature of the claim in the writ of summons, and the lack of bona fides of the Plaintiff in respect of the claim. The claim ostensibly is for the determination of the seaward boundary of the littoral States, whereas the real purpose which is speculative is for the subsequent calculation of the formula for the allocation of revenue. This latter and actual purpose for instituting the action has not been put forward as a claim.

The Plaintiff is aware and has admitted that there is no dispute with the non-littoral States and no relief was being claimed from them. Nevertheless Plaintiff insists on joining them as parties to the action and of prosecuting the non-existent claims against them. There can be nothing more vexatious and frivolous.

Plaintiff has no separate and independent civil rights and obligations from those of the littoral States who are co-owners in the determination of their seaward boundary. The insistence of Plaintiff on prosecuting the claim in the absence of any enabling law, and the fact that the defendants littoral States are minority co-owners of the seaward boundary sought to be determined in the action clearly demonstrate a vexatious attitude in asserting in the suit an imagined and non-existent right of action. One of the factors which qualifies an action as an abuse of the judicial process is the absence of any iota of applicable law supporting the court process. – See Saraki v. Kotoye (1992) 9 NWLR. (pt.264) 156

at p. 189.

It is an abuse of the process of the Court when a party improperly uses the machinery of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. – See Olutirin v. Agaka (1998) 6 NWLR.367. The abuse lies in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the defendant and interfere with the due administration of justice. – See Saraki v. Kotoye (1992) 9 NWLR (pt.264) 156, 188. The abuse does not lie in the exercise of the right of action per se which is constitutionally guaranteed. It is in the improper, irregular and unconscionable manner of the exercise of the right, which is oppressive, reckless and vindictive. – See Gomwalk v. Military Administrator, Plateau State (1998) 6 NWLR.653. In essence, it seems to me the overriding consideration is the complete absence of a right and the inconveniences, inequities involved in the aims and purposes for the institution of the action which constitutes the abuse. Otherwise, where there is a right to bring an action, the state of mind of the Plaintiff exercising the right cannot affect the validity or propriety of its exercise – See Mayor of Bradford v. Pickles (1895) AC.587. The facts of this case and the circumstances surrounding the prosecution of the claim, demonstrably and without doubt is a veritable abuse of the judicial process. There cannot be a more appropriate example.

CONCLUSION

I am satisfied and for the reasons I have given in this ruling that the grounds on which this Court should decline the exercise of its jurisdiction in the subject matter of this action are valid and overwhelming. It seems to me unnecessarily ambitious for this Court to assume jurisdiction where the law has not vested any. The thirst to assume jurisdiction should be prudently controlled by the reasonableness and propriety of its exercise. The watch-word in the situation is caution. It is preposterous to assume jurisdiction where there is no cause of action. Similarly indiscreet to do so in a factual situation fraught with dangerous political consequences and fit only for political resolution. This is because the court will by so doing be sowing seeds of inevitable recurring political disputes

with their attendant imminent social conflicts. To assume jurisdiction in such circumstances is like sailing on an uncharted sea without a compass or driving to an unknown destination without a road map. As Angels of justice, the courts should avoid treading dangerous alleys.

B It is hardly disputable that where there is no cause of action, there cannot be a justiciable dispute. The Court should not be overly anxious to expand its jurisdiction in situations where the law has granted none. I find the preliminary objection substantiated. In Mills v. Renner (1940) 6 WACA. 144 at p.145 the West African Court of Appeal counselled that

C *“It would be manifestly absurd to suggest that a court was bound to proceed with the taking of lengthy evidence of the parties to a suit where it appeared that the whole suit could be decided upon the pleadings without any evidence being called.”*

This dictum made more than sixty years ago is still valid and properly applicable to the facts of the instant case.

E This Court should strike out the claims of the Plaintiff. The duty of our Courts in the exercise of the judicial powers of the Constitution vested in them involves limiting the exercise of such powers to the case made by the parties, and not to go outside the claim validly and properly made to consider reliefs not claimed – See Jatau v. Mailafiya (1998) 14 NWLR (pt.338) 682). It is the sacred duty and binding obligation of our courts to determine only the case validly and properly made before them by the parties. – See Rockonboh Property Co. Ltd. v. R.C.C. (Nig.) Ltd. (1998) 2 NWLR.683. In the instant case Plaintiff is seeking the exercise of the jurisdiction of the Court on speculation of a right in futuro, i.e. a non-existing right and not a right in-fieri. The exercise of jurisdiction on such a claim will result in violation of one of the fundamental principles of adjudication. – which is that the Court should confine its decision to the claim properly made before it. If it is otherwise, the court may be seen, or appear to be seen, as the invisible and unseen third party in the litigation. It will be invidious and odious to speculate on the inclination of the side of the litigating parties of the third party. This is a deleterious insinuation which the fragile and thin image of the Judiciary can ill afford

to incur in the face of the whirlwind of adverse public criticism. Our Judiciary, the last hope of the common man deserves to be protected by the justice of the decisions of our Courts.

I accordingly uphold the submission of the Defendants who have filed the preliminary objections and hereby strike out the action of the Plaintiff against the Defendants in its entirety.

I make no order as to costs.

BELGORE JSC

The Attorney-General of the Federation pursuant to Order 3 rule 3 of the Supreme Court Rules 1985 filed a Statement of Claim in order to commence original action in this Court against all the Attorneys-General in the thirty-six states of the Federation claiming against all of them, as representing their sates, various remedies. The remedies relate to the position of the law concerning the petroleum oil wells onshore viz-a-viz those off-shore. The original jurisdiction of this Court is sought under S. 232 of the Constitution of the Federal Republic of Nigeria 1999. The ruling of the Honourable Chief Justice of Nigeria, which I read well in advance, has copiously set out the claim which I will not repeat here, because I accept entirely his enumeration as representing the area of the contention by the Federal Government in this action. It runs into ten clear paragraphs. Thus, this Court is asked to determine:

"...the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from the State pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999."

The defendants, that is to say all the thirty-six States filed Statements of Defence. However eleven of them raised preliminary objection in their Statements of Defence challenging the jurisdiction of this Court to hear the suit. The grounds of preliminary objections are many and varied. Some submitted the action is merely academic and would not appear subject for judicial determination, or that it is frivolous, vexatious and speculative. Some submitted that only littoral states are affected by

onshore/offshore problems and states completely removed from sea line are reasonably not to be parties; that the matter is for the National Assembly which by an Act is to set the boundary of any state. Others even claim that no reasonable cause of action has been disclosed. It is submitted that the plaintiff has no locus standi and the suit only raises political question. It is also submitted that under S.162(2) the Court lacks jurisdiction to even adjudicate in this matter and that as the President has not laid before National Assembly any proposal for revenue Allocation in accordance with S.162(2) of the Constitution the suit is premature. It is only when the National Assembly passes a Bill into an Act that the Court can be called upon to interpret as then will a dispute arise. It is also, in weird submission, urged that the determination of a seaward boundary of a State is a matter for International Tribunal on law of the Sea and the Supreme Court of Nigeria has no jurisdiction to hear this matter.

I shall first of all consider the issue of jurisdiction. The Constitution states:-

"S. 232 (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

This subsection presupposes that there must be a dispute either between the Federation and States or between States. The dispute must pertain to the existence of a legal right or its extent; it must relate to a question of law or fact or both. The question is then to determine what is a dispute. It must be remembered that fountain of all our laws is the Constitution, it is also the composite document setting out how the country is to be held together. It is not a document to be read with levity or disdain; every section must be given its meaning i.e every section has meaning and not devoid of adequate interpretation. It is the very foundation of the nation's existence. Any slightest disruption of the Constitution be it a dispute apparent or lurking must be addressed in the Court when the Court's intervention is sought. To wait for National Assembly to accept or reject the proposal on revenue Allocation based on resources

of the land and the sea, including territorial waters and Exclusive Economic Zone, with a lurking dispute about what is the limit of a State's boundary may cause national disaster. Such a situation manifests nothing but dispute. A dispute is a dispute whether apparent or lingering. It is remarkable that in the counter-claims to the suit some states have admitted there is a dispute. This Court in Attorney-General of Bendel State vs Attorney-General of the Federation and 22 Ors. (1981) 10 SC 1; Attorney-General of the Federation v. Attorney-General of Imo State & 2 Ors. (1983) 4 NCLR 178, set out clearly what is dispute to the extent of suing authoritative English dictionary. To my mind a dispute involves acts of argument, controversy, debate, claims as to right whether in law or fact, varying opinions, whether passive or violent or any disagreement that can lead to public anxiety or disquiet. I will not close the category of dispute. It is thus clear in paragraph 8 of Statement of Claim that there is controversy as evidenced by defendants in their Statements of Defence by 3rd, 6th, 9th, 10th, 24th, 27th and 28th Defendants. The question in issue involves law and fact. The boundary of a State is law and it is also fact, this is an inescapable fact. In a nation's life, a dispute, however superficial, must be addressed with all seriousness. Such dispute will be like a festering wound which must be treated before they become gangrenous. Certainly there is a dispute on legal matter and fact and in such a case the Constitution confers jurisdiction on the Supreme Court.

The Statement of Claim has not hidden any fact from the Court. It clearly avers that the determination sought in this Court will affect the formula for the Revenue Allocation of the Federation Account. If the existence of a State's boundary is not known in relation to its limit at the seaward line there certainly will be confusion. It is clear question of law on rights affecting not only the littoral States but all the States as they all have their stake on federation Account. This is the ratio decidendi in Attorney-General of Bendel State V Attorney-General of the Federation & 22 Ors. (supra).

I believe that the argument that this Court cannot or has no jurisdiction to interpret S.162(2) of the Constitution is just for purpose of argument and nothing more. The powers vested in the Supreme Court

are very immense; it "shall extend, notwithstanding anything to the contrary in the Constitution, to all inherent powers and sanctions of a court of law, and shall extend to all matters between persons or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of the person". How then can any person say this Court has no jurisdiction? This suit surely in this Court is justiciable. (See S.6 (6) (a) & (b) of the 1999 Constitution.)

In Attorney-General of Bendel Vs Attorney-General of the Federation & 22 Ors. (supra) this Court held:

"Any party that might be affected by the decision of the Court in a suit ought to be joined. It is therefore proper to join the States that are satisfied with the manner and form the 1981 Act was enacted even though there is no apparent dispute them and the Plaintiff."

In the instant suit the dispute is between the plaintiff and the littoral states, but the result of the suit will certainly affect non-littoral States in Revenue Allocation from Federation Account All the States, who are now defendants, whether littoral or non-littoral have a stake in the result of this suit. Whether a State contests or fold its arms it cannot escape the consequence of this Court's decision in this suit. Thus they are to be affected and they are rightly joined.

Another objection is that this matter affecting maritime boundary of a state is to be decided not by the municipal court but by an international tribunal dealing with Law of the Sea. This is totally misconceived objection. The "State" used in various convention on the Law of the sea refers to sovereign state. Each sovereign country decides on nomenclature for its component parts. In India they have States as components of their Republic; in Canada it is provinces, in Australia it is regions. The notion of states in Nigeria came with 1979 Constitution, based on states creation in 1967; before then we had Regions. It is certainly not true that the "State" referred to in international convention refer to our provinces that we conveniently call States. This objection is without the slightest merit and it is dismissed.

There is clearly a cause of action as manifested by the Statement

of Claim and the counter-claim in Statements of Defence of some defendants. It is always the Statement of Claim that should be examined if a cause of action is disclosed. Section 232(1) of Constitution alluded to earlier by me is clear and the plaintiff's claim is unambiguous. (See Izenkwe & Ors. Vs Nwadozie XIV WACA 361).

I therefore find no merit in the various preliminary objections. I agree with the Honourable Chief Justice of Nigeria in his Ruling which I was privileged to read earlier that the preliminary objection are without substance. I also dismiss the objection. This Court has jurisdiction to hear this suit.

WALI JSC

I am privileged to have read before now the lead Ruling of my learned brother Uwais, CJN just delivered and I agree with his reasoning and conclusion for over-ruling the preliminary objection raised in this case. For the purpose of emphasis, I wish to add the following by way of contribution.

Pursuant to the provision of Section 232(1) of the 1999 Constitution, the Attorney-General of the Federation by virtue of Section 20 of the Supreme Court Act, 1960 and the provision of Order 3 rules 2(2) and 3(a) of the Supreme Court Rules, 1985 filed an action in this Court against the 36 States of the Federation, accompanied by a Statement of Claim in which he averred, particularly in paragraphs 4,5,6,7 and 8 of the said Statement of Claim as follows:-

"4. Pursuant to the provisions in Section 162(2) of the Constitution and subject to certain conditions therein specified, the President of the Federal Republic of Nigeria is required to table before the National Assembly proposals for revenue allocation.

5. By a proviso to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.

6. The Plaintiff states that in the context of Section 162(2) of the Constitution the expression "principle of derivation" means the principle that revenue shall be deemed to have been derived from the State or

territory where such resources are located.

7. *The Plaintiff further states that the proviso to Section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.*

8. *By reason of the facts pleaded in paragraphs 5, 6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-*

(a) *The natural resources located within the boundaries of any State are deemed to be derived from that State;*

(b) *In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e. the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State;*

(c) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State;*

(d) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State."*

After due service of the Statement of Claim on the defendants, they all entered appearance and each filed its Statement of Defence. The States of Abia, Ebonyi, Edo, Ogun, Ondo, Rivers which are respectively, the 1st, 3rd, 6th, 9th, 10th, 11th, 12th, 27th, 28th, and 32nd defendants raised preliminary objection challenging the competence of the action and this court's jurisdiction to entertain it on several grounds the most prominent of which are:-

1. That the suit is academic, frivolous, vexatious and speculative.
 2. That the non-littoral States are wrongly joined and be struck out.
 3. The Supreme Court lacks jurisdiction to entertain the plaintiff's claim or grant the reliefs sought as the Constitution vests only upon the National Assembly power to determine the formula for revenue allocation, including allocation on basis of principle of derivation.
 4. That Plaintiff lacks locus standi to bring the action.
- On the order of this Court, briefs were filed and exchanged on the issues raised in the preliminary objection.

I think the preliminary objection can be categorised and discussed under three heads-

1. Whether a justiciable cause of action is disclosed.
2. Whether it is wrong to join non-littoral States to the action.
3. Whether the plaintiff has locus standi to institute the action.
4. Whether a justiciable cause of action is disclosed

Section 231(1) of the 1999 Constitution vests in the Supreme Court exclusive original jurisdiction in the following cases, to wit:

1. In any dispute between the Federation and a State, or
2. In any dispute between States,

"Where such dispute involves any question [whether of law or fact] on which the existence or extent of a legal right depends."

To determine whether such a dispute as envisaged in Section 232(1) exists, one has to examine the Statement of Claim filed by the plaintiff as a whole. See *IZENKWE & ORS. V. NWADOZIE* 14 WACA 361 cited and relied on by the Hon-Attorney-General of the Federation, particularly at page 363 where the Court stated the guiding principle as follows:-

"In the first place it is a fundamental principle that jurisdiction is determined by the plaintiff's demand and not by a defendant's answer which, as in this case, only disputes the existence of the claim, but does not alter or affects it nature. In other words, ordinarily it is the claim and not the defence which is to be looked at to determine the jurisdiction."

In other words, the statement must be read and considered as a whole in order to decide whether an arguable cause of action is disclosed.

Section 162 of the 1999 Constitution provides as follows:-

B 162(1) *The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed Force, the Ministry or department of government residents of the Federal Capital Territory, Abuja.*

C (2) *The President upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:*

E *Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.*

F (3) *Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.*

G (4) *The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly."*

Section 313 of the Constitution further provides as follows-

H "313. Pending any act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among the States, between the States and local government councils and among the local government councils in the States, the system of

revenue allocation in existence for the financial year beginning from 1st January, 1998 and ending on 31st December 1998 shall, subject to the provisions of this Constitution and as from the date when this section comes into force, continue to apply:

Provided that where functions have been transferred under this Constitution from the Government of the Federation to the States and from the States to local government councils the appropriations in respect of such functions shall also be transferred to the States and the local government councils, as the case may require."

Reading through the Statement of Claim it can easily be discerned therefrom that the issue is not so much of a boundary dispute between the Federal Government and the littoral States, but it is a dispute as to who, between the contesting parties controls the revenue accruing from oil-drilling, Particularly the off-shore drilling.

It is a notorious fact that at the moment the Federal Government controls the whole resources derived from both on-shore and off-shore oil-drilling which is being paid into the Federation Account and being shared as provided in Allocation of Revenue [Federation Account ETC] Act, as amended by the Allocation of Revenue [Federation Account ETC] [Amendment] Decree, read with Section 313 of the 1999 Constitution. This in my view does not require any evidence to prove. Decree No. 106 of 1992 which became operative from 10th July 1992 is deemed to be an existing law by virtue of Section 315 of the 1999 Constitution. So by virtue of the provision of Section 232(1) of the 1999 which is in pari materia with Section 212(1) of the Nigerian Constitution, 1979, It is my view that there is a justiciable dispute existing between the Federal Government as Plaintiff and the other States, and that the dispute involves question of law, or law and fact. See ATTORNEY-GENERAL BENDEL STATE V. ATTORNEY- GENERAL OF THE FEDERATION & 22 ORS [1982] 9 SC 1., where this court interpreted the word "dispute" used in Section 212(1) of the 1979 Constitution.

Joinder of other non-littoral States

It is obvious from the provision of Section 162 of the 1999 Constitution, the non-littoral States have a stake in the Federation Ac-

count, and the decision in the case may likely affect them, for better or for worse. Their joinder is therefore imperative and perfectly in order. See ATTORNEY- GENERAL BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION & 22 ORS. (supra) where in a similar
B situation this court ruled [per Fatayi-Williams, CJN] at page 24, that-

"Moreover, since all and each of States in the Federation have a stake in what its legal share of the revenue should be, it is only fair and just that each such states should be joined in the action."

C See also ODUOLA V. COKER [1981] 5 SC197; ADESANYA V. PRESIDENT OF FEDERAL REPUBLIC OF NIGERIA & 1 OR. [1981] ALL NLR 1 OLAWOYIN V. ATTORNEY-GENERAL OF NIGERIA [1996] ALL NLR 269.

Whether plaintiff has Locus Standi to bring the Action

D Again to decide this issue the Statement of Claim filed by the plaintiff must be looked into and considered; and having painstakingly looked at and considered the same, I am satisfied that the plaintiff has locus to bring the action. See HIS PRE-IMENENCE RAJI V. REV.
E BAMGBOSE [1985] 4 NWLR (Pt.37)632 and ATTORNEY-GENERAL BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION [supra]

F It is for those and the fuller reasons in the Ruling of my learned brother Uwais, CJN that I also dismiss the preliminary objection and hold that the action was properly instituted and that court has jurisdiction to entertain it.

KUTIGI JSC

G I have had the privilege of reading in advance the Ruling just rendered by my learned brother, the Hon. Justice M.L.Uwais, the Chief Justice of Nigeria. I agree with his reasoning and conclusions, which I
H consider adequate and sufficient for now. I think the less one says at this preliminary stage of the case the better lest one falls into the not uncommon trap of prematurely making observation which might appear to pre-judge the issues in the substantive suit yet to be decided by the court. The law does not permit that (see for example EGBE VS ENOGUN (1972)

1 ALL NLR (PART 1) 95, OJUKWU VS. GOVERNMENT OF LAGOS STATE (1986) 3 NWLR (P.T. 26) 35). I do not therefore find it necessary to add anything of my own except probably to emphasize the point that this decision is in no way a pointer to the success or failure of the substantive claims and or counter-claims. The fact that a case is weak or unlikely to succeed is certainly not a ground for striking it out, or contend that it is not justiciable, or that the court has no jurisdiction to hear it (see for example IRENE THOMAS & ORS VS OLUFOSEYE (1989) 1 NWLR (pt.18) 669. And I do expect many submissions already made to be repeated again at the trial even if for different reasons.

I therefore agree with the conclusion that none of the preliminary objection raised before us was sustained. They are accordingly overruled and hereby dismissed.

OGUNDARE JSC

Pursuant to section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter is referred to as the Constitution) which reads:

"The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

Section 20 of the Supreme Court Act and Order 3 rules 2(2) and 3 (a) of the Rules of this Court, the Attorney-General of the Federation, as Plaintiff, commenced this action against the Attorneys-General of the 36 States in the Federation, as defendants, by filling a writ and statement of claim in which he pleaded, inter alia, as follows.

"3. Section 162(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as the Constitution') provides that the Federation shall maintain a special account to be called 'the Federation Account' into which shall be paid all revenue subject to certain exceptions which are not material to this case collected by the Federation.

4. Pursuant to the provisions in section 162(2) of the Constitu-

tion and subject to certain conditions therein specified, the President of the Federal Republic of Nigeria is required to Table before the National Assembly proposals for revenue allocation.

B 5. *By a provision to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.*

C 6. *The Plaintiff states that in the context of section 162(2) of the Constitution the expression 'principle of derivation' means the principle that revenue accruing to the Federation Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.*

D 7. *The Plaintiff further states that the proviso to Section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.*

E 8. *By reason of the facts pleaded in paragraphs 5,6, and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-*

F (a) *The natural resources located within the boundaries of any State are deemed to be derived from that State:*

G (b) *In the case of the littoral State comprised in the federal Republic of Nigeria (i.e the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the Seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State;*

H (c) *The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.*

9. *In further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this Action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of the States comprised in the Federal Republic of Nigeria that has power to:-* B

(i) *exercise legislative, executive, or judicial powers over the entire area designated as the "territorial waters of Nigeria" pursuant to the provisions of the Federation of Nigeria 1990, as amended.*

(ii) *exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the 'Exclusive Economic Zone' pursuant to the provisions of the Exclusive Economic Zone Act, Cap.110, Laws of the Federation of Nigeria, as amended.* C

10. *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States.* D
and claimed- E

"A determination by this Honourable Court of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to the proviso to Section 162(2) of the Constitution of the Federal Republic of Nigeria 1999" F

The Defendants, except the 29th and 30th, filed their respective statement of defence. With leave of Court, some amended theirs. Both the 29th and 30th Defendants entered appearance but neither of them has up to date filed a statement of defence. G

The 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 27th, 28th and 32nd Defendants raised in their respective statements of defence (and some also, by formal notice of preliminary objection) objection to the jurisdiction of this Court to entertain the suit, predicated their objection on various grounds which I shall consider later in this ruling. We ordered written briefs of argument to be filed. All the objectors and the Plaintiff filled H

their respective briefs of argument. The 25th Defendant, although is not involved in the issue of jurisdiction however, filed a brief arguing in favour of there being jurisdiction in the Court to entertain the suit. At the oral hearing on the issue of jurisdiction, learned counsel for all the objectors and the Plaintiff proffered oral arguments in further elucidation of the arguments contained in their respective written briefs.

I shall now consider the arguments advanced by the parties on each ground of objection.

1. JOINDER OF NON-LITTORAL STATES:

It is the submission of the objectors that as the Plaintiff has no claim against those Defendants who are non-littoral State, the latter States were wrongly joined in the action. It is argued that the statement of claim does not aver any dispute between these States and the Federal Government. Referring to paragraphs 8(b) and 10 of the statement of claim, it is argued that non-littoral States are not necessary parties in this action.

The Plaintiff contends that non-littoral States are necessary parties in that their interests would be affected by the outcome of the action. It is argued that as they share in the Federation Account, the outcome of Plaintiff's action will effect the amount of each State's share.

In ODUOLA V. COKER (1981) 5SC 197, 227 this Court per Irikefe JSC (as he then was) laid down the test to be applied in determining whether to join a person as a party to an action, and this is: whether the person to be joined will have his interest irreparably prejudiced if an order joining him as a party is not made. Reading though the statement of claim, particularly paragraphs 5-10, there can be no doubt but that this action is concerned with the sharing of the Federation Account among the beneficiaries mentioned in section 162(3) of the Constitution. Section 162 (1) - (4) reads:-

"162(1) The Federation shall maintain a special account to be called 'the Federation Account' into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of govern-

ment charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

(2) The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, Land mass, terrain as well as population density:

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Government and local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

(4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly."

Clearly, the amount accruing from natural resources derivable from a State determines what amount goes to that State over and above what each beneficiary's share is in the Federation Account. The more money a State from which natural resources are derived gets the less amount goes into hotch pot to be shared by all. And vice versa where a State with natural resources gets less money. It follows, therefore, that the outcome of this action affects the interest of every beneficiary that shares in the Federation Account. All the beneficiaries are therefore, interested in the outcome of the action. They are all persons that ought to be joined in the action. I hold, therefore, that the non-littoral States are properly joined. See: ATTORNEY-GENERAL OF BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION & ORS. (1983) ANLR 208 where in an action between the Government of Bendel State and the Federal Government, this Court, in view of the nature of claim which

related to revenue allocation, directed that the Attorneys-General of the remaining 18 States of the Federation (as the number of States was then) be put on notice as interested parties and this was done. At the hearing all the 18 States but six were represented by counsel.

B 2. JUSTICIABILITY OF ACTION

This is the main hub of the Defendants' objection and it is fought under headings, to wit, that the action is premature; that it raises a political question that is best left to the Executive and the Legislature; that the statement of claim discloses no cause of action and that it is a boundary dispute which is not for this Court but the National Boundary Commission to decide. I shall now take these one by one.

(a) That the statement of claim discloses no cause of action: It is trite that what constitutes a cause of action is the entire set of circumstances giving rise to an enforceable claim- SAVAGE V. UWECHIA (1972) 3 SC 214,221. Lord Esher, in READ V BROWN (1888) 22 QBD 128 defined cause of action as meaning every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It also includes all those things necessary to give a right of action- EMIATOR V. NIGERIAN ARMY & ORS (1999) 12 NWLR 362. Where the statement of claim discloses no cause of action, it will be struck out and the action dismissed.

F For a plaintiff to successfully invoke the original jurisdiction of this Court conferred on it by section 232(1) of the Constitution (which is in pari materia with section 212(1) of the 1979 Constitution and section 149(1) of the 1963 Constitution), there must be a dispute between him and the defendant and that dispute must involve any question, whether of law or fact, on which the existence or extent of a legal right depends. As was decided by this Court in ATTORNEY-GENERAL OF BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION & 22 ORS. (1981) ANLR 85; (1981) 10 SC1, the dispute must be justiciable one, that is appropriate for judicial determination; it must be a real dispute affecting the legal right of the plaintiff. Obaseki JSC said in the case at pages 199-200 of the former report:

"The word dispute which is the basis of the court's jurisdiction

has been defined in our Constitution. In the Webster's New Twentieth Century Dictionary Unabridged, it is appropriately defined as being synonymous with controversy. It's meaning is given as an attempt to prove and maintain one's own opinion, arguments or claims of another; controversy in words.'

B

A dispute under section 212(1) of the Constitution must be one that is appropriate for judicial determination. It must not be one which only political decision can resolve. It includes suits of civil nature and must raise an issue or question (whether of law or fact) on which the existence or extent of a legal right depends. It must be real and substantial admitting of specific relief. It must be definite and concrete. The word 'controversy' was considered in the case of AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN V. HARWORTH 300 US 227 57 a. Ct. 461. In the case, Chief Justice Hughes said at page 464 of 57 Supreme Court Reporter:

C

'A Controversy in this sense must be one that is appropriate for judicial determination. OSBORN V. BANK OF UNITED STATES 9 WEAT 738, 819, 6L. Ed. 204. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot.....

E

It must be a real and a substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'

F

Section 212(1) of the Constitution definitely tells us that the dispute it refers to is not just a difference or controversy of a political hypothetical or abstract character. The section sufficiently indicates the question it must raise to be justiciable."

G

Bello JSC (as he then was) in ATTORNEY-GENERAL OF THE FEDERATION V. ATTORNEY-GENERAL OF IMO STATE & ORS. (1982) 12 SC 274 at pp.311-312, summed up the decisions in the earlier H case in these words:

"It follows from the foregoing that where the Federation, as in the case at hand, invokes the original jurisdiction of the Court under

section 212(1) of the Constitution it must be shown that there is a justiciable dispute between the Federation and the defendant/States and that the dispute must involve a legal right of the Federation. The Federation as Plaintiff must show that it has such right or interest which is affected or its likely to be affected by the action complained of."

And in his summary at pp.319-320, the learned Justice said:

"For the provisions of section 212(1) to apply:

(1) There must be justiciable dispute involving any question of law or fact;

(2) The dispute must be:

(a) between the Federation and a State in its capacity as one of the constituent units of the Federation; or

(b) between the Federation and more States than one in their capacities as members of the constituent units of the Federation: or

(c) between States in their aforesaid capacities; and

(3) The dispute must be one on which the existence or extent of a legal right of the Federal Republic of Nigeria or a legal right of a State in its aforesaid capacity is involved."

I now have to consider the case on hand in the light of the above decisions. The pith of the arguments of the Defendants who have raised the objection under consideration is that the statement of claim discloses no cause of action as there is no piece of legislation pursuant to section 162(2) in contemplation nor is there any challenge to the provisions of any statute presently in force. It is argued that the claim to determine the seaward boundary of littoral States for the purpose of calculating the revenue accruing to the Federation Account directly from any natural resources derived from those States is, therefore, academic, speculative and moot.

With profound respect to learned counsel for these Defendants, I do not share their view. Reading the Statement of claim as a whole, the impression is given that all the Plaintiff is saying is that by virtue of section 162(2) of the Constitution, a certain percentage (not less than 13%) of the revenue accruing to the Federation Account from natural

resources goes to the State from which the resources are derived (see paragraphs 5-7). Plaintiff contends that in respect of the littoral States, that is, the States bordering on the Atlantic Ocean, the seaward boundary of each of such States is the low water mark of the land surface thereof or the seaward limits of inland waters within the State and that only natural resources derivable within such boundary that can be said to be derived from each of such States. The Plaintiff further contends that natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any State (see paragraph 8). The plaintiff says that the littoral States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute Plaintiff's contention and claim that natural resources located within territorial waters, that is, Off-shore, ought to be treated or regarded as located within their respective States. Put simply, plaintiff claims that only natural resources located "*on shore*" are derived from the littoral States and that natural resources located "*off-shore*" are not derived from any State in the Federation and are, therefore, deemed derived from the Federation as a whole. The littoral State, on the other hand, claim that natural resources located both "*on shore*" and "*off-shore*" are derived from their respective States.

Clearly, there is a dispute here between the Government of the Federation and the Government of the littoral States. This dispute cannot by stretch of imagination be described as mere argument; it is real dispute. And it affects the legal rights of the Federation and its constituent units as to the amount standing to the credit of each beneficiary of the Federation Account. My respectful view, having regard to the provisions of the section 162(2) of the Constitution, the dispute here is not one which only a political decision can resolve; it is for the Court to determine, having regard to the proviso to section 162(2). What is the seaward boundary of the owner of land adjacent to a sea or tidal river is a matter of law for the court to determine.

From all I have been saying it is my view, and I so hold, that the statement of claim discloses a cause of action.

(b) That the action is premature:

It is submitted b the Defendants that as the President has not forwarded to the National Assembly any advice he might have received from the Revenue Mobilisation Allocation and Fiscal Commission on proposals for revenue allocation from the Federation Account, the present
B action is premature. I think this submission is misconceived. It loses sight of the fact that there is still in force the Allocation of Revenue (Federation Account, Etc.) Act, Cap 16 Laws of the Federation of Nigeria, 1990 [as amended by Allocation of Revenue (Federation Account etc..) (Amendment) Decree No. 106 of 1992]subject to the provisions
C of the Constitution (in this case, section 162), is deemed to be an Act of the National Assembly made pursuant to section 162.

(c) That it is a boundary dispute:

It is also argued that the matter here raises a boundary dispute
D between the Federation on the one hand and the littoral States, on the other and that this is better determined by the National Boundary Commission. I think this submission is again misconceived. First, there can be no boundary dispute between the Federation and any of its constituent
E units. And secondly, the functions of the Commission as spelt out in section 3 of the National Boundary Commission, Etc. Act, Cap.238 Laws of the Federation of Nigeria 1990 will not cover this case.

It is also argued that it is the Federal High Court rather than the
F Supreme Court that has jurisdiction. Again, this argument cannot be right. Revenue allocation is not one of the items over which the Federal High Court has jurisdiction as provided in section 251 of the Constitution. The Constitution has given this Court a special jurisdiction in section 231(1) and this jurisdiction covers the present case.

G It is also argued that it is international law that applies and the forum should, therefore, be an international tribunal. This argument, in my respectful view, is without any merit. The Defendants in this action are not persons within the scope of international law, not being sovereign
H States.

For the reasons I have given above and the other reasons contained in the ruling of my learned brother Uwais, Chief Justice of Nigeria a preview of which I had advantage of ere now, I have no hesitation in

holding that this Court has jurisdiction in this matter. The preliminary objection is dismissed.

OGWUEGBU JSC

I have read in advance the Ruling which has just been delivered B
by my lord, the Chief Justice of Nigeria and for the same reasons given
by him I would also dismiss the preliminary objection. This being an
objection on a matter touching on a most sensitive aspect of our new
Constitution, I intend to make a few comments on the principal issues C
canvassed.

The proceedings are commenced pursuant to section 232(1) of
the Constitution of the Federal Republic of Nigeria 1999 (hereinafter known
as the Constitution). Section 20 of the Supreme Court Act, Cap. 424,
Laws of the Federation of Nigeria, 1990 prescribes who the parties shall D
be in any proceedings brought under section 232(1) of the Constitution
while Order 3 rules 2(2) and 3(a) of the Rules of this Court, Provide for
the procedure for commencing the said proceedings.

It is important at this stage to set down the Statement of Claim E
of the Plaintiff which reads as follows:

*"1. The plaintiff is the Attorney-General of the Federation and
brings this action as the representative of the Government of the Federal
Republic of Nigeria.*

*2. The 1st to the 36th Defendants are the Attorney-General of F
each of the 36 States which along with the Federal Capital Territory
Abuja, comprise the Federal Republic of Nigeria. Each defendant is
sued as the representative of the Government of each State.*

*3. Section 162(1) of the Constitution of the Federal Republic of G
Nigeria, 1999 (hereafter referred to as "the Constitution") provides that
the Federation shall maintain a special account to be called "the Fed-
eration Account" into which shall be paid all revenue subject to certain
exceptions which are not material to this case collected by the Federa- H
tion.*

*4. Pursuant to the provisions in Section 162(2) of the Constitu-
tion and subject to certain conditions therein specified, the President of*

the Federal Republic of Nigeria is required to table before the National Assembly proposals for revenue allocation.

5. *By a proviso to the aforementioned Section 162(2) of the Constitution, the principle of derivation must be reflected in any approved formula for revenue allocation.*

6. *The plaintiff states that in the context of Section 162(2) of the Constitution the expression "principle of derivation" means the principle that revenue accruing to the Federation Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.*

7. *The Plaintiff further states that the proviso to section 162(2) of the Constitution requires that any approved formula for revenue allocation from the Federation Account shall reflect the fact that not less than 13% of revenue accruing to the said Federation Account from any natural resources are allocated to the Government of the State or territory where such resources are located.*

8. *By reason of the facts pleaded in paragraphs 5,6 and 7 of this Statement of Claim, the Plaintiff states that for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from any State or territory pursuant to the proviso to Section 162 of the Constitution:-*

(a) *The natural resources located within the Boundaries of any State are deemed to be derived from that State;*

(b) *In the case of the littoral States comprised in the Federal Republic of Nigeria (i.e the States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the seaward Boundary of each of the said States is low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the States.*

(c) *The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation and not from any state;*

(d) *The naturally resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any*

neighbouring littoral foreign State, derived from the Federation and not from any State.

(9. *In further support of the averments in paragraph 8 of this Statement of Claim the Plaintiff will contend at the trial of this action that under the provisions contained in the Constitution it is only the Federal Government of Nigeria and not the Government of any of the States comprised in the Federal Republic of Nigeria that has power to:-*

(i) *exercise legislative, executive, or judicial powers over the entire area designated as the "territorial waters of Nigeria" pursuant to the provisions of the Territorial Waters Act, Cap.428, Laws of the Federation of Nigeria 1990, as amended.*

(ii) *exercise any of the sovereign rights exercisable by Nigeria over the entire area designated as the "Exclusive Economic Zone" pursuant to the provisions of the Exclusive Economic Zone Act, Cap. 100, Laws of the Federation of Nigeria, as Amended.*

(10). *The States of Akwa-Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers dispute the averment of the Federal Government of Nigeria as pleaded in paragraph 8 hereof and claim that natural resources located offshore ought to be treated or regarded as located within their respective States.*

WHEREUPON the Plaintiff claims:-

A determination by this Honourable Court of the seaward boundary of a Littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from the State pursuant to the proviso to Section 162(2) of the Constitution of the Federal Republic of Nigeria 1999."

I will at this stage set down the two main constitutional provisions which will be examined in the course of this Ruling. These are section 232(1) and 162(1) - (4) of the Constitution and they read:

"Section 232(1) The supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or

extent of a legal right depends."

Section 162(1) to (4):

"162(1) *The federation shall maintain a special account to be called 'the Federation Account' into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.*

(2) *The President, upon the receipt of the advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:*

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

(3) *Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each States on such terms and in such manner as may be prescribed by the National Assembly.*

(4) *Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly."*

All the defendants except the 29th and 30th filed their Statements of Defence. The following defendants challenged the jurisdiction of this Court to entertain the suit. These are the 1st, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 27th, 28th and 32nd defendants. The objections were either raised in the Statement of Defence or by a formal notice. Briefs of argument were ordered and filed. At the hearing most of the learned counsel who raised the objection, adopted their respective briefs and proffered oral arguments in amplification of the written briefs.

The preliminary objection bring to focus the issue of jurisdiction of this Court having regard to the precise nature of the claim as disclosed by the plaintiff in its Statement of Claim and the facts on which it is based. Before the examination of section 232(1) of the Constitution and other sections cited, I should point out that the question at this Stage is not whether the Plaintiff's case has or has no merits but whether the plaintiff is in the right court. B

The grounds of objection are varied and ranged from misjoinder of non-littoral States; that this court is not conferred with jurisdiction to interpret section 162(2) of the Constitution; that this Court is being called upon to determine State boundaries; that the statement of claim does not disclose a cause of action; that the action is premature and that the plaintiff has no locus standi to institute the action. I will consider the preliminary objection on two broad heads: D

1. Misjoinder of non-Littoral States; and
 2. Whether there is a justifiable dispute in that:
 - (i) the statement of claim does not disclose any cause of action;
 - and ii) that it involves the determination of a State boundary. E
1. MISJOINDER OF NON-LITTORAL STATES.

Under this head, it was submitted on behalf of non-littoral States that the averment of the plaintiff in paragraphs 8(b) and 10 of the Statements of Claim had named the States which are disputing its claim, that there is no other averment in which non-littoral States are mentioned or any claim made against them and as they are not littoral States they do not have coastal boundaries and, therefore, not necessary parties to the action. It was the submission of the plaintiff that non-littoral States are necessary parties to the action because they are entitled to share of the amount of money paid in the Federation Account and that the answer to the question raised by this action will determine how much each State gets. The Court was referred to section 162(3) of the Constitution and that moneys standing to the credit of the Federation Account are for distribution among the Federal Government, State Government and local government councils. It was further submitted that the Federal Government is the only one, being an entity, which does not require further F G H

distribution of the amount received by it pursuant to section 162(3) and from the provisions of sub-sections (3) and (4) of section 162, the formula approved by the National Assembly will prescribe the terms and manner for the further distribution of moneys standing to the credit of the States and local government councils.

Section 162(2) of the Constitution prescribes the principle which the National Assembly will take into account in determining the formula and the principles include population, equality of States, internal revenue generation, land mass, terrain as well as population density. These allocation principles are qualified by a proviso that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources. From the above constitutional provisions, it is crystal clear that both the littoral and non-littoral States of the Federation are beneficiaries and the result of the litigation will effect their shares in the Federation Account one way or the other. They are therefore necessary parties and are properly joined in the action.

It should be noted that the Court has the discretion even on its own motion, to order the joinder of a person whether as plaintiff or defendant whose presence before the Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. See *Oladeinde & Or. v. Oduwole* (1962) WNLR 41 at 44 and *Attorney-General of Bendel State v. Attorney-General of the Federation & 22 Ors.* (1981)10 SC. 1. There is therefore no misjoinder of non-littoral States in this suit. This ground objection fails.

2. ABSENCE OF JUSTICIABLE DISPUTE

This is the crux of the preliminary objection and will be considered under two sub-heads as indicated earlier in this judgment.

(i) Non Disclosure Of Cause of Action In the Statement of Claim.

The term cause of action has been defined by Earl Jowitt in the *Dictionary of English Law*, Volume 1, 1959 edition at page 395 thus:

"The facts or combination of facts which give rise to a right to

sue. Thus in the case of some torts (e.g trespass), the cause of action is the wrongful act; in the case of other torts (e.g. negligence), the cause of action consists of two things, the wrongful act and the consequent damages. The phrase is of importance chiefly with reference to Limitation Act, 1939, and the jurisdiction of certain courts. Thus, time begins to run when the cause of action arises (unless postponed or revived by reason of fraud, mistake, acknowledgement etc.). It is necessary to determine the date upon which the cause of action arises. Again, the jurisdiction of an inferior court is frequently limited to cases where the cause of action or some part of it arises within the district of the court."

See also *Savage & Ors. v. Uwaechia* (1972) 3 SC 214 at 221, *Read v. Brown*(1858) 22 Q.B.D. 128, *Emiator v. Nigerian Army & Ors.* (1999) 12 NWLR (Pt.631) 362 at pages 369-371 *Egbe v. Adefarasin* (1987) 1 NWLR (Pt.47) 1 at 20, *Afolayan v. Ogunrinde* (1990) 1 NWLR D (Pt.127) 369 at 373 and *Bello & Ors. v. Attorney General of Oyo State* (1986) 2 NWLR (Pt.45) 828.

It is submitted in the briefs of the objecting defendants that this Court cannot assume its original jurisdiction to adjudicate on a question wherein no dispute has arisen between the Federation and the States in view of the Statement of Claim before the court. The same question is put thus: "Can the exclusive original jurisdiction of the Supreme Court of Nigeria as enshrined in section 232 sub-section (1) and (2) be invoked in respect of an anticipatory dispute between the Federation and the States?" It was further contended that the jurisdiction which the plaintiff is asking this Court to exercise is within the exclusive powers of the National Assembly and the Executive.

Mrs. Nella Andem Ewa, Honourable Attorney-General of Cross-River State has argued thus in the brief of the 9th defendant:

"By virtue of section 162 sub-section (2) of the Constitution, the procedure is that there has to be an agency known as the Revenue Mobilization by virtue of section 32, Third Schedule to the 1999 Constitution, who shall advice (sic) the President on revenue allocation from the Federation Account. The President shall table same before the National Assembly who in turn shall deliberate and determine the formula for the

said allocation taking cognizance of the factors as the principles of population.....The question really is, has the above procedure been fully exhausted and certain anomalies or unconstitutional actions taken as to generate enough discernible dispute to which this Honourable Court can be called upon to adjudicate under its exclusive original jurisdiction."

She answered the question in the negative. She further submitted that where the statute prescribes certain conditions precedent (as in this constitutional provision) before a relief or remedy is available to a litigant, he must comply with the statutory provision before an action is instituted in pursuit of the relief or remedy. The following cases were cited:

BENIN RUBBER PRODUCERS LTD. V. OJO (1997) 9 NWLR (Pt. 521) 388, EGUAMWENSE V. AMAGBIZEMWEN (1998) 9 NWLR (Pt. 315) 1 and LAHAN V. ATTORNEY-GENERAL WESTERN REGION OF NIGERIA (1963)3 NSCC.182.

The Honourable Attorney-General of the Federation referred the Court to the principle of derivation in the context of section 162(2) of the Constitution and paragraphs 6 and 7 its Statement of Claim. It was his contention that it is not possible for the plaintiff to apply the principle of derivation as directed by the proviso to section 162(2) of the Constitution without first ascertaining the State or territory where the natural resources from which the revenue concerned are located, that this action became necessary mainly because there is a very serious dispute between the Federal Government and some of the State Governments as to the seaward boundary of the littoral States and that this has created a controversy as to whether (for the purpose of applying the principle of derivation) natural resources located offshore of the Nigerian Coastal belt must be treated as Federal territory or as the territory of any State within the Federation.

With the greatest respect, there is a mis-apprehension by the objecting defendants of the nature of the relief sought by the plaintiff in its Statement of Claim.

To answer this objection, I will refer to section 232(1) of the Constitution which I have reproduced above. For this Court to assume jurisdiction under section 232(1) there has to be a dispute between the

Federation and State or between States and the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends. The original jurisdiction of this Court cannot be invoked by a State unless it can show that there is a real dispute between it and the Federation or another State and the question touches on the existence or extent of legal right or interest. See Attorney-General of Bendel State v. Attorney-General of the Federation & 22 Ors. (1970-1981) 12 NSCC 314. At pages 406-407 Nnamani JSC observed as follows:

"What then is a dispute in the circumstances of this case?" Concise Oxford Dictionary defines dispute as controversy, debate, being argued about, heated contention. The Shorter Oxford English Dictionary 3rd Edition defines it as 'the act of arguing against controversy, debate. An argumentative contention, a difference of opinion, a heated contention.' 'A controversy' in the constitutional sense must be one that is appropriate for judicial determination. A justiceable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. (UNITED STATES V. ALASKA S. 60. 253 U.S.113. 116; 40 S.CT. 448, 449; 64 L. Ed. 808). The controversy must be definite and concrete, touching on legal relations of parties having adverse legal interest...."

I have examined the Statement of Claim very closely and having regard to the above definition of the word 'dispute', I am clearly of the view that there is a heated contention between the Federal Government and the Government of the littoral States within the context of section 162(2) of the Constitution. Until the dispute set out in the Statement of Claim is resolved, it will not be possible for the Revenue Mobilization Commission, the National Assembly or the Executive to comply strictly with the provisions of section 162(2) of the Constitution. The claim is not academic, political or premature and the plaintiff is not seeking an advisory opinion from this Court which opinion this court is not competent to give and this is not the case in this suit.

(ii) Delimitation of Boundary

It was argued that the limitation of the maritime boundary of a

littoral State which the plaintiff's action approximates is governed by the provisions of the Untied Nations Convention On the Law of The sea 1982 and that Nigeria is a signatory. It was further submitted that under Article 3 and Article 5 of the Convention, the right of every State, such as
 B Nigeria, to establish the breadth of its territorial waters and the exclusive Zone is measured from the baseline determined in accordance with the Convention and it is not a judicial function exercisable by the Court. That if it is a delimitation in Nigeria the National Assembly or the Executive
 C can exercise that power through the National Boundaries Commission. Therefore, to ask this Court to undertake the exercise to a usurpation of the function of the National Assembly or the Executive.

The plaintiff's contention on this sub-issue is that States are made up of areas mentioned against their names in the Second Schedule to the
 D 1999 Constitution (section 3(2). That areas of each State are made up of local government councils. This includes the littoral States and there are no local government councils in the high seas. That section 1(1) of the Territorial Waters Act provides that the boundary of the Territory Waters
 E begins from lower water mark of the land space or of the seaward limits of inland waters within the States, that this is the contention of the plaintiff in paragraph 8(b) of the Statement of Claim and that the relief sought seeks the determination or confirmation of the boundary so that there
 F will no longer be any dispute as to where natural resources off-shore are derived from.

The contention of States concerned in the preliminary objection is not tenable. I have already pointed out in this Ruling while considering
 G issue 2(1) (Cause of Action) that it is after a pronouncement is made on the seaward boundary of a littoral State that the issue of natural resources derived from that State can be determined and the proviso to section 162(2) applied.

In the result, the preliminary objection fails. I therefore hold that
 H this Court has jurisdiction to entertain the suit pursuant to section 231(1) of the Constitution. I will also make no order as to costs.