

SUPREME COURT OF NIGERIA

13TH MAY, 2005. SC. 3/2004

**CORAM:- M. L. UWAI S CJN, S. U. ONU, A. I. KATSINA-ALU,
N. TOBI, I. C. PATS-ACHOLONU, G. A. OGUNTADE,
S. A. AKINTAN, JJSC**

THE ATTORNEY-GENERAL
OF ANAMBRA STATE

..... PLAINTIFF

AND

1. THE ATTORNEY-GENERAL OF THE FEDERAL
REPUBLIC OF NIGERIA

2. THE ATTORNEY-GENERAL OF ABIA STATE

3. THE ATTORNEY-GENERAL OF ADAMAWA STATE

4. THE ATTORNEY-GENERAL OF AKWA IBOM STATE

5. THE ATTORNEY-GENERAL OF BAUCHI STATE

6. THE ATTORNEY-GENERAL OF BAYELSA STATE

7. THE ATTORNEY-GENERAL

OF BENUE STATE

..... DEFENDANTS

8. THE ATTORNEY-GENERAL

OF BORNO STATE

9. THE ATTORNEY-GENERAL OF CROSS-RIVER STATE

10. THE ATTORNEY-GENERAL OF DELTA STATE

11. THE ATTORNEY-GENERAL OF EBONYI STATE

12. THE ATTORNEY-GENERAL OF EDO STATE

13. THE ATTORNEY-GENERAL OF EKITI STATE

14. THE ATTORNEY-GENERAL OF ENUGU STATE

15. THE ATTORNEY-GENERAL OF GOMBE STATE

16. THE ATTORNEY-GENERAL OF IMO STATE

17. THE ATTORNEY-GENERAL OF JIGAWA STATE

18. THE ATTORNEY-GENERAL OF KADUNA STATE

19. THE ATTORNEY-GENERAL OF KANO STATE

20. THE ATTORNEY-GENERAL OF KATSINA STATE

21. THE ATTORNEY-GENERAL OF KEBBI STATE

22. THE ATTORNEY-GENERAL OF KOGI STATE

23. THE ATTORNEY-GENERAL OF KWARA STATE

24. THE ATTORNEY-GENERAL OF LAGOS STATE
 25. THE ATTORNEY-GENERAL OF NASARAWA STATE
 26. THE ATTORNEY-GENERAL OF NIGER STATE
 27. THE ATTORNEY-GENERAL OF OGUN STATE
 28. THE ATTORNEY-GENERAL OF ONDO STATE
 29. THE ATTORNEY-GENERAL OF OSUN STATE
 30. THE ATTORNEY-GENERAL OF OYO STATE
 31. THE ATTORNEY-GENERAL OF PLATEAU STATE
 32. THE ATTORNEY-GENERAL OF RIVERS STATE
 33. THE ATTORNEY-GENERAL OF SOKOTO STATE
 34. THE ATTORNEY-GENERAL OF TARABA STATE
 35. THE ATTORNEY-GENERAL OF YOBE STATE
 36. THE ATTORNEY-GENERAL OF ZAMFARA STATE
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COURTS - Judgments or orders - Remains binding until set aside - By due process of law - Even where the order is irregular or void (H1)

COURTS - Actions - Declaration that seeks advisory opinion - Will not be granted by the court (H2)

ACTIONS - Constitutional law - Declaration confirming s.215(4) 1999 Constitution - As to a Governor's power to give direction - To his Commissioner of Police - May be reluctantly granted by the Supreme Court (H3)

COURTS - Orders - Governor of Anambra State - Order by an Enugu High Court Judge - That he be removed from office - Cannot be Considered by the Supreme Court - Without an appeal from the Court of Appeal (H4)

SUPREME COURT - Appellate jurisdiction of - Is limited to appeals from the Court of Appeal - As per s.233 1999 Constitution (H4)

ACTIONS - Reliefs - Dispute - Where reliefs are merely hypothetical - And

raised no dispute - Court will not grant them (H5)

CONSTITUTIONAL LAW - Evidence - Admission - Federation account - Deductions from share of Anambra State - As evidence justifying the deductions was not controverted - It is presumed to have been admitted (H6)

ACTIONS - Counter claim - Concession by the counter claimant - Puts issue of retirement age of the Chief Judge to rest (H7)

ACTIONS - Counter claim - Resignation of Governor - Trial Court's findings that there was no resignation - Remains valid - As there was no appeal against it (H8)

FACTS

Before the Supreme Court, the plaintiff filed this action as the representative of the Governor of Anambra State, against the defendants. The plaintiff alleged that a dispute has arisen between the Government of the Federal Republic and the other 35 States of Nigeria involving questions of law and fact on which the existence or extent of the legal rights of the Government of Anambra State depend.

Plaintiff's case is that Dr. Chris Ngige was sworn in as the Governor of Anambra State on 29th May, 2003. On 10-7-2003, an Assistant Inspector General of Police under the direct command of the I-G and ostensible direction of the President of Nigeria stormed the Anambra State Government House with a force of Policemen and attempted to remove the Governor from office. The Government of Anambra State made several representations to the President to no avail. He remained indifferent to the plight of the Governor. In the process, the Police Force was pulled out from the Government House at Awka. It is the contention of the plaintiff that the President is determined to remove the Governor of Anambra State from office unconstitutionally.

The plaintiff alleged that since the aborted attempt of 10-7-2003, the President has instigated various court suits and on 2-1-2004, contrived an

order from Hon. Justice S. C. Nnaji of Enugu State High Court directing the I-G of Police to remove the Governor of Anambra State from office. That the President has been contriving all machinations to orchestrate a State of Emergency proclamation in Anambra State for the sole purpose of removing Governor Ngige from office. The Federal Government in addition to all these has withheld and continued to withhold part of the Anambra State Government allocation from the Federation Account in a manner inconsistent with the provisions of the Constitution. The plaintiff, therefore, as per paragraph 23 of the Amended Statement of Claim sought for 16 reliefs, 14 of them being various declarations.

The 1st defendant denies that a dispute exists between the plaintiff and the other defendants in this suit. He filed a counter claim seeking a declaration that the Oath of Office purportedly administered on Dr. Chris Ngige on 29-5-2003, is unconstitutional, null, void and of no effect. That the plaintiff State has no constitutionally valid Governor in office under ss. 185 (1) & 2, 291 (2) of the 1999 Constitution. Alternatively, he sought a declaration that Chris Ngige ceased to be the Governor of Anambra State on 10-7-2003, following his letter of resignation received by the Speaker of Anambra State House of Assembly.

HELD (Unanimously granting only one of the plaintiff's declarations and dismissing the counter claim per **KATSINA-ALU JSC**)

Judgments or orders - Remains binding until set aside

1. The withdrawal of the police security personnel from the Governor of Anambra State was on the order of the Enugu High Court. The plaintiff in para 29 of its affidavit evidence exhibited a copy of the order marked Exhibit 3. The law in this regard is clear. It is now settled that the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. It is so even in cases where the person affected by the order believes it to be irregular or even void. So long as the order exists, it must be obeyed to the letter. An order or a judgment of court, no matter the fundamental vice that afflicts it, remains legally binding and valid until set aside by due process of law. The relief, in the circumstance, is

therefore refused. (p. 1130 F)

Declaration that seeks advisory opinion

2. (ii) A declaration that the Governor of a State including the Governor of Anambra State being the Chief Executive of the State by virtue of Section 176 of the Constitution is entitled to the use and service of organized coercive force represented by the Police Force to maintain its existence and authority and to enforce its laws. B

The declaration sought herein, in my view is not justifiable. What it seeks to do is to draw this court into giving advisory opinions. It is not the function or indeed the duty of the court to embark on advisory opinion. See Olaniyi v. Aroyehun (1991) NWLR (Pt. 194) 652. In addition, there is no evidence in support thereof. This declaration also cannot be granted. It is accordingly refused. (p. 1131 B) C D

Governor's power to give direction - To his Commissioner of Police

3. (iii) A declaration that the Governor of a State including Anambra State represents and indeed embodies the PUBLIC of that State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without interference by the Federal Government or the President. E F

I am inclined to think that the declaration sought is not justifiable. But it is an innocuous declaration since it only restates what the Constitution provides. I will therefore grant it and it is accordingly granted. (p. 1131 E) G

Order removing Governor of Anambra State from office

4. On Friday, 2nd January, 2004, Hon. Justice S.C. Nnaji made an order in the following terms: H

“That the 1st respondent shall remove the 3rd respondent forthwith from office in the same manner he put him in office on 10th July 2003 after having resigned as Governor of Anambra State and left therefrom.”

The 1st and 3rd respondents are the Inspector-General of Police and Dr. Chris Ngige, Governor of Anambra State respectively. As I have already stated earlier on in this judgment, every person against whom an order of court is made or directed should obey it even if the order seems to him irregular or void unless it is set aside on appeal. So long as the order exists, it must be obeyed.

It is common knowledge that Dr. Chris Ngige appealed from that order to the Court of Appeal, Enugu Division. The Court of Appeal on 12th January, 2004, stayed that order “*pending the determination of the appellants/applicants Motion on Notice now adjourned tomorrow 13/1/2004, for hearing at 1 p.m.*”. There is no record of what happened on 13/1/2004 or subsequent days. The matter has not yet come before this court on appeal. It is to be borne in mind that the appellate jurisdiction of the Supreme court is circumscribed by Section 233 of the 1999 Constitution. The appellate jurisdiction of this court is to hear and determine appeals from the Court of Appeal to the exclusion of any other court of law in Nigeria. In the circumstance this declaration cannot be granted and it is hereby refused. (p. 1132 F)

Where reliefs are merely hypothetical

5. Reliefs (ix), (x), (xi) and (xii) do not in my view raise any dispute between the plaintiff and 1st defendant within the contemplation of Section 232(1) of the Constitution. The dispute 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 definite and concrete. The reliefs above are merely hypothetical and speculative postulations. This court has said that it has not jurisdiction to give advisory opinion or deal with hypothetical or academic question - See *Olafe v. Ekwelendu* (1989) 4 (Pt. 11) 5326 at 344. There is no evidence of a declaration of a State of Emergency in Anambra State or a threat of such declaration cognizable in law as a ground for a decision or intervention by this court. It is now settled, as I have already indicated, that the court will not engage or indulge in academic exercise. I think it is elementary that the courts are to determine live issues. Surely, in the present case, as between the plaintiff and the 1st defendant the

declaration of a state of emergency is, not at the moment, a live issue.

It is needless to state that courts are manned by human beings. No one is perfect, we are all liable to err, so that if a court assumes jurisdiction which it does not have, its decision will be corrected on appeal. That indeed is why there are courts of appeal - Court of Appeal and the Supreme Court. In the circumstances, reliefs (ix), (x), (xi), (xii) are hereby refused. (p. 1134 F)

Admission - Federation account

6. The evidence in support of the declaration sought is contained in para. 38 of the affidavit. It reads:

“The Government of the Federal Republic of Nigeria has continued to withhold part of the share of Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set off for any loan granted to Anambra State Government by the Federal Government of Nigeria. A copy of a notice of such withholding is hereby exhibited, marked Exhibit 7.”

Exhibit 7 shows clearly that some deductions were made in respect of Anambra and other States. Reasons were given for these deductions. The first and second sheets show that deductions were on order of the court. Third, fourth, fifth, sixth and seventh sheets show that deductions were in respect of contractual obligations.

The plaintiff State did not challenge the reasons given for these deductions. This means that the plaintiff State has admitted the reasons given and by extension that the deductions were not arbitrary. It is elementary law that what is not denied is presumed to have been admitted. In the circumstances, this relief is hereby refused. (p. 1135 E)

Concession by the counter claimant

7. At the hearing of the suit on 17/2/2005, learned counsel for the 1st defendant/counter-claimant conceded that as at 29/5/2003, the Hon. Justice C. J. Okoli had not attained the compulsory retirement age of 65 years. This concession puts this issue to rest. (p.1138 E)

Counter claim - Resignation of Governor

8. The second leg of the counter-claim is that Dr. Chris Ngige voluntarily resigned his office as Governor of Anambra State by a letter dated the 9th of July, 2003. The short answer to this contention is this. Dr. Chris Ngige went to court and obtained a judgment in his favour at the High Court of Anambra State in Suit No. A/230/2003 - Dr. Chris Nwabueze Ngige v. The Speaker Anambra State House of Assembly & Anor. to the effect that Dr. Chris Nwabueze Ngige did not sign any letter of resignation or present any to the speaker of Anambra State House of Assembly. A copy of the drawn up order of the said judgment was exhibited and marked Exhibit 6 to the plaintiffs affidavit of facts in support of his claim.

This was issued on the 20th day of January, 2004. It is important to note that there was no appeal against the judgment. That means that the High Court judgment subsists. It remains valid.

In the light of the above, the counter-claim fails as a whole.
(p. 1138 F & 1139 F)

NOTABLE POINTS OF INTEREST
PATS-ACHOLONUJSC

1. Importance of facts and evidence in any case

Any lawyer giving or making a critical analysis of a case before him for which he seeks to persuade the court in his favour should suspend any prior judgment he might have had or conceived until he has carefully examined all the evidence attendant to the case. He accepts the interpretation of his client's state of facts without subjecting same to merciless scrutiny to discern whether the factual situation as presented or represented could make the case preponderate in his favour, to his detriment. It is important to state that all facts are not equal. Some can be ignored for their irrelevance but others which are weighty are the ones that make the difference between failure and success and when such facts of quality which can literally overwhelm an opposing party are in the grasp of a great lawyer, the elegance or romance of forensic advocacy is easily discernible, and it makes a great difference. Facts act like magnets and have the

potential to completely turn a seemingly ugly or bad case to a good case. We must never neglect the Roman aphorism “*Ex factor oritur jus*” that law has its offspring on the fact. The nemesis of this case before us is the lack of evidential proof that would have sustained the case sought to be made by the plaintiff. (p. 1163 E)

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OGUNTADEJSC

2. When a declaration may be granted by the court

In order to prevent the abusive use of the jurisdiction to grant declaratory reliefs, a number of sub-rules have emerged over the years. These include:

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(a) The person seeking the reliefs must have locus standi.

(b) The person seeking relief must present a case where there is a true dispute between him and his adversary.

(c) Questions which are purely academic, hypothetical, obscure or of no relevance to the parties cannot form the basis of declaratory relief.

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(d) The relief will not lie for the declaration of future rights unless aspects of an existing right depend on the adjudication of the court.

(e) Where there is a pending proceeding before another court or tribunal involving the same points of law being posed before a court, it should refuse to grant the relief. (p. 1170 F)

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AKINTANJSC

3. Success of a claim - Principles that guide the Court

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The courts follow well laid down principles, which must exist before any claim can be successfully sustained in a court of law. Among such principles that are relevant to the instant case are:

(1) An order made by a court, however awkward or bizarre it may be, is presumed right and must be obeyed until such order is varied or set aside by an appropriate appellate court: (2) Courts are created to resolve

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disputes. It follows therefore that any one coming before a court must show the existence of a dispute between him and the defendant in every action filed in court and that he is not merely seeking for an answer to hypothetical questions or an opinion on a matter in which there is yet no dispute: and (3) Only a person who is in imminent danger of coming into

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conflict with the law or whose business or other activities have been directly interfered with by or under a law, has sufficient interest to sustain a claim. (p. 117)

REPRESENTATION

B Udechukwu N. Udechukwu, SAN., (with him, C.A. Chuks-Nnadi, Esq., Mrs. V. Onwuka, Mrs. A. G. Idigo-Izundu (DCL), Chief Mike Ozekhome, Jeph Njikonye Esq., Bene Nwachukwu (Mrs.)), for the Attorney-General of Anambra State.

C Philip Umeadi, Jnr, (with him D. Ukachukwu, Esq.) for the Attorney-General of the Federation.

D Awa U. Kalu, SAN., (with him Dr. I. N. Ijioma, (Mrs.) U. E. Amaonwu, Sol. Gen., Mrs. C. S. Chioma, DCL, I. C. Nwachukwu, PSC), for the Attorney-General of Abia State.

E Adamawa State not represented.

Akwa Ibom State not represented.

Bauchi State not represented.

Bayelsa State not represented.

V. Y. Ayongur, DCL, (with him, S. T. Saleh, PSC), for Benue State.

F Borno State not represented.

Cross-River State not represented.

A. A. Utvama A-G Delta, (with him, O. Pedro, N.W. Ogbogu (CLO), and E. O. Ohwovoriole). for Delta State.

G Chief Jossy C. Eze. Attorney-General, (with him, E. A. Ewa, Esq., L.O. II), for Ebonyi State.

Edo State not represented

H Chief Duro Ajayi, Attorney-General, (with him, A. A. Adeleye, DLR. E. K. Adetifa, SLO), for Ekiti State.

Eze O. Eze, Deputy Director (CL), for Enugu State.

Gombe State not represented.

C. U. Nnodum (A-G, Imo State), (with him T. E. Chikeka, DCL), for Imo State.

Jigawa State not represented.

Kaduna State not represented.

Suraj Saea (Sol. Gen.), Kano State Ministry of Justice, (with him, Yau A. Adamu, CSC, and Bello Adoke, Esq.,) for Kano State.

B

Katsina State not represented.

Kebbi State not represented.

C

Prince Ben Ikani, Attorney-General, (with him, Osa Magoni), for Kogi State.

Mfon Ekong Usoro, Mrs, (with her, G. O. Ogobe), for Niger State.

P. A. Akinkugbe, for Ogun State.

D

A. O. Adebuseye Esq., SG., (with him, C. K. Akinrinsola, DCL, A. O. Ogunsuyi, SLO), for Ondo State.

Saka A. Isau, Attorney-General, Kwara State (with him, H. A. Gegele, Senior State Counsel, MOJ, Kwara State), for Kwara State.

E

Prof. O. Osinbajo, SAN., Attorney-General, (with him, L. Pedro, Assistant Director, (Civil Litigation), A. Ipaye), for Lagos State.

M. J. Agum, Director (Civil Litigation, MOJ, Lafia), for Nassarawa State.

A. O. Adeniyi (CSC). for Osun State.

F

M. O. Ishola, DPO, for Oyo State.

F. B. Lotben (Mrs.), DCL, for Plateau State.

H. Oden Ajumogobia, SAN., Attorney-General, (with him, I. R. Amakiri, Mrs, (Director, Legal Services), Iawoibim Karibo, Mrs, Chief State Counsel), for Rivers State.

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Sokoto State not represented.

J. D. Yakubu, DCL, (with him, S. I. Makarfi, SC I), for Taraba State. M.

M. Saleh. DCC, (with him, I. S. Kogo, PSC, for Yobe State.

Zamfara State not represented.

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CASES REFERRED TO

Mobil Oil (Nig) Ltd. v. Assan (1995) 8 NWLR (Pt. 412) 129

1124 A-G Anambra v. A-G Federation (2005) 5 KLR Kastsina-Alu JSC

Military Governor of Lagos State v. Ojukwu & Anor. (1986) 1 NSCC Vol. 17 (Pt. 1) 304

Olaniyi v. Aroyehun (1991) NWLR (Pt. 194) 652

Olale v. Ekwelendu (1989) 4 (Pt. 11) 5326 at 344

B Bhojwani v. Bhojwani (1996) 6 NWLR (Pt. 457) 661 at 666.

Military Governor of Lagos State v. Ojukwu & Anor. (1986) NWLR (Pt.18) 621 SC

See Olaniyi v. Aroyehun (1991) 5 NWLR (Pt. 194) 652

C Asafa Foods Factory Ltd. v. Alraine & Anor. (2002) 2 S.C. (Pt. I) 1; (2002) 12 NWLR (Pt. 781) 353

Fame Publications Ltd. v. Encomium Ventures (2000) 8 NWLR (Pt. 667) page 105

D Duwin Pharmaceutical Chemical Co. Ltd. v. Bebecks Pharm. & Cosmetics Ltd. & 2 Ors. (2000) 15 NWLR (Pt. 689) page 66

STATUTE REFERRED TO

E Constitution of the Federal Republic of Nigeria 1999, ss. 5, 11, 176, 180(1)(c), 185(1), 215, 232, 233, 285, 291(2), 305 & 306

LEAD JUDGMENT BY KATSINA-ALU JSC

F In this suit the plaintiff is the Attorney-General and Chief Legal Officer of Anambra State. He brought this action as representative of the Government of Anambra State.

The 1st defendant is the Attorney-General and Chief Legal Officer of the Federation. He is sued as a representative of the Federal Government.

G All the States in the Federation are joined as defendants in the action. These are 2nd - 35th defendants. The Attorneys-General of all these States are sued as representatives of their various and respective States.

H The plaintiff claims that a dispute has arisen between the Government of Anambra State, the Government of the Federal Republic and the other 35 States of Nigeria involving questions of law and fact on which the existence or extent of the legal rights of the Government of Anambra State depend.

The 1st defendant denies that a dispute exists between the plaintiff and other defendants in this suit.

The facts as related by the plaintiff in his affidavit of facts in support of his claim filed on 24th May, 2004, are these. On the 19th day of April, 2003, Dr. Chris Nwabueze Ngige, OON, was elected Governor of B Anambra State. He was duly sworn in on 29th May, 2003. However, on 10th July, 2003, an Assistant Inspector-General of Police under the direct command of the Inspector-General of Police and the ostensible direction of the President of the Federal Republic of Nigeria stormed the Anambra C State Government House with a force of Policemen and attempted to remove the Governor from office.

The Government of Anambra State, it was said, made several representations to the President to no avail. The President remained taciturn, nonchalant and indifferent to the plight of the Anambra State D Governor. It took national revulsion, furor and condemnation of the events together with international display of outrage before the Inspector General of Police was sufficiently embarrassed to distance himself from the shameful event. In consequence he ordered the assistant Inspector E General of Police, Mr. Ige to pull out the Police Force from the Government House at Awka, Anambra State.

It is the contention of the plaintiff that the President is determined to change the Government in Anambra State unconstitutionally by remov- F ing the Governor, Dr. Ngige, from office in order to install another Governor acceptable to the President.

It was the case of the plaintiff that ever since the aborted attempt of 10th July, 2003, the Federal Government under the President have G covertly instigated or condoned various suits at the Federal High Court in a bid to obtain a judicial order for the removal of Governor Ngige of Anambra State. It was pointed out that the Federal Government and the President have covertly and overtly instigated or condoned or sponsored identical suits at other judicial divisions of the Federal High Court including H the division at Enugu so as to obtain a court order to enable the President to remove the Governor of Anambra State.

The plaintiff further contended that as a last desperate measure the

Government of the Federation through the President in collaboration with the Government of Enugu State on the 2nd of January, 2004, contrived an order from Hon. Justice S.C. Nnaji of the High Court of Enugu State directing the Inspector General of Police to remove the Governor of Anambra State from office. And as soon as the Federal Government received a copy of the Order dated 2nd January, 2004, the Inspector General acting on the direction of the President and upon the advice of the Attorney-General of the Federation withdrew all Police protection and security apparatus of State power from the Governor of Anambra State and has refused to restore the same despite the order of the Court of Appeal.

Since the 2nd day of January, the Federal Government through the President has been contriving all machinations to orchestrate a State of Emergency proclamation in Anambra State without regard to the provisions of Section 305 of the 1999 Constitution. In this regard, it was said that the Federal Government through the President have started the process of lobbying members of the National Assembly to pass a resolution authorizing him to proclaim a State of Emergency in Anambra State for the sole purpose of removing the Governor. It was pointed out that the Federal Government through the President has continued to prevent the Commissioner of Police from taking lawful directives from the Governor of Anambra State for the maintenance of public safety, public order and the provision of police protection and other security apparatus of State power for the Government of Anambra State and the Governor contrary to Section 215(4) of the 1999 Constitution.

The Federal Government in addition to the above has withheld and continued to withhold part of the Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set-off for any loan granted to Anambra State Government by the Federal Government.

The plaintiff therefore claims as per para 23 of the Amended Statement of Claim as follows: (i) A declaration that the Inspector-General of Police acting on his authority or on the direction of the Federal Government or the President of the Federal Republic of Nigeria has

no constitutional right to withdraw Police Security Personnel and details from the Governor or a State in Nigeria including the Governor of Anambra State; alternatively:

A declaration that the President of the Federal Republic of Nigeria or the Government of the Federal Republic of Nigeria acting through the agents or agencies of the Government of the Federal Republic of Nigeria including the Inspector-General of Police have no constitutional right to remove Police protection and detail from any Governor of a State in Nigeria or to deny the facility of Police protection from any Governor of a State in Nigeria particularly the Governor of Anambra State, while that Governor remains in office.

(ii) A declaration that the Governor of a State including the Governor of Anambra State being by the express provision of Section 176 of the Constitution of the Federal Republic of Nigeria 1999 the Chief Executive of the State is entitled to the use and service of organized coercive force represented by the Nigeria Police Force to maintain its existence and authority and to enforce its laws.

(iii) A declaration that the Governor of a State including Anambra State represents and indeed embodies the Public of that State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without interference by the Federal Government or the President.

(iv) A declaration that the Governor of a State including Anambra State under Sections 5 and 11 of the 1999 Constitution being the Chief Security Officer of the State, his assassination or abduction due to removal from him of Police protection and detail will spark off widespread disturbance and so endanger or imperil security, order and safety of the public in the State.

(v) A declaration that the withdrawal of Police Security Personnel and detail from the Governor of a State including Anambra State by the Inspector-General acting by himself or on the direction of the President or the Federal Government is inconsistent with and does stultify the arrange-

ment of a single Police Force as a common organized coercive force for the maintenance of the existence and authority of a State Government and enforcement of its laws.

(vi) A declaration that the Inspector-General of Police, has no constitutional right to remove the Governor of a State including Governor of Anambra State from office, whether acting on his authority or on the direction or orders of the Federal Government, President or of any court of law; alternatively;

A declaration that the Federal Government acting through the Inspector-General of Police or the President or by order of any court of law other than a Tribunal set up under Section 285 of the Constitution of the Federal Republic of Nigeria has no constitutional right to remove the Governor of a State including Governor of Anambra State from office.

(vii) A declaration that neither the President of the Federal Republic of Nigeria nor the Federal Government nor the Inspector-General of Police has the constitutional right to remove the Governor of any State whether acting on their own initiative or on the orders of any court of law not being an Election Tribunal.

(viii) A declaration that the President of the Federal Republic of Nigeria cannot declare a state of Emergency in Anambra State or in any other State otherwise than in strict compliance with the provisions of Sections 11 and 305 of the 1999 Constitution.

(ix) A declaration that the circumstances specified in Sections 11 and 305 of the 1999 Constitution do not exist and have not arisen in Anambra State to warrant the declaration of a State of Emergency in Anambra State by the Federal Government of Nigeria or the President.

(x) A declaration that the Governor of Anambra State and indeed any other Governor of any State in Nigeria elected into office under the 1999 Constitution of the Federal Republic of Nigeria cannot be removed from office by the President or the National Assembly through a proclamation of a State of Emergency or otherwise.

(xi) A declaration that the judicial power of the Government of one State in the Federation including the High Court of Enugu State does not extend to matters arising under the provisions of the ONE SINGLE

Constitution of Nigeria relating or pertaining exclusively to the Government of another State in the Federation, its organs, agencies or instrumentalities and or its powers and tenure of office of its executive officers.

(xii) A declaration that the judicial power of the Federal Government, in particular the jurisdiction of the Federal High Court does not extend to matters arising under the provisions of the ONE SINGLE Constitution of Nigeria relating or pertaining exclusively to the Government of the thirty-six (36) States in the Federation, their organs, agencies or instrumentalities and or their powers and tenure of office of their executive officers.

(xiii) A declaration that the Government of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria or any of the agencies or agents of the Government of the Federation of Nigeria have no constitutional authority to withhold any part of the share of any State Government including Anambra State Government from the Federation Account except towards payments of any sum that is due from the State to the Federal Government in respect of any loan made by the Federation to that State, in this case, Anambra State.

(xv) An order directing the Federal Government of Nigeria to direct the Inspector-General of Police forthwith to restore to the Governor of Anambra State and the Government of Anambra State police protection and all security apparatus of State power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria.

(xvi) An order of the Supreme Court setting aside any Order of any State High Court including the Order made on the 2nd day of January, 2004 by the High Court of Enugu State whereby that High Court purported to direct the Inspector-General of Police to remove the Governor of Anambra State.

In his defence, the 1st defendant filed Amended Statement of Defence and counter-claim on 11th May, 2004.

The case of the 1st defendant is simply this. The 1st defendant denies that there exists a live issue between the plaintiff and all the defendants which calls for the interpretation of any provisions of the 1999 Constitution touching on the security, finances of the plaintiff State and the

use of the Police Force.

It is the case of the 1st defendant that the Governor of Anambra State Dr. Chris Ngige by a letter dated 9th of July, 2003, transmitted to the Speaker of Anambra State House of Assembly tendered his resignation as Governor of Anambra State. He denied the hearsay allegations of instructions to the members of the National Assembly to pass a resolution authorizing a proclamation of a state of emergency in the plaintiff State. The 1st defendant further denied ever giving any directions whatsoever to the Inspector-General of Police or anybody for purposes of or in relation to the removal of Dr. Chris Ngige who had earlier voluntarily resigned this office. It was said that declarations (iv), (v), (vi) and (vii) are merely academic and hypothetical. It was finally urged that the plaintiff is not entitled to any of the declarations sought.

The following defendants - Abia State, Benue State, Delta State, Ebonyi State, Imo State, Kano State, Ondo State, Osun State, Oyo State, Plateau State. Rivers State and Taraba State filed their respective State-ments of Defence and brief of argument. At the hearing these defendants urged this court to resolve this case in favour of the plaintiff.

I shall now consider the reliefs which I have earlier on in the judgment set out, seriatim. For ease of reference, I shall read them again and thereafter consider them one after the other.

(i) A declaration that the Inspector-General of Police acting on his own authority or through the direction of the Federal Government or the President has no constitutional right to withdraw police security personnel and details from the Governor of Anambra State.

The withdrawal of the police security personnel from the Governor of Anambra State was on the order of the Enugu High Court. The plaintiff in para 29 of its affidavit evidence exhibited a copy of the order marked Exhibit 3. The law in this regard is clear. It is now settled that the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. It is so even in cases where the person affected by the order believes it to be irregular or even void. So long as the order

exists, it must be obeyed to the letter. See *Mobil Oil (Nig) Ltd. v. Assan* (1995) 8 NWLR (Pt. 412) 129; *Military Governor of Lagos State v. Ojukwu & Anor.* (1986) 1 NSCC Vol. 17 (Pt. 1) 304. **An order or a judgment of court, no matter the fundamental vice that afflicts it, remains legally binding and valid until set aside by due process of law.** The relief, in the circumstance, is therefore refused. B

(ii) A declaration that the Governor of a State including the Governor of Anambra State being the Chief Executive of the State by virtue of Section 176 of the Constitution is entitled to the use and service of organized coercive force represented by the Police Force to maintain its existence and authority and to enforce its laws. C

The declaration sought herein, in my view is not justifiable. What it seeks to do is to draw this court into giving advisory opinions. It is not the function or indeed the duty of the court to embark on advisory opinion. See *Olaniyi v. Aroyehun* (1991) NWLR (Pt. 194) 652. In addition, there is no evidence in support thereof. This declaration also cannot be granted. It is accordingly refused. D

(iii) A declaration that the Governor of a State including Anambra State represents and indeed embodies the PUBLIC of that State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without interference by the Federal Government or the President. E F

I am inclined to think that the declaration sought is not justifiable. But it is an innocuous declaration since it only restates what the Constitution provides. I will therefore grant it and it is accordingly granted. G

(iv) A declaration that the Governor of a State including Anambra State under Sections 5 and 11 of the 1999 Constitution being the Chief Security Officer of the State his assassination or abduction due to removal from him of Police protection and detail will spark off widespread disturbance and so endanger or imperil security, order and safety of the H

public in the State.

This state of affairs has not arisen. From the affidavit evidence there is no dispute between the plaintiff and 1st defendant in this connection. These are mere speculations and not live issues This court has stated in B man) decided cases that it has no jurisdiction or competence to embark on advisory or abstract academic opinions - See Olaniyi v. Aroyehun (1991) 5 NWLR (Pt. 194) 652. This declaration sought here is therefore refused.

(v) A declaration that the withdrawal of police security personnel and detail from the Governor of a State including Anambra State by the C Inspector-General of Police acting by himself or on the direction of the President or the Federal Government is inconsistent with and does stultify the arrangement of a single Police Force as a common organized coercive force for the maintenance of the existence and authority of a State D Government and enforcement of its laws.

As I indicated in (i) above, the withdrawal of Police Personnel from the Governor of Anambra State was on the order of the Enugu High Court. The issue here as in (ii) and (iv) above is merely academic, hypothetical E and speculative. This also cannot be granted and it is accordingly refused.

(vi) A declaration that the Inspector-General of Police has no constitutional right to remove the Governor of a State including Governor of Anambra State from office, whether acting on his authority or on the F direction and orders of the Federal Government, President or of any court of law.

On Friday, 2nd January, 2004, Hon. Justice S.C. Nnaji made an order in the following terms:

G *“That the 1st respondent shall remove the 3rd respondent forthwith from office in the same manner he put him in office on 10th July 2003 after having resigned as Governor of Anambra State and left therefrom.”*

H The 1st and 3rd respondents are the Inspector-General of Police and Dr. Chris Ngige, Governor of Anambra State respectively. As I have already stated earlier on in this judgment, every person against whom an order of court is made or directed should obey it even if the order seems to him irregular or void unless it is set aside

on appeal. So long as the order exists, it must be obeyed.

It is common knowledge that Dr. Chris Ngige appealed from that order to the Court of Appeal, Enugu Division. The Court of Appeal on 12th January, 2004, stayed that order “*pending the determination of the appellants/applicants Motion on Notice now adjourned tomorrow 13/1/2004, for hearing at 1 p.m.*”. There is no record of what happened on 13/1/2004 or subsequent days. The matter has not yet come before this court on appeal. It is to be borne in mind that the appellate jurisdiction of the Supreme court is circumscribed by Section 233 of the 1999 Constitution. The appellate jurisdiction of this court is to hear and determine appeals from the Court of Appeal to the exclusion of any other court of law in Nigeria. In the circumstance this declaration cannot be granted and it is hereby refused.

(vii) A declaration that neither the President of the Federal Republic of Nigeria nor the Federal Government nor the Inspector-General of Police has the constitutional right to remove the Governor of any State whether acting on their own initiative or on the orders of any court of law not being an Election Tribunal.

This issue is also academic and speculative. This issue does not raise any dispute between the plaintiff and 1st defendant involving any question on which the exercise or the extent of any legal right depends. This court will not involve itself in a mere academic exercise. The claim is therefore incompetent and is hereby accordingly refused - A-G Federation v. A-G Abia State (No. 2) (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 764) 542.

(viii) A declaration that the President of the Federal Republic of Nigeria cannot declare a State of Emergency in Anambra State or in any other State otherwise than in strict compliance with the provisions of Section 11 and 305 of the 1999 Constitution.

Again, this claim is academic or speculative. It clearly does not arise from any dispute between the plaintiff and 1st defendant. The affidavit evidence does not disclose any scintilla of evidence in this regard. It is incompetent and is hereby refused.

(ix) A declaration that the circumstances specified in Sections 11 and 305 of the 1999 Constitution do not exist and have not arisen in Anambra State to warrant the declaration of a State of Emergency in Anambra State by the Federal Government of Nigeria or the President.

B (x) A declaration that the Governor of Anambra State and indeed any other Governor of any State in Nigeria elected into office under the 1999 Constitution of the Federal Republic of Nigeria cannot be removed from office by the President or the National Assembly through a proclamation of a State of Emergency or otherwise.

C (xi) A declaration that the judicial power of the Government of one State in the Federation including the High Court of Enugu State does not extend to matters arising under the provisions of the ONE SINGLE Constitution of Nigeria relating or pertaining exclusively to the Govern-
D ment of another State in the Federation, its organs, agencies or instrumentalities and or its powers and tenure of office of its executive officers.

(xii) A declaration that the judicial power of the Federal Govern-
E ment, in particular the jurisdiction of the Federal High Court does not extent to matters arising under the provisions of the ONE SINGLE Constitution of Nigeria relating or pertaining exclusively to the Government of the thirty-six (36) States in the Federation, their organs, agencies or instrumentalities and or their powers and tenure of office of their executive
F officers.

Reliefs (ix), (x), (xi) and (xii) do not in my view raise any dispute between the plaintiff and 1st defendant within the contemplation of Section 232(1) of the Constitution. The dispute 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 definite and concrete. The reliefs above are merely hypothetical and speculative postulations. This court has said that it has not jurisdiction to give advisory opinion or deal with hypothetical or academic question - See Olale
G
H v. Ekwelendu (1989) 4 (Pt. 11) 5326 at 344. There is no evidence of a declaration of a State of Emergency in Anambra State or a threat of such declaration cognizable in law as a ground for a decision or intervention by this court. It is now settled, as I have already

indicated, that the court will not engage or indulge in academic exercise. I think it is elementary that the courts are to determine live issues. Surely, in the present case, as between the plaintiff and the 1st defendant the declaration of a state of emergency is, not at the moment, a live issue. B

It is needless to state that courts are manned by human beings. No one is perfect, we are all liable to err, so that if a court assumes jurisdiction which it does not have, its decision will be corrected on appeal. That indeed is why there are courts of appeal - C
Court of Appeal and the Supreme Court. In the circumstances, reliefs (ix), (x), (xi), (xii) are hereby refused. See also Bhojwani v. Bhojwani (1996) 6 NWLR (Pt. 457) 661 at 666.

(xiii) A declaration that the Government of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria or any of the agencies or agents of the Government of the Federation of Nigeria have no constitutional authority to withhold any part of the share of any State Government from the Federation Account except towards payment of any sum that is due from the State to the Federal Government in respect of any loan made by the Federation to that State, in this case, Anambra State. D E

The evidence in support of the declaration sought is contained in para. 38 of the affidavit. It reads:

“The Government of the Federal Republic of Nigeria has continued to withhold part of the share of Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set off for any loan granted to Anambra State Government by the Federal Government of Nigeria. A copy of a notice of such withholding is hereby exhibited, marked Exhibit 7.” F G

Exhibit 7 shows clearly that some deductions were made in respect of Anambra and other States. Reasons were given for these deductions. The first and second sheets show that deductions were on order of the court. Third, fourth, fifth, sixth and seventh sheets show that deductions were in respect of contractual obligations. H

The plaintiff State did not challenge the reasons given for

these deductions. This means that the plaintiff State has admitted the reasons given and by extension that the deductions were not arbitrary. It is elementary law that what is not denied is presumed to have been admitted. In the circumstances, this relief is hereby refused.

(xiv) An order of perpetual injunction restraining the Federal Government or the President of the Federal Republic of Nigeria from interfering with the constitutional right of the Governor and Government of Anambra State to police protection and all security apparatus of State power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria.

Here again, it must be observed that there is no evidence of any directions by the President or 1st defendant to the Inspector-General of Police to remove police protection and all apparatus of State power from the Governor of Anambra State or any other State Governor for that matter. The relief is mere speculation. There must be evidence to back up the injunctive order sought against the President. In the absence of such evidence, the order of injunction must be refused and it is hereby refused.

(xv) An order directing the Federal Government of Nigeria to direct the Inspector-General of Police forthwith to restore to the Governor of Anambra State and the Government of Anambra State police protection and all security apparatus of State power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria.

I believe it is right to take judicial notice of the fact that the plaintiff appealed against the judgment of Hon. Justice Nnaji of Enugu State High Court to the Court of Appeal. The decision of the Court of Appeal is yet to come before this court on appeal by either the plaintiff or the 1st defendant. It must be borne in mind that the appellate jurisdiction of the Supreme Court is circumscribed, by Section 233 of the 1999 Constitution. An appeal to this court must be from a decision of the Court of Appeal. This court does not exercise a right of appeal over a High Court decision coming directly from that court. This court cannot and will not accede to this issue without an appeal to this court from the decision of the Court of Appeal.

(xvi) An order of the Supreme Court setting aside any Order of any

State High Court including the Order made on the 2nd day of January, 2004 by the High Court of Enugu State whereby that High Court purported to direct the Inspector-General of Police to remove the Governor of Anambra State.

There is evidence that the Governor of Anambra State has appealed B against the order of the Enugu High Court to the Court of Appeal. Moreover the Supreme Court cannot exercise a right of appeal over a High Court decision. This court cannot therefore pronounce on the validity of the Enugu High Court judgment until that judgment becomes the subject of C appeal to this court under Section 233 of the 1999 Constitution.

In summary, reliefs (i), (ii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (v) and (xvi), as presented by the plaintiff are refused. Relief (iii) only is granted.

1st DEFENDANT'S COUNTER-CLAIM D

I shall now consider the counter-claim which is in the following terms:

“(1) A declaration that the Oath of Office and oath of Allegiance purportedly administered on Dr. Chris Ngige on 29/5/2003 is unconstitutional null, void, and of no effect.

(2) A declaration that Dr. Chris Ngige cannot constitutionally assume the functions of Governor of Anambra State not having taken the Oath of Office and Oath of Allegiance to the Federal Republic of Nigeria. F

(3) A declaration that on a combined construction of the provisions of Sections 185(1) and (2) and 291(2) of the Constitution of the Federal Republic of Nigeria 1999, plaintiff State has no constitutionally valid Governor in office to whom may be accorded the rights, privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 and the law”. G

ALTERNATIVELY:

(4) A declaration that Dr. Chris Ngige ceased to be the Governor of Anambra State on 10/7/2003 following his letter of resignation and the receipt thereof by the speaker of the Anambra State House of Assembly, H

(5) A declaration that on a combined construction of the provision of Sections 180(1)(c) and 306(5) of the Constitution, plaintiff State has

no constitutionally valid Governor in office to whom may be accorded all the rights and privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 and the law.”

B There are two legs to the 1st defendant’s counter-claim. The first contention of the counter-claimant is that the Chief Judge of Anambra State, Hon. Justice C. J. Okoli was born on 15/6/37 and ought therefore to have ceased to hold office as Chief Judge of Anambra State by 15/6/2002 in accordance with the provisions of Section 291(2) of the 1999
C Constitution. It was pointed out that the Hon. Justice C. J. Okoli administered the oath of office and oath of allegiance on Dr. Chris Ngige on the 29th day of May, 2003. It was submitted that all the acts of Hon. Justice Okoli from 15/6/2002, including, but not limited to the administration of the oath of office and Oath of Allegiance on Dr. Chris Ngige, are
D unconstitutional and therefore null, void and of no effect.

For the Hon. Justice C. J. Okoli, it was pointed out that there is a subsisting judgment of the Federal High Court, Enugu in Suit No. FHC/EN/
E CS/28/04-Ikechukwu Ifediora v. Hon. Justice C. J. Okoli (2) Anambra State Judicial Service Commission and (3) National Judicial Council to the effect that as at 29/5/2003 he had not attained the compulsory retirement age of 65 years.

F **At the hearing of the suit on 17/2/2005, learned counsel for the 1st defendant/counter-claimant conceded that as at 29/5/2003, the Hon. Justice C. J. Okoli had not attained the compulsory retirement age of 65 years. This concession puts this issue to rest.**

G **The second leg of the counter-claim is that Dr. Chris Ngige voluntarily resigned his office as Governor of Anambra State by a letter dated the 9th of July, 2003. The short answer to this contention is this. Dr. Chris Ngige went to court and obtained a judgment in his favour at the High Court of Anambra State in Suit No. A/230/2003**
H **Dr. Chris Nwabueze Ngige v. The Speaker Anambra State House of Assembly & Anor. to the effect that Dr. Chris Nwabueze Ngige did not sign any letter of resignation or present any to the speaker of Anambra State House of Assembly. A copy of the drawn up order of**

the said judgment was exhibited and marked Exhibit 6 to the plaintiffs affidavit of facts in support of his claim. Pages 2 and 3 of Exhibit 6 read in part as follows:

"THE COURT HEREBY ADJUDGED AS FOLLOWS:-

That the plaintiff's case succeeds and the following reliefs be and are hereby granted to him; B

(a) A declaration that with effect from 29th day of May, 2003, he had been and still remains the Executive Governor of Anambra State;

(b) A declaration that the purported letter of resignation dated 9th July, 2003, said to have been signed by the plaintiff is a false document and pro tanto null and void; C

(c) A declaration that the proceedings of Anambra House of Assembly dated 10th July, 2003, purporting to accept the alleged letter of resignation said to have emanated from the plaintiff is unconstitutional, invalid and pro tanto null and void and of no effect whatsoever; D

(d) a declaration that the proceedings of the House of Assembly of Anambra State of the 14th July, 2002 whereby the House vacated its proceedings of 10th July, 2003, is valid and constitutional and; E

FINALLY AN ORDER of this Honourable court nullifying or setting aside the entire proceedings of the Anambra State House of Assembly held on 10th day of July, 2003 as it relates to the purported resignation of the Governor and any steps pursuant thereto taken by the defendants." F

This was issued on the 20th day of January, 2004. It is important to note that there was no appeal against the judgment. That means that the High Court judgment subsists. It remains valid.

In the light of the above, the counter-claim fails as a whole. G

I make no order as to costs. Each party to bear its own costs.

UWAIS CJN

H

I have had the privilege of reading in advance the judgment read by my learned brother, Katsina-Alu, JSC. I entirely agree with him that the plaintiff's claims succeed in part and the counter-claim by the 1st

defendant has no merit.

The claims by the plaintiff which are 16 in number have been stated in the leading judgment and I see no need to restate them here. However, I desire to add my own words in considering claim (iii) which has been granted. It asks as follows:-

“(iii) *A declaration that the Governor of a State including Anambra State represents and indeed embodied the Public of that State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without interference by the Federal Government or the President.*”

Now what does Section 215 subsection (4) of the Constitution of the Federal Republic of Nigeria, 1999 provide? It states -

“215(4) *Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may authorize in that behalf, may give the Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the State as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:*

Provided that before carrying out such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.”

It is significant to observe that the claim for the declaration is not limited to the Governor of Anambra State but extended to the Governors of the other States of the Federation, with whom there is no dispute whatsoever brought before this court, with the Federal Government or the 1st defendant. In this regard, no declaration could be granted in respect of the other States since by Section 232 subsection (1) of the 1999 Constitution it is only when a dispute exists between the States and the Federation that this court could assume its original jurisdiction. The

subsection 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 of fact) on which the existence or the extent of a legal right depends.” B

As to the claim, as applies to the Governor of Anambra State, it is clear, from the facts stated in both the Amended Statement of Claim and the affidavit evidence, that he had been under siege. This is also a matter of judicial notice which we must take. As can be gleaned from the counter-claim by the 1st defendant, there certainly exists a dispute between the plaintiff and the 1st defendant. The Constitution in Section 215 subsection (1) clearly gives the Governor of Anambra State the power to issue lawful direction to the Commissioner of Police, Anambra State, in connection with securing public safety and order in the State. I will, for that reason, in contrast with all the other claims by the plaintiff, which have not been proved or are academic, grant claim (iii) as modified. D

COUNTER-CLAIM BY THE 1ST DEFENDANT E

The 1st defendant counter-claims as follows:-

“(1) A DECLARATION that the Oath of Office and Oath of Allegiance purportedly administered on Dr. Chris Ngige on 29/5/2003 is unconstitutional, null, void, and of no effect.” F

(2) A DECLARATION that Dr. Chris Ngige cannot constitutionally assume the functions of Governor of Anambra State not having taken the Oath of Office and Oath of Allegiance to the Federal Republic of Nigeria.

(3) A DECLARATION that on a combined construction of the provisions of Sections 185(1) and (2) and 291(2) of the Constitution of the Federal Republic of Nigeria 1999, plaintiff State has no constitutionally valid Governor in office to whom may be accorded the rights, privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 H and the law.

ALTERNATIVELY:

(4) A DECLARATION that Dr. Chris Ngige ceased to be the

Governor of Anambra State on 10/7/2003 following his letter of resignation and the receipt thereof by the speaker of the Anambra State House of Assembly,

(5) A DECLARATION that on a combined construction of the provision of Sections 180(1)(c) and 306(5) of the Constitution, plaintiff State has no constitutionally valid Governor in office to whom may be accorded all the rights and privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 and the law.”

All the (1), (2) and (3) counter-claims are hinged on the taking of Oath of Office and Oath of Allegiance by the Governor of Anambra State, Dr. Chris Ngige. In this connection it is argued by the 1st defendant that both oaths had been vitiated by the fact that at the time they were administered by the Chief Judge of Anambra State, Hon. Justice C. J. Okoli, the Chief Judge of Anambra State, had no authority to do so by reason of his having attained, before hand, the age of 65, stipulated by Section 291 subsection (1) of the Constitution as his retirement age. This point has been settled by the judgment of the Federal High Court, Enugu, in Suit No. FHC/EN/CS/28/04 which found that the Honourable Chief Judge did not attain the prescribed age in question when he swore-in Dr. Chris Ngige as Governor of Anambra State. Consequently, the provisions of Section 185 subsection (1) of the Constitution, which provides:-

“185 (1) A person elected to the office of the Governor of a State shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the oath of office prescribed in the Seventh Schedule to this Constitution.”

have not been violated. In any event the 1st defendant had conceded that following the decision by the Federal High Court he could not sustain and continue with the claims under heads (1), (2) and (3).

It, therefore, remains to deal with the alternative claims under heads (4) and (5). These deal with the purported letter of resignation allegedly sent to the Speaker of the House of Assembly of Anambra State by Dr. Chris Ngige as Governor of the State. The counter-claims are rested on

the provisions of Sections 180(1)(c) and 306(5) of the 1999 Constitution, which state thus:-

“180(1) Subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until -

(c) the date when his resignation from office takes effect; or” B

“306(5) The notice of resignation of the Governor of a State shall be addressed to the Speaker of the House of Assembly and the Governor of the State.”

Dr. Chris Ngige had since challenged the claim that he had resigned C his office as Governor of Anambra in the Suit No. A/230/2003, titled Dr. Chris Nwabueze Ngige v. The Speaker of Anambra State House of Assembly & Anor. before the High Court of Anambra State. It was inter alia found and declared by the High Court that he did not sign the purported letter of resignation which was a “false document” and that he “still D remains the Executive Governor of Anambra State.” With this finding in favour of Dr. Chris Ngige, the counter-claim in the alternative cannot in its entirety be granted.

In conclusion, therefore, I allow the plaintiff’s claim no. (iii) as E modified but dismiss all the other heads of the claim. The counter-claim by the 1st defendant fails in its entirety. I too make no order as to costs. Each party shall bear its costs.

F

ONUJSC

In this suit, the plaintiff is the Attorney-General and Chief Legal Officer of Anambra State. He brought this action as representative of the G Government of Anambra State.

The 1st defendant is the Attorney-General and Chief Legal Officer of the Federation. He is sued as a representative of the Federal Government.

All the States in the Federation are joined as defendants in the action. H These are 2nd-35th defendants. The Attorneys-General of all the States are sued as representatives of their various and respective States. Some fell by the wayside by sheer force of technicality while others emerged unscathed

as I shall demonstrate hereunder.

The plaintiff claims that a dispute has arisen between the Government of Anambra State, the Government of the Federal Republic and the other 35 States of Nigeria involving questions of law and fact on which the existence or extent of the legal rights of the Government of Anambra State depend.

The 1st defendant denies that a dispute exists between the plaintiff and other defendants in this suit.

I have been privileged to read before now the draft of the judgment of my learned brother, Katsina-Alu, JSC., just delivered. I entirely agree with his reasoning but not all of his conclusions. I wish however, in expiation to add thereto a few comments of mine as follows:

In initiating his action culminating in the judgment herein the plaintiff invoked powers conferred on him by Section 232 of the 1999 Constitution which provides as follows:

“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.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly.

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.”

In the instant case, the claim as can be seen, is centred around certain provisions of the Constitution, more particularly Section 215 (1) (a), (b), (2), (3) and (5) respectively which relevantly provides:

“215(1) There shall be-

(a) An Inspector General of Police who, subject to Section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Force.

(b) A Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.

(2) *The Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a State shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that State.*

B

(3)

(4)

(5) *The question whether any, and if so what, directions have been given under this section shall not be inquired into by any court.*
(Underlining is mine for comments in due course).

C

The 1st defendant in the Attorney-General of the Federation and by that token the Chief Law Officer thereof. The action brought against him by the plaintiff is one in which the 2nd to 35th defendants represent their respective States in defence thereof. In pursuit of his claims the plaintiff asserts that a dispute has arisen between the Government of Anambra State, the Government of the Federal Republic and the other 35 States of Nigeria involving questions of law and fact on which the existence or extent of the legal rights of the Government of Anambra State depend. The 1st defendant flatly denies that a dispute indeed exists between the plaintiff and the other defendants to the suit, adding that the facts as related by the plaintiff in his affidavit of facts in support of his claim filed on 24th May, 2004, bear these out.

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All the facts leading to or precipitating the acrimony between the plaintiff and the President who the plaintiff alleged the former used in pulling out the Police Force from the Government House at Awka in Anambra State with the intention to install another Governor acceptable to him (President), the Federal Government and the President's continued prevention of the Commissioner of Police, Anambra State, from taking lawful directives from the Governor of the State for the maintenance of public safety, public order and the provision of police protection and other security apparatus of State power for the Government of Anambra State and the Governor contrary to Section 215 (4) of the 1999 Constitution in addition to the withholding of part of the Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the

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Constitution when the funds so withheld are not a legitimate set-off for any loan granted to Anambra State Government by the Federal Government etc., were itemized and adumbrated to elucidate the plaintiff's claim. The plaintiff rounded up his claims as per paragraph 23 of the Amended

B Statement of Claim as follows:

(i) A declaration that the Inspector-General of Police acting on his authority or on the direction of the Federal Government or the President of the Federal Republic of Nigeria has no constitutional right to withdraw Police Security Personnel and details from the Governor of a State, in
C Nigeria including the Governor of Anambra State; alternatively:

A declaration that the President of the Federal Republic of Nigeria or the Government of the Federal Republic of Nigeria acting through the agents or agencies of the Government of the Federal Republic of Nigeria
D including the Inspector-General of Police have no constitutional right to remove Police protection and detail from any Governor of a State in Nigeria or to deny the facility of police protection from any Governor of a State in Nigeria particularly the Governor of Anambra State, while that Governor
E remains in office.

(ii) A declaration that the Governor of a State including the Governor of Anambra State being by the express provision of Section 176 of the Constitution of the Federal Republic of Nigeria, 1999, the Chief
F Executive of the State is entitled to the use and service of organized coercive force represented by the Nigeria Police Force to maintain its existence and authority and to enforce its laws.

(iii) A declaration that the Governor of a State including Anambra State represents and indeed embodies the PUBLIC of that State and has the
G power under Section 215 (4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without
H interference by the Federal Government or the President.

(iv) A declaration that the Governor of a State including Anambra State under Sections 5 and 11 of the 1999 Constitution being the Chief Security Officer of the State, his assassination or abduction due to removal

from him of Police protection and detail will spark off widespread disturbance and so endanger or imperil security, order and safety of the public in the State.

(v) A declaration that the withdrawal of Police Security personnel and detail from the Governor of a State including Anambra State by the Inspector-General acting by himself or on the direction of the President of the Federal Government is inconsistent with and does stultify the arrangement of a single Police Force as a common organized coercive force for the maintenance of the existence and authority of a State Government and enforcement of its laws.

(vi) A declaration that the Inspector-General of Police has no constitutional right to remove the Governor of a State including the Governor of Anambra State from office, whether acting on his authority or on the direction or Orders of the Federal Government, President or of any Court of Law; alternatively:

A declaration that the Federal Government acting through the Inspector-General of Police or the President or by order of any court of law other than a Tribunal set up under Section 285 of the Constitution of the Federal Republic of Nigeria has no constitutional right to remove the Governor of a State including Governor of Anambra State from office.

(vii) A declaration that neither the President of the Federal Republic of Nigeria nor the Federal Government nor the Inspector-General of Police has the constitutional right to remove the Governor of any State whether acting on their own initiative or on the orders of any court of law not being an Election Tribunal.

(viii) A declaration that the President of the Federal Republic of Nigeria cannot declare a state of emergency in Anambra State or in any other State otherwise than in strict compliance with the provisions of Sections 11 and 305 of the 1999 Constitution.

(ix) A declaration that the circumstances specified in Sections 11 and 305 of the 1999 Constitution do not exist and have not arisen in Anambra State to warrant the declaration of a state of emergency in Anambra State by the Federal Government of Nigeria or the President.

(x) A declaration that the Governor of Anambra State and indeed

any other Governor of any State in Nigeria elected into office under the 1999 Constitution of the Federal Republic of Nigeria cannot be removed from office by the President or the National Assembly through a proclamation of a state of emergency or otherwise.

B (xi) A declaration that the judicial power of the Government of one State in the Federation including the High Court of Enugu State does not extend to matters arising under the provisions of the One Single Constitution of Nigeria relating or pertaining exclusively to the Government of another State in the Federation, its organs, agencies or instrumentalities
C and or its powers and tenure of office of its executive officers.

(xii) A declaration that the judicial power of the Federal Government, in particular the jurisdiction of the Federal High Court does not extend to matters arising under the provisions of the One Single Constitution of Nigeria relating or pertaining exclusively to the Government of the
D thirty-six (36) States in the Federation, their organs, agencies or instrumentalities and or their powers and tenure of office of their executive officers.

E (xiii) A declaration that the Government of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria or any of the agencies or agents of the Government of the Federation of Nigeria have no constitutional authority to withhold any part of the share of any State
F Government including Anambra State Government from the Federation Account except towards payment of any sum that is due from the State to the Federal Government in respect of any loan made by the Federation to that State, in this case, Anambra State.

G (xiv) An order directing the Federal Government of Nigeria to direct the Inspector-General forthwith to restore to the Governor of Anambra State and the Government of Anambra State police protection and all security apparatus of State power in accordance with the spirit and
H intendment of the Constitution of the Federal Republic of Nigeria.

(xv) An order of the Supreme Court setting aside any order of any State High Court including the Order made on the 2nd day of January, 2004, by the High Court of Enugu State whereby that High Court purported to direct the Inspector-General of Police to remove the Governor of

Anambra State.

In his defence, the 1st defendant filed Amended Statement of Defence and counter-claim on 11th May, 2004.

For his defence, the 1st defendant filed an Amended Statement of Defence and counter-claim. In the case he proceeded to make for himself, B he denies there being in existence any live issue between himself and all the defendants vis-a-vis the plaintiff which calls for the interpretation of any provisions of the 1999 Constitution touching on the security finances of the plaintiff State and the use of the Police Force.

Simply put, it is the case of the 1st defendant that the Governor of C Anambra State, Dr. Chris Ngige by a letter of 9th July, 2003, sent to the Speaker of the Anambra State House of Assembly, tendered his resignation as Governor thereof. He denied the hearsay allegations for giving instructions to the members of the National Assembly to pass a resolution D authorizing a proclamation of a state of emergency in the plaintiff state. While 1st defendant further denied ever giving any directions to the Inspector-General of Police or anybody for purposes of or in relation to the removal of Dr. Chris Ngige who had earlier resigned his office, it was E forthrightly submitted that declarations (iv), (v), (vi) and (vii) are conjectural, academic and hypothetical, adding that the plaintiff is not entitled to any of the declarations sought.

Defendants such as Abia, Benue, Delta, Ebonyi, Imo, Kano, Ondo, F Osun, Oyo, Plateau, Rivers and Taraba States filed their respective Statements of Defence as well as Briefs of Argument which were exchanged to circumscribe their respective claims and counterclaim.

At the hearing, these defendants urged us to resolve this case in G favour of the plaintiff. They denied a dispute having arisen as between them and the plaintiff.

To begin with, a dispute is by the authority of the case *Air Via Ltd. v. Oriental Airlines Ltd.* (2004) All FWLR (Pt. 212) P. 1583 defined as a conflict of claims or rights or demand on one side met by contrary H allegations on the other side.

I wish hereunder to consider the reliefs sought by the plaintiff thus:

“(i) A declaration that the Inspector-General of Police acting on

his own authority or through the direction of the Federal Government or the President has no constitutional right to withdraw security personnel and details from the Governor of Anambra State.”

The withdrawal of police security personnel from the Governor of Anambra State as demonstrated, was on the orders of the Enugu State High Court. The plaintiff in paragraph 29 of his affidavit evidence exhibited a copy of the order, (Exhibit 3).

The law in this instance is clear that it is settled that it is the unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged and this the moreso, where the person affected by the order believes it to be irregular or void. In so far as the order exists, it must be obeyed to the letter. See *Military Governor of Lagos State v. Ojukwu & Anor.* (1986) NWLR (Pt.18) 621 SC.

An order of court, no matter the fundamental vice attaching thereto, remains legally binding and valid until set aside by due process of law. The relief is for these reasons refused.

"(ii) *A declaration that the Governor of a State including the Governor of Anambra State being the Chief Executive of the State by virtue Section 176 of the Constitution is entitled to the use and service of organized coercive force represented by the Police Force to maintain its existence and authority and to enforce its laws.*"

The declaration herein sought is neither properly claimable nor justifiable. This is because it is neither the function nor indeed the duty of the court to embark on proffering advisory opinion. See *Olaniyi v. Aroyehun* (1991) 5 NWLR (Pt. 194) 652. Moreover, there is no evidence in support of such a proposition. This declaration cannot therefore be granted. It is accordingly refused.

(iii) *A declaration that the Governor of a State including Anambra State represents and indeed embodies the Public of that State and has the power under Section 215 (4) of the 1999 Constitution subject only as provided in that section, to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public security and public order*

in the State without interference by the Federal Government or the President.”

In respect of relief (iii), I cannot conceive of how it advances the core issue being agitated by the plaintiff. But since it appears clear, unobjectionable as well as harmless if granted, I hereby grant it for what B it is worth. I unhesitatingly grant it.

“(iv) A declaration that the Governor of a State including that of Anambra State under Sections 5 and 11 of the 1999 Constitution being the Chief Security Officer of the State, his assassination or abduction due to C removal from him of police protection and detail will spark off widespread disturbance and so endanger or imperil security, order and safety of the public in the State.”

As this state of affairs has not arisen in this case and from the affidavit evidence there is no dispute between the plaintiff and 1st D defendant, the points made herein are nothing but mere speculations. They do not constitute live issues. As this court has already pointed out, this court has no jurisdiction or competence to embark on advisory or abstract academic opinions, I have no hesitation in refusing to make the declaration E sought, being advisory abstract or academic opinions per se.

“(v) A declaration that the withdrawal of police security personnel and detail from the Governor of a State including Anambra State by the Inspector-General of Police acting by himself or on the direction of the F President of the Federal Government is inconsistent with and does stultify the arrangement of a single police Force as a common organized coercive force for the maintenance of the existence and authority of a State Government of its laws.”

I am of the view, as I had earlier demonstrated that the withdrawal G of police personnel from the Governor of Anambra State was on the orders of the Enugu High Court vide Exhibit 3 that this issue is hypothetical and speculative. See *Asafa Foods Factory Ltd. v. Alrairie & Anor.* (2002) 2 S.C. (Pt. I) 1; (2002) 12 NWLR (Pt. 781) 353; *Fame Publications Ltd. v. H Encomium Ventures* (2000) 8 NWLR (Pt. 667) page 105 and *Duwin Pharmaceutical Chemical Co. Ltd. v. Bebecks Pharm. & Cosmetics Ltd. & 2 Ors.* (2000) 15 NWLR (Pt. 689) page 66.

It cannot be granted and it is accordingly refused.

“(vi) *A declaration that the Inspector General of Police has no constitutional right to remove the Governor of a State including the Governor of Anambra State from office, whether acting on his authority or on the direction or orders of the Federal Government, President or of any court of law.*”

On Friday, 2nd January, 2004, Nnaji, J., sitting at the Enugu High Court made the following order:

“*That the 1st respondent shall remove the 3rd respondent forthwith from office in the same manner he put him in office on 10th July, 2003, after having resigned as Governor of Anambra State and left therefrom.*”

But it emphasized that 1st and 3rd respondents were the Inspector-General of Police and Dr. Chris Ngige, Governor of Anambra State, respectively. As I had earlier pointed out, every person against whom an order of court is made or directed should obey it even if it seems irregular or void unless and until it is set aside. In other words, it must be obeyed.

As indeed happened, Dr. Chris Ngige appealed from that order to the Court of Appeal, Enugu Division. That court on 12th of January, 2004, stayed that order “*pending the determination of the appellant/applicant’s Motion on Notice now adjourned to tomorrow 13/1/2004 for hearing at 1:pm.*” Incidentally, there is no record of what happened on 13/1/2004 or on subsequent days. As a matter of judicial notice judgment was in fact given in favour of Dr. Ngige in the appeal to the Court of Appeal. Be it noted that the appellate jurisdiction of the Supreme Court is circumscribed by Section 233 of the 1999 Constitution, the appellate jurisdiction of this court being to hear and determine appeals from the Court of Appeal to the exclusion of any other court of law in Nigeria. In that regard I accordingly refuse to grant this declaration.

“(vii) *A declaration that neither the President of the Federal Republic of Nigeria nor the Federal Government nor the Inspector General of Police has the constitutional right to remove the Governor of Anambra State nor the Governor of any other State whether acting on their own initiative nor on the orders of any court of law not being an Election Tribunal.*”

This issue is also academic and speculative; it does not raise any dispute between the plaintiff and 1st defendant involving any question on which the exercise or the extent of any legal right depends. This court will not involve itself in a mere academic exercise. The claim is accordingly declared incompetent and is accordingly refused. See A-G Federation v. B A-G Abia State No.2 (2002) S. C. (Pt. I) 1; 6 NWLR (Pt. 764) 542.

“(viii) A declaration that the President of the Federal Republic of Nigeria cannot declare a state of emergency in Anambra State or in any other state otherwise than in strict compliance with the provisions of Sections 11 and 305 of the 1999 Constitution.” C

Here also, the claim is speculative. It palpably does not arise from any mutual dispute between the plaintiff and 1st defendant. The affidavit evidence does not disclose any iota of evidence in this regard and because it appears clearly to me to be incompetent, it is hereby refused. D

“(ix) A declaration that the circumstances specified in Sections 11 and 305 of the 1999 Constitution do not exist and have not arisen in Anambra State to warrant the declaration of a state of emergency in Anambra State by the Federal Government of Nigeria or the President.” E

(x) A declaration that the Governor of Anambra State and indeed any other Governor of any State in Nigeria elected into office under the 1999 Constitution of the Federal Republic of Nigeria cannot be removed from office by the President or the National Assembly through a proclamation of a state of emergency or otherwise. F

(xi) A declaration that the judicial power of the Government of one State in the Federation including the High Court of Enugu State does not extend to matters arising under the provisions of the One Single Constitution of Nigeria relating or pertaining exclusively to the Government of another State in the Federation, its organs, agencies or instrumentalities and or its powers and tenure of office of its executive officers. G

(xii) A declaration that the judicial power of the Federal Government, in particular the jurisdiction of the Federal High Court does not extend to matters arising under the provisions of the One SINGLE Constitution of Nigeria relating or pertaining exclusively to the Government of the thirty-six (36) States in the Federation, their organs, agencies H

or instrumentalities and or their powers and tenure of office of their executive officers.”

Now, reliefs (ix) (x) (xi) and (xii) do not, in my view, raise any dispute between the plaintiff and the 1st defendant within the contemplation of Section 232 of the Constitution. The dispute 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 definite and concrete. The reliefs enumerated above are not only merely hypothetical but are speculative in tenor. This court has said in many cases that it has no jurisdiction to give advisory opinions or deal with hypothetical or academic questions. See *Kosile v. Folarin* (1989) 4 S.C. (Pt. I) 150; (1989) 3 NWLR (Pt. 107) at 8; *Adewunmi & Anor. v. A-G Ekiti State & Ors* (2002) 1 S.C. 47; (2002) 4 NWLR (Pt. 75) 474 at 525 para C-D and *Olale v. Ekwelendu* (1989) 7 S.C. (Pt. II) 62; (1989) 4 NWLR (Pt. 115) 344. There has been no evidence of a declaration of a state of emergency in Anambra State or a threat to declare one that would necessitate the intervention of this court. It is now settled, as I had the occasion to stress, that this court will not engage or indulge in academic exercise. As between the plaintiff and the 1st defendant, the declaration of a state of emergency is not at the moment, a live issue. Courts, it must be borne in mind, are established to redress wrongs, such that where a decision is not acceptable to a party, the best option available to the offended party is an appeal up the ladder of judicial hierarchy to the Supreme Court through the Court of Appeal. In the result, reliefs (ix), (x), (xi) and (xii) are hereby refused. See also *Bojwani v. Bojwani* (1996) 6 NWLR 661.

“(xiii) A declaration that the Government of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria or any of the agencies or agents of the Government of the Federation of Nigeria have no constitutional authority to withhold any part of the share of any State Government from the Federation Account except towards payment of any sum that is due from the State to the Federal Government in respect of any loan made by the Federation to that State, in this case, Anambra State.”

The evidence in support of the declaration is borne out in paragraph 38 of the affidavit which provides:

“The Government of the Federal Republic of Nigeria has continued to withhold part of the share of Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set-off for any loan granted to Anambra State Government by the Federal Government of Nigeria. A copy of a notice of such withholding is hereby exhibited, marked Exhibit 7.” B

Exhibit 7 displays clearly that some deductions were made in respect of Anambra and other States. Reasons were given for these deductions. The first and second sheets show that deductions were made pursuant to court orders while the third, fourth, fifth, sixth and seventh sheets exemplify that deductions were in respect of contractual obligations. C

No challenge was offered by the plaintiff State for these deductions. This is clear evidence that the plaintiff has admitted the reasons assigned and by extension that the deductions were not arbitrary. The law is trite that what is not denied is presumed to have been admitted. In the result, this relief is hereby refused. D E

“(xiv) An order of perpetual injunction restraining the Federal Government or the President of the Federal Republic of Nigeria from interfering with the constitutional right of the Governor and the Government of Anambra State to police protection and all security apparatus of State power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria.” F

Here again, it must be observed that there is no evidence of any directions by the President to 1st defendant, the Inspector General of Police to remove protection and all apparatus of State power from the Governor of Anambra State. This relief, I dare say, is mere speculation. As there is no evidence to support the injunction order sought against the President in the absence of such evidence, I will act post haste to refuse the order of injunction sought. G H

“(xv) An order directing the Federal Government of Nigeria to direct the Inspector General of Police forthwith to restore to the Government of Anambra State and the Government of Anambra State police

protection and all security apparatus of state power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria."

It is pertinent here to take judicial notice of the fact that the plaintiff B appealed against the judgment of Enugu State High Court to the Court of Appeal. The result of the appeal to the Court of Appeal is yet to be made known from either of the parties hereto. The appellate jurisdiction of this court being circumscribed by Section 233 of the 1999 Constitution, an C appeal to the Supreme Court must necessarily first emanate from a decision of the Court of Appeal. In other words, the Supreme Court does not exercise a right to sit on appeal over a High Court decision coming directly from that court. See *Ogoyi v. Umagba* (1995) 9 NWLR (Pt. 419) 283.

D “(xvi) *An order of the Supreme Court setting aside any order of any State High Court including the Order made on the 2nd day of January, 2004 by the High Court of Enugu State whereby that High Court purported to direct the Inspector-General of Police to remove the Governor of E Anambra State.*”

It has been demonstrated that the Governor of Anambra State appealed against the order of the High Court of Enugu State to the Court of Appeal. As the Supreme Court cannot exercise a right of appeal over a F High Court decision, this court is ipso facto incapable of pronouncing on the validity of the High Court judgment until that judgment becomes the subject of appeal to this court under Section 233 of the 1999 Constitution.

In summary, reliefs (i) (ii) (iii), (iv), (v), (vi) (vii), (viii), (ix), (x), G (xii) (xiii), (xiv), (xv) and (xvi) sought by the plaintiff are accordingly refused.

1st Defendant’s Counter-Claim 1st defendant counter-claimed from the plaintiff as follows:

H “1. *A declaration that the oath of office and oath of allegiance purportedly administered on Dr. Chris Ngige on 29/5/2003 is unconstitutional, null and void, and of no effect.*

2. *A declaration that Dr. Chris Ngige cannot constitutionally assume the functions of Governor of Anambra State not having taken the*

oath of office and oath of allegiance to the Federal Republic of Nigeria.

3. *A declaration that on a combined construction of the provisions of Sections 185 (1) and (2) and 291(2) of the Constitution of the Federal Republic of Nigeria 1999, plaintiff State has no constitutionally valid Governor in office to whom may be accorded the rights, privileges, B recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 and the Law.”*

Alternatively:

“4. *A declaration that Dr. Chris Ngige ceased to be the Governor C of Anambra State on 10/7/2003 following his letter of resignation and the receipt thereof by the speaker of the Anambra State House of Assembly.*

5. *A declaration that on a combined construction of the provisions of Sections 180 (1) (c) and 306(5) of the Constitution, plaintiff State has no constitutionally valid Governor in office to whom may be accorded all D the rights and privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria, 1999 and the Law.”*

There are two segments to the 1st defendant’s counter-claim. The E first arm of the counter-claim is that the Chief Judge of Anambra State, Hon. Justice C. J. Okoli was born on 15/6/37 and ought therefore to have ceased to hold office as Chief Judge of Anambra State by the latter date in accordance with the provisions of Section 291 (2) of the 1999 F Constitution. It was argued that the Hon. Justice C. J. Okoli administered the oath of office and the oath of allegiance on Dr. Chris Ngige on 29th day of May, 2003, and that all the acts of Hon. Justice C. J. Okoli from 15/6/2002, including but not limited to the administration of the oath of office as well as the oath of allegiance on Dr. Chris Ngige, are unconstitutional G and therefore null and void and of no effect.

For Okoli, C. J., it was contended that there is a subsisting judgment of the Federal High Court, Enugu in suit No. FHC/EN/CS/28/04 - Ikechukwu Ifediora v. Hon. Justice C. J. Okoli & 2 Ors to the effect that H as at 29/5/2003 he had not attained the compulsory retirement age of 65 years. That at the hearing of the suit on 17/2/2005, learned counsel for the 1st defendant/ counterclaimant conceded that as at 29/5/2003, the Hon.

Justice Okoli C. J., had not attained the compulsory retirement age of 65 years. This concession terminates the issue in contention.

For the argument of the second segment of the counterclaim, I can do no better than to adopt the argument proffered by my learned brother B and make similar consequential orders viz (a), (b), (c) and (d) contained therein.

In conclusion, the counterclaim fails as a whole and that as there was no appeal against the order/judgment of 20th January, 2004, which C performe subsists, I too make no order as to costs. Each party to bear its costs.

TOBI JSC

D I have read in draft the judgment just delivered by my learned brother, Katsina-Alu, JSC., and I agree with him.

The plaintiff, the Attorney General of Anambra State, asked for sixteen reliefs, some of which are fairly ambitious and tall, if not totally E ambitious and tall. As my learned brother has clearly stated the reliefs in his judgment, I do not want to repeat the exercise here.

It is elementary law that a plaintiff has the burden to prove the reliefs sought in the Statement of Claim to obtain judgment. That burden does not F shift. This is because he is the party who claims the reliefs in the Statement of Claim, and so the onus probandi rests upon him. He must prove the affirmative content of his Statement of Claim. Our adjectival law is as strict as that. See *Okechukwu and Sons v. Ndah* (1967) NMLR 368; *Elemo v. Omolade* (1968) NMLR 359; *Frempong II v. Erempong II* (1952) 14 G WACA 13; *Osawaru v. Ezeiruka* (1987) 6-7 S.C. (Reprint) 91; (1978) 6-7 S.C. 135; *Fashanu v. Adekoya* (1974) 6 S.C. (Reprint) 72; (1974) 6 S.C. 83. It must be mentioned that the burden of proof is restricted to the live issues in the matter, that is the issues which will determine the case one H way or the other. In other words, a plaintiff has no duty to prove issues which are not in any way related to the reliefs sought in the Statement of Claim as such issues are seen as merely gallivanting in the pleadings and to no issue.

The trial of the facts of the case was by affidavit evidence. The plaintiff and the defendants deposed to copious affidavits and counter-affidavits in support of their cases. In order to obtain judgment, the affidavit of the plaintiff must prove the reliefs sought in the Statement of Claim. A plaintiff whose affidavit does not prove the reliefs sought in the Statement of Claim must fail in the action. B

It is not enough for a plaintiff who seeks a constitutional remedy or remedy under the Constitution by merely parading before the court the constitutional provisions. He must prove, as it is in this case, by affidavit that he deserves the remedy sought. The court can only give the plaintiff judgment if the facts deposed to in the affidavit vindicate the remedy sought. A mere agglomeration of facts which do not vindicate or justify the remedy sought will not give rise to a judgment in favour of the plaintiff. C

There is yet another aspect and it is that the relief sought must raise a dispute between the plaintiff and the 1st defendant, a dispute involving a question of law. A court of law is not interested in reliefs which are merely academic or speculative. On the contrary, the dispute must involve a question of law within the meaning of the Constitution of the Federal Republic of Nigeria, 1999. D

There is still another aspect in this matter and it is that this court, unlike the International Court of Justice, cannot give advisory opinion in a matter before it. The court has no such jurisdiction conferred on it in either the Constitution or the Act establishing it. Accordingly, where a relief requires the advisory opinion of the court, it cannot grant the relief because it has no jurisdiction to grant it. E

Where a High Court in the exercise of its jurisdiction grants a relief to a plaintiff or makes an order, the Supreme Court has no jurisdiction to overturn the order just for the asking. This is because this court can only hear matters on appeal from the Court of Appeal and not directly from the High Court. A party must exhaust all his rights of appeal in accordance with the provisions of the Constitution. He cannot jump to this court to seek a remedy on a matter the High Court has given an order without first lodging an appeal to the Court of Appeal. F

I have carefully examined the sixteen reliefs sought and I am in G

grave difficulty to granting them, except perhaps relief No. (iii), for whatever it is worth. The relief reads:

“A declaration that the Governor of a State including Anambra State represents and indeed embodies the PUBLIC of the State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public security and public order in the State without interference by the Federal Government or the President.”

There is not much in this relief as it merely repeats the provision of Section 215(4) of the Constitution. The relief as it stands has no teeth, as it is not tied to a breaching conduct of anybody or person. I think my learned brother correctly calls it innocuous. I do not see any harm granting the relief and I so grant it.

I do not see my way clear in granting all the other fifteen reliefs for the reasons given in the leading judgment. While some of the reliefs sought are largely academic and speculative, others are premature. A few are orders made by the High Court of Enugu State and therefore cannot be basis of relief in this court without exhausting the appellate procedure as provided for in the Constitution.

It is for the above reasons and the more detailed reasons given by my learned brother, Katsina-Alu, JSC., in his judgment, that I too refuse reliefs (i), (ii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv) and (xvi). I grant only relief (iii). I also agree with my learned brother on his decision in respect of the counter-claim. I also make no orders as to costs.

PATS-ACHOLONUJSC

I have carefully read the lead judgment in draft of my learned and noble Lord, Katsina-Alu, JSC., and I agree with him. A painstaking and judicious examination of the plaintiff's case shows a markedly deficient evidence not enough to establish the goal for which the appellant seeks the

judgment of this court. It is patently clear that there is a surprising dearth of facts sufficient to establish a degree of proof that would sustain the presumption of law. The test of testimonial value in any given case in determining the required degree of proof and therefore to enable the court ascertain preponderance is the evidence, which in this case is in the form B of affidavit evidence. The affidavit evidence which would strengthen the facts or stories averred in the pleadings should be cogent and substantial to create in the mind of the court a belief that the plaintiff has established the assertion contended by a party. This case is large on the reliefs sought which form the point of forensic legal culture on the surface, and raises C very great fundamental issues in matters in respect of the relationship between the Federal Government and Anambra State Government in many facets. The application of law in a given situation depends on the nature of facts averred and elicited in the evidence which must necessarily D preponderate over the opposite case. I do not quarrel with the reliefs but the granting of the reliefs sought is dependent on the case made.

Consider, for example, the issue as to whether or not the Government of Anambra State can exercise power or control over the Police in E the State. There is no hard core evidence that the 1st defendant prevented the Governor from exercising the nature of control assigned to him in the Constitution. What is the evidence that the President was attempting to declare a state of emergency in Anambra State? With the greatest respect F to the plaintiff's counsel, there appears no tangible evidence. The main feature of the plaintiff's case is that though it frames and makes claims for reliefs which ex facie appear adjudicable or justiciable, it nevertheless parades latent weakness of making the case appear to raise mere academic G questions and not issues that should be properly addressed upon and verily determined by the court based on deposition of substantial facts which in this case are lacking in the affidavit evidence of the plaintiff.

In this connection it might be necessary to mention the averment H that the Federal Government had continued to prevent the Commissioner of Police in the State from taking orders from the Governor. Equally too is the allegation of invidious and insidious overt act that the President was lobbying for the State of Emergency in the State. There are no readily

available facts by way of documentary evidence or even additional affidavit deposed by some people who might have been contacted or lobbied for a support to a declaration of emergency. There are equally sparse facts by documentary evidence or otherwise to show how the President or the Federal Government has embarked on acts prejudicial to the governance of the State apart from the question of which of the two tiers of the government should effect control over the Police in the State. The nature of facts that ought to ground averments are lacking. Let me set out below paragraphs 10 to 14 of the plaintiff's Amended Statement of Claim:

1. The Government of Anambra State made representations to the President of the Federal Republic of Nigeria to exercise his presidential authority under Section 215 (3) of the Constitution to give lawful directions to the Inspector-General of Police under the President's control to abate the attempt to remove the Governor unconstitutionally. The President of the Federal Republic of Nigeria remained taciturn, nonchalant and indifferent.

2. It took the national revulsion, furor and condemnation of the events together with wide spread international display of outrage before the Inspector-General of Police was sufficiently embarrassed to distance himself from the shameful event and ordered the Assistant Inspector-General of Police, Mr. Ige to pull out his army of occupation from the Government House at Awka, Anambra State.

3. The Federal Government headed by the President of the Federal Republic of Nigeria is determined to change the Government in Anambra State unconstitutionally by removing the Governor of the State, Chief Chris Nwabueze Ngige (OON), from office in order to instal another Governor acceptable to the President, the wishes of the electorate expressed in a general election notwithstanding.

4. Ever since the aborted attempt of 10th July, 2003, the Federal Government under the President have covertly instigated or condoned various suits at the Federal High Court in a bid to obtain a judicial order for the removal of the Governor of Anambra State.

5. Having failed to obtain a judicial order from the Federal High

Court, Abuja, so far, the Federal Government and the President have covertly and overtly instigated or condoned or sponsored identical suits at other judicial divisions of the Federal High Court including the division at Enugu so as to obtain a judicial order to enable the President to remove the Governor of Anambra State.

What is the nature of the evidence in support of these averments? In other words, what is the materiality of the nebulous averments and I would add colourless as well which ought to give the meat or tissue to the framework, and therefore substance or weight? It is long settled that a party must make out his case by the best available evidence. It is a fundamental principle of our legal system in respect of facts averred that where weaker, tenuous or insufficient or feeble ineffectual evidence is given then it would amount to a case of failure of proof. The seriously imperfect evidence adduced as demonstrated in the contents of affidavit in support of the Amended Statement of Claim clearly robs the case of substance and realism. It is palpably weak in weight. This case somehow gives an impression of a rushed attempt to urgently file an action which so much emotion or passion seems to have taken the wind of the beauty of the case, thereby leaving it palpably obtuse and therefore manifestly weak in all respects.

Any lawyer giving or making a critical analysis of a case before him for which he seeks to persuade the court in his favour should suspend any prior judgment he might have had or conceived until he has carefully examined all the evidence attendant to the case. He accepts the interpretation of his client's state of facts without subjecting same to merciless scrutiny to discern whether the factual situation as presented or represented could make the case preponderate in his favour, to his detriment. It is important to state that all facts are not equal. Some can be ignored for their irrelevance but others which are weighty are the ones that make the difference between failure and success and when such facts of quality which can literally overwhelm an opposing party are in the grasp of a great lawyer, the elegance or romance of forensic advocacy is easily discernible, and it makes a great difference. Facts act like magnets and have the potential to completely turn a seemingly ugly or bad case to a good case.

We must never neglect the Roman aphorism “Ex factor oritur jus” that law has its offspring on the fact. The nemesis of this case before us is the lack of evidential proof that would have sustained the case sought to be made by the plaintiff. In *Jolayemi v. Alaoye* (2004) 5 S.C. (Pt. II) 112; (2004) B 12 NWLR (Pt.887) 322 at 340, Kalgo, JSC., said:

“Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence by itself (sic) and if not followed by any supporting evidence they are deemed abandoned”.

C See also *Ezeanah v. Attah* (2004) 2 S.C (Pt. II) 75; (2004) 7 NWLR (Pt. 873) 468 and *Ironbor v. Cross River Basin & Rural Development* (2003) FWLR (Pt. 165) 375 C.A., *Gaaba v. Lobi Bank Nig. (Ltd.)* (2003) FWLR (Pt. 173) 106 C.A., *Remm Oil Services Ltd. v. Endwell Trading Co. D Ltd.* (2003) FWLR (Pt. 152) 98 C.A., *Jibrin v. National Electric Power Authority* (2003) FWLR (178) 1092. C.A., *Ajao v. Ajao* (1986) 5 NWLR (Pt. 45) 802; *Balogun v. Labiran* (1988) 4 NWLR (Pt. 90) 503.

Pleadings of a party unless conceded by the other party must of E necessity be well fleshed up by evidence to persuade the court positively.

In respect of the relief sought in (iii), I do not know how it advances the central issue being agitated by the plaintiff but since it is harmless, unobjectionable and intrinsically inoffensive, it is hereby granted.

F Apart from relief (iii) above, the rest of the reliefs claimed unfortunately have to fail and I dismiss them.

In respect of the 1st defendant’s counter-claim, the defendant’s counsel did not address us on the questions of whether the Governor was validly sworn and or whether the Governor resigned from his office. G These matters were taken care of by the judgment of Anambra State High Court. There are no pending appeals against these judgments of the High Court in the cases affecting these matters. The substance of the counter-claims being non existent, there is really nothing left to agitate upon.

H I abide by the orders in the leading judgment.

OGUNTADEJSC

This is a suit brought before this court by the Attorney-General of Anambra State representing Anambra State as plaintiff against the Attorney-General of the Federation and 35 other Attorneys-General of the other States in Nigeria as the defendants. The suit was brought in this court pursuant to the original jurisdiction of this court under Section 232(1) of the 1999 Constitution. The plaintiff claims the following reliefs:

“(i) A declaration that the Inspector-General of Police acting on his authority or on the direction of the Federal Government or the President of the Federal Republic of Nigeria has no constitutional right to withdraw Police Security Personnel and details from the Governor or a State in Nigeria including the Governor of Anambra State; alternatively:

A declaration that the President of the Federal Republic of Nigeria or the Government of the Federal Republic of Nigeria acting through the agents or agencies of the Government of the Federal Republic of Nigeria including the Inspector-General of Police have no constitutional right to remove police protection and detail from any Governor of a State in Nigeria or to deny the facility of police protection from any Governor of a State in Nigeria particularly the Governor of Anambra State, while that Governor remains in office.

(ii) A declaration that the Governor of a State including the Governor of Anambra State being by the express provision of Section 176 of the Constitution of the Federal Republic of Nigeria 1999, the Chief Executive of the State is entitled to the use and service of organized coercive force represented by the Nigeria Police Force to maintain its existence and authority and to enforce its laws.

(iii) A declaration that the Governor of a State including Anambra State represents and indeed embodies the PUBLIC of that State and has the power under Section 215(4) of the 1999 Constitution subject only as provided in that section to give direction to the Commissioner of Police in charge of the contingent of the Police Force stationed in the State with respect to the securing and maintaining of public order in the State without interference by the Federal Government or the President.

(iv) A declaration that the Governor of a State including Anambra State under Sections 5 and 11 of the 1999 Constitution being the Chief Security Officer of the State, his assassination or abduction due to removal from him of police protection and detail will spark off widespread disturbance and so endanger or imperil security, order and safety of the public in the State.

(v) A declaration that the withdrawal of Police Security personnel and detail from the Governor of a State including Anambra State by the Inspector-General acting by himself or on the direction of the President or the Federal Government is inconsistent with and does stultify the arrangement of a single Police Force as a common organized coercive force for the maintenance of the existence and authority of a State Government and enforcement of its laws.

(vi) A declaration that the Inspector-General of Police, has no constitutional right to remove the Governor of a State including Governor of Anambra State from office, whether acting on his authority or on the direction or orders of the Federal Government, President or of any court of law; alternatively:

A declaration that the Federal Government acting through the Inspector-General of Police or the President or by order of any court of law other than a Tribunal set up under Section 285 of the Constitution of the Federal Republic of Nigeria has no constitutional right to remove the Governor of a State including Governor of Anambra State from office.

(vii) A declaration that neither the President of the Federal Republic of Nigeria nor the Federal Government nor the Inspector-General of Police has the constitutional right to remove the Governor of any State whether acting on their own initiative or on the orders of any court of law not being an Election Tribunal.

(viii) A declaration that the President of the Federal Republic of Nigeria cannot declare a State of Emergency in Anambra State or in any other State otherwise than in strict compliance with the provisions of Sections 11 and 305 of the 1999 Constitution.

(ix) A declaration that the circumstances specified in Sections 11 and 305 of the 1999 Constitution do not exist and have not arisen in

Anambra State to warrant the declaration of a State of Emergency in Anambra State by the Federal Government of Nigeria or the President.

(x) *A declaration that the Governor of Anambra State and indeed any other Governor of any State in Nigeria elected into office under the 1999 Constitution of the Federal Republic of Nigeria cannot be removed from office by the President or the National Assembly through a proclamation of a State of Emergency or otherwise.* B

(xi) *A declaration that the judicial power of the Government of one State in the Federation including the High Court of Enugu State does not extend to matters arising under the provisions of ONE SINGLE Constitution of Nigeria relating or pertaining exclusively to the Government of another State in the Federation, its organs, agencies or instrumentalities and or its powers and tenure of office of its executive officers.* C

(xii) *A declaration that the judicial power of the Federal Government, in particular the jurisdiction of the Federal High Court does not extend to matters arising under the provisions of the ONE SINGLE Constitution of Nigeria relating or pertaining exclusively to the Government of the thirty-six (36) States in the Federation, their organs, agencies or instrumentalities and or their powers and tenure of office of their executive officers.* D E

(xiii) *A declaration that the government of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria or any of the agencies or agents of the Government of the Federation of Nigeria have no constitutional authority to withhold any part of the share of any State Government including Anambra State Government from the Federation Account except towards payment of any sum that is due from the State to the Federal Government in respect of any loan made by the Federation to that position, in this case, Anambra State.* F G

(xiv) *An Order directing the Federal Government of Nigeria to direct the Inspector-General of Police forthwith to restore to the Governor of Anambra State and the Government of Anambra State police protection and all security apparatus of State power in accordance with the spirit and intendment of the Constitution of the Federal Republic of Nigeria.* H

(xv) *An Order of the Supreme Court setting aside any Order of any*

State High Court including the Order made on the 2nd day of January, 2004 by the High Court of Enugu State whereby that High Court purported to direct the Inspector-General of Police to remove the Governor of Anambra State.”

B The plaintiff filed an amended Statement of Claim, an affidavit of facts in support of the claim, a brief and a reply brief in support of his case. The 1st defendant filed a further amended Statement of Defence incorporating a counter-claim, and a brief. The other defendants filed similar processes.

C The 1st defendant in his counter-claim seeks the following reliefs:

"(1) A *DECLARATION* that the oath of office and oath of allegiance purportedly administered on Dr. Chris Ngige on 29/5/2003 is unconstitutional, null, void and of no effect.

D (2) A *DECLARATION* that Dr. Chris Ngige cannot constitutionally assume the functions of Governor of Anambra State not having taken the oath of office and oath of allegiance to the Federal Republic of Nigeria.

E (3) A *DECLARATION* that on a combined construction of the provisions of Sections 185(1) & (2) and 291(2) of the Constitution of the Federal Republic of Nigeria 1999, Plaintiff State has no constitutionally valid Governor in office to whom may be accorded the rights, privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria 1999 and the law.

F (4) AN *ORDER* that Dr. Chris Ngige be removed from office forth with.

ALTERNATIVELY;

G (5) A *DECLARATION* that Dr. Chris Ngige ceased to be the Governor of Anambra State on 10/7/2003 following his letter of resignation and the receipt thereof by the Speaker of the Anambra State House of Assembly.

H (6) A *DECLARATION* that on a combined construction of the provisions of Sections 180(1)(c) and Section 306(5) of the Constitution of the Federal Republic of Nigeria 1999, Plaintiff State has no constitutionally valid Governor in office to whom may be accorded all the rights and privileges, recognition and other facilities as a State Governor may be

entitled under the Constitution of the Federal Republic of Nigeria 1999 and the law.

(7) *AN ORDER that Dr. Chris Ngige be removed from office forth with.*

(8) *A DECLARATION and ORDER that on a combined construction of the provisions of Sections 180(1)(a), 185(1) & (2) and Section 291(2), of the Constitution of the Federal Republic of Nigeria 1999. Plaintiff State's only constitutionally valid and subsisting Governor in office to whom can be accorded all the rights, privileges, recognition and other facilities as a State Governor may be entitled under the Constitution of the Federal Republic of Nigeria 1999, and the law is the holder of that office on whom the last valid oath was administered on the 29th May, 1999. (Arising from paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 above."*

The facts relied upon by the plaintiff in support of his claims may be summarized thus:

On 29-5-2003, Dr. Chris Nwabueze Ngige, (OON) was sworn-in as the Governor of Anambra State. On 10-7-2003, an Assistant Inspector-General of Police acting under the direct command of the Inspector-General of Police attempted to remove the said Governor from office. The said Assistant Inspector-General of Police was later retired. On 22-7-03, a Federal High Court Judge sitting at Abuja made an order of injunction restraining the Governor from performing his functions as Governor. The said Judge was later retired. On 2-2-2004, a Judge of the Enugu State High Court made an order directing the inspector-General of Police to remove the Governor from office. However, on 12-01-04, the Court of Appeal sitting at Enugu suspended the order of the Enugu State High Court Judge. Since 2-2-04, the Federal Government through the President of Nigeria has by his public utterances been contriving "*all machinations to proclaim a state of emergency in Anambra State.*"

The 1st defendant pleaded the facts relied upon for the reliefs under his counter-claim in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16 of his further amended Statement of Defence and counter-claim. I shall discuss these later in this judgment.

The plaintiffs raise a claim for 16 reliefs out of which fourteen of them are declaratory and the other two consequential. In principle, the grant of a declaratory relief is discretionary but the discretion is often used with extreme caution. In *Russian Commercial & Industrial Bank v. British Bank for Foreign Trade Ltd.* (1921) 2 AC 438 and 447-48 CH. h) Lord Dunedin in giving a guide to the exercise of the discretion observed:

“*But thus it is said that the granting of a mere declaration is a matter of discretion, and that that discretion ought to be shown in granting such declaration ‘sparingly’ ‘with great care and jealousy’ and ‘with extreme caution.’ My Lords, I confess that to my mind such expressions give little guidance. It may be that I am swayed by my experience of another system of law, but a rule which can be expressed in the form of a principle may well be proper to any legal system. Your Lordships are aware that the action of declarator has existed for hundreds of years in Scotland..... The rules that have been elucidated by a long course of decisions in the Scottish courts may be summarized thus: The question must be real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declarations sought.” (underlining mine)*

The jurisdiction to grant declaratory reliefs is unlimited even if discretionary. See *Re Lockyer* (1934) 1 DLR 687; *Faber v. Gosworth Urban Dist. Council* (1903) 88 LT 549 at 550 and *Markwald v. A-G* (1920) 1 Ch. 348 at 357. However, in order to prevent the abusive use of the jurisdiction to grant declaratory reliefs, a number of sub-rules have emerged over the years. These include:

- (a) The person seeking the reliefs must have locus standi.
- (b) The person seeking relief must present a case where there is a true dispute between him and his adversary.
- (c) Questions which are purely academic, hypothetical, obscure or of no relevance to the parties cannot form the basis of declaratory relief.
- (d) The relief will not lie for the declaration of future rights unless aspects of an existing right depend on the adjudication of the court.
- (e) Where there is a pending proceeding before another court or

tribunal involving the same points of law being posed before a court, it should refuse to grant the relief.

I have set out above the reliefs which the plaintiff by his action seeks from this court. My learned brother, Katsina-Alu, JSC, has in his lead judgment given the reasons why all but one of plaintiff's claims must fail. B I entirely agree with him. I should only discuss some aspects of the case as would expose the hollowness and unsustainability of the reliefs sought by the plaintiff.

The questions that I have had to contend with in the consideration of plaintiff's claims include - How do the facts pleaded by the plaintiff C justify the grant of the sixteen reliefs sought by the plaintiff? Where is the evidence that it was the President of Nigeria who ordered the Assistant Inspector-General of Police to make the attempt to remove from office the Governor of Anambra State? Where is the evidence that it was the D President of Nigeria who ordered the Federal High Court Judge sitting at Abuja and the Enugu State High Court Judge sitting at Enugu to make the orders which the plaintiff is complaining about? Do judges take orders from the President of Nigeria in the performance of their judicial func- E tions?

There can be no doubt that plaintiff's case is like a building erected on a sand foundation which disappears with the approach of the wind. There is no evidence to support several of the reliefs claimed. There is F patent vagueness and equivocation on the facts even when these are considered on their own and not contrasted with the facts given by the 1st defendant.

Now Section 215 of the 1999 Constitution of the Federal Republic G of Nigeria provides:

"215:-(1) There shall be -

(a) an Inspector-General of Police who, subject to Section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria H Police Force;

(b) a Commissioner of Police for each State of the Federation who shall be appointed by the Police Service Commission.

(2) *The Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a State shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that State.*

(3) *The President or such other Minister of the Government of the Federation as he may authorize in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with.*

(4) *Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may authorize in that behalf, may give to the Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the State as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:*

Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.

(5) *The question whether any, and if so what, directions have been given under this section shall not be inquired into in any court.”*

In paragraphs 18, 19 and 20 of the affidavit in support of his claim, the plaintiff deposed:

“18. *The Governor of Anambra State duly gave directions to the Commissioner of Police in charge of the Police contingent in Anambra State with respect to the securing and maintaining of public security in Anambra State and particularly for the provisions of police security protection and detail for both the Government House and the Governor’s Lodge at Awka, Anambra State for the security of the Government and the Governor.*

19. *The Commissioner of Police has never requested that such directive may be referred to the President or any Minister, by the Governor. In fact, the Commissioner of Police has continued to comply with the said directive until the 10th day of July, 2003.*

20. *On the 10th day of July, 2003, an Assistant Inspector-General of Police acting under the direct command of the Inspector-General of Police and the ostensible direction of the President of the Federal Republic of Nigeria stormed the Anambra State Government House, with a force of Policemen led by one Mr. Raphael Ige (now deceased) and attempted to remove the Governor of Anambra State, Dr. Chris Nwabueze Ngige (OON) from office.”*

It is explicit from an examination of Section 215(5) of the 1999 Constitution reproduced above that this court and indeed any court in the land may not look into the question whether any, and if so what directions have been given pursuant to Section 215(4) above. That being the position, the reliefs which are premised on the hypothesis that the President of Nigeria had given some directions to the police as to the maintenance of law and order in Anambra State must be refused.

The plaintiff did not anywhere in his amended Statement of Claim and the affidavit in support allege that the declaration of a state of emergency was discussed in the National Assembly in relation to Anambra State or that the President of Nigeria in collaboration with the National Assembly made a proclamation of a state of emergency in Anambra State. Plaintiff's claims (VII), (VIII), (IX) and (X) do not have any evidential support. They are plainly speculative and puerile. There is nothing to convey that there had arisen a dispute between the plaintiff and 1st defendant justifying the intervention of this court.

The plaintiff also raised some claims to the effect that the judicial power of the High Court of a State does not extend beyond the borders of the particular State. It was not however disclosed which dispute had arisen between the plaintiff and the 1st defendant with respect to the limit of the jurisdiction of a State High Court. In any case, if a particular State High Court had exceeded its jurisdiction in a matter involving the plaintiff, the plaintiff would have the right to appeal against an order made by such

court. It is improper and also unconstitutional to move this court to make an all-season order concerning specific cases, which had not been brought before it.

B The plaintiff in his claim (XIII) has asked us to declare that the Federal Government has no constitutional authority to withhold the allocation due to any State Government from the Federation Account. The only averment in support of the claim is to be found in paragraph 21 of the Amended Statement of Claim and reads:

C “21. *The Government of the Federal Republic of Nigeria has continued to withhold part of the share of Anambra Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set-off for any loan granted to Anambra State Government by the Federal Government*
D *of Nigeria.*”

The evidence in support of this allegation is to be found in paragraphs 38 and 39 of the affidavit in support of the claims. They read:

E “38. *The Government of the Federal Republic of Nigeria has continued to withhold part of the share of Anambra State Government from the Federation Account in a manner inconsistent with the provisions of the Constitution when the funds so withheld are not a legitimate set-off for any loan granted to Anambra State Government by the Federal*
F *Government of Nigeria. A copy of a notice of such withholding is hereby exhibited, marked Exhibit 7.*

G 39. *The Federal Government has also threatened to withhold the allocation due to Local Governments in Anambra State from the Federation Account without any constitutional justification.*”

H The plaintiff in Exhibit 7 attached to his affidavit has only succeeded in showing that some money was deducted from its allocation. It was not shown that the plaintiff had previously sought to know from the 1st defendant the basis of such deductions. The plaintiff has not asked for an account. How can this court from the mere fact that deductions were made from the plaintiff's allocation arrive at the conclusion that the deductions were unjustifiably made? This claim must also be refused.

Under the plaintiff's claim (III), he seeks a declaration that under

Section 215(4) of the 1999 Constitution, the Governor of a State including Anambra State could give direction to the Commissioner of Police in a State with respect to security and public safety without interference from the President of Nigeria or the Federal Government. I have read the amended Statement of Claim and the affidavit filed by the plaintiff. I have considered these against the contents of 1st defendant's Statement of Defence and the counter-affidavit. There is clearly no dispute on the point. The 1st defendant has not argued that a State Governor does not have the power to give directions to the Police. Section 215(4) of the 1999 Constitution is very clear on the point. This claim on a first look would therefore appear unsustainable, irrelevant and pedantic. I am however willing to accede to its grant as stated in the lead judgment for whatever it is worth.

I reproduced above the 1st defendant's counter-claims. The facts pleaded in support of the counter-claim are to be found in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16 of the Further Amended Statement of Defence and counter-claim. They read:

"9. The 1st defendant admits paragraph 8 of the amended statement of claim to the extent only that such oaths were purportedly administered and most unconstitutionally. 1st defendant will contend, as set out in the counter-claim infra, that the administration of the said oaths being unconstitutional in effect deprived Dr. Chris Ngige of any rights, de jure or de facto to perform the functions of the office of Governor of Anambra State and, as in the case of the rest of the averments, puts the plaintiff to very strict proof.

10. 1st defendant avers that the Chief Judge of Anambra State, Hon. Justice C. J. Okoli, alias Joseph Chuka Okoli, from official records from the Hon. Society of Middle Temple in England and the Council of Legal Education, Bwari, Abuja, was born on 15/6/37. 1st defendant avers that Hon. Justice C. J. Okoli alias Chuka Jideofor Okoli, ought to have ceased to hold the office of Chief Judge of Anambra State by 15/6/2002 in accordance with the provisions of S. 291(2) of the 1999 Constitution. All the acts of the Hon. Justice C. J. Okoli while clinging to the office of the Chief Judge of Anambra State from 15/6/2003, including but not

limited to the administration of the oaths of office and allegiance to the Federal Republic of Nigeria on Dr. Chris Ngige, are unconstitutional and therefore null, void and of no effect whatsoever.

11. 1st defendant denies paragraph 9 of the amended statement of claim and avers that Dr. Chris Ngige by a letter dated 9/7/2003 transmitted to the Speaker of Anambra State House of Assembly, his resignation as Governor of Anambra State.

12. In further answer to paragraph 9 of the amended statement of claim, 1st defendant avers that the said Speaker by letter dated 10/7/2003 notified the Chief Judge of Anambra State of the receipt of the aforesaid letter of resignation and the fact that the State House of Assembly had met and accepted it.

13. 1st defendant denies paragraphs 10, 11 and 12 of the amended statement of claim and avers that as a result of Dr. Chris Ngige's equivocation on his authorship of the said letter of resignation, all the letters, including one dated 18/4/2003 were sent for forensic analysis at the Police forensic laboratory of "D" department, Force C.I.D., Lagos.

14. 1st defendant avers that the result of the handwriting analyst of the "D" department. Force C.I.D., Lagos, revealed traits in all the letters peculiar to one signatory, Dr. Chris Ngige as the author.

15. 1st defendant denies paragraphs 13 to 21 of the amended statement of claim especially paragraphs 18, 19, 20 and 21, particularly the hearsay allegations of instructions to the members of the National Assembly to pass a resolution authorizing a proclamation of a state of emergency in the Plaintiff State.

16. 1st defendant denies that any such instructions were given to the Inspector-General of Police or anybody, for purposes of, or in relation to the removal of Dr. Chris Ngige who had earlier voluntarily resigned his office, and puts the Plaintiff to very strict proof of the averments."

My reaction to the counter-claim is that it ought to fail. There is no doubt that Dr. Chris Ngige remains the Governor of Anambra State. He was also the de facto Governor at the time this action was commenced. Section 180(1) of the 1999 Constitution of Nigeria sets out the circumstances when a State Governor shall cease to hold office as such. There

is no fact pleaded to show that Dr. Chris Ngige has under the 1999 Constitution of Nigeria ceased to hold office as Governor.

Further, the assertion that the Chief Judge of Anambra State was not eligible to administer the Oath of Office and Oath of Allegiance on Dr. Chris Ngige at the time he did creates the absolute necessity to make the said Chief Judge a party to this case. The question whether or not the Chief Judge was qualified to administer the relevant oaths cannot be considered in the situation when the Chief Judge is not a party. In any case, the said Chief Judge has been able to establish before a competent court that he was qualified to administer the relevant oaths at the time he did. Finally, on the point, it seems to me a clear contradiction to pronounce that an individual who is acknowledged under our Constitution as the Governor of a State can be declared to have lost the office by a court of law when there have been no proceedings initiated before a competent court for that purpose.

In the final conclusion I agree with the lead judgment of Katsina-Alu, JSC. I subscribe to all the orders made in the said judgment.

AKINTANJSC

I have read the draft of the leading judgment written by my learned brother, Katsina-Alu, JSC., which has just been delivered. He has adequately set out the facts of the case and discussed all the issues raised in the case. I entirely agree with his reasoning and conclusion that only the third leg of the claim out of the sixteen should succeed while the remaining and the counter-claim should fail. I adopt his said conclusions as mine.

The crisis that erupted in Anambra State following the election of Dr. Chris Ngige as the Governor of that State in the 2003 election created a serious upheaval not only in the nation political circle but also in the nation's judiciary. According to the facts of the case, as are well set out in the leading judgment, efforts were made to remove the said Governor by all means - however dirty or foul. To that end a court order was sought and obtained from a Judge of the High Court of a neighbouring State, which ex facie, had no jurisdiction to entertain such matter, declaring the Governor as having resigned his appointment and ordering that he should

be ejected from his operating base at the Anambra State House. Armed with that court order, an Assistant Inspector-General of Police was despatched to effect the ejection of the Governor from the State House. Again, another attack was launched at the same man. This time, the validity of the oath of office he took before assuming office as Governor was challenged. It is alleged that the State Chief Judge who administered the oath to him was not competent to administer the oath because he was over 65 years old and as such he was constitutionally not qualified to administer the oath of office. But in both cases, the judiciary ably came in to save the situation. The Court of Appeal promptly granted a stay of execution of the court order which ordered the removal of the Governor. Similarly, the Federal High Court, which examined the allegation of over-age made against the State Chief Judge, found that the allegation was false; even though the allegation even if confirmed, could not be enough to found a case of removal of the Governor from office since such act is a mere irregularity which could not have the effect of nullifying or vitiating the appointment of the Governor.

Again, yet another attempt to remove the Governor was based on an allegation that he had voluntarily resigned his appointment as the Governor of the State in a letter his accusers claimed that he signed and handed to the speaker of the State House of Assembly. Although he denied writing and signing such letter, his opponents insisted that the letter was from him. But the judiciary again ably came to his rescue when the High Court which looked into the matter held that the allegation was again false. The various efforts launched at removing the man must have probably led him to institute the present action, which he believed would help in sustaining and establishing his tenure of office and ward off his numerous adversaries. However, the courts follow well laid down principles, which must exist before any claim can be successfully sustained in a court of law. Among such principles that are relevant to the instant case are:

(1) An order made by a court, however awkward or bizarre it may be, is presumed right and must be obeyed until such order is varied or set aside by an appropriate appellate court: see *Military Governor of Lagos State v. Ojukwu & Anor* (1986) 1 NWLR (Pt. 18) 621; ¹⁷ (2) Courts are

created to resolve disputes. It follows therefore that any one coming before a court must show the existence of a dispute between him and the defendant in every action filed in court and that he is not merely seeking for an answer to hypothetical questions or an opinion on a matter in which there is yet no dispute: See *Olaniyi v. Aroyehun* (1991) 5 NWLR (Pt. 194) 652; and *Attorney-General of Federation v. Attorney-General of Abia State* (No. 2) (2002) 4 S. C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542; and (3) Only a person who is in imminent danger of coming into conflict with the law or whose business or other activities have been directly interfered with by or under a law, has sufficient interest to sustain a claim: see *Olawoyin v. Attorney-General of Northern Region* (1961) All NLR 269. B C

These well-established principles were carefully taken into consideration in the leading judgment and the result is that only the third leg of the claim succeeds. For the reasons I have given above and the fuller D reasons given in the leading judgment, I hold that leg 3 of the claim succeeds and I dismiss the other legs of the claim and the counter-claim. I also make no order on costs.

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