

**SUPREME COURT OF NIGERIA**

24TH JUNE, 2005. SC. 124/1999

**CORAM:- M. L. UWAIS CJN, A. I. KATSINA-ALU, D. MUSDAPHER, D. O. EDOZIE, I. C. PATS-ACHOLONU, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

A-G OF CROSS RIVER STATE ..... PLAINTIFF  
AND

1. A-G OF THE FEDERATION ..... DEFENDANTS  
2. A-G OF AKWA-IBOM STATE

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LAND LAW - State boundaries - Proof - Jurisdiction - Where the Boundary Commission - Had not concluded its exercise of delineating boundaries - Plaintiff can invoke original jurisdiction - Of the Supreme Court - Provided other credible evidence is available (H1)

LAND LAW - State boundaries - Disputed communities - Where transferred long ago without protest - Before state creation - Status quo when the two states were created - Should be maintained (H2)

INTERNATIONAL LAW - Boundaries - Maritime boundary of two states - Where prior determination of the international boundary - By the ICJ is relevant - Supreme Court will not yet determine the boundary (H3)

JUDGMENTS - Revenue allocation - Evidence - Where there is uncontradicted evidence of an admission - That the plaintiff is entitled to a sum of money - Judgment will be entered in his favour - In respect of that sum (H4)

CONSTITUTIONAL LAW - Federation account - Evidence - Order of account - Plaintiff is not entitled to it - Where no evidence is placed before the court - To substantiate the allegation made (H5)

PLEADINGS - Counter claim - Competence - Where defendants' counter claim does not refer to plaintiff - Such counter claim is incompetent

(H6)

### **FACTS**

Before the Supreme Court of Nigeria, the plaintiff, the Cross River State represented by its Attorney General, by a writ of summons instituted an action against the defendants which are the Federal Government of Nigeria and Akwa-Ibom State, respectively. The origin of the dispute between the two states over their boundaries started when the Governor of the old Cross River State in 1983, purported to vary the boundary of Itu and Odukpani Local Government Areas by an Executive Order which act transferred some of the communities of Itu L.G.A to Odukpani L.G.A.

At the creation of Akwa-Ibom State in 1987, members of these communities refused to be bound by the order until March, 2002, when the National Boundary Commission by fiat purported to acquiesce to the illegality by delineating the boundary on the North-Eastern end of Akwa-Ibom to exclude the disputed communities and their lands. The 2nd defendant claimed that the Map referred to by the plaintiff was contrived and does not represent the official map of the two states. The plaintiff also claimed that the Governor was wrong for splitting the Local Government before the creation of the state. It also claimed the sum of N3.2 billion as accruing to it from the Federation account from mineral resources within its boundary.

### **ISSUES FOR DETERMINATION**

*"(1) Whether by reason of the "frantic effort" of the National Boundary Commission to resolve the boundary dispute between CRS and AKS and to demarcate and survey internal boundaries of Nigeria, the claim of the plaintiff is premature, speculative or otherwise incompetent?*

*(2) Whether the boundaries of CRS (and more particularly the boundary between CRS and AKS) are as set out in Exhibit CRSDSG 2, and if so whether it is competent of any State Government, other than the Government of Cross River State, to exercise executive, administrative or judicial power in or over the areas comprising CRS and more particularly in or over the cities, towns and villages set out in paragraph 42.3 (a) (i) (ii) and (iii) of the plaintiff's 3rd Amended Statement of Claim.*

*3. Whether CRS is entitled to the orders of account sought in this*

*suit, and/or to judgment for the admitted sum of N3,232,433,537.49."*

**HELD** (Unanimously allowing the plaintiff's claim in part, per **EDOZIE JSC**)

***State boundaries - Proof - Jurisdiction***

1. As can be seen from the above two provisions, it cannot be seriously suggested that before the jurisdiction of the Supreme Court is invoked in a boundary dispute between States, the NBC should have determined the dispute or completed its exercise in delineating the disputed boundary. No doubt, the completion of such exercise would be of tremendous assistance to the court. A boundary is an imaginary line which marks the confines or line of division of two contiguous parcels of land. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In this sense, boundaries may be classified as natural and artificial according as to whether or not such physical objects are man-made. Boundaries are fixed either:

- (1) By proved acts of the respective owners as for example by agreement, assurance, undisturbed possession and estoppel.
- (2) By statutes, or orders of the authorities having jurisdiction and
- (3) By legal presumption.

See Halsbury's Laws of England 4th Edition p. 390 et seq.

Thus, it is clear that while a boundary can be proved by delimitation by a body statutorily vested with authority to do so, like the NBC, it is by no means exhaustive of the method of proving same. If there is a statutory instrument that defined the boundaries of the affected LGAs of disputing parties, that will be credible evidence upon which the court can rely to make a declaration in respect of the disputed boundary. It is, therefore, my view that it is immaterial whether or not the NBC had concluded its exercise in delimiting the boundaries of CRS and AKS before the plaintiff can invoke the original jurisdiction of this court provided that other credible evidence of proving the boundary is available. (p. 1515 C)

***State boundaries - Disputed communities***

2. It is my view that whatever flaws that might have been attendant with

in the transfer of the communities concerned, they were de facto transferred from Itu Local Government Area to Odukpani Local Government Area. The transfer was effected in 1983 before the old Cross River State was split. There is no evidence that at the time of the transfer the B disputed communities or the people of Itu LGA protested. It does not seem that the Governor could wake up one morning and proceed to alter indiscriminately the existing Local Government structure without justification. The presumption is that the Governor in making the 1983 Order C acted in the best interest of the people of the entire area of the old Cross River State. There is a provision in Section 4(1) (d) of the Cross River State Law No. 9 of 1983, for the alteration of the composition of a Local Government Council. It seems to me too late in the day for Akwa-Ibom D to complain about the transfer of the disputed communities which was effected more than 20 years ago. It is in the interest of both parties that the status quo as at 1987 when the two States were created be maintained. That position is that the disputed communities together with Odot Forest Reserve and Okpokong bridge are in Odukpani Local Government Area of E the present Cross River State. It is my view that the reference to Odukpani LGA in Part 1 of the First Schedule of the 1999 Constitution includes the disputed communities and since the geographical boundary of the disputed communities extends to the Cross River, it is my judgment that the F boundary between Akwa-Ibom State and Cross River State in the non-estuarine sector lies along the Cross River as depicted in the plaintiff's plan Exhibit CRSDSG 2. (p. 1520 F)

***Declaratory relief - Maritime boundary of two states***

G 3. It can easily be seen from paragraph 17 of the above affidavit that the Revised Boundary delimitation of the NBC dated 5/7/2004 which the plaintiff is urging this court to declare as the maritime boundary of the two States is predicated on the negotiations between Nigeria and Cameroun H which negotiation is almost but not finally concluded. By paragraph 22 of the said affidavit, the plaintiff gave the impression that the 2nd defendant is not opposed to the plaintiff's claims to the oil fields stated therein. But from the 2nd defendant's counter-claim, most of those oil fields are

claimed by the 2nd defendant in paragraph 26 of his counter-claim. It is, therefore, clear to me that the revised boundary delimitation by NBC is not a product of an agreement between CRS and AKS contrary to the representation of the former. It also needs to be stressed that the NBC revised boundary map was made and allegedly approved by the President B at a time when the boundary dispute was sub judice. It has been said that the making of a declaratory order is within the discretion of the trial court and that such discretion should not be readily exercised. In the light of the observations I have expressed above regarding the NBC revised boundary C delimitation, I do not feel comfortable to grant the declaration sought. Until both Nigeria and Cameroun conclude their negotiation to finality and the international boundary fixed by the ICJ is modified and published in line with the agreement, it will be premature for this court to determine the D maritime boundary of the two States. (p. 1523 E)

***Revenue allocation - Evidence***

4. It is manifest from the above explanation that the downward review of the revenue accruing to the plaintiff was as a result of the implementation E of the judgment of this court in which new indices were used to recalculate the plaintiff's entitlement. The plaintiff has not placed before this court evidence to fault the new indices used. It is, therefore, my view that the plaintiff has not established its entitlement to the sum of F N3,232,433,537.49 as claimed but the entitlement of the lesser sum of N2,455,888,820.14 has been proved. While a court cannot award more than what a plaintiff claims, it can award less. In the instant case, since there is uncontradicted evidence of the admission by the RMAFC that the G plaintiff is entitled to the lesser sum of N2,455,888,820.14, judgment will be entered in favour of the plaintiff in respect of that sum. (p. 1525 G)

***Federation account - Evidence - Order of account***

5. With respect to the prayer for an order of account, it is conceded that H by virtue of Section 162(1) of the Constitution of the Federal Republic of Nigeria 1999, that the Federal Government holds the position of a trustee in respect of all monies paid into the Federation Account on behalf of the

States from which the revenue was generated. As was decided by this court in the case of Attorney-General Bendel State v. Attorney-General of the Federation & Ors (1983) NSCC Vol. 14, 181 at p. 193, this court, per Uwais, JSC., as he then was, while interpreting Section 149 (1) of the 1979 Constitution, which is in pari materia with Section 162 (1) of the 1999 Constitution observed thus:-

*“It is settled that it is the duty of a trustee to keep a proper account of the trust he administers. And the beneficiary has a right to call upon the trustee for accurate information as to the state of the trust. Consequently, it is imperative for the Federal Government to render accurate and regular account to the beneficiaries of all monies paid into the Federation Account when requested to do so.”* In the instant case, however, plaintiff’s claim for an account in paragraphs 40(2) (a) and (c) is on the allegation that the Federation Government neglected, omitted or wilfully defaulted in furnishing such account to the plaintiff. There is no evidence placed before this court to substantiate the allegation. Consequently, the plaintiff is not entitled to the order of account. (p. 1526 B)

**PLEADINGS - Counter claim - Competence**

6. It is convenient at this stage to advert to the 2nd defendant’s counter-claim. In considering the counter-claim, it is well to bear in mind that a counter-claim is a claim by the defendant against the plaintiff’s claim. In the case in hand, paragraphs 26(a), (b) and (c) of the 2nd defendant’s counter-claim do not refer to the plaintiff and such are incompetent. With respect to paragraphs 26(d) and (e) of the counter-claim, the declaration prayed for cannot be granted having regard to the views I have expressed to the effect that the disputed communities transferred to Odukpani LGA now belong to Cross River State. (p. 1526 H)

**REPRESENTATION**

Mrs. Nella Anden-Ewa (with, L. Garrick & F. Ibiang), for the Plaintiff.  
Mr. Kolapo Adabale, for the 1st Defendant  
Mr. B. Dan-Abia, Attorney-General of Akwa-Ibom State (with him, Chief Assam Assam; B. Abia-Bassey and Mrs. V. P. Inwang), for 2nd the

Defendant.

**CASES REFERRED TO**

Ogundairo & Ors v. Okanlawon (1963) 1 All NLR 358, per Taylor, JSC.

Ekpenyong & Ors v. Nyong & Ors (1975) 2 S.C. 78, 80-81 B

Felix Okoli Ezeonwu v. Charles Onyechi & 2 Ors (1996) 3 NWLR (Pt. 438) 439

Attorney-General of the Federation v. Attorney-General Abia State & Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542 C

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, ss. 162(2) & 232(1)

Nigeria Boundaries Commission Act cap. 239 LFN 1990, s. 3

Cross River State Law No. 9 of 1983, s. 4(1)(d) D

**LEAD JUDGMENT BY EDOZIE JSC**

Pursuant to the original jurisdiction conferred on the Supreme Court by Section 232(1) of the Constitution of the Federal Republic of Nigeria 1999, the plaintiff, the Cross River State (CRS for short) represented by its Attorney-General, by a Writ of Summons instituted this action in this court against the defendants, the Federal Government of Nigeria (FGN) and the Akwa Ibom State (AKS) respectively represented by their Attorneys-General. Pleadings were settled, duly filed, exchanged and subsequently amended. In the plaintiff's final pleadings that is, the 4th Amended Statement of Claim, in paragraph 40 thereof, the reliefs sought against the defendants are formulated thus:-

*“40. (1) The plaintiff's claim against the defendants is for: A  
a declaration that the boundary between Cross River State (CRS) and Akwa-  
Ibom State (AKS) is as shown in the boundary delimitation by NBC dated  
30th March, 2004 and revised on 5th July, 2004.* G

*(2) Plaintiff's claim against the 1st defendant is for: H*

*(a) An order of account of revenue that has accrued to the  
Federation Account from mineral oils derived from Cross River State on  
the basis of the derivation principle from 23rd September, 1987 to 28th*

*of May (sic) which Cross River State should have received but for the neglect, omission or wilful default of the Federal Government of Nigeria.*

*(b) An order for payment to Cross River State of any sums due from the Federation Account to Cross River State upon taking such account.*

B *(c) An order of account of revenue due to the Cross River State from the revenue that has accrued to the Federation Account from mineral resources more particularly mineral oil derived from Cross River State from 29th May, 1999, to date of judgment, being revenue which Cross River State should have received but for the neglect, omission or wilful*  
C *default of the Federal Government of Nigeria.*

*(d) An order for payment forthwith of the admitted sum of N3,329,433,537.42 (sic) (Three Billion Three Hundred and Twenty-Nine Million, Four Hundred and Thirty-Three Thousand, Five Hundred and*  
D *Thirty-Seven Naira, Forty-Two Kobo) being arrears of revenue due to CRS under the provisions of Section 162(2) of 1999 Constitution from May 29th to July, 2002 and any additional sum due and thereafter until full payment thereof.*

E *(3) The plaintiff's claim against the 2nd defendant is for:*

*(a) A declaration that (the) State (authority) to exercise administrative, executive, legislative and judicial powers or functions in or over:*

*(i) All cities, towns and villages in Odukpani Local Government and more particularly in Obot Akapabio (sic), Ikot-Offiong Ebiti, Asang, Okpo, Afia Isong plantation, Ikot Efa Bench, Etehentem, Idim Nkem, Nkpan Uruk, Ikot Essien Ekpe Inyang, Esuk, Ediong, Mbiabo Ikot Edem, Mbiabo, Mbiabo Abasi Efiari, Mbiabo Ikoneto, Ikot Nya, Odu Mma-Edem, Ikot Akpana, Okoho, Akwa Efe, Akpa tre Efe, Odot Forest Reserve*  
F *and Okpokong Bridge.*  
G

*(ii) All cities, towns and villages in Calabar South Local Government Area (particularly Alligator Island, James Island and other unnamed Islands and Akpabuyo Local Government Area, and*

H *(iii) All cities, towns and villages in Bakassi Local Government Area, (particularly Bakassi Peninsular and its surrounding Islands) are vested in the Government of Cross River State (to the exclusion of the Government of Akwa Ibom State) and*



*(b) An order of perpetual injunction restraining all arms of government, officer, employees, appointees, agents and servants of the Government of Akwa Ibom State, or any persons or authority established by law in force in Akwa-Ibom State from exercising administrative, executive, legislative and judicial powers in or over any part of Cross River State and more particularly the area set out in paragraph 40(3)(a) above.”* B

In response to the plaintiff’s 4th Amended Statement of Claim (Statement of Claim for short) each of the two defendants filed a separate Statement of Defence with the 2nd defendant sub-joining a counter-claim to his Statement of Defence wherein by paragraph 26 thereof, he counter-claimed thus:- C

“26 (a) A declaration that the defendant is entitled to revenue accruing onshore from the total production of Addax oil wells/fields of Abanga, Akam, Ebughu, Bogi, Ebughune, Ukpan, Mimbo, amounting to 4,532,608 barrels between June 1999, and June 2002; and the Monipulo oil wells/fields of Abana East and Abana West amounting to 25,198,556 barrels for the same period which by the clear and unambiguous admission of the Revenue Mobilization and Fiscal Commission had never been accredited to the defendant. D

*(b) An order directing the 1st defendant to compute and pay to the 2nd defendant its (sic) share of accrued revenue from Addax and Monipulo oil fields for the period June 1999 to June 2002 amounting to 29,731.164 barrels of crude petroleum. E*

*(c) An order directing the 2nd (error for 1st) defendant’s agent RMAFC, to report on the production figures for Davy Bank, Obio, Efiat 1, Efiat 2, Okposo East, Tom Shot Bank I, Tom Shot Bank 2, and Cross River which have never been assessed nor paid to the defendant for the purpose of computing the revenue due and payable to the State. F*

*(d) A declaration that it was ultra vires the powers of the Governor of the old Cross River State to purport to alter the boundaries of the Local Governments in the State under the 1979 Constitution. G*

*(e) A declaration that Obot Akpabio, Ikot Offiong Ebiti, Asang, Okpo, Afia Isong Plantation, Ikot Efa Beach, Etchentem, Idim Nkem, H*

*Nkpan Uruk, Ikot Essien, Ekpe Inyang, Esuk Ediong, Mbiabo Ikot Edem, Mbiabo, Mbiabo Abasi Efiari, Mbiabo Ikonet, Ikot Nya, Odu Mma Edem, Ikot Akpana, Okoho, Akwa Efe, Akpatre Efe, Odot Forest Reserve and Okpokong Bridge have always been and remain part of Akwa Ibom State.”*

B In support of their pleadings, both the plaintiff and the 2nd defendant tendered copious affidavit evidence and several documents which they relied upon to establish their respective cases. The plaintiff tendered the following affidavit evidence and exhibits:-

C 1. Affidavit of Ralph Idiku Uche, Surveyor-General CRS sworn on 24/6/03 with Exhibits, CRSSG 2, CRSSG 3, CRSSG 4.

2. Affidavit of Obu Kanu Uma, Deputy Surveyor-General CRS sworn on 24/6/03 with Exhibits, CRSDG 1, CRSDG 2, CRSDG 3, D CRSDG 4, CRSDG 5 and CRSG 1.

3. Affidavit of Eyamba Henshaw, Accountant-General CRS sworn on 24/6/03 with Exhibits, CRSAG 1, CRSAG 2 and CRSAG 3.

4. Affidavit of Mrs. Rose Bassey, Accountant-General CRS sworn E on 6/10/04.

5. Additional Affidavit of Raphael Idiku Uche, Surveyor-General CRS sworn on 8/3/05 with Exhibits, CRSG 3, CRSG 4, CRSG 5, CRSG 6 and CRSG 7 and

F 6. Additional Affidavit of Mrs. Rose Bassey, Accountant-General CRS sworn on 8/3/05.

For the 2nd defendant, the following affidavit evidence and Exhibits were relied upon:-

G 1. Affidavit of Bassey Etim Akpan, Catographer AKS sworn on 23/10/03 with Exhibits AK 1, AK 2, AK 3, AK 4, AK 5, AK 6, AK 7, AK 8.

2. Affidavit of Donatus Archibong Solicitor-General/ Permanent Secretary AKS sworn on 29/3/05.

H Although there are two defendants in this case, the principal parties are the plaintiff and the 2nd defendant. The bone of contention between them is the common boundary of their two States particularly:-

(a) Their northern or non estuarine boundary between Itu LGA in Akwa Ibom State and Odukpani LGA in Cross River State and

(b) Their Southern or estuarine boundary between Calabar municipality, Akpabuyo LGA and until recently Bakassi LGA all in Cross River State and Oron, Udung and Mbo in Akwa Ibom State.

While the plaintiff maintains that the Cross River which takes its source from Cameroun mountains, and flowing southwards empties itself into the Atlantic Ocean forms a natural boundary between the two riparian States, the 2nd defendant contends that at some points the Cross River cuts across Akwa-Ibom State.

From the plaintiff's pleadings and the affidavit evidence of Mr. R. I. Uche, Surveyor-General and Mr. O. K. Umar, Deputy Surveyor-General both sworn on 24/6/03, the plaintiff's case may be summarized thus:-

In 1967, the South Eastern State was created out of the Eastern Region of Nigeria and it comprised 14 Divisions. The boundaries of the 14 Divisions remained the same as depicted in the administrative map of South Eastern State (Exhibit CRSSG 2) which was changed to Cross River State in 1976 and comprised the area as set out in the Schedule to the States (Creation and Transitional Provisions) Act No. 12 of 1976. As at October 1, 1979 and up till 22/9/1987, Cross River State comprised the following 17 Local Government Areas: Calabar municipality, Abak, Ukanafun, Akamkpa, Odukpani, Eket, Etinan, Ikom, Ikot Abasi, Ikot-Ekpanem, Itu, Ikono, Obubra, Ogoja, Obudu, Oron and Uyo, with the boundaries of the constituent LGAs as reflected in the Administrative map of Cross River Exhibit CRSSG 3. On 23rd September, 1987, Akwa-Ibom State was created out of the then or old "*Cross River State*" and comprised 10 of the 17 of the aforesaid LGAs namely: Ikot-Ekpene, Abak, Eket, Ukanafun, Ikot-Abasi, Uyo, Etinan, Ikono, Oron and Itu. Before the creation of additional LGAs in the two States, the LGAs of the present Cross River State bounding Akwa-Ibom State were Calabar Municipality from which Calabar South LGA was created and Odukpani LGA out of which Odukpani, Akpabuyo and Bakassi LGAs were carved out.

It is the plaintiff's case that on 11/3/2002, the National Boundary Commission (NBC) announced and published a boundary delimitation showing distances and bearings of the boundary line between the two States. This delimitation as reflected in Exhibit CRSSG 4 tallies with the

non-estuarine boundaries of the two States as described in Exhibit CRSSG 3 and this shows that the disputed communities mentioned in paragraph 40 (3) (a) (i) of the Statement of Claim lie with Odukpani LGA of Cross River State.

B With respect to the estuarine boundary, it is the plaintiff's case that  
the NBC's delimitation of 11/3/2002 Exhibit CRSSG 4 is not correct  
because the NBC based the delimitation on the median principle, that is, by  
taking the median of the Cross River. It is the plaintiff's case that the  
C estuarine boundary between two States bounded by a river accessible to  
container and other ocean vessels (that is, a navigable river) is determined  
by taking the middle line of the deepest part of the navigable channel of  
such river (otherwise referred to as the navigable channel line or the  
thalweg). Adopting this principle and using the report of the Nigerian Navy  
D which sets out the co-ordinates, width and average depths of the navigable  
part of the Cross-River, the boundary of the two States in the estuarine  
sector is as depicted in Exhibit CRSDSG 3. It is further the contention of  
the plaintiff that as a matter of settled practice, the extent of the width of  
E the sea abutting Cross River State and Akwa-Ibom State is determined by  
taking a perpendicular line from the meeting point of the 'thalweg line' and  
"base line" up to the point permitted by law to the open sea as reflected  
in Exhibit CRSDSG 3 as a result of which the oil block OPL 98 containing  
F the oil fields known as Adanga, Mimbo, Anta, Bogi and Ebughu now lie  
within Cross River State.

In the additional affidavit evidence of Mr. R.I. Uche, Surveyor-General, CRS, sworn to on 8/3/05, it was averred thus:-

G That following the enactment in 2004 of the Allocation of Revenue  
(Abolition of Dichotomy in the Application of the Principle of Derivation)  
Act 2004, the NBC produced the Well Dichotomy Study Map (Map B6)  
Exhibit CRSG 1 which map depicted the maritime boundaries between the  
littoral States including the plaintiff and the 2nd defendant as well as the  
H location of oil wells within each State's maritime boundary up to the 200  
metre isobaths; that sometime in 2002, following the judgment of the  
International Court of Justice in the case between Nigeria and Cameroun  
which gave sovereignty of Bakassi over Cameroun, the Presidents of

Nigeria and Cameroun set up a mixed commission resulting in an agreement between Nigeria and Cameroun over the Bakassi peninsular; that on 14th January, 2005, the President of Nigeria approved the review of the maritime boundary between the plaintiff and the 2nd defendant which review is in substantial conformity with Exhibit CRSG 1 and as a result of this, new indices were to be used in calculating the oil revenue accruing to the plaintiff. B

In consequence of the revised boundary aforesaid, the 2nd defendant commenced proceedings in the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/64/2005 but the suit was subsequently withdrawn and struck out. C

In respect of the plaintiff's monetary claim for N3,232,433,537.49k it is the plaintiff's case that the amount was admitted by the RMAFC as being the State's entitlement of Revenue accruing to the Federation Account from mineral oil exploration activities within its boundary for the period May 1999, to July 2002, but that subsequently the RMAFC stated that the said amount had been reviewed downward to N2,455,888,820.14k. D

The case of the 1st defendant as pleaded in its Statement of Defence may be summarized thus:- E

1. That the internal boundaries of Nigeria as set out in the 10th Edition of the Administrative Map of Nigeria is at best approximate as the internal boundaries of Nigeria are being surveyed and demarcated by the NBC and F

2. That the case of the plaintiff which is substantially a boundary dispute is presently being handled by the NBC and that since the internal boundaries of Nigeria are only just being surveyed/demarcated and the NBC is making "frantic effort" to resolve the boundary dispute between CRS and AKS, the plaintiff's action is pre-emptive of the outcome of the demarcation and survey of the boundary by the NBC and thus premature and speculative. G

The case of the 2nd defendant as set out in the affidavit of Mr. Etim H Akpan, a Cartographer in the Ministry of Lands and Housing, Akwa Ibom State runs thus:-

The origin of the dispute of Akwa Ibom and Cross River States over

their boundary dates back to 1983 when the Governor of the old Cross River State, purported to vary the boundaries of Itu and Odukpani Local Government Areas of the then Cross River State by an Executive Order which act transferred some of the communities of Itu LGA to Odukpani B LGA. At the creation of Akwa Ibom State in 1987, the members of these communities refused to be bound by the Order until March 11, 2002 when the NBC by fiat purported to acquiesce to the illegality by delimiting the boundary on the North-Eastern end of Akwa-Ibom to exclude the disputed communities and their lands.

C Since the creation of the two States in 1987, the boundaries of the two States, at the time the old Cross River State was split, have remained the boundaries of the South Eastern State renamed Cross River State in 1976. The boundaries of the Eastern Region as set out in Legal Notice 126 D of 1954 was used in determining the boundaries of South Eastern State or old Cross River State and from there both CRS and AKS. At the creation of Akwa Ibom and the present Cross River States all communities existing in each of the Local Government Areas were deemed to continue to so E exist, remain and form part of the States as presently constituted.

The only alteration to the boundary of the two States is at the estuary, which as a result of the recent judgment of the International Court of Justice, Bakassi now belongs to the Republic of Cameroun. The I.C.J., F established the coordinates which mart the new boundary between Nigeria and Cameroun as indicated in the British Admiralty Chart No. 3433b - Exhibit AK 1 and based on this, a chart showing the delineated boundaries and oil well locations are depicted in Exhibit AK 2.

G It is the 2nd defendant's case that the administrative map referred to by the plaintiff as Exhibit CRSSG 2 was contrived and does not represent the official maps of the two States at the relevant time. The map, Exhibit AK3 produced by the 2nd defendant's catographer is a true reflection of the boundaries of the two States.

H The NBC, on 11/3/2002, published a provisional boundary delimitation showing the co-ordinates of the boundary of the two States but the 2nd defendant was totally dissatisfied with the exercise at the Northern end.

On 30th March, 2004, the NBC also published the well dichotomy study map (Map B6) referred to by the plaintiff as Exhibit CRSG 1. It is merely a working document used to study the probable effect of the ICJ's judgment on the location of oil wells in CRS and AKS and was never intended to delimit the maritime boundary of the two States.

The 2nd defendant is aware that consequent upon the ICJ's judgment, negotiations had been going on between Nigeria and Cameroun but is not aware that the President has taken any decision in respect of the maritime boundary between CRS and AKS. In any case, the matter being subjudice any action taken in derogation of the authority of the court would amount to a contempt.

Finally, the 2nd defendant contends that the oil wells/fields at the estuary of the Cross River are located in AKS but are wrongly credited to CRS. These are Adax oil wells/fields of Adanga, Akan, Ebughu, Bogi, Ebughu ne, Ukpan, Mimbo and the Monipolo oil wells/fields of Abana-East and Abana West. Also located in AKS are the oil wells of Davy Bank, Obio, Efiati, Efiat 2, Okposo East, Tom Shot Bank 1, Tom Shot Bank 2 and Cross River.

In the advancement of their respective cases, the learned leading counsel for the plaintiff, Mrs. Nelly Andem-Ewa and Chief Assam E. A. Assam, learned counsel for the 2nd defendant, submitted written addresses and in addition proffered oral addresses in amplification of their written submissions. Learned counsel for the 1st defendant did not file his written address timeously and on account of that, he did not present oral argument.

In the plaintiff's written address or brief, the following three issues are identified for determination:-

- “(1) Whether by reason of the “frantic effort” of the National Boundary Commission to resolve the boundary dispute between CRS and AKS and to demarcate and survey internal boundaries of Nigeria, the claim of the plaintiff is premature, speculative or otherwise incompetent?*
- (2) Whether the boundaries of CRS (and more particularly the boundary between CRS and AKS) are as set out in Exhibit CRSDSG 2, and if so whether it is competent of any State Government, other than the*

*Government of Cross River State, to exercise executive, administrative or judicial power in or over the areas comprising CRS and more particularly in or over the cities, towns and villages set out in paragraph 42.3 (a) (i) (ii) and (iii) of the plaintiff's 3rd Amended Statement of Claim.*

B 3. *Whether CRS is entitled to the orders of account sought in this suit, and/or to judgment for the admitted sum of N3,232,433,537.49."*

C Issue 1 relates to the original jurisdiction of the Supreme Court as spelt out in Section 232 (1) of the 1999 Constitution and the function of the National Boundary Commission established by the National Boundary Commission etc., Act, Cap. 238 Laws of the Federation of Nigeria, 1990 to, among other things, determine and intervene in boundary disputes. The issue raised is whether the jurisdiction of the Supreme Court in respect of boundary delimitation is exercisable subject to the prior determination of D the boundary dispute by the National Boundary Commission. The contention of learned counsel for the plaintiff on this issue is that there is nothing in the NBC Act which vests it with exclusive jurisdiction over boundary disputes and, therefore, the plaintiff is not obligated or otherwise bound to E await a determination by the NBC before approaching this court for a determination of its boundary with Akwa Ibom State. Reference was made to the case of Attorney-General of the Federation v. Attorney-General of Abia State and Ors. (2001) 7 S.C. (Pt. I) 32; (2001) 11 NWLR (Pt. 725) F 689 at p. 732 where it was held that in exercising its original jurisdiction, the jurisdiction of the Supreme Court can be the same or concurrent with that of the NBC. It was further argued that since the plaintiff's claim discloses a dispute between States, it falls within the ambit of the original jurisdiction of the Supreme Court and therefore not incompetent or G premature.

Learned counsel for the 2nd defendant has not advanced a contrary view to the contention of the plaintiff's counsel which I consider unassailable. Section 232(1) of the Constitution of the Federal Republic H of Nigeria 1999 provides:-

*"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.”*

*Under Section 3 of the NBC Act Cap. 239, Laws of the Federation 1990, the functions of the NBC are stated to be:-*

*“(a) To deal with, determine and intervene in any boundary disputes that may arise between Nigeria and any of her neighbours or between any two States of the Federation with a view to settling such disputes;*

*(b) To entertain any recommendations from the Technical Committee and to advise the Federal Government on such recommendations. “*

**As can be seen from the above two provisions, it cannot be seriously suggested that before the jurisdiction of the Supreme Court is invoked in a boundary dispute between States, the NBC should have determined the dispute or completed its exercise in delineating the disputed boundary. No doubt, the completion of such exercise would be of tremendous assistance to the court. A boundary is an imaginary line which marks the confines or line of division of two contiguous parcels of land. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In this sense, boundaries may be classified as natural and artificial according as to whether or not such physical objects are man-made. Boundaries are fixed either:**

**(1) By proved acts of the respective owners as for example by agreement, assurance, undisturbed possession and estoppel.**

**(2) By statutes, or orders of the authorities having jurisdiction and**

**(3) By legal presumption.**

**See Halsbury’s Laws of England 4th Edition p. 390 et seq.**

**Thus, it is clear that while a boundary can be proved by delimitation by a body statutorily vested with authority to do so, like the NBC, it is by no means exhaustive of the method of proving same. If there is a statutory instrument that defined the boundaries of the affected LGAs of disputing parties, that will be credible evidence upon which the court can rely to make a declaration in respect of the**

**disputed boundary. It is, therefore, my view that it is immaterial whether or not the NBC had concluded its exercise in delimiting the boundaries of CRS and AKS before the plaintiff can invoke the original jurisdiction of this court provided that other credible evidence of proving the boundary is available.**

Issue No. 2

Whether the boundaries of Cross River State (and more particularly the boundary between Cross River State and Akwa Ibom State) are as set out in Exhibit CRSDSG 2, and, if so, whether it is competent of any State Government other than the Government of Cross River State to exercise executive, administrative and judicial power in or over the areas comprising Cross River State and more particularly in or over the cities, towns and villages set out in paragraph 42.3(a) (i) (ii) and (iii) of the plaintiff's 3rd Amended Statement of Claim (that is, paragraph 40 (3) (a) (i) (ii) and (iii) of the 4th Amended Statement of Claim)

Arguments on this issue are advanced under two broad compartments, viz, (1) The non-estuarine boundary and (2) estuarine boundary.

In respect of the non-estuarine boundary, the learned counsel for the plaintiff, Mrs. Nelly Andem-Ewa in her written address, recounted the constitutional history of the two States from 1951 when as Calabar, Uyo and Ogoja provinces, they formed part of Eastern State, Nigeria to 26th of May, 1967 when they were created as South Eastern State, then to 1976 when they were constituted as Cross River State with 17 LGAs and finally to 22/9/87 when they were split into Cross River State with 7 LGAs and Akwa-Ibom with 10 LGAs. It is the contention of learned counsel that the boundaries of the LGAs before the creation of the two States remained unaltered after the creation and that Calabar Municipality and Odukpani LGAs of Cross River State share common boundaries with Akwa-Ibom State as shown on the maps Exhibits CRSSG 2 and CRSSG 3. The boundaries as depicted in these exhibits are said to coincide with the report of the National Boundary Commission published on March 11, 2002. With the boundaries as delineated, the disputed communities lie to the Eastern flank of the Cross River as part of Odukpani LGA.

With regard to the estuarine boundary, the plaintiff contends that

from point F to point L on Exhibit CRSDSG 2, the Cross River forms the natural divide between CRS and AKS with Cross-River, (Calabar South, Akpabuyo and of recent Bakassi LGAs) lying to the eastern bank of the Cross River while AKS (Oron, Uduong Uko and Mbo LGAs) is located to the western bank of the Cross River. It was further explained that from points OKL to the open sea as depicted in Exhibit CRSDSG 2 is an estuary which is a navigable body of water with its navigable channel indicated therein. Learned counsel then submitted that it is the law that when, as in the instant case, the natural boundary between two States, is a navigable river, the line defining the boundary between the two States is the middle of the navigable (or main) channel of the river (otherwise called the middle of the thalweg). This rule of law, it is said, operates as a presumption of law and seeks to preserve the right of navigation of both States in the river. Reference was made to Oppenheim's International Law Vol. I p. 53 to paragraph 1991 where the learned author stated the principle thus:-

*“Boundary rivers are such rivers as separate two different States from each other. If such a river is not navigable, the imaginary boundary line as a rule runs down the middle of the river, following all turnings of the border line of both banks of the river. If navigable, the boundary line as a rule runs through the middle of the so-called thalweg, that is, the middle channel of the river...”*

As instances where the Thalweg principle was followed by the United States Supreme Court, the following cases were cited:- Iowa v. Illinois 147 US 1, 13 s.cc 238, 37 L ED 55 (1893), New Jersey v. Delaware 291 US 361, 54 s.ct 407, 78 L Ed 847 (1934) and New Jersey v. Delaware 291 US 361, 54 SC 407, 78 L Ed 847 (1934).

It is submitted that the principle of the thalweg is part of the jurisprudence of Nigeria's legal system for in defining the boundaries of the Eastern Region, the Cross River was mentioned with reference to its “thalweg”.

Adopting the thalweg principle, learned counsel submitted that the boundaries of the land mass on either side of the part of the Cross River is as represented in Exhibit CRSDSG 3. Finally, it was argued that the width of the sea abutting CRS is measured by taking a perpendicular line

from the meeting point of the base line and the thalweg line of the Cross River to the open sea up to the limit permitted by law as shown in Exhibit CRSDSG 3.

In response to the above submission, learned counsel for the 2nd  
B defendant, with respect to the non-estuarine boundary noted that under the  
Local Government Law 1976, Itu LGA was one of the 17 LGAs of the old  
Cross River State. One of the constituent wards of the said Itu LGA was  
Oku/Mbiabo/Ayadehe which comprises the disputed communities referred  
C to in paragraph 40(3) (a) (i) of the Statement of Claim. Learned  
counsel further noted that upon the creation of the present Cross River and  
Akwa Ibom States in 1987, Itu Local Government Area with the said Oku/  
Mbiabo/Ayanehe ward became part of AKS and in consequence the  
disputed communities are in AKS. Citing the case of *Yalaju-Amaye v.*  
D *Association of Reg. Eng. Const. Ltd.* (1990) 21 NSLE (Pt. 2) 462 on the  
grant of equitable relief in support of a legal right, learned counsel  
submitted that the plaintiff has not established any legal right to be entitled  
to the declaration sought in regard to those communities and that the NBC  
E was in error in purporting to delineate the 2nd defendant's North Eastern  
border to exclude them. With respect to the estuarine border, learned  
counsel contends that the situation in America with independent States is  
not the same as the Nigerian situation; that the authorities referred to by  
F plaintiff's counsel were cited out of context and that 'thalweg' principle  
is not a universal and equitable method applicable in boundary delimitation  
between riparian States as demonstrated in the judgment of ICJ in the case  
of *Cameroun v. Nigeria* supra. Learned counsel further submitted that by  
the decision of that court whereby sovereignty over Bakassi is vested in  
G Cameroun, CRS no longer has a seaward boundary and therefore does not  
share an estuarine boundary with Akwa-Ibom State.

Under the second issue for determination, the communities over  
which the plaintiff claims right to exercise executive, administrative and  
H judicial power are set out in paragraphs 40(3) (a)(i), (ii) and (iii) of the 4th  
Amended Statement of Claim. Paragraph 40(3)(a) (i) relate to the non-  
estuarine boundary while paragraphs 40(3)(ii) and (iii) relates to the  
estuarine boundary. I propose to deal with them separately.

Communities in paragraphs 40(3)(a)(i)

The communities listed thereunder are:-

“All cities, towns and villages in Odukpani Local Government Area and more particularly in Obot Akpabio, Ikot Offiong Ebili, Asang, Ebiti Okpo, Afia Isong Plantation, Ikot Efa Beach, Etahentem, Idun Nkem, B Nkpan Umik, Ikot Essien Ekpe Nyang. Esuk Ediong, Mbiabo Ikot Edem, Mbiabo, Mbiabo Abasi Efiari, Mbiabo Ikoneto, Ikot Nya, Odu Mma Edem, Ikot Akpana, Okoho, Akwa Efe, Akpatre Efe, Odot Forest Reserve and Okpokong Bridge.

These disputed communities lie in between Itu LGA of AKS and Odukpani LGA of CRS. It seems the Cross River lies to the west of these communities. The plaintiff claims that the Cross River is the natural boundary of the two States and therefore the disputed communities on the East of that River are part of Odukpani LGA of CRS hence in their Map Exhibit CRSDSG 2 the common boundary of the two States runs along the Cross River. The 2nd defendant State on the other hand takes the opposite view, that is, that at some points the boundary does not lie along the Cross River but extends for a distance east of the river to encompass the disputed communities and it has tailored its boundary plan Exhibit AK 4 to that effect. The crucial issue is whether the disputed communities are in Itu LGA of AKS or Odukpani LGA of CRS.

It is common knowledge that every Local Government Area has a Local Government Council established to administer its area. The councils are made up of constituent wards. I think the best method of determining the Local Government Area to which the dispute communities belong and in resolving the boundary dispute is by reference to the instruments establishing Itu and Odukpani Local Government Councils as such instruments would define the extent of their areas of authority. From the submissions of learned counsel for the 2nd defendant and affidavit evidence, it seems that the disputed communities originally formed a ward known as Oku/Mbiabo/Ayadehe in Itu Local Government Council. Learned counsel explained that by an Order of the Governor of the old Cross River State made in 1983, the disputed communities were transferred from Itu LGA to Odukpani LGA pointing out that the transfer was ultra vires the

power of the Governor as a result of which the transfer was null and void. It is apt to quote the submission of the learned counsel in this regard. At page 38 paragraph 70 of his brief, he said:-

“70 In 1983, the Governor of (old Cross River State) purporting to act under the Cross River State Traditional Rulers’ Law 1978 pretended to vary the villages which made up some of the clans in the State and in the process moved villages and clans across Local Government borders and put in other Local Government thereby giving the impression that these communities had been moved from one Local Government to another without an express amendment to the political composition of the Local Government and the wards.”

Earlier, at paragraph 69 of the said brief, it was stressed that there was no Act of Parliament altering the composition and structure of the LGA. The 1983 Order referred to by learned counsel was published as C.R.L.N No.5 of 1983 in the Supplement to Cross River State of Nigeria Gazette No.34 Vol. 10 of 25/8/83 and is titled “Local Governments, Clans, Villages (Variation) Order No. 1 of 1983.” It was made by the then Governor of old Cross River State, Dr. Clement Isong, pursuant to the Traditional Rulers Law 1978 (Edict No. 14 of 1978). The contention of the 2nd defendant appears to be that when the disputed communities were transferred from Itu to Odukpani Local Government Area, the relevant instruments creating the Local Government Councils of the two Local Government Areas were not amended in consequence of which the disputed communities continued to be part of Itu Local Government Area of Akwa Ibom State.

**It is my view that whatever flaws that might have been attendant with in the transfer of the communities concerned, they were de facto transferred from Itu Local Government Area to Odukpani Local Government Area. The transfer was effected in 1983 before the old Cross River State was split. There is no evidence that at the time of the transfer the disputed communities or the people of Itu LGA protested. It does not seem that the Governor could wake up one morning and proceed to alter indiscriminately the existing Local Government structure without justification. The**

presumption is that the Governor in making the 1983 Order acted in the best interest of the people of the entire area of the old Cross River State. There is a provision in Section 4(1) (d) of the Cross River State Law No. 9 of 1983, for the alteration of the composition of a Local Government Council. It seems to me too late in the day for Akwa-Ibom to complain about the transfer of the disputed communities which was effected more than 20 years ago. It is in the interest of both parties that the status quo as at 1987 when the two States were created be maintained. That position is that the disputed communities together with Odot Forest Reserve and Okpokong bridge are in Odukpani Local Government Area of the present Cross River State. It is my view that the reference to Odukpani LGA in Part 1 of the First Schedule of the 1999 Constitution includes the disputed communities and since the geographical boundary of the disputed communities extends to the Cross River, it is my judgment that the boundary between Akwa-Ibom State and Cross River State in the non-estuarine sector lies along the Cross River as depicted in the plaintiff's plan Exhibit CRSDSG 2.

Estuarine Boundary

Communities mentioned in paragraphs 40(3) (a) (ii) and (iii) of the 4th Amended Statement of Claim

(ii) All cities, towns and villages in Calabar South Local Government Area (particularly Alligator Island, James Island and other unnamed Islands) and Akpabuyo Local Government Area, and

(iii) All cities, towns and villages in Bakassi Peninsular and its surrounding Islands)."

These communities are located at the vicinity of the estuary of the Cross River. As stated in the plaintiff's Reply brief, filed on 8/3/2005, the claim in respect of the said communities has been abandoned and substituted with the claim in paragraph 40(1)(a) which reads thus:-

*"(a) A declaration that the boundary between Cross River State and Akwa Ibom State is as shown in the boundary delimitation by the NBC dated 30th March, 2004, and revised on 5th July, 2004."*

The contention of the plaintiff is that notwithstanding the judgment

of the ICJ in the dispute between Nigeria and Cameroun whereby Cameroun was adjudged to have sovereignty over Bakassi peninsular, a decision which adversely affected the seaward boundary of Cross River State, Nigeria and Cameroun through their mixed commission have almost concluded agreement with regard to Bakassi peninsular. In consequence of that agreement, the NBC, reviewed the maritime boundary between CRS and AKS in terms substantially in accord with the Well Dichotomy Map (Map 6) of 30/3/2004 revised as at 5/7/2004. The revised boundary map Exhibit CRSG 1 was said to have been approved by the President on 24th January, 2005.

In considering the merit of the plaintiff's case, it is important to bear in mind, that the effect of the judgment of ICJ dated 10/10/2002 on the Land and Maritime boundary case between Nigeria and Cameroun is that it has wiped off what used to be the estuarine sector of Cross River State as a result of which the State is hemmed in by the new international boundary between Nigeria and Cameroun. That being the case, there seems to be no longer any estuarine boundary between Akwa Ibom State and Cross River State. If the "*median line*" principle or the "*thalweg*" principle is adopted in drawing the boundary line along the Cross River between CRS and AKS, the line must intersect the new maritime boundary line (maroua line) between Nigeria and Cameroun with the result that Cross River no longer has a seaward boundary. For the foregoing reason, it seems to me unnecessary to consider the question about the applicable principle in determining the maritime boundary between the two States.

Notwithstanding the judgment of the ICJ, the plaintiff relies on an agreement said to have been reached between Nigeria and Cameroun. In this regard, paragraphs 16, 17, 18, 19, 20, 21 and 22 of the affidavit of Rephael Idiku Uche are pertinent and are reproduced hereunder-

*"16. That sometime in 2002 the Presidents of Nigeria and Cameroun set up the Cameroun/Nigeria Mixed Commission with the United Nations as facilitators, to address any difficulties arising from the implementation of the judgment of the ICJ.*

*17. That negotiations have almost been concluded with regard to the Bakassi Peninsular.*



18. That on the 4th January, 2005, National Boundary Commission wrote to the President to approve the reviewed maritime boundary between the plaintiff and the 2nd defendant, which review is in substantial conformity with Exhibits CRSG 1.....

19. That on 14th January, 2005, the President approved the review B  
.....

20. That on 24th January, 2005, the NBC wrote to the RM AFC conveying the President's approval of the reviewed maritime boundary between the plaintiff and the 2nd defendant.

21. That I am informed by the plaintiff and I verily believe him that C  
on the 8th February, 2005, the 2nd defendant's Government instituted a suit at the Federal High Court holden at Abuja in Suit No FHC/ABJ/CS/64/2005 against the NBC, DPR, RMAFC, Accountant-General of the Federation, the plaintiff herein ..... D

22. That I am informed by the plaintiff and I verily believe him that in paragraph 22 of the Affidavit in support of the Exhibit CRSG 7 (2nd defendant's Originating Summons) the 2nd defendant's Government has stated that it does not oppose the return of the plaintiff's oil wells..... E  
which oil wells are in the oil fields known as Abana, Adanga, Bogi, Ebughu, Etoro, Mimbo, Okwok and Oron."

**It can** easily be seen from paragraph 17 of the above affidavit that the Revised Boundary delimitation of the NBC dated 5/7/2004 F  
which the plaintiff is urging this court to declare as the maritime boundary of the two States is predicated on the negotiations between Nigeria and Cameroun which negotiation is almost but not finally concluded. By paragraph 22 of the said affidavit, the plaintiff gave the impression that the 2nd defendant is not opposed to the G  
plaintiff's claims to the oil fields stated therein. But from the 2nd defendant's counter-claim, most of those oil fields are claimed by the 2nd defendant in paragraph 26 of his counter-claim. It is, therefore, clear to me that the revised boundary delimitation by H  
NBC is not a product of an agreement between CRS and AKS contrary to the representation of the former. It also needs to be stressed that the NBC revised boundary map was made and allegedly

**approved by the President at a time when the boundary dispute was sub judice. It has been said that the making of a declaratory order is within the discretion of the trial court and that such discretion should not be readily exercised:** See *Ogundairo & Ors v. Okanlawon* (1963) 1 All NLR 358, per Taylor, JSC.

**In the light of the observations I have expressed above regarding the NBC revised boundary delimitation, I do not feel comfortable to grant the declaration sought. Until both Nigeria and Cameroun conclude their negotiation to finality and the international boundary fixed by the ICJ is modified and published in line with the agreement, it will be premature for this court to determine the maritime boundary of the two States.**

Issue 3

Whether Cross River is entitled to the orders of account sought in this suit, and/or to judgment for the admitted sum of N3,232,433,537.49 (Three Billion, Two Hundred and Thirty-Two Million, Four Hundred and Thirty-three Thousand, Five Hundred and Thirty-Seven Naira, Forty-Nine kobo)

The circumstances relating to the plaintiff's claim to the sum of N3,232,433,537.49k are set out in the affidavit evidence of Mrs. Rose Bassey Accountant-General, Cross River State. Paragraphs 21 to 24 are pertinent and are reproduced hereunder-

*"21 By a letter dated 15th July, 2003, Ref. GO/3/19 Vol. 11/346 (Exhibit CRSAG 1) Cross River State made a demand on the Federal Government of Nigeria, through RMAFC, for a proper account of its entitlement of the revenue accruing to the Federation Account from mineral resources within the boundary of Cross River State.*

*22. In consequence of Exhibit CRSAG 1 above, the RMAFC by letter dated 2nd September, 2002, ref. RMC/SEG/613/Vol. 1/178, (Exhibit CRSAG 2) wrote to the officer of the Accountant-General of the Federation admitting that Cross River State was entitled under the derivation principle from May, 1997 to July, 2002, to the sum of N3,232,433,537.49 being its entitlement of revenue accruing to the Federation Account from mineral oil exploration activities within its*

*boundary for the said period.*

23. *By another letter dated 30th March, 2003, (Exhibit CRSAG 3) RMAFC wrote to the Minister for Finance advising that the amount due to Cross River State as its entitlement from revenues accruing to the Federation Account from mineral oil exploration activities within its boundaries under the derivation principle for the period May 1997, to July 2002, had been reviewed downward to N2,455,888,820.14."* B

In an endorsement of Exhibit CRSAG 3 to the Governor of Cross-River State, RMAFC explained the reason for the downward review in paragraphs 2 and 3 of the endorsement thus: C

"2 You would have observed that in our letter reference RMC/SEC.013/V61.1/178 of 2nd September, 2002 addressed to the Accountant-General and endorsed to you in response to your letter No. 90/S/18/Vol.2/345 of 15th July, 2002. ....we did advise the Accountant-General D of the Federation to refund to your State, the sum of N3,232,488,537.49 (Three Billion, Two Hundred and Thirty-Two Million, Four Hundred and Thirty-Three Thousand Five Hundred and Thirty-Seven Naira and Forty-Nine Kobo only based on the old indices used before the Supreme Court E judgment in Suit No. SC/28/2001 of 5th April, 2003.

3. However, with the Supreme Court judgment on offshore and onshore dichotomy and the revision of the indices arising from the verification of oil wells that fall within the boundaries of littoral States, new F indices have had to be computed, thereby reducing the amount due for refund to your State to N2,455,888,820. 14 (Two Billion Four Hundred and Fifty Five Million, Eight Hundred and Eighty-Eight Thousand, Eight Hundred and Twenty Naira Fourteen Kobo only.

**It is manifest from the above explanation that the downward G review of the revenue accruing to the plaintiff was as a result of the implementation of the judgment of this court in which new indices were used to re-calculate the plaintiff's entitlement. The plaintiff has not placed before this court evidence to fault the new indices H used. It is, therefore, my view that the plaintiff has not established its entitlement to the sum of N3,232,433,537.49 as claimed but the entitlement of the lesser sum of N2,455,888,820.14 has been proved.**

**While a court cannot award more than what a plaintiff claims, it can award less.** See *Ekpenyong & Ors v. Nyong & Ors* (1975) 2 S.C. 78, 80-81, *Felix Okoli Ezeonwu v. Charles Onyechi & 2 Ors* (1996) 3 NWLR (Pt. 438) 439. **In the instant case, since there is uncontradicted evidence of the admission by the RMAFC that the plaintiff is entitled to the lesser sum of N2,455,888,820.14, judgment will be entered in favour of the plaintiff in respect of that sum.**

**With respect to the prayer for an order of account, it is conceded that by virtue of Section 162(1) of the Constitution of the Federal Republic of Nigeria 1999, that the Federal Government holds the position of a trustee in respect of all monies paid into the Federation Account on behalf of the States from which the revenue was generated. As was decided by this court in the case of Attorney-General Bendel State v. Attorney-General of the Federation & Ors (1983) NSCC Vol. 14, 181 at p. 193, this court, per Uwais, JSC., as he then was, while interpreting Section 149 (1) of the 1979 Constitution, which is in pari materia with Section 162 (1) of the 1999 Constitution observed thus:-**

***“It is settled that it is the duty of a trustee to keep a proper account of the trust he administers. And the beneficiary has a right to call upon the trustee for accurate information as to the state of the trust. Consequently, it is imperative for the Federal Government to render accurate and regular account to the beneficiaries of all monies paid into the Federation Account when requested to do so.”***

**See also the case of Attorney-General of the Federation v. Attorney-General Abia State & Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542. In the instant case, however, plaintiff’s claim for an account in paragraphs 40(2) (a) and (c) is on the allegation that the Federation Government neglected, omitted or wilfully defaulted in furnishing such account to the plaintiff. There is no evidence placed before this court to substantiate the allegation. Consequently, the plaintiff is not entitled to the order of account.**

**It is convenient at this stage to advert to the 2nd defendant’s counter-claim. In considering the counter-claim, it is well to bear in**

mind that a counter-claim is a claim by the defendant against the plaintiff's claim. In the case in hand, paragraphs 26(a), (b) and (c) of the 2nd defendant's counter-claim do not refer to the plaintiff and such are incompetent. With respect to paragraphs 26(d) and (e) of the counter-claim, the declaration prayed for cannot be granted B having regard to the views I have expressed to the effect that the disputed communities transferred to Odukpani LGA now belong to Cross River State.

Consistent with the several reasons given above, it is hereby C ordered as follows:-

- (1) Relief 40(1) of the plaintiff's claims is refused and struck out.
- (2) Reliefs 40(2)(a), (b) and (c) of the plaintiff's claims are refused.
- (3) The sum of money claimed in paragraph 40 (2) (d) is refused D but judgment is entered for the plaintiff against the 1st defendant in the sum of N2,455,888,820.14 (Two Billion, Four Hundred and Fifty-Five Million, Eight Hundred and Eighty-Eight Thousand, Eight Hundred and Twenty-Naira, Fourteen Kobo only).
- (4) Reliefs 40(3)(a) (i) and (b) limited to 40(3) (a) (i) are granted. E
- (5) Reliefs 26(a), (b) and (c) of the counter-claim are struck out.
- (6) Reliefs 26(d) and (e) of the counter-claim are dismissed.

As each party has equally failed and equally succeeded, the order of this court is that costs shall remain where they were incurred. F

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#### UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Edozie, JSC. I entirely agree with him that as each party succeeds in part, there should be no order as to costs. Each party G should bear its costs.

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#### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered H by my learned brother, Edozie, JSC. I entirely agree with it.

It is not in dispute that the disputed communities originally formed a ward known as Oku/Mbiabo/Ayadehe in the Itu Local Government Area.

The parties are also agreed that by an order of the Governor of the old Cross River State made in 1983, the disputed communities were transferred from Itu Local Government Area to Odukpani LGA. The transfer was effected before the old Cross River State was split. It is only right that  
 B the status quo as at 1987 when the two States were created be maintained. It follows therefore that the communities which the plaintiff claims in the instant case should remain where they were immediately before the old Cross River State was split.

C As regards the monetary claim, I am in total agreement that the sum of N2,455,888.820.14 has been clearly established as the amount due to the plaintiff. It should be paid forthwith to the plaintiff.

I also agree, for the reasons stated by my learned brother Edozie, JSC., that the counter-claim fails. I also abide by all the orders made in the  
 D leading judgment including the order as to costs.

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### **MUSDAPHERJSC**

I have had the honour to read in advance the judgment of my Lord,  
 E Edozie, JSC., just delivered with which I entirely agree. The dispute in this matter is mainly on the extent of the boundary between the two neighbouring States to wit (i) the Northern land boundary between Itu Local Government Area Council in Akwa Ibom State and Odukpani Local Government  
 F Area Council in Cross River State, (ii) The Southern estuarine boundary between Calabar Municipal, Akpabuyo and until recently Bakassi Local Government, Area Councils in Cross River State and Oron, Udung-Uko and Mbo Local Government Area Councils in Akwa Ibom State. While the claim of the plaintiff against the first defendant is mainly for an order to  
 G account and pay the revenue accruable and payable from the Federation Account to the plaintiff in view of the boundary adjustment.

In support of their pleadings the parties filed copious affidavit evidence with several document including maps, charts and letters. At the  
 H hearing of the matter the parties in addition to the written address made oral submissions in support and defence of their cases. Based purely on the facts, his Lordship in the judgment aforesaid, Edozie, JSC., has painstakingly lucidly and comprehensively examined, appraised and evaluated all

the available evidence tendered in this matter and in my view came to the right conclusion. I adopt his reasoning as mine and I also accordingly order as follows:-

(1) Relief 40( 1) is refused and struck out.

(2) Reliefs 40(2)(a), (b) and (c) are refused.

B

(3) The sum of money claimed in paragraph 40 (2) (a) is refused but judgment is entered for the plaintiff against the 1st defendant in the sum of N2,455,888,820.14k (Two Billion, Four Hundred and Fifty-Five Million, Eight Hundred and Eighty-Eight Thousand, Eight Hundred and Twenty-Naira, Fourteen Kobo only).

C

(4) Reliefs 40(3)(a) (i) and (b) limited to 40(3) (a) (i) are granted.

(5) Reliefs 26(a), (b) and (c) of the counter-claim are struck out.

(6) Reliefs 26(d) and (e) of the counter-claim are dismissed.

Each party to bear its costs.

D

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### **PATS-ACHOLONUJSC**

I have read in draft the judgment of my noble and learned Lord, Edozie, JSC., and I agree with him. This case has not much to do with law, strictly speaking. In my view, this should be a matter that ought to be settled politically. Access to the court is one of the principal pillars of democracy but for any matter relating to boundary dispute that can be resolved decently and easily with the assistance of the Boundary Commission, it is proper and just that resort to such resolution be made through that organ.

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I abide by the orders in the leading judgment.

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### **OGUNTADEJSC**

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The plaintiff, the Honourable Attorney-General of Cross -River State (hereinafter abbreviated as the 'CRS') commenced his suit on behalf of the Government of his State claiming against the Attorney-General of the Federation and the Attorney-General of Akwa-Ibom State (hereinafter abbreviated as 'AKS'). The dispute arose in connection with the northern or non-estuarine and the southern estuarine boundaries between the CRS and the AKS. The plaintiff in paragraph 40 of its 4th Amended Statement

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of Claim seeks the undermentioned reliefs:

"40.(1) The plaintiff's claim against the defendants is for:

A declaration that the boundary between Cross River State (CRS) and Akwa-Ibom State (AKS) is as shown in the boundary delimitation by NBC dated 30th March, 2004 and revised on 5th July, 2004.

(2) Plaintiff's claim against the 1st defendant is for:

(a) An order of account of revenue that has accrued to the Federation Account from mineral oils derived from Cross River State on the basis of the derivation principle from 23rd September, 1987 to 28th of May (sic) which Cross River State should have received but for the neglect, omission or wilful default of the Federal Government of Nigeria.

(b) An order for payment to Cross River State of any sums due from the Federation Account to Cross River State upon taking such account;

(c) An order of account of revenue due to the Cross River State from the revenue that has accrued to the Federation Account from mineral resources more particularly mineral oil derived from Cross River State from 29th May, 1999 to date of judgment, being revenue which Cross River State should have received but for the neglect, omission or wilful default of the Federal Government of Nigeria.

(d) An order for payment forthwith of the admitted sum of N3,329,433,537.42 (sic) (Three Billion, Three Hundred and Twenty-Nine Million, Four Hundred and Thirty-Three Thousand, Five Hundred and Thirty-Seven Naira, Forty-Two Kobo) being arrears of revenue due to CRS under the provisions of Section 162(2) of 1999 Constitution from May 29 to July, 2002 and any additional sum due and thereafter until full payment thereof.

The plaintiff's claim against the 2nd defendant is for:

(a) A declaration that (the) State (authority) to exercise administrative, executive, legislative and judicial powers or functions in or over:

(i) all cities, towns and villages in Odukpani Local Government and more particularly in Obot Akapabio (sic), Ikot-Offiong Ebiti, Asang, Okpo, Afia Isong Plantation, Ikot Efa Bench, Etehentem, Idim Nkem, Nkpan Uruk, Ikot Essien Ekpe Inyang, Esuk Ediong, Mbiabo Ikot Edem, Mbiabo, Mbiabo Abasi Efiari, Mbiabo Ikoneto, Ikot Nya, Odu Mma-Edem,



Iko Akpana. Okoho, Akwa Efe, Akapa Tre Efe, Odot Forest Reserve and Okpokong Bridge.

(ii) all cities, towns and villages in Calabar South Local Government Area (particularly Alligator Island, James Island and other unnamed Islands) and Akpabuyo Local Government Area, and B

(iii) all cities, towns and villages in Bakassi Local Government Area, (particularly Bakassi Peninsular and its surrounding Islands) are vested in the Government of Cross River State (to the exclusion of the Government of Akwa Ibom State) and C

(b) An order of perpetual injunction restraining all aims of government, officer, employees, appointees, agents and servants of the Government of Akwa Ibom State, or any persons or authority established by law in force in Akwa-Ibom State from exercising administrative, executive, legislative and judicial powers in or over any part of Cross River State and more particularly the area set out in paragraph 40(3)(a) above.” D

The 2nd defendant, the AKS raised a counter-claim against the plaintiff. The counter-claim reads:

“26 (a) A declaration that the defendant is entitled to revenue E accruing onshore from the total production of Addax oil wells/fields of Abanga, Akam, Ebughu, Bogi, Ebughune, Ukpan, Mimbo, amounting to 4,532,608 barrels between June 1999, and June 2002; and the Monipulo oil wells/fields of Abana East and Abana West amount to 25,198,556 F barrels or the same period which by the clear and unambiguous admission of the Revenue Mobilization and Fiscal Commission had never been accredited to the defendant.

(b) An order directing the 1st defendant to compute and pay to the 2nd defendant its (sic) share of accrued revenue from Addax and Monipulo oil fields for the period June 1999 to June 2002 amounting to 29,731.164 barrels of crude petroleum. G

(c) An order directing the 2nd (error for 1st) defendant’s agent RMAFC, to report on the production figures for Davy Bank, Obio, Efiat H 1, Efiat 2, Okposo East, Tom Shot Bank 1, Tom Shot Bank 2, and Cross River which have never been assessed nor paid to the defendant for the purpose of computing the revenue due and payable to the State.

(d) *A declaration that it was ultra vires the powers of the Governor of the old Cross River State to purport to alter the boundaries of the Local Governments in the State under the 1979 Constitution.*

(e) *A declaration that Obot Akpabio, Ikot Offiong Ebiti, Asang, Okpo, Afia Isong Plantation, Ikot Efa Beach, Etchentem, Idim Nkem, Nkpan Uruk, Ikot Essien, Ekpe Inyang, Esuk Ediong, Mbiabo Ikot Edem, Mbiabo, Mbiabo Abasi Efiari, Mbiabo Ikonet, Ekot Nya, Odu Mma Edem, Ikot Akpana, Okoho, Akwa Efe, Akpatre Efe, Odot Forest Reserve and Okpokong Bridge have always been and remain part of Akwa Ibom State.”*

My learned brother, Edozie, JSC., has in the lead judgment, which I consider comprehensive in the manner it has dealt with the issues in the case, and expressed views and conclusions with which I entirely agree. I have nonetheless found it necessary to express my view by way of emphasis, on the plaintiff’s claim as to the northern boundary and the 2nd defendant’s counterclaim thereto.

The plaintiff’s claim as to the northern boundary between him and the 2nd defendant is simple and easy to understand. The CRS was created a State in 1976 by Act No. 12 of the same year. On 1st October, 1979 and up till 22/9/87, the Local Government Areas together constituting the land area of CRS were (1) Calabar Municipality (2) Abak, (3) Ukanfun, (4) Akamkpa, (5) Odukpani, (6) Eket, (7) Etinan, (8) Ikom, (9) Ikot Abasi, (10) Ikot Ekpene, (11) Itu, (12) Ikono, (13) Obubra, (14) Ogoja, (15) Obudu, (16) Oron and (17) Uyo. On 23-9-87 however, the AKS was carved out of the CRS and ten of the Local Government Areas constituting CRS were transferred to the new AKS. The ten Local Government Area (hereinafter abbreviated as ‘LGA’) were (1) Ikoto Ekpene, (2) Abak, (3) Eket, (4) Ukanfun, (5) Ikot Abasi, (6) Uyo, (7) Etinan (8) Ikono, (9) Oron and (10) Itu. The present CRS shares boundary with AKS at the old Calabar Municipality and Odukpani, LGAs. It was plaintiff’s case that the areas or communities referred to in its claim 40(3) (1) were all in Odukpani Local Government Area which had been a constituent part of CRS since its creation in 1976.

The case of the 2nd defendant which serves both as an answer to

plaintiff's claim 40 (3) (1), and the arrowhead of its counter-claim is succinctly stated in paragraphs 9, 10 and 11 of the affidavit evidence of 2nd defendant deposed to on 23-10-03 by Bassey Etim Akpan, cartographer and Head of Department of Cartography, Ministry of Lands and Housing, Akwa Ibom State. The paragraphs read:

"(9) *The origin of the dispute of the Akwa Ibom and Cross River States over their boundary has its origin in 1983 when the Governor of the old Cross River State, purported to vary the boundaries of Itu and Odukpani Local Government Areas of the then Cross River State by an Executive Order, which act put some of the communities of Obot Akpabio, Ikot Offiong Ebiti, Asang, Okpo, Afia Isong Plantation, Ikot Efa Beach, Etechentem, Idim Nkem, Nkpan Uruk, Ikot Essien Ekpe Inyand, Esuk Ediong, Mbiabo Ikot Edem, Mbiabo Mbiabo Abasi Efiari, Mbiabo Ikoneto, Ikot Nya, Odu Mma Edem, Ikot Akpana, Okoho, Akwa Efe, Akpatre Efe, Odot Forest Reserve and Okpokong Bridge in Okukpani Local Government Area of Cross River State.*

*(10) At the creation of Akwa Ibom State in 1987, the members of those communities refused to be bound by the order until when on March 11, 2002, the National Boundary Commission, by fiat purported to acquiesce the illegality by delimiting the boundary on the North Eastern end of Akwa Ibom State to exclude its people and lands underlined in paragraph 9 above.*

*(11) Since the creation of the two States in 1987, as admitted by the plaintiff, the boundaries of the two States at the time of the split of the old Cross River State into the new Cross River and Akwa Ibom States have remained the boundaries of the South Eastern State which in 1976 was renamed Cross River State. The boundaries of Eastern Region, (set out in Legal Notice 126 of 1954). was used in determining the boundaries of South Eastern State and in consequence the old 'Cross River State' and from there both CRS and AKS. At the creation of Akwa Ibom and the new Cross River States, all communities existing in each of the Local Government Areas were deemed to continue to so exist remain and form part of the States as presently constituted."*

It is apparent that whilst the plaintiff bases the claim on the Laws

which created the CRS and AKS in 1976 and 1987 respectively, the 2nd defendant relies on the same laws with the extrapolation that the adjustment made in the areas or communities constituting Odukpani LGA in 1983 by the Governor of the old CRS could not be recognized as it was  
 B invalidly done. In effect, the 2nd defendant contends that Odukpani LGA is indeed part of CRS provided the adjustment of 1983 is not recognized or taken into account. It was this adjustment, which moved some areas or communities from Itu LGA now in AKS to Odukpani LGA now in CRS. It is thus seen that the 2nd defendant's resistance to plaintiff's claim is  
 C substantially premised on an alleged invalidity of a 1983 order made by the incumbent Governor of CRS which at the time included the LGAs now constituting AKS.

There is no doubt that CRS was created by Law No. 12 of 1976.  
 D The said Law sets out the LGAs constituting the State. Section 4 of the Law No. 12 of 1976 makes provisions for setting up States Boundaries Adjustment Commission, which was charged with responsibility for adjusting the boundaries of any State created under the said law. The  
 E boundary of CRS was however not altered or adjusted at anytime before the creation of AKS by Law No. 24 of 1987.

Under the 1963 Constitution of the Republic of Nigeria, Local Government was a matter within residual list and a matter within the competence of the Regional Governments. In the exercise of that power  
 F the Regional Government constituted areas or communities into specific Local Government Areas. Following the advent of Military Ruling Nigeria, States were created from the existing regions. The practice followed in the creation of these States was that Local Government Divisions or Areas,  
 G which existed, were identified and grouped together to constitute the new States being created. What actually happened was that some LG As were excised from an existing Region or State to constitute a new State as the need arose.

H In the case of CRS and AKS, the south Eastern State was created in 1967 and it comprised of 14 divisions. In 1976, when the CRS was created by Act No. 12, the 17 LGAs constituting the new CRS were identified and named. In 1987, ten of the LGAs of CRS were excised to

form AKS. The law creating AKS in 1987 had not named the areas or communities that were to constitute AKS. Neither did the Law concern itself with the internal administrative engineering which had taken place within CRS between 1976 when CRS was created and 1987 when AKS was excised out of CRS. There is no doubt that in 1983, the incumbent Governor of CRS transferred some areas or communities from Itu LGA to Odukpani LGA but the impropriety or invalidity of such transfer was never brought to the attention of the then Military Government when in 1987 AKS was created. The AKS was therefore created by reference to the LGAs as they stood immediately before 1987. In any case, it is doubtful if an area or community would have been able to contend successfully that it did not wish to be placed in a particular LGA.

The result is that the towns, villages and communities in Odukpani Local Government Area as at 22-9-87 when AKS was created from CRS must continue to be a part of the same LGA and consequentially part of the CRS. The plaintiff's claim No. 40 (3) (a) (i) must therefore succeed.

With respect to plaintiff's claim for N3,329,433,537.42 being arrears of revenue due to CRS under the provisions of Section 162(2) of the 1999 Constitution from May 29 to July, 2002, I am satisfied that the 1st defendant has shown satisfactorily why that amount was reviewed downward to N2,455,888,820.14. The need to review the amount downward arose because of the necessity to comply with the judgment of this court in an earlier dispute concerning the States of the Federation and the 1st defendant. I also agree with the lead judgment that the plaintiff is not entitled to more than N2,455,888,820.14.

And finally is the dispute concerning the estuarine boundary between CRS and AKS. There was the judgment of the International Court of Justice on 10-10-2002. The judgment in its effect wiped off what used to be the estuarine sector of Cross River State. That occurrence has made any attempt to apply either the "median line" principle or the "thalweg" principle unrealistic until a new maritime boundary between Nigeria and Cameroun is agreed and identified.

In the final conclusion, I agree with the lead judgment of Edozie, JSC. I would also make the same orders as in the lead judgment. I

subscribe to the order on costs.

**AKINTANJSC**

The disputes that led the plaintiff to institute this action in this court under the original jurisdiction of this court are mainly between the plaintiff and the 2nd defendant. The claims are, inter alia, for declarations and an order for refund to the plaintiff a specified sum of money which the plaintiff claimed to be its entitlement but which was wrongly paid to the 2nd defendant. The 1st defendant was joined as the trustee through whom disbursements due to the States are made. The second leg of the claim relates to boundary disputes between the plaintiff and the 2nd defendant. The plaintiff is seeking, among others, for an order of this court for a return of certain named villages, communities and settlements which are at present being administered by the 2nd defendant.

I had the privilege of reading before now the leading judgment just delivered by my learned brother, Edozie, JSC. He has painstakingly set out all the issues raised in the case, discussed them extensively and came to conclusions which are entirely agreeable to me. I therefore adopt them.

I entirely agree with the views expressed in the leading judgment that the boundaries of States created as a result of carving out new States from existing States should be in line with what were in existence immediately before the carving out of portions of the State from which the newly created States emerged. It follows therefore that the communities being claimed in the instant case should remain where they were immediately before the plaintiff and 2nd defendant States were split into two States. I also believe and hold that the sum of N2,455,888.820.14 which has been clearly established as an amount due to the plaintiff should be paid forthwith to the said plaintiff.

As regards the counter-claim, I share the same views as expressed in the leading judgment that Reliefs 26 (a), (b) and (c) of the counter-claim should be refused and struck out while Reliefs 26(d) and (c ) should be dismissed and I make the same orders. I also abide by all the orders made in the leading judgment including that on costs.