

SUPREME COURT OF NIGERIA

16TH DECEMBER, 2005. SC. 144/2004

**CORAM:- M. L. UWAISS CJN, I. L. KUTIGI, A. O. EJIWUNMI,
D. MUSDAPHER, I. C. PATS-ACHOLONU, G. A. OGUNTADE, A.
M. MUKHTAR, JJSC**

1. THE ATTORNEY- GENERAL OF ADAMAWA STATE
 2. THE ATTORNEY- GENERAL OF BAUCHI STATE
 3. THE ATTORNEY- GENERAL OF BENUE STATE
 4. THE ATTORNEY- GENERAL OF BORNO STATE
 5. THE ATTORNEY- GENERAL OF EKITI STATE
 6. THE ATTORNEY- GENERAL OF GOMBE STATE
 7. THE ATTORNEY- GENERAL OF JIGAWA STATE
 8. THE ATTORNEY GENERAL OF KADUNA STATE
 9. THE ATTORNEY- GENERAL OF KANO STATE
 10. THE ATTORNEY- GENERAL OF KATSINA STATE
 11. THE ATTORNEY- GENERAL OF KEBBI STATE
 12. THE ATTORNEY- GENERAL OF KOGI STATE PLAINTIFFS
 13. THE ATTORNEY- GENERAL OF KWARA STATE
 14. THE ATTORNEY- GENERAL OF NASARAWA STATE
 15. THE ATTORNEY - GENERAL OF NIGER STATE
 16. THE ATTORNEY- GENERAL OF OSUN STATE
 17. THE ATTORNEY- GENERAL OF OYO STATE
 18. THE ATTORNEY - GENERAL OF PLATEAU STATE
 19. THE ATTORNEY - GENERAL OF SOKOTO STATE
 20. THE ATTORNEY -GENERAL OF TARABA STATE
 21. THE ATTORNEY - GENERAL OF YOBE STATE
 22. THE ATTORNEY -GENERAL OF ZAMFARA STATE
- AND
1. THE ATTORNEY-GENERAL OF THE FEDERATION
 2. THE ATTORNEY-GENERAL OF AKWA IBOM STATE
 3. THE ATTORNEY-GENERAL OF BAYELSA STATE
 4. THE ATTORNEY-GENERAL OF CROSS RIVER STATE
 5. THE ATTORNEY-GENERAL OF DELTA STATE
 6. THE ATTORNEY-GENERAL OF LAGOS STATE

7. THE ATTORNEY-GENERAL OF OGUN STATE

8. THE ATTORNEY-GENERAL OF ONDO STATE ... DEFENDANTS

9. THE ATTORNEY-GENERAL OF RIVERS STATE

ACTIONS - Supreme Court - Originating summons - Purpose - Counter affidavit - Originating summons is filed - Where there is no serious dispute as to the facts - Filing counter affidavit - As if to replace statement of defence - Is not necessary (H1)

EVIDENCE - Affidavits - Conflicts therein - Where not material or are inadmissible - Calling oral evidence to resolve the conflict - Will be unnecessary (H2)

ACTIONS - Locus standi - Definition - Federation account - Where plaintiffs have right to receive share therefrom - They have locus standi to sue (H3)

CONSTITUTIONAL LAW - Legislation - Validity - Estoppel - That an Act was passed by the National Assembly - Consisting of representatives from all the States - Cannot estop aggrieved States - From challenging its validity (H4)

ACTIONS - Supreme Court - Originating summons - Affidavits - Objection to paragraphs that offend s.87 Evidence Act - For raising legal argument or conclusions - Will not invalidate the originating summons - As other paragraphs support the summons (H5)

CONSTITUTIONAL LAW - Legislation - Allegation of conflict between an Act and the Constitution - As if the 2004 Act extended boundaries of littoral States - Does not arise - As the extension is merely deemed and notional (H6)

CONSTITUTIONAL LAW - Conflict - Legislation - Seaward boundaries

of littoral States - Are not extended by Allocation of Revenue Act 2004 - And there is no conflict - Between the 2004 Act and sections of the Constitution (H7)

INTERNATIONAL LAW - Conflict of laws - Duty of counsel - Allegation that the 2004 Revenue Act - Is in conflict with some international conventions - Was to be specifically shown by plaintiffs' counsel (H8)

CONSTITUTIONAL LAW - Legislation - Contention that the 2004 Revenue Act - Enacted by the National Assembly - Is null and void will fail - As the Court declares the Act intra vires the Constitution (H9)

CONSTITUTIONAL LAW - Federation account - Legislation as to manner of distribution - Amongst the beneficiaries - Is vested in the National Assembly - Vide s.162 of the Constitution (H10)

STATUTES - Legislative judgment - Where the 2004 Revenue Act - Did not usurp the court's function in any way - It is not a legislative judgment (H11)

FACTS

Before the Supreme Court the plaintiffs by an originating summons, commenced an action against the defendants and inter alia, sought the following reliefs:-

(1) A declaration that the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is unconstitutional, ultra vires the defendants' and therefore null and void.

(2) Declaration that the 1st and 10th defendants are without constitutional powers to rely on the said Act for purposes of allocation of revenue.

(3) Order directing the defendants to forthwith stop the implementation and reliance on the said Allocation of Revenue Act 2004.

(4) An injunction restraining the 2nd - 9th defendants from taking advantage from or under the said 2004 Act.

(5) An injunction restraining the 1st and 10th defendants from implementing the Allocation of Revenue Act 2004.

(6) An order setting aside the said 2004 Act.

The 2nd, 4th, 7th and 9th defendants filed counter affidavits which seem to be unnecessary in originating summons proceedings as there is usually no serious dispute as to the facts in such form of action. The 5th and 9th defendants also filed notices of preliminary objections which were rejected by the court as filed out of time. The 1st, 2nd and 7th defendants also raised some objections in their briefs or argument con- tending inter alia, that the plaintiffs lacked locus standi to institute the action, and failed to disclose their cause of action.

ISSUES FOR DETERMINATION

“ 1. Whether having regard to the provisions of sections 16 and 44(3) of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Territorial Water Act Cap. 248 Laws of the Federation 1990, the provisions of the Exclusive Economic Zone Act Cap 110, Laws of the Federation 1990, and binding International Convention to which Nigeria was a signatory, the 1st defendant did not act ultra vires its powers in making and implementing the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 under which the 1st Defendant purported to cede or give away or concede any part of the territorial waters or sea ward boundaries of Nigeria to the 2nd - 9th Defendants in anyway or manner or guise whatsoever.

(2) Whether having regard to the provisions of Sections 4, 6(6), 44(3), 162, 232, 235 and 315 of the Constitution of the Federal Republic of Nigeria 1999, the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act 2004 is not unconstitutional, ultra vires, null, void and of no effect whatsoever.

(3) Whether in view of the decision of this Honourable court in suit No. SC. 28/2001 A-G Federation vs A-G Abia State and 35 Ors. Delivered on 5th April, 2002 the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and without any effect.”

HELD (Unanimously dismissing the plaintiffs' action per **UWAIS CJN**)

Originating summons - Purpose

1. The aim of an action being commenced by originating summons is to simplify and speed up procedure since it is envisaged that there is no serious dispute as to the facts in the case because what is in dispute is the construction of an enactment or instrument made under any law upon which the plaintiff is basing his right to a declaration or a claim in his favour. Where there is a serious dispute as to the facts then a writ of summons must be issued under Order 3 rule 3 of the Supreme Court Rules, which states -

“3. The following proceedings must be begun by filing a statement of claim -

(a) proceedings in which the facts in issue are disputed or are likely to be disputed.

(b) proceedings in which a claim made by the plaintiff is based on an allegation of fraud.”

The present case is based largely on the validity and effect of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, which, clearly, are not issues or facts in dispute as to warrant the filing of counter-affidavits by the 2nd, 4th, 7th and 9th defendants. The counter-affidavits not only contradict the averments in the plaintiffs' affidavit but also offend the provisions of sections 86 and 87 of the Evidence Act, Cap. 112 to the effect that -

“86. Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information received which he believes to be true.

87. An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.”

Therefore, a counter-affidavit is not intended to take the place of a statement of defence or a brief of argument as in this case. (p. 2718 C)

Affidavits - Conflicts therein - Where not material

2. Where the conflicts in affidavit evidence are not material to a case or where the facts therein are inadmissible in evidence, the court should not be saddled with the responsibility of calling oral evidence to resolve the conflict. The need to call oral evidence would also not arise if the areas of conflict are so narrow and are not significant.

I, therefore, see no necessity in this case to call for oral evidence in order to resolve the conflict between the plaintiffs' affidavit and counter-affidavits of the 2nd, 4th, 7th and 9th defendants, respectively. (p. 2719 B)

Locus standi - Definition - Federation account

3. A person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed.

The plaintiffs have the right and obligation to receive funds from or share in the Federation Account. Therefore, if any action is being taken or has been taken to affect their interest in the Federation Account, surely, the plaintiffs have the locus standi to sue. I think this is the short answer to the objection raised by the 1st defendant on standing. (p. 2721 C)

Legislation - Validity - Estoppel

4. The next preliminary objection is that since the National Assembly consists of representatives from all the States of the Federation who passed the 2004 Act, the plaintiffs are estopped from challenging the validity of the Act. Nothing can be further from the truth. There is a fallacy in this argument. It is true that the members of the National Assembly have been elected to the Assembly as members but they cannot be described as members of all the States because each member, whether as a Senator or Representative, even as a representative of his state, was not elected by the whole of the State but a section of it, and though elected, might not have been given vote by all the electorates in his or her constituency. Such members might or could have opposed the passing of the 2004 Act, in that case can their States be held responsible for the passing of the Act? The

1999 Constitution, in section 232(1) thereof, permits any State that has controversy or dispute with the Federal Government to institute an action in the Supreme Court, can the principle of estoppel apply to prevent such State from suing? It has to be remembered that estoppel is a subject under sections 151 - 154 of the Evidence Act, Cap. 112. If it indeed applied in this case, would it not be in conflict or inconsistent with section 232 (1) of the Constitution and therefore null and void to that extent by virtue of section 1 subsection (3) of the 1999 Constitution? In my opinion, the answers to all these questions are against the argument by the 1st defendant. I, therefore, hold that estoppel does not operate against the plaintiffs in bringing this action. (p. 2721 F)

Originating summons - Affidavits - Objection to paragraphs

5. There is finally, the preliminary objection by the 7th defendant. It is based on the following grounds. That paragraphs 9, 10 and 11 of the affidavit in support of the plaintiffs' originating summons offend against the provisions of section 87 of the Evidence Act. That the plaintiffs lack the locus standi to institute the action. That the action does not disclose any reasonable cause of action.

Arguing the first point, it is submitted that the depositions in the paragraphs of the affidavit in question have raised legal argument and conclusions contrary to the provisions of the Evidence Act and the decisions in the following cases.

We are being urged to strike out the depositions or in the alternative not to attach any weight thereto. It is true that the averments in paragraphs 9, 10 and 11 of the affidavit offend section 87 of the Evidence Act and should be struck out. I, therefore, hereby strike them out. However, I must point out that this objection, though successful, is in substance a mere technicality because it does not affect the validity of the originating summons since the remaining paragraphs of the affidavit in support of the summons are sufficient to sustain it. (p. 2723 E)

Allegation of conflict between an Act and the Constitution

6. A careful reading of section 1 subsection (1) of the Act shows that the

extension deemed to have been given to the seaward boundary of the littoral States is specifically for the “*purposes of computing the revenue accruing to the Federation Account from the*” littoral States and nothing else. The boundary is to be “*deemed*” to be “*the two hundred metre water depth Isobath contiguous*” to the littoral States. It is clear, therefore, that the extension given to the littoral States’ seaward boundary is neither real since it is to be “*deemed*” nor is it for any other purpose than for calculating the revenue which accrues to the littoral States to the Federation Account.

Subsection (2) of the Section further provides that in the application of the principle of derivation of revenue, it is immaterial whether the revenue accruing to the Federation Account from a littoral State is derived from the natural resources located either on-shore or off-shore the littoral State. The plaintiffs have argued that the effect of the 2004 Act is that it has extended the boundaries of the littoral States (2nd - 9th defendants) contrary to section 8 of the 1999 Constitution. This, with respect is not a correct interpretation of the provisions of the Act, because the Act specifically states that the extension is only to be deemed, in other words it is not real but notional, and it is specifically intended for the purpose of computing the revenue which accrues to the Federation Account from the littoral States. (p. 2736 H)

Legislation - Seaward boundaries of littoral States

7. It follows that the argument by the plaintiffs that the effect of the 2004 Act is to extend the seaward boundaries of the littoral States in contravention of section 8 of the 1999 Constitution cannot, with respect, be correct.

Section 16 of the Constitution deals with the economic objectives of Nigeria under the Fundamental Objectives and Directive Principles of State Policy. It provides in subsection (1) (a) thereof as follows:-

“16. (1) *The State, shall, within the context of the ideals and objectives for which provisions are made in this Constitution -*
 (a) *harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy.*”

I am unable to see the connection between these provisions and

those of the 2004 Act, because the latter is not concerned with the harnessing of resources of the nation or promoting national prosperity or promoting efficient, dynamic and self-reliant economy but the computation of revenue that accrues to States from the Federation Account. Therefore, it cannot validly be argued that the 2004 Act is in conflict with the provisions of section 16 of the Constitution. Even if it were, such act is not justiciable by virtue of the provisions of section 6 subsection (6) (c) of the 1999 Constitution. B

Again while the 2004 Act is concerned with the computation of revenue accruing to the Federation Account and notional extension of the States boundaries, the foregoing provision is about the ownership, control and management of natural resources by the Government of the Federation. Here too since the objects are at variance I see no conflict between the Act and section 44(3) of the Constitution. (pp. 2738 C/ 2739 C) C D

Conflict of laws - Duty of counsel

8. With regard to the purported conflict between the 2004 Act and the various international conventions mentioned by the plaintiffs, namely, United Nations Convention on the Law of the Sea, 1982, the General Convention on the Territorial Sea, the Contiguous Zone, 1958 and the General Convention of the High Seas, 1958; learned Senior Advocate for the plaintiffs has not shown specifically in his argument, in their brief, how the alleged conflict comes about. With respect, it is not, therefore, easy for us nor is it our duty to suo motu fish out what the conflict is. F

On the whole the plaintiffs' issue no. 1 has failed and I answer it in the negative. (p. 2741 D) G

Contention that the 2004 Revenue Act - Is null and void will fail

9. Section 4 of the Constitution deals with the legislative powers of the National Assembly, section 6 subsection (6) quoted in part above, deals with the extent of the judicial powers vested in the courts established by the Constitution; section 162 deals with the Federation Account; section 232 deals with the original jurisdiction of this Court; section 235 provides for the finality of the decision of the Court and section 315 relates to H

existing laws. Learned counsel for the plaintiffs relies on his argument in respect of issue no. 1 above and submits that having shown that the 2004 Act is a nullity, this Court has the inherent power to declare it null and void and of effect whatsoever. He also submits that once the Section 1 (2) and (3) of the Act is struck down the rest of the Act cannot stand on its own and should also be struck down. With respect, the whole of this argument is based on the premise that issue no. 1 is answered in the affirmative, but as aforesaid the contrary is the case. Therefore, issue no. 2 has no base upon which it could stand. The simple answer to the issue is that it has failed and therefore it must be answered in the affirmative because it is couched in the negative. In other words, the 2004 Act is constitutional *intra vires* and not null and void and not of no effect whatsoever. (p. 2741 G)

D *Federation account - Legislation as to manner of distribution*

10. Now by section 162 subsection (3) of the 1999 Constitution -

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

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

It is clear, by virtue of these provisions, that the National Assembly has absolute power under the 1999 Constitution to enact a legislation or a statute that deals with the manner in which revenue accruing to the Federation Account is to be distributed amongst the beneficiaries. The power is not limited since it is to be exercised by the National Assembly in such terms and manner as it may prescribe except as provided in the proviso to subsection 2 of section 162 of the Constitution. (p. 2742 E)

H *STATUTES - Legislative judgment*

11. On whether the 2004 Act is a legislative judgment, I accept the argument by the defendants’ counsel, that based on the decisions of this Court in the following cases - *Lakanmi & Anor. v A-G (West)*, (supra);

Uwaifo v. A-G of Bendel State (supra) and A-G of the Federation v. Guardian Newspapers, (supra) - the 2004 Act is not a legislative judgment because it has not in any way usurped the function of the court or the judiciary.

Issue no. 3 therefore fails and I answer it in the negative by holding that the 2004 Act is not a legislative judgment and as such it is not null and void or without effect. (p. 2743 D)

NOTABLE POINTS OF INTEREST

KUTIGIJSC

1. Need for the plaintiff to adduce sufficient evidence and show how his rights are breached

There is clearly no indication of how much money accrued to the Federation Account before the Act was passed and how much the amount will be if the Act is implemented. Consequently there is no averment of how the shareable revenue due to each of the Plaintiffs will impact negatively on each of "them. There is equally no indication of how much of the shore coastline of Nigeria and part of the territorial waters of Nigeria have been ceded and or granted to the 2nd to 9th Defendants. Cumulatively therefore the Plaintiffs have not shown in my view how the 2004 Act if implemented will work to their disadvantage. These matters cannot be assumed. More facts and or details are required. Paragraphs 8 -11 inclusive are therefore in my view vague. They must be struck out for want of particulars and I so strike them out. It is not enough for a Plaintiff to merely state that an Act is illegal or unconstitutional without showing how his civil rights and obligations are breached or threatened.

The offending paragraphs no doubt ought to be struck out being incompetent. The consequence clearly is that the bottom has been knocked out of the Plaintiffs' case.

Having thus struck out for want of competence paragraphs 8-11 of the supporting affidavit, there is nothing left in the affidavit to support the Plaintiffs' suit. The court does not manufacture evidence. The court acts on evidence adduced by the parties. The Plaintiffs having failed to adduce evidence or sufficient evidence in support of their case, must have their

case dismissed straight away. (p. 2747 A)

PATS-ACHOLONUJSC

2. Legislative judgment - Definition of

B What is a Legislative Judgment? The first mention to the best of my knowledge of the expression legislative Judgment first appeared in Blackstone Commentaries on the Laws of England. The great jurist stated as follows in repudiating a seemingly incipient legislation directed at some one.

C “Blackstone in his Commentaries Vol. 1 (4th Edn) P. 44 said :-
‘Therefore a particular act of the legislature to confiscate the goods of , or to attain him of high treason, does not enter into the idea of a municipal law: for the operation of this act is spent upon Titius only and
D has no relation to the community in general: it is rather a sentence than a law.’

It is an enactment by the legislature wearing the garb or having a colouration or flavour of a conviction (the legislature transmuting itself
E more or less into a Court) of a person while merely exercising its legislative functions. Both the common law and the Constitutional law not only regard it as an aberration but condemn such a tendency for it should be known that while the Legislature is most suited to make laws, it is neither invested
F with the power to interpret laws nor inflict or impose convictions or assume Powers to make decisions with judgmental flavour as it is most unsuited for and is not trained or possessed of the knowledge to do any of the above though some of its members may be learned in law. (p. 2765
G)

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REPRESENTATION

Alhaji Yusuf Ali, SAN with him A. O Adelodun, R. A. Lawal-Rabana, J. S. Fagbemi, D.C.L. Kwara State, P. O. Ibrahim, Legal Officer, S. A. Oke,
H J. I. Jacob and A. O. Ojongbede for the plaintiffs. A. O. Mbamali (Mrs) Ag. DCL, Federal, with her C. O. Assam, Asst. Chief Legal Officer and R. Clark, Senior Legal Officer, for the 1st defendant.
B. Dan-Abia, Attorney-General, Akwa Ibom State, with him A. Ekong-

Bassey, SAN, 1. E. Ukana, B. J. Ekanem, Tony Uwah, C. A. Udoh and M. Ukpong for the 2nd defendant.

T. Ongolo, SAN, Attorney-General, Bayelsa State, with him M. T. Kachina for the 3rd defendant. N. Andem-Ewa (Mrs) with her L. Garrick for the 4th defendant. Prof. A. A. Utuama, SAN, Attorney-General, Delta State, B with him G. E. Okirhienyefa, Solicitor-General, O. Pedfo and E. Ohwovoiole for the 5th defendant. Prof. Y. Osibajo, SAN, Attorney-General, Lagos State, with him O. Durojaiye, L. Pedro, Head DCL, Chuks Nwanlikwu, A. Haroun, O. Adewale, A. O. Salami and E. R. Iyamu, for the 6th defendant. C A, Fashanu, SAN with him T. A. Okunsokan for the 7th defendant. 8th defendant, absent and unrepresented.

H. O. Ajumogobia, SAN, Attorney-General, Rivers State, with him M. U. Wakaraa (Mrs) D.C.L., A. C. Amadi, Senior State Counsel, and D. D. Ihua-Maduenyi, State Counsel, for the 9th defendant. D

CASES REFERRED TO

Falobi v Falobi. (1976) 9 -10 S.C. 1

Okupe v F.I.B.R. (1974) All NLR 284

Garba v University of Maiduguri, (1986) 1 N.W.L.R. (Part 18) 550

L.S.D.P.C. v Adold/Stamm Int. Ltd. (1994) 7 N.W.L.R. (Part 358) 545 at p. 560 B-D

Olagunju v Yahaya (1998) 3 NWLR (Part 542) 501

Ogbuehi v Gov. of Imo State (1995) 9 NWLR (Part 417) 53 at pp. 52 - 90

Okafor v Asoh (1999) 3 NWLR (Part 593) 35 at pp. 53 - 57

Jusien Holdings Ltd. Ors. v Lornamead Ltd. & Anor, (1995) 1 N.W.L.R. (Part 317) 254 at p. 255

Nigeria LNG Ltd. v African Development Insurance Co. Ltd. (1995) 8 N.W.L.R. (Part 416) 677 at p. 701

Governor of Lagos State v Ojukwu (1986) 1 N.W.L.R. (Part 18) 621 at p. 641

Bamaiyi v State & Ors. (2001) 8 N.W.L.R. (Part 715) 270 at p. 289

A-G Bendel State v. A-G of Federation (1981) 12 NSCC 314

Adefulu v. Oyesile (1989) 5 NWLR (Pt.122) 377

Thomas v. Olufosoye (1986) 1 NWLR (Pt.180 669

Lakanni v. Adene (2003) 10 NWLR (Pt.828) 353)

STATUTES & RULES REFERRED TO

- B Constitution of the Federation Republic of Nigeria, 1999 ss. 1(3), 4, 6(6), 8(2), 12, 16, 19, 44(3), 162, 232, 235, 315 & 318
Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 ss. 1 and 2
Evidence Act ss. 86, 87, 151-154
- C Territorial Waters Act Cap. 248 Laws of the Federation 1990 ss. 1(1), 2(1) & 3
Exclusive Economic Zone Act Cap. 110, Laws of the Federation 1990 ss. 2(1) & 6
- D Supreme Court Act s. 20
Supreme Court Rules, 1985 O. 3 rr. 3, 6(1) & (3)

LEAD JUDGMENT BY UWAIS CJN

- E This suit was commenced by an originating summons, supported by an affidavit filed on behalf of all the plaintiffs by their counsel. The following reliefs, which have been stated in the originating summons, are being sought by the plaintiffs:-
- F “1. *DECLARATION that the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is unconstitutional ultra vires the defendants and therefore null and void.*
2. *DECLARATION that the 1st and 10th defendants are without constitutional powers to rely on the Allocation of Revenue (Abolition of*
- G *Dichotomy in the Application of the Principle of Derivation) At 2004 for the purposes of allocation of revenue to the states and local governments from the Federation Account.*
3. *ORDER directing the defendants to forthwith stop the implemen-*
- H *tation and reliance on the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.*
4. *INJUNCTION restraining the 2nd - 9th defendants by themselves, their agents, or any other person or persons deriving authority through*

them from taking benefit from, insisting on or in any other manner seek to take advantage from or under or in the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.

5. *INJUNCTION* restraining the 1st and 10th defendants by themselves, their agents, servants, privies or any other person or body deriving authority from or through them from implementing, giving effect to or in any other manner enforce the provisions of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.

6. *ORDER* setting aside, annulling and make void the said Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.

7. *ANY* other relief or other reliefs as the Honourable Court may find the plaintiff entitled to in law and equity.”

CONFLICTING AFFIDAVITS

In-paragraphs 6, 7, 8, 9, 10 and 11 of the affidavit in support, of the originating summons it is averred as follows:-

“6. *That I know as a fact that hitherto, the amount accruing to the Federation account included monies realized from the on-shore and off-shore exploration of crude oil by oil companies operating in Nigeria.*

7. *That I know as a fact that the President of The Federal Republic of Nigeria presented a Bill to the National Assembly titled “An Act to Abolish the Dichotomy in the Application of the Principle of Derivation For the Purpose of Allocation of Revenue Accruing to the Federation Account and for Matters connected Therewith 2004” to the National Assembly which passed same and the President had since accented to it and it is now “The Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004”, (hereinafter referred to as . The Act).*

8. *That I know as a fact from the briefing given to my Principal by the plaintiffs that the Act once implemented will impact negatively on the amount that will accrue to the Federation Account and this will in turn reduce the shareable revenue due to the plaintiffs.*

9. *That I know as a fact that the said Act has by implication ceded part of the shore coastline of Nigeria to the 2nd - 9th defendants.*

10. *That I know as a fact that the Act also has the effect of granting part of the territorial waters of Nigeria to the 2nd - 9th defendants to the disadvantage of the plaintiffs.*

11. *That I know as a fact that the Act as it is if implemented will work to the disadvantage of the plaintiffs.”*

Counter-affidavits to the affidavit in support of the originating summons were filed by the 2nd, 4th, 7th and 9th defendants respectively. That of the 2nd defendant avers in paragraphs 5 to 18 as follows:-

“5. *That when the President of the Federal Republic of Nigeria presented a Bill title (sic) “An Act to Abolish the Dichotomy In the Application of the Principle of Derivation for the Purpose of Allocation of Revenue Accruing to the Federation Account and For Matters Connected Therewith 2004,” to the National Assembly it was a matter of great Public discussion, views and great interest throughout Nigeria and beyond.*

6. *That both Houses of the National Assembly deliberated openly and extensively on the Bill before the same was passed by the two Houses of the National Assembly as the “Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.”*

7. *That throughout this period and throughout the long processes and Procedure leading to the passage and enactment of the Act none of the Plaintiffs raised a finger or voice in protest or made any reservation whatsoever.*

8. *That all the 36 States making up the Federal Republic of Nigeria have elected representatives in the National Assembly whose responsibility it is to initiate Bills, to take part in debates, to criticize or take any position on all Bills presented before the National Assembly and to participate in the passage or rejection of such Bills.*

9. *That all the representatives of the plaintiff States took part in the deliberations leading to the passage of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Bill 2004.”*

10. *That neither the representatives of the 22 plaintiff States in the National Assembly nor the Attorneys-General of those States warned or advised or admonished the President of the Federal Republic to refrain from giving his assent to the Bill when it was finally presented for his assent.*

B

11. *That our leading counsel in this case A. Ekong Bassey Esq. (SAN) informed me and I verily believe him that the plaintiffs' action is an attempt to unlawfully interfere with the law making process of the National Assembly.*

12. *That our leading counsel in this case A. Ekong Bassey Esq., has also advised and I verily believe that it is wrong for the 22 plaintiff States, having given support to the passage of the Bill through their accredited representatives in parliament (National Assembly) to now turn round through their Attorneys-General to challenge the validity of an Act which they had fully supported and sanctioned.*

C

D

13. *That in answer to paragraph 8 of the plaintiffs' affidavit, the 2nd defendant states that the Act has already been fully implemented.*

14. *That paragraph 9 of the plaintiffs' affidavit is totally false; the Act has not either directly or by implication ceded any "part of the shore coastline of Nigeria to the 2nd - 9th defendants."*

E

15. *That paragraph 10 of the plaintiffs' affidavit is false and accordingly denied; the Act has not in any way "granted part of the territorial waters of Nigeria to the 2nd - 9th defendants."*

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16. *That paragraph 11 of the plaintiffs' affidavit being false is accordingly denied; it is not true that "the Act... if implemented will work to the disadvantage of the plaintiffs," indeed, the Act has already been implemented to the knowledge of the plaintiffs."*

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In paragraphs 5 - 14 of his counter-affidavit, the 4th defendant avers thus:-

"5) That paragraph 6 of the Plaintiffs' affidavit in support of their originating summons is not correct and in answer thereto the 4th Defendant avers that monies accruing to the Federation Account still include and continue to include monies realized from onshore and offshore exploration of crude oil in Nigeria.

H

6) *That paragraph 7 of the Plaintiffs' affidavit in support of their originating summons is admitted.*

7) *That paragraph 8 of the Plaintiffs' affidavit in Support is false; and in answer thereto the 4th Defendant contends that the Act abolishes the Onshore/offshore dichotomy that hitherto prevailed in computing revenue due to the oil Producing States under the principle of derivation as enshrined in the Constitution of the Federal Republic of Nigeria, 1999.*

8) *That in further answer to paragraph 8 of the Plaintiffs' affidavit in support the 4th Defendant contends that the Act will not impact negatively on the amount accruing to the Federation Account; all monies derived from oil and gas exploration and production both onshore and offshore are payable into the Federation Account before any payouts or deductions are effected thereto.*

9) *That still in answer to said paragraph 8 of the Plaintiffs' affidavit in support, the 4th Defendant contends that all revenues accruing to the Federation having first been paid into the Federation Account, payouts and deductions therefrom are made in accordance with law, and in accordance with the revenue allocation formula tabled before the President by the 10th Defendant who then presents same to the National Assembly for enactment into law.*

10) *That paragraph 9 of the Plaintiffs' affidavit in support is false and misleading; and in answer thereto the 4th Defendant contends that the implication of the Act is that natural resources including crude oil derived from the waters and subsoil contiguous to the coastline or seawards limits of inland waters of an oil producing littoral state and extending to the 200 meter water depth (isobaths) is deemed part of the state for the purpose of computing revenue accruing to that state under the principle of derivation.*

11) *That in further answer to paragraph 9 of the Plaintiffs' affidavit in support the 4th Defendant contends that ownership of all natural resources derived offshore are vested and continue to be vested in the Federal Government of Nigeria in accordance with all relevant laws.*

12) *That paragraph 10 of the Plaintiffs' affidavit in support is false and misleading; and in answer thereto the 4th defendant states that no part of the territorial waters of Nigeria is granted to the Defendants.*

Natural resources derived from the territorial waters contiguous to a littoral state are deemed to be derived from that state for purposes of computing revenue due to the state under the principle of derivation.

13) *That in answer to paragraph 11 of the Plaintiffs' affidavit in support, the 4th Defendant contends that the Plaintiffs will suffer no disadvantage occasioned by the implementation of the Act.* B

14) *That in further answer thereto the 4th Defendant contends that the Act is in accord with all relevant international and municipal legislation and conventions upon which the 4th Defendant shall rely at the hearing of this suit."* C

The 7th defendant avers in paragraphs 5 - 11 of his counter Affidavit

-
"5. *That the legislators from the Plaintiffs' States constitute the majority in the National Assembly.* D

6. *That I know as a fact that the Act in question was extensively debated before it was passed.*

7. *That the people in the Plaintiffs' States for whose benefit the Plaintiffs' share of the money in the Federation Account are meant, have through their representatives in the National Assembly participated in the enactment of the Act in question.* E

8. *That contrary to paragraph 9 of the Affidavit in Support, the Act in question has neither directly nor indirectly ceded any part of the shore coastline of Nigeria to the 7th Defendant.* F

9. *That contrary to paragraph 10 of the Affidavit in Support, the Act in question has not in anyway granted any part of the Territorial Waters of Nigeria to the 7th Defendant.*

10. *That the 7th Defendant played no role in the enactment of the Act in question.* G

11. *That I know as a fact that it is the 10th Defendant that has the power to implement the Act in question."*

While the 9th defendant avers in paragraphs 5 - 16 of his counter- Affidavit as follows:-

"5. *That the 9th Defendant admits paragraph 6 of the Plaintiffs affidavit in support of their Summons Filed on the 5th day of November,*

2004.

6. That further to the said paragraph 6 of the Plaintiffs Affidavit in support of their Originating Summons, the 9th Defendant states that it is a fact that any amount accruing to the Federation Account till date include all monies realized from the on-shore and off-shore exploitation of mineral resources by oil Companies operating in Nigeria.

7. That the depositions in paragraph 7 of the Plaintiff Affidavit in support of their Originating Summons Are admitted by the 9th Defendant as being correct.

8. That further to the said paragraph 7 of the Plaintiff Affidavit in support of the Originating Summons, the 9th Defendant swear that the promulgation of the Allocation of Revenue (Abolition of Dichotomy in the application of the principle of Derivation) Act, 2004 is consistent with the provisions of Sections 162(2) and 44(3) of the Constitution of the Federal Republic of Nigeria, 1999, and the Allocation of Revenue (Federation Account etc) Act Cap 16 Laws of the Federation of Nigeria, 1990 as amended by the Allocation of Revenue Federation Account etc. amended Act of 1992 (otherwise known as Decree No. 106 of 1992) which became applicable hitherto by virtue of the provisions of Sections 313 and 315 of the Constitution of the Federal Republic of Nigeria, 1999.

9. That paragraph 8 of the Plaintiffs affidavit in support of their Originating Summons is specifically denied as being false, baseless and deliberately misleading.

10. That further to the said paragraph 8 of the Plaintiffs Affidavit in support of their Originating Summons, the 9th Defendant states and avers that consistent with the provisions of Section 162(1) of the Constitution of the Federal Republic of Nigeria, 1999, all Revenues collected by the Government of the Federation except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria police charged with the responsibility for foreign affairs and the residents of the Federal Capital Territory, Abuja are paid into a special Account known as the "Federation Account."

11. That further to the foregoing paragraph, all accruals whether from on-shore or off-shore natural resources exploration are all p

aid into the said Federation Account.

12. That the 9th Defendant denies paragraph 9 of the Plaintiffs affidavit in Support of their Originating Summons and shall put the Plaintiffs at the hearing of this application to the strictest proof thereof.

13. That further to the said paragraph 9 of the Plaintiffs affidavit B in support of their Originating Summons, 9th Defendant states and avers as follows:

(a) That it is not correct that “The Allocation of Revenue (Abolition of Dichotomy in the application of the principle of Derivation) C Act, 2004 has by implication ceded part of the shore coastline of Nigeria to the 2nd to 9th Defendants.

(b) That the coastline of Nigeria has already been determined and established by international treaties entered into by Nigeria by virtue of D its membership as a sovereign state of the comity of nations.

(c) That the implication of the Act complained of by the Plaintiffs is that natural resources, including crude oil derived from the waters and sub soil contiguous to the coastline or seawards limits of inland waters of an oil producing State and extending to the 200 metre waters of an oil E producing state and extending to the 200 metre water depth (130 bath) is deemed part of the state for the purpose of computing revenue accruing to the state under the principle of derivation.

(d) That the further implication is that for the purposes of F application of the principle of derivation, it shall be immaterial whether the Revenue accruing to the Federation Account from a state is derived from natural resources located on-shore or off-shore.

(e) That the provisions of the Act are not limited to littoral states G alone but to all states within the Federation of Nigeria from which revenue is derived from their natural resources.

(f) That the act is in line with the principle of Natural Justice, equity and good conscience, sequel to the fact that the activities of natural resources exploration and exploitation negatively impact the socio- H economic activities of the affected surrounding states to the extent of totally destroying their ecosystem, economy and livelihood. Thus the act will help as intended by the law makers to repair some of the devastating

effect of natural resources exploration.

(g) That the said Act was promulgated, pursuant to the powers reposed in the president, the Revenue Mobilization Allocation and Fiscal Commission and the National Assembly as stipulated under Section 162(i)

B of the Constitution of the Federal Republic of Nigeria, 1999.

14. That 9th Defendant denies paragraph 10 of the Plaintiff affidavit in support of its Originating Summons and shall at the hearing of this application in Court put the Plaintiffs to the strictest proof thereof.

C (a) That further to the said paragraph 10 of the Plaintiffs Affidavit in support of their Originating Summons, the 9th Defendant states and avers that the territorial waters of Nigeria have already been determined and established by the Territorial Waters Act, Cap 428, Sea fisheries Act, Cap 404, and Exclusive Economic Zone Act Cap 110 which Acts gave D municipal effect to international treaties entered into by Nigeria by virtue of its membership as a sovereign state of the comity of nations.

15. That paragraph 11 of the Plaintiff affidavit in support of their Originating Summons is denied emphatically by the 9th Defendant and the E Plaintiffs are hereby put to the strictest proof thereof.

16. That the 9th Defendant in further reference to paragraph 11 of the Plaintiffs' Originating Summons states and avers as follows:

F (a) That it is not true that the Act, if implemented, will work to the disadvantage of the Plaintiffs.

(b) That the provisions of the Act in abolishing the dichotomy in the application of the principle of derivation is consistent with Section 162(1) of the Constitution of the Federal Republic of Nigeria which mentioned Natural Resources in the proviso.

G (c) That the provisions of the Act is consistent With the provisions of the Allocation of Revenue (Federation Account etc.) Act Cap 16, Laws of the Federation Account etc. Amendment Act of 1992 (otherwise known as Decree No. 106 of 1992) which also abolished the dichotomy in on- H shore revenue in the application of the principle of derivation in sharing the revenue in the Federation Account among the states that produce mineral resources.

(d) That the Allocation of Revenue (Federation Account Etc) that

Cap 16 Laws of the Federation of Nigeria, 1990 as amended by the Allocation of Revenue Federation Account etc. Amendment Act 1992 (otherwise known as Decree No. 106 of 1992) which also abolished the dichotomy in - on-shore and off-shore revenue in the application of the principle of derivation in sharing the revenue in the Federation Account among the sates that produce mineral resources.

(e) That the Allocation of Revenue (Federation Account etc) that Cap 16 Laws of the Federation of Nigeria, 1990 as amended by the Allocation of Revenue Federation Account etc Amendment Act of 1992 (otherwise known as Decree No. 106 of 1992) was applied in the sharing of revenue from the Federation Account among mineral resources producing state for many years until it was amended by the Allocation of Revenue Federation Account etc. Modification Order 2002 which introduced the dichotomy between on-shore and off-shore in the application of the principle of derivation in the sharing of revenue among the Natural resources producing states from the Federation Account.

(f) That one of the consequences of the promulgation of the Allocation of Revenue (Abolition of Dichotomy in the application of the principle of Derivation) Act, 2004 is the repeal of the application of the Revenue Federation Account etc. modification Order 2002 and its provisions.

(g) That under Section 44(3) of the 1999 Constitution, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall rest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

(h) That the provisions of 162(2) states that the president upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission shall table before the National Assembly proposals for Revenue Allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density.”

Now Order 3 rule 6(1) and (3) of the Supreme Court Rules 1985 (as amended) provides:-

B “6.(1) *In any proceedings where the Court has original jurisdiction, any party claiming any legal or equitable right and the determination of the question whether he is entitled to the right depending on the construction of the Constitution or of any other enactment may apply for the issue of an originating summons for the determination of such question of construction and for a declaration as to the right claimed and for any further or other relief.*

C (3) *The application shall be made in Form 2 in the First-Schedule to the Rules and shall be supported by such evidence as the Court may require.”*

D **The aim of an action being commenced by originating summons is to simplify and speed up procedure since it is envisaged that there is no serious dispute as to the facts in the case because what is in dispute is the construction of an enactment or instrument made under any law upon which the plaintiff is basing his right to a declaration or a claim in his favour. Where there is a serious dispute as to the facts then a writ of summons must be issued under Order 3 rule 3 of the Supreme Court Rules, which states -**

F “3. *The following proceedings must be begun by filing a statement of claim -*

(a) *proceedings in which the facts in issue are disputed or are likely to be disputed.*

G (b) *proceedings in which a claim made by the plaintiff is based on an allegation of fraud.”*

H The present case is based largely on the validity and effect of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, which, clearly, are not issues or facts in dispute as to warrant the filing of counter-affidavits by the 2nd, 4th, 7th and 9th defendants. The counter-affidavits not only contradict the averments in the plaintiffs’ affidavit but also offend the provisions of sections 86 and 87 of the Evidence Act, Cap. 112 to the effect that -

“86. Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information received which he believes to be true.

87. An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.” B

Therefore, a counter-affidavit is not intended to take the place of a statement of defence or a brief of argument as in this case. Where the conflicts in affidavit evidence are not material to a case or where the facts therein are inadmissible in evidence, the court should not be saddled with the responsibility of calling oral evidence to resolve the conflict. The need to call oral evidence would also not arise if the areas of conflict are so narrow and are not significant - see Falobi v Falobi. (1976) 9 -10 S.C. 1; Okupe v F.I.B.R. (1974) All NLR D 284; Garba v University of Maiduguri (1986) 1 N.W.L.R. (Part 18) 550 and L.S.D.P.C. v Adold/Stamm Int. Ltd. (1994) 7 N.W.L.R. (Part 358) 545 at p. 560 B-D. C

I, therefore, see no necessity in this case to call for oral evidence in order to resolve the conflict between the plaintiffs’ affidavit and the counter-affidavits of the 2nd, 4th, 7th and 9th defendants, respectively. E

PRELIMINARY OBJECTIONS

Next, notices of preliminary objections have been filed by the 5th and 9th defendants. The latter was rejected and discountenanced by the Court as it was filed late. In addition, preliminary objections were also raised in the briefs of argument of the 1st, 2nd, and 7th defendants. The 1st defendant objects to the plaintiffs action on the following grounds - G

- “(i) plaintiffs lack the locus standi to bring the action;*
- (ii) the plaintiffs are estopped to bring the action;*
- (iii) the plaintiffs have failed to disclose their cause of action; and*
- (iv) the action was improperly constituted.* H

The 2nd defendant objects to the action on the grounds that -

- “(i) the plaintiffs lack standing, and*
- (ii) the 10th defendant - the Revenue Mobilization Allocation and*

Fiscal Commission was wrongly joined contrary to section 232 of the Constitution of the Federal Republic of Nigeria, 1999, and

(iii) the plaintiffs are estopped from bringing the action since their representatives in the National Assembly participated in passing the Act being challenged by them.”

The objection by the 5th defendant in both the notice of preliminary objection, which he filed, and his brief of argument, is that the 10th defendant was wrongly joined in the action and as such the court lacked the jurisdiction to determine the suit as constituted.

The 7th defendant’s preliminary objection is based on the following grounds -

“(i) paragraphs 9, 10 and 11 of the plaintiffs’ affidavit in support of their originating summons offend against the provisions of section 87 D of the Evidence Act;

(ii) the plaintiffs lack the locus standi to institute this action; and

(iii) the action does not disclose any reasonable cause of action against the 7th defendant.”

As can be seen there is overlapping in some of the grounds for the preliminary objections raised. I intend to treat the objections by each defendant one after the other and where the point has been dealt with earlier I will so point out.

Learned counsel for the 1st defendant argues, in the 1st defendant’s brief of argument, as follows. The plaintiffs lack the necessary locus standi to institute the action. He refers to the case of *Owodunni v Celestial Church of Christ* (2000) 6 S.C. (Part III) 60 at p. 73 per Ogundare, J.S.C., to submit that in the determination of the question whether locus standi is disclosed or not only the statement of claim or in this case, the affidavit in support of the originating summons should be resorted to. He argues that only paragraphs 8-11 inclusive, of the affidavit in support of the plaintiffs’ originating summons, relate to their locus standi and the injury suffered or to be suffered by them, that purportedly give them the cause of action.

That the plaintiffs have failed in those paragraphs of the affidavit to disclose their civil rights and obligations have been affected by the 2004 Act in consonance with the requirements of section 6 (6) (d) of the 1999

Constitution. He contends that the paragraphs of the affidavit in question complain mainly about injury or loss to the Federal Republic of Nigeria and a collateral, remote or anticipatory loss (which is unsubstantiated) to the plaintiffs, along with the generality of Nigerians including all the defendants. He submits that the plaintiffs have not disclosed sufficient interest to clothe them with the necessary locus standi to institute the action against the defendants and cited in support of the contention the cases of- Oloriode v. Oyebi (1984) 1 SCNLR 390; Thomas v. Olufosoye (1986) 1 NWLR (Part 18) 669 and Adefulu v. Oyesile (1989) 5 NWLR (Part 122) 377.

The plaintiffs do not reply to this submission in their brief of argument. Be that as it may, **a person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed** - see Olagunju v Yahaya (1998) 3 NWLR (Part 542) 501, Ogbuehi v Gov. of Imo State (1995) 9 NWLR (Part 417) 53 at pp. 52 - 90 and Okafor v. Asoh (1999) 3 NWLR (Part 593) 35 at pp. 53 - 57. Under section 162 subsections (3), (4) and (5) of the 1999 Constitution, **the plaintiffs have the right and obligation to receive funds from or share in the Federation Account. Therefore, if any action is being taken or has been taken to affect their interest in the Federation Account, surely, the plaintiffs have the locus standi to sue. I think this is the short answer to the objection raised by the 1st defendant on standing.**

The next preliminary objection is that since the National Assembly consists of representatives from all the States of the Federation who passed the 2004 Act, the plaintiffs are estopped from challenging the validity of the Act. Nothing can be further from the truth. There is a fallacy in this argument. It is true that the members of the National Assembly have been elected to the Assembly as members but they cannot be described as members of all the States because each member, whether as a Senator or Representative, even as a representative of his state, was not elected by the whole of the State but a section of it, and though elected, might not have been given vote by all the electorates in his or her constituency. Such members might or could have opposed the passing of the 2004 Act,

in that case can their States be held responsible for the passing of the Act? The 1999 Constitution, in section 232(1) thereof, permits any State that has controversy or dispute with the Federal Government to institute an action in the Supreme Court, can the principle of estoppel apply to prevent such State from suing? It has to be remembered that estoppel is a subject under sections 151 - 154 of the Evidence Act, Cap. 112. If it indeed applied in this case, would it not be in conflict or inconsistent with section 232 (1) of the Constitution and therefore null and void to that extent by virtue of section 1 subsection (3) of the 1999 Constitution? In my opinion, the answers to all these questions are against the argument by the 1st defendant. I, therefore, hold that estoppel does not operate against the plaintiffs in bringing this action.

It is also argued that the plaintiffs have failed to depose, in their affidavit, to any matter in dispute between them and the 1st defendant since it is not alleged that the 1st defendant qua the Attorney-General of the Federation was the author of the 2004 Act, neither did he assent to it since he has no constitutional responsibility or power to do that. Consequently, it is submitted that the plaintiffs' suit discloses no cause of action.

I think this contention is oblivious of the provisions of section 20 of the Supreme Court Act, Cap. 424 which states -

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

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

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

Surely, when the President of the Federal Republic of Nigeria or the National Assembly acts, they do so on behalf of the Federation or the Federal Government. Section 318 of the 1999 Constitution defines "*Federation*" as the Federal Republic of Nigeria.

The foregoing disposes of the preliminary objection by the 1st

defendant, which has failed and is hereby dismissed.

The 2nd defendant raises the issues of locus standi, joinder of the 10th defendant and estoppel. I have already dealt with the issues of locus standi and estoppel, which are the same points as raised by the 1st defendant. With respect, there is no substance in them. With regard to the issue of misjoinder of the 10th defendant, this has been overtaken by events because learned counsel for the plaintiffs conceded in the course of his argument that the 10th defendant was wrongly joined. As a result, the 10th defendant was struck out from the suit in a ruling which we delivered on the 29th September, 2005.

It follows that all the points in the preliminary objection by the 2nd defendant have failed and they are hereby dismissed.

The only point raised by the 5th defendant in his preliminary objection relates to the misjoinder of the 10th defendant in the suit in view of the provisions of section 232 subsection (1) of the Constitution. As I have already treated the point above, I need not say anymore. The objection is overtaken by events and it is hereby dismissed.

There is finally, the preliminary objection by the 7th defendant. It is based on the following grounds. That paragraphs 9, 10 and 11 of the affidavit in support of the plaintiffs' originating summons offend against the provisions of section 87 of the Evidence Act. That the plaintiffs lack the locus standi to institute the action. That the action does not disclose any reasonable cause of action.

Arguing the first point, it is submitted that the depositions in the paragraphs of the affidavit in question have raised legal argument and conclusions contrary to the provisions of the Evidence Act and the decisions in the following cases - Jusien Holdings Ltd. Ors. v Lornamead Ltd. & Anor, (1995) 1 N.W.L.R. (Part 317) 254 at p. 255; Nigeria LNG Ltd. v African Development Insurance Co. Ltd. (1995) 8 N.W.L.R. (Part 416) 677 at p. 701; Governor of Lagos State v Ojukwu (1986) 1 N.W.L.R. (Part 18) 621 at p. 641 and Bamaiyi v State & Ors. (2001) 8 N.W.L.R. (Part 715) 270 at p. 289. We are being urged to strike out the depositions or in the alternative not to attach any weight thereto. It is true that the averments in paragraphs 9, 10 and

11 of the affidavit offend section 87 of the Evidence Act and should be struck out. I, therefore, hereby strike them out. However, I must point out that this objection, though successful, is in substance a mere technicality because it does not affect the validity of the originating summons since the remaining paragraphs of the affidavit in support of the summons are sufficient to sustain it.

Arguing the point on locus standi, it is contended that it is an established principle of constitutional law that before any party can invoke the judicial power entrenched in section 6 subsection (6) (b) of the 1999 Constitution, he must not only show that he has personal interest or has stake in the subject matter of dispute or outcome of the controversy or threatened injury, he must also establish that the asserted injury was the consequence of the defendant's conduct. In other words, there must be nexus between the plaintiffs action and the 7th defendant's conduct. The cases of *Thomas v Olufosoye & Ors.* (1986) 1 N.W.L.R. (Part 18) 669; *Adesanya v President of Nigeria*, (1981) 2 S.C.N.L.R. 358 and *Olawoyin v A-G Northern Nigeria*, (1961) 2 S.C.N.L.R. 5 were cited to buttress the contention. It is further argued that the Act being challenged was validly passed by the National Assembly and therefore for the plaintiffs to have locus standi they must establish that -

(a) the Act is valid,
(b) each of the plaintiffs must show that it has sustained or suffered or is in danger of sustaining some direct injury as a result of the enforcement of the Act;

(c) each plaintiff must show that by the resultant hardship or injury it stands to suffer by the enactment and operation of the Act is greater than that affecting the other non-littoral States not joined as parties to the suit, and

(d) the plaintiffs must establish that the injury they suffer is the consequence of the action by the 7th defendant.

It is canvassed that the representatives of the plaintiffs in the National Assembly took part in the debate which led to the enactment of the Act and that the affidavit in support of the originating summons has not disclosed what each plaintiff will suffer or that it has indeed suffered

greater hardship than the other non-littoral States that are not parties to the action.

Some aspects of the argument by the 7th defendant go to the merit of the action rather than the preliminary objection being raised. Suffice it to say that the issue of locus standi has been dealt with in the foregoing B while considering the same point as raised by the 1st defendant. Similarly, I see no merit whatsoever in the objection being raised here. Accordingly I reject it and hold that the plaintiffs have the standing to institute the case.

The final point of the objection is that the plaintiffs have failed to disclose any reasonable cause of action against the 7th defendant. It is argued that plaintiffs by the relief they are seeking claimed that the Act in dispute is ultra vires the defendants and therefore it is null and void. However, the affidavit in support of the originating summons has not disclosed the role displayed by the 7th defendant either in the enactment of the Act or in its implementation. It is submitted that no reasonable cause of action can therefore be sustained against the 7th defendant for the reliefs being sought by the plaintiffs.

I have already treated the points being raised here earlier on in this judgment when considering the same issue that was raised by the 1st defendant. Paragraph 8 of the affidavit in support of the originating summons has clearly shown the fear and complaint of the plaintiffs, which is that the Act in dispute if implemented “*will impact negatively on the amount that will accrue to the Federation Account and this will in turn reduce the shareable revenue due to the plaintiffs.*” The 7th defendant is, indeed, as a matter of judicial notice, one of the littoral States to which the Act refers. I therefore hold that the plaintiffs have disclosed sufficient cause of action against the 7th defendant.

On the whole, the preliminary objection by the 7th defendant has failed and it is hereby dismissed. This now clears the way for the substantive action to be considered.

CLAIM BY THE PLAINTIFFS

The plaintiffs, in their brief of argument, formulate three issues for the Court to determine. They read thus -

“ 1. Whether having regard to the provisions of sections 16 and

44(3) of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Territorial Water Act Cap. 248 Laws of the Federation 1990, the provisions of the Exclusive Economic Zone Act Cap 110, Laws of the Federation 1990, and binding International Convention to which Nigeria was a signatory, the 1st defendant did not act ultra vires its powers in making and implementing the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 under which the 1st Defendant purported to cede or give away or concede any part of the territorial waters or sea ward boundaries of Nigeria to the 2nd - 9th Defendants in anyway or manner or guise whatsoever.

(2) Whether having regard to the provisions of Sections 4, 6(6), 44(3), 162, 232, 235 and 315 of the Constitution of the Federal Republic of Nigeria 1999, the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act 2004 is not unconstitutional, ultra vires, null, void and of no effect whatsoever.

(3) Whether in view of the decision of this Honourable court in suit No. SC. 28/2001 A-G Federation vs A-G Abia State and 35 Ors. Delivered on 5th April, 2002 the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and without any effect.”

The 1st defendant raises only one issue for determination, which is -

“Having regard to the relevant provisions of the 1999 Constitution and existing laws, whether the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 is valid and subsisting.”

The 2nd defendant has formulated 2 issues for determination in his brief, which read -

“(i) Whether the plaintiffs’ action is competent, and
(ii) Whether the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, is inconsistent with the provisions of the Constitution, 1999.”

The 3rd defendant has not formulated any issue but adopts the issues

formulated by the plaintiffs. The 4th defendant, on the other hand, has formulated 2 issues in his brief of argument: They are:-

"i. Whether by virtue of the provisions of sections 4(2), 4(4), 44(3), 162(2) and paragraph 32(b) (Part 1 of the Third Schedule to the 1999 Constitution, the 1st Defendant possessed the vires to enact and implement *the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004.*

ii. Whether in view of the decision of this Honourable Court in Suit No. SC/28/2001 - A-G Federation v A-G Abia State and 35th Ors. delivered on 5th April, 2002, *the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, is a legislative judgment thereby making it unconstitutional null, void and without any effect.*"

The 5th defendant adopts the issues formulated by the plaintiffs. While the 7th defendant adopts the singular issue formulated by the 1st defendant.

Learned counsel for the plaintiffs argues, in the brief of argument, all the 3 issues formulated. He begins by general reference to the concept of federalism and public international law, as the point in controversy in the case impinges on the essence of federalism and the sovereignty of States on their territorial waters under international law. He argues that it is universally accepted that the federating units in a federal set up should enjoy absolute equality in all matters of resource and resource control. He contends that the same applies to the distribution of Federation Account or central purse. He submits that the acts of the defendants being complained about in the present case clearly negate the principles of equality of the component parts of the federating units as expounded by Prof. B. O. Nwabueze in his works - *The Presidential Constitution of Nigeria*, 1982 Edition, on pp. 37-51 and *Constitutional Democracy in Africa*, Volume 1, 2003 Edition, chapter 4 on pp. 93 - 98.

He contends that in order to resolve the plaintiffs' issue No. 1 the provisions of sections 16 and 44(3) of the 1999 Constitution, section 1 subsection (1) and section 3 of the Territorial Waters Act, Cap. 428, section 2 subsection (1) and section 6 of the Exclusive Economic Zone

Act, Cap. 110 together with those of the United Nations Convention on Law of the Sea, 1982; General Convention on the Territorial Sea and the Contiguous Zone, 1958 as well as the Vienna Convention of 1969 which became operational on 27th January, 1980, will have to be interpreted by the Court.

He argues that section 44 subsection (3) of the Constitution unequivocally vests in the Government of the Federation the entire property in and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria. Also in, or under or upon the territorial waters of Nigeria and the exclusive economic zone, with management power in such manner as prescribed by an Act of the National Assembly. He submits that section 1 subsection (3) of the Territorial Waters Act is intended to bring the definition of territorial waters of Nigeria in any enactment to correspond with the extension incorporated in section 1 subsection (1) of the Territorial Waters Act. He refers to the long title of the Exclusive Economic Zone Act, Cap. 116, sections 1 (1), 2(1) thereof and section 1 of the Allocation of Revenue (Abolishing of Dichotomy in the Application of Principle of Derivation) Act, 2004 (hereinafter referred to as the 2004 Act) and submits that the natural resources or minerals in the territorial waters of Nigeria and the Exclusive Economic Zone belong to the Federation of Nigeria and not to a constituent part thereof. A fortiori, he argues, revenue derived or derivable therefrom belongs to the Federation and is not subject to derivation principles.

He contends that the purport of section 1(1) of the 2004 Act, is to adjust the boundaries of the littoral States of Nigeria without complying with the prescriptions stipulated in section 8 subsection (2) of the 1999 Constitution. In that respect, he argues, the 2004 Act is liable to be struck down. He submits further, by citing the case of *A-G of the Federation v A-G of Abia State* (No. 2), (2002) 6 N.W.L.R. (Part 764) 542, that to the extent that the 2004 Act is intended to make the principles of derivation in respect of natural resources derived outside of the boundaries of the littoral States applicable, the 2004 Act is liable to be declared null and void. He canvassed that by its decision in the case of *A-G of the Federation v Abia State*, (supra) this Court determined the boundary of a littoral State to be

the low water mark along the coast and the seaward limits of inland waters. That the decision corresponds with the provisions of section 1 subsection (1) of the Territorial Waters Act.

Learned counsel contends that the right conferred or vested in the Federation by the Constitution, cannot be taken away or interfered with by any other legislation. He argues that such legislation is void for its inconsistency with the Constitution - *Adisa v Oyinwola*, (2000) 10 N.W.L.R. (Part 674) 116 at 2004. Therefore, the provisions of section 1 subsection (1) of the 2004 Act, is void for being inconsistent with the provisions of the Constitution; and for interfering with the rights conferred on the plaintiffs with regard to the 200 metre water depth isobaths contiguous to the 2nd to 9th defendants. He further argues that the said provisions of the 2004 Act are void by reason of their being inconsistent with section 8 subsection (2) and section 6 of the 1999 Constitution.

He submits further that it is now an accepted part of our jurisprudence that obligations under an international convention must be respected and that it is beyond the powers of a sovereign state like Nigeria to enact any law which derogates from its obligations under an international convention. He cites in support the case of *Abacha v Fawehinmi* (2000) 6 N.W.L.R. (Part 660) 228 at pp. 344 - 345.

He argues that Nigeria is a signatory to many conventions including the United Nations Convention on the Law of the Sea, 1982; the General Convention on the Territorial Sea; the Contiguous Zone, 1958 and the General Convention of the High Seas, 1958. He submits that the provisions of the 2004 Act have contravened the provisions of the aforesaid Conventions and therefore the 2004 Act is liable to be declared a nullity.

On issue No. 2, learned Senior Advocate, for the plaintiffs, refers to sections 4, 6(6), 16, 44(3), 162, 232 and 315 of the 1999 Constitution to submit that having shown that the 2004 Act is a nullity, this Court has the inherent power to declare the Act null and void and of no effect whatsoever. He relies, further, on his earlier argument on issue No. 1. He submits that once section 1 subsections (1) and (2) of the 2004 Act is struck down, the rest of the Act cannot stand on its own and therefore the whole of the Act would need to be struck down.

On issue No. 3, learned counsel has referred to the decision of this Court A-G of the Federation v A-G of Abia State and 35 Ors., (supra) to argue that it was held therein that there was a difference between internal waters and territorial waters, that territorial sea cannot belong to any indigenous community, as that will be contrary to both the common law and international law; that only the Federal Government, and not the littoral States can lawfully exercise legislative, executive and judicial powers over the territorial waters and the Exclusive Economic Zone; that “boundaries of the littoral States do not extend to the Exclusive Economic Zone or the continental shelf of Nigeria; that none of the littoral States has ownership over the natural resources situated off-shore even if oil right and or wells bear indigenous names, and that the littoral States are not entitled under the provisions of section 162 (2) of the 1999 Constitution to a special share in the revenue accruing to the Federation Account from natural resources derivable from the continental shelf of Nigeria. That the Court, it is argued, based its decision in the case on the interpretation of the Constitution, the Exclusive Economic Zone Act, and the various international conventions earlier mentioned. That all these legislations remained unrepealed up to the time when the 2004 Act was enacted. Therefore, it is submitted, it is beyond the powers of the National Assembly to purport to enact the 2004 Act and that we should declare section 1 of the 2004 Act a nullity.

Learned Senior Advocate, for the plaintiffs refers to the case of Adegbenro v Akintola, (1962) 1 All NLR (Reprint) 462, to submit that although the legislature possesses the vires to legislate post the judgment in order to render the continuous application of the decision ineffective, the situation here is different, because the National Assembly is yet to carry out the necessary repeal of all the legislations that impede the survival of the 2004 Act. The Court is urged, on this account, to hold that it is ultra vires the National Assembly to enact the 2004 Act and the 1st defendant to seek to implement its provisions.

Replying, learned Senior Advocate, for the 1st defendant states in the brief of argument that by virtue of section 12 of the 1999 Constitution any convention or treaty, to which Nigeria is a party does not become operative and binding unless it has gone through legislative procedure in the National

Assembly and becomes enacted as a municipal law. That no such treaty or convention is identified by the plaintiffs and nor have they adduced evidence to that effect. Therefore, it is submitted, on the authority of *Yoye v Olubode* (1974) 9 NSCC 409 at p. 412, that the plaintiffs' argument on the point goes to no issue as the argument is not based on the facts pleaded by them. He argues that there is nothing in the 2004 Act which can be interpreted as amounting to cession of part of Nigeria to the 2nd to 9th defendants. That if section 16 of the Constitution is read together with section 6 subsection (6) (c) thereof, it would be seen that the plaintiffs have no justiciable right to bring this action. C

Learned counsel contends that the 2004 Act does not purport to cede to any State or any part of Nigeria, minerals or non-minerals. That the word "*deem*" used in the 2004 Act has nothing to do with the word "cede" which the plaintiffs imported to interpret the Act. He argues further that there is no conflict whatsoever between the 2004 Act and the Territorial Waters Act, Cap. 428, (TWA) and the Exclusive Economic Zone Act, Cap. 116 (EEZA) since each Act was enacted for a purpose different from those of the others. That while the TWA exists to determine the limits of Nigeria's territorial waters, and the EEZA limits the exclusive economic zone of Nigeria, the 2004 Act provides a formula for the allocation of revenue accruing to the Federation Account as envisaged by section 162 subsection (2) of the 1999 Constitution. It is further argued that even if the 2004 Act is inconsistent with the earlier Acts, it is established principle of interpretation of statutes, that the 2004 Act being the later Act would be presumed to have repealed the earlier Acts because the National Assembly is presumed to be aware of all existing laws before enacting the later one. He cites in support the cases of *Kaduna State Governor v Kagoma* (1982) All N.L.R. 160 at 172; *Onyema v Oputa* (1987) 18 NSCC (Part 2) 900 at p. 909; *Attorney-General of Anambra State v Attorney-General of the Federation* (1993) NWLR (Part 302) 692 at p. 726 and *Flannagan v Shaw* (1920) 3 KB 97 at p.105. D E F G H

In the brief of argument of the 2nd defendant, learned Senior Advocate of Nigeria, for the 2nd defendant, argues in favour of the 2nd defendant's issue no. 1 and against the plaintiffs' issues nos. 1 and 2. He

contends that there is no principle of law which nullifies a statute on the ground that it is contrary to or inconsistent with an earlier statute enacted by the legislature. On the contrary, he argues, the later statute in point of time must be preferred to the earlier statute in the light of the inconsistency between them, on the authority of *Crownstar & Co. Ltd. v The Vessel MV B* *Vali* (2000) 1 N.W.L.R. (Part 639) 37 and *The A-G of the Federation v The A-G of Abia State* (No. 2), (2002) 6 N.W.L.R. (Part 764) 542. On the point made by the plaintiffs that the 2004 Act ceded part of Nigeria to the 2nd - 9th defendants, counsel argues that the 2nd - 9th defendants are part of the C *Federation of Nigeria* which is made up of 36 component states. Therefore, there is no separate territory known as Nigeria and territories separate therefrom that are known as States. Consequently it is submitted further that the 2004 Act does not offend the provisions of sections 16 and 44(3) D of the 1999 Constitution, as argued by the plaintiffs, but rather complements and fulfils the principle of economic and social justice under section 16. The Act, it is contended, has not also derogated from section 44(3) of the Constitution because there is nothing in any of its sections that gives E ownership in the property of or control of any minerals, mineral oil and natural gas to the 2nd - 9th defendants.

On the 3rd issue formulated by the plaintiffs, it is argued, by learned counsel for the 2nd defendant, that there is nothing in the laws of this F country which indicates that once a court made a decision on a particular subject matter, then the legislature is precluded from deliberating on other issues touching on the subject matter. It is submitted that the powers of the courts to pronounce on the status of an existing law do not foreclose the powers of the legislature, in pursuit of its function, as provided by G section 4 of the 1999 Constitution.

In his brief of argument the Attorney-General of Bayelsa State - 3rd defendant, contends that the crux of this case is whether the provisions of the 2004 Act apply to cession of territory. He submits that international H treaties or conventions to which Nigeria is a signatory do not come into force in Nigeria unless they have been made part of our municipal laws pursuant to section 12 subsection (1) of the 1999 Constitution. He contends that it is difficult to see how the provisions of sections 16 and

19 of the 1999 Constitution could be claimed to have been violated by the 2004 Act. He refers to the provisions of section 6 subsection (6) (c) of the Constitution and submits that the plaintiffs cannot sue on any violation of the provisions of sections 16 and 19 of the Constitution because the provisions are non-justiciable. With regard to the Territorial Waters Act B and the Exclusive Economic Zone Act, he contends that these are municipal laws with international complexion since they were enacted to give effect to treaties to which Nigeria was a signatory. He argues that the plaintiffs have not shown or demonstrated how the Acts have been violated by the 2004 Act, as claimed. On whether the 2004 Act has ceded C part of Nigeria to the 2nd - 9th defendants, he canvasses that the cession of a territory is an internationally recognized method of acquisition of territories and it involves the transfer of territory from one State to another, and this is accomplished by a treaty. He argues that this is not what has D happened in the present case because the 2nd - 9th defendants having been created by section 3 of the 1999 Constitution, have no independent, existence from Nigeria under the 1999 Constitution. He argues further that the 200 metre water depth isobath mentioned in the 2004 Act as deemed E to be part of the States contiguous to it, which is claimed by the plaintiffs to have been ceded, is an area within which the legislative and executive competence of the 2nd - 9th defendants does not extend. In other words, the 2nd - 9th defendants, he submits, cannot exercise de facto or de jure F authority over the area evinced by the 2004 Act and therefore the sovereignty of the 1st defendant over the said area remains unaffected along with its incidences.

Again, on the contention that the 2004 Act amounts to cessation of G the territorial waters or seaward boundaries of Nigeria to the 2nd-9th defendants, the learned Attorney-General states that under international law, the territory of the Federal Republic of Nigeria does not extend beyond its low water marks and that beyond those points international law merely H confers limited rights on Nigeria for certain purposes. He cites in support the case of *Savannah Bank v Ajilo* (1989) N.W.L.R. (Part 97) 305 which defines the word “*deem*” and *Attorney-General of the Federation v A-G of Abia State & 35 Ors.* (No. 2) (supra); (2002) Vol. 6 MJSC 1 at p. 33

F-G, pp. 36E - 37D.

On the point that the 2004 Act constitutes a legislative judgment, learned Attorney-General has referred to the case of *Lakanmi v A-G (West)*, (1970) NSCC Vol. 6, p. 143 and argues that an Act is a legislative judgment where it names a particular individual and adjudges him guilty of an offence or a wrong without recourse to the affected person's constitutionally guaranteed right to judicial trial. He submits that the 2004 Act, does not meet that requirement because it neither deprives identifiable persons or States or their property without recourse to judicial determination, nor contains express or implied provisions ousting the jurisdiction of the courts. He states that the 2004 Act merely extends the principle of derivation to the areas that it (the Act) evinces.

The 4th defendant refers to the long title of the 2004 Act, and the Explanatory Memorandum to the Act, to submit that the Act was enacted pursuant to and in conformity with section 162 subsection (2) of the 1999 Constitution. He argues that any revenue derived whatsoever accrues directly to the Federation Account and is subject to the derivation principle stated under the section 162 subsection (2). He cites the cases of *A-G of Abia State & 35 Ors. v A-G of the Federation* (2003) F.W.L.R. (Part 152) 131 at pp. 147 and 199 B-C; *A-G of the Federation v A-G of Abia State & 35 Ors.* (1983) NSCC (Vol. 14) 181 at p. 183 and 192; *Buhari v Obasanjo* (2003) 17 N.W.L.R. (Part 850) 587 at pp. 620 and 635 F-H and *Abacha v Fawehinmi* (2000) 6 N.W.L.R. (Part 660) 228 and submits that by virtue of the provisions of sections 4 (2), 4(4), 44(3), 162(2) and paragraph 32 (b) of Part 1 of the Third Schedule to the 1999 Constitution, the 1st defendant possesses the vires to enact and implement the 2004 Act.

On whether the 2004 Act is a legislative judgment, he refers to the cases of *A-G of the Federation v A-G of Abia State & 35 Ors.*, (supra); *Uwaifo v A-G of Bendel State* (1982) NSCC (Vol. 13) 221 at pp. 249 - 250; *A-G of the Federation v Guardian Newspapers* (2001) FWLR (Part 32) 37 at pp. 100 and 138 C-F and *Lakanmi & Anor v A-G (West)*, (supra) to submit that going by the dicta of this Court in the cases, the plaintiffs have misconceived the concept of legislative judgment. He contends that although the plaintiffs rely on the Territorial Waters Act, the Exclusive

Economic Zones Act and other provisions of international conventions, the Acts and the conventions are in fact not in conflict with the 2004 Act. He concludes by submitting that the 2004 Act, either by its wording or effect, is not a legislative judgment.

The 5th defendant argues in his brief of argument that it is misleading B for the plaintiffs to contend that section 1 of the 2004 Act is designed to undermine, directly or by implication, the provisions of section 44 (3) of the 1999 Constitution, section 1 of the Territorial Waters Act, and section 1 of the Exclusive Economic Zone Act. He canvasses that section 44 of the Constitution is mainly concerned with making provisions to protect the C fundamental right of individuals to property with regard to compulsory acquisition of movable or immovable properties as stated in subsections (1) and (2) thereof. That the purpose of subsection (3) thereof is to exclude D minerals, mineral oils and natural gas from the notion of such fundamental right, so that no individual can lay claim to those natural resources. That with regard to the plaintiffs' argument that the 2004 Act in section 1 E thereof adjusts the boundaries of 2nd - 9th defendants without complying with section 8 subsection (2) of the 1999 Constitution, there is no such adjustment of boundaries because section 1 of the 2004 Act merely refers to 200 metres depth isobath contiguous to the sea but makes no mention of any measurement width-wise to entail any extension of the boundaries that are seaward. To buttress the point, A-G of the Federation v A-G of F Abia State, (No. 2) (supra) at pp. 644 and 646, per Ogundare, JSC, is cited.

Learned Attorney-General, argues that the decision by the 1st defendant to abolish dichotomy in the application of the principle of derivation, for the purpose of allocation of revenue accruing to the Federation Account under the Constitution, is political. Therefore, the G plaintiffs' case raises a political question, which is not justiciable, per A-G of Eastern Nigeria v A-G of the Federation (1964) All N.L.R. 21 8 at p. 226; A-G of Anambra State v Okafor (1992) 2 NWLR (Part 224) 396 at p. 430E-F; Coleman v Miller 307 US 433 and Baker v Carr 369 US H 186(1962).

The 7th defendant contends that it is beyond dispute that the National Assembly has, pursuant to section 4 subsection (2) of the 1999 Constitu-

tion, the power to make laws for the peace, order and good government of the Federation of Nigeria or any part thereof in respect of any subject under the Exclusive Legislative List in the Second Schedule to the Constitution. That it is in exercise of this power together with the power
B given to the National Assembly under section 162 subsection (3) of the Constitution, that it enacted the 2004 Act. He submits that the Act, being merely a fiscal enactment, has not ceded or annexed to the 2nd - 9th defendants the area specified in the Act; hence compliance with section 8
C of the Constitution does not arise.

The defendant states that on the issue of legislative judgment the plaintiffs merely adverted to the decision in A-G of the Federation v. A-G of Abia State (No. 2), (supra) and failed to advance any argument in support of the point. He argues, in the alternative, that on the authority of
D Lakanmi's case (supra) and Uwaifo v A-G of Bendel State, (supra) the 2004 Act does not have the attributes of a legislative judgment.

Now the 2004 Act, which consists of only two sections, reads as follows:-

E "1. (1) *As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purposes of computing the Revenue accruing to the Federation Account from the State pursuant to*
F *the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.*

(2) *Accordingly, for the purposes of the application of the Principle of Derivation, it shall be immaterial whether the revenue accruing to the Federation Account from a State is derived from natural resources located*
G *onshore or offshore.*

2. *This Act may be cited as the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004."*

H **A careful reading of section 1 subsection (1) of the Act shows that the extension deemed to have been given to the seaward boundary of the littoral States is specifically for the "purposes of computing the revenue accruing to the Federation Account from the"**

littoral States and nothing else. The boundary is to be “deemed” to be “the two hundred metre water depth Isobath contiguous” to the littoral States. It is clear, therefore, that the extension given to the littoral States’ seaward boundary is neither real since it is to be “deemed” nor is it for any other purpose than for calculating the revenue which accrues to the littoral States to the Federation Account.

Subsection (2) of the Section further provides that in the application of the principle of derivation of revenue, it is immaterial whether the revenue accruing to the Federation Account from a littoral State is derived from the natural resources located either on-shore or off-shore the littoral State. The plaintiffs have argued that the effect of the 2004 Act is that it has extended the boundaries of the littoral States (2nd - 9th defendants) contrary to section 8 of the 1999 Constitution. This, with respect is not a correct interpretation of the provisions of the Act, because the Act specifically states that the extension is only to be deemed, in other words it is not real but notional, and it is specifically intended for the purpose of computing the revenue which accrues to the Federation Account from the littoral States. This Court had the opportunity in the case of A-G of the Federation v A-G of Abia State & 35 Ors. (No. 2), (supra) to determine the actual boundary of the littoral States by virtue of section 3 of the 1999 Constitution and to explain the implication of the 200 metre water depth Isobath contiguous to Nigeria with reference to the United Nations Convention on the Law of the Sea, 1982. On pp. 728H - 729C thereof I observed as follows:-

“Perhaps I need to explain here that ‘Coastal State’ in the Convention means Nation State and not internal State of a country like the littoral States in the present case. In a Federation, it applies to the Federation and not the constituent or federating States that comprise the Federation. This is necessarily so, because international law applies to countries that are members of the comity of Nations The 36 constituents States of Nigeria are not members of the comity of Nations and so the provisions of interna-

tional law in a Convention do not directly apply to them but the Federation.”

And on p. 731B - C thereof I continued thus:-

“From the foregoing the provisions of the Conventions which enable the Federation of Nigeria to enact laws such as the Territorial Waters Act, Cap. 428, the Sea Fisheries Act, Cap. 404 and the Exclusive Economic Zone Act, Cap. 116 can be seen. What the Federation has over the territorial waters and air space is the power to exercise sovereignty over the territorial waters and air space and not that they constitute extension of the boundary of Nigeria or indeed the littoral States.”

It follows that the argument by the plaintiffs that the effect of the 2004 Act is to extend the seaward boundaries of the littoral States in contravention of section 8 of the 1999 Constitution cannot, with respect, be correct.

Section 16 of the Constitution deals with the economic objectives of Nigeria under the Fundamental Objectives and Directive Principles of State Policy. It provides in subsection (1) (a) thereof as follows:-

“16. (1) The State, shall, within the context of the ideals and objectives for which provisions are made in this Constitution -

(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy.”

I am unable to see the connection between these provisions and those of the 2004 Act, because the latter is not concerned with the harnessing of resources of the nation or promoting national prosperity or promoting efficient, dynamic and self-reliant economy but the computation of revenue that accrues to States from the Federation Account. Therefore, it cannot validly be argued that the 2004 Act is in conflict with the provisions of section 16 of the Constitution. Even if it were, such act is not justiciable by virtue of the provisions of section 6 subsection (6) (c) of the 1999 Constitution, which provides:-

“6.(6) The judicial powers vested in accordance with the foregoing provisions of this section -

(c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;”

B

Section 44 subsection (3) of the Constitution provides -

“44.(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federal Republic and shall be managed in such manner as may be prescribed by the National Assembly.”

C

Again while the 2004 Act is concerned with the computation of revenue accruing to the Federation Account and notional extension of the States boundaries, the foregoing provision is about the ownership, control and management of natural resources by the Government of the Federation. Here too since the objects are at variance I see no conflict between the Act and section 44(3) of the Constitution.

D

Sections 1 and 3 subsection (1) of the TWA provide:-

“1.(1) The territorial waters of Nigeria shall for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.

F

(2) Without prejudice to the generality of the foregoing subsection, that subsection shall in particular apply for the purposes of any power of the Federal Government to make, with respect to any matter, laws applying to or to any part of the territorial waters of Nigeria.

G

(3) Accordingly -

(a) in the definition of territorial waters contained in section 18(1) of the Interpretation Act 1964, for the words “twelve nautical miles” there shall be substituted the words “thirty nautical miles”; and

H

(b) references to territorial waters or to the territorial waters of Nigeria in all other existing Federal enactments (and

in particular the sea Fisheries Act) shall be construed accordingly.

(4) *In subsection (3) of this section, existing “Federal enactment” means*

(a) *any Act of the National Assembly passed or made before the commencement of this Act or 26th August 1971 (which is the date of commencement of the amendment to this Act) including any instrument made before 1st October 1960 in so far as it has effect as an Act; or*

(b) *any order, rules, regulations, rules of court or by the law made before the commencement of this Act or 26th August 1971 aforesaid in exercise of powers conferred by any such Act or instrument.*

(5) *Nothing in this section shall be construed as altering the extent of or the area covered by any lease, licence, right or permit granted under any enactment or instrument before the commencement of this Act or 26th August 1971 (which is the date of commencement of the amendment to this Act).*

3. (1) *Subject to the provisions of this section, a Nigerian court shall not try a person who is not a citizen of Nigeria for any offence committed on the open sea within the territorial waters of Nigeria unless before the trial the Attorney-General of the Federation has issued a certificate signifying his consent to the trial of that person for that offence.”*

I fail to see any connection or conflict between these provisions and those of the 2004 Act. For each deals with a different subject.

Section 2 subsection (1) and section 6 of the EEZA provide as follows -

“2.(1) *Without prejudice to the Territorial Waters Act, the Petroleum Act or the Sea Fisheries Act, sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the sea bed, subsoil and superjacent waters of the Exclusive Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercisable by the Federal Government or by such Minister or agency as the government may from time to time designate in that behalf ‘either generally or in any special case.*

6. *In this Act, unless the context otherwise requires -*

“the appropriate authority” means the Federal Government or any

other person or authority designated in that behalf by the Federal Government by virtue of section 2 of this Act;

“designated area” has the meaning assigned thereto by section 3(4) of this Act;

“the Exclusive Zone” means the Exclusive Economic Zone of Nigeria as delimited by Section 1 of this Act;

“territorial waters of Nigeria” has the meaning assigned thereto by the Territorial Waters Act.”

Section 2 subsection (1) hereof is concerned with the exploration and exploitation by the Federal Government of the natural resources in the territorial waters of Nigeria which vest in the Federal Government. Section 6 simply defines phrases as used in the EEZA. I, see no conflict whatsoever between these provisions and those of the 2004 Act.

With regard to the purported conflict between the 2004 Act and the various international conventions mentioned by the plaintiffs, namely, United Nations Convention on the Law of the Sea, 1982, the General Convention on the Territorial Sea, the Contiguous Zone, 1958 and the General Convention of the High Seas, 1958; learned Senior Advocate for the plaintiffs has not shown specifically in his argument, in their brief, how the alleged conflict comes about. With respect, it is not, therefore, easy for us nor is it our duty to suo motu fish out what the conflict is.

On the whole the plaintiffs’ issue no. 1 has failed and I answer it in the negative.

Next the plaintiffs raise the issue whether by virtue of sections 4, 6(6), 44(3), 162, 232, 235 and 315 of the Constitution, the 2004 Act is not unconstitutional, ultra vires, void and of no effect.

Section 4 of the Constitution deals with the legislative powers of the National Assembly, section 6 subsection (6) quoted in part above, deals with the extent of the judicial powers vested in the courts established by the Constitution; section 162 deals with the Federation Account; section 232 deals with the original jurisdiction of this Court; section 235 provides for the finality of the decision of the Court and section 315 relates to existing laws. Learned counsel

for the plaintiffs relies on his argument in respect of issue no. 1 above and submits that having shown that the 2004 Act is a nullity, this Court has the inherent power to declare it null and void and of effect whatsoever. He also submits that once the Section 1 (2) and B (3) of the Act is struck down the rest of the Act cannot stand on its own and should also be struck down. With respect, the whole of this argument is based on the premise that issue no. 1 is answered in the affirmative, but as foreseen the contrary is the case. Therefore, C issue no. 2 has no base upon which it could stand. The simple answer to the issue is that it has failed and therefore it must be answered in the affirmative because it is couched in the negative. In other words, the 2004 Act is constitutional intra vires and not null and void and not of no effect whatsoever.

D On whether the 2004 Act is a legislative judgment learned counsel for the plaintiffs argues that the effect of the 2004 Act is to reverse the decision of this Court in A-G of the Federation v A-G of Abia State and 35 Ors. (No. 2), (supra) and that for the National Assembly to act intra E vires in enacting the 2004 Act, it would have to repeal the TWA, the EEZA and the various international conventions that apply to the territorial waters of Nigeria.

Now by section 162 subsection (3) of the 1999 Constitution -

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

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

H It is clear, by virtue of these provisions, that the National Assembly has absolute power under the 1999 Constitution to enact a legislation or a statute that deals with the manner in which revenue accruing to the Federation Account is to be distributed amongst the beneficiaries. The power is not limited since it is to be exercised by the National Assembly in such terms and manner as it may prescribe

except as provided in the proviso to subsection 2 of section 162 of the Constitution. The subsection reads-

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

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

On whether the 2004 Act is a legislative judgment, I accept the argument by the defendants’ counsel, that based on the decisions of this Court in the following cases - Lakanmi & Anor. v A-G (West), (supra); Uwaifo v A-G of Bendel State (supra) and A-G of the Federation v Guardian Newspapers, (supra) - the 2004 Act is not a legislative judgment because it has not in any way usurped the function of the court or the judiciary.

Issue no. 3 therefore fails and I answer it in the negative by holding that the 2004 Act is not a legislative judgment and as such it is not null and void or without effect.

Finally, the plaintiffs’ action, as a whole, fails in its entirety and it is hereby dismissed with no order as to costs.

KUTIGIJSC

The Plaintiffs by Originating Summons sought for the determination of the following questions:-

“ 1. Whether having regard to the provisions of Section 44 of the Constitution of the Federal Republic of Nigeria 1999 the provisions of the Territorial Water Act Cap 428 Laws of the Federation 1990, the provisions of the Exclusive Economic Zone Act Cap 110 Laws of the Federation 1990

and binding international conventions to which Nigeria is a signatory, the defendants could validly cede or give away or concede any part of the sea ward boundaries of Nigeria to the 2nd - 8th defendants in any manner whatsoever.

B 2. *Whether in view of the provisions of sections 16 and 44(3) of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Territorial Waters Act Cap 428 LFN 1990, and the Exclusive Economic Zone Act Cap 110 LFN 1990 at was not ultra vires the powers of the 1st Defendant to make and implement the Allocation of Revenue*
C *(Abolition of Dichotomy in the Application of Derivation) Act 2004.*

3. *Whether having regard to the provisions of Sections 4, 16, 44(3). 162 and 315 of the Constitution of the Federal Republic of Nigeria 1999 the Allocation of Revenue (Abolition of Dichotomy in the Application of*
D *Derivation) Act of 2004 is not unconstitutional, ultra vires and null and void.*

4. *Whether in view of the provisions of the sections 6(6), 232 and 235 of the Constitution of the Federal Republic of Nigeria 1999 the*
E *Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and of no effect whatsoever.*

5. *Whether in view of the decision of this Honourable Court in suit*
F *No. SC.28/2001 Attorney-General of the Federation Vs the Attorney-General of Abia State and 35 others Delivered on 5th April, 2002 the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby Making it unconstitutional, null, void and Without any effect.”*

G They also claimed to be entitled to the following reliefs jointly and severally against the Defendants:-

“ 1. *Declaration that the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is*
H *unconstitutional, Ultra vires the defendants and therefore null and void.*

2. *Declaration that the 1st and 10th Defendants are without Constitutional powers to rely on the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 for*

the purposes of allocation of revenue to the states and local governments from the Federation Account.

3. *Order directing the defendants to forthwith stop the implementation and reliance on the said Allocation Of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.* B

4. *Injunction restraining the 2nd - 9th defendants by themselves, their agents, or any other person or persons deriving authority through them from taking benefit from, insisting on or in any other manner seek to take advantage from or under or in the said Allocation of the Principle of Derivation) Act 2004.* C

5. *Injunction restraining the 1st and 10th defendants by themselves, their agents, servants, privies or any other person or body deriving authority from or through them from implementing, giving effect to or in any other manner enforce the provisions of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.* D

6. *Order setting aside, annulling and make void the said Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.* E

7. *Any other relief or other reliefs as the Honourable Court may find the plaintiff entitled to in law and equity."*

The Originating Summons was supported by an affidavit of twelve F (12) paragraphs only. It is clear to me that only paragraphs 8-11 (inclusive) appear to be of any relevance in the suit even though they failed to disclose" or demonstrate sufficiently and effectively how their civil rights and obligations have been affected by the 2004 Act.

For the sake of clarity, the twelve (12) paragraphs Plaintiffs' G supporting affidavit read thus:-

"1. *That I am a Legal practitioner in the Law Firm of Yusuf O. Ali Esq; SAN and by virtue of my position I am very familiar with the facts of this case and I have the authority of all the plaintiffs to swear to this* H *oath.*

2. *That I was present when the plaintiffs briefed my principal Yusuf O. Ali Esq; SAN on this matter.*

3. *That I know as a fact that the 1st defendant is the Chief Law Officer of the Federation and he is sued to represent the Federal Government in this suit.*

B 4. *That I know as a fact that the 2nd - 9th defendants are the Chief Law Officers of their respective States and they are sued to represent their respective states.*

C 5. *That I know as a fact that the 10th defendant is a creation of the Constitution of the Federal Republic of Nigerian 1999 whose duties include the distribution of revenue from the Federation account to all the tiers of Government as stipulated by law.*

6. *That I know as a fact that hitherto, the amount accruing to the Federation account included monies realized from the on-shore and off-shore exploration of crude oil by oil companies operating in Nigeria.*

D 7. *That I know as a fact that the President of the Federal Public of Nigeria presented a bill to the National Assembly titled “An Act to Abolish the Dichotomy in the Application of the Principle of Derivation for the Purpose of Allocation of Revenue Accruing to the Federation Account and for Matters Connected Therewith 2004” to the National Assembly which passed same and the President had since accented to it and it is now “The Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.” (hereinafter referred to as the Act).*

F 8. *That I know as a fact from the briefing given to my principal by the plaintiffs that the Act once implemented will impact negatively on the amount that will accrue to Federation Account and this will in turn reduce the shareable revenue due to the plaintiffs.*

G 9. *That I know as a fact that the said Act has by implication ceded part of the shore coastline of Nigeria to the 2nd - 9th defendants.*

H 10. *That I know as a fact that the Act also has the effect of granting part of the territorial waters of Nigeria to the 2nd - 9th defendants to the disadvantage of the plaintiffs.*

11. *That I know as a fact that the Act as it is if implemented will work to the disadvantage of the plaintiffs.*

12. *That I swear to this oath in good faith, conscientiously believing*

same to be true and correct and in accordance with the provisions of Oaths Act.”

There is clearly no indication of how much money accrued to the Federation Account before the Act was passed and how much the amount will be if the Act is implemented. Consequently there is no averment of how the shareable revenue due to each of the Plaintiffs will impact negatively on each of “them. There is equally no indication of how much of the shore coastline of Nigeria and part of the territorial waters of Nigeria have been ceded and or granted to the 2nd to 9th Defendants. Cumulatively therefore the Plaintiffs have not shown in my view how the 2004 Act if implemented will work to their disadvantage. These matters cannot be assumed. More facts and or details are required. Paragraphs 8 -11 inclusive are therefore in my view vague. They must be struck out for want of particulars and I so strike them out. It is not enough for a Plaintiff to merely state that an Act is illegal or unconstitutional without showing how his civil rights and obligations are breached or threatened (see for example ATTORNEY-GENERAL BENDEL STATE VS ATTORNEY-GENERAL OF FEDERATION (1981) 12 NSCC 314, ADEFULU VS OYESILE (1989) 5 NWLR (PT.122) 377, THOMAS VS OLUFOSOYE (1986) 1 NWLR (PT.180) 669, LAKANNI VS ADENE (2003) 10 NWLR (PT.828) 353).

Added to this is the fact that both the 1st and 7th Defendants contended before us that paragraphs 8-11 of the supporting affidavit are essentially arguments and conclusions and therefore offend the provisions of sections 86 and 87 of the Evidence Act which read thus -

“86. Every affidavit used in Court shall contain only a statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from information received which he believes to be true.

87. An affidavit shall not contain extra matter by way of objection, or prayer, or legal argument or conclusion.”

I think both Counsel are right. The offending paragraphs no doubt ought to be struck out being incompetent. The consequence clearly is that the bottom has been knocked out of the Plaintiffs’ case

Having thus struck out for want of competence paragraphs 8-11 of

the supporting affidavit, there is nothing left in the affidavit to support the Plaintiffs' suit. The court does not manufacture evidence. The court acts on evidence adduced by the parties. The Plaintiffs having failed to adduce evidence or sufficient evidence in support of their case, must have their case dismissed straight away. But before I do so I wish to set out the 2004 Act itself on which the Plaintiffs' suit is founded or based. The Act reads-

"1.(1) As from the commencement of this Act, the two hundred metres depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purposes of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999 or any other enactment.

(2) Accordingly, for the purposes of the Principle of derivation, it shall be immaterial whether the revenue accruing to the Federation Account from a State is derived from natural resources located onshore or offshore.

2. This Act may be cited as the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004."

A careful reading of the Act above, clearly reveals that no part of the shore coastline of Nigeria nor any part of the territorial waters of Nigeria, has been ceded and or granted as the case may be, to the 2nd to 9th Defendants individually or collectively. It is equally clear to me that the Act does not have the attributes of a legislative judgment as nobody has been adjudged guilty of any wrong doing without recourse to a court of law (See for example LAKANNI VS ATTORNEY-GENERAL (WEST) (1970) NSCC VOL. 6 PAGE 143; UWAIFO VS ATTORNEY-GENERAL OF BENDEL STATE (1982) NSCC VOL. 13 PAGE 221).

Now, by section 162 of the 1999 Constitution, the National Assembly has the power to enact a law that deals with the manner in which revenue accruing to the Federation Account is to be shared amongst the beneficiaries. That is what has happened here. The Act is therefore competent.

It is doubtless that this action seeks to challenge the validity and

effect of the 2004 Act. But the Plaintiffs had chosen to go about it in the wrong way. They read the Act in their own way. They gave the Act their own meaning and or interpretation. They then sought to actualize their “warped” understanding of the Act by going to Court. Unfortunately, the Plaintiffs have not asked this court for any interpretation of the relevant provisions of the Constitution, or of the 2004 Act itself. They thereby committed a blunder!

It is for the reasons stated above and the fuller and more detailed reasons contained in the lead judgment of my learned brother the Hon. the Chief Justice of Nigeria which I had the privilege of reading before now, that I also agree to dismiss the Plaintiffs’ suit and or claims in their entirety. The suit dismissed as lacking in merit. I also make no order as to costs.

EJIWUNMIJSC

I have had the privilege of reading in advance the draft of the judgment just delivered by my learned brother, Uwais, the Chief Justice of Nigeria but I need to add a few words of my own. By an originating Summons taken out on behalf of all the plaintiffs by Yusuf O. Ali, SAN, the plaintiffs are seeking, for the determination of the following, questions:

“(1) Whether having regard to the provisions of section 44 (3) of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Territorial Water Act Cap 428 Laws of the federation 1990, the provisions of the Exclusive Economic/one Act Cap 110 laws of the Federation 1990 and binding international conventions to which Nigeria is a signatory, the defendants could validly cede or give away or concede any part of the sea ward boundaries of Nigeria to the 2nd 8th defendants in any manner whatsoever.

(2) Whether in view of the provisions of sections 16 and 44 (3) of the constitution of the federal Republic of Nigeria 1999, the provisions of the Territorial Waters Act Cap 428 Laws of the Federation 1990 it was not ultra vires the powers of the 1st defendant to make and implement the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004.

(3) *Whether having regard to the provisions of sections 4, 16. 44(3). 162 and 315 of the Constitution of the Federal Republic of Nigeria 1999, the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act of 2004 is not unconstitutional, ultra vires null and void.*

(4) *whether in view of the provisions of sections 6(6), 232 and 235 Of the Constitution of the Federal Republic of Nigeria 1999, the allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not unconstitutional, null, void and of no effect whatsoever.*

(5) *Whether in view of the decision of this Honourable Court in Suit No. SC/28/2001 - Attorney-General of the Federation v. The Attorney-General, of Abia State and 35 Ors delivered on 5th April 2002 the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and without any effect”.*

The plaintiffs thereon then sought the following from the defendant E jointly and severally, the following reliefs:-

“(1) *Declaration that the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 200-4 is unconstitutional, ultra vires the defendants and therefore void.*

(2) *Declaration that the 1st and 10th defendants are without Constitutional powers to rely on the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 for the purposes of allocation of revenue to the States and Local Governments from the Federation Account.*

(3) *Order directing the defendants to stop the implementation and reliance on the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.*

(4) *Injunction restraining the 2nd-9th defendants by themselves, their H agents, or any other person or persons deriving authority through them from taking benefit from, insisting on or in the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.*

(5) Injunction restraining the 1st and 10th defendants by themselves, their agents. Servants, privies or any other person or body deriving them from implementing, giving effect to or in any other manner enforce the provisions of the Allocation of Revenue (.Abolition of Dichotomy in the Application of Derivation) Act 2004."

In support of the said originating Summons, a 12-paragraph affidavit was sworn to by one Sikiru Adeposi Oke, a legal practitioner in the chambers of Yusuf O. Ali, SAN, the learned counsel for the plaintiffs. Following the service of the originating Summons on the defendants, appearances were duly entered. However, as some of the defendants did not file their briefs of argument as ordered by the Court, the trial was heard on the briefs filed by the plaintiffs, the 1st, 2nd, 3rd, 4th, 5th and 7th defendants. In the briefs so filed, some of the defendants raised preliminary objections against certain aspects of the action as instituted by the plaintiffs. As the Court felt that one of the preliminary objections is obviously meritorious, the Court dealt with that objection in the fact of the Court. This objection was with regard to whether the 10th defendant namely. The Revenue Mobilization Allocation and fiscal Commission was properly joined as a party to this action.

I think it is pertinent to note, howbeit briefly, that the fact that this action was commenced by the plaintiffs by the taking of originating summons against the defendants to obtain the reliefs sought from them cannot for that reason alone be considered as inimical to the success of the action. I say this because having regard to their claim and the affidavit sworn to by the plaintiffs and the defendants, it is in my view plain that the sole issue for determination is the validity and effect of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004. Now, as affidavits and counter affidavits have been filed by the parties to this action, it is settled law that the parties in such circumstances should have had such evidence as would enable the Court to resolve the conflicts raised by the conflicting affidavits. However, where the areas of conflict are not as would affect significantly the claim before the Court, it would not be necessary to call for oral evidence by the parties. See *Okupe v. F.I.B.R. (1974) AM. N.L.R. 284*; *Falobi. v. Falobi*

(1976) 9-10 S.C. 1; Garba v. University of Maiduguri (1986) 1 N.W.L.R. (pt.18) 550 and In the Matter of the Constitution of the Federation In the Matter of an Application Under Section 117(4) (A) In Re G. M.. Bayo 1970 ALL. Nigeria Law Report 114.

B It follows from all that I have been saying above that it is my view that it is not necessary to direct that oral evidence be taken. It is clear as I have said above that what is in issue in this action is whether there has been an infraction of the Constitution by reason of the enactment of the Allocation of Revenue (Abolition of Dichotomy in the Application of
C Derivation) Act 2004.

The grounds of the preliminary objection are:

- (i) That the plaintiffs lack locus standi to prosecute the action
- (ii) estoppel
- D (iii) Non-disclosure of cause of action
- (iv) Improper constitution of the action

It is on the fourth ground where the 1st defendant contends that the action was improperly constituted that this Court dealt with at the hearing.
E In respect of this ground of objection, the argument of counsel was upheld as the 10th defendant was improperly joined in the suit. What now remains to be considered in respect of the grounds of objection relate to (i) whether the plaintiffs had locus standi, or (ii) are bound by estoppel and (iii) whether
F the action disclosed a cause of action.

I will deal with these grounds seriatim. On the first ground, it is the contention of the 1st defendant that the plaintiffs lacked the locus standi to institute the action. In support of this contention, he referred to the dictum of Ogundare JSC in Owodunni v. Celestial Church of Christ (2000)
G 8 S.C. (pt.1 11) 60 at 73. Learned Senior Counsel for the plaintiffs further argued that of all the paragraphs of the affidavit sworn to in support of the originating summons, only paragraphs 8, 9, 10 and 11 thereof relate to the action as it disclosed the injury suffered or to be suffered by them via the
H enactment of the Act. But, though the 1st defendant conceded that much, learned Senior Counsel went on to contend that the plaintiffs failed in those paragraphs disclosed sufficient interest to them with the necessary locus standi to institute the action against the defendants. For this submission,

he cited the following cases: - Adefulu v. Oyesile (1989) 5 NWLR (pt.22) 377; Thomas v. Olufusoye (1986) 1 NWLR (pt.18) 669; Oloriode v. Oyebi (1984) 1 SCNLR 390 and also to Olawoyin v. Attorney-General of Nigeria (1981) 2 NCLR 5 for the proposition that in determining the existence or non-existence of locus standi, the “*interest*” and “*injury*” test had always been applied, particularly when a plaintiff challenges the validity of an enactment. See also Adeghenro v. Attorney General (1962) 1 ALL N.L.R. 401 at 437; Lakanmi v. Adene (2003). However, though the plaintiffs did not react in any of their briefs to the above contention of the 1st defendant that they lacked the locus standi to institute this action, I will for the purposes of this judgment consider the contention of the 1st defendant. Abraham Adesanya v. President of the Federal Republic of Nigeria (1981) 5 S.C. 112.

The plaintiffs who were duly served with the preliminary objection of the 1st defendant did not in their brief respond to the argument of the 1st defendant in this regard. However, that failure on the part of the plaintiffs cannot deter a Court from deciding the question raised by the preliminary objection of the 1st defendant. It is in my view manifest that where a party considered that his constitutional rights have been breached, that party can quite properly seek the invocation of the Court’s powers to protect the invasion of such rights. If the Constitution is to be upheld and undoubtedly it must be, then a breach of it or the likelihood of its being breached must be capable not only of being vindicated but also of being prevented. See In Re G. M. Boyo (supra); Ogbuchi v. Gov. of Imo State (1995) 9 N.W.L.R. (pt. 417) 53 at pp. 52-90; Okafor v. Asoh (1999) 3 N.W.L.R. (pt.593) 35 at pp. 53 - 57.

Now, the provisions of the Constitution of Nigeria 1999 which form the fulcrum of this action are Section 162, subsections (3), (4) and (5). They read thus: -

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

(4) Any amount standing to the credit of the States in the Federation

Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.

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

There can be no doubt that the plaintiffs are entitled under the provisions to receive funds from and or share in the funds in the Federation Account. Therefore, where they consider that any action or inaction of anyone is likely to affect their just rights to the receipt of funds from the Federation Account, they certainly do have the right to institute proceedings not only to vindicate their claims but also to protect their perceived interest in the Federation Account. It would be perverse to argue to the contrary. I therefore hold that the plaintiffs have the locus standi to institute this action.

The second ground of the preliminary objection raised by the 1st defendant is that since the National Assembly consists of representatives from all the States of the Federation who passed the 2004 Act, the plaintiffs are estopped from challenging the validity of the Act. This argument is in my view, not only erroneous, but it stems from a total misconception of the meaning of estoppel as used and interpreted judicially and/or by the meaning attributed to the use of that word in the context of argument in support of a decision under the law. See Sections 151 - 154 of the Evidence Act for the definition attributed to Estoppel. I do not also think that if it was expected that the argument be considered in the context of the colloquial usage of the word. I am afraid that my view is that it is wholly inappropriate in all the circumstances. Having made that observation, it is also necessary to state clearly that the notion being canvassed that because people who got themselves into the National Assembly or into any of the State Assemblies would not be able to reverse a perverse law, and would not also be able to legislate or enact fresh legislations cannot be right as each individual deems fit and also take or even initiate any action against the Federal Government to protect its own rights which is considered to be in breach or about to be breached by the Federal Government. See

Section 232 (1) of the 1999 Constitution.

I also need to deal very briefly with the further argument of the 1st defendant in support of the 1st defendant in respect of this ground of its preliminary objection that the Federal Government was wrongly sued in this case by the plaintiffs. The premise of this contention made in that B behalf is based on the contention that as Sections 4, 5 & 6 of the 1999 Constitution clearly delaminated the functions and powers of the Legislature, Executive and the Judiciary, in accordance with the doctrine of separation of powers. It is therefore the submission of learned Senior C Counsel for the 1st defendant that the action is wrongly constituted and incompetent, thereby robbing this Court of the competence to adjudicate upon it. In support of this submission, he cited the following cases: Oduola v. Ogunjobi (1982) 2 N.W.L.R. (pt.23) 508 at 514; Amachree v. D Newington (1972) 14 W.A.C.A. 97 at 99-100; Ekpere v. Aforije (1972) 1 ALL N.L.R. 224; Osunrinde v. Ajamogun (1992) 6 N.W.L.R. (pt.246) 156. I have read these authorities and did not see their applicability to the submission made for the 1st defendant. However, it is necessary to observe that counsel should refrain from referring to cases, which do not E support or advance the points upon which they wish to persuade the Court. Besides, it is self-evident on the records that the suit was initiated against the Attorney-General of the Federation and who represent the Federal Government in any action directed against the Federal Government of F Nigeria. For all the reasons set out above, this ground of objection is resolved against the 1st defendant.

Lastly, the 1st defendant wants this action to be terminated at this stage of the proceedings on the ground that the plaintiffs did not disclose any reasonable cause of action to justify the hearing of the action. It is the G contention of the 1st defendant that the 1st defendant qua Attorney-General made the Act complained of, neither did he assent to it. In the view of learned counsel for the 1st defendant, the 1st defendant clearly has no constitutional responsibility or power to make the Act or assent to it. In H support of his submission that the plaintiffs claims disclosed no cause or action, he cited the following cases: Shell-BP v. Onasanya (1976) A.N.L.R. 338; H.S. Engr Co. Ltd. v. Yakubu (2003) 10 N.W.L.R. (pt.593)

505; Esegbe v. Agholor (1990) 7 N.W.L.R. (pt.161) 234.

With due respect to learned Senior Counsel, I think he completely failed to consider the provisions of Section 20 of the Supreme Court Act, Cap. 424 in making his submission that the plaintiffs did not disclose any cause of action against the defendants. Now Section 20 of the Supreme Court Act reads: -

"Any proceedings before the Supreme Court arising out of a dispute referred to in Section 212(1) (now Section 232(1) of the constitution and brought by or against the Federation or a State shall:-

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

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

Thus it is no doubt clear that if counsel had adverted to the above provisions of Section 20 of the Supreme Court Act, much time and effort of the Court and even counsel would have been saved in the pursuit of this ground of objection to the suit and it is accordingly declared unmeritorious. As all the grounds raised by the 1st defendant have been duly considered and found to be lacking in merit, that concludes the preliminary objection raised by the 1st defendant.

I will now consider the grounds for the preliminary objection raised against the suit by the 2nd, 5th & 7th defendants. With regard to the 2nd defendant whose ground raised issues of locus standi, estoppel and joinder of the 10th defendant. As the argument urged for the 2nd defendant is similar to those urged by the 1st defendant, for the reasons already given on those grounds are resolved against the 2nd defendant. The ground of objection relating to the misjoinder of the 10th defendant in view of Section 232 (1) of the Constitution is no longer necessary for consideration as it has been dealt with during the hearing, of the action.

I will now deal with the preliminary objection raised for the 7th defendant. The grounds of this objection are as follows: -

“(1) That paragraphs 9, 10 and 11 of the plaintiffs’ affidavit offend against the provisions of Section 87 of the Evidence Act.

(2) That the plaintiffs lacked locus standi to institute this action.

(3) That the action did not disclose any reasonable cause of action against the 7th defendant.”

In respect of the first ground, learned counsel for the 7th defendant submits that the depositions made in the plaintiffs’ affidavit raised legal argument and or conclusion. In support, he cited the following cases B Jusien Holdings Ltd & Ors. v. Lornamead Ltd & Anor (1995) 1 N.W.L.R. (pt.319) 254 at 255; Nig. LNE Ltd. v. African Dev. Insurance Co. Ltd (1995) 8 N.W.L.R. (pt.416) 677 at 701; Governor of Lagos v. Ojukwu (1986) 1 N.W.L.R. (Pt. 18) 621 at 641; Bamaïyi v. State & Ors. (2001) C N.W.L.R. (pt.715) 270 at 289.

There can be no doubt that it is settled that depositions in any affidavit sworn in support of a cause or matter must not be drafted to include legal arguments, conclusions in law or fact. See Sections 86 and 87 of the Evidence Act. Cap. 1 12 and which read thus: - D

“86. Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information received which he believes to be true.” E

87. An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.”

This means that where depositions in an affidavit offend this basic law, the offending paragraphs of such an affidavit must be struck out. In F this case this case, the offending paragraphs in the affidavit filed in support of the-originating summons of the plaintiffs read thus: -

“9. That I know as a fact that the said Act has by implication ceded part of the shore coastline of Nigeria to the 2nd to 9th defendants.” G

10. That I know as a fact that the Act also has the effect of Granting part of the territorial waters of Nigeria to the 2nd to 9th defendants to the disadvantage of the plaintiffs.

11. That I know as a fact that the Act as it is if implemented will work to the disadvantage of the plaintiffs.” H

It does not need too careful a study to agree with the learned counsel for the 7th defendant that the paragraphs above quoted amongst the affidavit filed in support of the plaintiffs’ originating summons offend

against the provisions of Sections 86 and 87 of the Evidence Act, Cap.112 Laws of Nigeria 1990. They must therefore be struck down for that reason and they are hereby struck down accordingly. However, I do not agree with the other submission made for the 7th defendant that for this reason, B the entire cause of the plaintiffs should be dismissed. A careful perusal of the other paragraphs of the affidavit read with the claims as disclosed in the originating summons, in my own opinion disclose a clear cause of action that ought to be considered before a decision is arrived at as to whether their claims are meritorious or not. I will therefore refuse to C uphold the secondary request of the plaintiffs to have the action struck out.

The second ground urged for the disposal of this action on the basis of the argument that the plaintiffs' action should be struck out in that they lacked the requisite locus standi to institute the action must also fail for the D several reasons given earlier in this judgment. I therefore so hold.

Finally, the 7th defendant has also argued like the 1st defendant that the plaintiffs have not by this suit disclosed that they have a reasonable cause of action against the defendants. I do not need to reiterate here the E arguments of learned counsel in respect of this contention. This is because the arguments advanced in support of this contention are not dissimilar from those of the 1st defendant which I have reviewed and pronounced upon earlier in this judgment. Suffice it to say that the plaintiffs had by their F claims disclosed a reasonable cause of action. And I so hold.

I now turn to consider the issues raised by the parties for the determination of the merits of the plaintiffs' claims against the defendants. However, apart from the plaintiffs' brief, the other briefs to be considered are those of the 1st, 2nd, 3rd, 4th, 5th & 7th defendants who duly filed their G respective briefs within the time frame ordered by the Court.

The issues raised for the plaintiffs in their brief are as follows:

"1. Whether having regard to the provisions of sections 16 and 44 (3) of the Constitution of the Federal Republic of Nigeria 1999, the H provisions of the Territorial Water Act Cap.248 Laws of the Federation 1990, the provisions of the Exclusive Economic Zone Act Cap. I 10, Laws of the Federation 1990 and binding International Convention to which Nigeria was a signatory, the defendant did not act ultra vires its powers

in making and implementing the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 under which the 1st defendant purported to cede or give away or concede any part of the territorial waters or seaward boundaries of Nigeria to the 2nd 9th defendants in any way or manner or guise whatsoever.

B

(2) Whether having regard to the provisions of sections 4, 6(6), 44(3), 162, 232, 235 and 315 of the Constitution of the Federal Republic of Nigeria 1999, the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act 2004 is not unconstitutional, ultra vires, null, void and of no effect whatsoever.

C

(3) Whether in view of the decision of this Honourable court in Suit No. SC. 28 2001 A-G Federation v. A-G Abia State and 35 Ors. delivered on 5th April, 2002 the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and without any effect.”

D

The 1st defendant raised only one issue and it reads: -

“Having regard to the relevant provisions of the 1999 Constitution and existing laws, whether the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 is valid and subsisting.”

E

The 2nd defendant in its brief had formulated for it two issues, which are: -

F

“(i) Whether the plaintiffs’ action is competent, and

(ii) Whether the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act. 2004, is inconsistent with the provisions of the Constitution, 1999.”

G

For the 4th defendant, two issues are formulated and they are:-

“(i) Whether by virtue of the provisions of sections 4(2), 4(4), 41(3), 162(2) and paragraph 32(b) (Part 1 of the Third Schedule to the 1999 Constitution, the 1st defendant possessed the vires to enact and implement the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.

(ii) Whether in view of the decision of this Honourable Court in Suit

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No. SC /28/2001 A-G Federation v. A-G Abia State and 35 Ors delivered on 5th April, 2002, the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, is a legislative judgment thereby making it unconstitutional, null, void and without any effect.”

After carefully reading the issues settled by the parties and the arguments proffered on behalf of the parties, it is in my view not in doubt that the central issue is whether the 2004 Act is valid in terms of its provisions. But before considering these issues, it is I think useful to refer to the genesis of this action. In this regard, I need to refer to the judgment of this Court in *A-G Federation v. A-G of Abia State (No.2) (2002) 6 N.W.L.R . (pt.764)* at p.660 which reads:

“With profound respect to learned Senior Advocate, I cannot agree that cap. 16 does not operate as existing law or that it applies as it is notwithstanding any inconsistency between it and the Constitution. The correct position, in my respectful view, is that Cap. 16 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending the time the National Assembly comes out with a new formula as directed by the Constitution. Cap. 16 is, however, only applicable far as it is not inconsistent with the provisions of the 1999 Constitution. And where there is any inconsistency, the Act gives way. Cap. 16 is, of course, an existing law as it answers neatly to the definition of that expression in Section 315 (4)(b) which provides:

“(4) In this section, the following expressions have the meanings assigned to them respectively -

(b) ‘existing law” means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.’

Given the zig-zag history of revenue allocation vis-a-vis the derivation principle since, at least, 1960 to date, it cannot be said that the plaintiff at any time admitted that the area of the sea beyond the low-water mark belonged to the Coastal Regions or States contiguous to it.

With this conclusion, I hold, and determine, that the seaward

boundary of a Littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to section 162 (2) of the constitution of the Federal Republic of Nigeria 1999 is the low-water mark of the land surface thereof or (if the case so requires as in the Cross-River State with an archipelago of islands) the seaward limits of inland waters within the State. And this shall be my judgment in respect of plaintiffs case.”

Also germane to this action is the provision of S.162 (1), (2), (3) & (4) and which read thus: -

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

(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density: provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

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

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

I also quote hereunder the provisions of The Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 as follows: -

B “1(1) As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the pin poses of computing the Revenue accruing to the Federation Account from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.

C (2) Accordingly, for the purposes of the application of the Principle of Derivation, it shall be immaterial whether the revenue accruing in the Federation Account from a State is derived from Natural Resources located onshore or offshore.

D 2 This Act may be cited as the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004.”

E The thrust of the argument for the plaintiffs is generally to the effect that by the enactment of the Allocation of Revenue (Abolition of Dichotomy in the .Application of the Principle of Derivation) Act, 2004, that the boundaries of the defendants have been extended as claimed. But a careful reading of the said Act do not support the interpretation given by F the plaintiffs.

G In my view, the Abolition of Dichotomy Act is to do away with “on-shore” and “off-shore” dichotomy principle to a limited extent since it covers only 200 metres depth isobath. In the application of the principle of derivation of revenue from natural oil and gas for the purposes of Revenue Allocation, a distinction was made (or created) between those natural resources exploited from the geographical land mass of a Littoral State and from any natural resources exploited from the geographical land mass of a Littoral State and those exploited off its shores, the latter not H being taken into account as natural resources derived from or deemed to be from that State. This was seen as unfair to the Littoral States where the devastating impact of such exploitation is most inhuman.

I therefore think that the plaintiffs’ contention that Section 1 of the

Abolition of Dichotomy Act is to adjust the boundaries of the Littoral States without complying with the condition laid down in Section 8 (2) of the 1999 Constitution is unacceptable. There was no adjustment of boundaries of Littoral States. It follows that I must hold that the plaintiffs' issue No.1 must be resolved against them.

While it is quite clear that the 2004 Act is concerned with the computation of revenue accruing to the Federation Account and what appears nominally to be extension of boundaries of States, there is clearly nothing to show that the provisions of s.44 (3) of the Constitution was breached. The said S.44 (3) reads thus: -

“44(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federal Republic and shall be managed in such manner as may be prescribed by the National Assembly.”

The plaintiffs have also complained that whether by virtue of S.6(6), 44(3). 162, 232, 235, 315 of the Constitution, the 2004 Act is not unconstitutional, ultra vires, void and of no effect. Having considered the provisions of Section 4, Section 6 subsection 6, it is my view that contention cannot be right. And more so in view of the decision that plaintiffs' issue had been answered in the negative. I must therefore hold that the 2004 Act is constitutional, ultra vires and not null and void.

In connection with the argument of the plaintiffs that the 2004 Act is a legislative judgment. It is my view that the Act is not: having regard to the position of this court in *Lakanmi & Anor. v. A-G (West) (1970) N.S.C.C. Vol. 6 p. 413* and also *Uwaifo v. A-G of Bendel State 1982 (Vol. 13) 221 at pp. 219 - 250*.

It is also argued that the 2004 Act is illegal, ultra vires the 1999 constitution as it was passed to reverse the position of this Court in *A-G of Abia state (supra)*. It is further argued that for the National Assembly to enact the 2004 Act, they have to repeal the Territorial Waters Act, the Exclusive Economic Zones Act and other provisions of international conventions and also the Acts and Conventions related thereto. That

Submission, in my respectful view is misconceived. The National Assembly has absolute power to enact the legislations or statutes that deals in the manner in which the Federation Account is to be distributed among the beneficiaries in accordance with the proviso to subsection 2 of Section 162 of the Constitution of Nigeria 1999.

Therefore it is my view that in so far as the 2004 Act was passed by the National Assembly under the said proviso to subsection 2 of Section 162 of the constitution of 1999, it cannot be said that the 2004 Act is illegal. The plaintiffs not in any way persuaded me to hold otherwise.

For the above reasons and the fuller reasons given in the lead judgment I also dismiss the plaintiffs' claims. I make no order as to costs.

D MUSDAPHER JSC

I have had the honour to read before now, the judgment of my Lord, the Chief Justice of Nigeria just delivered with which I entirely agree. In the aforesaid judgment his lordship has meticulously dealt not only with the preliminary objections and rightly in view, rejected the objections, but he has also comprehensively discussed and decided lucidly all the issues submitted for the determination of the case. I respectfully adopt his reasonings as mine, and accordingly I find no merit in the plaintiffs' case and I dismiss in its entirety the plaintiffs suit. I make no order as to costs.

PATS- ACHOLONU JSC

I have read the judgment of the learned Chief Justice of Nigeria M. L. Uwais in draft and I agree with him. The facts or the premises behind the institution of this case by way of originating summons have been amply stated and graphically detailed in the lead Judgment referred. The issues formulated have their off spring from a belief which led to the claim being made that by reason of Allocation of revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act 2004, that a part of the Nigerian soil or land will be ceded to 2nd -9th defendant - parties which in fact are not neighbouring countries but an integral part of the geographical

territory known as Nigeria. By reason of the belief, the Plaintiffs submitted that they would be seriously shortchanged in the revenue allocation as they would not be allocated the amount they felt that ought to but for the Act would have ensured to them as of right. They framed three issues. I intend to discuss some of the salient issues. I would first discuss issues No. 3 B which runs thus;

“Whether in view of the decision of this Honourable Court in suit No. SC. 28/2001 Attorney-General of Federation vs. Attorney-General of Abia State and 35 Ors delivered on 5th April, 2002 the Allocation of revenue (Abolition of Dichotomy in the Application of the Principles of C Derivation) Act 2004 is not a legislative judgment thereby making it unconstitutional, null, void and without any effect”

Let me reproduce the two provisions of that Act.

The only 2 sections of the Act states as Follows; D

“1. (1) As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that State for the purposes of computing the Revenue accruing to the Federation Account from the State pursuant to E the provisions of the Constitution of the Federation Republic of Nigeria, 1999 or any other enactment.

(2) Accordingly, for the purposes of the application of the Principle of Derivation, it shall be immaterial whether the revenue accruing to F the Federation Account from a State is derived from natural resources located onshore or offshore.

2. This Act may be cited as the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004.

What is a Legislative Judgment? The first mention to the best of my G knowledge of the expression legislative Judgment first appeared in Blackstone Commentaries on the Laws of England. The great jurist stated as follows in repudiating a seemingly incipient legislation directed at some one. H

“Blackstone in his Commentaries Vol. 1 (4th Edn) P. 44 said :-

‘Therefore a particular act of the legislature to confiscate the goods of , or to attain him of high treason, does not enter into the idea of a

municipal law: for the operation of this act is spent upon Titius only and has no relation to the community in general: it is rather a sentence than a law.'

It is an enactment by the legislature wearing the garb or having a colouration or flavour of a conviction (the legislature transmuting itself more or less into a Court) of a person while merely exercising its legislative functions. Both the common law and the Constitutional law not only regard it as an aberration but condemn such a tendency for it should be known that while the Legislature is most suited to make laws, it is neither invested with the power to interpret laws nor inflict or impose convictions or assume Powers to make decisions with judgmental flavour as it is most unsuited for and is not trained or possessed of the knowledge to do any of the above though some of its members may be learned in law.

In *Lovell v. United States* (1946) 66 Supreme Court Reports 1073 at page 1079, Mr. Justice Black said as follows:

"Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment without trial by duly constituted courts".

It was this type of legislation that was being dealt with in *Liyanage and Others v. The Queen* (1967) 1 A. C 259 at page 289-290; (1966) All E.R 650 at 659 when Lord Pearce said in his judgment;

"In so far as any Act passed without recourse to section 29(4) of the Constitution purports to usurp or infringe the judicial power it is ultra vires. It goes without saying that the legislature may legislate, for the generality of its subjects, by the creation of crimes and penalties or by enacting rules relating to evidence. But the Acts of 1962 had no such general intention. They were clearly aimed at particularly known individuals who had been named. That the alterations in the law were not intended for the generality of the citizens or designed as any improvement of the general law, is shown by the fact that the effect of those alterations was to be limited to the participants in the January coup and that after these had been dealt with by the judges, the law should revert to its normal

state”.

In our organic law where the Supreme Court in particular watches with hawklike guard on the kind of laws passed by our legislatures, it will be remiss on its part to ignore an enactment that actually seeks to invade the preserve of the Judiciary. I have carefully read, and subjected the provisions of this Act being complained about to all manner of probable interpretations to determine whether it has a judicial flavour and I cannot. The situation in this case cannot be compared to what gave rise to *Lakanmi v A. G. (West) 1970 N.S.C.C. vol. G.P. 143*. The judgment in *Lakanmi* case was in respect of the interpretation given by this Court presided over by Ademola C. J. in respect of the Decree on the Supremacy of the Supreme Military Council which tended to give the Supreme Military Council literally speaking an omnipotent power short of describing its decrees as God given, or to be regarded as one of the ten commandments. In the same manner the case of *Attorney General of the Federation v. Guardian Newspapers (1995) 5 N.W.L.R. (Pt. 398) P. 703*. was in respect of Decree No. 12 of 1994. In that case (Court of Appeal) I stated at P. 713 of that judgment,

“The recitals contained in Decree No. 12 of 1994 which is almost in Primateria to that in Decree No. 28 of 1970 which overturned the decision in Lakanmi and Another v. A.G. Western States & Ors (1970) N.S.C.C.; (1971) 4 ILR (Pt.) 201 which the Court had described and lampooned as a judicial legislation tends to strengthen an uneasy feeling that regardless of the garb that a decree wears its validity cannot be questioned by any Court of law” .

It is difficult for me to really understand and appreciate the premises for labeling the construction of these two provisions which are labeled or described as legislative judgments. I cannot do more than I have done in my opinion of what is a legislative judgment. To merely label an Act as having certain characteristics in the guise of judicial legislation to rubbish it without any proof that it answers to such a description in content and intendment is not enough to make the Court swallow such skewed interpretation, line, hook and sinker. The 2004 Act which has the quality of clarity was made in large measure to assuage the fears of the littoral

states who clamoured that they had suffered incredible marginalisation due to the Dichotomy Principle when it held sway.

Indeed Sir Edward Coke’s repudiation of the claim of the king that he had the right to judge cases can somehow be likened to the National Assembly attempting to vest itself with the power to make a law that has judicial flavour i.e. legislative judgment. Coke rising to such a challenging occasion had postulated as follows;

“True, it is that God hath endowed His Majesty with Excellent Science and great endowment of nature but his Majesty is not learned in the laws of the realm of England and causes which concern the life or inheritance or goods or fortunes of his subjects are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an art which requires long study and experience before that a man can attain to the cognisance of it”

What I am saying is that an enactment that tends to show that the legislature is trying to appropriate the powers of the judiciary if so found out by the Court, will be regarded as an oddity and of course it will be thrown out. I fail to see how the 2004 Act can be described as a judicial legislation or legislative judgment.

To describe that Act as a Legislative Judgment is with greatest respect a misconception of the ingredients that qualify an act as a Legislative Judgment. To describe the enactment in question as a legislative judgment is to have a dim understanding of the import of that expression. The learned counsel for the Plaintiffs’ construction shows a cleverly skewed interpretation of the provision of the Act by attempting to clothe it in a garb that does not suit or fit it. The main purpose of that Act is to abolish the phenomenon of dichotomy and ensure that agitation of short changing of the littoral oil States are put behind us and that the oil producing areas in the littoral zones are getting what ought to be due to them.

I now come to issue No. 1. which is formulated thus;

“Whether having regard to the provisions of section 16 and 44(3) of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Territorial Water Act Cap 248 laws of the Federation 1990, the

Provisions of the Exclusive Economic Zone Act Cap 110, laws of the Federation 1990 and binding International Convention to which Nigeria was a signatory, the 1st defendant did not act ultra vires its powers in making and implementing the Allocation of Revenue (Abolition of Dichotomy in the Application of Derivation) Act 2004 under which the 1st defendant purported to cede or give away or concede any part of the territorial waters or sea ward boundaries of Nigeria to the 2nd - 9th Defendants in anyway or manner or guise whatsoever”. B

The argument posited in issue one is strange to me. I am well aware that the issues are argued together but I must confess it is galling to say the least that the learned counsel for the Plaintiffs is seriously contending that the Federal Government is ceding a territory of Nigeria to the defendants when the Act in question is merely trying to establish the proper boundary of a littoral state with a view to determining its rights in respect of oil allocation as a result of certain anomalies that existed in the past. The learned counsel’s quotation from Starke on the 3rd Edition of his book “*Principles of Public International Law*” in trying to persuade this Court by relying on that writing, seems to overlook the point that the word “state” appearing there is a nation State. To advance an argument that by the Act, the Federal Government is ceding a portion of Nigerian territory to some of the Federating States that make up Nigeria is not only weird and novel but an attempt to use or introduce the proposition that underlie the principles that determine the boundaries of nation States in International law, to a mere domestic law. In this connection the employment of such a principle is bound to fail. I hereby dismiss the action. D E F

Perhaps the only good thing arising out of this case is that it has in great measure helped lawyers to enrich their understanding of our Constitution which will enable them to further add to other well considered Constitutional cases by this Court. G

I abide by the orders in the lead judgment.

H

OGUNTADE JSC

The Plaintiffs, by a suit commenced with an originating summons

claimed six reliefs against the defendants. The said reliefs read;

“1. *DECLARATION that the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is unconstitutional ultra vires the defendants and therefore null and void.*

B 2. *DECLARATION that the 1st and 10th defendants are without constitutional powers to rely on the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 for the purposes of allocation of revenue to the states and local governments from the Federation Account.*

C 3. *ORDER directing the defendants to forthwith stop the implementation and reliance on the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004*

D 4. *INJUNCTION restraining the 2nd - 9th defendants by themselves, their agents, or any other person or persons deriving authority through them from taking benefit from, insisting on or in any other manner seek to take advantage from or under or in the said Allocation of Revenue Act 2004.*

E 5. *INJUNCTION restraining the 1st and 10th defendants by themselves, their agents, servants, privies or any other person or body deriving authority from or through them from implementing, giving effect to or in any other manner enforce the provisions of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.*

F 6. *ORDER setting aside, annulling and make void the said Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.*

G 7. *ANY other relief or other reliefs as the Honourable Court may find the Plaintiffs entitled to in law and equity.”*

The plaintiffs would appear from their claims above to be aggrieved by the enactment into law of the Allocation of Revenue (Abolition of H Dichotomy in the Application of the Principle of Derivation) Act 2004. (Hereafter called the Act of 2004). Although the suit was commenced by originating summons, the parties filed what on a first look appear to be conflicting affidavits. However, a close perusal of the affidavits, readily

conveys that parties had unwittingly injected into the said affidavits their conflicting standpoints on the issues raised by the plaintiffs' suit. Perhaps, the paragraph that captures the essence of the plaintiffs' grievance may be identified as 8 in the affidavit in support of the motion where they deposed thus;

"8 That I know as a fact from the briefing given to my principal by the plaintiffs that the Act once implemented will impact negatively on the amount that accrue to the Federation Account and thus will in turn reduce the shareable revenue due to the plaintiffs"

Nigeria is a Country governed as a Constitutional democracy. It consists of 36 States and in addition there is the Federal Capital Territory. It is indisputable that the bulk of the revenue accruing to the Country which is shared on an ascertainable formula to each of the States in the Federation derives from Oil revenue. In recent times, there had been loud and vociferous controversy as to how to equitably share the Oil revenue in conformity with the Constitution. This arose from the necessity to give weighted advantage to the Oil producing States, a situation which introduced into the debate the 'on-shore and off-shore' dichotomy.

There is no doubt that the more share is granted to the Oil producing States the less would be the amount available to be shared amongst the non-Oil producing States. The plaintiffs are non - Oil producing States and have brought their suit because they are displeased with the Act of 2004, as it will in its effect and operation impact their income from the Federation Account.

The 2nd to 9th defendants which are Oil producing States are as to be expected seriously resisting plaintiffs' suit. If occasionally, one notices a measure of harshness in the language employed, it is understandable because parties are engaged in a dispute about money. I say this because the plaintiffs have in paragraph 10 of the affidavit in support of their summons deposed;

"That I know as a fact that the Act also has the effect of granting part of the territorial waters of Nigeria to the 2nd - 9th defendants to the advantage of the plaintiffs".

Some of the defendants raised preliminary objections to the

plaintiffs' suit. My learned brother, the Chief Justice of Nigeria, in his lead judgment has addressed each of these objections. I entirely agree with his treatment of the issues covered by the preliminary objection.

I now briefly consider the merits of the plaintiffs' suit. Now, the Act of 2004 contains two sections. The Act reads;

"1 (1) As from the commencement of this Act, the two hundred metre water depth Isobath contiguous to a State of the Federation shall be deemed to be a part of that state for the purposes of computing the Revenue accruing to the Federation from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.

(2) Accordingly, for the purposes of the application of the principle of derivation, it shall be immaterial whether the revenue accruing to the Federation account or a state is derived from natural resources located on-shore of off-shore.

2 This Act may be cited as the Allocation of Revenue (Abolition of Dichotomy in the Application of the principle of Derivation) Act, 2004"

It is helpful to consider the provisions of the Act of 2004 above against the provisions of section 162(1), (2), (3), and (4), of the 1999 Constitution which read;

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

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

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

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

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

It is apparent that the purpose of the Act of 2004 is to introduce a more readily ascertainable basis of apportionment of the income derived from the natural resources in a State. It had hitherto been apportioned on the basis of the on-shore and off-shore nomenclature. This can be slippery and difficult to apply as it was so unspecific. The 2004 Act replaces this with a direct and more specific criterion which is “the two hundred metre water depth Isobath contiguous to a State”.

There is no doubt that this Court has the jurisdiction to invalidate a law which is contrary to or inconsistent with the 1999 Constitution of Nigeria. I have examined the 2004 Act again and again with a view to determining if there is anything intrinsic or extrinsic to it which is contrary to the letter and spirit of the 1999 Constitution. I could find no such matter. Rather it is a legislation, which in my view, is directed at placing the implementation of the provisions of section 162 of the 1999 Constitution on a more certain and predictable basis. I do not see the law as a legislative judgment by the National Assembly. It is, based on its tenor and language not an attempt to cede land to Oil producing States.

It is my firm view that this suit has nothing to commend it. It has no merit. I would therefore dismiss it as in the lead judgment of my learned brother the Chief Justice of Nigeria.

I make no order as to cost.

MUKHTARJSC

I have read in advance the lead judgment delivered by my learned brother Uwais, Chief Justice of Nigeria.

By way of originating summons the plaintiffs invoke the jurisdiction of this court pursuant to the provisions of Section 232 of the 1999 Constitution of the Federal Republic of Nigeria 1999 and sought the following reliefs :-

“1. Declaration that the allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 is unconstitutional, ultra vires the defendants and therefore null and void.

2. Declaration that the 1st and 10th defendants are without constitutional powers to rely on the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 for the purposes of allocation of revenue to the states from the Federation Act.

3. Order directing the defendants to forthwith stop the implementation and reliance on the said Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004.

- 4.
- 5.
- 6.
- 7.

The originating summons was supported by an affidavit, some of the paragraphs of which read :-

“5. That I know as a fact that the 10th defendant is a creation of the constitution of the Federal Republic of Nigeria 1999 whose duties include the distribution of revenue from the Federation account to all the tiers of government as stipulated by law.

6. That I know as a fact hitherto, the amount accruing to the Federation account included monies realized from the on-shore and off-shore exploration of crude oil by oil companies operating in Nigeria.

7. That I know as a fact that the President of the Federal Republic of Nigeria presented a bill for the National Assembly titled ‘An Act to abolish the Dichotomy in the Application of the Principle of Derivation for the purpose of Allocation of Revenue Accruing to the Federation

Account and for matters connected therewith 2004' to the National Assembly which passed same and the President had since accented to it and it is now "the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004", (hereinafter referred to as the Act).

8. That I know as a fact from the briefing given to my Principle by the plaintiffs that the Act once implemented will impact negatively on the amount that will accrue to the Federation Account and this will in turn reduce the share able revenue due to the plaintiffs."

By way of notice of preliminary objection the inclusion of the 10th defendant as a party was raised, and the learned Senior Advocate for the plaintiffs at the hearing conceded that the 10th defendant was not a competent party. The 10th defendant was therefore struck out. The first ground of the preliminary objection of the 7th defendant that paragraphs 9, 10 and 11 of the affidavit in support of the plaintiffs originating summons offends the provisions of Section 87 of the Evidence Act Cap. 112, Laws of the Federation of Nigeria, 1990, is a valid ground. The depositions read as follows :-

"9. That I know as a fact that the said Act has by implication ceded part of the shore coast line of Nigeria to the 2nd - 9th defendants.

10. That I know as a fact that the Act also has the effect of granting part of the territorial waters of Nigeria to the 2nd - 9th defendants to the disadvantage of the plaintiffs.

11. That I know as a fact that the Act as it is if implemented will work to the disadvantage of the plaintiffs."

The argument of learned Senior Advocate of the 1st defendant in respect of this objection is that the above depositions raised legal argument and conclusion, which the law frowns upon, and that they contained extraneous matters by way of legal argument which is also not allowed by law. Learned Senior Advocate placed reliance on the cases of Jusien Holdings Ltd. & ors v. Lornamead Ltd. & Anor 1995 1 N.W.L.R. part 317, H page 254; Nig. LWG Ltd. V. African Development Insurance Co. Ltd. 1995 8 N.W.L.R. part 416 page 677, and Bamaïyi v. State & ors 2001 N.W.L.R. part 715 page 270 in support of his argument.

Indeed a careful perusal of the depositions disclose that they do contain extraneous matters by way of legal argument and conclusion, which should not be allowed to stand, for by virtue of the said Section 87 of the Evidence Act :-

B “An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusions”.

C In this wise, the above reproduced paragraphs of the supporting affidavit are hereby struck out. That first ground of objection in the 7th defendant’s notice of preliminary objection is therefore sustained. The second ground of objection on locus standi, as is with the other defendant’s objections is, however, baseless and is overruled. In essence, therefore, only part of the 7th defendant’s objection succeeds. Having struck out the above paragraphs of the supporting affidavit, does not mean that the whole D affidavit is thrown out, for there are still some live depositions. There were other preliminary objections raised by some defendants that were overruled.

E Section 232 of the Constitution (supra) under which the plaintiffs initiated the originating summons proceedings stipulates the following provisions :-

F “232 (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the federation and state or between states 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.”

G By virtue of the above provisions the suit is properly before this court. The plaintiffs are challenging the constitutionality of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004, which reads thus :-

H “ 1(1) As from the commencement of this Act, the two hundred metre water depth isobath contiguous to a state of the Federation shall be deemed to be a part of that State for the purposes of computing the Revenue accruing to the Federation Account from the State pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 or any other enactment.

(2) Accordingly, for the purposes of the application of the Principle of Derivation, it shall be immaterial whether the revenue accruing the Federation Account from a state is derived from natural resources located onshore or offshore.”

(Underlining above is mine).

B

I have found it necessary to underline the above portion of Section 1(1) for the purpose of emphasis on the essence of that provision. Contrary to the argument of the learned Senior Advocate, the legislation is not meant to adjust the boundaries of the littoral States per se. The purport and intendment of the law has been clearly interpreted in the lead judgment. I fail to see that the law is inconsistent with the provisions of sections 8(2) and 162 of the Constitution of the Federal Republic of Nigeria, nor has it violated the provision of Sections 16 and 44 (3) (supra) of the Constitution, the former of which states the following :-

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“16(1) The state shall, within the context of the ideals and objectives for which provisions are made in this constitution :-

(a) harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy;

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(b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;

(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

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(d) without prejudice in the right or any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

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(2) The state shall direct its policy towards ensuring :-

(a) the promotion of a planned and balanced economic development;

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(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(c) that the economic system is not operated in such a manner as to

permit the concentration of wealth or the means of production and in the hands of a few individuals or of a group; and

(d)”

I do not perceive any variance in the provisions. Finally, I am in full B agreement with the lead judgment delivered by my learned brother Uwais CJN, that the action instituted by the plaintiffs must fail and should be dismissed. I also dismiss it and make no order as to costs.

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