

**SUPREME COURT OF NIGERIA**  
20TH JANUARY, 2006. SC. 113/2004  
**CORAM:- M. L. UWAISS CJN, I. L. KUTIGI, A. O. EJIWUNMI,**  
**N. TOBI, D. MUSDAPHER, I. C. PATS-ACHOLONU,**  
**G. A. OGUNTADE, JJSC**

1. PLATEAU STATE OF NIGERIA ..... PLAINTIFFS  
2. HOUSE OF ASSEMBLY OF PLATEAU STATE  
AND  
1. ATTORNEY-GENERAL OF THE FEDERATION  
2. NATIONAL ASSEMBLY .....DEFENDANTS
- 

CONSTITUTIONAL LAW - Actions - State of emergency - Declared by the President under s.305 1999 Constitution - Action challenging its constitutionality - Cannot be declared dead or academic (H1)

ACTIONS - Authorization - Constitutional law - State of emergency declaration - Where suit is not authorized by the State Administrator - It is not authorized by the plaintiffs (H2)

SUPREME COURT - Original jurisdiction - S.232(1) 1999 Constitution - Claims or reliefs for individual persons - The Court has no original jurisdiction - To entertain them (H3)

ACTIONS - Parties - Abuse of court process - Where the parties are different - And the reliefs are not the same - The action is not an abuse of Court process (H4)

ACTIONS - Parties' name - Supreme Court Act s.20 - Where action is filed in the name of a State - Or its House of Assembly - It is a procedural irregularity - That can be waived (H5)

ACTIONS - Supreme Court - Preliminary Objection - That is ambiguous - Would fail (H6)

**FACTS**

Before the Supreme Court, placing reliance on the Court's original jurisdiction, the plaintiffs filed an Amended Originating Summons against the defendants. Plaintiffs raised 4 issues for the Court's determination, claimed 11 declaratory reliefs and sought 3 mandatory orders. The grounds for the action were the declaration of a State of emergency in Plateau State on the 18th May, 2004, by the President of the Federal Republic of Nigeria pursuant to s.305(1), (3), (C) and (d) of the 1999 Constitution. The Proclamation suspended the office of the Executive Governor, and the House of Assembly of Plateau State for the Period of 6 months and appointed a Sole Administrator to administer the affairs of that State.

This present suit questions the constitutionality of the President's action, but some of the reliefs claimed were personal as they sought monetary compensation for the individuals affected. The defendants filed Counter affidavits in response to the affidavit in support of the Claim. They also Filed 8 preliminary objections challenging the competence of the suit and the Court's jurisdiction to entertain it.

**HELD** (Unanimously striking out the case per **KUTIGI JSC**)

**CONSTITUTION LAW - Actions - State of emergency**

1. I will now proceed to treat the grounds of preliminary objection one after the other.

**(1.) THAT THE SUIT IS DEVOID OF ANY LIVE ISSUE AND IT IS BEING MAINTAINED MERELY FOR ACADEMIC AND ADVISORY PURPOSES ONLY**

I think the ground of objection misconceives the nature of the declarations and other reliefs sought in this case. The entire case simply put concerns the constitutionality and or legality of the exercise of the emergency powers conferred on the President under Section 305 of the 1999 Constitution and which powers he exercised in Plateau State from 18/5/2004 to 17/11/2004. In exercise of his powers other provisions of the Constitution became involved as well. For example Sections 11, 36, 90, 170 & 315 just a few mentioned by the Plaintiffs. The emergency we all know ended or ceased to apply in that State on 17/11/2004. But the

Constitution including Section 305 thereof, is still with us. The powers are still there for the President to exercise if and when he deems it necessary. The Constitution is alive and so are the emergency powers therein alive. It is therefore of no adverse significance to the case that "suspended structures and public officers" are now back to duty! Issues relating to the interpretation of a living Constitution as in this case, cannot in my view be dead, academic, speculative or hypothetical. A declaration of a state of emergency is a serious business anytime, anywhere. This ground of objection therefore fails. (p. 134 D)

**ACTIONS - Authorization****2. (2.) THE SUIT IS NOT AUTHORIZED BY THE PLAINTIFFS**

It is a notorious fact that Major-General Chris Alli (Rtd.) was appointed Sole Administrator of Plateau State during the state of emergency in that State from 18/5/2004 until 17/11/2004 when the emergency ceased. It is also a notorious fact that during the State of Emergency both the Governor and the House of Assembly were suspended and therefore were not functional. It is also a fact that throughout the period of State of Emergency only the Sole Administrator took decisions for and on behalf of the State. It is therefore common sense to say that as at 24/6/2004 when the Plaintiffs filed this suit, only the Sole Administrator could have authorized the filing of the suit on behalf of the Plateau State of Nigeria. This was vehemently denied in his Counter-Affidavit and Further-Counter-Affidavit. Also as at 24/6/2004, the 2nd Plaintiff who had been suspended, clearly had no capacity or capability to meet and authorize the filing of the suit on its behalf.

My conclusion therefore is that the 1st and 2nd Plaintiffs did not authorize this suit and no instruction was given for filing same at the time it was filed. Any retrospective approval given by Governor Dariye is unhelpful as you cannot put something on nothing. There was no suit filed on 24/6/2004 when one was purportedly filed. There was therefore nothing to ratify. This ground of objection therefore succeeds.

(pp. 135 B/ 136 D)

***SUPREME COURT - Original jurisdiction***

3. This objection is clear. This Court has no original jurisdiction in respect of claims or reliefs for individual persons by virtue of the provisions of Section 232(1) of the Constitution which reads -

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

C Claims (x), (xi), (xii), (xiii) & (xiv) are therefore incompetent. I strike them out accordingly. (p. 136 G)

***ACTIONS - Parties - Abuse of court process***

D 4. (5.) THE ACTION IS AN ABUSE OF COURT PROCESS HAVING REGARD TO THE SUIT IN THE FEDERAL HIGH COURT

I say immediately that this is not correct. Suffice it to say however that the parties in the two suits are different and the reliefs claimed are also not the same. This is sufficient to dispose of the ground of objection.

E It is over-ruled by me. (p. 137 A)

***ACTIONS - Parties' name - Supreme Court Act s.20***

F 5. The issue here pertains to the names by which the parties sued. Under section 20 of the Supreme Court Act, it is provided that a State shall sue or be sued in the name of the Attorney-General in respect of suits founded on Section 232(1) of the Constitution. While Section 3 of the Supreme Court (Additional Original Jurisdiction) Act, provides that a State House of Assembly shall institute or defend an action by the Speaker of the House of Assembly. I must say at once that both the Attorney-General and the Speaker are nominal parties only. The principal, real or substantive parties are the State and the House of Assembly respectively. The question therefore is - Is it proper for Plateau State of Nigeria not to have sued in the name of the Attorney-General or the House of Assembly not to have sued in the name of its Speaker? I believe the Plateau State Government as well the House of Assembly of Plateau State are the substantive or principal or real parties, while the Attorney-General and Speaker are merely nominal parties

only. This is therefore a mere irregularity. The irregularity is in my view clearly procedural which can and should be waived or overlooked. If the substantive or principal parties are here and they are, why bother about the nominal parties? The objection in my view therefore fails. (p. 137 H)

***Supreme Court - Preliminary Objection***

6. I am not sure whether this is an objection or a mere general statement of law on the jurisdiction of the Court in the matter before us. If it is law, Counsel has not referred to any law. Counsel also has not indicated which reliefs sought by the Plaintiffs pertain to rights suspended by the Regulations under the emergency and which are not. There is again no indication which reliefs question the validity of any law or regulation made during the emergency.

The Preliminary Objection therefore fails. (p. 138 G)

***NOTABLE POINTS OF INTEREST******UWAIS CJN***

*1. Suit without authority is abuse of court's process*

E It is not in dispute that the authority to bring the action was not given by the Sole Administrator. The reply by the plaintiffs, in their affidavit in reply to the counter-affidavit, is that, the action was brought by the Government of Plateau State which was the de jure government, even during the period of the state of emergency, while the Sole Administrator was a usurper with only a de facto authority. To me this only goes to confirm that the sole administrator did not authorize the institution of the case. In view of the fact that the State of Emergency (Plateau State) Proclamation, 2004 and the Emergency Powers (General) Regulations, 2004 remained extant at the time of filing the summons and was not repealed or declared null and void by a competent court, I hold that the action was brought without the authority of the Sole Administrator. Therefore it is an abuse of the process of the court and must not be allowed to stand. The Governor of Plateau State has no power to ratify what was done, if even wrongly, when he was not qualified to take or be in a position to permit the action. No law or legal authority has been cited by learned counsel for the plaintiffs

to show that such power is vested in the Governor. I do not accept, in view of the provisions of section 315 of the 1999 Constitution, that the Governor and the House of Assembly were the de jure authority during the period of the State of emergency. (p. 140 B)

B

*2. Plaintiffs are not proper parties that can sue*

The other point which I wish to touch upon briefly is whether the 1st plaintiff has the capacity to sue. By the provisions of section 20 of the Supreme Court Act, Cap 424 it is only the Attorney-General of Plateau State that can sue or be sued on behalf of the State. I therefore hold that the 1st plaintiff is not a proper party to the case. So also the 2nd plaintiff by virtue of the same section of the Act as amended by the Supreme Court (Additional Original Jurisdiction) Act, 2002; only the Speaker of the House can sue and be sued on behalf of the House of Assembly.

C

Accordingly the suit as a whole fails for being incompetent and I too hereby strike it out. (p. 140 G)

**TOBI JSC**

*3. Plaintiffs' suit is not academic or speculative*

A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.

D

A suit is speculative if it is based on speculation. A suit is speculative if it is not supported by facts or very low on facts but very high in guesses. As courts of law are not established to adjudicate on guesses but on facts, such actions are struck out.

E

A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a “mirage” to deceive the defendant and the court as to the reality of the cause of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought.

With the above brief exercise in diction, I am of the firm view that the suit filed by the plaintiffs is not academic, speculative or hypothetical.

F

On the contrary, the suit clearly contains reliefs which are actionable and

which a court of law is competent to decide one way or the other.  
(p. 162 G)

**REPRESENTATION**

Prof. B. Nwabueze, SAN (L.T. Sule and chief Ziggy Azike with him) B  
for the plaintiffs.

Seni Okunloye, SAN (B. J. Akomolafe, Mrs. Relmi Awe-Osha, Dotun  
Sowemimo and Mrs. N. O Owookere with him) for 1st Defendant.

Tochi Nwogu and Miss Olubunmi Ope-Agbe for 2nd defendant. C

**CASES REFERRED TO**

Obasanjo v. Yusuf (2004) 9 N.W.L.R. (Pt. 877) 144

Okesade v. Ogunkayode (1994) 1 N.W.L.R. 9 (Pt. 318) 26

Trade Bank v. Benilux (Nig.) Ltd. (2003) 9 N.W.L.R. (Pt. 825) 416 D

Obasuyi v. Business Ventures Ltd. (2000) 5 N.W.L.R. (Pt. 658) 668

Kurubo v. Zach Motison (Nig.) Ltd. (1992) 5 N.W.L.R. (Pt. 239) 102

Permanent Sec. Ministry of Works, Kwara State v. Balogun (1975) All  
N.L.R. 254 E

Saraki v. Kotoye (1992) 9 N.W.L.R. (Pt. 264) 156

A-G Ondo State v. A-G Ekiti State (2001) 17 N.W.L.R. (Pt. 743) 765

Nkwocha v. Governor of Anambra State (1984) 1 S.C.N.L.R. 634

Ezeanya v. Okeke (1995) 4 N.W.L.R. (Pt. 388) 12 F

Adewunmi v. A-G Ekiti State (2002) 2 N.W.L.R. (Pt. 751) 474

A-G Federation v. A.N.P.P. & 2 Ors. (2003) 18 N.W.L.R. (Pt. 851)

Ezeanya. v. Okeke (1995) 4 N.W.L.R. (Pt. 388) 142

Adewunmi v. A-G Ekiti State (2000) 2 N.W.L.R. (Pt. 751) 474

A.G Federation v. A.N.P.P. & 2 Ors (2003) 18 N.W.L.R. (Pt. 851) 182 at G  
page 215

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999 ss. 11, 36, 90, 114, H  
170, 176, 232, 305 & 315

Supreme Court Act ss. 3 & 20

Emergency Powers Act, 1961

**LEAD JUDGMENT BY KUTIGI JSC**

The Plaintiffs' Amended Originating Summons which was taken  
 B out by their Counsel, Professor B. O. Nwabueze SAN, Legal Practitioner,  
 is couched in the following terms -

**"1. ISSUES FOR DETERMINATION"****ISSUE A:**

C Whether the suspension by the President of the Federal Republic  
 of Nigeria of "*the office of the Executive Governor .... and the House of*  
*Assembly*" of Plateau State and the Proclamation, published in the Federal  
 Government Gazette as Statutory Instrument No. 4 of 2004, by which the  
 suspension was effected, are not a violation of the provisions of sections  
 176 and 90 of the Constitution of the Federal Republic of Nigeria 1999  
 D which establish those organs for the government of the State.

**ISSUE B:**

Whether the said Constitution, either expressly or by implication  
 of its provisions, authorizes the President of the Federal Republic of Ni-  
 E geria, by Proclamation published in the Federal Government Gazette as  
 Statutory Instrument No. 4 of 2004, to suspend the duly elected Executive  
 Governor and members of the House of Assembly of Plateau State from  
 exercising the functions and powers of their offices, and to appoint in their  
 F place an Administrator, with power to administer the affairs of the state,  
 and whether the suspension is not a positive contravention of the explicit  
 prohibition contained in section 11(4) and (5) of the said Constitution.

**ISSUE C:**

G Whether the Emergency Powers Act 1961 from which the Pres-  
 ident claims to derive power to issue Regulations as additional authority  
 or "*basis*" for the suspension of the "*the office of Governor and House*  
*of Assembly*" of Plateau State and the Establishment of an emergency  
 administration under an Administrator was as at May 18, 2004 part of  
 the laws of the Federation as an existing law under section 315 of the  
 said Constitution and, if so, whether the Act is not inconsistent with that  
 H Constitution.

**ISSUE D:**

Whether, except with respect to a law for maintaining and securing  
 public safety and public order and for providing, maintaining and securing  
 designated essential supplies and services, or when the Federation is at war,  
 under section 11(1) and (3) of the said Constitution, the National Assembly B  
 has power to make laws generally for peace, order and good government  
 of Plateau State on matters within the exclusive competence of the State  
 under the Constitution otherwise than as provided in section 11(4) and (5)  
 of the said Constitution or has power to make law or to pass resolution  
 removing or suspending or authorizing the removal or suspension of the C  
 Governor or Deputy Governor of the State.

**2. RELIEFS CLAIMED**

The Plaintiffs claim the following reliefs:

(i.) A DECLARATION that the suspension by the President of D  
 the Federal Republic of Nigeria of "*the office of the Executive Governor*  
*.... and the House of Assembly*" of Plateau State and the Proclamation,  
 published in the Federal Government Gazette as Statutory Instrument No.  
 4 of 2004, by which the suspension was effected, are unconstitutional, E  
 null and void as a violation of the provisions of sections 176 and 90 of  
 the Constitution of the Federal Republic of Nigeria 1999 which establish  
 those organs for the government of the State.

(ii.) A DECLARATION that the suspension from office by the F  
 President of the Federal Republic of Nigeria by Statutory Instrument No.  
 4 of 2004 of the duly elected Governor and Chief Executive and Mem-  
 bers of the House of Assembly of Plateau State and their replacement by  
 an emergency Administrator appointed by the President, with power to  
 "administer" the State for the duration of the emergency, are unconstitu- G  
 tional, null and void on the ground that it is not only unauthorized by any  
 of the provisions of the 1999 Constitution of Nigeria but is also a positive  
 contravention of the explicit prohibition contained in section 11(4) and  
 (5) of the said Constitution. H

(iii.) A DECLARATION that the Emergency Powers Act 1961 by  
 virtue of which the President of the Federal Republic of Nigeria claims to  
 have power to issue Regulations as the "basis" on which the Emergency

Administrator is to “*operate*” in the administration of the Plateau State was not as at 18 May, 2004 part of the laws of the Federation, and even supposing it to be an existing law within the meaning of section 315 of the Constitution aforementioned, it is unconstitutional, null and void on the ground of inconsistency with section 11(4) and (5) of the said Constitution.

B (iv.) A DECLARATION that the Emergency Powers Act 1961, supposing it to be an existing law within the meaning of section 315 of the said 1999 Constitution, is unconstitutional, null and void as an abdication of the legislative powers vested in the National Assembly by section 4 of the Constitution.

C (v.) A DECLARATION that, even supposing the Emergency Powers Act 1961 to be an existing law as at 18th May, 2004 and to be a valid law under the 1999 Constitution, the Regulations made by the President pursuant thereto and on the basis of which the Governor and members of the House of Assembly of Plateau State were purportedly suspended and the emergency Administrator operated in the administration of the State are null and void on the ground that, having been made some days after 18 May, 2004, they are inconsistent with the enabling Act which does not authorize the making of Regulations with retrospective effect, and with section 36(8) which prohibits criminal offences and penalties with retrospective effect.

D (vi.) A DECLARATION that, except with respect to a law for maintaining and securing public safety and order and for providing, maintaining and securing designated essential supplies and services, or when the Federation is at war, under section 11(1) and 3 of the 1999 Constitution, the National Assembly has no power to make laws generally for peace, order and good Government of Nigeria or any part thereof on matters not included in the Legislative Lists, otherwise than as provided in section 11(4) of the said Constitution, and accordingly any law enacted for Plateau State in contravention of that subsection is unconstitutional, null and void.

E (vii.) A DECLARATION that by reason of section 11(5) of the 1999 Constitution the National Assembly has no power, by means of a law or a mere resolution, to remove or to authorize the President to remove or suspend the Governor or Deputy Governor of Plateau State and accordingly

any law enacted or resolution passed in contravention of that subsection is unconstitutional, null and void.

(viii.) A DECLARATION that the Government of Plateau State headed by Chief Joshua Dariye as the constitutional and duly elected Governor and Chief Executive of Plateau State is entitled to be paid compensation by the Federal Government for the deprivation of its Constitutional right to administer the affairs of the State during the six months, May 18 to November 17, 2004, by its unlawful suspension by the President of the Federal Republic of Nigeria.

(ix.) A DECLARATION that the House of Assembly, Plateau State, as the constitutional and duly elected legislative organ of the State, is entitled to be paid compensation by the Federal Government for the deprivation of its constitutional right to make laws for the State and to exercise other functions vested in it by the Constitution of the Federal Republic of Nigeria 1999 during the six months, May 18 to November, 17, 2004, of its unlawful suspension by the President of the Federal Republic of Nigeria.

(x.) A DECLARATION that as the Constitutional functionaries of Plateau State, duly elected and sworn-in, the Governor, Deputy Governor and Members of the House of Assembly of the State as well as the Commissioners of the State Government are entitled to be paid compensation for the loss of their emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months May 18 to November 17, 2004 during which they were unlawfully suspended from their respective offices by the President of the Federal Republic of Nigeria.

(xi.) A DECLARATION that Governor Joshua Dariye is entitled to be paid compensation by the Federal Government for the damage caused him not only by the false and malicious information supplied by its functionaries to the London Metropolitan Police that “*Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK*” but also by the unwarranted and unlawful action of the Attorney-General of the Federation and Minister of Justice, Chief Akinlolu Olujinmi SAN in confirming to the London Metropolitan Police that “he has waived without any reservation,

any immunity from arrest and prosecution that he (Chief DARIYE) may claim to have.”

(xii.) A MANDATORY ORDER compelling the Federal Government to pay to the Plateau State Government and the House of Assembly of the State the sum of Six Billion Naira only and One Billion Naira only respectively for the deprivations mentioned in paragraphs (viii) and (ix) above of the Reliefs.

(xiii.) A MANDATORY ORDER compelling the Federal Government to pay to Chief Joshua Dariye, Governor and Chief Executive of Plateau State and the Deputy Governor jointly the sum of N2 Billion (Two Billion Naira only), to the Commissioners of the Government N500 million (Five Hundred Million only) and to the Speaker and each of the other Members of the House of Assembly a total sum of N1 Billion (One Billion Naira only) as compensation for loss of emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months’ period of their suspension.

(xiv) A MANDATORY ORDER compelling the Federal Government to pay to Governor Joshua Dariye the sum of One Billion Naira only as compensation for the damage caused him by the false and malicious information and action mentioned in paragraph (xi) above of the Reliefs.

### 3. GROUNDS

(a.) On May 18, 2004, by the State of Emergency (Plateau State) Proclamation, 2004, published as Statutory Instrument No. 4 of 2004, the President of the Federal Republic of Nigeria declared a State of emergency in Plateau State of Nigeria.

(b.) The Proclamation suspended “*the office of the Executive Governor .... and the House of Assembly*” of Plateau State with effect from 18 May, 2004 and that “*the State shall for the duration of the emergency be administered by an Administrator who shall be appointed by me and operate on the basis of such Regulations that may, from time to time, be issued by me.*”

(c.) These acts above mentioned were stated to be done or made “*in exercise of the powers conferred upon me by Section 305(1), (3), (c.) and (d.) of the Constitution of the Federal Republic of Nigeria 1999 and*

*of all other powers enabling me in that behalf.”*

The Originating Summons was supported by an affidavit. In paragraphs 4, 5, 6 & 7 it is averred thus -

“(4.) *That His Excellency Governor Joshua Dariye, his Deputy and the House of Assembly of Plateau State were duly elected and sworn into office in accordance with the 1999 Constitution.*

5. *That Mr. Simon Lalong, Speaker of the House of Assembly, Plateau State, informed me and I verily believe him as follows:-*

(a.) *That there were civil disturbances in some parts of Plateau State between September, 2001 and May 2004.*

(b.) *That the parts of the State affected by these civil disturbances formed a relatively small part of the total area and population of Plateau State.*

(c.) *That by reason of the disturbances and while strenuous efforts were being made by the authorities of the State Government to contain the situation, President Olusegun Obasanjo, by the State of Emergency (Plateau State) Proclamation 2004, published in the Federal Government Gazette as S.1 No. 4 of 2004, declared a state of emergency in Plateau State on May 18, 2004.*

(d.) *That the Proclamation aforementioned also suspended “the office of Executive Governor ..... and House of Assembly” of Plateau State.*

(e.) *That thereafter President Olusegun Obasanjo appointed Major-General M. C. Alli (Rtd) as emergency Administrator to administer the affairs of Plateau State for an initial period of 6 (six) months effective from May 19, 2004 subject to ratification of the National Assembly.*

(f.) *That at the time of the suspension of the constitutional organs of the Government of Plateau State and their replacement by an Administrator appointed by the President, there were no Regulations made under the Emergency Powers Act 1961 and pursuant to which the suspension and the appointment could have been made.*

(g.) *That the National Assembly ratified the declaration of a state of emergency, the suspension of the Executive Governor, Deputy Governor and the State House of Assembly, Plateau State, and the appointment of Major-General M.C. Alli (Rtd) as the Administrator of the State for a*

period of 6 (six) months.

(h.) That following their suspension from office and the take-over of the State Government by the Administrator, the Governor, Deputy Governor and the House of Assembly, Plateau State, were prevented from exercising the functions of their offices, although they remained able and willing to do so.

(i.) That the deprivation mentioned in paragraph (h) above continued until 18 November, 2004 when the emergency and the suspension expired by effluxion of time.

(j.) That during the entire period of their suspension, the Governor, Deputy Governor, Commissioners, Speaker and members of the House of Assembly, Plateau State, were deprived of the right not only to exercise the functions of their offices, but also the right to the emoluments attached to those offices, including allowances, accommodation, cars and other privileges and perquisites.

(k.) That further to paragraph (j.) above the parties aforementioned suffered untold hardship and emotional trauma, loss of esteem and influence.

6. That Governor Joshua Dariye of Plateau State informed me and I verily believe him -

(i.) That the Defendants have engaged in an intense and relentless campaign to malign and disgrace him with a view to forcing him out of office as Governor of Plateau State.

(ii.) That as part of that campaign, the Defendants instigated the London Metropolitan Police to arrest him, and to raid and search his home and hotel room in London on allegations of criminal offences on or about 2nd September, 2004.

(iii.) That the search, arrest and raid of Governor Joshua Dariye's house and hotel room were consequent upon the false and malicious information given by the Defendants to the London Metropolitan Police that "Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK," and that his "immunity from arrest and prosecution has been waived without any reservations" by the Attorney-General of the Federation, Chief Olujinmi SAN.

(iv.) That the campaign has been carried further by bringing an officer from the London Metropolitan Police to testify against Governor Dariye in a criminal case before the Federal High Court in Kaduna when his name has been struck out from the case on the ground that he is covered by immunity under section 308 of the Constitution, and when the evidence given by the officer from the London Metropolitan Police, Mr. Peter Clark, is totally irrelevant to the charges before the Court, especially after the name of Governor Dariye and counts ONE and FOUR of the charges had been struck out by the order of the Court in Kaduna.

(v.) That the campaign against Governor Dariye aforementioned has imposed severe stress and trauma upon him, which have so adversely affected his entire life.

7. That I am informed by Counsel in charge of the case, Professor B. O. Nwabueze SAN, and I verily believe him, that a Court of competent jurisdiction the Federal High Court in Abuja, has held that the suspension of Chief Joshua Dariye from office as Governor of Plateau State, even supposing the suspension to be valid in law, does not remove his immunity under section 308 of the Constitution, and that the Federal Government has not appealed against that decision."

A Counter-Affidavit to the affidavit in support of the Originating Summons was filed by the 1st Defendant. It is averred in paragraphs 5-29 thus -

"5. That paragraphs 5(a) - (k) are prevaricated and or slanted; paragraphs 6(i.) - (v.) and 8 are false while paragraph 7 is totally irrelevant to the Plaintiff's case.

6. The 1st Defendant shall by way of objection to the competence of this suit contend that the 1st and 2nd Plaintiffs did not authorize this action and no instruction was given by the Plaintiffs for the filing of this case at the time it was filed.

7. Furthermore, the 2nd Plaintiff is not a juristic person and cannot maintain this action as constituted.

8. That on 24th June, 2004 when this case was instituted, I know as a matter of common knowledge that Major-General M. C. Alli (Rtd) was the Administrator of Plateau State.

9. That in that capacity, the said Major-General M. C. Alli was

*the alter ego of Plateau State and its directing mind.*

10. That any decision to commence action on that day by the 1st Plaintiff could only be taken by the said Major-General Alli and no one else.

B 11. That the said Major-General M. C. Alli told me and I verily believe that he did not authorize the filing of this case and that he gave no instruction to Plaintiffs' counsel or to anyone at all to file this action.

C 12. That counsel to the Plaintiffs is a mere busy body who has without any authority whatsoever employed the name of the 1st Plaintiff to institute this action.

13. That at all times material to the institution of this case, the 2nd Plaintiff was suspended and remained suspended until end of the emergency.

D 14. That I therefore verily believe that there was no time when the 2nd Plaintiff took a decision to institute this action.

15. Accordingly, there was no time that counsel was instructed by the 2nd Plaintiff to institute this action.

E 16. That some members of the 2nd Plaintiff who claimed to be aggrieved by the suspension of the 2nd Plaintiff instituted an action in their personal capacities at the Federal High Court, Jos to ventilate their alleged grievances.

F 17. That the said action is still pending before the Federal High Court, Abuja, the same having been transferred from Jos to Abuja.

18. That the 1st Defendant shall contend in the circumstance that this action is an abuse of Court process by counsel who employed the name of the Plaintiffs to institute this action.

G 19. That the 2nd Plaintiff did not instruct counsel and did not pay any fees to counsel to institute the action.

20. That His Excellency, Chief Joshua Dariye was sworn in as the Governor of Plateau State on 29th May, 1999 and occupied the said office pursuant to the provisions of the 1999 Constitution.

H 21. Shortly thereafter and specifically from March, 2001, the State was plunged into incessant crisis and civil disturbances arising from animosity and prejudices among the people of the State along ethnic and religious divisions.

22. The crisis and disturbances were not checked by the Governor with its adverse implications on the State of Public Order and Security.

23. That the crisis consequently escalated leading to complete breakdown of public order and public safety in Plateau State with attendant massive loss of lives and properties and creating human calamity within and outside the State. B

24. That the Governor did not take any effective step to stem down the tide and made no request to the President to issue a proclamation of a state of emergency in the State.

C 25. That the effect of the public breakdown of order in the State went beyond the State and extended to other parts of the Federation as to require extra-ordinary measures to avert the situation.

D 26. That it was as result of these that the President and Commander in Chief of Armed Forces of the nation issued a proclamation of a State of Emergency in Plateau State to deal with the situation.

27. The State of Emergency lasted for 6 months from 18th May, 2004 to 17th November, 2004 and has since lapsed.

E 28. That having regard to the fact that peace was restored to the State during the period of the State of Emergency the emergency rule was not extended and the arms of Government that were suspended had been restored since 18th November, 2004.

F 29. That the Plaintiffs' case is vexatious, unmeritorious, unauthorized, lacking in merit and a gross abuse of the Court process."

The Plaintiffs also filed a Reply to the 1st Defendant's Counter-Affidavit above. Paragraph 4 of the Reply reads as follows -

G "4. That leading Counsel for the Plaintiffs, Professor Ben Nwabueze SAN, informed me and I verily believe him as follows:

(i.) The averments in paragraphs 6 and 12-15 of Mr. Bankole Akomolafe's Counter-Affidavit that "the 1st and 2nd Plaintiffs did not authorize this action and no instruction was given by the Plaintiffs for the filing of this action at the time it was filed" raise a point of law, which does not need to be controverted in an affidavit; insofar, however, as they may be said to be averment of fact, the Plaintiffs deny it and put the Defendants to the strictest proof thereof. H

(ii.) Being a statement of law, the averments in the said paragraphs 6 and 12 - 15 of Bankole Akomolafe's Counter-Affidavit are incompetent and invalid as they offend against sections 86 and 87 of the Evidence Act Cap. E14, (sic) Laws of the Federation, which provide as follows:-

B “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 which he believes to be true” (emphasis supplied)

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

(iii.) The averment in the said paragraphs 6 and 12 - 15 of the Counter-Affidavit are incompetent and invalid on another ground which will be taken up at the hearing of the suit, should it be necessary to do so.

D (iv.) Being also a statement of law, the averment in paragraph 7 of the said Counter-Affidavit that “the 2nd Plaintiff is not a juristic person and cannot maintain this action as constituted” is likewise incompetent and invalid as offending against the above - quoted sections 86 and 87 of the Evidence Act; in any case, like the 1st Defendant (the Office of the E Attorney-General of the Federation) and the 2nd Defendant (the National Assembly), the House of Assembly of Plateau State is a body established by the supreme law of the land - section 90 of the Constitution 1999.

F (v.) The averments in paragraphs 8 - 11 of the said Counter-Affidavit are likewise incompetent, as they preempt the very issue before the Honourable Court for determination, namely, whether or not the Constitution of Nigeria 1999 authorizes the suspension of the elected Government of Plateau State for the six months period of the emergency, the appointment of Major-General M. C. Alli as Administrator during that period and the consequent deprivation of the constitutional right and power of the elected Government of the State to administer the affairs of the State during the period; the averments (paras. 8-11) unwarrantedly presume that the suspension, the appointment of the Administrator and deprivation of the rights and powers of the elected Government of the State are so authorized and are legally valid, the effect of which would be to deprive the elected H Government (the Executive Governor and House of Assembly) of their

right of recourse to the Court to determine the issue as well as to deprive the Court of jurisdiction to entertain their suit; if the suspension and the appointment of the Administrator are unconstitutional, null and void, then, they are so ab initio, so that the elected Executive Governor and House of Assembly remained de jure Government of the State during the period of the emergency and the lawful authority to administer its affairs, including authorizing the filing of the present suit; the Administrator was simply a usurper, whose de facto authority, such it was, cannot be set up against that of the lawful Government of the State; the numerous decided authorities on the point will be examined during the hearing of the suit, should it be necessary to do so. C

(vi.) The averments in paragraphs 21-28 are irrelevant as well as incompetent, in that the declaration of a state of emergency in Plateau State, whether or not it was constitutional and valid having regard to the situation prevailing in the State at the time, is not an issue before the Honourable Court for determination in this suit, but rather whether the constitution grants the President power and authority, following the emergency declaration, even assuming without conceding the constitutional validity of the declaration, to suspend the elected Government of the state and to appoint an Administrator. D E

(vii.) The issue of abuse of Court process averred in paragraphs 16 -19 of the said Counter - Affidavit is incompetent as it raises a point of law contrary to sections 86 and 87 of the Evidence Act quoted above; in any case, the Plaintiffs, not being a party to the suit in the Federal High Court, cannot have abused Court process by instituting the present suit in the Supreme Court, more so as the constitutionality of the declaration of a state of emergency challenged in the suit in the Federal High Court, is not an issue for determination in the present suit, the suspension of the elected executive government of the State is not an issue in the Federal High Court suit as it is in the present suit, and as any decision given by the Supreme Court in the present suit is binding on all other Courts in the country, including the Federal High Court. F G H

(viii.) Contrary to the averment in paragraph 29 of the said Counter-Affidavit, the present suit is not vexatious or unmeritorious, but one of great national interest and importance relating to the government of the

country under the Constitution.”

### PRELIMINARY OBJECTIONS

Notices of Preliminary Objections were filed by both the 1st and 2nd Defendants. They also raised them in their briefs of argument. The 1st Defendant objects to the competence of the suit and the jurisdiction of the Court. The grounds of the objection are as follows -

“(1) That *the suit is devoid of any live issue and it is being maintained merely for academic and advisory purposes only.*

(2.) *The suit is not authorized by the 1st Plaintiff.*

(3.) *The suits seeks reliefs for individuals who are not parties to the case and who have no competence to maintain an action in this case.*

(4.) *The action, as constituted is misconceived.*

(5.) *The action is an abuse of Court process having regard to the suit in Exhibit CA1, attached to the 1st Defendant's Counter-Affidavit. This is a suit at the Federal High Court, Jos now transferred to Abuja.*

(6.) *Both Plaintiffs herein are by virtue of Section 20 and Section 3 of the Supreme Court Act and Supreme Court (Additional Original Jurisdiction Act) Cap S. 16 LFN 2004 (sic) respectively, have no requisite locus standi to institute this action;*

(7.) *There is no reasonable cause of action;*

(8.) *The Jurisdiction of the Honourable Court is not extended to the enforcement of rights which were suspended in the Regulations but limited to whether or not the Laws and Regulations relating to the State of Emergency in Plateau State were properly made or not.”*

The 2nd Defendant objects to the suit on the sole ground that the issue before the Court is “lifeless, spent, academic, speculative and hypothetical.”

It is clear to me that the single ground raised by the 2nd Defendant is the same as 1st Defendant's ground (1) above.

Arguing the grounds of preliminary objection together, learned Counsel for the 1st Defendant, Okunloye SAN, said going by the affidavit evidence before the Court, the State of Emergency was declared on 18/5/2004 and ended on 17/11/2004 when situation in Plateau State normalized. Consequently there cannot be any live issue in respect of that

emergency declaration which has since expired. That it is a notorious fact that all structures, and public officers suspended are now back on duty. That what is before the Court is therefore an academic, speculative and hypothetical issue. He said reliefs (i), (ii), (iii), (iv), (v), (vi) and (vii) claimed by the Plaintiffs are spent, lifeless, hypothetical and academic and that the Court should decline jurisdiction to entertain them.

It was also contended that individual claims are not cognizable under the original jurisdiction of this Court by virtue of section 232(1.) of the Constitution. Consequently reliefs (x), (xi), (xiii) and (xiv) are incompetent and should be struck out. In addition these reliefs are being claimed by persons who are not even parties to the suit. That Governor Joshua Dariye, his Deputy, members of the House of Assembly and Commissioners of the State are not parties to the case before the Court. That a non-party cannot claim any relief in a suit to which he or she is not a party. That this Court has the jurisdiction to strike out part or parts of a relief or reliefs sought and or dismiss part or parts. A number of cases were cited in support. They include - OBASANJO v. YUSUF (2004) 9 N.W.L.R. (Pt. 877) 144, ATT.-GEN. OF FEDERATION v. A.N.P.P. & 2 ORS. (2003) 18 N.W.L.R. (Pt. 851) 182; OKESADE v. OGUNKAYODE (1994) 1 N.W.L.R. 9 (Pt. 318) 26; TRADE BANK v. BENILUX (NIG.) LTD. (2003) 9 N.W.L.R. (Pt. 825) 416; OBASUYI v. BUSINESS VENTURES LTD. (2000) 5 N.W.L.R. (Pt. 658) 668; IMANA v. ROBINSON (1979) 3 - 4 S.C. 1; KURUBO V. ZACH MOTISON (NIG.) LTD. (1992) 5 N.W.L.R. (Pt. 239) 102.

It was further submitted that the action is incompetent because it was not authorized. That on 24/06/2004 when the action was instituted, the Administrator Major-General M.C. Alli (Rtd) was the alter ego of Plateau State and its directing mind. That Major-General M. C. Alli (Rtd.) has deposed in his Counter-Affidavit and Further Counter-Affidavit that he did not direct the institution of this action nor authorized any body to file same. That the 2nd Plaintiff which could only have acted by resolutions passed at its sitting or as directed by its principal officers, was as at 24/6/2004 when this action was instituted, not in session and its principal officers were also not in office. Clearly therefore the suit was not authorized by the

Plaintiffs and or the Emergency Administrator. We were therefore urged to hold that this action is unauthorized and therefore incompetent.

It was also contended that the reliefs claimed are not for the benefit of the Plaintiffs themselves. That it is not enough for the Plaintiffs to complain about a breach of the Constitution without showing how the breach has affected their legal interests. He cited ATTORNEY-GENERAL BENDEL STATE v. ATTORNEY-GENERAL OF FEDERATION (1981) N.S.C.C. 314; OKESADE v. OGUNKAYODE (supra); PERMANENT SEC. MINISTRY OF WORKS, KWARA STATE v. BALOGUN (1975) ALL N.L.R. 254 and urged the Court to decline jurisdiction.

It was again contended that by virtue of the provision of Section 20 of the Supreme Court Act, the 1st Plaintiff, Plateau State of Nigeria herein, is not a proper or competent party before the Court (it) not being the Attorney-General of Plateau State. Likewise the 2nd Plaintiff by virtue of the provisions of Section 3 of the Supreme Court (Additional Original Jurisdiction) Act, No. 3 of 2002, could only have instituted this action in the name of the Speaker of the House of Assembly. That this was not complied with because the House and its officers were suspended. He referred to the Counter-Affidavit and Further-Counter Affidavit of Major-General Chris Alli (Rtd.) the Sole Administrator of Plateau State from 18/5/2004 to 17/11/2004.

That this suit was filed by the Plaintiffs on 24/6/2004 more than one month after Major-General Chris Alli (Rtd.) took office and the House of Assembly remained suspended during the State of Emergency. It is therefore submitted that the 2nd Plaintiff lacks locus standi to institute or maintain this action.

It was also argued that this suit is unmaintainable in that it is an abuse of process of Court because members of the 2nd Plaintiff who claimed to be aggrieved by the suspension of the 2nd Plaintiff had instituted an action in their personal capacities at the Federal High Court, Jos to ventilate their alleged grievances and that the said suit is still pending before the Federal High Court, Abuja, the same having been transferred from Jos to Abuja. That it is an abuse of Court process to institute multiple actions. We were referred to the cases of SARAHI v. KOTOYE (1992) 9

N.W.L.R. (Pt. 264) 156 and ATTORNEY-GENERAL OF ONDO STATE v. ATTORNEY-GENERAL OF EKITI STATE (2001) 17 N.W.L.R. (Pt. 743) 765 and urged to dismiss the suit.

The 2nd Defendant's Counsel Nwogu Esq. in his submissions agreed with the 1st Defendant that reliefs (i) - (vii) contained in the Amended Originating Summons should be struck-out for being incompetent. That they are spent and have become academic and hypothetical. Learned Counsel said the State of Emergency lasted from 18/5/2004 to 17/11/2004 and that normalcy has since returned to Plateau State. There is thus no live issue before this Court for trial now. We were referred to NKWOCHA v. GOVERNOR OF ANAMBRA STATE (1984) 1 S.C.N.L.R. 634; EZEANYA v. OKEKE (1995) 4 N.W.L.R. (Pt. 388) 12, ADEWUMI v. ATTORNEY-GENERAL OF EKITI STATE (2002) 2 N.W.L.R. (Pt. 751) 474 and ATTORNEY-GENERAL OF FEDERATION vs. A.N.P.P. & 2 ORS. (2003) 18 N.W.L.R. (Pt. 851) 182. The Court was urged to strike out the Plaintiffs' reliefs (i.) - (vii.) as well as the name of the 2nd Defendant.

Professor Nwabueze SAN, learned Counsel for the Plaintiffs, in reply submitted that the preliminary objection misconceives the nature of an action for a declaration and that the Court has jurisdiction to entertain an action by a competent party for a declaration that a law or a legal right, shown to be subsisting, has been violated.

That the provisions of sections 90 and 176 of the Constitution are clearly subsisting law, so are the legal rights that they confer. That the maintainability of a claim for a declaration does not depend on the monetary value of the damage caused by the violation of the law or legal right in question as contended by the 1st Defendant. He said reliefs (i.) - (vii.) raise live issues of great national importance especially when the reliefs are read together with other reliefs (viii.) - (xiv.). All the reliefs must be read together he said. It was submitted that Chief Joshua Dariye, his Deputy and Commissioners, as individuals are "persons" who exercise power or authority on behalf of the Government of Plateau State, so also are individual members of the House of Assembly of the State. Accordingly the Court has original jurisdiction to entertain their claims for compensation, being parties to the suit as embraced in the term "Plateau State of Nigeria"

or “*the Government of Plateau State*” by virtue of Section 318(1) of the Constitution.

It was further submitted that the contention that the 1st Plaintiff, Plateau State, is not a competent party by virtue of Section 20 of the Supreme Court Act, and that the 2nd Plaintiff, the House of Assembly likewise lacks competence to be a party, by virtue of Section 3 of the Supreme Court (Additional Original Jurisdiction) Act, are unfounded. He said Section 232(1) of the Constitution speaks of a “*dispute between the Federation and a State.*” In such a dispute the competent parties are namely, the Federation and the State concerned. That section 20 of the Supreme Court Act does not provide that the Federation or a State cannot be a competent party in a suit instituted under section 232(1) of the Constitution. He said reference to the Attorney-General in Section 20 of the Act is only a name to be used for convenience in bringing the action, thus making it a procedural matter only which cannot override the substantive right of the real and competent parties as indicated in Section 232(1) of the Constitution. That Section 20 of the Act cannot regulate the rights under Section 232(1) of the Constitution. That the Attorney-General is a party only in name and as representing the competent party. He relied on the case of *ATTORNEY-GENERAL BENDEL STATE v. ATTORNEY-GENERAL OF THE FEDERATION & ORS.* (1981) N.S.C.C. 314, where this Court ordered the joinder of the National Assembly, the President of the Senate, the Speaker of the House of Representatives and the Clerk of the National Assembly as 20th, 21st, 22nd and 23rd Defendants.

It was also submitted that the provision in the Supreme Court (Additional Original Jurisdiction) Act No. 3 of 2002 as it applies only to original jurisdiction derived from Section 232(2) of the Constitution and not to the Court’s original jurisdiction under Section 232(1), is proper. In other words, the National Assembly can only validly regulate by an Act the exercise of original jurisdiction conferred by it under Section 232(2), as it has done in this case under 2002 Act No. 3, but not in respect of the exercise of original jurisdiction conferred by Section 232(1). It was argued that the requirement for the House of Assembly to sue by the name of its Speaker is procedural. The House of Assembly is the real or substantive

party, while the Speaker is a mere nominal party. That the irregularity is not fatal to the suit and should be waived.

On the authorization of this suit by the House of Assembly of Plateau State, it was submitted that the Speaker of the House, Barrister Simon Bako Lalong had on 10/2/2005 sworn to an affidavit in support of the suit being the proper person to have authorized the suit brought by the House. That the action has also been retrospectively and effectively ratified by Governor Dariye himself after the end of his so called suspension. In addition it was argued that the issue of authorization of the suit is misconceived as it pre-emptes the very issue before the Court for determination, namely whether or not the 1999 Constitution authorizes the suspension of the elected Government of Plateau State for the period of emergency, the appointment of an Administrator during the period and the consequent deprivation of the constitutional rights and powers of the elected government of the State.

It was also submitted that for there to be an abuse of Court process proof that the filing of multiple actions was done with the intention, purpose or aim of harassing, irritating and annoying an adversary is necessary vide *SARAKI vs. KOTOYE* (1992) 9 N.W.L.R. (Pt. 264) 156. That this was lacking in suit No. FHC/J/SC/64/2004 of the Federal High Court. He said that the Plaintiffs herein are not parties to suit No. FHC/J/SC/64/2004 and have not even been shown to be privy to the filing of that suit. It was also submitted that the issues in the present suit before the Supreme Court are different from those in the suit before the Federal High Court. That the claim in this case is limited to the constitutional validity of the suspension of the elected Governor and the House of Assembly for the period of the state of emergency, while the Federal High Court suit raises the question of the constitutional validity of the declaration of a state of emergency as well as the constitutional validity of the suspension of the House and the appointment of an emergency Administrator. That the constitutional validity of the suspension of the Governor is not an issue in the suit before the Federal High Court. He said neither the Governor nor the State House of Assembly nor Plateau State is a party in the Federal High Court case. We were therefore asked to discountenance the grounds of objection which are hopeless, misconceived as well as frivolous.

**I will now proceed to treat the grounds of preliminary objection one after the other.**

**(1.) THAT THE SUIT IS DEVOID OF ANY LIVE ISSUE AND IT IS BEING MAINTAINED MERELY FOR ACADEMIC AND ADVISORY PURPOSES ONLY**

**I think the ground of objection misconceives the nature of the declarations and other reliefs sought in this case. The entire case simply put concerns the constitutionality and or legality of the exercise of the emergency powers conferred on the President under Section 305 of the 1999 Constitution and which powers he exercised in Plateau State from 18/5/2004 to 17/11/2004. In exercise of his powers other provisions of the Constitution became involved as well. For example Sections 11, 36, 90, 170 & 315 just a few mentioned by the Plaintiffs. The emergency we all know ended or ceased to apply in that State on 17/11/2004. But the Constitution including Section 305 thereof, is still with us. The powers are still there for the President to exercise if and when he deems it necessary. The Constitution is alive and so are the emergency powers therein alive. It is therefore of no adverse significance to the case that “suspended structures and public officers” are now back to duty! Issues relating to the interpretation of a living Constitution as in this case, cannot in my view be dead, academic, speculative or hypothetical. A declaration of a state of emergency is a serious business anytime, anywhere. This ground of objection therefore fails.**

**(2.) THE SUIT IS NOT AUTHORIZED BY THE PLAINTIFFS**

**It is a notorious fact that Major-General Chris Alli (Rtd.) was appointed Sole Administrator of Plateau State during the state of emergency in that State from 18/5/2004 until 17/11/2004 when the emergency ceased. It is also a notorious fact that during the State of Emergency both the Governor and the House of Assembly were suspended and therefore were not functional. It is also a fact that throughout the period of State of Emergency only the Sole Administrator took decisions for and on behalf of the State. It is therefore common sense to say that as at 24/6/2004 when the Plaintiffs filed this suit, only the Sole Administrator could have authorized the filing of**

**the suit on behalf of the Plateau State of Nigeria. This was vehemently denied in his Counter-Affidavit and Further-Counter-Affidavit. Also as at 24/6/2004, the 2nd Plaintiff who had been suspended, clearly had no capacity or capability to meet and authorize the filing of the suit on its behalf.**

In paragraphs 1 - 9 of Further Counter Affidavit, Major-General Chris Alli (Rtd.) Sole Administrator of Plateau State says -

*“1. That I was the Sole Administrator appointed to administer the Plateau State of Nigeria by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR between the 1st day of May, 2004 and 17th day of November, 2004 which State of Emergency was declared in the State.*

*2. That the said State of Emergency lasted for 6 months, precisely, between the 18th day of May, 2004 to the 17th day of November, 2004.*

*3. That throughout the duration of the State of Emergency the House of Assembly of Plateau State was suspended and was not functional.*

*4. That throughout the period of the Emergency I took decisions solely for and on behalf of the State.*

*5. That as at the 24th day of June, 2004 when the Plaintiffs filed this suit I was the Sole Administrator of Plateau State of Nigeria.*

*6. That I did not during the period of Emergency which included 24th June, 2004 instruct or brief Chief Rotimi Williams, SAN or any other Counsel to initiate this proceeding on behalf of Plateau State of Nigeria.*

*7. That there was a complete breakdown of law and order and lives of the citizens were unsafe as at 18/5/2004 when I took over as the sole Administrator of the State.*

*8. That tranquility, Serenity, Orderliness and Security of lives and properties had been restored as at 17/11/2004 while total normalcy had returned.*

*9. That the governance and administration of Plateau State had since the 17th day of November, 2004 been returned to the elected Governor and the House of Assembly both of whom have since been functioning.”*

**My conclusion therefore is that the 1st and 2nd Plaintiffs did not authorize this suit and no instruction was given for filing same at the time it was filed. Any retrospective approval given by Governor**

Dariye is unhelpful as you cannot put something on nothing. There was no suit filed on 24/6/2004 when one was purportedly filed. There was therefore nothing to ratify. This ground of objection therefore succeeds.

B (3.) THE SUIT SEEKS RELIEFS FOR INDIVIDUALS WHO ARE NOT PARTIES TO THE CASE AND WHO HAVE NO COMPETENCE TO MAINTAIN THE ACTION

C This objection is clear. This Court has no original jurisdiction in respect of claims or reliefs for individual persons by virtue of the provisions of Section 232(1) of the Constitution which reads -

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

Claims (x), (xi), (xii), (xiii) & (xiv) are therefore incompetent. I strike them out accordingly.

E (4.) THE ACTION AS CONSTITUTED IS MISCONCEIVED  
This is overruled having regard to what I said under (1) above.

(5.) THE ACTION IS AN ABUSE OF COURT PROCESS HAVING REGARD TO THE SUIT IN THE FEDERAL HIGH COURT

F I say immediately that this is not correct. Suffice it to say however that the parties in the two suits are different and the reliefs claimed are also not the same. This is sufficient to dispose of the ground of objection. It is over-ruled by me.

G (6.) BOTH PLAINTIFFS HEREIN ARE BY VIRTUE OF SECTION 20 AND SECTION 3 OF THE SUPREME COURT ACT AND SUPREME COURT (ADDITIONAL ORIGINAL JURISDICTION) ACT RESPECTIVELY HAVE NO REQUISITE LOCUS STANDI TO INSTITUTE THIS ACTION

I will start by setting out the Sections of the two Acts as follows - Section 20 of the Supreme Court Act reads -

H “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.”* B

Section 3 of the Supreme Court (Additional Original Jurisdiction) Act provides -

“Section 20 of the Supreme Court Act is amended to the extent that in any such suit by or against -

(a.) *The National Assembly; or* C

(b.) *a State House of Assembly; The nominal party in the case of*

(i.) *National Assembly is the National Assembly*

(ii.) *a State House of Assembly is the Speaker of the House of Assembly, as stated in this Act.”* D

The issue here pertains to the names by which the parties sued. Under section 20 of the Supreme Court Act, it is provided that a State shall sue or be sued in the name of the Attorney-General in respect of suits founded on Section 232(1) of the Constitution. While Section 3 of the Supreme Court (Additional Original Jurisdiction) Act, provides that a State House of Assembly shall institute or defend an action by the Speaker of the House of Assembly. I must say at once that both the Attorney-General and the Speaker are nominal parties only. The principal, real or substantive parties are the State and the House of Assembly respectively. The question therefore is - Is it proper for Plateau State of Nigeria not to have sued in the name of the Attorney-General or the House of Assembly not to have sued in the name of its Speaker? I believe the Plateau State Government as well the House of Assembly of Plateau State are the substantive or principal or real parties, while the Attorney-General and Speaker are merely nominal parties only. This is therefore a mere irregularity. The irregularity is in my view clearly procedural which can and should be waived or overlooked. If the substantive or principal parties are here and they are, why bother about the nominal parties? The objection

in my view therefore fails.

(7.) THERE IS NO REASONABLE CAUSE OF ACTION

Certainly there is a reasonable cause of action as explained under (1) above. The objection fails.

B (8.) THE JURISDICTION OF THE HONOURABLE COURT IS NOT EXTENDED TO THE ENFORCEMENT OF RIGHTS WHICH WERE SUSPENDED IN THE REGULATIONS BUT LIMITED TO WHETHER OR NOT THE LAWS AND REGULATIONS RELATING TO THE STATE OF EMERGENCY IN PLATEAU STATE WERE PROPERLY MADE OR NOT

C **I am not sure whether this is an objection or a mere general statement of law on the jurisdiction of the Court in the matter before us. If it is law, Counsel has not referred to any law. Counsel also has not indicated which reliefs sought by the Plaintiffs pertain to rights suspended by the Regulations under the emergency and which are not. There is again no indication which reliefs question the validity of any law or regulation made during the emergency.**

**The Preliminary Objection therefore fails.**

E Conclusion

The Preliminary Objection raised by the 1st Plaintiff succeeds on the sole and principal ground that the suit was not authorized by the Plaintiffs. All other grounds of objection are refused except the reliefs or F claims (x), (xi), (xii), (xiii) & (xiv) in respect of individuals which are struck out. The 2nd Defendant's sole ground of objection also fails. The suit having been filed without the authorization by the Plaintiffs deserves one thing only. That one thing is simply to strike out the case in its entirety. The suit is hereby struck out. I make no order as to costs.

G

### UWAIS CJN

H I have had the advantage of reading in advance the judgment read by my learned brother Kutigi, JSC. I entirely agree with him that this action has not been properly constituted and that it should be struck out.

By virtue of the State of Emergency (Plateau State) Proclamation,

2004, Statutory Instrument No. 4 of 2004, and the Emergency Powers (General) Regulations, 2004, Statutory Instrument No.7 of 2004 both made by the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, in exercise of his powers under section 305 of the Constitution of the Federal Republic of Nigeria, 1999, the President suspended the B office of the Governor of Plateau State and the House of Assembly of the State. In their place he appointed a Sole Administrator in the person of Majors General M. C. Alli (Retired) to administer the affairs of the State with effect from the 18th May, 2004 to 17th November, 2004.

C The originating summons, which commenced this action, was submitted to the Registry of this Court by the plaintiffs on 24th June, 2004. The originating summons was amended by the plaintiffs, with the leave of the Court, on the 10th March, 2005. The 1st defendant had filed a counter-affidavit to the originating summons sworn to by Major-General D M. C. Alli in which it is deposed thus -

*"3. That throughout the duration of the State of Emergency, the House of Assembly was suspended and was not functional.*

*4. That throughout the period of the Emergency I took decisions E solely for and on behalf of the State.*

*5. That as at the 24th day of June 2004 when the plaintiffs filed this suit I was the Sole Administrator of Plateau State of Nigeria.*

*6. That I did not during the period of Emergency which included F 24th June, 2004 instruct or brief Chief Rotimi Williams, SAN or any other counsel to initiate this proceeding on behalf of Plateau State of Nigeria."*

G It is not in dispute that the authority to bring the action was not given by the Sole Administrator. The reply by the plaintiffs, in their affidavit in reply to the counter-affidavit, is that, the action was brought by the Government of Plateau State which was the de jure government, even during the period of the state of emergency, while the Sole Administrator was a usurper with only a de facto authority. To me this only goes to confirm that the sole administrator did not authorize the institution of the H case. In view of the fact that the State of Emergency (Plateau State) Proclamation, 2004 and the Emergency Powers (General) Regulations, 2004 remained extant at the time of filing the summons and was not repealed

or declared null and void by a competent court, I hold that the action was brought without the authority of the Sole Administrator. Therefore it is an abuse of the process of the court and must not be allowed to stand. The Governor of Plateau State has no power to ratify what was done, if even wrongly, when he was not qualified to take or be in a position to permit the action. No law or legal authority has been cited by learned counsel for the plaintiffs to show that such power is vested in the Governor. I do not accept, in view of the provisions of section 315 of the 1999 Constitution, that the Governor and the House of Assembly were the de jure authority during the period of the State of emergency.

The other point which I wish to touch upon briefly is whether the 1st plaintiff has the capacity to sue. By the provisions of section 20 of the Supreme Court Act, Cap 424 it is only the Attorney-General of Plateau State that can sue or be sued on behalf of the State. I therefore hold that the 1st plaintiff is not a proper party to the case. So also the 2nd plaintiff by virtue of the same section of the Act as amended by the Supreme Court (Additional Original Jurisdiction) Act, 2002; only the Speaker of the House can sue and be sued on behalf of the House of Assembly.

Accordingly the suit as a whole fails for being incompetent and I too hereby strike it out with no order as to costs as contained in the lead judgment of my learned brother Kutigi, JSC.

#### **EJIWUNMI JSC**

I was privileged to have read in advance, the draft of the judgment just delivered by my learned brother, Kutigi JSC and I agree with him that this action lacks merit.

The background facts that led to this action may be put briefly as follows: On May 18, 2004, by the State of Emergency (Plateau State) Proclamation 2004, published as Statutory Instrument No.4 of 2004, the President of the Federal Republic of Nigeria declared a state of emergency in Plateau State of Nigeria i.e. the 1st plaintiff. In the preamble to the said declaration, the reasons for it were set out therein. I will later in this judgment advert to the reasons so given. Be that as it may, by the said

Proclamation, “the office of the Executive Governor and the House of Assembly” of Plateau State were suspended with effect from 18th May 2001. It further states that “the State shall for the duration of the emergency be administered by an Administrator who shall be appointed by the President and operate on the basis of such Regulations that may, from time to time be issued by the President”. Major-General Chris Alli (Rtd.) was thereafter appointed Sole Administrator of Plateau by the President “in exercise of the powers conferred upon him by section 305 (1), (3) (c) and (d) of the Constitution of the Federal Republic of Nigeria 1999 and all other powers enabling me in that behalf”. In effect, the President declared a State of Emergency by the said Proclamation on the Plateau State of Nigeria on the 18th May 2004, and it lasted from that date until the 17th November 2001 when the emergency ceased.

As the plaintiffs considered that the state of emergency was illegal and contrary to the provisions of the Constitution of Nigeria 1999, commenced this action by an amended originating summons taken out on their behalf by their learned counsel. Prof. Ben Nwabueze, S.A.N. for the determination of the following questions: -

#### “ISSUE A

Whether the suspension by the President of the Federal Republic of Nigeria of “the office of the Executive Governor .... and the House of Assembly” of Plateau State and the Proclamation, published in the Federal Government Gazette as Statutory Instrument No.4 of 2004, by which the suspension was effected, are not a violation of the provisions of sections 176 and 90 of the Constitution of the Federal Republic of Nigeria 1999 which establish those organs for the government of the State.

#### ISSUE B

Whether the said constitution, either expressly or by implication of its provisions, authorizes the President of the Federal Republic of Nigeria, by Proclamation published in the Federal Government Gazette as Statutory Instrument No.4 of 2004, to suspend the duly elected Executive Governor and members of the House of Assembly of Plateau State from exercising the functions and powers of their offices, and to appoint in their place an Administrator, with power to administer the affairs of the state,

*and whether the suspension is not a positive contravention of the explicit prohibition contained in section 11 (4) and (5) of the said Constitution.*

### ISSUE C

*Whether the Emergency Powers Act 1961 from which the President claims to derive power to issue Regulations as additional authority or “basis” for the suspension of “the office of Governor and House of Assembly” of Plateau State and the establishment of an emergency administration under an Administrator was as at May 18, 2004 part of the laws of the Federation as an existing law under section 315 of the said Constitution and, if so, whether the Act is not inconsistent with that Constitution. .*

### ISSUE D

*Whether, except with respect to a law for maintaining and securing public safety, and public order and for providing, maintaining and securing designated essential supplies and services, or when the declaration is at war, under section 11(1) and (3) of the said Constitution or has power to make law or to pass resolution removing or suspending or authorizing the removal or suspension of the Governor or Deputy Governor of the State.”.*

*E The plaintiffs are therefore seeking for the following reliefs:*

*“i. A DECLARATION that the suspension by the President of the federal Republic of Nigeria of “the office of the Executive Governor ....and the House of Assembly” of Plateau State and the Proclamation, published in the federal Government Gazette as Statutory Instrument No.4 of 2004, by which the suspension was effected, are unconstitutional, null and void as a violation of the provisions of sections 176 and 90 of the Constitution of the Federal Republic of Nigeria 1999 which establish those organs for the government of the State.*

*ii. A DECLARATION that the suspension from office by the President of the Federal Republic of Nigeria by Statutory Instrument No.4 of 2004 of the duly elected Governor and Chief Executive and Members of the House of Assembly of Plateau State and their replacement by an emergency Administrator appointed by the President, with power to “administer” the State for the duration of the emergency, are unconstitutional, null and void on the ground that it is not only unauthorized by any of the provisions*

*of the 1999 Constitution of Nigeria but is also a positive contravention of the explicit prohibition contained in section 11(4) and (5) of the said Constitution.*

*iii. A DECLARATION that the Emergency Powers Act 1961 by virtue of which the President of the federal Republic of Nigeria claims to have power to issue Regulations as the “basis” on which the Emergency Administrator is to “operate” in the administration of the Plateau State was not as at 18th May, 2004 part of the laws of the federation, and even supposing it to be an existing law within the meaning of section 315 of the Constitution aforementioned, it is unconstitutional, null and void on the ground of inconsistency with section 11 (4) and (5) of the said Constitution.*

*iv. A DECLARATION that the Emergency Powers Act 1961, supposing it to be an existing law within the meaning of section 315 of the said 1999 Constitution, is unconstitutional, null and void as an abdication of the legislative powers vested in the National Assembly by section 4 of the Constitution.*

*v. A DECLARATION that, even supposing the Emergency Powers Act, 1961 to be an existing law as at 18 May, 2004 and to be a valid law under the 1999 Constitution, the Regulations made by the President pursuant thereto and on the basis of which the Governor and Members of the House of Assembly of Plateau State were purportedly suspended and the emergency Administrator Operated in the administration of the State are null and void on the ground that, having been made some days after 18 May, 2004, they are inconsistent with the enabling Act which does not authorize the making of Regulations with retrospective effect, and with section 26 (8) which prohibits criminal offences and penalties with retrospective effect.*

*vi. A DECLARATION that, except with respect to a law for maintaining and securing public safety and public order and for providing, maintaining and securing designated essential supplies and services, or when the Federation is at war, under section 11(1) and (3) of the 1999 Constitution, the National Assembly has no power to make laws generally for peace, order and good government of Nigeria or any part thereof on matters not included in the Legislative Lists, otherwise than as provided*

*in section 11 (4) of the said Constitution, and accordingly any law enacted for Plateau State in contravention of that subsection is unconstitutional, null and void.*

*vii. A DECLARATION that by reason of section 11 (5) of the 1999 Constitution the National Assembly has no power, by means of a law or a mere resolution, to remove or suspend or to authorize the President to remove or suspend the Governor or Deputy Governor of Plateau State and accordingly any law enacted or resolution passed in contravention of that subsection is unconstitutional, null and void.*

*viii. A DECLARATION that the Government of Plateau State headed by Chief Joshua Dariye as the constitutional and duly elected Governor and Chief Executive of Plateau State is entitled to be paid compensation by the Federal Government for the deprivation of its constitutional right to administer the affairs of the State during the six months, May 18th to November 17, 2004 by its unlawful suspension by the President of the federal Republic of Nigeria.*

*ix. A DECLARATION that the House of Assembly Plateau State, as the constitutional and duly elected legislative organ of the State, is entitled to be paid compensation by the Federal Government for the deprivation of its constitutional right to make laws for the State and to exercise other functions vested in it by the Constitution of the federal Republic of Nigeria 1999 during the six months. May 18th to November 17th, 2004 of its unlawful suspension by the President of the federal Republic of Nigeria.*

*x. A DECLARATION that as the constitutional functionaries of Plateau State, duly elected and sworn-in, the Governor, Deputy Governor and Members of the House of Assembly of the State as well as the Commissioners of the State Government are entitled to be paid compensation for the loss of their emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months May 18 to November 17, 2004 during which they were unlawfully suspended from their respective offices by the President of the Federal Republic of Nigeria.*

*xi. A DECLARATION that Governor Joshua Dariye is entitled to be paid compensation by the Federal Government for the damage caused*

*him not only by the false and malicious information supplied by its functionaries to the London Metropolitan Police that "Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK", but also by the unwarranted and unlawful action of the Attorney-General of the Federation and Minister of Justice, Chief Akinlolu Olujinmi SAN in confirming to the London Metropolitan Police that "he has waived without any reservation, any immunity from arrest and prosecution that he (Chief DARIYE) may claim to have.*

*xii. A MANDATORY ORDER compelling the Federal Government to pay to the Plateau State Government and the House of Assembly of the State the sum billion naira only and one billion naira only respectively for the deprivations mentioned in paragraphs (viii) and (ix) above of the Reliefs.*

*xiii. A MANDATORY ORDER compelling the Federal Government to pay to Chief Joshua Dariye, Governor and Chief Executive of Plateau State and the Deputy governor jointly the sum of N2 billion (two billion naira only), to the Commissioners of the Government N600 million (five hundred million only) and to the Speaker and each of the other Members of the House of Assembly a total sum of N1 billion (one billion naira only) as compensation for loss of emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months' period of their suspension.*

*xiv A MANDATORY ORDER compelling the Federal, Government to pay to Governor Joshua Dariye the sum of one billion naira only as compensation for the damage caused him by the false and malicious information and action mentioned in paragraph (xi) above of the Reliefs."*

In support of the Originating Summons, as amended, one Damian Obiefule, litigation clerk in the chambers of Messrs. B.O. Nwabueze & Co. deposed to an affidavit. For present purposes, paragraphs 4,5,6 & 7 are deemed relevant. They read thus: -

*"4. That His Excellency Governor Joshua Dariye, his Deputy and the House of Assembly of Plateau State were duly elected and sworn into office in accordance with the 1999 Constitution.*

5. That Mr. Simon Lalong, Speaker of the House of Assembly, Plateau State, informed me and I verily believe him as follows: -

(a) that there were civil disturbances in some parts of Plateau State between September, 2001 and May 2001

B (b) That the parts of the State affected by these civil disturbances formed a relatively small part of the total area and population of Plateau State

C (c) That by reason of the disturbances and while strenuous efforts were being made by the authorities of the State Government to contain the situation. President Olusegun Obasanjo, by the Slate of Emergency [Plateau State] Proclamation 2004, published in the Federal Government Gazette as S.I No.4 of 2004, declared a state of emergency in Plateau Slate on May 18, 2004. Shown to me and marked Exhibit "BON 1" is a photocopy of the said Proclamation.

D (d) That the Proclamation aforementioned also suspended "the office of Executive Governor.... and House of Assembly" of Plateau State.

E (e) That thereafter President Olusegun Obasanjo appointed Major-General M.C. Alli (Rtd) as emergency Administrator to administer the affairs of Plateau State for an initial period of 6 (six) months effective from May 19, 2004 subject to ratification of the National Assembly. Shown to me and marked Exhibit "BON 2" is a photocopy of an Affidavit sworn to by the said Major-General Alli in his capacity as Administrator, Plateau State.

F (f) That at the time of the suspension of the constitutional of the government of Plateau Slate and their replacement by an Administrator appointed by the President, there were no Regulations made under the Emergency Powers Act 1961 and pursuant to which the suspension and the appointment could have been made. Shown to me and marked Exhibit G "BON 3" is a photocopy of the This Day newspaper of 19 May, 2004 where the President was reported to have said that he "hoped the administrator will not require new laws in the administration of the State", and that "if he does, it will be in the form of regulations which he will submit to the President for consideration by the Federal Executive Council and H promulgation by the President for the State."

(g) That the National Assembly ratified the declaration of A state of emergency, the suspension of the Executive Governor, Deputy governor and the State House of Assembly, Plateau State and the appointment of Major-General M.C. Alli (Rtd) as the Administrator of the Slate For a period of 6 (six) months, although only the Declaration of a slate of emergency, B but not the suspension of the constitutional organs of the State Government or the appointment of an Administrator (whose office is unknown to the Constitution), is required by the Constitution to be approved by the National Assembly; the approval of the suspension and the appointment C by the National Assembly has thus no constitutional significance.

(h) That following their suspension from office and the take over of the stale government by the Administrator, the Governor, Deputy Governor and the I louse of Assembly, Plateau State, were prevented from exercising the functions of their offices, although they remained able and willing to D do so. Shown to me and marked Exhibit "BON 4" is an Affidavit to that effect deposed to by the said Speaker.

(i) That the deprivation mentioned in paragraph (h) above continued until 18 November, 2004 when the emergency and the suspension E expired by effluxion of time.

(j) That during the entire period of their suspension, the Governor, Deputy Governor, Commissioners, Speaker and Members of the House of Assembly, Plateau Slate, were deprived of the right not only to exercise F the functions of their offices, but also the right to the emoluments attached to those offices, including allowances, accommodation, cars and other privileges and perquisites.

(k) That further to paragraph (j) above, the parties aforementioned suffered untold hardship and emotional trauma, loss of esteem and G influence.

6. That Governor Joshua Dariye of Plateau State informed me and I verily believe him: -

(i) That the defendants have engaged in an intense and relentless H campaign to malign and disgrace him with a view to forcing him out of office as Governor of Plateau State.

(ii) That as part of that campaign, the defendants instigated the

*London Metropolitan Police to arrest him, and to raid and search his home and hotel room in London on allegations of criminal offences on or about 2nd September, 2004.*

(iii) That the search, arrest and raid of Governor Joshua Dariye's house and hotel room were consequent the false and malicious information given by the Defendants to the London Metropolitan Police that "Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK", and that his "immunity from arrest and prosecution has been waived without any reservations by the Attorney-General of the Federation, Chief Olujunmi SAN. Shown to me and marked Exhibit "BON 5" is a photocopy of a letter on the point by the London Metropolitan Police.

(iv) That the campaign has been carried further by bringing an officer from the London Metropolitan Police to testify against Governor Dariye in a criminal case before the Federal High Court in Kaduna when his name has been struck out from the case on the ground that he is covered by immunity under section 308 of the Constitution, and when the evidence given by the officer from the London Metropolitan Police, Mr. Peter Clark, is totally irrelevant to the charges before the court, especially after the name of Governor Dariye and counts ONE and FOUR of the charges had been struck out by the order of the court in Kaduna. Shown to me and marked Exhibits "BON 6, BON 7 and BON 8" are photocopies of the criminal charges, the order of the court aforementioned and newspaper reports of the evidence of Peter Clark of the London Metropolitan Police.

(v) That the campaign against Governor Dariye aforementioned has imposed severe stress and trauma upon him, have so adversely affected his entire life.

7. That I am informed by Counsel in charge of the case, Professor B.O. Nwabueze SAN, and I verily believe him, that a court of competent jurisdiction, the Federal High Court in Abuja, has held that the suspension of Chief Joshua Dariye from office as Governor of Plateau State, even supposing the suspension to be valid in law, does not remove his immunity under section 308 of the Constitution, and that the Federal Government has not appealed against that decision. Shown to me and marked Exhibit

"BON 9" is a photocopy of the judgment of the Federal High Court, Abuja on the matter."

Also exhibited is the S. 1 No.4 of 2004 titled "State of Emergency (Plateau State) Proclamation 2004 commencement: 18th May 2004 which was signed by Olusegun Obasanjo, President of the Federal Republic of Nigeria, the relevant paragraphs of which read thus: -

"WHEREAS the Plateau State of Nigeria has been experiencing incessant crisis since March 2001 as a result of age-old animosity and prejudices among the people of the State along ethnic and religious lines with serious adverse implications for the state of public order and security;

WHEREAS the Government of Plateau State has been incapable of managing the situation justly and equitably leading to the total collapse of public order and public safety in the State;

WHEREAS there is actual breakdown of public order and public safety in the Plateau State of Nigeria leading to massive loss of lives and property and creating serious humanitarian calamity within and outside the State,

WHEREAS there is a clear and present danger of the crisis in Plateau State spreading beyond the boundaries of the State to other States of the Federation;

WHEREAS extraordinary measures are required to restore peace and security in Plateau State,

NOW THEREFORE, in exercise of the powers conferred upon me by section 305 (1), (3) (c) and (d) of the Constitution of the Federal Republic of Nigeria 1999 and of all other powers enabling me in that behalf, I, OLUSEGUN OBASANJO, President of the Federal Republic of Nigeria hereby make the following Proclamation:

1. As from the commencement of this Proclamation, a State of Emergency is hereby declared in the Plateau State of Nigeria (in this Proclamation referred to as "the State),

2. As from the commencement of this Proclamation, the office of the Executive Governor of the State and the State House of Assembly are hereby suspended.

3. The State shall for the duration of the emergency be adminis-

*tered by an Administrator who shall be appointed by me and operate on the basis of such Regulations that may, from lime to time, be issued by me.*

*4. This Proclamation may be cited as the State of Emergency (Plateau State) Proclamation 2004.”*

B And also filed in support of the Originating Summons is the affidavit sworn to by Major-General M.C. Alli (Rtd) who was appointed as the Sole Administrator of Plateau State following the declaration of Emergency by the President of the Federal Republic of Nigeria. Paragraphs 5,6,7,8,9,10,11,12,13,14,15,16,17 of the said affidavit read thus: -

C “5. That I have the authority of the 1st plaintiff to depose to this affidavit.

*6. That there were civil disturbances in the Northern and Southern Zones of Plateau State between September, 2001 and May, 2004 which resulted in extensive loss of lives and property.*

D *7. That as a result of the breakdown of law and order a state of emergency was declared in Plateau State by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on the 18th of May, 2004.*

E *8. That pursuant to the declaration of the state of emergency in Plateau State by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on 18th May, 2004, the Executive Governor and Deputy Governor of Plateau State and State House of Assembly were suspended.*

F *9. That following from the above, the President and Commander-In-Chief of the Armed Forces of the Federal Republic of Nigeria, nominated me as an Administrator to administer (he affairs of Plateau State for an initial period of 6 (six) months effective from 19th May, 2004 subject of the ratification of the National Assembly.*

G *10. That the National Assembly ratified the suspension of Executive Governor and the Deputy Governor of Plateau State and the Plateau State House of Assembly and also my nomination as the Administrator of Plateau State to administer the affairs of Plateau State for the said period of 6 (six) months.*

H *11. That as the officer conferred with the Executive powers to*

*administer Plateau State I have not instructed anybody whomsoever to institute any action challenging the validity or of the Constitutional exercise of powers by the President and National Assembly with regards to Plateau State.*

*12. That it is only I, as Administrator of Plateau State, or any other person delegated by me, who can competently instruct Counsel to institute an action or authorize proceedings on behalf of Plateau State.*

*13. That I have neither authorized the institution or any such action nor have I delegated such authority to any other person so to do.*

C *14. That the 2nd plaintiff /respondent having been suspended pursuant to the State of Emergency (Plateau State) Proclamation 2004 did not instruct anybody to sue on its behalf.*

*15. That the Chief Executive of the 1st plaintiff and 2nd plaintiff having been suspended pursuant to the State of Emergency (Plateau State) Proclamation 2004 did not institute this action as they lack the competence to do so.*

*16. That the 2nd plaintiff is not a proper party before the Honourable Court.*

E *17. That the 1st plaintiff is not interested in prosecuting this case having not initialed it in the first place.”*

The 1st defendant, per Chief Afe Babalola SAN instructed to represent the Hon. Attorney-General of the Federation filed a 29 paragraphed counter-affidavit and sworn to by Bankole Akomolafe, a legal practitioner F in the chambers of the said Chief Ale Babaloh SAN. The counter-affidavit consists for the most, a denial of most of the points made in the plaintiffs affidavit. Indeed at paragraph 5 of the said counter-affidavit, it was deposed that “paragraphs 5 (a) (k) are prevaricated and or slanted; paragraphs 6 G (i) - (v) and 8 are false while paragraph 7 is totally irrelevant to the plaintiffs case. But having regard to the position taken by the 1st defendant in this action, and the reasons which led to the proclamation of the State of Emergency; paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, H 20, 21, 22, 23, 24, 25, 26, 27 would be reproduced hereunder:

*“6. The 1st defendant shall by way of objection to the competence of this suit contend that the 1st and 2nd plaintiffs did not authorize this*

*action and no instruction was given by the plaintiffs for the filing of this case at the time it was filed.*

*7. Furthermore, the 2nd plaintiff is not a juristic person and cannot maintain this action as constituted.*

B *8. That on 24th June 2004 when this case was instituted, I know as a mailer of common knowledge that Major General M.C. Alli (Rtd) was the Administrator of Plateau State*

C *9 That in that capacity, the said Major General M.C. Alli was the alter ego of Plateau State and its directing mind.*

*10. That any decision to commence action on that day by the 1st plaintiff could only be taken by the said Major General Alli and no one else.*

D *11. That the said Major General M.C. Alli told me and I verily believe that he did not authorize the filing of this case and that he gave no instruction to plaintiffs counsel or to anyone at all to file this action. Plaintiffs' Exhibit 'BON 2' shall be relied upon by the 1st defendant in this action.*

E *12. That counsel to the plaintiffs is a mere busy body who has without any authority whatsoever employed the name of the 1st plaintiff to institute this action.*

F *13. That at all times material to the institution of this case, the 2nd plaintiff was suspended and remained suspended until end of the emergency.*

*14. That I therefore verily believe that there was no time when the 2nd plaintiff took a decision to institute this action.*

*15. Accordingly, there was no time that counsel was instructed by the 2nd plaintiff to institute this action.*

G *16. That some members of the 2nd plaintiff who claimed to be aggrieved by the suspension of the 2nd plaintiff instituted an action in their personal capacities at the Federal High Court, Jos to ventilate their alleged grievances. A copy of the suit they filed is attached herewith as Exhibit 'CA1'.*

H *17. That the said action is still pending before the Federal High Court, Abuja the same having been transferred from Jos to Abuja.*

*18. That the 1st defendant shall content in the circumstance that this action is an abuse of court process by counsel who employed the name of the plaintiffs to institute this action.*

*19. That the 2nd plaintiff did not instruct counsel and did not pay any fees to counsel to institute the action.*

*20. That His Excellency, Chief Joshua Dariye was sworn in as the Governor of Plateau State on 29th May, 1999 and occupied the said office pursuant to the provisions of the 1999 Constitution.*

C *21. Shortly thereafter and specifically from March 2001, the State was plunged into incessant crisis and civil disturbances arising from animosity and prejudices among the people of the State along ethnic and religious divisions.*

D *22. The crisis and disturbances were not checked by the Governor with its adverse implications on the State of Public Order and Security.*

*23. That the crisis consequently escalated leading to complete breakdown of public order and public safety in Plateau State with attendant massive loss of lives and properties and creating human calamity within and outside the State.*

E *24. That the Governor did not take any effective step to stem down the tide and made no request to the President to issue a proclamation of a state of emergency in the State.*

F *25. That the effect of the public breakdown of order in the State went beyond the state and extended to other parts of the Federation as to require extra-ordinary measures to avert the situation.*

G *26. That it was as a result of these that the President and Commander in Chief of Armed Forces of the nation issued a proclamation of a State of Emergency in Plateau State to deal with the situation.*

*27. The State of Emergency lasted for 6 months from 18th May, 2004 to 17th November 2004 and has since lapsed".*

Similarly, one Ada Ekenze, who described herself as a Litigation Clerk in the Law Firm of Punuka Chambers and acting for the 2nd H defendant deposed to a 17 paragraphed counter-affidavit. The relevant paragraphs of which are 4, 5, 6, 7, 8, 9, 10, 11 and 16 read thus: -

*"4. That paragraphs 5(a) (k) are distorted, paragraphs 6(i)-(v)*

are untrue whilst paragraph 7 has no relevance to the suit herein.

5. That His Excellency, Chief Joshua Dariye was sworn in as the Governor of Plateau State on the 29th of May, 1999 and occupied the said office pursuant to the provisions of the 1999 constitution.

B 6. That shortly thereafter and specifically from March 2001 the state was plunged into incessant crisis and civil disturbances arising from animosity and prejudices among the people of the State along ethnic and religion divisions.

C 7. The crisis and disturbances were not checked by the Governor with its adverse implications on the State of Public Order and Security.

8. That the crisis consequently escalated leading to complete breakdown of public order and public safety in Plateau State with attendant massive loss of lives and properties and creating human calamity within and outside the State.

D 9. That the Governor did not take any effective step to stem down the tide and made no request to the President to issue a proclamation of a state of emergency in the State.

E 10. That the effect of the public breakdown of order in the State went beyond the State and extended to other parts of the Federation as to require extra-ordinary measures to avert the situation.

F 11. That it was as a result of these that the President and Commander in Chief of Armed Forces of the Federal Republic of Nigeria issued a proclamation of a State of Emergency in Plateau State to deal with the situation.

16. That the plaintiffs case is vexatious, unmeritorious and lacking in merit.”

G The plaintiffs filed a paragraphed affidavit in reply to the counter-affidavit of the defendants. For present purposes, paragraph 4 (i), (ii) (iii) will be reproduced. They read: -

H “4(i) The averments in paragraphs 6 and 12-15 of Mr. Bankole Akomolafe’s Counter-Affidavit that “the 1st and 2nd Plaintiffs did not authorize this action and no instruction was given by the plaintiffs for the filing of this action at the time it was filed” raise a point of law, which does not need to be controverted in Affidavit; insofar, however, as they may be

said to be averment of fact, the plaintiffs deny it and put the defendants to the strictest proof Thereof.

(ii) Being a statement of law, the averments in the said paragraphs 6 and 12-15 of Bankole Akomolafe’s Counter-Affidavit are incompetent and invalid as they offend against sections 86 and 87 of the Evidence Act B Cap. E14 Laws of the federation, which provide as follows:-

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 which he believes to be true.

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

(iii) The averment in the said paragraphs 6 and 12-15 of the Counter-Affidavit are incompetent and invalid on another ground which will be taken up at the hearing of the Suit, should it be necessary to do D so.”

The 1st and 2nd defendants then followed their counter-affidavits referred to above with Notices of Preliminary Objections to the plaintiffs’ Originating Summons (as amended). Briefs of Arguments were also filed E and exchanged between the parties.

The Notice of Preliminary Objection of the 1st defendant reads: - “Take Notice that the 1st defendant shall at the hearing of this suit by way of Preliminary Objection argue that this suit is not maintainable as it is F presently constituted and that same be dismissed with substantial cost.”

#### Grounds of Objection

1. There is no live issue before the speculative and hypothetical issues;

2. Individual claims are not cognizable under the Original Juris- G diction of the Supreme Court by virtue of Section 323 (i) (sic) 232 (i) of the 1999 Constitution as amended;

3. Persons who are not parties to an action cannot claim reliefs H in the action;

4. Both plaintiffs herein are by virtue of Section 20 and Section 2 of the Supreme Court (Additional Original Jurisdiction Act) Cap 5, 16 LFN 2004 respectively have no requisite locus standi to institute this

action;

5. Action was instituted without authority;

6. This action is an abuse of court's processes;

7. There is no reasonable cause of action.

B 8. The jurisdiction of the Honourable Court is not extended to the enforcement of rights which were suspended in the Regulations but limited to whether or not the Laws and Regulations relating to the State oil Emergency in Plateau State were properly made or not.

C With regard to the 2nd defendant, the notice of preliminary objection filed on its behalf reads thus: -

*"The issue before the Court is lifeless, spent, academic, speculative and hypothetical".*

D In accordance with practice, the arguments for and against the notice of preliminary objection will be considered first. It is the outcome of that exercise that would determine whether in the circumstances the arguments in respect of the originating summons as amended need be considered.

E I would begin with the consideration of the 1st defendant's grounds serially.

1. There is no live issue before the Court but an academic, speculative and hypothetical issues.

F On this ground, the Court is invited by the 1st defendant to note that by the evidence before the Court, the State of Emergency that was declared on the 18th May 2004 had ended on the 17th of November 2004 and the situation in Plateau State had since normalized. It is therefore contended that as all suspended structures have been put in place and public officers are back on duty, there is nothing that is in dispute in the State.

G Learned Senior Counsel for the 2nd defendant has also argued in support of his brief that there is no live issue before the Court in this matter. He contends that what is left of it is mainly academic and speculative. For this submission, he cited such cases as *Nkwocha v. Gov. of Anambra State* (1984) 1 S.C.N.L.R. 634; *Ezeanya. v. Okeke* (1995) 4 N.W.I.R. (Pt. 388) 142; *Adewunmi v. A-G. Ekiti State* (2000) 2 N.W.I.R. (Pt. 751) 474:

A.G Federation v. A.N.P.P. & 2 Ors (2003) 18 N.W.I.R. (Pt.851) 182 at page 215. On the basis of that submission he urges the Court to hold that reliefs (i), (ii), (iii), (iv), (v), (vi) & (vii) contained in plaintiffs' amended originating summons are spent, have become academic and hypothetical.

B For the plaintiffs, it is the contention of their learned counsel that the preliminary objection on this ground is a total misconception of the nature of an action for a declaration. The Court, argues learned Senior Counsel, has clearly an indisputable jurisdiction to entertain an action by a competent party for a declaration that a law or a legal right shown to be subsisting has been violated. On this point, it is manifest that the provisions of sections 90 and 176 of the 1999 Constitution are clearly substantive law, and so are the legal rights they confer. I therefore hold that the maintainability of such claims for a declaration does not depend on the reasons given by the 1st defendant. Ground 1 is therefore resolved D against the plaintiffs.

2. Individual claims are not cognizable under the original jurisdiction of the Supreme Court by virtue of section 232 (i) of the 1999 Constitution. E

F It is the plain submission of learned Senior Counsel for the 1st defendant that persons who are not parties to an action cannot claim any relief in the action. And as it is clear that Governor Joshua Dariye, his Deputy, members of the House of Assembly and Commissioners of the State are not parties to the action, they are strangers to the action. Furthermore, where as in the instant case, the above-mentioned persons cannot also be the beneficiaries of the claims made for them by their learned Senior Counsel. In this regard, it is pertinent to refer to the provisions of section 232 (1) of the Constitution, which reads: - G

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

The above quoted provisions of the Constitution do not in my view require any forensic learning to have a clear understanding that

individuals no matter their status cannot take advantage of the provisions to pursue any claim from this Court sitting in its original jurisdiction. It follows that the Ground 2 of preliminary objection succeeds.

4. Both plaintiffs herein are by virtue of Section 20 and Section 2 of the Supreme Court (Additional Original Jurisdiction Act) Cap S.I 6 LFN 2004 respectively have no requisite locus standi to institute this action.

The above is the other reason advanced by the 1st defendant for setting aside the plaintiffs' action is not of any moment. This is the contention that the plaintiffs are not known to the Law and the Constitution. In my humble view, the fact that the action was commenced in the name of Plateau State of Nigeria and National Assembly respectively does not necessarily deny their status, as plaintiffs to the action. I so hold. See the provisions of Section 20 and Section 2 of the Supreme Court Act and Supreme Court (Additional Original Jurisdiction) Act 2002 respectively.

5. The suit is not authorized by the 1st plaintiff.

On this ground, it is the contention of the 1st defendant that the action was filed by a faceless person who has merely employed the name of the plaintiffs but without any authority to do same. This is more so, where it is manifest that as the plaintiffs are not natural persons, being artificial persons or corporate bodies, the plaintiffs, argued learned counsel must show their authority or the person or persons who authorized that the action be commenced. See *Kadzi Int'l Ltd. v. Kano Tannery Co. Ltd* (2000)4 N.W.I.R. (Pt.864) 545, 573 - 4. It is also the further submission of learned counsel for the 1st defendant that the learned senior counsel who filed the action must have in all the circumstances pursued this action alone or acted on the instructions of unauthorized persons who are incapable of acting or directing the mind of the plaintiffs when the suit was commenced. In this connection, attention was drawn to the fact that on the 24th June 2004 when this action was commenced, the directing mind of the 1st plaintiff was Major-General Chris Alli (rtd). That point is made clear from the Further Counter-Affidavit of the said Major-General Chris Alli, the relevant paragraphs of which read thus: -

"1. That I was the Sole Administrator appointed to administer the

*Plateau State of Nigeria by the President and Commander-in-chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR between the 1st day of May 2004 and the 17th day of November 2004 which State of Emergency was declared in the State.*

2. *That the said State of Emergency lasted for 6 months, precisely, between the 18th day of May 2004 to the 17th day of November 2004.*

3. *That throughout the duration of the State of Emergency the House of Assembly of Plateau State was suspended and was not functional.*

4. *That throughout the period of the Emergency I took decisions solely for and on behalf of the State.*

5. *That as at the 24th day of June 2004 when the plaintiffs filed this suit I was the Sole Administrator of Plateau State of Nigeria.*

6. *That I did not during the period of Emergency which Included 24th June 2004 instruct or brief Chief Rotimi Williams, SAN or any other Counsel to initiate this proceeding on behalf of Plateau State of Nigeria."*

The substance of the submission made for the plaintiffs in rebuttal, appears to be that though the affidavits filed asserting that the elected and lawful Government of Plateau, i.e. the Governor and House of Assembly was suspended by the President during the period of emergency, and that the emergency Administrator did not authorize the action, the 1st defendant has adduced no evidence before the Court to show that the action was not authorized by the lawful Governor and House of Assembly.

By that submission, it is no doubt clear that by accepting the affidavit evidence adduced by the 1st defendant, it was open to the plaintiffs to show or bring forth evidence to counter the evidence of the 1st defendant that the action was duly authorized. It is pertinent in my respectful view to refer to the general principle that the burden of proof in this sense, rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. It is an ancient rule founded on consideration of good sense, and it should not be departed from without strong reasons. It is fixed at the beginning of the trial by the state of the pleadings, and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleadings place it, and never shifting in any circumstances whatever. See *Imana v. Robinson* (1979) 3-4 S.C. 1 and *Osawaru*.

v Ezeiruka (1978) 6 7 S.C. 135. The reference to post facto authorization allegedly given to commence the action cannot in the circumstances of this case avail the plaintiffs. I do not consider that the decision of the Privy Counsel in Madzimbuto's case. (1969) 1 A.C. 645 at 732 is apt for the determination of the question raised in this case. It follows that I must uphold the contention of the 1st defendant on this ground.

Before concluding, it is I think desirable to advert to the ground of objection that the plaintiffs' action did not disclose a reasonable cause of action. I do not in my respectful view agree with that contention made for the 1st defendant. In my view, the complaints of the plaintiffs raise very salient questions particularly with regard to the principles that should apply in governance under a democratically elected government. Surely it is my firm view that the claims, apart from those struck out above disclose a reasonable cause of action. However, in view of what I have held above that the plaintiffs instituted this action without due authority resulting in the success of the preliminary objection, the very important questions raised in the action cannot be ventilated as the Court lacks jurisdiction to hear the matter.

It is for the above reasons and the fuller reasons given in the lead judgment of my learned brother, Kutigi JSC that I also strike out this action for lack of jurisdiction. I make no order as to costs

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#### TOBI JSC

The President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, by the State of Emergency (Plateau State) Proclamation 2004, published as Statutory Instrument No. 4 of 2004 declared a state of emergency in Plateau State on and with effect from May 18, 2004.

The proclamation suspended the "office of the Executive Governor ... and the House of Assembly of Plateau State and the establishment of an emergency administration under an Administrator. The Administrator appointed was Major-General M. C. Alli (Rtd), the deponent to the affidavit in support of the preliminary objection by the Administrator.

This did not go down well with the plaintiffs. They challenged it in this court. In their Amended Originating summons, the plaintiffs asked for eleven declaratory reliefs, and three mandatory orders compelling the Federal Government to pay to the plaintiffs, (the Plateau State Government and the House of Assembly), Chief Joshua Dariye, the Governor of Plateau State, Deputy Governor, commissioners, speaker and members of the House of Assembly different sums of money as compensation.

In line with the rules of this court, parties filed their Briefs of Argument. The 1st defendant in his Brief of Argument raised a preliminary objection. So look the 2nd defendant. The grounds of objection by the 1st defendant are as follows:

*"1. The suit is devoid of any life (sic) issue and it is being maintained merely for academic and advisory purposes only.*

*2. The suit is not authorized by the 1st plaintiff.*

*3. The suit seeks reliefs for individuals who are not parties to the case and who have no competence to maintain an action in this case.*

*4. Both plaintiffs herein are by virtue of Section 20 and Section 2 of the Supreme Court Act and Supreme Court (Additional Original Jurisdiction Act) Cap S. 16 LFN 2004 respectively have no requisite locus standi to institute this action."*

It seems that the 2nd defendant raised only one preliminary objection and it is in respect of and in line with the first ground raised by the 1st defendant. All counsel have argued the preliminary objection in some detail. Let me take some of the grounds.

Learned Senior Advocates for the defendants submitted that the suit must fail as it does not involve any live issue. They argued that the suit is academic, speculative, and hypothetical. They cited a plethora of cases.

With respect, I do not agree with them. A suit does not necessarily become spent merely because it was heard after the act or conduct which gave rise to the action, it is clear from the case file that the action was filed on June 24th, 2004, about thirty-six days after the declaration of the state of emergency in the State. That the matter was not heard until the expiration of the emergency is not the fault of the plaintiffs and it will be

improper for this court to throw out the suit on that ground. That will be doing injustice to the plaintiffs and I am not prepared to do injustice to them.

The above apart, I do not think counsel got the point when they argued that the suit is academic, speculative and hypothetical. What is academic about the suit? What is speculative about the suit? What is hypothetical about the suit? I do not think they offered good answers to the above three questions. I should quickly provide answers to the questions.

A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.

A suit is speculative if it is based on speculation. A suit is speculative if it is not supported by facts or very low on facts but very high in guesses. As courts of law are not established to adjudicate on guesses but on facts, such actions are struck out.

A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a “mirage” to deceive the defendant and the court as to the reality of the cause of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought.

With the above brief exercise in diction, I am of the firm view that the suit filed by the plaintiffs is not academic, speculative or hypothetical. On the contrary, the suit clearly contains reliefs which are actionable and which a court of law is competent to decide one way or the other.

The defendants would appear to miss the declaratory nature of the reliefs and their effect on our adjectival law. Learned Senior Advocate for the plaintiffs, Professor Nwabueze thoroughly got the point when he reacted to the submissions of the learned Senior Advocates for the defendants that there was no live issue in the suit. I think I should quote the ipsissima verba of what the learned Senior Advocate said at page 3, paragraph 2.3 of the plaintiffs reply brief:

*“It caricatures the entire concept of legality and of a legal right to say that the violation of a law or of a legal right becomes an academic question and ceases to be actionable if and when the violation stops or, in*

*more concrete terms, that an unlawful detention or unlawful deprivation of other rights becomes an academic question and cannot be redressed by the court because the person unlawfully detained has been released and has regained his or her freedom or because the unlawful deprivation of other rights has stopped”.*

In his Reply Brief to the preliminary objection, learned Senior Advocate for the 1st defendant, Mr. Seeni Okunloye said at page 3, paragraph 2.02:

*“The suit instituted by the plaintiffs cannot be compared with an action for unlawful detention. In that case the deprivation of the personal liberty of the person remains a life (sic) issue. In this case Plateau State Government was not detained. It was never deprived of anything by the suspension of the Governor which remains a life (sic) issue after the suspension has been lifted. The right of the person who is Governor of Plateau State is not the same as the right of Plateau State. The illustration is therefore non-sequitor.”*

While I entirely agree with the point made by Professor Nwabueze in his brief, I do not think I agree with Mr. Seeni Okunloye. The case as presented by the plaintiffs is not as simplistic as Mr. Okunloye has put it. While I agree with Mr. Okunloye that the case of the plaintiffs is not unlawful detention, they are asking for other actionable wrongs allegedly committed by the defendants. I should also say that the case of Attorney-General Anambra State v. Attorney General of the Federation (2005)9 NWLR (Pl.931) 572, which learned counsel for the 1st defendant cited is not apposite. The reliefs sought by the plaintiffs, if granted will not be mere advisory opinion. Attorney - General of Anambra State raised quite different issues which are not applicable here. Accordingly the preliminary objection on the issue fails.

And that takes me to the second ground and it is that the suit is not authorized by the 1st plaintiff. The 1st plaintiff is Plateau State Government. The first paragraph of the Amended Originating Summons H reads:

*“LET (1) Attorney-General of the Federation of Attorney - General’s chambers, Federal Ministry of Justice, Abuja and (2) National Assembly*

*of National Assembly, Abuja within 8 days after service of this summons on them, inclusive of the day of such service cause an appearance to be entered for them to this summons which is issued upon the application of (1) Plateau State of Nigeria and (2) House of Assembly of Plateau State...*

B The words I want to make use of are “*summons which is issued upon the application of (1) Plateau State of Nigeria.*” In his Affidavit in support of the preliminary objection filed on July 14, 2004, the former Administrator of Plateau State, Major -General M. C. Alli (Rtd) deposed in relevant paragraphs as follows:

C “*1. That I am the Administrator of Plateau State having been so appointed by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo:*

*(a) pursuant to the declaration of the State of Emergency in Plateau State on the 18th May, 2004: and*

D *(b) pursuant to the approval thereof and of my nomination as Administrator by the National Assembly.*

*2. That by virtue of my position as Administrator of Plateau State I am conversant with the facts deposed to herein.*

E *3. That I have since assumed office as the Administrator of Plateau State by virtue of which office and the State of Emergency (Plateau State) Proclamation 2004 and the Emergency Powers (General) Regulations 2004 I am empowered to control and direct the general administration of*

F *the State.*

*4. That I know as a fact that Plateau State of Nigeria is the 1st plaintiff in this matter.*

G *11. That as the officer conferred with the Executive powers to administer Plateau State I have not instructed anybody whomsoever to institute any action challenging the validity or otherwise of the constitutional exercise of powers by the President and National Assembly with regards to Plateau State.*

H *12. That it is only I, as Administrator of Plateau State, or any other person delegated by me, who can competently instruct counsel to*

*institute an action or authorize proceedings on behalf of Plateau State.*

*16. That the 2nd Plaintiff is not a proper party before the Honourable Court.”*

I see a clear conflict between the first paragraph of the Amended originating summons and the totality of the affidavit sworn by Major-General M. C. Alli (Rtd), particularly paragraph 11 thereof. While the Amended Originating Summons claims that the summons was issued on the application of the 1st plaintiff, paragraph 11 deposes that the deponent did not instruct anybody to institute any action challenging the validity or otherwise of the constitutional exercise of powers by the President and the National Assembly with regard to Plateau State.

There is no dispute between the parties that Major General M. C. Alli (Rtd) was the Administrator of Plateau State during the period of emergency, which included the period when the action was filed. In the circumstance, he was in the best position to authorize or instruct the institution of the action. In the light of the deposition in paragraph 11 of the affidavit, I do not have any difficulty in upholding the ground of objection that the suit was not authorized by the 1st plaintiff.

E I now take the third ground of objection and it is that the suit seeks reliefs for individuals who are not parties to the case and who have no competence to maintain an action in the case. The Amended Originating Summons seeks reliefs for Chief Joshua Dariye, Governor of Plateau State, the Deputy Governor of Plateau State, Commissioners of Plateau State Government, Speaker and members of the House of Assembly, who are strictly not parties to the action.

G The law is basic that only parties to an action can claim relief flowing from such action. A person who is not a party to an action cannot claim relief, he lacks the locus standi to do that. In the circumstances, the ground of objection succeeds.

H Another related issue is that where proper parties are not before a court, the court is without jurisdiction to adjudicate. See *Amodu v. Ajobo* (1995) 7 NWLR (Pt. 406) 170. See also *Onwunalor v. Osademo* (1971) 1 ALL MR (Pt. 1) 14; *Ekpere v. Aforije* (1972) 1 ALL MR 220; *Olaviode v. Oyebi* (1984) 1 SCNLR 390.

Another ground of objection worth considering is No. 6. It is the submission of learned counsel for the 1st defendant that by virtue of Sections 2 and 20 of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria, 1990 and the Supreme Court (Additional Original Jurisdiction Act) Cap. S. 16 Laws of the Federation of Nigeria, 2004, the plaintiffs have no requisite locus standi to institute the action.

I have read Sections 2 and 20 of the Supreme Court Act. I do not see anything in Section 2 to justify the submission of learned Senior Advocate for the 1st defendant. I however see much in Section 20 to justify the submission. That section makes reference to the original jurisdiction of the Supreme Court in the 1979 Constitution as provided in section 212(1) thereof. It is now section 232 (1) of the 1999 Constitution.

Section 232(1) of the 1999 Constitution vests exclusive jurisdiction on the Supreme Court in any dispute between the Federation and a State or between States if and in so far as the dispute involves any question on which the existence or extent of a legal right depends. Apart from the fact that the purported action commenced by the 1st plaintiff was not duly so authorized, 2nd plaintiff does not seem to come under Section 232(1) of the 1999 Constitution.

And what is more, the action did not comply with the provisions of Section 20(b) of the Supreme Court Act, 1990, which enjoins the Attorney General of the State to commence an action. The Supreme Court (Additional Jurisdiction) Act, No. 3 of 2002 does not even vest this court with jurisdiction to hear this matter as it relates to the 2nd defendant. By section 3 of the Act, in a suit by or against a State House of Assembly, the nominal party shall be the Speaker of the House. Accordingly the ground of objection also succeeds.

Let me pause here to deal briefly with the Supreme Court (Additional Original Jurisdiction Act) Cap. S. 16, Laws of the Federation of Nigeria, 2004 cited by learned counsel for the 1st defendant. I have my strong doubts whether the purported Laws of the Federation of Nigeria, 2004 have gone through the law making procedure as they relate to the National Assembly. In the circumstances, I do not feel comfortable using the Laws. I am not prepared to say more here. I can do so in a more ap-

propriate case, if and when the issue arises.

I have shopped sufficiently from the eight grounds of preliminary objection. I have taken four of the grounds. My basket is full. I think the 1st defendant merely flew a kite in respect of grounds 4, 5, and 7. I do not see any substance in them. As the preliminary objection succeeds, this court has not the opportunity to look at this important matter beyond this point. It is a pity. I will say no more as this court lacks the jurisdiction to say more than what I have said.

It is in the light of the above reasons and the more detailed reasons given by my learned brother, Kutigi, JSC that I too strike out the action for lack of jurisdiction.

#### MUSDAPHER JSC

This is an action brought pursuant to section 232(1) of the Constitution of the Federal Republic of Nigeria invoking the original jurisdiction of the Supreme Court by the plaintiffs, Plateau State of Nigeria and House of Assembly of Plateau State. By their amended Originating Summons, the plaintiffs claimed the following reliefs against the defendants:-

(i) A DECLARATION that the suspension by the President of the Federal Republic of Nigeria of “*the office of the Executive Governor ..... and the House of Assembly*” of Plateau State and the proclamation, published in the Federal Government Gazette as Statutory Instrument No. 4 of 2004, by which the suspension was affected, are unconstitutional, null and void being a violation of the provisions of Sections 90 and 176 of the Constitution of the Federal Republic of Nigeria 1999 which establish those organs for the governmental of the State.

(ii) A DECLARATION that the suspension from office by the President of the Federal Republic of Nigeria by Statutory Instrument No. 4 of 2004 of the duly elected Governor and Chief Executive and Members of the House of Assembly of Plateau State and their replacement by an emergency Administrator appointed by the President, with power to “administer the State for the duration of the emergency, are unconstitutional,

null and void on the ground that it is not only unauthorized by any of the provisions of the 1999 Constitution of Nigeria but is also a positive contravention of the explicit prohibition contained in section 11(4) and (5) of the said Constitution.

B (iii) A DECLARATION that the Emergency Powers Act 1961 by virtue of which the President of the Federal Republic of Nigeria claims to have power to issue regulations as the “*basis*” on which the Emergency Administrator is to “*operate*” in the administration of the Plateau State was not as at 18th May, 2004 part of the laws of the Federation, and even C supposing it to be an existing law within the meaning of Section 315 of the Constitution aforementioned, it is unconstitutional, null and void on the ground of inconsistency with section 11(4) and (5) of the said Constitution.

D (iv) A DECLARATION that the Emergency Powers Act 1961, supposing it to be an existing law within the meaning of Section 315 of the said 1999 Constitution, is unconstitutional, null and void as an abdication of the legislative powers vested in me National Assembly by section 4 of the Constitution.

E (v) A DECLARATION that, even supposing the Emergency Powers Act 1961 to be an existing law as at 18th May, 2004 and to be a valid law under the 1999 Constitution, the Regulations made by the President pursuant thereto and on the basis of which the Governor and Members of F the House of Assembly of Plateau State were purportedly suspended and the emergency Administrator operated in the administration of the State are null and void on the ground that, having been made some days after 18th May, 2004, they are inconsistent with the enabling Act which does not authorize the making of Regulations with retrospective effect, and with Section 36(80) which prohibits criminal offences and penalties with G retrospective effect.

H (vi) A DECLARATION that, except with respect to a law for maintaining and securing public safety and public order and for providing, maintaining and securing designated essential supplies and services, or when the Federation is at war, under Section 11(1) and (3) 1999 Constitution, the National Assembly has no power to make laws generally

for peace, order and good government of Nigeria or any part thereof on matters not included in the Legislative Lists, otherwise than as provided in Section 11(4) of the said Constitution, and accordingly any law enacted for Plateau State in contravention of that subsection is Unconstitutional, null and void.

B (vii) A DECLARATION that by reason of Section 11(5) of the 1999 Constitution the National Assembly has no power, by means of a law or a mere resolution, to remove or suspend or to authorize the President to remove or suspend the Governor or Deputy Governor of Plateau State and accordingly any law enacted or resolution passed in contravention of C that subsection is unconstitutional, null and void

(viii) A DECLARATION that the Government of Plateau State headed by Chief Joshua Dariye as the constitutional and duly elected Governor and Chief Executive of Plateau State is entitled to be paid compensation by the Federal government for the deprivation of its constitutional right to administer the affairs of the State during the six months, May 18 to November 17, 2004, by its unlawful suspension by the President of the Federal Republic of Nigeria. D

E (ix) A DECLARATION that the House of Assembly, Plateau State, as the constitutional and duly elected Legislative organ of the State, is entitled to be paid compensation by the Federal Government for the deprivation of its constitutional right to make laws for the State and to exercise other functions vested in it by the Constitution of the Federal F Republic of Nigeria 1999 during the six months, May 18 to November 17, 2004, of its unlawful suspension by the President of the Federal Republic of Nigeria.

G (x) A DECLARATION that as the constitutional functionaries of Plateau State, duly elected and sworn-in, the Governor, Deputy Governor and Members of the House of Assembly of the State as well as the Commissioner of the State Government are entitled to be paid compensation for the loss of their emoluments, including allowances, accommodation, H transport and other privileges and perquisites, during the six months May 18 to November 17, 2004 during which they were unlawfully suspended from their respective offices by the President of the Federal Republic of

Nigeria

(xi) A DECLARATION that Governor Joshua Dariye is entitled to be paid compensation by the Federal Government for the damage caused him not only by the false and malicious information supplied by its functionaries to the London Metropolitan Police that “*Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK,*” but also by the unwarranted and unlawful action of the Attorney-General of the Federation and Minister of Justice, Chief Akinlolu Olukinmi, SAN in confirming to the London Metropolitan Police that “he has waived without any reservation, any immunity from arrest and prosecution that he (Chief DARIYE) may claim to have”

(xii) A MANDATORY ORDER compelling the Federal Government to pay to the Plateau State Government and the House of Assembly of the State the sum of six billion naira only and one billion naira only respectively for the deprivations mentioned in paragraphs (viii) and (ix) above of the Reliefs.

(xiii) A MANDATORY ORDER compelling the Federal Government to pay to Chief Joshua Dariye, Governor and Chief Executive of Plateau State and the Deputy Governor jointly the sum of N2 billion (two billion naira only), to the Commissioners of the Government N500 million (five hundred million naira only) and to the Speaker and each of the other Members of the House of Assembly a total sum of N1 billion (one billion naira only) a compensation for loss of emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months’ period of their suspension.

(xiv) A MANDATORY ORDER compelling the Federal Government to pay to Governor Joshua Dariye the sum of one billion naira only as compensation for damage caused him by the false and malicious information and action mentioned in paragraph (xi) above of the Reliefs”.

In support the amended Originating Summons the plaintiffs filed affidavits attaching a number of documents. The defendants denied the plaintiffs claims and filed counter-affidavits attached to which are also a number of documents. Following the legal issues relating to the compe-

tence and the locus standi of plaintiffs as contained in the counter-affidavits, the defendants filed formal Notices of Preliminary Objections to the competence of the action as constituted. Briefs of Arguments were also filed which, in addition to the submissions of counsel for and against the action, discussions on the preliminary objections were also raised. Before dealing with the briefs, it is convenient at this stage to sketch out the brief facts of the case.

On the 18th day of May, 2004, by the State of Emergency (Plateau State) Proclamation 2004, published as Statutory Instrument No. 4 of 2004, the President of the Federal Republic of Nigeria declared a state of emergency in Plateau State of Nigeria. The declaration of the state of emergency was said to be based on the situation recited in the preamble to the Proclamation as existing in Plateau State. It is not necessary for the present purposes to set out the situation so recited. However, the Proclamation suspends “the office of the Executive Governor xxxxxx and the House of Assembly” of Plateau State with effect from 18th May 2004.

It further states that “*the state shall for the duration of the emergency be administered by an Administrator who shall be appointed*” by the President of the Federal Republic of Nigeria. The Administrator will administer the state “*on the basis of such Regulations that may from time to time, be issued by me.*” The Proclamation of the State of Emergency was made by the President in the exercise of the powers conferred upon him by section 305(1) (3) (c) and (d) of the Constitution of the Federal Republic of Nigeria. The President also published the Emergency Powers Act (modification) Order 2004 in Statutory Instrument No. 6 of 2004 and the Emergency Powers (General), Regulations 2004 in Statutory Instrument No. 7 of 2004.

The state of emergency lasted for six months during which time Major General Alli (Rtd) was appointed as the Administrator of the State. The Administration of Major General Alli elapsed on the 17th of November, 2004 and the elected functionaries of the state, the governor, deputy governor and the plateau State House of Assembly who were suspended by the proclamation resumed their functions in the state. It was in challenge of the Proclamation, laws, Regulations and the steps taken during

the period of emergency that the plaintiffs instituted this suit.

I have alluded to the formal motions filed by the defendants challenging firstly, the competence of the action and secondly, the jurisdiction of this court to adjudicate on the claims as filed by the plaintiffs. At the hearing of the matter, this court decided to hear both the substantive matter and the preliminary objections together. But will of course firstly discuss the preliminary objections and if the objections terminate in favour of the defendants, there would be no need to deal with the substantive claims.

I have had the opportunity to read in draft the judgment of my learned brother Kutigi, JSC which has been delivered just now and I entirely agree with him that at the time the suit was filed, the Officer Administering the Government of Plateau State did not authorize the filing of the suit. I also agree that the Supreme Court has no original jurisdiction in respect of claims or reliefs for individuals by virtue of the provisions of section 232 (1) of the constitution. It is on these points that I want to comment merely for the sake of emphasis..

Section 232 (1) of the Constitution provides:-

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

In my view, to invoke the original jurisdiction of the Supreme Court there must be a “dispute” the word “dispute” has been defined as the “act of arguing against, controversy, debate, contention as to right, claims and the like or on a matter of opinion.” See A-G OF BENDEL STATE VS. A-G OF FEDERATION AND 22 OTHERS. (1981) 10 SC 1 at 49, 230. A-G OF FEDERATION VS. A-G OF ABIA STATE AND OTHERS [2001] 89 LRCN 2413 at 2432. A-G OF FEDERATION AND OTHERS VS. A-G IMO STATE AND OTHERS [1983] 4 NCLR 178. In the instant case there was no dispute between the Administrator of the State and the defendants at the time the action was filed.

A court is said to be competent to adjudicate in a matter, when among other considerations, the subject matter is within its jurisdiction

and there is no feature in the case which prevents the court from exercising it jurisdiction. See MARK VS. EKE [2004] 5 NWLR (Pt 865) 54. In the instant case there was no authority from the Government of Plateau State at the time the action was filed. See also ODUTOLA VS. UNILORIN [2004] 18 NWLR (Pt 905) 416. Since also there was no “dispute” as defined between the Government of Plateau State and the House of Assembly of Plateau State as plaintiffs and the defendants at the time the suit was filed, this Court would have no jurisdiction, power or authority to adjudicate over the matters. See EBHODAGHE VS. OKOYE [2004] 18 NWLR (Pt 905) 472.

In his Further Counter-affidavit sworn to by Major-General Chris Alli (?Rtd) it was averred thus:-

*“1. That I was the sole Administrator appointed to administer the Plateau State of Nigeria by the President and Commander-In-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR between the 1st day of May, 2004 and 17th day of November, 2004 which State of Emergency was declared in the state.*

*2. That the said State of Emergency lasted for 6 months, precisely, between the 18th day of May, 2004 to the 17th day of November, 2004.*

*3. That through out the duration of the State of Emergency the House of Assembly of Plateau State was suspended and was not functional.*

*4. That through out the period of the Emergency I took decisions solely for and on behalf of the State.”*

It is a notorious fact that when the plaintiffs purported to file this action, there was no authorization by the Sole Administrator to do so.

The action was filed on the 24/6/2004, when the State of Emergency was in force and Major General Chris Alli was at least the de facto administrator of the State. He was the appointed and the effective and factual functionary in active exercise of the powers of the State Government and the State Legislature. So, on the 24/6/2004, the action filed could not be authorized by the legitimate “plaintiffs” since Major General Chris Alli did not authorize it. The action filed is accordingly incompetent since it was not authorized by the plaintiffs and in my view Joshua Dariye acting as Governor after the emergency period cannot ratify the action. This

ground of objection accordingly succeeds and there is no need for me to discuss the other issues, suffice it for me only to strike out the case as incompetent. The suit is hereby struck out. I make no order as to costs.

B ———

### **PATS -ACHOLONU JSC**

The issue before us in this case raises important Constitutional questions which all things being equal would have enabled this court to give a careful consideration to it. It is disheartening and disturbing that a case is lost because of the inability of Counsel briefed to determine or ascertain the procedural law that would enable the party complaining of infraction to have due access to the Court, failing ignobly. I say no more. I adopt the judgment of my learned brother Kutigi, JSC as mine. I took strike out the action.

### **OGUNTADE JSC**

The plaintiffs by their amended originating summons, which was filed on 11-02-05, claimed the following reliefs against the defendants:

*“(i) A Declaration that the suspension by the President of the Federal Republic of Nigeria of ‘the office of the Executive Governor.... and the House of Assembly’ of Plateau State and the Proclamation, published in the Federal Government Gazette as Statutory instrument No. 4 of 2004, by which the suspension was effected, are unconstitutional, null and void as a violation of the provisions of Sections 176 and 90 of the Constitution of the Federal Republic of Nigeria 1999 which establish those organs for the government of the State.*

*(ii) A Declaration that the suspension from office by the President of the Federal Republic of Nigeria by Statutory Instrument No. 4 of 2004 of the duly elected Governor and Chief Executive and Members of the House of Assembly of Plateau State and their replacement by an emergency Administrator appointed by the President with power to ‘administer’ the State for the duration of the emergency, are unconstitutional, null and void*

on the ground that it is not only unauthorized by any of the provisions of the 1999 Constitution of Nigeria but is also a positive contravention of the explicit prohibition contained in section 11(4) and (5) of the said Constitution.

(iii) A Declaration that the Emergency Powers Act 1961 by virtue of which the President of the Federal Republic of Nigeria claims to have power to issue Regulations as the ‘basis’ on which the Emergency Administrator is to ‘operate’ in the administration of the Plateau State was not as at 18 May, 2004 part of the Laws of the Federation, and even supposing it to be an existing law within the meaning of Section 315 of the Constitution aforementioned, it is unconstitutional, null and void on the ground of inconsistency with section 11(4) and (5) of the said Constitution.

(iv) A Declaration that the Emergency Powers Act 1961, supposing it to be an existing law within the meaning of section 315 of the said 1999 Constitution, is unconstitutional, null and void as an abdication of the legislative powers vested in the National Assembly by section 4 of the Constitution.

(v) A Declaration that, even supposing the Emergency Powers Act 1961 to be an existing law as at 18th May, 2004 and to be a valid law under the 1999 Constitution, the Regulations made by the President pursuant thereto and on the basis of which the Governor and members of the House of Assembly of Plateau State were purportedly suspended and the emergency Administrator operated in the administration of the State are null and void on the ground that, having been made some days after 18 May, 2004, they are inconsistent with the enabling Act which does not authorize the making of Regulations with retrospective effect, and with section 36(8) which prohibits criminal offences and penalties with retrospective effect.

(vi) A Declaration that, except with respect to a law for maintaining and securing public safety and order and for providing, maintaining and securing designated essential supplies and services, or when the Federation is at war, under section 11(1) and 3 of the 1999 Constitution, the National Assembly has no power to make laws generally for peace, order and good Government of Nigeria or any part thereof on matters not included

in the Legislative lists, otherwise than as provided in section 11(4) of the said Constitution, and accordingly any law enacted for Plateau State in contravention of that subsection is unconstitutional, null and void.

(vii) A Declaration that by reason of section 11(5) of the 1999 Constitution the National Assembly has no power, by means of a law or a mere resolution, to remove or to authorize the President to remove or suspend the Governor or Deputy Governor of Plateau State and accordingly any law enacted or resolution passed in contravention of that subsection is unconstitutional, null and void.

(viii) A Declaration that the Government of Plateau State headed by Chief Joshua Dariye as the constitutional and duly elected Governor and Chief Executive of Plateau State is entitled to be paid compensation by the Federal Government for the deprivation of its Constitutional right to administer the affairs of the State during the six months, May 18 to November 17, 2004, by its unlawful suspension by the President of the Federal Republic of Nigeria.

(ix) A Declaration that the House of Assembly, Plateau State, as the constitutional and duly elected Legislative organ of the State, is entitled to be paid compensation by the Federal Government for the deprivation of its constitutional right to make laws for the State and to exercise other functions vested in it by the Constitution of the Federal Republic of Nigeria 1999 during the six months, May 18th to November, 17th 2004, of its unlawful suspension by the President of the Federal Republic of Nigeria.

(x) A Declaration that as the constitutional functionaries of Plateau State, duly elected and sworn-in, the Governor, Deputy Governor and Members of the House of Assembly of the State as well as the Commissioners of the State Government are entitled to be paid compensation for the loss of their emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months May 18 to November 17, 2004 during which they were unlawfully suspended from their respective offices by the President of the Federal Republic of Nigeria.

(xi) A Declaration that Governor Joshua Dariye is entitled to be paid compensation by the Federal Government for the damage caused him

not only by the false and malicious information supplied by its functionaries to the London Metropolitan Police that '*Chief DARIYE in his current status as suspended Governor of Plateau State is not entitled to and does not have diplomatic privilege status in the UK*' but also by the unwarranted and unlawful action of the Attorney-General of the Federation and Minister of Justice, Chief Akinlolu Olujinmi S.A.N. in confirming to the London Metropolitan Police that '*he has waived without any reservation, any immunity from arrest and prosecution that he (Chief DARIYE) may claim to have.*'

(xii) A Mandatory Order compelling the Federal Government and the House of Assembly of the State the sum of Six Billion Naira only and One Billion Naira only respectively for the deprivations mentioned in paragraphs (viii) and (ix) above of the Reliefs.

(xiii) A Mandatory Order compelling the Federal Government to pay to Chief Joshua Dariye, Governor and Chief Executive of Plateau State and the Deputy Governor jointly the sum of N2 Billion (Two Billion Naira only), to the Commissioners of the Government N500 million (Five Hundred Million only) and to the Speaker and each of the other Members of the House of Assembly a total sum of N1 Billion (One Billion Naira only) as compensation for loss of emoluments, including allowances, accommodation, transport and other privileges and perquisites, during the six months' period of their suspension.

(xiv) A Mandatory Order compelling the Federal Government to pay to Governor Joshua Dariye the sum of One Billion Naira only as compensation for the damage caused him by the false and malicious information and action mentioned in paragraph (xi) above of the Reliefs."

The issues which the plaintiffs identified as arising for determination for their suit were stated to be the following:

"ISSUE A:

*Whether the suspension by the President of the Federal Republic of Nigeria of the office of the Executive Governor..... and the House of Assembly' of Plateau State and the Proclamation, published in the Federal Government Gazette as Statutory Instrument No. 4 of 2004, by which the suspension was effected, are not a violation of the provisions of sections*

*176 and 90 of the Constitution of the Federal Republic of Nigeria 1999 which establish those organs for the government of the State.*

ISSUES B:

*Whether the said Constitution, either expressly or by implication of its provisions, authorizes the President of the Federal Republic of Nigeria, by Proclamation published in the Federal Government Gazette as Statutory Instrument No. 4 of 2004, to suspend the duly elected Executive Governor and member of the House of Assembly of Plateau State from exercising the functions and powers of their offices, and to appoint in their place an Administrator, with power to administer the affairs of the State, and whether the suspension is not a positive contravention of the explicit prohibition contained in section 11(4) and (5) of the said Constitution.*

ISSUE C:

*Whether the Emergency Powers Act 1961 from which the President claims to derive power to issue Regulations as additional authority or 'basis' for the suspension of the 'office of Governor and House of Assembly' of Plateau State and the Establishment of an emergency administration under an Administrator was as at May 18, 2004 part of the laws of the Federation as an existing law under section 315 of the said Constitution and, if so, whether the Act is not inconsistent with that Constitution.*

ISSUE D:

*Whether, except with respect to a law for maintaining and securing public safety and public order and for providing, maintaining and securing designated essential supplies and services, or when the Federation is at war, under section 11(1) and (3) of the said Constitution, the National Assembly has power to make laws generally for peace, order and good government of Plateau State on matters within the exclusive competence of the State under the Constitution otherwise than as provided in section 11(4) and (5) of the said Constitution or has power to make law or to pass resolution removing or suspending or authorizing the removal or suspension of the governor or Deputy Governor of the State."*

The brief relevant facts to be garnered from the affidavit in support of the originating summons are these:

1. His Excellency Joshua Dariye, his Deputy and The House of

Assembly - all of Plateau State were sworn into their diverse positions under the 1999 Constitution of the Federal Republic of Nigeria.

2. There were civil disturbances in some parts of Plateau State between September, 2001 and May 2004.

3. The President of the Federal Republic of Nigeria by the State of Emergency (Plateau State) Proclamation 2004 published in the Federal Government Gazette as S.I. No. 4 of 2004 declared a state of emergency in Plateau State on 18-05-04.

4. By the said Proclamation, the office of the Governor of Plateau State and the House of Assembly of Plateau State were suspended.

5. The President of the Federal Republic of Nigeria appointed Major-General M. C. Alli (retired) as emergency Administrator to administer the affairs of Plateau State for an initial period of six months effective from May 19, 2004.

6. The National Assembly later ratified the declaration of a State of emergency in Plateau State but not the suspension of the constitutional organs of the State Government or the appointment of an administrator.

7. The suspension continued in force until 18/11/04.

8. During the suspension, the Governor, his Deputy, Commissioners, Speaker and Members of the House of Assembly in Plateau State were not able to perform their constitutional duties.

In reaction to the affidavit in support of the originating summons, the Administrator of Plateau State appointed by the President of the Federal Republic of Nigeria on 14/7/04 deposed to an affidavit. Paragraphs 1 to 19 of the said affidavit read:

"1. *That I am the Administrator of Plateau State having been so appointed by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo.*

*(a) pursuant to the declaration of the State of Emergency in Plateau State on the 18th May, 2004; and*

*(b) pursuant to the approval thereof and of my nomination as Administrator by the National Assembly.*

2. *That by virtue of my position as Administrator of Plateau State I am conversant with the facts deposed to herein.*

3. That I have since assumed office as the Administrator of Plateau State by virtue of which office and the State of Emergency (Plateau State) Proclamation 2004 and the Emergency Powers (General) Regulations 2004 I am empowered to control and direct the general administration of the State.

4. That I know as a fact that Plateau State of Nigeria is the 1st Plaintiff in this matter.

5. That I have the authority of the 1st Plaintiff to depose to this affidavit.

6. That there were civil disturbances in the Northern and Southern Zones of Plateau State between September, 2001 and May, 2004 which resulted in extensive loss of lives and property.

7. That as a result of the breakdown of law and order a state of emergency was declared in Plateau State by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on the 18th of May, 2004.

8. That pursuant to the declaration of the state of emergency in Plateau State by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria on 18th May, 2004, the Executive Governor and Deputy Governor of Plateau State and State House of Assembly are suspended.

9. That following from the above, the President and Commander-in-chief of the Armed Forces of the Federal Republic of Nigeria, nominated me as an Administrator to administer the affairs of Plateau State for an initial period of 6 (six) months effective from 19th May, 2004 subject of the ratification of the National Assembly.

10. That the National Assembly ratified the suspension of Executive Governor and the Deputy Governor of Plateau State and the Plateau State of House of Assembly and also my nomination as the Administrator of Plateau State to administer the affairs of Plateau State for the said period of 6 (six) months.

11. That as the officer conferred with the Executive powers to administer Plateau State I have not instructed anybody whomsoever to institute any action challenging the validity or otherwise of the Consti-

tutional exercise of powers by the President and National Assembly with regards to Plateau State.

12. That it is only I, as Administrator of Plateau State, or any other person delegated by me, who can competently instruct counsel to institute an action or authorize proceedings on behalf of Plateau State.

13. That I have neither authorized the institution of any such action nor have I delegated such authority to any other person so to do.

14. That the 2nd Plaintiff/Respondent having been suspended pursuant to the State of Emergency (Plateau State) Proclamation 2004 did not instruct anybody to sue on its behalf.

15. That the Chief Executive of the 1st Plaintiff and 2nd Plaintiff having been suspended pursuant to the State of Emergency (Plateau State) Proclamation 2004 did not institute this action as they lack the competence to do so.

16. That the 2nd Plaintiff is not a proper party before the Honourable Court.

17. That the 1st Plaintiff is not interested in prosecuting this case having not initiated it in the first place.

18. That neither the interest of the 2nd Plaintiff nor the Defendants will be prejudiced if this suit is struck out.

19. That it will be in the interest of justice if this suit is struck out."

Other counter-affidavits were filed but in view of the fact that this suit is destined to founder on an important procedural point highlighted by the Notice of Preliminary objection filed on behalf of the 1st defendant, it is unnecessary in my view to go into an in-depth discussion of the other affidavits. The 1st and 2nd defendants filed Notices of Preliminary objection to Plaintiffs suit. The 1st defendant in his preliminary objection contended that:

"1. There is no life (sic) issue before the court but an academic, speculative and hypothetical issues;

2. Individual claims are not cognizable under the original Jurisdiction of the Supreme Court by Virtue of section 232(1) of the 199 Constitution as amended.

3. *Persons who are not parties to an action cannot claim reliefs in the action;*

4. *Both Plaintiffs herein are by virtue of section 20 and section 2 of the Supreme Court Act and Supreme Court (additional Original Jurisdiction Act) Cap. 5 16 LFN 204 respectively have no requisite locus standi to institute this action.*

5. *Action was instituted with authority.*

6. *These actions are abuse; of court's processes.*

7. *There is no reasonable cause of action.*

8. *The Jurisdiction of the Honourable is Court is not extended to the enforcement of rights which were suspended, in the Regulations relating to the State of Emergency in Plateau. State were properly made or not."*

The 2nd defendants Notice of Preliminary Objection raises one solitary ground, namely:

*"The issue before the court is lifeless, spent, academic, speculative and hypothetical."*

My learned brother Kutigi JSC. has in his lead judgment demonstrated why this; suit must be struck out. I entirely agree with him. It is apparent in my view that even only on the plaintiffs' showing, this suit ought not have been brought by the present plaintiffs. I reproduced earlier the facts deposed to in support of the Amended originating summons. There is no doubt that as at 18-05-04, when a state of emergency was declared in Plateau State, the then Governor was His Excellency Joshua Dariye. Following the declaration of the statement of emergency Joshua Dariye ceased to be the Governor of Plateau State as his office was suspended. Under the said declaration the Plateau State House of Assembly was also suspended. It is undisputed that Major-General M. C. Alli (Rtd.) became the Administrator of Plateau State on 19-05-04. He, in the capacity of administrator was completely in charge of the Government of Plateau State and all its agencies. Plaintiffs' suit was filed on 24-06-04 at which time Joshua Dariye was no longer the de facto constitutional head of Government in Plateau State. He had neither the control over the Plateau State nor the authority to initiate an action in court in the name of the Plateau

State Government. It is in this connection I gratefully adopt what this Court said in A-G. Bendel State v. A-G. Federation [1981] NSCC 314 at 406-407:

*"It is clear from the wording of this provision that the jurisdiction which it confers on the Supreme Court is limited indeed. There has to be a dispute between the Federation and a State or between States. The dispute must involve a question on which the existence or extent of a legal right depends. A State can only invoke the jurisdiction of this Court if it can show that there is a real dispute between it and the Federation or another State and that the question involved in the dispute touches on the existence or extent of its legal right or interest. In other words that State must as part of this dispute have legal interests or rights, which are injured or threatened. (See New South Wales v. Commonwealth [1931] 46 C.L.R. 155; Att. General for Victoria v. Commonwealth [1945] 71 C.L.R. 297. As was stated in Commonwealth of Massachusetts v. Mellon, Secretary of the Treasury, etc. 262 U.S. Vol. 43 Supreme Court Report 597 (though in respect of individual rights). A party invoking the power of the Court with respect to an unconstitutional statute must show, not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury from its enforcement and not merely that he suffers in some indefinite way in common with the public generally.*

*In my view each case ought to be decided on its particular facts and circumstances and after the Court has been seised with all the arguments as in the instant case. Looking more closely at this jurisdiction (i.e. under Section 212 of the Constitution) it must be stated that the mere fact that there is non-compliance with the constitutional requirements of law making does not by itself entitle a State to come to court and impeach or challenge its validity or will not entitle it to invoke the jurisdiction of the Court."*

On the facts deposed to by the Plaintiffs, the wrong, if any, which was committed by the defendants, by the declaration of a state of emergency in Plateau State and the suspension of the Governor and the members of the House of assembly was to the incumbent Governor Joshua Dariye and not to the Government of Plateau State. Further, since

the Government of Plateau State was under the control of Major-General M. A. Alli (Rtd.), only he alone could authorize the initiation of the suit in the name of the Plateau State Government. As at 24-06-04, when this suit was brought, there was no dispute of any type between the defendants and the Plateau State Government. Clearly therefore the 1st plaintiffs suit cannot be taken as one within the contemplation of section 232(1) of the 1999 Constitution.

With respect to the 2nd plaintiff, section 3 of the Supreme Court (Additional Original jurisdiction) Act, 2004 provides:

*“Section 20 of the Supreme Act is amended to the extent that in any such suit by or against -*

*(a) The National Assembly; or*

*(b) A State House of Assembly;*

*The nominal party in the case of -*

*(i) National Assembly is the National Assembly*

*(ii) A State House of Assembly is the Speaker of The House of Assembly, as stated in this Act.”*

It is manifest from the above that only the Speaker of a State House of Assembly could bring an action on behalf of the members of the House.

The result is that suit brought by the plaintiffs is in its present from incompetent. I would also strike it out as in the lead judgment by my learned brother Kutigi J.S.C. I make no order as to costs.

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