

SUPREME COURT OF NIGERIA

8TH JUNE, 2007 SC.62/2007

**CORAM:- N. TOBI, G. A. OGUNTADE, A. M. MUKHTAR,
M. MOHAMMED, W. S. N. ONNOGHEN, I. T. MUHAMMAD,
C. M. CHUKWUMA-ENEH, JJSC**

ATTORNEY GENERAL OF ANAMBRA STATE PLAINTIFF
AND
ATTORNEY GENERAL OF THE FEDERATION DEFENDANT

EVIDENCE - Affidavits - Depositions - That contain legal arguments -
Should be struck out - For offending s. 87 Evidence Act (H1)

ACTIONS - Jurisdiction - Supreme Court's original jurisdiction - Does
not avail in this action - Where the proper body to be sued - Is the INEC
(Independent National Electoral Commission) (H2)

CONSTITUTIONAL LAW - Supreme Court - Jurisdiction - Parties -
Dispute - There is no dispute as envisaged by s. 232 1999 Constitution -
Between the present parties - To warrant exercise of Supreme Court's
original jurisdiction (H3)

STATUTES - Interpretation - Golden rule - Requires that words be given
their natural meaning - Without introducing extraneous matters - That
will give a meaning different from legislator's intention (H4)

ACTIONS - Remedy - Interest of the State - Wrong done to a Governor
personally - Should be pursued by him vide personal legal action - With-
out converting it into a State matter (H5)

SUPREME COURT - Original jurisdiction - Under s. 232 1999 Constitu-
tion - Where no dispute exists between the parties - Supreme Court has
no jurisdiction to determine the case (H6)

FACTS

Before the Supreme Court of Nigeria, under the Court’s original jurisdiction, plaintiff by way of originating summons filed this action against defendant, claiming five declarations and two orders. The claims were mainly complaints that the Independent National Electoral Commission (INEC) failed to do some things, or will be responsible for the very acts sought to be stopped, i.e., conducting of 14th. April, 2007, governorship election in Anambra State. The basis of the claim was that the incumbent Governor of Anambra State, Mr. Peter Obi, who took his Oath of office on 17-3-2006, has not completed his four year tenure in office as provided by s.180 (1) & (2) of the Constitution of the Federal Republic of Nigeria, 1999, and that his four year tenure will expire on the 16th day of March, 2010.

Thus, the claim did not disclose any dispute between the present parties to warrant exercise of the Supreme Court’s original jurisdiction, but is a personal grievance Mr. Peter Obi may have against INEC, a legal body that can be sued in its own name. As the case came up for hearing on the 3- 4-2007, the apex Court ordered parties to exchange briefs of argument on the issue of jurisdiction to try the case. Briefs were exchanged and the parties addressed the court.

ISSUE FOR DETERMINATION

“Whether this court in the exercise of its original jurisdiction can hear and determine the reliefs sought by the plaintiff in this suit.”

HELD (Unanimously striking out the case for want of jurisdiction per MUKHTAR JSC)

Affidavits - Depositions

1. As argued in the defendant’s brief of argument paragraphs 4 - 7 of the depositions supra, are mere legal arguments. I subscribe to the submission and in fact add that paragraph (3) also falls into that category. A cardinal principle of law is that affidavit evidence i.e. depositions must not contain legal arguments, and where they do they offend the provision of Section 87 of the Evidence Act Cap 112, Laws of the Federation of

Nigeria 1990. In the event that such situation exists the paragraphs containing the offensive depositions will be struck out, and I so strike out paragraphs 3-7 of the supporting affidavit to the originating summons. (p. 3054 G)

Supreme Court's original jurisdiction - Does not avail in this action

2. The claims when read together with paragraphs 8 - 13 of the supporting affidavit clearly confirms the views expressed supra that the Independent National Commission is responsible or will be responsible for the very act, sought to be stopped. In effect methink the proper body to sue for these claims and reliefs should have been the said Independent National Electoral Commission, which is a statutory body established by Section 153 of the 1999 Constitution supra, and which can sue and be sued as provided by the law creating it i.e. Electoral Act, 2001, Section 1 of which states:

"1. The Independent National Electoral Commission as established by Section 153 of the 1999 Constitution of the Federal Republic of Nigeria shall be a body corporate with perpetual succession and may, sue and be sued in its corporate name."

In the very recent case of Attorney General of Kano State v. Attorney General of the Federation 2006 6 NWLR part 1029 page 164, at page 192, Kalgo JSC, succinctly put the situation of when the Attorney General of the Federation can be sued in a matter similar to the present case thus :-

"The defendant is the Attorney-General of the Federation. It is not in dispute that the Attorney General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be made against the Federal Government or any of its authorized agencies, arising from any act or omission complained of. See Ezomo v. Attorney General; Bendel State (1986) 4 NWLR (pt, 36) 448. The Inspector General of Police, who is involved in this case, is the head of the Nigeria Police Force in Nigeria. It is a force recognized by the State and Federal Governments of Nigeria and it is a separate body created by the Constitution with special powers and responsibilities and can properly be sued."

In the circumstances of this case, this court has no original jurisdiction over the plaintiff's case. (p. 3058 C)

Supreme Court - Jurisdiction - Parties

- B 3. It is agreed that the tenure of an elected Governor of a state is four years as stipulated in Section 180 (2) of the Constitution, and it is a fact that the Governor of Anambra State declared to be the winner of the Gubernatorial election held in 2003 by a Court of Appeal verdict of 2006, did not spend the total of four years tenure, when the 2007 general election was to hold. It could therefore be said that this Governor became short changed by virtue of the fact that he should have been in office from 2003 when the electorate voted him to power, but then does that fact negatively affect Anambra State as an entity vis a vis the provision of Section 176 of the Constitution supra? I think not, for even the combined effect of the provisions of Sections 14 (a) and (c) and Section 178 (2) and (5) of the Constitution does not suggest so. Indeed I would say that the people of Anambra State have not been deprived of the exercise of their rights under the provisions of the Constitution. If anyone is aggrieved or deprived of the exercise of the rights in the provisions or placed in a disadvantaged position, by virtue of the non-compliance, or violation of any provision of the Constitution it is at best the Governor of Anambra State Mr. Peter Obi. Anambra State was not deprived of governance (albeit legal or otherwise) or administration (albeit good or bad). The state all along had a Governor in place who discharged his functions and duties, and was occupying the office in accordance with the tenets of the Constitution of the Federal Republic of Nigeria 1999. Why then should Anambra State be aggrieved to the extent of discerning that a dispute exists between it and the Federation of Nigeria within the context of the provision of Section 232 of the Constitution of the Federal Republic supra? I cannot fathom why in the circumstance of this case. Anambra state definitely has not lost anything to justify a dispute in the real Constitutional meaning of it. It should be a suit by Mr. Obi in person, and since the said Section 232 of the Constitution talks of dispute between States or State and the Federation, this dispute does not fall within the

ambit of the provision, and so this court has no original jurisdiction to hear it. (pp. 3059 B/ 3060 E)

STATUTES - Interpretation - Golden rule

4. A thorough perusal of all the provisions of the constitution relied upon by the learned Senior Advocate reveal that none of them have been contravened, misapplied or infringed on. This court has held over and over again that law should be given their correct and grammatical interpretation. The provision of law should be viewed in its simple form and interpreted within its ambit, and no extraneous matters should be introduced to it to give it a meaning different from what the legislator intended it to be. If such happens then the law will be wrongly construed, and its purpose will fall outside the intendment of the legislator. I have produced the various definitions of the word ‘dispute’ above. The authors of Halsburys statutes of England third Edition volume 32 encapsulated the principles of the consideration of words in statutes on pages 364 and 365 thus :-

“The golden rule is that the words of an Act are prima facie to be given their ordinary and natural meaning, or, as is sometimes said, their popular meaning; The rule has been in existence for many years and the classical statement of it is contained in the judgment of Wensley dale in Grey v. Pearson (1857), where he said:

“In construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency but no further”.

If the words of an Act are clear and explicit, they themselves are the best evidence of the intention of the legislature and no reference may be made to other sources of information.....” (p. 3061A)

ACTIONS - Remedy - Interest of the State

5. By the very nature and substance of the claim, there is no way one can

divorce the action from the Governor of Anambra State as an individual who is seeking to remedy a wrong that was purportedly done to him, by virtue of not enjoying his full tenure of office as the Governor of Anambra State, having not subscribed his oath of allegiance and office in May 2003, when he should have. Consequently the legal right that exists in this suit that are sought to be remedied are not those of the Government of Anambra State or its people but legal rights that are personal to the incumbent Governor who desires to be given the opportunity to exhaust the four years tenure he believes he is entitled to, by Section 180 (2) of the Constitution. As I have earlier on expressed Anambra State has right from 29th of May 2003 been governed by a Governor and that Governor continued to administer the state until the incumbent Governor came on board as the Chief Executive of the State. So what should Anambra State be complaining of, or what is its legal rights to complain? It has no reason or legal rights to complain, not even if, as suggested by the learned Senior Advocate that its people were deprived of the governance of the person they voted for in 2003. I think that sentiments will neither hold nor assist in converting the remedy from a personal one. In essence, I fail to fathom how the orders sought in this suit will benefit the Anambra State Government or its people. (p. 3066 C)

SUPREME COURT - Original jurisdiction - Under s. 232

6. The provision of Section 232 of the Constitution under which the plaintiff instituted this action is very clear on when the said provision can be invoked. The condition upon which it is invocable is in no uncertain terms -specified, and unless those conditions or principles are met a suit so initiated is unsustainable. The original jurisdiction of this court under the said section can be invoked only when there is a dispute between the Federation and a state or between states. In the present case no dispute exists, if it exists it is not between the plaintiff and the defendant, but at most the Independent Electoral Commission, which it is seeking orders against, as can be established from the claims and supporting affidavit. The circumstance of the position thus points the arrow of the appropriate body to sue at Independent National Electoral Commission, and in

this wise it is the Federal High Court that is vested with jurisdiction to hear and determine the dispute. Consequently this action is not between a state and the Federation. Secondly, the claims and the depositions in the supporting affidavit do not disclose grievance of Anambra State, but grievance of a person i.e. the incumbent Governor of Anambra State, so in essence it is a claim of an individual, (though christened that of a state) and which no legal right exists. This court, in the circumstance of this case has no original jurisdiction to entertain this suit, as the Anambra State, Government's rights or constitutional powers as a Government are not involved. I hereby hold that the Supreme Court has no jurisdiction to hear and determine this case, and therefore strike out the claims. (p. 3066 H)

NOTABLE POINTS OF INTEREST

TOBI JSC

1. A Governor cannot metamorphose to a State or vice versa

I am in grave difficulty to agree with learned Senior Advocate that a dispute exists between the parties. In the first place, the Constitution provides in separate and distinct sections the States of the Federation and the Office of the Governor of a State. Section 3(1) provides for the States while section 176 creates the Office of Governor of a State. A State created under section 3(1) is a separate and distinct entity from the office of Governor created under section 176 of the Constitution. Certainly a Governor cannot metamorphose to a State, ditto the reverse position. In other words, the two are not synonyms in the Constitution and therefore cannot change places. One is a State in the Federation. The other is the Governor of a State.

There is another dimension to the matter. The people making up a State are entirely different from the State as a legal and political entity. While I agree that by the exercise of their franchise, the people voted in the Governor of the State, that does not make them the State. In my humble view, it will be begging the issue to equate the people with the State merely because they exercise their franchise to bring the Governor to office, or merely because sovereignty rests with them. (p. 3069 E)

MUHAMMAD JSC

2. Jurisdiction defined and analysed

Since the lone issue for the determination of this suit is on the Jurisdiction of this court, I think I should straight consider that issue. Jurisdiction is said to be the authority a court has to decide matters before it. But, Black, in his sixth edition of his Law Dictionary defines the term to be of comprehensive input embracing every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the Subject matter and the parties. See: Attorney General Anambra State v. Attorney General of the Federation (1993) 9 KLR 158. In fact jurisdiction to a court of law is equated to blood in a living animal. Jurisdiction is the blood that gives life to the survival of an action in a court of law without which the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an exercise in futility. (p. 3092 E)

3. General principles for court's exercise of jurisdiction

The general principles for the exercise of jurisdiction by a court of law, as enunciated by a litany of decided cases, are that:

i. The subject matter of the case is within the jurisdiction of the court and there is no feature in the case which prevents the court from exercising its jurisdiction.

ii. The court is properly constituted as regards members and their requisite qualifications and no member is disqualified for one reason or the other.

iii. The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

For a case to be initiated by due process of law as in (iii) above, it presupposes that the jurisdiction of a court to adjudicate in a matter must be determined by the facts placed before it and more importantly, by the phraseology of the plaintiffs claim. (p. 3092 H)

CHUKWUMA-ENEHJSC*4. Plaintiff has no locus standi to file this suit*

From another angle the instant case, as can be seen has once again put on the front burner the contemporary question of locus standi of the plaintiff instituting and maintaining an action in a Court of law in this regard, the instant plaintiff's standing to sue on the peculiar facts of this matter. In other words, in this matter the plaintiff has sued on behalf of the government and people of Anambra State. The question that arises, is its standing for so doing. Briefly, locus standi or standing or title to sue which means the capacity to sue in a Court of law is resolved by perusing plaintiffs statement of claim which from the authorities has defined confines of the plaintiffs total cause of action. Like the issue of jurisdiction it is a threshold action and has to be taken at the earliest. What I am minded to emphasize upon here is that no other person excepting the person on whom is vested the aggregate of the enforceable rights in a cause has the standing to sue. And so the point must be made that, where a person has brought an action claiming a relief which on the facts of the matter is referable to another as in this matter then he cannot succeed for want of locus standi simply because there is no dispute between them. Again, the point has to be made that although this Court in a number of cases as I shall state hereunder has perceptibly moved away from the rigid principle of locus standi as pronounced in Adesanya's case, nonetheless, no Court in its wildest imagination would on the peculiar facts of this matter uphold the standing of the plaintiff to sue in this matter there being no dispute between the parties, that is, between the plaintiff and the defendant. Besides, the plaintiff cannot sue in respect of the reliefs claimed here on behalf of Governor Peter Obi by virtue of Section 232(1) of the Constitution as the facts of the matter do not support that cause. (pp. 3106 C/3107 F)

REPRESENTATION

Hon. Awa Kalu ,SAN, with him P. I. Ikwueto, SAN, Prof. E. Azinge, SAN, Dr. V. J. O. Azinge, Dr. O. F. Ayeni, J. N. Nwokolobia, N. C.

Okonkwo, M. C. Kalu, I. Bozimo and C. Ofor for the appellant.
Chief Bayo Ojo (SAN), Hon. Attorney-General of the Federation with
him A. O. Mbamali (Mrs.), Director, Civil Litigation, Federal Ministry of
Justice, and C. O. Assam (ACLO) for the respondent.

B

CASES REFERRED TO

Ezomo v. Attorney General; Bendel State (1986) 4 NWLR (pt, 36) 448
Governor of Ondo State v. President of the Federation 1985 6 NCLR 681
Governor of Ogun State v. President of Nigeria 1982 3 NCLR 538

C

Lagos State v. Attorney General of the Federation 2004 18 NWLR
St. John; Hamstood, Vestry v. Cotton (886), 12 App. Cas. I
Wokes V. Don Castar Amalgamated Collieries, Ltd; (1940) A.C. 1014,
(1940) 3 All E. R. 549, at page 1022 and page 553.

D Plateau State Government of Nigeria v. Attorney-General of the Federa-
tion (2006) 3 N.W.L.R. (PT. 967) 346

A-G of the Federation Vs A-G of Imo State (1983) 4 NCLR 178
A-G of the Federation Vs A-G of Abia State (2001) 11 NWLR (pt 725)

E 689

Attorney General Anambra State v. Attorney General of the Federation
(1993) 9 KLR 158

Sken Consult (Nig.) Ltd v. Secondy Ukey (1981) 1 SC 6

F

Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria (1986)
6 SC 35

Odofin v. Agu (1992) 3 NWLR (Pt.229) 350

Attorney General of Ondo State v. Attorney General of the Federation &
Ors (1983) 2 SCNLR 269

G

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999 ss. 5, 6, 14, 20, 178
180, 185, 232, 239

H Electoral Act No. 2 of 2006 s.144

Supreme Court Rules 0. 3. rr. 1 & 6

LEAD REASONS FOR RULING BY MUKHTAR JSC

On 5th April, 2007, I struck out this case for lack of jurisdiction. I indicated that day that I will give my reason for doing so today.

By way of originating summons pursuant to Order 3 Rules 1 and 6 Supreme Court Rules 1985 (as amended) the Attorney-General of Anambra State who is plaintiff in this suit sought the following reliefs:-

“1. A *DECLARATION* that by virtue of provisions of Section 180 (1) AND (2) (A) Constitution of the Federal Republic of Nigeria 1999, the four year tenure of office of the incumbent Governor of Anambra State of Nigeria is reckoned to begin from 17th March, 2006, being the date he first subscribed to the Oath of Allegiance and Oath of Office in accordance with Section 185 Constitution of the Federal Republic of Nigeria 1999.

2. A *DECLARATION* that the incumbent Governor of Anambra State of Nigeria is Constitutionally entitled to continue in office without fresh elections after 28th May 2007 when the tenure of other State Governors who subscribed their respective Oaths of Allegiance and Oaths of Office on 29th May 2003 is deemed to expire; the incumbent Governor of Anambra State of Nigeria having subscribed his Oath of Allegiance and Oath of Office on 17th day of March, 2006 in accordance with Sections 180 (2) (a) and 185 (1) Constitution of the Federal Republic of Nigeria 1999.

3. A *DECLARATION* that any elections, or preparations for elections including any purported elections on 14th April 2007 or any other date conducted by the Defendant, by itself or through (sic) his servants, privies, agents/agencies including the Independent National Electoral Commission; for the purpose of electing any person into the office of Governor of Anambra State of Nigeria before the expiration of the tenure of the incumbent Governor of Anambra State on 16th March, 2010; is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Sections 5 (1); 180 (1) (d), 180 (2) (a) and 185 (1) Constitution of the Federal Republic of Nigeria 1999.

4. A *DECLARATION* that the incumbent Governor of Anambra

State of Nigeria is constitutionally entitled to an uninterrupted tenure of office of a period of four years commencing on 17th March 2006 in accordance with Sections 180 and 185 Constitution of the Federal Republic of Nigeria 1999.

B 5. A DECLARATION that any purported return into office of
Governor of Anambra State and subscription of the Oath of the elections
or purported elections of the 14th April 2007 or of any other date; during
the currency of the tenure of the incumbent Governor of Anambra State
is unconstitutional, illegal, unlawful, null, void and of no effect whatso-
C ever being contrary to Section 180(1)(a) and (d) Constitution of the
Federal Republic of Nigeria 1999.

6. AN ORDER OF INJUNCTION restraining the Defendant, by
itself or through its servants, privies, officers, authorities, agents/agen-
D cies including the Independent National Electoral Commission from pre-
paring to conduct, conducting or purportedly conducting any election
into the office of the Governor of Anambra State of Nigeria on 14th April
2007 or any other date prior to the expiration of the tenure of office of
E the incumbent Governor of Anambra State of Nigeria.

7. AN ORDER OF INJUNCTION restraining the Defendant, by
itself or through its servants, privies, officers, authorities, agents/agen-
cies including the Independent National Electoral Commission from re-
F turning any person into office as Governor of Anambra State of Nigeria
pursuant to any purported election on 14th April 2007 or any other date
prior to the expiration of the tenure of office of the incumbent Governor
of Anambra State of Nigeria.”

G In support of the originating summons is an affidavit sworn to by
the Attorney-General and Commissioner of Justice, Anambra State,
Emmanuel Dubem Chukwuma, and the salient depositions read as fol-
lows:-

H “3. On the 15th March 2006, the Court of Appeal of Nigeria sit-
ting in Enugu (Coram: R. D. Muhammad, Aderemi, Augie, Alagoa and
Omokri, JJCA) delivered judgment in Appeal Numbers CA/E/EPT/5A/
2005; CA/E/EPT/5B/2005; CA/E/EPT/5C/2005; CA/E/EPT/5D/2005;
and CA/E/EPT/5E/2005 between: Dr. Chris Nwabueze Ngige v. Mr. Pe-

ter Obi & 449 Ors, to the effect inter alia that:

“Mr. Peter Obi is declared as validly and duly elected and returned as Governor of Anambra State having scored/pollled the highest/majority, of lawful votes cast on the 19th April 2003 gubernatorial election.”

B

4. The said Judgment of the Court of Appeal is reported as Dr. Chris Nwebueze Ngige V. Mr. Peter Obi & 449 Ors (2006) 14 NWLR (part 999) 1 - 241, while the part of the Judgment referred to in Paragraph 3 above is to be found at pages 176 -177 H - A of the said Nigerian Weekly Law Report.

C

5. That having been returned as the winner of the election into office as Governor of Anambra State held on 19th April 2003, the Independent National Electoral Commission issued a certificate of Return to the incumbent Governor of Anambra State of Nigeria on account of which the said Governor subscribed to the Oath of Allegiance and Oath of Office pursuant to Section 185 (1) Constitution of the Federal Republic of Nigeria on 17th March, 2006 are now produced, shown to me and marked Exhibit PI series hereto.

D

6. I know as a fact that Section 180 (1) Constitution of the Federal Republic of Nigeria 1999 provides that subject to provisions of the said Constitution the incumbent Governor of Anambra State shall hold the office as such until the occurrence of one of the following events: -

E

- (i) when his successor in office takes the oath of that office, or*
- (ii) he dies whilst holding such office, or ,*
- (iii) the date when his resignation from office takes effect; or*
- (iv) he otherwise ceases to hold office in accordance with the provisions of the Constitution.*

F

7. I also know as a fact that Section 180 (2) (a) Constitution of the Federal Republic of Nigeria 1999 provides that subject to the provisions of Section 180 (1) of the same Constitution, the incumbent Governor of Anambra State shall vacate his office at the expiration of a period of four years commencing from the date when the incumbent took the Oath of Allegiance and Oath of Office.

G

8. I also know as a fact that the last election into office of posi-

tion of Governor of Anambra State took place on 19th April, 2003; and it was this election that the Court of Appeal pronounced the incumbent Governor of Anambra State the winner by its judgment of 15th March, 2006.

B 9. *I also know that the incumbent Governor of Anambra State who was pronounced and returned as winner of the elections into office of Governor of Anambra State on the 19th April 2003 polls, assumed the Office of Governor on 17th March 2006 after duly subscribing to the Oath of Allegiance and Oath of Office declaring his assets as required by*
C *the aforesaid 1999 Constitution.*

10. *That despite the fact that the incumbent Governor of Anambra State assumed the office of Governor of Anambra State on 17th March 2006, the Defendant through its servants, privies, agents/agencies (in-*
D *cluding Independent National Electoral Commission) is making serious preparations for the purpose of conducting elections into the office of Governor of Anambra State on 14th April 2007.*

11. *That unless this case is expeditiously determined, the Defend-*
E *ant through its servants, privies, agents/agencies:*

a. may continue to make preparations towards holding and/or conducting elections into the office of the Governor of Anambra State on 14th April 2007 despite the pendency of this suit.

F *b. may purport to return another person as duly elected into office of Governor of Anambra State of Nigeria and further purport to have that person subscribe the Oath of Allegiance and Oath of Office.*

12. *That I also know as a fact that the legitimate expectations of the people of Anambra State who voted the incumbent Governor of An-*
G *ambra State into office is that his mandate will run for an uninterrupted period of four years in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999.*

H 13. *That having regard to the peculiar circumstances of Anambra State, an expeditious determination of this suit will avert chaos, confusion and other inimical events that may lead to anarchy in the Plaintiff State."*

The questions sought to be determined by the plaintiff in its mat-

ing, summons are as follows:-

“1. A determination of the question whether the four year period/ tenure of office for a state Governor contemplated by Section 180 Constitution of the Federal Republic of Nigeria 1999 is reckoned from the date in which the incumbent Governor subscribed to the Oath of Allegiance and Oath of office. B

2. A determination of the question whether having regard to all the circumstances it is constitutional for the incumbent Governor of the plaintiff state to continue in office without fresh election after 28th May, 2007 when the tenure of other state Governors (apart from Anambra State of Nigeria) who subscribed their respective Oaths of Allegiance and Oaths of Office on 29th May 2003, is deemed to expire. C

3. A determination of the question whether having regard to Anambra State of Nigeria, it is unconstitutional and illegal to conduct elections into the Office of Governor of Anambra State on 14th April, 2007 when the tenure of office of the incumbent Governor will not expire until 16th March 2010. D

4. A determination of the question whether a democratically elected Governor of Anambra, State is by virtue of Section 180 (2) (a) Constitution of the Federal Republic of Nigeria 1999 entitled to an uninterrupted tenure of four years from the date of subscribing to the Oath of Allegiance and Oath of Office as Governor of a State. E

5. A determination of the question whether it is lawful and constitutional for the Defendant, through its servants; privies. Agents/agencies (including Independent National Electoral Commission), to conduct elections into the office of Governor of Anambra State on 14th April 2007 when the incumbent Governor subscribed his Oath of Allegiance and Oath of office on 17th March, 2006.” F G

When the case came up for hearing on 3rd of April 2007 this court ordered parties to exchange briefs of argument on the jurisdiction of the court to hear the case. The plaintiffs brief of argument was filed on 4/4/ 07, and the defendant filed its own brief of argument on 5/4/07 on the order of the court after a motion for extension of time and deeming of the brief of argument was moved by the Honourable Attorney General, Chief H

Bayo Ojo himself. On 5/4/07 learned Senior Advocate for the plaintiff adopted their said brief of argument, which has as the only issue raised for determination the following:-

B *“Whether this court in the exercise of its original jurisdiction can hear and determine the reliefs sought by the plaintiff in this suit.”*

The Honourable Attorney General also adopted the defendant’s brief of argument which also has in it the following formulated issue for determination:-

C *“Whether this Honourable court can hear and determine, the questions raised by the plaintiff in its originating summons for determination in the exercise of its original jurisdiction.”*

In proffering argument on his lone issue, the learned Senior Advocate for the plaintiff referred to cases where this court indicated the D circumstances in which its original jurisdiction will be invoked. The cases are Attorney General of Bendel State v. Attorney General of the Federation 1982 3 NCLR 1, Attorney General of the Federation v. Attorney General of Imo State 1983 4 NCLR 178, and Attorney General of the E Federation v. Attorney General of Abia State 2000 11 NWLR part 725 page 689. The learned Senior Advocate contended that the word ‘dispute’ under Section 232 (1) of the Constitution of the Federal Republic of Nigeria 1999, which is in pari materia with Section 212 (1) of the 1979 F Constitution has been defined as “*the act of arguing against, controversy, debate, contention as to rights, claims and the like or on a matter of opinion.*” According to the learned Senior Advocate any issue which calls for the interpretation of the constitution is justiciable unless otherwise provided by the constitution. The combined provisions of Section 6 G (1) and (6) and 232 (1) of the 1999 Constitution show that the Supreme Court has jurisdiction to interpret not only the provisions of Section 162 (2) of the 1999 Constitution but also all the other provisions of the constitution whether on appeal or in exercise of its original jurisdiction under H Section 232 (1) of the 1999 Constitution. For the Supreme Court to exercise its original jurisdiction in a civil case between the Federation and the state(s) or between states the following must be present.

(a) a dispute between the Federation and a state or states or be-

tween states and

(b) the dispute must involve a question of law or fact or both; and

(c) the dispute must pertain to the existence or extent of a legal right.

These elements were also stated in the defendant's brief of argument, as being laid down in the case of Attorney General of the Federation v. Attorney General of the 36 States 2001 Vol. 6 MISC 94. The learned Senior Advocate for the plaintiff further submitted that the position of a Governor of a State in relation to the state is aptly captured by Section 5 (2) (a) of the 1,999 Constitution, which provides;

"(2) subject to the provisions of the Constitution, the executive powers of a state

(a) shall be vested in the Governor of that state and may subject as aforesaid and to the provisions of any law made by a House of Assembly be exercised by him either directly or through the Deputy Governor".

Unquestionably the exercise of executive powers of a state vested in the Governor are not exercisable by the Governor as an expression of his personal rights but are exercised by the Governor qua his constitutional position as the Chief Executive of the State, he argued. It therefore stands to reason that the collective interest of Anambra State is the appropriate subject in any question regarding the constitutional manner and or process through which and or under which executive powers in the state is to be exercised, In the instant case, the crucial question is the legitimate right of Anambra State as a component state within the Federation to have determined whether the continued exercise of the executive powers in the state by its incumbent Chief Executive will terminate or abate by May 29th 2007 when the other Governors who subscribed the respective Oath of Allegiance and Oath of office are deemed to become *functus officio*. It is the contention of the learned Senior Advocate that Anambra state has a right to ensure a legitimate Government pursuant to Section 5 (2) (a) of the 1999 Constitution, and that a dispute on this subject obviously concerns a question on which the extent of the constitutional right of the plaintiff depends. It has been settled that a constitutional right is a legal right within the purview of Section 232 (1) of the

1999 Constitution. See Attorney General of Bendel State v. Attorney General of the Federation supra. Whether or not a court has jurisdiction to entertain a matter must be found in the plaintiffs statement of claim, not in its brief of argument, or in the case of the defendant.

B In the brief of argument of the defendant, it was submitted that it is a fundamental principle of law that the issue of jurisdiction is a central point on which the entire case rests, and so the issue of jurisdiction must be tackled first before any step is taken in a matter.

C It has been submitted that the conditions reproduced supra have been satisfied by the plaintiffs claims. The learned Senior Advocate has posited that for the purposes of determining whether or not a dispute exists between the parties in this suit the court must have recourse to the provisions of Section 185 of the 1999 Constitution for evidence indicating convincingly that the incumbent Governor of Anambra State subscribed the Oath of Allegiance and Oath of office as stipulated in Section 185 (1) of the Constitution on the 17th March, 2006. It was submitted that the subscription to the Oath of office brings a particular Governor within the purview of Section 180 (2) (a). It was submitted that this court cannot be called upon to invoke its original jurisdiction where any of the elements in the Attorney General of the Federation v. Attorney General of the 36 States’ case already reproduced supra is missing.

F The defendant in its brief of argument invoked the words of Professor B. O. Nwabueze in his book “*Federalism in Nigeria under the Presidential Constitution*”, where he tackled the word ‘dispute’ as is contained in Section 232 of the Constitution of 1999 as he commented on the said Section 232 (1) supra thus:-

G “..... The provision leaves no room for doubt that a dispute between the Federation and a State or between two or more states is a condition for the invocation of the jurisdiction i.e. a real dispute involving a question, whether of law or fact, on which the existence or extent of a legal right depends as distinct from a hypothetical dispute or one that is academic or moot”.

It was submitted that the reliefs sought in the originating summons and the facts deposed to in the affidavit in support are all centered

around the person of the Governor of Anambra State and by no means the entity called the State. The alleged legal rights which the plaintiff wants remedy on are legal rights which are personal to him and not the legal right of the government and people of Anambra State. It was further submitted that the plaintiff here in its originating summons and supporting affidavit failed to disclose the existence of a dispute between the Federal Government and Anambra State, and that a dispute is synonymous with controversy, quarrel, argument, disagreement and contention. The case of Attorney General of the Federation v. Attorney General of the 36 States was cited. It was again submitted that dispute cannot be a state of complacency or dispassionate view of an opponent's claims. It certainly is not a situation in which an adverse party has neither by an act or omission accentuated or opposed a plaintiffs claim as in the present case. It was submitted that the only paragraphs of plaintiffs affidavit which relate to the facts in issue are paragraphs 8 to 13 of the affidavit in support of plaintiffs originating summons, while paragraphs 4 to 7 are mere legal argument.

The section of the Constitution that confers original jurisdiction on the Supreme Court is Section 232 of the Constitution of the Federal Republic of Nigeria 1999 and the provision therein reads:-

"232 (1) - (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 invoke any question (whether of law or fact) on which the existence or extent of a legal right depends.

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

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

The key word in subsection (1) above, which is the applicable section to the instant case, is 'dispute'. Dispute in Blacks Law Dictionary 7th Edition is defined as (a conflict or controversy, especially, one that has given rise to a particular lawsuit. Then as per Belgore JSC (as he then

was) in the case of Attorney General of the Federation v. Attorney General of 36 States supra, *‘dispute involves acts of argument, controversy, debate, claims as to rights, whether in law or fact, varying opinion whether passive or violent or any anxiety or disquiet.....’*

B A plethora of authorities have laid down situations and circumstances in which the original jurisdiction of this court will be invoked.

By virtue of the provisions of ‘Section (6) (6) of the Constitution supra, judicial powers are vested on superior courts stated under subsection (5) of the said section (6). I will reproduce the provisions of section C 6 (1) and (6) supra, hereunder:-

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

D *(a) shall extend, notwithstanding anything to the contrary in this constitution to all interest powers and sanctions of a court of law;*

(b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to E the civil rights and obligations of that person;”

No doubt the above provisions vest jurisdiction on the Supreme Court to entertain actions, and when the provisions are read together with that of Section 232, the position becomes clearer. But then a legal F right must exist, and the matter in controversy must be between the Federation and a state of the Federation. I will now consider the requirement of Section 232, to see whether or not a dispute involving any question (whether of law or fact) on which the existence or extent of a legal right depends, exists in the instant case. Towards this end it is imperative G that I peruse the depositions in the supporting affidavit of the originating summons.

As argued in the defendant’s brief of argument paragraphs 4 - 7 of the depositions supra, are mere legal arguments. I subscribe H to the submission and in fact add that paragraph (3) also falls into that category. A cardinal principle of law is that affidavit evidence i.e. depositions must not contain legal arguments, and where they do they offend the provision of Section 87 of the Evidence Act Cap

112, Laws of the Federation of Nigeria 1990. In the event that such situation exists the paragraphs containing the offensive depositions will be struck out, and I so strike out paragraphs 3-7 of the supporting affidavit to the originating summons. See Bamaiyi v. State 2001 8 NWLR part 715 page 270.

According to the learned Senior Advocate for the plaintiff, by virtue of the Provisions of Section 14 (1) (a) of the Constitution, sovereignty belongs to the people of Nigeria, from whom Government through this constitution derives all its powers and authority. In addition to this, our constitution in Section 14 (1) (e) provides that the participation by “the people in their Government shall be ensured in accordance with the provisions of this constitution. By virtue of Section 14 (i) (c) :-

“14 (1) The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.

(2) It is hereby accordingly declared that

(2)(c) the participation by the people in their government shall be ensured in accordance with the provisions of the Constitution.

The provisions of Sections 178 (2) and (5) of the Constitution supra were also referred to. These provisions read as follows :-

“178 (2) An election to the office of Governor of a state shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of office of the last holder of that office.

(5) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of Governor of a State.”

By virtue of Section 176 of the said constitution

“(1) There shall be for each of the Federation a Governor.

(2) The Governor of a State shall be the Chief Executive of the state.

According to the learned Senior Advocate, the implication of the provisions of Section 176 are two fold namely that the Governorship of a State is not a personal estate but an office and indeed an institution and that the Governor is also the Chief Executive of the State. To that extent,

any threat to the existence of the office of Governor Or to the rights accruing to that office can be vindicated only by the Attorney General of the State concerned, by virtue of Section 20 Supreme Court Act. When cognizance is taken of the combined effects of Section 14 (a) and (c) and Section 178 (2) and (5) of the 1999 Constitution it becomes clear and compelling that the people of any State in the Federation must challenge any perceived threat to the continued existence of the office of Governor as such matter directly affects their sovereign vested rights as citizens. For the purposes of determining whether or not a dispute exists between the parties in this suit the court must have recourse to the provisions of Section 185 of the 1999 Constitution for evidence indicating convincingly that the incumbent Governor of Anambra State subscribed the Oath of Allegiance and Oath of office as stipulated in Section 185 (1) of the Constitution on the 17th March, 2006. The learned Senior Advocate submitted that subscription to the Oath of office aforesaid brings a particular Governor within the purview of Section 180 (2) (a). The cardinal question asked by learned Senior Advocate is, if the Governor of the plaintiff state subscribed to his Oath of Allegiance and Oath of office only on the 17th March, 2006 when will the term of office of the Governor of the state expire as contemplated by Section 178 (2) of the Constitution. This is a question directly affecting the sovereign rights of people of Anambra State, the plaintiff. The duration of the office of a Governor in a single term as provided by the supra constitution is four years, and the provision reads as follows:-

“180 (2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when -

(a) in the case of a person first elected as Governor under this constitution he took Oath of Allegiance and Oath of office; and

(b) the person last elected to take that office took the Oath of allegiance and Oath of office or would, but for his death, have taken such Oaths.”

I will now go back to the depositions in the supporting affidavit of the originating summons vis a vis the submissions in the defendant's

brief of argument. The argument in the said brief is that paragraphs (8) - (13) do not disclose any argument or controversy whatsoever on the issue of continuation of tenure by the Governor of Anambra State, a matter which constitutes the gravamen of plaintiffs contention in this matter. The depositions in paragraphs 8, 10 and 11 relate to the Independent National Electoral Commission's preparation for the election into the office of Governor of Anambra State. These depositions however do not disclose representations of any alleged right or claim by the plaintiff which were debunked by the Independent National Electoral Commission to suggest a dispute. Further the facts disclosed in the affidavit relate to the Independent National Commission as an agency of Government which indeed plaintiff himself represented as discharging the responsibility imposed on it by law under paragraph 15 to the 3rd Schedule part 1 of the 1999 constitution and under the Electoral Act. Under this paragraph the Independent Electoral Commission is charged with inter alia the following:

"(a) organize, undertake and supervise all elections to the offices of the President and Vice- President, the Governor and Deputy governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;

(b) register political parties in accordance with the provisions of this constitution and an Act of National Assembly;

(c) monitor the organization and operation of the political parties, including their finances;

(d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report of vote for the purpose of any election under this constitution;

(e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this constitution;

(f) monitor political campaigns and provide rules and regulations which shall govern the political parties;

(g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;

(h) *delegate any of its powers to any Resident Electoral Commissioner, and*

(i) *carry out such other functions as may be conferred upon it by an Act of the National Assembly”.*

B A careful perusal of the claims of the plaintiff, most especially claims (2) (3), (5) (6) and (7) indicate that they are directed at what Independent National Electoral Commission should do or not do. The reliefs sought are acts/functions/and or duties incumbent on the said Electoral Commission to wit is specifically (a) supra of the paragraph 15 reproduced above. **The claims when read together with paragraphs 8 - 13 of the supporting affidavit clearly confirms the views expressed supra that the Independent National Commission is responsible or will be responsible for the very act, sought to be stopped. In effect**
 C
 D **methink the proper body to sue for these claims and reliefs should have been the said Independent National Electoral Commission, which is a statutory body established by Section 153 of the 1999 Constitution supra, and which can sue and be sued as provided by**
 E **the law creating it i.e. Electoral Act, 2001, Section 1 of which states:**

“1. The Independent National Electoral Commission as established by Section 153 of the 1999 Constitution of the Federal Republic of Nigeria shall be a body corporate with perpetual succession and may, sue and be sued in its corporate name.”

F **In the very recent case of Attorney General of Kano State v. Attorney General of the Federation 2006 6 NWLR part 1029 page 164, at page 192, Kalgo JSC, succinctly put the situation of when the Attorney General of the Federation can be sued in a matter**
 G **similar to the present case thus :-**

“The defendant is the Attorney-General of the Federation. It is not in dispute that the Attorney General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be
 H *made against the Federal Government or any of its authorized agencies, arising from any act or omission complained of. See Ezomo v. Attorney General; Bendel State (1986) 4 NWLR (pt, 36) 448. The Inspector General of Police, who is involved in this case, is the head of*

the Nigeria Police Force in Nigeria. It is a force recognized by the State and Federal Governments of Nigeria and it is a separate body created by the Constitution with special powers and responsibilities and can properly be sued."

In the circumstances of this case., this court has no original B jurisdiction over the plaintiff s case.

It is agreed that the tenure of an elected Governor of a state is four years as stipulated in Section 180 (2) of the Constitution, and it is a fact that the Governor of Anambra State declared to be the winner of the Gubernatorial election held in 2003 by a Court of Appeal verdict of 2006, did not spend the total of four years tenure, when the 2007 general election was to hold. It could therefore be said that this Governor became short changed by virtue of the fact that he should have been in office from 2003 when the electorate D voted him to power, but then does that fact negatively affect Anambra State as an entity vis a vis the provision of Section 176 of the Constitution supra? I think not, for even the combined effect of the provisions of Sections 14 (a) and (c) and Section 178 (2) and (5) of E the Constitution does not suggest so. Indeed I would say that the people of Anambra State have riot been deprived of the exercise of their rights under the prov---isions of the Constitution. If anyone is aggrieved or deprived of the exercise of the rights in the provi- F sions or placed in a disadvantaged position, by virtue of the non-compliance, or violation of any provision of the Constitution it is at best the Governor of Anambra State Mr. Peter Obi. To further but- tress my views, and in a way strengthen the argument of the learned Senior Advocate that the incumbent Governor did not enjoy his full ten- G ure the provision of Section 185 (1) of the constitution is of assistance. It reads:-

"185 (1) A person elected to the office of the Governor of a State shall not begin to perform the functions of that office until he has de- H clared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the oath of Allegiance and Oath of office prescribed in the seventh schedule to this constitution."

Indeed, the incumbent Governor of Anambra State did not subscribe to the Oath of allegiance and office until 17th of March, 2006, and so in accordance with this provision, he did not start to function as the Governor until that said 17th of March 2006, the lapse of which in fact
B deprived him of his right to so function from 2003, when the election under which he purportedly came out victorious was held. This situation and unwholesome position affected the incumbent Governor as a person, not Anambra State, for there was no vacuum created by this unfortunate lapse. Right from the 29th of May, 2003 when another Govern-
C ment came into power in Anambra State after the 2003 General Election, a Governor in the person of Dr. Chris Nwabueze Ngige took the Oath of allegiance and office, and he commenced and continued to function as the Governor of Anambra State until the incumbent Governor, Mr. Peter
D Obi took his own Oath of Allegiance on 15th March, 2006, after he had been declared validly and duly elected and returned as Governor of Anambra State by the Court of Appeal. Thus for all intent and purpose there was a Governor governing and functioning in Anambra State. Nothing was
E amiss and the state was not deprived of a Governor **Anambra State was not deprived of governance (albeit legal or otherwise) or administration (albeit good or bad). The state all along had a Governor in place who discharged his functions and duties, and was occupying the office in accordance with the tenets of the Constitution of the**
F **Federal Republic of Nigeria 1999. Why then should Anambra State be aggrieved to the extent of discerning that a dispute exists between it and the Federation of Nigeria within the context of the provision of Section 232 of the Constitution of the Federal Republic**
G **supra? I cannot fathom why in the circumstance of this case. Anambra state definitely has not lost anything to justify a dispute in the real Constitutional meaning of it. It should be a suit by Mr. Obi in person, and since the said Section 232 of the Constitution talks**
H **of dispute between States or State and the Federation, this dispute does not fall within the ambit of the provision, and so this court has no original jurisdiction to hear it. See Governor of Ondo State v. President of the Federation 1985 6 NCLR 681, Governor of Ogun State**

v. President of Nigeria 1982 3 NCLR 538, and Lagos State v. Attorney General of the Federation 2004 18 NWLR part 904 1.

A thorough perusal of all the provisions of the constitution relied upon by the learned Senior Advocate reveal that none of them have been contravened, misapplied or infringed on. This court has held over and over again that law should be given their correct and grammatical interpretation. The provision of law should be viewed in its simple form and interpreted within its ambit, and no extraneous matters should be introduced to it to give it a meaning different from what the legislator intended it to be. If such happens then the law will be wrongly construed, and its purpose will fall outside the intendment of the legislator. I have produced the various definitions of the word ‘dispute’ above. The authors of Halsburys statutes of England third Edition volume 32 encapsulated the principles of the consideration of words in statutes on pages 364 and 365 thus :-

“The golden rule is that the words of an Act are prima facie to be given their ordinary and natural meaning, or, as is sometimes said, their popular meaning; see St. John; Hamstead, Vestry v. Cotton (1886), 12 App. Cas. I at page 6 per Lord Halsbury, L. C.; Wokes V. Don Castar Amalgamated Collieries, Ltd; (1940) A.C. 1014, (1940) 3 All E. R. 549, at page 1022 and page 553, respectively, per Viscount Simon, L.G;

.....

The rule has been in existence for many years and the classical statement of it is contained in the judgment of Wensley dale in Grey v. Pearson (1857), where he said:

“In construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency but no further”.

If the words of an Act are clear and explicit, they themselves are the best evidence of the intention of the legislature and no reference

may be made to other sources of information.....”

See also *Tukur v. Government of Gongola State* 1989 4 NWLR part 117 page 517, *Lawal v. G. B. Ollivant* 1972 3 S.C. 124, *Ifezue v. Madugha* 1984 1 SCLR 427, and *I.B.W.A. v. Imano (Nig) Ltd.* 1988 3 B NWLR part 85 page 633.

On the existence or extent of the plaintiffs legal right, the learned Senior Advocate has argued that the plaintiffs legal right in the circumstances arises from the sovereignty preserved, for the people of the plaintiff state by virtue of the combined effect of Sections 14 (2) (a) 1976, 180 and 185 of the Constitution. According to him it has long been recognized and laid down that as a cardinal principle of interpretation of the constitution, a document or relevant parts thereof must be read together, broadly and liberally in all circumstances. See *Adesanya v. President of the Federal Republic of Nigeria and Anor* 1981 5 SC page 112, *Attorney-General, Bendel State v. Attorney-General, Federation* 1980 NCLR page 1, and *Nafiu Rabi v. The State* 1981 2 NCLR page 283 which he relied upon. He further argued that although Section 14 of the Constitution supra is within the ambit of Chapter 11 of the Constitution and so prima facie not justifiable, this court has laid down the rule that where the provisions of Chapter II of the Constitution finds expression in a Statute or legislation, including other areas of the constitution itself, then full effect will be given to it. He placed reliance on the case of *Attorney-General, Ondo State v. Attorney General Federation* and 35 Ors 2002 9 NWLR part 772 page 222. He added that Section 14 (2) of the Constitution allows the people of the state to participate in their Government, and the exercise of sovereignty as guaranteed by the constitution demonstrated through the right of the people to vote periodically - every four years (see Section 178 (2) and (5)). Learned Senior Advocate further argued that the plaintiff as the guardian of Public Interest contends on behalf of the people of the plaintiff state that the tenure of the person last elected to the office of the Governor is on the facts of this case unexhausted. However, having regard to the circumstances the defendant is of the view that such tenure is at an end. The following posers said to be perhaps germane to a resolution of the question under reference

was raised by Learned Senior Advocate. They are:-

- (i) Is the office of Governor of the plaintiff-state an institution?
- (ii) Are the people of the plaintiff state entitled to vote periodically for persons to occupy that office or institution?
- (iii) Are the people of the plaintiff state entitled to a determination of the question whether or not it is time to vote again? B

He answered the questions in the affirmative, and submitted that the mandate given freely by the people of the plaintiff state (which mandate was confirmed by the Court of Appeal) is as yet unexhausted and deserves protection of this court. It may be contended (according to Learned Senior Advocate) that the provision of Section 184 of the Constitution is appropriate in the circumstances of this case, but he submitted that the said Section 184 is inapplicable for the following reasons: C

(i) The said Sections make provisions in future having regard to the fact that the National Assembly at this time has not made the provisions contemplated or anticipated by Section 184 (a) (ii) and (iii). D

(ii) In comparison, Section 239 (1) which makes similar provisions in respect of the office of the President and Vice President makes particular reference to the Court, of Appeal qua Court of Appeal and any person who is in doubt with regard to Section 239 (1) (b) or (c) may approach the Court of Appeal for appropriate relief. In the instant case, since no provisions have been made by the National Assembly, the plaintiff state cannot on the facts of this case approach an Election Tribunal as contemplated by Section 184 aforesaid. By way of emphasis, neither the Electoral Act 2002 (which was in operation at the time the incumbent Governor contested elections) nor the extant Electoral Act No. 2 of 2006 or by way of any other Act have made provisions in this regard. E
F
G

(iii) The plaintiff can therefore not take advantage of the provisions of Section 144 of the Electoral Act 2006 having regard to the fact that, the Section is limited to a candidate at an election or a political party that has sponsored a candidate. See *Egolum v. Obasanjo* 1999 4 NWLR part 611 page 423, and *Buhari v. Obasanjo* 2005 2 NWLR part 941 page 1. H

The learned Senior Advocate concluded by contending that in the

light of the decision of this court, and having regard to the fact that the plaintiff has demonstrated its right to a determination of the question whether the tenure of the incumbent Governor is unexhausted, the plaintiff ought to have a forum to ventilate its grievances. He submitted that
 B the forum is this court and if the plaintiff has a right this court ought to provide an appropriate remedy.

In the defendant's brief of argument it was submitted that contrary to the submission in the plaintiff's brief of argument that Section 5
 C (2) (d) of the 1999 Constitution vests on the Governor of a state the executive powers of the state, the constitution sets limitations where such power will impede or prejudice the exercise of the executive powers of the Federation or endanger the continuance of Federal Government. It was contended that even if this court accepts that the struggle
 D for a continuation of tenureship is a collective aspiration of a state and not that of Governor as an individual, the resultant disparity in the election programme of the country is likely to undermine the security of the nation. The plaintiff can therefore not rely on his executive powers under
 E Section 5 (2) (d) of the Constitution in this case. It was further argued that the relevant question is the existence of a legal right of a state not that of a person. It was further submitted that the reliefs sought in the originating summons and the facts deposed to in the affidavit in support are
 F all centered around the person of the Governor of Anambra State not the Government or people of the state. The alleged legal rights which the plaintiff wants remedied are legal rights which are personal to him and not the legal right of the government and people of Anambra State. It
 G was submitted that Section 318 of the Constitution clearly defines the state as separate and distinct from the office of a Governor. This Section 318 defines state as follows :-

"State when used otherwise than in relation to one of the component parts of the Federation, includes government."

H It was further submitted therefore that the Governor of Anambra State in the circumstance cannot be interpreted to include the Government or people of Anambra State, the reliefs sought not being beneficial to the Government of Anambra State, same being personal to him. Okla-

homa Ex Real Johnson v. Cook, 304 U.S. 387 (1938) was referred to. Likewise the case of Plateau State Government of Nigeria v. Attorney General of the Federation 2006 1 SCNJ 1 where Kutigi JSC (as he then was) stated thus:

“The Supreme Court has no original jurisdiction in respect of claims or reliefs for individual person by virtue of the provisions of Section 232 (1) of the Constitution.”

It was finally submitted that on the general principle of justiciability following the authorities of the U.S. Supreme Court and the Nigerian Supreme Court *supra*, a government can only invoke the original jurisdiction of the Supreme Court, when its rights or constitutional powers as a government are involved. I have already dealt with the provisions of Sections 14 (2) (a) 176, 180 and 185 of the constitution above. Even though by virtue of Section 14 (2) (a) sovereignty is preserved for the people of the plaintiff's state, the combined effect of the provisions do not on their own confer legal right on the plaintiff in the circumstances, even when read together. The fact that Section 14 (2) allows the people of the state to participate in their government does not in effect mean that the people can or will constitute themselves as plaintiffs and vest on themselves legal rights in a matter that does not negatively affect or directly concern them. To have such legal rights they must be aggrieved and have recourse to remedy to the action complained of or about to be taken and executed.

By virtue of Section 5 (2) (a) and (3) of the Constitution the following position was stated:

(2) Subject to the provisions of this constitution, the executive powers of a state -

(a) shall be vested in the Governor of that state and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through, the Deputy Governor and Commissioners of the Government of that state or officers in the public service of the state;

(3) The executive powers vested in a state under subsection (2) of this section shall be so exercised as not to-

(a) *impede or prejudice the exercise of the executive powers of the Federation;*

(b) *endanger any asset or investment of the Government of the Federation in that state; or*

B (c) *endanger the continuance of a Federal Government in Nigeria.”*

The above provisions may vest executive powers on the Governor of a state, and that the collective interest of Anambra State is the appropriate through which his executive power in the state is to be exercised the nature of the present suit does not translate to a collective interest of Anambra State. **By the very nature and substance of the claim, there is no way one can divorce the action from the Governor of Anambra State as an individual who is seeking to remedy a wrong that was purportedly done to him, by virtue of not enjoying his full tenure of office as the Governor of Anambra State, having not subscribed his oath of allegiance and office in May 2003, when he should have. Consequently the legal right that exists in this suit that are sought to be remedied are not those of the Government of Anambra State or its people but legal rights that are personal to the incumbent Governor who desires to be given the opportunity to exhaust the four years tenure he believes he is entitled to, by Section 180 (2) of the Constitution. As I have earlier on expressed Anambra State has right from 29th of May 2003 been governed by a Governor and that Governor continued to administer the state until the incumbent Governor came on board as the Chief Executive of the State. So what should Anambra State be complaining of, or what is its legal rights to complain? It has no reason or legal rights to complain, not even if, as suggested by the learned Senior Advocate that its people were deprived of the governance of the person they voted for in 2003. I think that sentiments will neither hold nor assist in converting the remedy from a personal one. In essence, I fail to fathom how the orders sought in this suit will benefit the Anambra State Government or its people.**

The provision of Section 232 of the Constitution under which

the plaintiff instituted this action is very clear on when the said provision can be invoked. The condition upon which it is invocable is in no uncertain terms -specified, and unless those conditions or principles are met a suit so initiated is unsustainable. The original jurisdiction of this court under the said section can be invoked only B when there is a dispute between the Federation and a state or between states. In the present case no dispute exists, if it exists it is not between the plaintiff and the defendant, but at most the Independent Electoral Commission, which it is seeking orders against, C as can i.e. established from the claims and supporting affidavit. The circumstance of the position thus points the arrow of the appropriate body to sue at Independent National Electoral Commission, and in this wise it is the Federal High Court that is vested with D jurisdiction to hear and determine the dispute. Consequently this action is not between a state and the Federation. Secondly, the claims and the depositions in the supporting affidavit do not disclose grievance of Anambra State, but grievance of a person i.e. the incumbent Governor of Anambra State, so in essence it is a claim of an E individual, (though christened that of a state) and which no legal right exists. This court, in the circumstance of this case has no original jurisdiction to entertain this suit, as the Anambra State, Government's rights or constitutional powers as a Government are F not involved. I hereby hold that the Supreme Court has no jurisdiction to hear and determine this case, and therefore strike out the claims, as entertaining the suit will lead to a nullity of the proceedings and thus an exercise in futility. I make no order as to costs. G

TOBI JSC

On 5th April, 2007 I struck out this matter for lack of jurisdiction. H I indicated that day that I will give reasons for doing so today, 8th June, 2007.

The plaintiff, by an originating summons, sought five declaratory and two injunctive reliefs in respect of the incumbent Governor of Anambra

State, Mr. Peter Obi. The aggregate of the reliefs is to reckon his four year tenure to begin from 17th March, 2006. The originating summons was supported by an affidavit of 14 paragraphs.

When the matter came up on 3rd April, 2007, this court *suo motu* asked the parties to address it on jurisdiction immediately. This was because of the urgency of the matter. Came 4th April, 2007, the parties filed their briefs on jurisdiction and addressed the court the following day. I commend counsel for this. Both parties formulated a single issue each for determination and it is whether this court has original jurisdiction to hear the matter.

Mr. Awa Kalu, learned Senior Advocate for the plaintiff, referred to the following cases where this court indicated circumstances in which it can exercise its original jurisdiction: Attorney-General of Bendel State v. Attorney-General of the Federation (1982) 3 NCLR 1; Attorney-General of the Federation v. Attorney-General of Imo State (1983) 4 NCLR 178; Attorney-General of Ondo State v. Attorney-General of the Federation (1983) 4 NCLR 178 and Attorney-General of the Federation v. Attorney-General of Abia State (2001) 11 NWLR (Pt. 725) 689. Counsel restated the principles at pages 4 and 5 of the brief.

Referring to the provisions of sections 5(2)(a), 6(1) and (6), 14(1)(a), 162(2), 176(1), 178(2) and (5), 184, 185 and 232(1) of the Constitution of the Federal Republic of Nigeria 1999, learned Senior Advocate submitted that this court has original jurisdiction to hear the matter. He urged the court to hear the matter.

Chief Bayo Ojo, learned Senior Advocate and Attorney-General of the Federation submitted that as the facts deposed to in the affidavit in support of the originating summons centre around the person of Governor of Anambra State, Mr. Peter Obi, this court has no original jurisdiction to hear the matter. He cited section 232(1) of the Constitution and the following cases: Attorney-General of Federation v. Attorneys-General of the States (2001) 6 MISC 94; Oklahoma Ex. Real Johnson v. Cook 304 US 387 (1938) and Plateau State Government of Nigeria v. Attorney-General of the Federation (2006) 1 SCNJ 1. He urged the court to strike out the action for lack of jurisdiction.

The hub on which this matter rests is section 232(1) of the Constitution. It reads:

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

By the provision, the plaintiff must satisfy the court that there exists a dispute between the Federation and a State or between States. In other words, there must exist a dispute between the Federal Government and a State or between States named under section 3(1) of the Constitution. The dispute must involve the existence of a legal right.

Learned Senior Advocate for the plaintiff, in his effort to bring the Governor of Anambra State within the provision of section 232(1), tried his hands on sections 5(2)(a) and 14(1)(a) of the Constitution. While section 5(2)(a) vests in the Governor of a State executive powers of a State, section 14(1)(c) vests sovereignty in the people of Nigeria from whom government through the Constitution derives its powers and authority. Learned Senior Advocate moved to section 176 which provides that there shall be for each State a Governor who shall be the Chief Executive of the State.

I am in grave difficulty to agree with learned Senior Advocate that a dispute exists between the parties. In the first place, the Constitution provides in separate and distinct sections the States of the Federation and the Office of the Governor of a State. Section 3(1) provides for the States while section 176 creates the Office of Governor of a State. A State created under section 3(1) is a separate and distinct entity from the office of Governor created under section 176 of the Constitution. Certainly a Governor cannot metamorphose to a State, ditto the reverse position. In other words, the two are not synonyms in the Constitution and therefore cannot change places. One is a State in the Federation. The other is the Governor of a State.

There is another dimension to the matter. The people making up a State are entirely different from the State as a legal and political entity.

While I agree that by the exercise of their franchise, the people voted in the Governor of the State, that does not make them the State. In my humble view, it will be begging the issue to equate the people with the State merely because they exercise their franchise to bring the Governor
B to office, or merely because sovereignty rests with them.

The office of the plaintiff is created under section 195 of the Constitution. Although the Constitution provides only for the duties of the Attorney-General in criminal prosecutions, it is the law that the plaintiff is
C the Chief Law Officer of the State. And in that capacity, he can sue and be sued In such matters affecting the State, and I repeat, the State. He cannot sue or be sued in civil matters affecting persons in cases which are personal or domestic to them and therefore not official.

It is clear to me that the reliefs sought are personal to Mr. Peter
D Obi, who was at the material time the Governor of Anambra State. In my humble view, the State should not be involved in a matter affecting the tenure of Mr. Obi. That is strictly a personal affair of Mr. Obi, and I so hold.

And that takes me to the defendant, the Attorney-General of the Federation. Why was he sued, I ask? What constitutional or statutory function or role has he to play in the tenure of a Governor? Perhaps I can extend this question to cover the Federal Government, and I ask what
E constitutional or statutory role does the Federal Government play in the
F tenure of a Governor?

In my view, neither the defendant nor the Federal Government is vested with constitutional or statutory function in matters affecting tenure of the Governor of a State. The only constitutional body to exercise
G function is the Independent National Electoral Commission. That body is different from the Federal Government. It is a separate and distinct legal entity.

It is for the above reasons and the more comprehensive reasons
H given by my learned brother, Mukhtar, JSC, that I struck out the suit on 5th April, 2007. I abide by the orders she made as to costs.

OGUNTADE JSC

The plaintiff in this suit filed an originating summons against the defendant claiming seven reliefs in all. It is not relevant for the purpose of my judgment to set out in full the said reliefs. It suffices to say that the suit seeks in the main a declaration that the four year tenure of office of the incumbent Governor of Anambra State be taken as having commenced on 17-03-06, when he took the oaths of office in accordance with Sections 180 and 185 of the Constitution of the Federal Republic of Nigeria.

The matter came before us on 3/04/07 when *suo motu* we asked parties to address us as to whether or not we have jurisdiction to entertain the suit. I have given consideration to counsel's arguments on jurisdiction in their respective briefs.

The plaintiff, by its suit has sought to invoke the original jurisdiction of this court pursuant to Section 232 of the Constitution which provides:

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

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

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

I have painstakingly read the 14 paragraph affidavit filed in support of the suit brought by the Plaintiff. It seems to me that the suit, although disguised as arising from a dispute between the Attorney-General of Anambra State and the Attorney-General of the Federation, is in fact, one to press the individual or personal right of the incumbent Governor of Anambra State Mr. Peter Obi. The existence of a State has nothing to do with the individual who happens to be its Governor at a particular time. Governors come and go but the State remains. The result is that the personal right of any individual to be a governor of a State at a par-

ticular time is not synonymous with the right of the state. Clearly, this ought to have been a suit initiated only by the individual concerned Dr. Peter Obi and not by the Attorney-General of the Anambra State.

In paragraphs 10 to 12 of the affidavit in support of the suit, it was
B deposed thus:

“10. That despite the fact that the incumbent Governor of Anambra State assumed the office of Governor of Anambra State on 17th March 2006, the Defendant through its servants, privies agents/agencies (including Independent National Electoral Commission) is making serious
C preparations for the purpose of conducting elections into the office of Governor of Anambra State on 14th April 2007.

11. That unless this case is expeditiously determined, the Defendant through its servants, privies, agents/agencies:

D (a) may continue to make preparations towards holding and/or conduction elections into the office of the Governor of Anambra State on 14 April 2007 despite the pendency of this suit.

(b) may purport to return another person as fully elected into of-
E fice of Governor of Anambra State of Nigeria and further purport to have that person subscribe the Oath of Allegiance and Oath of Office.

12. That I also know as a fact that the legitimate expectation of the people of Anambra State who voted the incumbent Government of
F Anambra State in to office is that his mandate will run for an uninterrupted period of four years in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999.

Under the Constitution of the Federal Republic of Nigeria paragraph 15 of the 3rd Schedule, the power to organize, undertake and supervise all elections to the major elective offices including that of a Governor of a State is vested in the Independent National Electoral Commission (hereinafter referred to as INEC.). The thrust of plaintiff s suit is to prevent or stop INEC from conducting election in Anambra State for the
H office of a Governor. Neither the Attorney-General of the Federation nor the Federal Government of Nigeria directly conducts the said election. In a suit to stop the conduct of such elections, the proper defendant is INEC and not the Attorney-General of the Federation.

I am therefore satisfied that the plaintiff is employing no more than a subterfuge in order to bring the suit within the jurisdiction of this Court under section 232 of the 1999 Constitution notwithstanding that the suit, when considered and analysed from various angles is not one brought within the ambit of section 232 of the 1999 Constitution. It is my B view that this Court has no jurisdiction in the matter.

I therefore agree with the lead judgment by my learned brother Mukhtar J.S.C. that this court has no jurisdiction in the matter. I would therefore strike it out.

C

MOHAMMED JSC

The Supreme Court Rules 1985 as amended have indeed made provisions in Order 3 Rules 2(1) and (2) for civil proceedings seeking to D invoke the original jurisdiction of this Court to be commenced by filing an application to the Court by statement of claim, originating summons or originating motion as the case may require. However, the same rules in Order 3 Rule 6(1) also permits/any party claiming any legal or equitable E right, the determination of which depends on the construction of the constitution or any other enactment, to invoke the original jurisdiction of this Court by filing an originating summons. It was in line with the provisions of these rules that the Attorney-General of Anambra State as Plain- F tiff filed this action by originating summons dated 26th March, 2007 supported by an affidavit against the Attorney-General of the Federation as Defendant claiming the following reliefs -

“1. A DECLARATION that by virtue of provisions of Section G 180(1) and (2)(a) Constitution of the Federal Republic of Nigeria 1999, the four year tenure of office of the incumbent Governor of Anambra State of Nigeria is reckoned to begin from 17th March, 2006, being the date he first subscribed to the Oath of Allegiance and Oath of office in accordance with Section 185 constitution of the Federal Republic of Ni- H geria 1999.

2. A DECLARATION that the incumbent Governor of Anambra State of Nigeria is constitutionally entitled to continue in office without

fresh elections after 28th May, 2007 when the tenure of other State Governors who subscribed their respective Oath of Allegiance and Oath of office on 29th May, 2003 is deemed to expire; the incumbent Governor of Anambra State of Nigeria having subscribed his Oath of Allegiance and
 B *Oath of office on 17th day of March, 2006 in accordance with Sections 180(2)(a) and 185(1) constitution of the Federal Republic of Nigeria 1999.*

3. A DECLARATION that any elections, or preparations for elections including any purported elections on 14th April, 2007 or any other
 C *date conducted by the Defendant by itself or through his servants, privies, agents/agencies including the Independent National Electoral Commission; for the purpose of electing any person into the office of Governor of Anambra State of Nigeria before the expiration of the tenure of*
 D *the incumbent Governor of Anambra State on 16th March 2010; is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Sections 5(1), 180(1)(d), 180(2)(a) and 185(1) constitution of the Federal Republic of Nigeria 1999.*

4. A DECLARATION that the incumbent Governor of Anambra
 E *State of Nigeria is constitutionally entitled to an uninterrupted tenure of office of a period of four years commencing on 17th March 2006 in accordance with Sections 180 and 185 constitution of the Federal Republic*
 F *of Nigeria, 1999.*

5. A DECLARATION that any purported return into office of
 Governor of Anambra State and subscription of the Oath of Allegiance
 as well as Oath of office as such by any person pursuant to the elections
 or purported elections of the 14th April 2007 or of any other date; during
 G *the currency of the tenure of the incumbent Governor of Anambra State is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Section 180(1)(a) & (d) constitution of the Federal Republic of Nigeria 1999.*

6. AN ORDER OF INJUNCTION restraining the Defendant, by
 H *itself or through its servants, privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from preparing to conduct, conducting or purportedly conducting any election*

into the office of the Governor of Anambra State of Nigeria on 14th April, 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria.

7. *AN ORDER OF INJUNCTION restraining the Defendant, by itself or through its servants, privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from returning any person into office as Governor of Anambra State of Nigeria pursuant to any purported election on 14th April 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria."*

When the case came up for hearing on 3rd April, 2007, the parties were directed by this Court to prepare and file briefs of argument and to address this Court on whether or not it has original jurisdiction to hear and determine the action. After filing their respective briefs of argument, the parties were heard on 5th April, 2007 and at the conclusion of the hearing, this Court decided that it has no original jurisdiction to hear and determine the dispute between the parties. The action was accordingly struck out summarily for the full reasons for the decision to be given today 8th June, 2007.

I have read in draft before today, reasons for the judgment given by, my learned brother Mukhtar, JSC and I entirely agree with them. I wish however to add a few reasons why the action of the Plaintiff was struck out.

Having carefully examined the 4 questions for determination and the reliefs sought in the originating summons filed in this Court on 26th March, 2007, by the Plaintiff, together with the affidavit in support thereof, the nature and type of dispute disclosed therein does not give the Plaintiff, as one of the States constituting the Federal Republic of Nigeria, the right to institute this action before this Court. The dispute disclosed by the action of the Plaintiff is clearly one affecting the right of Mr. Peter Obi, who was declared the candidate who won the Governorship election conducted on 19th April; 2003 in Anambra State in the judgment of the. Court of Appeal Enugu delivered on 15th March, 2006 and the Independent National Electoral Commission (INEC). Following his victory,

Mr. Peter Obi was sworn in as the Governor of Anambra State on 17th March, 2006. What the present action is seeking this Court to determine is whether having regard to the provisions of section 180 of the constitution of the Federal Republic of Nigeria 1999, the tenure of Mr. Peter Obi as the Governor of Anambra State will expire on 29th May, 2007 or on 16th March, 2010 taking into consideration that he took his oath of allegiance and oath of office on 17th March, 2006. Clearly it is the personal legal rights of Mr. Peter Obi as the Governor of Anambra State who took his oath on 17th March, 2006 that were in issue and not the legal rights of Anambra State as one of the legal entities or States of the Federation. In otherwords, Mr. Peter Obi in his personal capacity, is the aggrieved party in this action and not Anambra State of Nigeria. This is because the alleged legal rights sought to be remedied by the Plaintiff in this action, are legal rights which are clearly personal to Mr. Peter Obi as a candidate who contested the 2003 Governorship election conducted by the Independent National Electoral Commission (INEC) and declared the winner of the election in a judgment of the Court of Appeal as the result of which he occupied the seat of the Governor of Anambra State after subscribing the required oath on 17th March, 2006. The right of Anambra State to have an incumbent Governor like all other States of the Federation after 2003 elections had not been interfered with whatsoever as the State had an incumbent Governor from 29th May, 2003 up to 17th March, 2006 when Mr. Peter Obi occupied the seat.

Close examination of the declarations being sought in the action by the Plaintiff reveal that most of them particularly reliefs 3,5,6 and 7 are being sought against Independent National Electoral Commission (INEC), an agency of the Federal Government charged with specific responsibility under the 1999 constitution to conduct elections. The agency is not even a party in this case while the Federation of Nigeria which is the Defendant has no responsibility under the constitution to conduct elections to justify the reliefs being sought against it. There is no doubt whatsoever therefore, that the dispute disclosed in the action filed by the Plaintiff against the Defendant is not one between Anambra State of Nigeria and the Federation of Nigeria capable of being brought to this Court

under section 232 of the constitution of the Federal Republic of Nigeria, 1999. The dispute disclosed in the action is one affecting the personal legal rights of Mr. Peter Obi then serving as the Governor of Anambra State and the Independent National Electoral Commission (INEC) which conducted the election that brought him to office. This Court obviously has no original jurisdiction under section 232 of the 1999 constitution in such disputes affecting personal legal rights of individuals. See *Plateau State Government of Nigeria v. Attorney-General of the Federation* (2006) 3 N.W.L.R. (PT. 967) 346 at 393.

In the final analysis, as the action filed by the Plaintiff against the Defendant is not one that can be heard and determined by this Court in exercise of its original jurisdiction under section 232 of the 1999 constitution, the action shall be and is hereby struck-out.

ONNOGHEN JSC

By an originating summons filed in this court on the 26th day of March, 2007, the plaintiff called on the court to determine the following questions:-

“1. A determination of the question whether the four year period/tenure for a State Governor contemplated by section 180 (sic) constitution of the Federal Republic of Nigeria 1999 is reckoned from the date on which the incumbent Governor subscribes to the Oath of allegiance and Oath of Office.

2. A determination of the question whether having regard to all the circumstances, it is constitutional for the incumbent Governor of the plaintiff state to continue in office without fresh election after 28th May, 2007 when the tenure of other State Governors (apart from Anambra State of Nigeria) who subscribed their respective Oaths of Allegiance and Oath of Office on 29th May, 2003, is deemed to expire.

3. A determination of the question whether having regard to Anambra State of Nigeria, it is unconstitutional and illegal to conduct elections into the office of Governor of Anambra State on 14th April, 2007 when the tenure of office of the incumbent Governor will not expire

until 16th March, 2010.

4. A determination of the question whether a democratically elected Governor of Anambra State is by virtue of section 180(2)(a) constitution of the Federal Republic of Nigeria 1999 entitled to an uninterrupted
B tenure of four years from the date of subscribing to the Oath of Allegiance and Oath of Office as Governor of a State.

5. A determination of the question whether it is lawful and constitutional for the Defendant, through its servants, privies, agents/agencies
C (including Independent National Electoral Commission); to conduct elections into the office of Governor of Anambra State on 14th April, 2007 when the incumbent Governor subscribed his Oath of Allegiance and Oath of Office on 17th March, 2006.”

The plaintiff therefore sought the following reliefs:-

D “1. A DECLARATION that by virtue of (sic) provisions of section 180(1) and (2)(a) (sic) Constitution of the Federal Republic of Nigeria 1999, the four year tenure of office of the incumbent Governor of Anambra State of Nigeria is reckoned to begin from 17th March 2006, being the
E date he first subscribed to the Oath of Allegiance and Oath of Office in accordance with section 185(sic) Constitution of the Federal Republic of Nigeria 1999.

2. A DECLARATION that the incumbent Governor of Anambra
F State of Nigeria is constitutionally entitled to continue in office without fresh elections after 28th May 2007 when the tenure of other State Governors who subscribed their respective Oaths of Allegiance and Oaths of Office on 29th May 2003 is deemed to expire; the incumbent Governor of
G Anambra State of Nigeria having subscribed his Oath of Allegiance and Oath of Office on 17th day of March 2006 in accordance with sections 180(2) (a) and 185(1) (sic) Constitution of the Federal Republic of Nigeria 1999.

3. A DECLARATION that any elections, or preparations for elections
H including any purported elections on 14th April, 2007 or any other date conducted by the Defendant by itself or through his servants, privies, agents/agencies including the independent National Electoral Commission; for the purpose of electing any person into the office of Gover-

nor of Anambra State before the expiration of the tenure of the incumbent Governor of Anambra State on 16th March, 2010; is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to sections 5(1), 180(1)(d), 180(2)(a) and 185(1) (sic) Constitution of the Federal Republic of Nigeria 1991.

B

4. A DECLARATION that the incumbent Governor of Anambra State of Nigeria is Constitutionally entitled to an uninterrupted Tenure of office of a period of four years commencing on 17th March 2006 in accordance with section 180 and 185 (sic) Constitution of the Federal Republic of Nigeria 1999.

C

5. A DECLARATION that any purported return into office as Governor of Anambra State and subscription of the Oath of Allegiance as well as Oath of Office as such by any person pursuant to the elections or purported elections of the 14th April, 2007 or of any other date; during the currency of the tenure of the incumbent Governor of Anambra State is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to section 180(1)(a) and (d) (sic) constitution of the Federal Republic of Nigeria 1999.

D

E

6. AN ORDER OF INJUNCTION restraining the Defendant, by itself or through its servants, officers, authorities, agents/ agencies including the Independent National Electoral Commission from preparing to conduct, conducting or purportedly conducting any election into the office of the Governor of Anambra State of Nigeria on 14th April, 2007 or any other date prior to the expiration of the tenure of office of the incumbent Government of Anambra State of Nigeria.

F

7. AN ORDER OF INJUNCTION restraining the Defendant by itself or through its servants, privies, officers, authorities, agents/ agencies including the Independent National Electoral Commission from returning any person into office as Governor of Anambra State of Nigeria pursuant to any purported election on 14th April, 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria.”

G

H

It is important to note that though some reliefs are directed at the Independent National Electoral Commission which is constitutionally

empowered to organize and conduct elections into elective offices in Nigeria and to return those elected, the said Independent National Electoral Commission is not made a party to the proceeding by the plaintiff.

Also worthy of note is the fact that though preparations for the Nigeria general election into elective offices including that of the Governor of Anambra State of Nigeria had been expected, by operation of law, particularly effluxion of time of constitutionally predetermined tenure, and which election had long been fixed to commence with that to the office of State Governors on 14th April, 2007, the plaintiff did not commence his action until the 26th day of March 2007 thereby giving this court a little over one month to hear and determine the action! having regard to the fact that the plaintiff, as claimed in the reliefs had been aware that the incumbent Governor of Anambra State took his Oath of Allegiance and Oath of Office on the 17th day of March, 2006 instead of 29th day of May, 2003 which was the date other State Governors in Nigeria, including the President and Vice President of the Federal Republic of Nigeria took their Oaths of Allegiance and Oath of Office.

However, the facts in supports of the originating summons as deposed to in a supporting affidavit filed along with the said originating summons include the following:-

“3. On the 15th March, 2006, the Court of Appeal of Nigeria sitting In Enugu (Coram: R .D. Muhammad, Aderemi, Augie, Alagoa and Omokri, JCA) delivered judgment in Appeal Numbers CA/E/EPT/ 5A/ 2005; CA/E/EPT/5B/2005; CA/E/EPT/5C/2005; CA/E/EPT/5D/ 2005; and CA/E/EPT/5E/2005 between: Dr. Chris Nwabueze Ngige V. Mr. Peter Obi & 449 Ors; to the effect inter alia that:

“Mr. Peter Obi is declared as validly and elected and returned as Governor of Anambra State having scored/pollled the highest/majority of lawful votes cast at the 19th April 2003 gubernatorial election.”

4. The said Judgment of the Court of Appeal is reported as Dr. Chris Nwabueze Ngige V. Mr. Peter Obi & 449 Ors (2006) 14 NWLR paragraph 3 above is to be found at Pages 176-177 H-A of the said Nigerian Weekly Law Report.

5. That having been returned as the winner of the election into

office as Governor of Anambra State held on 19th April, 2003 the Independent National Electoral Commission issued a Certificate of Return to the incumbent Governor of Anambra State of Nigeria on account of which the said Governor subscribed to the Oath of Allegiance and Oath of Office pursuant to Section 185(1) Constitution of the Federal Republic of Nigeria on 17th March 2006. Certified copies of the Oath of Allegiance and Oath of Office of the incumbent Governor dated 17th March 2006 are now produced, shown to me and marked Exhibit PI Series hereto.

6.1 know as a fact that Section 180(1) Constitution of the Federal Republic of Nigeria 1999 provides that subject to provisions of the said Constitution the incumbent Governor of Anambra State shall hold the office as such until the occurrence of one of the following events: -

- (i) when his successor in office takes the oath of that office, or*
- (ii) he dies whilst holding such office, or*
- (iii) the date when his resignation from office takes effect; or*
- (iv) he otherwise ceases to hold office in accordance with the provisions of the constitution.*

7. I also know as a fact that Section 180(2)(a) Constitution of the Federal Republic of Nigeria 1999 provides that subject to provisions of Section 180(1) of the same Constitution, the incumbent Governor of Anambra State shall vacate his office at the expiration of a period of four years commencing from the date when the incumbent took the Oath of Allegiance and Oath of Office.

8. I also know as a fact that the last election into office or position of Governor of Anambra State took place on 19th April, 2003; and it was this election that the Court of Appeal pronounced the incumbent Governor of Anambra State the winner by its judgment of 15th March, 2006.

9.1 also know that the incumbent Governor of Anambra State who was pronounced and returned as winner of the elections into office of Governor of Anambra. State at the 19th April, 2003 Polls, assumed the Office of Governor on 17th March 2006 after duly subscribing to the Oath of Allegiance and Oath of Office and declaring his assets as required by the aforesaid 1999 Constitution.

10. *That despite the fact that the incumbent Governor of Anambra State assumed the office of Governor of Anambra State on 17th March, 2006, the Defendant through its servants, privies, agents/agencies (including Independent National Electoral Commission) is making serious preparations for the purpose of conducting elections into the office of Governor of Anambra State on 14th April 2007.*

11. *That unless this case is expeditiously determined, the Defendant through its servants, privies, agents/agencies:*

a. *may continue to make preparations towards holding and/or conducting elections into the office of the Governor of Anambra State on 14th April, 2007 despite the pendency of this suit.*

b. *may purport to return another person as duly elected into office of Governor of Anambra State of Nigeria and further purport to have that person subscribe the Oath of Allegiance and Oath of Office.*

12. *That I also know as a fact that the legitimate expectation of the people of Anambra State who voted the incumbent Governor of Anambra State into office is that his mandate will run for an uninterrupted period of four years in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999."*

When the case came up on the 3rd day of April 2007, learned counsel for the parties were ordered by this court to file written briefs on the issue whether or not this court has the requisite jurisdiction to entertain the suit as constituted under the original jurisdiction of the court. The order was duly complied with.

On the 5th day of April, 2007 the matter came up for hearing and learned senior leading counsel for the plaintiff, Awa U. Kalu Esq. SAN adopted the plaintiffs brief filed on 4/4/07 and submitted that the matter is a proper one to come before the court under the original jurisdiction of the court as the action seeks interpretation of constitutional provisions as they relate to and affect the office of the Governor of Anambra State of Nigeria, under the constitution of the Federal Republic of Nigeria, 1999 (hereinafter called/referred to as the 1999 Constitution) and relied on the following cases in support of his contention:-

A-G of Bendel State Vs A-G of the Federation (1982) 3 NCLR 1;

A-G of the Federation Vs A-G of Imo State (1983) 4 NCLR 178; A-G of Ondo State Vs A-G of the Federation & Ors (2002) 9 NWLR (pt 772) 223; A-G of the Federation Vs A-G of Abia State (2001) 11 NWLR (pt.725) 689.

It is the submission of learned senior counsel for the plaintiff that any issue which calls for the interpretation of the constitution is justiciable unless otherwise provided by the constitution and that a community reading of sections 6 and 6(1) and 232(1) of the 1999 constitution reveals that this court has jurisdiction to interpret the provisions of section 162(2) and all other provisions of the 1999 Constitution whether on appeal or in exercise of the original jurisdiction conferred on the court by section 232(1) of the said 1999 Constitution. Learned senior counsel also referred to and submitted that the executive power of a state which are thereby vested in the Governor are not exercisable by the Governor as an expression of his personal rights but qua his constitutional position as the Chief Executive of the State and therefore the collective interest of Anambra State is the appropriate subject in any question regarding the constitutional manner and or process through which and under which the executive power of the State is to be exercised; that it is the legitimate right of Anambra State to have the issue as to whether the continued exercise of executive power in the state by its incumbent Governor would terminate by May, 29th 2007 when the tenure of the other Governors will expire; whether Anambra State should participate in or be involved in an election conducted to elect another Governor when the incumbent is still in office under the provisions of the 1999 constitution. Learned counsel then proceeded to argue, in effect, the merit of the plaintiffs case as contained in the originating summons and the supporting affidavit under the guise of demonstrating the existence of a dispute between the parties. However, learned senior counsel submitted that there is a dispute between the parties on which the existence of the plaintiffs legal right depends which legal right arises from the sovereignty of the people preserved by the combined effect of sections 14(2)(a), 176, 180 and 185 of the 1999 constitution and urged the court to hold that it has the original jurisdiction to entertain the action.

On the other hand, it is the submission of learned counsel for the defendant, in the defendant's brief of argument deemed Filed on 5/4/07, that this court has no original jurisdiction under section 232(1) of the 1999 constitution to entertain the matter as there is no dispute between the federation and a state or states etc, etc as laid down by this court in very many cases including A-G of the Federation Vs A - G of the 36 States (2001) Vol.6 Misc 94; that the reliefs sought in the originating summons and the facts deposed to in the supporting affidavit are centred on the person of the Governor of Anambra State and not the entity called Anambra State and that the alleged legal rights which the plaintiff claims are personal to the Governor not the state and people of Anambra State, relying on Oklahoma Ex Real Johnson Vs Cook 304 Us 387 (1938) and Plateau State Government of Nigeria Vs A - G of the Federation (2006) 1 SCNJ 1 and urges the court to strike out the action. Section 232 of the 1999 constitution provides as follows:-

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

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

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

It is settled law that for the purpose of determining whether a court has the requisite jurisdiction to entertain a matter before it, it is the duty of the court to look at the statement of claim where one is required and had been filed and take the documents therein contained as true ex facie: see Adeyemi Vs Opeyori (1976), 9 - 10 S.C 31. In the instant case, no statement of claim is required and none was filed. The relevant documents or processes therefore that need to be looked at in determining the issue are the originating summons and the affidavit in support of same.

However, from the provisions of section 232(1) of the 1999 con-

stitution supra, it is very clear and it is now settled law that for the Supreme Court to exercise its original jurisdiction in a civil case between the Federation and the state or states or between states, the following conditions must exist: -

- (i) a dispute between the Federation and a State or States or between states; and
- (ii) the dispute must involve a question of law or fact or both; and
- (iii) the dispute must pertain to the existence or extent of a legal right See A-G Bendel State Vs A-G of the Federation (1982) 3 NCLR 1; A-G of the Federation Vs A-G of Imo State (1983) 4 NCLR 178. A-G of the Federation Vs A-G of Abia State (2001) 11 NWLR (pt 725) 689 etc, etc, etc.

The word “*dispute*” has been judicially defined in a number of cases by this court including, but not limited to, A-G of Bendel State Vs A-G of the Federation; A-G of the Federation Vs A-G of Imo State both supra, as the act of arguing against, controversy, debate, contention as to rights, claims and the like or on a matter of opinion. It is also the view of this court that a controversy in the constitutional sense must be one that is appropriate for judicial determination.

In constructing or interpreting the word “*dispute*” for the purposes of invoking the original jurisdiction of this court, it has been held that the word should be given such meaning that will effectuate rather than defeat the purposes of that section of the constitution. From the plain and simple meaning of the word in question, it is very clear that the dispute that must invoke the original jurisdiction of the Supreme Court must not be a personal dispute particularly as the purpose of the constitution is not to make personal disputes a subject of the original jurisdiction of the Supreme Court.

It is also the requirement of the section 232(1) of the 1999 constitution that the dispute must relate to the existence or extent of a legal right, which to my mind, must not be personal.

The question is whether from the issues or questions for determination, the reliefs and the facts deposed to in the supporting affidavit, it can be said that this is a proper case to invoke the original jurisdiction of

this court. I had earlier in this judgment reproduced the questions for determination, the reliefs claimed and the relevant paragraphs of the supporting affidavit.

B It should be noted that just as the Supreme Court has no original jurisdiction to settle personal disputes between persons or persons and institutions or governments, it cannot also enforce individual rights inter se or between individual and any institution, such as INEC and the government(s).

C I agree with the defendant that the reliefs sought in the action and the facts disclosed in the supporting affidavit all centre around the person of the Governor of Anambra State who is not the same thing as Anambra State. It must be emphasized that participation in an election either as a voter or candidate is not a state government or state affair or right con-
D ferred on the state government but an individual personal right that ought to be enforced, exercised or protected by that individual, not the state on his behalf.

E From the facts disclosed in the affidavit, it is clear that the plaintiff has failed to disclose any existing dispute between Anambra State of Nigeria and the Federal Government or Republic of Nigeria so as to bring the action within the purview of section 232(1) of the 1999 constitution.

F That apart, the depositions in paragraphs 8, 10 and 11 of the supporting affidavit relate to the Independent National Electoral Commission, INEC, and its preparation for the election into the office of Governor of Anambra State.

G The said INEC is a creation of the 1999 constitution with distinct legal personality capable of suing and being sued in the court of law but it is riot joined as a party in the action, though some reliefs are claimed against it. The non joinder of INEC in the action is however understandable as that act would have further removed the action away from the purview of the original jurisdiction of this court. The hopelessness of the
H situation is further brought home by the fact that without INEC being made a party the action would be improperly constituted and therefore ineffective.

From the totality of the facts before this court, it is my view that

the alleged legal right(s) sought to be enforced or protected by the plaintiff are the personal legal rights of the Governor of Anambra State, not the legal rights of Anambra State as required by law particularly as the reliefs sought are not beneficial to Anambra State in general but to the Governor of Anambra State in particular and therefore personal to him. B

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother MUKHTAR, JSC, the draft of which I had the benefit of reading before now, that I agree that this court has no original jurisdiction to entertain the action as presently constituted, the conditions precedent to the exercise of the jurisdiction of this court under section 232(1) of the 1999 Constitution having been found not to exist in this case. Consequently I too strike out the action for lack of jurisdiction and abide by all the consequential orders made in the said lead judgement including the order as a costs. D

Case struck out.

MUHAMMAD JSC

This is one of few cases which seldom come to this court inviting the court to exercise its original jurisdiction. The Constitution of the Federal Republic of Nigeria, 1998, provides:

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

(2) In addition to the Jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original Jurisdiction as may be conferred upon it by any Act of the National Assembly; provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.” G H

In his originating summons filed in this court on the 26th of March, 2007, the plaintiff sought for the determination of the following questions:

1. *"A determination of the question whether the four year period/tenure of office for a State Governor contemplated by Section 180 Constitution of the Federal Republic of Nigeria, 1999 is reckoned from the date on which the incumbent Governor subscribes to the Oath of Allegiance and Oath of Office.*

2. *A determination of the question whether having regard to all the circumstances, it is constitutional for the incumbent Governor of the Plaintiff state to continue in office without fresh election after 28th May, 2007 when the tenure of other state Governors (apart from Anambra State of Nigeria) who subscribed their respective Oaths of Allegiance and Oaths of Office in 29th May, 2003, is deemed to expire.*

3. *A determination of the question whether having regard to Anambra State of Nigeria, it is unconstitutional and illegal to conduct elections into the Office of Governor of Anambra State on 14th April, 2007 when the tenure of office of the incumbent Governor will not expire until 6th March, 2010.*

4. *A determination of the question whether a democratically elected Governor of Anambra State is by virtue of Section 180(2)(a) Constitution of the Federal Republic of Nigeria 1999 entitled to an uninterrupted tenure of four years from the date of subscribing to the Oath of Allegiance and Oath of office as Governor of a State.*

5. *A determination of the question whether it is lawful and constitution for the Defendant, through its servants, agents/agencies (including Independent National Electoral Commission); to conduct elections into the office of Governor of Anambra State on 14th April 2007 when the incumbent Governor subscribed his Oath of Allegiance and Oath of Office on 17th March, 2006."*

The claims indorsed, in the originating summons by the plaintiff reads as follows:

1. *"A DECLARATION that by virtue of provisions of Section 180(1) and (2)(a) Constitution of the Federal Republic of Nigeria 1999, the four year tenure of office of the incumbent Governor of Anambra State of Nigeria is reckoned to begin from 17th March, 2006, being the date he first subscribed to the Oath of Allegiance and Oath of Office in*

accordance with Section 185 Constitution of the Federal Republic of Nigeria 1999.

2. A DECLARATION that the incumbent Governor of Anambra State of Nigeria is constitutionally entitled to continue in office without fresh elections after 28th May 2007 when the tenure of other state Governors who subscribed their respective Oaths of Allegiance and Oath of Office on 29th May, 2003 is deemed to expire; the incumbent Governor of Anambra State of Nigeria having subscribed his Oath of Allegiance and Oath of Office on 17th day of March, 2006 in accordance with Section 180(2)(a) and 185(1) Constitution of the Federal Republic of Nigeria 1999.

3. A DECLARATION that any elections, or preparations for elections including any purported elections on 14th April, 2007 or any other date conducted by the Defendant, by itself or through his servants, privies, agents/agencies including the Independent National Electoral Commission; for the purpose of electing any person into the office of Governor of Anambra State of Nigeria before the expiration of the tenure of the incumbent Governor of Anambra State on 16th March, 2010; is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Section 5(1), 180(1)(d), 180(2)(a) and 185(1) Constitution of the Federal Republic of Nigeria 1999.

4. A DECLARATION that the incumbent Governor of Anambra State of Nigeria is constitutionally entitled to an uninterrupted tenure of office of a period of four years commencing on 17th March, 2006 in accordance with Sections 180 and 185 Constitution of the Federal Republic of Nigeria 1999.

5. A DECLARATION that any purported return into office of Governor of Anambra State and subscription of the Oath of Allegiance as well as Oath of Office as such by any person pursuant to the elections or purported elections of the 14th April, 2007 or of any other date; during the currency of the tenure of the incumbent Governor of Anambra State is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Section 180(1)(a) & (d) Constitution of the Federal Republic of Nigeria 1999.

6. *AN ORDER OF INJUNCTION* restraining the Defendant, by itself or through its secants, privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from preparing to conduct, conducting or purportedly conducting any election into the office of the Governor of Anambra State of Nigeria on 14th April 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria.

7. *AN ORDER. OF INJUNCTION* restraining the Defendant by itself or through its servants, privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from returning any person into office as Governor of Anambra State of Nigeria pursuant to any purported election on 14th April, 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria.”

There was an affidavit of 14 paragraphs and some exhibits which accompanied the originating summons. Time was extended by this court within which both parties could file and exchange their respective written addresses.

On the 5th day of April, we heard the learned senior counsel for the respective parties on their written addresses. We stood the case down for some minutes. After resumption of the Court, a summary of the Court’s ruling was delivered while the reasons for it were adjourned to today.

The issue identified by both parties in their respective written submissions is on jurisdiction. The plaintiff formulated the issue as follows: “Whether this court in the exercise of its original jurisdiction can hear and determine the reliefs sought by the plaintiff in this court.”

Learned Senior Counsel for the plaintiff listed a litany of authorities in which this court has indicated the circumstances in which its original jurisdiction will be invoked. Some of these authorities, among others, are: Attorney General of Bendel State v. Attorney General of the Federation (1982) 3 NCLR; Attorney General of the Federation v. Attorney General of Imo State; Attorney General of Ondo State v. Attorney General of the Federation (1983) 4 NCLR 178. Learned Senior Counsel

gave a summary of the holdings of the courts in the above listed cases, which re-state the cardinal principles settled. He brought out some of them:

a) That in this kind of situation, and at this stage, the question is not whether the plaintiff's case has or has no merits but whether the plaintiff is in the right court.

b) A controversy in the Constitutional sense must be one that is appropriate for judicial determination.

c) Any issue which call for the interpretation of the Constitution is justiciable unless otherwise provided by the Constitution. This court has power to interpret any provision of the Constitution including section 162(2) of the 1999 Constitution whether on appeal or in exercise of its original jurisdiction under Section 232(1) of the 1999 Constitution.

Learned Senior Counsel submitted that the position of a Governor of a State in relation to the state is aptly captured by section 5(2) (a) of the 1999 Constitution. Unquestionably, the exercise of executive powers of a state vested in the Governor is not exercisable by the Governor as an expression of his personal rights but are exercised by the Governor qua his Constitutional position as the chief Executive of the state and it stands to reason that the collective interest of Anambra State is the appropriate subject in any question regarding the Constitutional manner or process through which and under which executive power in the state is to be exercised.

Learned SAN argued further that in the instant case, the crucial question is the legitimate right of the Federation to have determined whether the continued exercise of executive power in the state by its incumbent Chief Executive will terminate or abate by May 29th 2007 when the other Governors who subscribed the respective Oaths of Allegiance and Oaths of Office are deemed to become *functus officio*. He submitted further that should Anambra State participate and/or be involved in an election conducted to elect another Chief Executive when the incumbent is still in office under the provisions of the 1999 Constitution? Learned Senior Counsel's self answer is that it cannot be argued otherwise that Anambra State has a right to ensure a legitimate Government pursuant to Section

5(2)(a) of the 1999 Constitution. This involves a question on which the extent of the plaintiffs Constitutional right depends.

Learned Counsel for the defendant submitted otherwise. He is of the understanding that it is a fundamental principle of law that the issue
B of jurisdiction is a central plank on which the entire case rests. And, whether or not a court has jurisdiction to entertain a matter must be found in the plaintiff's statement of claim not in their brief of argument and certainly not in the case of the defendant.

C Learned Counsel for the defendant submitted further that the reliefs sought in the originating summons and the facts deposed to in the affidavit in support are all centred around the person of the Governor of Anambra State and by no means the entity called the state. The alleged legal rights which are personal to him and not the legal right of the gov-
D ernment and the people of Anambra State. The plaintiff in his originating summons and the supporting affidavit failed to disclose the existence of a dispute between the Federal Government and Anambra State of Ni-geria.

E Since the lone issue for the determination of this suit is on the Jurisdiction of this court, I think I should straight consider that issue. Jurisdiction is said to be the authority a court has to decide matters be-
F fore it. But, Black, in his sixth edition of his Law Dictionary defines the term to be of comprehensive input embracing every kind of judicial ac-
F tion. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the Subject matter and the parties. See: Attorney General Anambra State v. Attorney General of the Federation (1993) 9 KLR 158. In fact jurisdic-
G tion to a court of law is equated to blood in a living animal. Jurisdiction is the blood that gives life to the survival of an action in a court of law without which the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without
H infusing blood into it would be an exercise in futility. See: Shitta-Bey v. A-G Federation & Anor (1998) 7 SCNJ 264 at 266 enuciate

The general principles for the exercise of jurisdiction by a court of law, as enunciated by a litany of decided cases, are that:

i. The subject matter of the case is within the jurisdiction of the court and there is no feature in the case which prevents the court from exercising its jurisdiction.

ii. The court is properly constituted as regards members and their requisite qualifications and no member is disqualified for one reason or the other.

iii. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See: *Modukolu v. Nkemdilim* (1962) 1 All NLR 587 AT 594; *Sken Consult (Nig.) Ltd v. Secondary Ukey* (1981) 1 SC 6; *Ishola v. Ajiboye* (1994) 19 L. R. C. N 35; *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (1986) 6 SC 35; *Odofin v. Agu* (1992) 3 NWLR (Pt.229) 350.

For a case to be initiated by due process of law as in (iii) above, it presupposes that the jurisdiction of a court to adjudicate in a matter must be determined by the facts placed before it and more importantly, by the phraseology of the plaintiffs claim. See: *Abacha & Anor v. Fawehinmi* (2000) FWLR (Pt.4) 557; *Ejike v. Ifeadi* (1998) 6 SCNJ 87 at 89.

I already have reproduced the claims of the plaintiff before this court. My learned brother, Mukhtar, JSC, has in the leading judgment eloquently discussed these claims and found that there is no dispute between the plaintiff and the defendant as the plaintiff was not deprived of anything. If, there is anyone aggrieved, it is at best Mr. Peter Obi, the Governor of Anambra State who may have the right of action in person. I completely agree with My Lord, Mukhtar, JSC. Mr. Peter Obi as a Governor and Anambra State as one of the states of the Federation are two legal entities in law. See: *Solomon v. Solomon* (1897) A.C. 22.

The Constitution is very clear on when the Supreme Court will invoke its original jurisdiction on a matter. Section 232 of the 1999 Constitution provides:

“232(1) the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a

legal right depends.

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

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

It is certain, therefore, from the above Constitutional provisions that where a person who has no legal interest sues, such a person is no more than just a busy body. His purported claim(s) cannot be acceded to by the court and same must be struck out.

C By necessary intendment, the Supreme Court cannot exercise its original jurisdiction to determine any dispute between individuals or between persons and Federal or State Government. Also, Corporate or Statutory body cannot invoke the original jurisdiction of the Supreme Court and it cannot be made a party to a suit properly initiated in the Supreme Court, see: Attorney General of Ondo State v. Attorney General of the Federation & Ors (1983) 2 SCNLR 269; Attorney -General of Abia State v. Attorney Genera of the Federation (2002) 6 NWLR (Pt. 763) 264 at 367 - 377.

Again the Supreme Court cannot have original jurisdiction on any criminal matter however serious, including capital offences.

F Thus, the yardstick for measuring whether original jurisdiction on a matter lies in the Supreme Court is based on the following factors:

1) A dispute must exist between the Federal Government and a State Government or between States inter se

2) The dispute must involve a question of law or fact or both;

G 3) The dispute must pertain to the existence or extent of a legal right See generally: Attorney General Bendel State v. Attorney General of the Federation (1982) 3 NCLR 1; Attorney General of the Federation v. Attorney General. Imo State (1983) 4 NCLR 178; Attorney General, Ondo State v. Attorney General, Federation (1983) 4 NCLR 178; Attorney General, Federation v. Attorney General, Abia State (2001) 11 NWLR (Pt.725) 689.

H Flowing from the above discourse, one may want to ask: whether

the plaintiff has any LOCUS STANDI to sue in this suit. My answer certainly is no this is because, as already found, there is no dispute between the plaintiff and the defendant in this suit. This court, per Uwais, CJN, in a Ruling in the case of Attorney General of the Federation v. Attorney General of Abia State & Ors (supra), held, inter alia:

“To invoke the original jurisdiction of the Supreme Court, there must be a dispute as so qualified between the federation and a state or between states. Dispute is the act of arguing against controversy, debate, argument, disengagement, contention as to right, claims and the like or a matter of opinion. As in accordance with the established principle of the interpretation of the Constitution that the words of a constitution are not to be read with stultifying narrowness, the word “dispute” in section 232(1) of the 1999 Constitution should be given such meaning that will effectuate rather than defeat the purpose of that section of the Constitution.”

Thus, only a justiciable dispute between the Federal Government and a state Government or between states, will enable the invocation of the original jurisdiction of the Supreme Court. This limitation, I believe, will in a way help in discouraging the flooding of the Supreme Court with cases of non-justiciable or mere academic or hypothetical controversies, such as the one on hand, between the Federal and State Governments or between the states inter se. This was the position of the law taken by this court in the case of Attorney General of the Federation v. Attorney General of Lagos State in unreported suit No. SC.144/2004; Plateau State v. Attorney General of the Federation (2006) 1 SC (Pt.1) 1; Attorney General, Bendel State v. Attorney General of the Federation (1981) 10 SC (reprint) 1; (1981) NSCC 314 at 406 - 407.

For the fuller reasons contained in the judgment of my brother Mukhtar, I hold that this court lacks jurisdiction to hear and determine this suit. I hereby strike it out. I make no order as to costs.

CHUKWUMA-ENEH JSC

By an originating Summons filed on 26/03/2006 in this case the

plaintiff has sought to invoke the original jurisdiction of the Court for the determination of the following questions:

“(a) A determination of the question whether the four year period/tenure of office for a State Governor contemplated by Section 180 Constitution of the Federal Republic of Nigeria 1999 is reckoned from the date on which the incumbent Governor subscribes to the Oath of Allegiance and Oath of Office

(b) A determination of the question whether having regard to all the circumstances, it is constitutional for the incumbent Governor of the plaintiff State to continue in office without fresh election after 28th May 2007 when the tenure of other State Governors (apart from Anambra State of Nigeria) who subscribed their respective Oaths of Allegiance and Oaths of Office on 29th May 2003, is deemed to expire.

(c) A determination of the question whether having regard to Anambra State of Nigeria, it is unconstitutional and illegal to conduct elections into the Office of Governor of Anambra State on 14th April 2007 when the tenure of office of the incumbent Governor will not expire until 16th March 2010.

(d) A determination of the question whether a democratically elected Governor of Anambra State is by virtue of Section 180(2)(a) Constitution of the Federal Republic of Nigeria 1999 entitled to an uninterrupted tenure of four years from the date of subscribing to the Oath of Allegiance and Oath of Office as Governor of a State.

(e) A determination of the question whether it is lawful and constitutional for the Defendant, through its servant; privies, agents/agencies (including Independent National Electoral Commission); to conduct elections into the office of Governor of Anambra State on 14th April 2007 when the incumbent Governor subscribed his Oath of Allegiance and Oath of Office on 17th March 2006.”

To ground the foregoing questions for determination the plaintiff has, in its originating summons, sought the following reliefs:

“(1) A DECLARATION that by virtue of provisions of Section 180(1) and (2)(a) Constitution of the Federal Republic of Nigeria 1999, the four year tenure of office of the incumbent Governor of Anambra

State of Nigeria is reckoned to begin from 17th March 2006, being the date he first subscribed to the Oath of Allegiance and Oath of Office in accordance with Section 185 Constitution of the Federal Republic of Nigeria 1999.

(2) A DECLARATION that the incumbent Governor of Anambra State of Nigeria is constitutionally entitled to continue in office without fresh elections after 28th May 2007 when the tenure of other State Governors who subscribed their respective Oaths of Allegiance and Oath of Office on 29th May 2003 is deemed to expire; the incumbent Governor of Anambra State of Nigeria having subscribed his Oath of Allegiance and Oath of Office on 17th day of March 2006 in accordance with Sections 180(2)(a) and 185(1) Constitution of the Federal Republic of Nigeria 1999.

(3) A DECLARATION that any elections, or preparations for elections including any purported election on 14th April, 2007 or any Other date conducted by the Defendant, by itself or through his servants, privies, Agents/agencies including the Independent National Electoral Commission; for the purpose of electing any person into the office of Governor of Anambra State of Nigeria before the expiration of the tenure of the incumbent Governor of Anambra State on 16 Mar 2010; is unconstitutional, illegal, unlawful, null, void and of no effect whatsoever being contrary to Section 5(1) 180(1)(d), 180(2)(a) and 185(1) Constitution of the Federal Republic of Nigeria 1999.

(4) A DECLARATION that the incumbent Governor of Anambra State of Nigeria is constitutionally entitled to an uninterrupted tenure of office of a period of four years commencing on 17th March 2006 in accordance with Sections 180 and 185 Constitution of the Federal Republic of Nigeria 1999.

(5) A DECLARATION that any purported return into office of Governor of Anambra State and Subscription of the Oath of Allegiance as well as Oath of Office as such by any person pursuant to the elections or purported elections of the 14th April, 2007 or of any other date during the currency of the tenure of the incumbent Governor of Anambra State is unconstitutional, illegal, unlawful, null, and void and of no effect

whatsoever being contrary to section 180 (1) (a) & (d) Constitution of the Federal Republic of Nigeria 1999.

6. *AN ORDER OF INJUNCTION* restraining the Defendant, by itself or through its servants, privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from preparing to conduct, conducting or purportedly conducting any election into the office of the Governor of Anambra State of Nigeria on 14th April, 2007 or any other date prior to the expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria.

(7) *AN ORDER OF INJUNCTION* restraining the Defendant, by itself or through its servants privies, officers, authorities, agents/agencies including the Independent National Electoral Commission from returning any person into office as Governor of Anambra State of Nigeria pursuant to any purported election on 14th April, 2007 or any other date prior to me expiration of the tenure of office of the incumbent Governor of Anambra State of Nigeria”.

This matter came up before us on 03/04/2007 when the parties have to be directed to address the issue of jurisdiction first and to file and exchange their respective briefs of argument on that subject matter. The plaintiff filed its brief of argument on 4/4/2007. The Defendant also filed its brief of argument on 5/4/2007 and was deemed properly so filed on 5/4/2007. The facts of this matter will be gleaned from the body of this judgment.

The plaintiff, arguing on whether this Court in exercise of its original jurisdiction can hear and determine the reliefs sought in this suit has submitted, as settled, that it is the plaintiffs claim that determines whether or not a Court has jurisdiction over the *litis contestis* and has referred to Attorney General of Ondo State V. Attorney General of the Federation and 35 Ors. (2002) 9 NWLR (Pt. 772) 223 at 283 G - H and Attorney General of the Federation V. Attorney General of Abia; State (2001) 11 NWLR (Pt. 725) 689 at 742 A- H. It is contended that to ignite the original jurisdiction of the Court as provided under Section 232(1) of the 1999 Constitution that Sections 14(2)(1) and (c), 176, 178(2) and (5), 180, 184 and 185 have to be given detailed consideration as expatiated in

such cases like Attorney General of Bendel State V. Attorney General of the Federation (1982) 3 NCLR 1, Attorney General of the Federation V Attorney General of Imo State (1983) 4 NCLR 178, Attorney General of Ondo State V. Attorney General of the Federation (1983) 4 NCLR 178 and Attorney General of the Federation V Attorney General of Abia State (supra).

In contending that this matter comes within the purview of Section 232(1) of the 1999 Constitution, the plaintiff says that the instant dispute directly affects the sovereign rights of the people of Anambra State and that this is so as the incumbent Governor of Anambra State only subscribed to his Oath of allegiance and oath of office on 17/3/2006 implying that under Section 178(2) of the 1999 Constitution his tenure expires on 16/3/2010. It is also contended that the crucial question is the legitimate right of Anambra State as a component State within the Federation to have determined whether the continued exercise of executive power in the State by its incumbent Governor will terminate or abate on 29/05/2007 when the other governors who subscribed to their respective Oaths of allegiance and oaths of office are deemed to become *functus officio*. In this regard the plaintiff has posited that this question directly affects the people of Anambra State as it constitutes a constitutional question affecting their sovereign rights in exercise of their franchise and thus the plaintiff, in other words, are the people of Anambra State entitled to a determination of the question whether or not it is time to vote again. It is in this regard that the plaintiff is saying that as the guardian of public interest in so far as the controversy in the instant case is concerned, which directly affects Anambra State as a corporate entity and the defendant, it can maintain this action on behalf of the people of Anambra State even then as the Governorship of a State as Anambra State is not a personal estate but an office or an institution in which the governor is the Chief Executive of the State. See: Section 178(2) of the 1999 Constitution.

Based on the foregoing premises It is contended that this Court is the proper forum to determine when the tenure of the incumbent Governor of Anambra State is to terminate. That is to say, to interpret Section

180(1) (a) of the Constitution See: Bello V. Attorney General of Oyo State (1996) 12 SC 1, as the Defendant on the other hand has contended otherwise. The plaintiff has submitted very strongly for that matter that Section 144 of the Electoral Act 2006 has no application to the instant case being limited to candidates who have taken part in an election or a political party that has sponsored a candidate. The plaintiff finally submits that there is a dispute fit for this Court to adjudicate upon.

The defendant in its written brief on jurisdiction on the directive of this Court has made the point that jurisdiction is the bedrock of every case and has to be discerned from the plaintiffs Statement of claim. Based on Section 232 (1) of the 1999 Constitution as expatiated in the case of Attorney General of the Federation V. Attorney General of Abia State and 35 States (2001) 11 NWLR (Pt. 725) 689; the defendant contend; it has set out the parameters of the original jurisdiction of this Court and it has provided; put in a summary form; that there must be a dispute between the Federation and a State or between States involving a question of law or fact or both and pertaining to the existence or extent of a legal right. See: Attorney-General of the Federation V. Attorney-General of Abia State and the 35 others (supra) per Belgore JSC. Relating these parameters to the facts as deposed in the affidavit in support, it is submitted that the reliefs sought in the originating summons are centred on the person of the Governor of Anambra State and not on the entity called the State in its corporate capacity or its government and even moreso that the alleged legal rights upon which the reliefs are predicated are personal to the Governor in his private capacity as against his office or the institution of Governor or the people of Anambra State as a corporate entity.

Again, in relation to the questions raised for determination, the defendant acting on paragraphs 8 to 13 of the affidavit in support of the originating summons has contended that no controversy or dispute on the specific issue of the continuation of tenure of the Governor of Anambra State has been made out as between the parties to this matter so as to ground this matter and bring it within the ambit of Section 232(1) of the Constitution and that paragraphs 4 to 7 of the said supporting affidavit are mere legal arguments. Particularly it is argued, that paragraphs 8, 10

and 11 relate to the functions of INEC who is not a party to this case and even then it is not shown how INEC has impinged on the legal rights, of Anambra State as a corporate entity or its government. It is submitted that Section 318 of the 1999 Constitution has clearly defined the State as separate and distinct entity from the office of Governor of a State so that the expression Governor of Anambra State cannot mean the Government or people of Anambra State as a corporate entity and that the reliefs sought in the case are neither beneficial to the Government or people of Anambra State as a corporate entity as they are personal to the Governor Peter Obi, and so this Court has no original jurisdiction in the matter. See: *Plateau State Government of Nigeria V. Attorney General of the Federation* (2006) 1 SCNJ 1 Addressing generally the issues raised in this case; the defendant has contended based on the authorities on justifiability, that a government or State as a corporate entity can only invoke the original jurisdiction of this Court where its rights or constitutional powers as government or State are involved and not as per the facts of this matter. And that in the instant case, the plaintiff has failed to show how the state rights or constitutional powers in its corporate capacity have been infringed upon. These are formidable contentions which cannot be faulted.

The Court is urged to decline jurisdiction to hear or determine the issues raised by the plaintiff and to strike out the matter for want of jurisdiction.

The above cited cases more particularly *Attorney-General of the Federation V. Attorney-General of Abia State & Ors.* (supra) have not by their pronouncements thrown open the floodgates so as to allow for all manner of actions by all manner of persons seeking for the interpretation of any provisions of the 1999 Constitution by invoking the original jurisdiction of the Court without more. It must be observed that by a community reading of Sections 6 (1) and 232(1) of the 1999 Constitution it is clearly pronounced in the immediate cited case that this Court has jurisdiction to interpret not only the provisions of Section 162(2) but also all other parts of the Constitution whether on appeal or in exercise of its original jurisdiction under Section 232(1). Even though the instant matter involves the interpretation of Section 180(1)(a) of the Constitution it does

not follow it is a matter fit for this Court to handle under Section 232 without more. To narrow down this issue in the context of this matter let me advert to paragraphs 8 to 13 of the affidavit in support of the originating summons which I shall set out hereunder and to ask whether they
B have thereby elicited sufficient premises upon which the instant plaintiff can in law stand to challenge the perceived threats if any to the alleged continued existence of the office of Governor of the plaintiff State, which it is submitted directly affect the sovereign vested rights of Anambra
C people albeit as citizens (I shall come to the plaintiffs standing in this matter anon). In this regard if I have, understood the plaintiff's case, it is contending that the controversy or dispute made evident by the depositions in the affidavit in support of the originating summons and the accompanying exhibits is that, the incumbent Governor of the plaintiffs
D State having subscribed to his oath of allegiance and oath of office only on 17/3/2006 his term of office as Governor of the plaintiff State should ordinarily expire on 16/3/2010 instead of 29/5/2007 as the other Governors of the 35 States of Nigeria and is clearly a dispute requiring interpretation as involving questions of law in so far as the governorship of the
E State is not a personal estate but an office or institution. And that it constitutes a threat to the continued existence of that office or rights accruing to that office as the Chief Executive of the plaintiff State. And even
F moreso as it infringes directly on the sovereign vested rights of the people of the plaintiff State albeit their franchise as citizens. And so, the people of the plaintiff State in cognizance of the combined effect of Section 14(a) and (c) and Section 178(2) & (5) of the 1999 Constitution construed together broadly and liberally can and indeed have rightly challenged this perceived threat by the instant suit.
G

There are no legitimate grounds for the plaintiff to be contending as per the foregoing as the whole matter as presently constituted is a ruse to fight the cause of the private rights of governor Peter Obi.

H It is otherwise being contended that the defendant's case is then the continued exercise of Executive power in the plaintiff State by the incumbent Chief Executive will terminate or abate on 29/5/2007 when the tenure of the other Governors who subscribed their respective oaths

of allegiance and oaths of office on 29/5/2003 are deemed to become functus officio I cannot agree more with this contention, in this wise, it is submitted by the plaintiff, that the provisions of Section 184 of the 1999 Constitution are inapplicable. The implication of my reasoning is that the Attorney-General (i.e. the plaintiff) acting on behalf of the public B may only intervene in matters as the instant one to secure the due execution of public right but not a private right.

Evidently, this matter has raised the issue of original jurisdiction of this Court as conferred on it by Section 232(1) of the 1999 Constitution as clearly borne out by the depositions as contained more specifically in C paragraphs 8 to 14 of the affidavit in support of the Originating Summons; which paragraphs for ease of reference are set forth as follows:

“(8) I also know as a fact that the last election into office or position of Governor of Anambra State took place on 19th April 2003; D and it was this election that the Court of Appeal pronounced the incumbent Governor of Anambra State the winner by its judgment of 15th March 2006.

9. I also know as a fact that the incumbent Governor of Anambra E State who was pronounced and returned as winner of the elections into office of Governor of Anambra State at the 19th April 2003 Polls, assumed the Office of Governor on 17th March 2006 after duly subscribing to the oath of Allegiance and Oath of Office and declaring his assets as F required by the aforesaid 1999 Constitution.

(10) That despite the fact that the incumbent Governor of Anambra State assumed the office of Governor of Anambra State on 17th March 2006, the Defendant through its servants, privies, agents/agencies (including independent National Electoral Commission) is making serious G preparations for the purpose of conducting elections into the office of Governor of Anambra State on 14th April 2007.

(11) That unless this case is expeditiously determined, the Defendant through its servants, privies, agents/agencies: H

(a) may continue to make preparations towards holding and/or conducting elections into the office of the Governor of Anambra State on 14th April 2007 despite the pendency of this suit.

(b) may purport to return another person as duly elected into office of Governor of Anambra State of Nigeria and further purport to have that person subscribe the Oath of Allegiance and Oath of Office.

B (12) That I also know as a fact that the legitimate expectations of the people of Anambra State who voted the incumbent Governor of Anambra State into office is that his mandate will run for an uninterrupted period of four years in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999.

C (13) That having regard to the peculiar circumstances of Anambra State, an expeditious determination of this suit will avert chaos, confusion and other inimical events that may lead to anarchy in the Plaintiff State.

D (14) I depose this Affidavit in good faith whilst believing its contents to be correct in accordance with the Oaths Act LFN 1990.”

As an aside, an important point to be taken against the background of the foregoing depositions is to note that the Independent National Electoral Commission (INEC) has not been made a party here. This is a body, E an agency of government, charged with the conduct of the 2006 Elections to all elective offices; to register political parties; to monitor their organization and operations; to supervise the funds and accounts of political parties; to conduct registration of voters; monitor political campaigns and more importantly can sue and be sued in its own right, and it F is more or less being impleaded here as it were vis-a-vis the foregoing originating summons and the depositions by the supporting affidavit. Without deciding the point, can it be said on that ground that this action is otherwise improperly constituted as to parties for not joining the independent National Electoral Commission (INEC), a necessary party, if it is G to be bound by any decision in the matter. By the foregoing depositions the plaintiff has alleged the existence and indeed the extent of the dispute between it and the defendant (and indeed INEC) and has therefore relied H on the same to invoke the powers of this Court as conferred on it under Section 232(1) of the 1999 Constitution to resolve the controversy. It is pertinent to scrutinize its provisions before making any conclusions.

No doubt this Court has original jurisdiction to the exclusion of

ether Court in matters stipulated, under Section 232 of the 1999 Constitution. Firstly, Section 232 provides as follows:

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

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

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

What is certain from examining the foregoing provision is that this Court can only take due cognizance of any justiciable matter before it where there is a dispute or controversy between parties to a case in the true sense of the word; in other words, to the exclusion of academic or hypothetical issues, as exemplified in the case of Attorney-General of the Federation V. Attorney General of the 35 States (2001) (supra) where the Supreme Court held that dispute involves acts of argument controversy, debate, claims as to rights, whether in law or fact. In this regard, “*Dispute*” has as such been defined as controversy. To be a justiciable controversy therefore, it must be real as against being academic or hypothetical and must pertain to the legal relations of the parties in such a manner as to show that they have adverse legal interests in the subject matter.

I have gone over the issues this Court is called upon to determine on the backdrops of the reliefs being sought in the originating summons and the facts deposed to in the supporting affidavits thereof and I am left in no doubt that it is the person of the governor and not the government or people of Anambra State in its corporate capacity that is in the thick of this matter. This is so particularly as per the depositions in paragraphs 8 to 10 of the said affidavit in support. The legal rights alleged to have been infringed are those personal to Governor Peter Obi; the rights or constitutional powers of the government of Anambra State are not in any way

infringed, or in danger or those of the people of Anambra State for that matter, that is, in its corporate capacity. It is therefore a grave error on the part of the plaintiff, to have taken out this suit in the corporate capacity of the state Governor Peter Obi's tenure in office is a matter properly
 B suited between Governor Peter Obi and INEC. And indeed a proper matter he should have properly taken up or pursued at the Election Tribunal while there and not in this Court. The original jurisdiction of this Court cannot be invoked to deal with this matter and it is therefore incompetent.

C From another angle the instant case, as can be seen has once again put on the front burner the contemporary question of locus standi of the plaintiff instituting and maintaining an action in a Court of law in this regard, the instant plaintiff's standing to sue on the peculiar facts of this
 D matter. In other words, in this matter the plaintiff has sued on behalf of the government and people of Anambra State. The question that arises, is its standing for so doing. Briefly, locus standi or standing or title to sue which means the capacity to sue in a Court of law is resolved by perusing
 E plaintiffs statement of claim which from the authorities has defined confines of the plaintiffs total cause of action. Like the issue of jurisdiction it is a threshold action and has to be taken at the earliest. What I am minded to emphasize upon here is that no other person excepting the
 F person on whom is vested the aggregate of the enforceable rights in a cause has the standing to sue. And so the point must be made that, where a person has brought an action claiming a relief which on the facts of the matter is referable to another as in this matter then he cannot succeed for want of locus standi simply because there is no dispute between them.

G See: Buraimoh Oloriode & Ors. V. Oyebe & Ors. (1984) 5 SC 1 at 16

In the instant matter, the Court has to scrutinize indeed examine carefully the depositions as contained in the affidavit in support of the Originating Summons in order to ascertain the standing of the plaintiff in
 H this matter; See Egolum V. Obasanjo (1999) 5 SCNJ 92 and thus determine from the facts so deposed whether the plaintiff has vested in it the enforceable right to sue and maintain the instant matter. If I may interpose here, a thorough forage into the facts deposed to in the Supporting

affidavit does not show that the plaintiff has vested in it any enforceable rights to sue in this matter. I shall expatiate anon. The Issue of locus standi is therefore linked with the issue of jurisdiction of a Court to entertain a matter. It is a sine qua non in a matter as the instant one, because judicial powers are constitutionally limited to cases in which the parties B have it. See: Section 6(6)(b) of the Constitution. The restrictive application of this principle has gotten legal expression and backing in *Adesanya V. The President of the Federal Republic of Nigeria & Anor.* (1981) 5 SC 162 And according to Bello JSC (as he then was), in the cited case he has C expounded this principle thus:

“It seems to me that upon the construction of the sub-section (i.e.6) (6)(b) of the Constitution) it is only when the said rights and obligations of the person who invokes the jurisdiction of the Court, are in issue for D determination that judicial powers of the Courts may be invoked. In other words, standing will only be accorded to a plaintiff who shows that his civil rights and obligations have or are in danger of being violated or adversely affected by the act complained of.....” (words in brackets supplied by me). E

I have shown abundantly here that the plaintiff in the instant matter has not deposed to any rights or obligations personal or peculiar to it which have been infringed or injured so as to ground this suit. All it has succeeded in showing is that the Fights personal to Governor Peter Obi F are the ones threatened.

Again, the point has to be made that although this Court in a number of cases as I shall state hereunder has perceptibly moved away from the rigid principle of locus standi as pronounced in *Adesanya’s* case, nonetheless, no Court in its wildest imagination would on the peculiar facts of this matter uphold the standing of the plaintiff to sue in this matter there G being no dispute between the parties, that is, between the plaintiff and the defendant. Besides, the plaintiff cannot sue in respect of the reliefs claimed here on behalf of Governor Peter Obi by virtue of Section 232(1) of the H Constitution as the facts of the matter do not support that cause. The Supreme Court since the days of the rigid principle as enunciated in *Adesanya’s* case has also expounded the principle of standing further in a

number of cases such as Attorney General of Bendel State V. Attorney General of the Federation & Ors. (1981) 10 SC 1 at 190 - 191 per Fatai Williams CJN; Attorney-General of Kaduna State V. Hassan (1985) 2 NWLR (Pt.8) 483 per Oputa JSC, Adediran V. Interlands Transport Limited (1991) B 12 SCNJ 27; Owodunni V. Registered Trustees Celestial Church (2000) FWLR (Pt. 9) 1455 at 1479 - 1480; Thomas V. Olufosoye (1986) 1 NWLR (Pt. 18) 669 and Plateau State Government of Nigeria V. Attorney-General of the Federation (2006) 1 SCNJ 1 per Kutigi JSC (as he then was).

Although the foregoing cases have taken the principle of standing a step further beyond Adesanya's case, even then, if I may reiterate none can accommodate the instant plaintiffs standing on its quest in this matter to invoke on behalf of Anambra State Government the original jurisdiction of this Court when its rights or constitutional powers as a government or State have not been infringed upon. In this matter the plaintiff respectfully has obtrusively chosen to fight another's fight without the necessary standing and this Court will not allow that. Furthermore and to compound the plaintiffs case here it has been held in Plateau State Government of Nigeria V. Attorney General of the Federation (2006) 1 SCNJ 1 that, "*The Supreme Court has no original jurisdiction in respect of claims of reliefs for individual persons by virtue of the provisions of Section 232(1) of the Constitution*" per Kutigi JSC (as he then was). Again for want of standing, the plaintiff's case has no basis and must collapse and it stands struck out.

For all this and much more in the lead judgment prepared by my learned brother Mukhtar JSC in this matter, I agree that this matter deserves to be struck out. And I so order and abide by all the orders contained in the lead judgment.

H