

SUPREME COURT OF NIGERIA
FRIDAY 6TH JULY, 2012. SC. 66/2005
CORAM:- F. F. TABAI, J. A. FABIYI, O. O. ADEKEYE,
BODES-VIVOUR, O. ARIWOOLA, JJSC

LAFIA LOCAL GOVERNMENT APPELLANT
AND
1. THE EXECUTIVE GOVERNOR,
NASARAWA STATE
2. ATTORNEY GENERAL,
NASARAWA STATE
3. EMMANUEL ANZAKU & 33 ORS RESPONDENTS

APPEALS - Preliminary objection - Purpose - The objection is against hearing of appeal - Not against competence of brief of party - As it contends that appeal is fundamentally defective (H1)

APPEALS - Judgment - Respondent's role - He is to defend the judgment that is on appeal - And not to assist appellant (H2)

CONSTITUTIONAL LAW - Constitution - Interpretation - Constitution is interpreted to reveal the intention of legislature - Hence the sections are never to be read in isolation (H3)

CONSTITUTIONAL LAW - Constitution - Interpretation - Principle - Liberal approach must be adopted in interpreting constitution - Especially fundamental rights provisions (H4)

CONSTITUTIONAL LAW - Fundamental rights - Discrimination based on ethnicity - Courts must review acts of Govt or its agencies - In protection of fundamental rights of the individual (H5)

COURTS - Evidence - Evaluation - Trial court's duty is to receive relevant evidence - Examines them in the context of circumstances of the case - Before making its findings (H6)

AFFIDAVITS - Conflicts - Resolution - Where affidavits conflict - But there is documentary evidence in support of one - Court must ex-

amine it before coming to fair decision (H7)

EVIDENCE - Evaluation - Interference - Since trial Judge did not evaluate exhibits D-F1 and s. 42 of 1999 Constitution - Court of Appeal rightly did the evaluation - And come to correct decision (H8)

APPEALS - Cross appeal - Purpose - Cross appeal is filed by respondent seeking to correct errors in judgment - Or to set aside finding which is fundamental to the case (H9)

JURISDICTION - Fundamental nature - Once issue of jurisdiction is raised - Same must be determined - Since if court proceeds without jurisdiction - The proceedings would amount to a nullity (H10)

JURISDICTION - Issue of - Time to raise - Jurisdiction can be raised at anytime - Even for first time in Supreme Court - And can be raised suo motu by court - Provided counsel are heard (H11)

COURTS - Competence - Basis - Court is competent in a suit - When it is properly constituted - The subject matter being within its jurisdiction - And the case is initiated by due process of law (H12)

FUNDAMENTAL RIGHTS - Enforcement - Leave - By O. 1 r. 2(2) Fundamental Rights Rules 1979 - Leave must be obtained - Before applicant can enforce the rights (H13)

STATUTES - Limitation law - Purpose - The law protects defendant from the injustice of facing stale claim - Where proof and defence would be almost impossible (H14)

ACTIONS - Filing - Limitation - Where actions are brought against public officials - Same must be filed within 3 months after cause of action accrued (H15)

FACTS

Respondents were employed by the Nasarawa State Local Government Service Commission and were deployed to Lafia Local Government Council. In 1999, the State Governor issued a policy

directing all unified Local Government staff serving in the various Local Government Councils other than their council of origin to relocate to their councils on their existing ranks and status. The staff who are not of Nasarawa State origin were directed to remain in the council where they were working. Screening committee was thus set up in this regard. The committee identified respondents as indigenes of Nasarawa Eggon Local Government Council. Respondents were thus deployed from Lafia Local council to Nasarawa Eggon Local council. The latter refused to accept respondents.

Respondents who were of the view that the policy violates their fundamental rights, filed this application in the State High Court, seeking for an order nullifying the said policy and declaration that they are indigenes of Lafia local council. The matter was decided on affidavits and documentary evidence. In its judgment, the court while dismissing the application held that respondents failed to prove that they are indigenes of Lafia local council. Dissatisfied, respondents appealed to the Court of Appeal Jos Division. The court allowed the appeal and set aside judgment of trial court. Aggrieved, appellant appealed to Supreme Court, while 1st and 2nd respondents cross-appealed.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right when it dismissed the preliminary objection of the appellant touching on the competence of certain paragraphs of the brief of argument of the 1st and 2nd respondents after holding that some aspects of the said brief actually projected or supported the case of the 3rd - 36th respondents/applicants.

2. Whether the policy of the Nasarawa State Government infringes the 3rd- 36th respondents' Constitutional right under section 42 (1) of the 1999 Constitution.

3. Whether the learned trial Judge properly evaluated evidence.

HELD (Unanimously dismissing the main appeal and cross-appeal per **RHODES-VIVOUR JSC**)

APPEALS - Preliminary objection - Purpose

1. A preliminary objection can only be taken against the hear-

ing of an appeal and not against the competence of the brief of a party to the appeal. The purpose of a preliminary objection is to contend that the appeal is fundamentally defective or incompetent. If it succeeds, the hearing of the appeal abates.

B (p. 4401 B)

Judgment - Respondent's role

2. A respondent's role in an appeal is to defend the judgment that is on appeal and not to assist the appellant.

C **After examining the brief of the 1st and 2nd respondents, it becomes clear that it contained arguments that supported the judgment of the trial court. They maintained that the policy statement of the State Government was not discriminatory and**
D **that is the role expected of a respondent, or co-respondent. To my mind, the 1st and 2nd respondents discharged the role expected of them in their brief admirably and the Court of Appeal was right to dismiss the preliminary objection.**

E **It is only when the substance in the respondents' brief supports the case of the appellant that such a brief would be discountenanced by the court. The 1st and 2nd respondents'/ cross-appellants' brief in the Court of Appeal supported the appellant's argument on some peripheral points. Such a brief would be countenanced as it still supports and defends the**
F **judgment that is on appeal. (p. 4401 G)**

Constitution - Interpretation

G **3. Interpretation of sections of the Constitution reveals the intention of the Legislature, and so sections of the Constitution p are never to be read in isolation. They should be interpreted in a way that on no account should one section defeat the intent of another section. The Court of Appeal considering other sections in interpreting section 42 of the Constitu-**
H **tion was very much in order. (p. 4403 B)**

Constitution - Interpretation - Principle

4. A liberal approach must be adopted when interpreting the Constitution and especially the fundamental rights provisions.

Section 42 of the Constitution guarantees to every citizen of Nigeria freedom from discrimination on the basis of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion. (p. 4404 B)

COURTS - Fundamental rights - Protection of

5. The policy statement by the Governor of Nasarawa State which directed all unified Local Government Staff serving in various Local Government Councils other than their Councils of origin to relocate to their Local Government Council which ultimately culminated in the refusal of the Nasarawa Eggon Local Government Council to accept the 3rd - 36th respondents as staff of their Local Government Council is discriminatory and unconstitutional and clearly offends the provisions of section 41 (I) which guarantees freedom of movement and section 42 (I) which guarantees the right to freedom from discrimination. It is contrary to the spirit and intendment of relevant sections of the Constitution.

I am in full agreement with the Court of Appeal which held that the policy does infringe the constitutional rights of the appellants (3rd - 36th respondents) against discrimination based on ethnicity or place of origin. Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of Government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the Constitution are never trampled on.
(p. 4404 E)

Evidence - Evaluation

6. It has always been the duty of the trial Judge to receive all relevant evidence. That is perception. He then weighs the evidence in the context of the surrounding circumstances of the case. That is evaluation. A finding of fact involves both perception and evaluation. Now, how did the learned trial Judge evaluate evidence on this burning issue.

Evaluation of evidence entails the trial Judge examining all evidence before him before making his findings. This is

done by putting all the evidence on an imaginary scale to see which side appears to outweigh the other. (p. 4405 E/4406 E)

AFFIDAVITS - Conflicts - Resolution

7. Even if there are conflicts in affidavits but there are authentic documentary evidence supporting one of the affidavits in conflict P with the other, the trial court ought to examine it before applying it in coming to a fair decision. (p. 4406 D)

EVIDENCE - Evaluation - Interference

8. Furthermore, the learned trial Judge did not evaluate the contents of exhibits, D - F1 attached to the 3rd – 36th respondents affidavit or examined the admissions by the appellant that the 3rd -36th respondents are indigenes of Lafia Local Government Council. Finally, the Court of Appeal correctly found that the trial court did not examine section 42 of the Constitution, a section that the whole case revolves round. The Court of Appeal had this to say:

“The court below had decided that the section was not breached, the policy in exhibit R not being discriminatory against the appellants (now the 3rd - 26th respondents) it did not examine the constitutional provision along with the policy and its manifest effect deposed in the affidavit evidence before him.”

A diligent review of the judgment of the learned trial Judge reveals that little or no evaluation of evidence was done. The Court of Appeal was right to take over the role of the trial Judge, evaluate evidence and come to the correct decision.
(p. 4407 A)

Cross appeal - Purpose

9. A cross-appeal can only be filed by a respondent seeking to correct errors in the judgment or to set aside a finding which is crucial and fundamental to the case. A cross-appeal is not filed where the respondent seeks a complete reversal of the whole case.

Put in another way a cross-appeal is an appeal by a dissatisfied respondent who agrees with the judgment but wants the

judgment confirmed or varied on other grounds. (p. 4409 A)

JURISDICTION - Fundamental nature

10. The central issue is that non-compliance with Order 1 rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 denies the court of jurisdiction. Indeed, jurisdiction is fundamental in every suit. It is a threshold matter, so once raised it must be decided quickly before anything else. This is so because if a court lacks jurisdiction to hear a case, but goes ahead to hear the case no matter how well the case is decided the entire proceedings would amount to a nullity. It is the life and soul of case. (p. 4410 D) B
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JURISDICTION - Issue of - Time to raise

11. It is so important that it can be raised at anytime in the court of first instance, on appeal and even in the Supreme Court for the first time. It can also be raised suo motu provided counsel are given an opportunity to address the court on it before a decision is taken. (p. 4410 F) D
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COURTS - Competence - Basis

12. A court is competent to hear and determine a suit when-

1. It is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and F

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

3. The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 4410 G)

FUNDAMENTAL RIGHTS - Enforcement - Leave

13. The grouse of the 1st and 2nd cross-appellants is that there was noncompliance with Order I rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules 1979. The complaint falls within (2) above. H

My lords, the interpretation of the above provision is that leave to enforce fundamental rights must be obtained before the applicant can enforce his fundamental rights. That is to say, the enforcement is made after leave is granted. In this case, the motion *ex parte* for leave was
B filed on 30/5/2000, and granted on 2/6/2000, while the motion on notice was filed on 1/6/2000 and order for the enforcement of their fundamental rights granted on 7/5/2001. It is clear that the application to enforce fundamental rights was granted after leave was obtained. There was
C thus complete compliance as leave was granted in accordance with Order 1 rule 2(2) of the fundamental Rights (Enforcement Procedure) Rules 1979. Furthermore, I must say that an applicant under the Fundamental Rights (En-
D forcement Procedure) Rules 1979 may file the substantive application (motion on notice) with the motion *ex parte* for leave, thereby saving them, as time is of the essence in such applications and nothing should be allowed to truncate the hearing of an applicant who complains of the violation of
E his inalienable rights guaranteed by the Constitution. The claim of the 3rd – 36th respondents is competent, and the trial court, had jurisdiction to hear the claim. There was complete compliance with Order 1 rule 2(2) of the Fundamental Rights (En-
F forcement Procedure) Rules, 1979. (p. 4411 C)

STATUTES - Limitation law - Purpose

14. The limitation law sets out limitation periods for different classes of cases. They provide that certain actions shall be
G filed within a specified time after accrual of the cause of action. The main purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim. If a claim is brought a longtime after the events in question, there is a strong likelihood that evidence which was available ear-
H lier may have been lost and memories of witnesses may have faded. It would be unfair to allow a defendant face such a claim where proof and defence would be almost impossible.
 (p. 4412 F)

ACTIONS - Filing - Limitation

15. Where actions are brought against public officials, they must be brought quickly, that is, within 3 months after cause of action accrues. This is designed to protect public officials who are very busy people from being distracted or submerged in a sea of litigation at times at the instance of professional litigants. Where a plaintiff's action was filed outside the time allowed by the limitation law, the plaintiff would still have a cause of action but sadly one that cannot be enforced.

When a cause of action is complete, time begins to run for the purpose of the limitation law. The person who can sue and the person to be sued are easily identified. The aggrieved party is expected to file his action within the time stipulated by the limitation law. For example, if the time stipulated by the limitation law is 3 months, the action must be filed before 3 months from the date the cause of action accrued. (p. 4412 H)

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Status of respondent in cross appeal

Finally, I must observe that the defendant or respondent to a cross-appeal is the appellant in the main appeal. In this case, the appellant did not respond to the cross-appeal. The cross-appeal is between the 1st and 2nd cross-appellants and the 3rd – 36th respondents. A cross-appeal is not an inter parties action between respondents. It is an action between respondents. It is an action between respondents (as cross-appellants) against the appellant (in the main appeal) as the respondent. This further shows the incompetence of this cross-appeal. (p. 4409 G)

ADEKEYE JSC

2. Superior courts to take judicial notice of Constitution and statutes

The superior courts can take judicial notice of the provisions of the Constitution and any other statutes - decrees and edicts, in effect all laws or enactments and any subsidiary legislation made thereunder

having the force of law now or heretofore in force or hereafter to be in force in any part of Nigeria by virtue of section 74 of the Evidence Act. (p. 4417 E)

3. Courts must guard the supremacy of the Constitution

B The courts as custodians of the Supreme Law and the fundamental laws of the land - therefore jealously guard the supremacy of the constitution in its interpretation.

C The courts have appreciated the Constitution as the grundnorm while other legislations take their hierarchy from the provisions of the Constitution. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself.
(p. 4418 G)

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REPRESENTATION

H. M. Liman SAN with M. B. Usman, I. M. Dikko, A. D. Auta, F. Bukar, J. A. Ayilogo and H. I. Henry, for appellant

J. A. Akubo with C. J. Omagbugon, for 1st and 2nd respondents

E Chief S. A. Ayioulu with Z. Z. Alumugu, Dr. M. E. Ediri, M. D. Abubakar, C. C. Agu and John Ovie, for 3rd – 36th respondents

CASES REFERRED TO

Adenuga v. Odumeru (2003) 4 SCNJI

F NEPA v. Ango (2001) 15 NWLR (Pt. 737) 627

Odunukwe v. Ofomata (2010) 18 NWLR (Pt. 1225) 404

Adebanjo v. Brown (1990) 6 SCNJI

Obi v. INEC (2007) 11 NWLR (Pt.1046) 560

G Uzoukwu v. Ezeonu 611 (1991) 6 NWLR (Pt.200) 708

Chairman N.P.C. v. Chairman Ikere Local Govt (2001) 13 NWLR (Pt.730) 540

Mogaji v. Odofin (1978) 4 SC 91

Ajayi v. Military Administrator Ondo State (1997) 5 NWLR (Pt.504)

H 237

Eliochin Nig. Ltd. v. Mbadiwe (1986) 1 NWLR (Pt. 14) 47

Madukolu v. Nkemdilim (1962) Vol. 2 NSCC 374

Ajao v. Alao (1986) 5 NWLR (Pt. 45) 802

Bronik Motors Ltd v. Wema Bank Ltd (1983) I SCNLR 296

Egbe v. Adefarasin (1987) 1 SCNJI (No.2)

Ibrahim v. Judicial Service Committee (1988) 12 SCNJ p. 255

STATUTES & RULES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 41(1), 42(1) B
Public Officers Protection Law Cap. 111 Laws of Northern Nigeria
1963, s. 2(a)

Evidence Act, s. 74

Fundamental Rights (Enforcement Procedure) Rules 1979, O. 1 r. C
2(2)

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The respondents were employed by the Nasarawa State Local Government Service Commission and deployed to Lafia Local Government Council. In 1999, the Governor of Nasarawa State issued a policy statement wherein he directed all unified Local Government staff serving in the various Local Government Councils other than their councils of origin to relocate to their Local Government Councils on their existing ranks and status. Staff of various councils who were not of Nasarawa State origin were directed to remain in the councils where they were working. E

In compliance with the policy statement, Lafia Local Government Council set up a screening committee to screen its staff, (i.e. the respondents and some others). The screening committee identified the respondents as indigenes of Nasarawa Eggon Local Government Council. Acting on the screening committee's report, the respondents were deployed from Lafia Local Government Council to Nasarawa Eggon Local Government Council. Nasarawa Eggon Local Government Council refused to accept the respondents. F G

The respondents were of the view that the policy statement of the Governor was a breach of their fundamental rights entrenched in the Constitution. They applied to the High Court for the enforcement of their fundamental rights and as applicants asked for the following reliefs: H

1. A declaration that the Nasarawa State Government policy that all the unified staff of Local Government councils in Nasarawa State should be deployed to their Local Government Councils of

origin is unconstitutional, null and void and of no effect whatsoever.

2. An order quashing or nullifying the Nasarawa State Government policy that all the unified staff of Local Government Councils in Nasarawa State should be deployed to their Local Government Councils of origin for being unconstitutional, as same is contrary to the provisions of section 42 of the 1999 Constitution of the Federal Republic of Nigeria.

3. An order that the decision of the 3rd respondent disqualifying the applicants as indigenes of Lafia Local Government Council on the grounds that the applicants or their parents have not been living in Lafia Local Government Area before 1925 is unconstitutional, null and void and of no effect whatsoever.

4. A declaration of the court that the applicants are indigenes of Lafia Local Government Area and are entitled to be re-absorbed in their places of work with full payment of their arrears of salaries and/or emoluments or other benefits.

5. A perpetual injunction restraining the respondents, their agents or servants from implementing the deployment policy of Nasarawa State Government that all unified staff of Local Government Councils in the State be re-deployed to their Local Government Councils of origin.

Maina, J, of the Lafia High Court, Nasarawa State presided. Trial was on affidavits and documentary evidence. Dismissing the respondents'/applicants' application the learned trial Judge had this to say:

"The applicants having failed to satisfy the court by evidence that they are indeed indigenes of Lafia Local Government Area, I have no cause to declare them to be so and this being the crux of this application, other accessory claims or relief cannot be considered by the court... with the failure to established even a single applicant's indigenous claim of Lafia Local Government Area, the applicants' claim fail and are accordingly dismissed."

Dissatisfied with the ruling, the respondents lodged an appeal. The appeal was heard by the Court of Appeal, Jos Division. That court resolved all the issues in favour of the respondents, allowed the appeal and set aside the judgment of Maina J delivered on the 19th day of June, 2001. This appeal is against that Judgment. In the court of first instance the respondents were the applicants. The 1st

respondent was the governor of the State. The 2nd respondent the Attorney- General of the State and the 3rd respondent Lafia Local Government.

This appeal was filed by Lafia Local Government alone. The Governor of Nasarawa State and his Attorney-General are 1st and 2nd respondents/cross-appellants, while the applicants in the trial court are the other respondents. In accordance with rules of this court, briefs were filed and exchanged. The appellant's brief was filed on the 10th of June 2005. The 1st and 2nd respondents did not file respondents' brief, rather they filed a joint 1st and 2nd cross-appellants' brief on the 11th of August 2006. The 3rd to 36th respondents' brief was deemed filed on the 12th of May 2010.

Learned counsel for the appellant formulated eight issues from his nine grounds of appeal. They are:

1. Whether the Court of Appeal was right when it dismissed the preliminary objection of the appellant touching on the competence of certain paragraphs of the brief of argument of the 1st and 2nd respondents after holding that some aspects of the said brief actually projected or supported the case of the 3rd – 36th respondents/ applicants.

2. Whether the Court of Appeal was right when it held the policy of the 1st and 2nd respondents dated the 10th day of June, 1999 as contained in exhibit "B" as having violated the fundamental rights of 3rd – 36th respondents as enshrined in the entirety of Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria notwithstanding the fact that the claim was based on section 42 of the same Constitution.

3. Whether the Court of Appeal was right when it held that the 3rd respondent now appellant in the practical application of the policy of the Government of Nasarawa State discriminated against the appellants, 3rd – 36th respondents on the ground of origin and indigene ship notwithstanding the constitutional role of the 3rd respondent now appellant.

4. Whether having regard to the provision of section 41 of the 1999 Constitution of the Federal Republic of Nigeria, was the Court of Appeal right when it held that the appellants now 3rd - 36th respondents have the right to work in any part of Nigeria of which the policy of Government of Nasarawa State and the action of the 3rd

respondent now appellant seek to restrict.

5. Whether or not having regard to the entire documentary evidence at the disposal of the trial court and the Court of Appeal, was the Court of Appeal right when it held that the policy of the 1st and 2nd respondents as directed at all Local Governments in Nasarawa State including the appellant, which transfers the Local Government staff of Nasarawa State to their Local Government Council of origin and its implementation by the appellant as unconstitutional, and discriminatory on the grounds of ethnicity.

6. Whether having regard to the contents of exhibits “A” and “AI”, “B” and “BI”, “C” and “CI”, “D” and “DI”, “E” and “EI”, and “F” and “FI” attached by the applicant’s affidavit in support of their motion on notice and exhibits “A” and “LLGR” attached to the appellant’s counter-affidavit and further counter-affidavit before the trial court and the entire contents of the affidavits of the parties, was the Court of Appeal right when it held that the 3rd- 36th respondents have proved their case and that they were employed originally as indigenes of Lafia Local Government Council by the said Council consequent upon which are entitled to a declaration as indigenes of Lafia Local Government Area and need not call oral evidence to further establish that fact.

7. Whether having regards to the entirety of the contents of exhibits “A” and “AI”, “B” and “BI”, “C” and “CI”, “D” and “DI”, “E” and “EI”, and “F” and “FI” attached by the applicants’ affidavit before the trial court, exhibits “A” and “LLGR” attached to the appellant’s counter affidavit and further counter affidavit at the trial court and the entire contents of the affidavit evidence before the trial court and the Court of Appeal was the Court of Appeal right when it held that the 3rd - 36th respondents’/ applicants have satisfactorily proved their indigene ship status of Lafia Local Government.

8. Having regard to the totality of evidence and consideration of the nature of the principal claim of the 3rd – 36th respondents/ applicants which mainly is a declaration as unconstitutional, null and void and a consequential relief or order setting aside the 1st respondent’s policy of 10th day of June, 1999 directing and or transferring all Local Government Staff to their Local Governments of origin, was the Court of Appeal right after making the declaration and granting the principal relief to have proceeded and considered

other ancillary issues and reliefs which arose and or are dependent on the existence or otherwise of the principal claim and relief.

The 1st and 2nd respondents did not file a brief for the main appeal. They filed a joint cross-appeal.

The 3rd – 36th respondents' learned counsel formulated five issues for determination. They are:

1. Whether the lower court was right when it applied other provisions or sections of Chapter IV of the Constitution in aid to interpret and discover the meaning and intendment of section 42 of the Constitution.

2. Whether the Court of Appeal was right when it held that the indigenization policy in exhibits "B and "B1" and its implementation infringed on the fundamental rights of the 3rd – 36th respondents and declared the policy as unconstitutional for being contrary to the spirit and intendment of section 42 of the Constitution.

3. Whether the learned Justices of the Court of Appeal were right when they held that the 3rd – 36th respondents suffered from the policy in exhibits "B" and "B1" and its implementation by being subjected to disability by the policy and its implementation by the appellant.

4. Whether the learned Justices of the Court of Appeal were right when they set aside the decision of the trial court on the ground that the 3rd – 36th respondents proved their indigene ship of Lafia Local Government Council and there was no need to call for oral evidence.

5. Whether the Court of Appeal was right when it held that the 1st and 2nd respondents' counsel did not present a supportive brief of argument at the lower court different from the position taken by him at the trial court, and whether there was miscarriage of justice occasioned by the supportive brief (if any) to the appellant.

I have examined in detail the issues formulated by the appellant and the 3rd - 36th respondents. The 1st and 2nd respondents, cross appellants did not file respondent's brief. The central issue in this appeal is whether the policy of the Nasarawa State Government infringes the 3rd– 36th respondents' fundamental rights under section 42(1) of the Constitution. The appellants, issues 2, 3,4,5,7,8 and the 3rd to 36th respondents' issues 1,2,3 and 4 asked whether the Government policy infringed the fundamental rights of the 3rd to 36th

respondents.

The appellants' issue 6 is on evaluation of evidence. I intend to consider this appeal on the following three issues which in my view cover all the issues formulated by counsel for determination of this appeal.

B 1. Whether the Court of Appeal was right when it dismissed the preliminary objection of the appellant touching on the competence of certain paragraphs of the brief of argument of the 1st and 2nd respondents after holding that some aspects of the said brief actually projected or supported the case of the 3rd - 36th respondents/applicants.
C

2. Whether the policy of the Nasarawa State Government infringes the 3rd- 36th respondents' Constitutional right under section 42 (1) of the 1999 Constitution.

D 3. Whether the learned trial Judge properly evaluated evidence.

Issue I

The refusal of the Court of Appeal to sustain the appellant's (3rd respondent in the Court of Appeal) preliminary objection as to the competence of paragraphs 4.3 of issue one, 4.5 of issue two and the entire arguments on issues 3,4,5 and conclusions of the brief of argument of the 1st and 2nd respondents' before the Court of Appeal.
E

Learned counsel for the appellant observed that the arguments and conclusions of learned counsel for the 1st and 2nd respondents in the Court of Appeal (now 1st and 2nd respondents, cross appellants) were in support of the case of the 3rd- 36th respondents (appellants in the Court of Appeal) as it attacked specific findings of facts and legal conclusions of the trial court without filing an appeal or a cross-appeal. Reliance was on *Adenuga & 5 Ors v. Odumeru & 7 Ors* (2003) 4 SCNJI, (2003) 8 NWLR (Pt. 821) 163.
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He submitted that this court should resolve this issue in favour of the appellant, and set aside the judgment of the Court of Appeal and uphold the preliminary objection and make the necessary consequential orders to rectify the miscarriage of justice suffered by the appellant. The 1st and 2nd respondents in the Court of Appeal who are now the 1st and 2nd cross-appellants did not file a respondent's brief. They filed a cross appellants' brief. Consequently there is no response from them on this issue. Issue 5 in the 3rd- 36th respondents'
H

brief reads:

Whether the Court of Appeal was right when it held that the 1st and 2nd respondents' counsel did not present a supportive brief of argument at the lower court different from the position taken by him at the trial court, and whether there was miscarriage of justice occasioned by the supportive brief (if any) of the appellant. B

This issue if addressed would have answered the preliminary objection (issue I). I have searched through the brief but nowhere has issue 5 been addressed. Only issues 1, 2, 3 and 4 were addressed in the brief. C

A preliminary objection can only be taken against the hearing of an appeal and not against the competence of the brief of a party to the appeal. The purpose of a preliminary objection is to contend that the appeal is fundamentally defective or incompetent. If it succeeds, the hearing of the appeal abates. See *Odunukwe v. Ofomata* 44 NSCQR p. 379, (2010) 18 NWLR (Pt. 1225) 404; *NEPA v. Ango* (2001) 15 NWLR (Pt. 737) p. 627. D

In the instant case, if the preliminary objection succeeded in the Court of Appeal that court would have discountenanced the offending brief, decline to entertain oral argument from counsel responsible for the defective brief, but proceed with the hearing of the appeal. This is a wrong use of preliminary objection. Highlighting the state of the brief at the hearing of the appeal would have been enough. E F

This is what the Court of Appeal had to say on the substance of the preliminary objection.

"I have examined the said brief. I hold the view that the contents cannot be said to be entirely projecting the case of the appellant. It would appear to me that the learned counsel Mr. Agum felt G obliged to admit in places, the need for the application of the law by the court below which, in his view ought to have been applied. That notwithstanding, he did not leave the main track of the defence to the effect that the policy of the government being attacked was not discriminatory, that though desirable, a law is not essential to give the H policy effect."

I agree with the Court of Appeal. ***A respondent's role in an appeal is to defend the judgment that is on appeal and not to assist the appellant.*** The issue in this case is whether the policy

statement of the Nasarawa State Government discriminated against the 3rd -36th respondents. The trial court held that it did not discriminate against them. The concluding part of the 1st and 2nd respondents' brief reads:

B *"In conclusion, my lords, I submit that Government did not intend this directive to discriminate against any person or group of persons in the state. It was made in good faith for rapid development of the grass root. These affected employees must belong to a particular Local Government and the court has a duty to make a finding on each employee based on evidence available and in line with the Constitution."*

D **After examining the brief of the 1st and 2nd respondents, it becomes clear that it contained arguments that supported the judgment of the trial court. They maintained that the policy statement of the State Government was not discriminatory and that is the role expected of a respondent, or co-respondent. To my mind, the 1st and 2nd respondents discharged the role expected of them in their brief admirably and the Court of Appeal was right to dismiss the preliminary objection.**

E **It is only when the substance in the respondents' brief supports the case of the appellant that such a brief would be discountenanced by the court. The 1st and 2nd respondents'/ cross-appellants' brief in the Court of Appeal supported the appellant's argument on some peripheral points. Such a brief**
F **would be countenanced as it still supports and defends the judgment that is on appeal.**

Issue 2

G Whether the policy of the Nasarawa State Government infringes the appellants' constitutional right under section 42 (1) of the 1999 Constitution.

H Learned counsel for the appellant observed that the complaint of the 3rd- 36th respondents is that by virtue of the policy, they suffer discrimination on the grounds of ethnicity which is prohibited by the provisions of section 42 of the Constitution. He argued that by testing the policy against the entirety of chapter IV of the Constitution, the Court of Appeal has widened the scope of the case of the 3rd – 36th respondents, contending that it is not the duty of the court to make out or widen the scope of the case of a party different from

what was presented in court. Reliance was placed on Adebajo v. Brown (1990)6 SCNJ p. I; (1990) 3 NWLR (Pt. 141) 661.

Concluding, he submitted that the 3rd – 36th respondents were not in any way discriminated against by the policy but the policy only seeks to transfer them to their Local Government of origin. He urged this court to restore the judgment of the trial court which upheld the policy as constitutional and non discriminatory by the appellant. B

Learned counsel for the 3rd -36th respondents observed that the Court of Appeal was right when it applied other provisions or sections of Chapter IV of the Constitution in its interpretation 13 of section 42 of the Constitution. He argued that provisions of a statute are not to be read in isolation. Reliance was placed on Obi v. INEC (2007) 11 NWLR (Pt.1046) p. 560. C

Interpretation of sections of the Constitution reveals the intention of the Legislature, and so sections of the Constitution p are never to be read in isolation. They should be interpreted in a way that on no account should one section defeat the intent of another section. The Court of Appeal considering other sections in interpreting section 42 of the Constitution was very much in order. D E

The 3rd- 36th respondents sought in the trial court enforcement p of their fundamental rights under the constitution, to quash the policy statement of the Executive Governor which required staff of Nasarawa State Local Government Service Commission to go and work in the Local Government of their origin, an order setting aside the appellants disqualification of the 3rd - 36th respondents as indigenes of Lafia Local Government Area and a declaration that they are indigenes. The defence is that the policy is not discriminatory of any person or group of persons and not in breach of the fundamental rights of the 3rd- 36th respondents. According to the appellant, the 3rd – 36th respondents were rightly adjudged non-indigenes of Lafia Local Government Area by Lafia Local Government Council. Section 42 of the constitution provides that: F G

“42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person - H

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administra-

tive action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religions or political opinions are not made subject; or

(b) *be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.*

2. *No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.*”

A liberal approach must be adopted when interpreting the Constitution and especially the fundamental rights provisions. Section 42 of the Constitution guarantees to every citizen of Nigeria freedom from discrimination on the basis of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion.

The discrimination complained about must emanate from a law in force in Nigeria, or any executive or administrative action of the Government. This includes laws made by the Legislative Houses and Legislation made by Local Governments, and this includes policy statements. The rights are enforceable against the state, and not against individuals. See *Uzoukwu v. Ezeonu* 611 (1991) 6 NWLR (Pt.200) p.708.

The policy statement by the Governor of Nasarawa State which directed all unified Local Government Staff serving in various Local Government Councils other than their Councils of origin to relocate to their Local Government Council which ultimately culminated in the refusal of the Nasarawa Eggon Local Government Council to accept the 3rd - 36th respondents as staff of their Local Government Council is discriminatory and unconstitutional and clearly offends the provisions of section 41 (I) which guarantees freedom of movement and section 42 (I) which guarantees the right to freedom from discrimination. It is contrary to the spirit and intendment of relevant sections of the Constitution.

I am in full agreement with the Court of Appeal which held that the policy does infringe the constitutional rights of the appellants (3rd- 36th respondents) against discrimination

based on ethnicity or place of origin. Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of Government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the Constitution are never trampled on.

Issue 3

The central question is whether the 3rd- 36th respondents were able to establish the fact of their indigene ship of Lafia Local Government notwithstanding the affidavits and the documentary evidence. The question of indigene ship was important in the action before the trial court.

Learned counsel for the appellant submitted that the Court of Appeal erred in law when it held that the applicants (the 3rd – 36th respondents) were able to establish their indigene ship of Lafia Local Government Council by virtue of exhibits A and Al. He further submitted that the 3rd – 36th respondents failed to satisfy the court by credible documentary evidence that they are indigenes of Lafia Local Government Council. He urged this court to restore the judgment of the trial court.

Learned counsel for the 3rd- 36th respondents observed that the learned trial Judge did not evaluate the contents of exhibits A, Al, D, Dl, E, El and F. Fl attached to the 3rd- 36th respondents' affidavit, neither did the trial court examine the provision of section 42 of the Constitution. He urged this court to dismiss the appeal and affirm the decision of the Court of Appeal.

It has always been the duty of the trial Judge to receive all relevant evidence. That is perception. He then weighs the evidence in the context of the surrounding circumstances of the case. That is evaluation. A finding of fact involves both perception and evaluation. Now, how did the learned trial Judge evaluate evidence on this burning issue. Relevant extracts from the judgment runs as follows:

“...the applicants in this case are claiming the affirmative that they are indigenes of Lafia Local Government Area, the burden is therefore on them to prove they are. They placed reliant on exhibits A and Al the Local Government Service Commission, Lafia, Lafia

Local Government Unified Staff Record dated December 1999.”

Depositions in paragraph 5 (a) (b) (c) and (d) of the affidavit in support say they are all employed by the Local Government Service Commission Lafia. The learned trial Judge continued:

“It is worthy to note that exhibits A and A1 did not emanate from Lafia Local Government Council and there is nothing before the court to show that Lafia Local Government was confided with before the applicants were employed as indigenes of Lafia Local Government Area. Exhibits A and A 1 therefore cannot to my mind be conclusive evidence of their Indigeneship, more so that it was not the product of Lafia Local Government Council. There was therefore the need for the applicants to prove by oral evidence that they were indigenes of Lafia Local Government Area.”

The Court of Appeal quite rightly observed that the document did not have to emanate from Lafia Local Government Council which is not the employer, but from the commission, their statutory employer. The Court of Appeal further found that documentary evidence tendered and depositions in the affidavit were sufficient evidence to enable the court come to a just decision.

Even if there are conflicts in affidavits but there are authentic documentary evidence supporting one of the affidavits in conflict P with the other, the trial court ought to examine it before applying it in coming to a fair decision. See *Nwosu v. Imo State Environmental & Sanitation Authority (1990) 2 NWLR (Pt.135) p.688*; *Chairman, N.P.C. v. Chairman Ikere Local Government (2001) 13 NWLR (Pt.730) p.540*

Evaluation of evidence entails the trial Judge examining all evidence before him before making his findings. This is done by putting all the evidence on an imaginary scale to see which side appears to outweigh the other. See *Mogaji v. Odofin (1978) 4 SC p.91.*

The Local Government Service Commission is the employer of the 3rd – 36th respondents. It has in its custody exhibits A and A1 and these documents contain comprehensive details of its employees' places of origin, village, town, date of appointment etc. These documents constitute sufficient evidence, had the trial Judge considered them carefully. Instead the trial Judge was of the view that it was the Lafia Local Government Councils who are the employers of the

3rd- 36th respondents. The learned trial Judge fell into grave error by dismissing relevant documents and affidavit evidence which would have easily resolved the burning issue of indigene ship. This amounted to very wrong evaluation of evidence. The Court of Appeal was correct when it concluded that the trial court abdicated its functions and came to an erroneous conclusion. B

Furthermore, the learned trial Judge did not evaluate the contents of exhibits, D - F1 attached to the 3rd - 36th respondents affidavit or examined the admissions by the appellant that the 3rd -36th respondents are indigenes of Lafia Local Government Council. Finally, the Court of Appeal correctly found that the trial court did not examine section 42 of the Constitution, a section that the whole case revolves round. The Court of Appeal had this to say: C

“The court below had decided that the section D was not breached, the policy in exhibit R not being discriminatory against the appellants (now the 3rd - 26th respondents) it did not examine the constitutional provision along with the policy and its manifest effect deposed in the affidavit evidence before him.” E

A diligent review of the judgment of the learned trial Judge reveals that little or no evaluation of evidence was done. The Court of Appeal was right to take over the role of the trial Judge, evaluate evidence and come to the correct decision. F

Cross Appeal

Learned counsel for the 1st and 2nd cross-appellants formulated five issues for determination. They are:

1. Whether the learned Justices of the Court of Appeal had the jurisdiction to enter judgment in favour of the 3rd- 36th respondents in light of non-compliance with Order I, rule 29(2) of the Fundamental Rights ‘ (Enforcement Procedure) Rules, 1979 on the part of the 3rd- 36th respondents having regard to their motion on notice for enforcement of fundamental rights filed before leave was obtained. H

2. Whether the case of the 3rd - 36th respondents were statute barred under and by virtue of section 2(a) of the Public Officer Protection Law, Cap. Ill, Laws of Northern Nigeria, 1963.

3. Whether upon correct interpretation and application of

section 42 of the Constitution of the Federal Republic of Nigeria, 1999, *vis-a-vis* the facts of this case, the learned Justices of the Court of Appeal were right in holding that the policy directing the deployment of all Local Government staff in Nasarawa State to their respective Local Government Council of origin infringe the constitutional rights of the 3rd -36th respondents against discrimination based on ethnicity or place of origin, by subjecting them to disabilities, discrimination and/or against the spirit of the democratic Constitution.

4. Whether the learned Justices of the Court of Appeal were right in blaming the trial court for dismissing the case for want of oral evidence and at the same time faulting the trial court for failing in its duty to appraise and/or evaluate evidence before it and reconcile conflicts having regard to exhibits “A”, “A1”, “C”, “D” and “E” or for not properly using and giving adequate weight to exhibits “A” of the appellant.

5. Whether the learned Justices of the Court of Appeal were right in their conclusion that the 3rd – 36th respondents satisfied the rule of evidence by proving their case through the requisite burden and that there was no irreconcilable conflict in the affidavit evidence of the parties.

Learned counsel for the 3rd – 36th respondents formulated four issues for determination in the cross-appeal.

1. Whether the claim of the 3rd– 36th respondents is incompetent and the lower court lack’s jurisdiction to entertain same.

2. Whether the claim of the 3rd– 36th respondents is affected by section 2(a) of the Public Officers Protection Law, Cap. Ill, Laws of Northern Nigeria 1963 and it is therefore statute barred.

3. Whether the lower court was right when it applied other provisions or sections of Chapter IV of the Constitution, when interpreting section 42 of the Constitution, and whether the court came to the right conclusion when it held that the policy in exhibits B and B1 infringed on the rights of the 3rd – 36th respondents and declared the policy as unconstitutional and discriminatory based on ethnicity or places of birth; and that the policy subjected the 3rd - 36th respondents to disabilities contrary to the spirit of democratic Constitution.

4. Whether the learned Justices of the Court of Appeal were right when they set aside the decision of the trial court and held that the 3rd - 36th respondents proved their indigene ship of Lafia Local

Government Council and there be no need for oral evidence in view of availability of documentary evidence on the records.

Issues 1 and 2 are on jurisdiction while issues 3, 4 and 5 questions the judgment, and if they succeed the judgment of the Court of Appeal would be set aside. I must state that the role of a respondent is to defend the judgment of the court from which the appeal emanates. ***A cross-appeal can only be filed by a respondent seeking to correct errors in the judgment or to set aside a finding which is crucial and fundamental to the case. A cross-appeal is not filed where the respondent seeks a complete reversal of the whole case.*** See Ajayi v. Military Administrator, Ondo State (1997) 5 NWLR (Pt.504) p.237; Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Pt.14) p.47. ***Put in another way a cross-appeal is an appeal by a dissatisfied respondent who agrees with the judgment but wants the judgment confirmed or varied on other grounds.***

Issues 3, 4 and 5 do not ask for the judgment to be varied or confirmed on other grounds, neither were they filed to correct errors in the judgment. They were filed with the view that if they succeed the appeal would be allowed and the judgment of the Court of Appeal set aside. This cannot be done by a cross-appeal. This can only be done if the 1st and 2nd respondents/cross-appellants had filed an appeal.

On 5/6/06, this court granted the 1st and 2nd respondents/cross-appellants leave and extension of time to file notice of cross-appeal.

This is conclusive evidence that they were never appellants in the main appeal. In the light of what I have been saying, issues 3, 4 and 5 are hereby struck out for being incompetent, and a wrong use of judicial process.

Issues 1 and 2 which are on jurisdiction would be taken. This is premised on the fact that the issue of jurisdiction can be raised in the Supreme Court, even for the first time. See Usman Dan Fadio University v. Kraus Thompson Organisation Ltd. (2001) 15 NWLR (Pt.736) p.305.

Finally, I must observe that the defendant or respondent to a cross-appeal is the appellant in the main appeal. In this case, the appellant did not respond to the cross-appeal. The cross-appeal is

between the 1st and 2nd cross-appellants and the 3rd – 36th respondents. A cross-appeal is not an inter parties action between respondents. It is an action between respondents. It is an action between respondents (as cross-appellants) against the appellant (in the main appeal) as the respondent. This further shows the incompetence of this cross-appeal.

Issue 1

Learned counsel for the 1st and 2nd appellants observed that the 3rd- 36th respondents motion *ex parte* for leave to enforce their fundamental rights was filed on 31/5/2000 and granted on 1/6/2000 while the motion on notice to enforce their fundamental rights was filed on 1/6/2000 in breach of Order I rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules 1979 contending that the substantive application can only be filed pursuant to leave of court. He submitted that the entire proceedings in the trial court was fatally flawed, consequently the trial court lacked jurisdiction to enter judgment for the 3rd – 36th respondents.

Learned counsel for the 3rd- 36th respondents observed that Order 1 rule 2(2) does not forbid filing the motion on notice along side with the motion *ex parte* for leave for enforcement of fundamental rights. He submitted that the proceedings in the court of first instance were in order.

The central issue is that non-compliance with Order 1 rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 denies the court of jurisdiction. Indeed, jurisdiction is fundamental in every suit. It is a threshold matter, so once raised it must be decided quickly before anything else. This is so because if a court lacks jurisdiction to hear a case, but goes ahead to hear the case no matter how well the case is decided the entire proceedings would amount to a nullity. It is the life and soul of case. It is so important that it can be raised at anytime in the court of first instance, on appeal and even in the Supreme Court for the first time. It can also be raised suo motu provided counsel are given an opportunity to address the court on it before a decision is taken. See *Madukolu & Ors. v. Nkemdilim* (1962) Vol. 2 NSCC p.374, (1962) 2 SCNLR 341; *Ajao v. Alao* (1986) 5 NWLR (Pt. 45) p.802; *Bronik Motors Ltd. & Anor v. Wema Bank Ltd.* (1983) 1 SCNLR p.296. ***A court is***

competent to hear and determine a suit when-

1. It is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

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

3. 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 *Madukolu v. Nkemdilim* (supra).

Order 1 rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 reads:

"No application for an order enforcing or securing the enforcement within the state of any such rights shall be made unless leave therefore has been granted in accordance with this rule."

The grouse of the 1st and 2nd cross-appellants is that there was noncompliance with Order I rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules 1979. The complaint falls within (2) above.

My lords, the interpretation of the above provision is that leave to enforce fundamental rights must be obtained before the applicant can enforce his fundamental rights. That is to say, the enforcement is made after leave is granted. In this case, the motion *ex parte* for leave was filed on 30/5/2000, and granted on 2/6/2000, while the motion on notice was filed on 1/6/2000 and order for the enforcement of their fundamental rights granted on 7/5/2001. It is clear that the application to enforce fundamental rights was granted after leave was obtained. There was thus complete compliance as leave was granted in accordance with Order 1 rule 2(2) of the fundamental Rights (Enforcement Procedure) Rules 1979. Furthermore, I must say that an applicant under the Fundamental Rights (Enforcement Procedure) Rules 1979 may file the substantive application (motion on notice) with the motion *ex parte* for leave, thereby saving them, as time is of the essence in such applications and nothing should be allowed to truncate the hearing of an applicant who complains of the violation of

his inalienable rights guaranteed by the Constitution. The claim of the 3rd – 36th respondents is competent, and the trial court, had jurisdiction to hear the claim. There was complete compliance with Order 1 rule 2(2) of the Fundamental Rights (Enforcement Procedure) Rules, 1979.

B Issue 2

Learned counsel for the 1st and 2nd cross-respondents observed that the cause of action arose on 10/6/99 when the Nasarawa State Government Policy on deployment of unified Local Government Staff was implemented, further observing that the 3rd- 36th respondents did not file their action until 31/5/2000. He submitted that by virtue of section 2(a) of the Public Officers Protection Law, Cap. Ill, Laws of Northern Nigeria, 1963, the 3rd- 36th respondents were obliged to have filed their action within 3 months after 10/6/99 contending that their action is statute barred. Reference was made to *Egbe v. Adefarasin* (1987) 1 SCNJ p. 1 (No.2), (1987) 1 NWLR (Pt.47) 1; *Ibrahim v. Judicial Service Committee* (1988) 12 SCNJ p. 255; (1998) 14 NWLR (Pt. 584) 1. He urged this honourable court to resolve this issue in favour of the 1st and 2nd cross-appellants.

E Learned counsel for the 3rd – 36th respondents observed that the cause of action accrued in this case on 20/3/2000 when the 3rd – 36th respondents were rejected by the appellant as indigenes of Lafia Local Government Council, or Area. He submitted that upon the refusal of the Lafia Local Government Council to comply with exhibits D, DI, E, EI and F, FI, the 3rd- 36th respondents went to court on 30/5/2000. Reliance was placed on *Thomas v. Olufosoye* (1986) 1 NWLR (Pt.18) p.669; *Owie v. Igbiwi* (2005) 5 NWLR (Pt.917) p.184.

G He further submitted that the suit was filed within 3 months after accrual of cause of action on 20/3/2000, contending that the suit was not statute barred.

The limitation law sets out limitation periods for different classes of cases. They provide that certain actions shall be filed within a specified time after accrual of the cause of action. The main purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim. If a claim is brought a longtime after the events in question, there is a strong likelihood that evidence which was available earlier may have been lost and memories of witnesses may

have faded. It would be unfair to allow a defendant face such a claim where proof and defence would be almost impossible. Where actions are brought against public officials, they must be brought quickly, that is, within 3 months after cause of action accrues. This is designed to protect public officials who are very busy people from being distracted or submerged in a sea of litigation at times at the instance of professional litigants. Where a plaintiff's action was filed outside the time allowed by the limitation law, the plaintiff would still have a cause of action but sadly one that cannot be enforced. See Sanni v. Okene L.G. (2005) 14 NWLR (Pt.944) p.60; Eboigbe v. NNPC (1994) 5 NWLR (Pt.347) p.649; Utih v. Egor (1990) 5 NWLR (Pt.153) p.771

When a cause of action is complete, time begins to run for the purpose of the limitation law. The person who can sue and the person to be sued are easily identified. The aggrieved party is expected to file his action within the time stipulated by the limitation law. For example, if the time stipulated by the limitation law is 3 months, the action must be filed before 3 months from the date the cause of action accrued.

Section 2(a) of the Public Officers Protection Law, Cap. III, Laws of Northern Nigeria, 1963, states that:

"2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall have effect -

(a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof."

It is clear from the above that if the action is brought after the expiration of three months after the cause of action accrued, the action would be caught by the provisions of section 2 (a) of the Public Officers Protection Law *supra* and thus statute barred.

On the 10th of June 1999 the Nasarawa State Government Policy on deployment of unified Local Government Staff was implemented. That gave the 3rd– 36th respondents (the applicants in the

trial court) a serious cause for concern. Their cause of action accrued on the 20th of March 2000 when they were rejected by the appellant for not being indigenes of Lafia Local Government Council Area. After the letter dated 20th of March 2000 was seen, the 3rd– 36th respondents could sue the appellant and the 1st and 2nd respondents who were responsible for their plight. The action was filed in court on 30/5/2000, and that was within 3 months from 20/3/2000. The 3rd– 36th respondents' suit is not statute-barred.

This appeal and the cross-appeal are dismissed with costs of N50.000 against the appellant. Costs to be paid by the appellant to the surviving 3rd - 36th respondents.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother - Rhodes-Vivour, JSC. I am at one with the reasons advanced therein to arrive at the conclusion that the main appeal as well as the cross- appeal should be dismissed.

Action was initiated under the Fundamental Rights Enforcement Procedure Rules by the 3rd – 36th respondents at the trial High Court, Lafia, Nasarawa State of Nigeria. A policy statement by the Executive Governor of the State precipitated the transfer of 3rd– 36th respondents from Lafia Local Government, their place of abode to Eggon Local Government where they were rejected. Some form of discrimination was established under the provision of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

The application of the 3rd – 36th respondents was heard *by* Maina, J who maintained, in substance, that they failed to satisfy him by evidence that they were indeed indigenes of Lafia Local Government Area and dismissed their claims. They appealed to the Court of Appeal, Jos Division where the appeal was heard. The Court of Appeal had a contrary view and allowed the appeal.

The stance posed by the Court of Appeal has precipitated the appeal and the cross-appeal before this court.

I feel tempted to say a word or two in respect of issue 2 captured in the lead judgment with respect to the main appeal. It reads as follows:

‘2 Whether the policy of the Nasarawa State Government

infringes the 3^d- 36th respondents' constitutional right under section 43 of the 1999 Constitution.”

Learned counsel for the appellant felt that it was not right for the Court of Appeal to test the policy against the entirety of Chapter IV of the Constitution as such widened the scope of the case of the 3^d – 36th respondents. He maintained that it is not the duty of the court to make out or widen the scope of the case of a party different from what was presented in court. He cited *Adebanjo v. Brown* (1990) 6 SCNJ 1, (1990) 3 NWLR (Pt. 141) 661. B

Learned counsel submitted further that the 3rd– 36th respondents were not discriminated against by the policy which only directed their transfer to their Local Government of origin. Learned counsel for the 3rd - 36th respondents maintained that the Court of Appeal was right when it applied other provisions of Chapter IV of the Constitution in its interpretation of section 42 of the Constitution. D He cited *Obi v. INEC* (2007) 11 NWLR (Pt. 1046) 565.

There is no doubt about it that in due interpretation of the provisions of the Constitution which is the grundnorm, the court should embark upon broad interpretation more especially when same relates to the fundamental rights of the citizen. The court should employ a liberal approach or take what is often called a global view. This is so as the rights of the citizen must not be toyed with under any guise. See: *Rabiu v. The State* (1980) 8-11 SC 130 at 151,195, (1981) 2 NCLR 293 E

Furthermore, related sections of the Constitution ought to be interpreted together so as to produce a harmonious result. See: *Senator Abraham Adesanya v. President of the Federal Republic & Anr* (1981) 5 S.C. 112 at 134, 321; (1981) 2 NCLR 358; *Akaighe v. Idama* (1964) 1 All NLR 322. F

To say the least, the approach taken by the Court of Appeal was very correct. The criticism of same by the counsel for the appellant missed the target as it was not in tune with the position of the law as set out above. G

The Court of Appeal, after a due appraisal of the matter, adequately considered same with a global view. Section 41 (1) of the Constitution guarantees freedom of movement while section 42 (1) guarantees the right of freedom from discrimination. The 3rd-36th respondents by the policy were to relocate from Nasarawa Local H

Government Council where they had their abodes to Eggon Local Government Counsel their so-called place of origin where they were rejected. They remained like floating objects without a known destination; not here and not there. The policy was not in tune with the purport and spirit of the Constitution; to say the least.

B 1 was not taken aback when the court below found against the mundane policy of the State Government and nailed it. 1 am at one with the stance of the court below when it found that the policy infringed and/or eroded the constitutional rights of the 3rd-36th respondents relating to discrimination, ethnicity and place of origin syndrome. C That should not be the position in a democratic setting guided by fundamental human rights as duly imbued by the omnipotent.

The cross-appeal was admirably considered in the lead judgment. Let me keep my peace as I adopt the reasons therein.

D For the above reasons and the detailed ones adumbrated in the lead judgment, I too, feel that the main appeal as well as the cross-appeal should be dismissed. 1 order accordingly. 1 endorse the order relating to costs as made in the lead judgment.

E

ADEKEYE JSC

I have read in advance the judgment just delivered by my learned brother, Bode Rhodes-Vivour, JSC.

F The appeal of the appellant - Lafia Local Government, and the 1st and 2nd cross-appellants, the Executive Governor of Nasarawa State and the Attorney-General respectively is against the judgment of the Court of Appeal, Jos Judicial Division delivered on the 1st of December 2004. Mr. Liman, learned counsel for the appellants are G urging this court to set aside the portion of the judgment of the Court of Appeal which directed that the appellants be transferred back to the Local Governments where they were working before the 10th of June 1999 - and that those Local Government Councils bear the responsibility of paying them as may be directed by the 1st respondent - the Executive Governor through the Local Government Service Commission. H

The Court of Appeal erred in law when it ordered the appellant to reinstate and pay the applicants arrears of salaries. The appellants - the Local Government, will be contravening the order or dec-

laration of the court that the policy is unconstitutional and its implementation, The 3rd - 36th respondents are by the judgment of the Court of Appeal being ordered to benefit from a policy that the same Court of Appeal declared illegal. Mr. P. A. Akubo, learned senior counsel for the 1st and 2nd respondents urged this court to set aside the judgment of the Court of Appeal and restore the judgment of the trial court in that the reliefs of the 3rd - 36th respondents was a nullity having not been initiated by due process pursuant to Order 1, rule 2 (2) of the Fundamental Rights (Enforcement Procedure) Rules 1979. Further that the Justices of the Court of Appeal lacked the jurisdiction to enter judgment in favour of 3rd - 36th respondents as the conditions precedent for exercise of jurisdiction were manifestly lacking, more so that the 3rd - 36th respondents did not obtain prior leave of court before filing their substantive application. That the judgment of the Court of Appeal is fatally flawed by want of jurisdiction. The case of the 3rd - 36th respondents is statute-barred under and by virtue of Section 2(a) of the Public Officer Protection Law, Cap. III, Laws of Northern Nigeria, 1963. That the lower court wrongly interpreted section 42 of the Constitution.

I must correct the wrong conception of the judgment of the Court of Appeal, Jos dated the 1st of December 2004, by the learned counsel for the appellant particularly the order of court as regards reinstatement and payment of arrears of salaries.

The order of court can simply be interpreted to mean that parties must maintain *status quo ante bellum*. So as to avoid any complication and to allow for case of payment of their arrears by the relevant authorities with reference to existing documents. The superior courts can take judicial notice of the provisions of the Constitution and any other statutes - decrees and edicts, in effect all laws or enactments and any subsidiary legislation made thereunder having the force of law now or heretofore in force or hereafter to be in force in any part of Nigeria by virtue of section 74 of the Evidence Act.

The Court of Appeal in its judgment declared at pages 411 - 412 of the record reads: -

“There is no magic in promulgating a law in the circumstances of this case. For if a policy or an action by the executive contravenes a provision in the constitution, no law can cure it. That law itself would contravene, would be inconsistent and run counter to the constitu-

tion which is supreme. Such a law would in itself be null and void to the extent of the inconsistency. See section 1(1) and 1(3) of the Constitution. The argument has not given enough thought and attention to the actual words of the provision of section 42 of the Constitution itself. The section seeks to protect a citizen of Nigeria against the application of any law in force in Nigeria. This is apart from protecting him against any executive or administrative action of the government. I ought to declare here that this matter is a clear case of executive and administrative action against which section 42 seeks to shield the citizen. If a statute is promulgated, and the action is declared to be in contravention of the section would a statute backing the action not suffer the same fate? It certainly would.

With respect that submission is not acceptable. I therefore agree with the learned trial Judge that a law is not necessary to legalize the application of the 1st respondent's policy or the manner of executing it by 3^d and 4th respondents. In any event, however, as earlier determined, the policy and its implication are discriminatory. Everything taken into account, my conclusion and answer to issue No. 1 is that the policy does infringe the constitutional rights of the appellants against discrimination based on ethnicity or place of origin".

The findings of the Court of Appeal are in respect of the policy declaration of the government of Nasarawa *vis-a-vis* the provisions of the constitution. The government of a state through the National Assembly has power to make law for peace, order and good government of the State - on any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution. The general provision of the Constitution in part stipulates in Section 1(1) that:-

"The Constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria"

Section 1(3) reads:

"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void".

The courts as custodians of the Supreme Law and the fundamental laws of the land - therefore jealously guard the supremacy of the constitution in its interpretation.

The courts have appreciated the Constitution as the grundnorm while other legislations take their hierarchy from the provisions of the Constitution. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself. A.-G., Abia State v. A-G Federation (2002) 6 NWLR B (Pt.763) pg.264, A-G. Abia State v. A.-G., Federation (2003) 4 NWLR (Pt.809) pg.124, Fasakin Foods (Nig.) Co. Ltd. v. Shosanya (2006) 10 NWLR (Pt.987) pg. 126

The courts have pronounced that all agencies of government are organs of initiative whose powers are derived either directly from the Constitution or from law enacted thereunder. They therefore stand in relationship to the Constitution as it permits of their existence and functions. A-G Ondo State v. A-G Federation (2002) 9 NWLR (Pt.772) pg.222. C D

Section 42 (I) of the Constitution guarantees right to freedom from discrimination. The relevant section reads: Section 42(1)

“A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person - E

(a) Be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or F

(b) Be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions. G

2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.”

Chapter II of the Constitution under Fundamental Objectives and Directives Principles of State Policy section 14(4) stipulates H that -

“The composition of the government of a State ,a local government council or any of the agencies of such government or council, and the conduct of the affairs of the government or council or

such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation. ”

Section 17(3) reads -

B *The State shall direct its policy towards ensuring that- (a) All citizens without discrimination on any group whatsoever, have adequate opportunity to secure suitable employment. ”*

C Whereas Nasarawa State Local Government Service Commission Edict No, 6 of 1998 directed the deployment of all local government staff to their respective local government council of origin, while non-indigenes of Nasarawa State should remain in their local government of service, the bulk of the employees claimed Lafia Local Government Council as their local government of origin. Lafia Local
D Government council in an effort to streamline the influx of employees resorted to identification of true origins of the council amongst other terms of reference. The screening committee concluded that the 3rd – 36th respondents were not *bona fide* indigenes of Lafia Local Government Council.

E This step taken above under the Nasarawa State Local Government Edict No. 6 of 1998 dictating the policy run contrary to the provisions of section 42(1) and (2); sections 14 (4) and 17(3) (a) of the 1999 Constitution. The Edict is by virtue of section 3 of the
F 1999 Constitution inconsistent with the provisions of the Constitution and is to the extent of the inconsistency declared null and void.

With fuller reasons given in the lead judgment of my Lord B. Rhodes-Vivour, JSC, I also dismiss the appeal and cross-appeal. I abide the orders made in the lead judgment.

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ARIWOOLA JSC

H This is an appeal against the decision of the Court of Appeal, Jos Division which allowed the appeal against the judgment of the trial court, per Maina, J of the Lafia High Court of Nasarawa State.

The 3rd - 36th respondents herein were the applicants before the trial High Court while the appellant and cross appellants were together respondents. The 3rd – 36th respondents had before the trial High Court sought the enforcement of their fundamental rights and

as applicants sought the following reliefs:

1. A declaration that the Nasarawa State Government policy that all the unified staff of Local Government Councils in Nasarawa State should be deployed to their Local Government Councils of origin is unconstitutional, null and void and of no effect whatsoever.

2. An order quashing or nullifying the Nasarawa State Government policy that all the unified staff of Local government councils in Nasarawa State should be deployed to their local Government Councils of origin for being unconstitutional, as same is contrary to the provisions of section 42 of the 1999 Constitution of the Federal Republic of Nigeria.

3. An order that the decision of the 3rd respondent disqualifying the applicants as indigenes of Lafia Local Government Council on the grounds that the applicants or their parents have not been living in Lafia Local Government Area before 1925 is unconstitutional, null and void and of no effect whatsoever.

4. A declaration of the court that the applicants are indigenes of Lafia Local Government Area and are entitled to be re-absorbed in their places of work with full payment of their arrears of salaries and/or emoluments or other benefits.

5. A perpetual injunction restraining the respondent their agents or servant from implementing the deployment policy of Nasarawa State Government that all unified staff of Local Government Councils in the state be re-deployed to their Local Government Councils of origin.

The trial court had dismissed the application which led to an appeal to the court below. At the court below, it was found that the trial court failed to examine and properly evaluate the affidavit and documentary evidence adduced and placed before the court by the respondents leading to perversion and a miscarriage of justice. The court below as it was entitled so to do, carried out proper examination and evaluation of the affidavit and documentary evidence available, allowed the appeal, set aside the judgment of the trial court and granted the respondents reliefs sought.

The appellant herein being the 3rd respondent before the court below, being dissatisfied with the decision of the court below appealed to this court on nine grounds of appeal. The appellant distilled eight (8) Issues from the nine (9) Grounds of appeal.

The bedrock of the respondents' case when they went before the trial court as applicants was whether the policy of the Nasarawa State Government infringed their constitutional right under section 42 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

There is no doubt that this case was fought on affidavit and documentary evidence filed by both parties. It is however clear from the records that the trial court failed to examine and properly evaluate the various documents attached as exhibits. It is trite law that an appellate court and even this court is in as good a position as the trial court to examine and re-evaluate affidavit and documentary evidence before the trial court in the event of the trial court's failure to carry out its primary duty of evaluation of evidence adduced during the trial. This is to remedy the injustice being perpetuated in the case. See *Mallam Yusuf Jimoh & Ors v. Mallam Karimu Akande & Anor* (2009) 1 SCM 34 at 58; (2009) 5 NWLR (Pt.1135) 549; *Ogundele & Anor v. Shittu Agiri & Anor* (2009) 11-12 SCM (Pt. 1)95 at 109-110, (2009) 18 NWLR (Pt. 1173) 219; *F.S.B; International Bank Ltd. v. Imano Nig. Ltd.* (2000) 11 NWLR (Pt. 679) 620 at 637; (2000) 7 SCNJ 65; *Gonzee Nig. Ltd. v. Nigeria Educational Research & Development Council & 2 Ors* (2005) 8 SCM 99; (2005) 6 SCNJ (Pt. 1) 25 at 35; (2005) All FWLR (Pt. 2) 235/247-248; (2005) 13 NWLR (Pt. 943) 634

By the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or be accorded either expressly by or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions. And no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. See: section 42 of the Constitution.

There is no doubt that by the pronouncement of the Nasarawa State Government on its policy of redeployment of staff of government from Lafia Local Government, the above constitutional provision has been breached and violated. With that breach and violation, the constitutionally guaranteed right of the 3rd - 36th respondents was breached and they deserved to be protected.

In other words, the 3rd – 36th respondents as applicants before the trial court were entitled to seek the enforcement of their fundamental right as guaranteed by the constitution. The trial court was therefore in error to have refused to grant the reliefs they sought. In short, the court below was right in allowing the appeal of the 3rd – 36th respondents, after it was satisfied with the affidavit and documentary evidence made available with their application for the enforcement of their fundamental rights.

For the above reason and the fuller reasons in the lead judgment of my learned brother, Rhodes-Vivour, JSC which were beautifully articulated, I shall also dismiss both the appeal and cross-appeal. Accordingly, both the appeal and cross-appeal are hereby dismissed. I abide by the order on costs as awarded in the lead judgment. Appeal dismissed. Cross appeal dismissed.

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