

**SUPREME COURT OF NIGERIA**

FRIDAY 10TH MAY, 2013. SC. 58/2009

**CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,  
S. GALADIMA, C. B. OGUNBIYI, S. S. ALAGOA, JJSC**

ABIA STATE INDEPENDENT  
ELECTORAL COMMISSION  
AND

..... APPELLANT

1. CHIEF OKECHI KANU
2. NZE PETER ONWUMERE
3. CHIEF NSA KANU ORJI
4. CHIEF GODWIN IBENDIOGWU

..... RESPONDENTS

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APPEALS - Jurisdiction - Determination - To determine whether or not it has jurisdiction over a matter - Court must examine the nature of claims - And the parties before it (H1)

COURTS - Federal High Court - Jurisdiction - By 1999 Constitution s. 251 - The court exercises jurisdiction - Once any of the parties is Federal government or any of its agencies (H2)

ELECTIONS - Party - Necessary party - Inclusion of INEC in the matter at Federal HC is indispensable - Because respondents' relief No. 4 claimed for an order - Mandating INEC to release voters register to appellant (H3)

PLEADINGS - Parties - Main & alternative relief - Party can plead in the main and alternatively - But court is bound to grant only one at expense of the other - Where the latter was made ancillary to the former (H4)

APPEALS - Interlocutory stage - Substantive matter - Court of Appeal should not have determined the merit of plaintiffs' case - At the time it decided the issue of jurisdiction (H5)

**FACTS**

Plaintiffs/respondents instituted this action at the Federal High Court Abuja, claiming inter alia a declaration that by virtue of section

7(4) of the 1999 Constitution, sections 10(1)(2)(3), 11(4), and 16 of the Electoral Act, 2006, Abia State Independent Electoral Commission has no power to conduct elections for Local Government Councils on the 19<sup>th</sup> May 2007 in the absence of Voters' register.

By an interim order, the court restrained the Abia State Independent Electoral Commission from conducting Local Government Elections in Abia State on the 19<sup>th</sup> May 2007. Subsequently, defendant/appellant filed a motion on notice challenging the jurisdiction of the Federal High Court to entertain respondents' suit. After taking arguments on the preliminary objection, the court dismissed same. Appellant therefore appealed to the Court of Appeal Abuja. The court dismissed the appeal and affirmed the ruling of the trial court. Appellant has further appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"i. Was the Court of Appeal right when it held that the Federal High Court has jurisdiction to entertain Respondent's suit?*

*ii. Was the Court of Appeal right when it held that Section 182[1][d] of the Abia State of Nigeria Local Government Law No. 2 of 2006 is 'inconsistent with a statute of the National Assembly and to that extent of the inconsistency void?'"*

**HELD** (Unanimously dismissing the appeal per  
**MUHAMMAD JSC)**

*Jurisdiction - Determination*

**1. This appeal poses a simple issue of jurisdiction of a court. The well founded principle of the law is that in the determination of whether a court has jurisdiction or not to try a matter placed before it, such a court must examine the nature of the claims. I think, I should add now, with the coming into effect of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that the court will also have to examine the persons that make up the parties before it.**  
(p. 2318 G)

*Federal High Court - Jurisdiction*

**2. Thus, irrespective of the nature of the claim, once any of**

**the parties before a State High Court is the Federal Government or any of its Agencies, the State High Court loses jurisdiction. It is the Federal High Court, by virtue of Section 251 of the Constitution and the interpretation given by this court to that section and or other related sections or statutes that can lawfully exercise jurisdiction thereon. (p. 2322 H)**

*ELECTIONS - Party - Necessary party*

**3. It is beyond any dispute that the presence of INEC in the matter before the trial High Court was indispensable. It is more than a “mere inclusion of INEC as 2nd defendant” in the matter as nominal party, as learned counsel for the appellant persistently argued. This is because relief No. 4 of the plaintiffs’/ respondents’ statement of claim which was made in the alternative, claimed for an order mandating INEC to forthwith release and make available to the Abia State Independent Electoral Commission Voters Register in compliance with section 16 of the Electoral Act, 2006. (p. 2323 B)**

*Parties - Main & alternative relief*

**4. On the strength of the above averments, whether relief 4 (alternative) can, with all sense of responsibility, be regarded to be a mere averment in which the respondents did not seek any substantive relief against INEC? Be that as it may, it is trite law that a party is free to plead in the alternative, separately and distinctly as done by the respondents in relief 4. See *Metal Construction v. Aboderin* (1998) 6 SCNJ 161, where this court held that a plaintiff is entitled to plead two or more inconsistent sets of material facts and claim relief in the alternative. I agree with the learned counsel for the respondents in his submission that the respondents sought two main reliefs: first, an order restraining the appellant from conducting the Local Government Council elections in Abia State in contravention of the provisions of the Electoral Act, 2006 and secondly, an order directing the 2nd defendant at the trial court, to release to the appellant a voters register required by the Electoral Act for the conduct of the Local Government Council Elections in Abia State. As the prayers are in the alterna-**

***tive, the trial court or any other court is bound to grant only one at the expense of the other where the alternative relief was made as ancillary to the main relief.*** (p. 2324 A)

*APPEALS - Interlocutory stage - Substantive matter*

- B ***5. Finally, as the respondents conceded that the court below should not have determined the merit of the plaintiffs' case as it was decided on the issue of jurisdiction, I too agree that the court below overbusied itself unnecessarily by considering the merit of the suit before it at that point in time.*** (p. 2325 A)
- C

### **REPRESENTATION**

Appellants not in court not represented. Hearing Notice was sent to the appellant on 18/6/2012

- D J. N. Egwuonwu Esq. with A. S. Akingbade Esq., for the respondents

### **CASES REFERRED TO**

- Adeyemi v. Opeyori (1976) 9-10 SC 31  
W. S. W. Ltd. v. Iron & Steel Workers Union of Nigeria (1987) 1 NSCC 133  
E Oduku v. Govt. of Ebonyi State (2009) 9 NWLR (pt. 1147) 439  
Obi v. INEC (2007) 45 WRN 1  
NEPA v. Edegbero (2002) 18 NWLR (pt. 798) 79  
F Oloruntoba-Oju v. Dopamu (2003) 31 WRN 19  
Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1  
Metal Construction v. Aboderin (1998) 6 SCNJ 161  
Anyia v. Iyayi (1993) 7 NWLR (pt. 305) 290  
A-G Kwara State v. Warah (1995) 7 NWLR (pt. 405) 121  
G Anigboro v. Sea Trucks Nig. Ltd (1995) 6 NWLR (pt. 399) 43  
Onuora v. Okeke (2005) 10 NWLR (pt. 932) 47

### **STATUTES REFERRED TO**

- Constitution of Federal Republic of Nigeria 1999, ss. 7(4), 251  
H Electoral Act 2006, ss. 10(1)(2)(3)(4), 16

### **LEAD JUDGMENT BY MUHAMMAD JSC**

The respondents, herein, as plaintiffs at the Federal High Court, sitting at Abuja (trial court) commenced by a writ of summons, the

suit which gave rise to this appeal. Their claims were as follows:

*“i. A declaration that by virtue of section 7[4] of the 1999 Constitution, section 10[1][2][3] of the Electoral Act, 2006, S.11[4] of the Electoral Act, 2006 and S.16 of the Electoral Act, 2006, Abia State Independent Electoral Commission has no power to conduct elections for Local Government Councils on the 19th day of May, 2007 in the absence of Voters’ register. B*

*ii. A declaration that any purported method for the conduct of the forthcoming local government elections which runs contrary to the provisions of the Electoral Act, 2006 and the 1999 Constitution C is unconstitutional, null and void.*

*iii. An order of mandatory injunction restraining Abia State Independent National Electoral Commission from holding and/or conduction local government elections in Abia State on the 19th day of May, 2007 or any other date until the voters register is duly corrected, updated and issued by the Independent National Electoral Commission. D*

*iv. In the Alternative, an order mandating Independent National Electoral Commission to forthwith release and make available E to the Abia State Independent Electoral Commission voters register in compliance with Section 16 of the Electoral Act, 2006. (see Record pages 7-8).”*

By an interim order made on the 17th day of May, 2007, the trial court restrained the Abia State Independent Electoral Commission, the appellant herein, from conducting Local Government Elections in Abia State on the 19th day of May, 2007. According to the appellant, it entered a conditional appearance to the respondents’ suit. On the 22nd of May, 2007, the appellant filed a motion on notice challenging the jurisdiction of the Federal High court to entertain respondents’ suit. After taking arguments on the Preliminary Objection, the trial court dismissed appellants Preliminary Objection. The appellant appealed to the court below against the dismissal of its Preliminary Objection. The court below on the 4th of June, dismissed the appeal. The appellant further appealed to this court. F G H

Two issues were formulated in the appellant’s brief. They are as follows:

*“i. Was the Court of Appeal right when it held that the Federal High Court has jurisdiction to entertain Respondent’s suit?*

ii. *Was the Court of Appeal right when it held that Section 182[1][d] of the Abia State of Nigeria Local Government Law No. 2 of 2006 is 'inconsistent with a statute of the National Assembly and to that extent of the inconsistency void?'*

B Learned counsel for the respondents formulated only one issue for determination. It reads as follows:

*"Whether the lower court was right in affirming the decision of the trial court that it had jurisdiction to entertain the suit."*

C While making his submissions, the learned counsel for the appellant argued that the appellant is not an agent or agency of the Federal government. Issues pertaining to Local Government Election of any State of the Federation including Abia State is not one of the subjects upon which jurisdiction is conferred on the Federal High Court under Section 251 of the 1999 Constitution or any other Act. D The Federal High Court, therefore, clearly, lacks jurisdiction to entertain respondents' suit. The inclusion of INEC as 2nd defendant does not make any difference as the respondents did not seek any substantive relief against INEC, and relief No. [iv] sought against INEC by the respondents is an alternative relief.

E Learned counsel for the respondents, on the other hand, submitted that from the ruling of the trial court, it is clear that the grounds upon which the trial court relied to found jurisdiction to hear the suit were from the nature of the plaintiffs claims and the Independent National Electoral Commission (INEC), an agency of the Federal F Government, was a party to the suit. Learned counsel submitted further that both the trial court and as well as the court below were right in their decisions that the trial court had jurisdiction to entertain the plaintiffs/respondents suit.

G ***This appeal poses a simple issue of jurisdiction of a court. The well founded principle of the law is that in the determination of whether a court has jurisdiction or not to try a matter placed before it, such a court must examine the nature of the claims.*** See Adeyemi & Ors v. Opeyori (1976) 9-10 SC 31; H W. S. W. Ltd. v. Iron & Steel Workers Union of Nigeria & Ors (1987) 1 NSCC 133 at p.140; Oduku v. Govt. of Ebonyi State (2009) 9 NWLR (Pt.1147) 439 at 452 F-G; Obi v. INEC (2007) 45 WRN 1 at 66. ***I think, I should add now, with the coming into effect of Section 251 of the Constitution of the Federal Republic of***

**Nigeria, 1999 (as amended) that the court will also have to examine the persons that make up the parties before it.** See: NEPA v. Edeghero (2002) 18 NRLW (Pt.798) 79.

Now, what were the claims of the plaintiffs/respondents before the trial court? As can be gleaned from the plaintiffs' statement of claim, the claims read as follows:

*"1. A declaration that by virtue of section 7[4] of the 1999 Constitution, section 10[1][2][3][4] of the Electoral Act, 2006, S.11[4] of the Electoral Act, 2006 and S.16 of the Electoral Act, 2006, Abia State Independent Electoral Commission has no Power to conduct elections for Local Government Councils on the 19th day of May, 2007 in the absence of voters' register."*

*2. A declaration that any purported method for the conduct of the forthcoming local government elections which runs contrary to the provisions of the Electoral Act, 2006 and the 1999 Constitution is unconstitutional, null and void."*

*3. An order of mandatory injunction restraining Abia State Independent National Electoral Commission from holding and or conducting local government elections in Abia State on the 19th day of May, 2007 or any other date until the voters' register is duly corrected, updated and issued by the Independent National Electoral Commission."*

*4. In the alternative, an order mandating Independent National Electoral Commission to forthwith release and make available to the Abia State Independent Electoral Commission voters' register in compliance with section 16 of the Electoral Act, 2006."*

The findings of the trial court on its jurisdiction which was challenged by the defendant/appellant reads in parts, as follows:

*"From this claim, it is obvious that the plaintiff is seeking redress against the 1st Defendant and the 1st Defendant in different capacities. Undoubtedly, the 2nd Defendant is an agency of the Federal Government of Nigeria. Section 251 of the 1999 Constitution vests Jurisdiction in the Federal High Court in matters affecting the interest of the Federal Government, its agents and agencies."*

*The claim in this suit relates to the 2nd Defendant and the fact that the 1st defendant sued along with the 2nd defendant does not alone in my view make the suit incompetent."*

*The 2nd defendant being an agency of the Federal Govern-*

*ment of Nigeria, any act that has to do with its administration, management, control and the operation and interpretation of the 1999 Constitution can be validly commenced before the Federal High Court. See Section 251[1][d] and [9] of the 1999 Constitution.*

B *On the whole I find and hold that the plaintiffs' case is proper before this court and that it has reasonable cause of actions."*

In affirming the decision of the trial court, the court below, after having cited several statutory and case law authorities, stated, inter alia:

C *"It is clear therefore from the above stated authorities inclusive of the statutory provisions especially the Electoral Act, 2006 that the Federal High Court has been given the necessary mandate to consider or adjudicate in the case in hand. It is safely within the concept of statutory jurisdiction.*

D *By virtue of Section 251[1], [q] and [r] and [s] of the 1999 Constitution, jurisdiction to hear suits challenging or touching on the administration, management and control of the Federal Government or any of its agencies are(sic) vested exclusively in the Federal High Court. NEPA v. Edeghero (2002) 18 NWLR (Pt. 798) 79."*

E On the necessity of making the 2nd defendant (whose name has somehow been missing in the appeal processes) a party, the court below observed:

F *"As a follow-up it was necessary for the plaintiffs/respondents to have made INEC a party. This is so because where a necessary party is not joined in a judicial process, the court or tribunal lacks jurisdiction to entertain the suit because of non-joinder of a necessary party...*

G *The situation is simple enough that this issue is in favour of the Respondents as I answer positively since a matter against that state Government agency as the case in hand cannot be effectively and conclusively determined without the Federal Agency, INEC being a necessary Party.*

H *In totality the lower court was right in dismissing the preliminary objection and asserting firmly that it had jurisdiction. It is in that view that I dismiss this appeal as lacking in merit and affirm the decision of the court below."*

Both decisions of the trial court and the court below are ad idem that the trial court possessed the necessary jurisdiction to deal



with the matter placed before it by the plaintiffs. This makes it to be a concurrent decision which requires special circumstances to warrant this court to interfere. No such special circumstances have been shown and I am reluctant to interfere with these decisions made by the two courts below.

I would have at this point in time, dropped my pen down, had it not been for the captivating argument put forward by the learned counsel for the appellant on two issues: [a] the nature of the reliefs sought from the trial court and [b] the status of the parties before the trial court. Permit me my lords to quote in extenso the said submissions:

*“4.05. Submit that the jurisdiction of the Federal High Court to grant declaratory and injunctive reliefs pursuant to the provisions of Section 251[1][r] of the 1999 Constitution inures only when such declarative or injunctive reliefs are sought against the Federal Government or any of its agents or agencies with respect to any of the subject matters enumerated under Section 251 of the 1999 Constitution or any other enabling Act. The appellant is not an agent or agency of the Federal Government. Issues pertaining to the Local Government Election of any state of the Federation including Abia State is not one of the subject upon which jurisdiction is conferred on the Federal High Court under Section 251 of the 1999 Constitution or any other Act.*

*4.06 The Federal High Court therefore clearly lacks jurisdiction to entertain Respondents suit. The mere inclusion of INEC as the 2nd defendant does not make any difference in our submissions. This is because the respondents did not seek any substantive relief against INEC. The relief [iv] sought against INEC by the respondents is an alternative relief. But what determines jurisdiction is the main claims and not alternative or ancillary claims.*

*It follows that if a court lacks jurisdiction to entertain the main claims, then it also lacks jurisdiction to entertain ancillary or alternative claims. See W. S. W Ltd. v. I. S. W. U. N. (2004) 7 WRN 58 at 75 lines 15 - 20; Tukur v. Government of Gongola State (1989) 4 NWLR H (Pt.117) 517.”*

I think I should start from the outset by correcting the position of the law which was wrongly reflected by the learned counsel for the appellant in the case of Oloruntoba-Oju v. Dopamu (2003) 31 WRN

19 at 36, where in one place in the record of appeal (page 92), in urging the court below to allow his appeal he quoted what the court of Appeal said in respect of mere inclusion in a suit of a Federal Government Agency without more could found jurisdiction in the Federal High Court:

- B *"I now look at the issue from another angle. The lower court is a Federal High Court. It is a court of limited jurisdiction. Consequently, it cannot exercise jurisdiction over any cause or matter outside what is conferred on it by the enabling law. Section 251 of the 1999 Constitution which confers jurisdiction on a Federal High Court does not*  
 C *provide that any suit in which the Federal Government or any of its agencies, functionary or parastatals is a party, must be heard by a Federal High Court. It follows that there is no blanket provision which confers exclusive jurisdiction on the Federal High Court in suits against*  
 D *or by the Federal Government or any of its agencies regardless of the subject matter of the suit."*

It is to be observed that:

- a) Dopamu case (supra) was decided by the Court of Appeal in 2003  
 E b) Edegbero's case (supra) was decided by this court in 2002  
 c) the Court of Appeal was not guided by the pronouncement in Edegbero's case (supra).  
 d) the court of Appeal thus, did not present the correct position of the law on the jurisdiction on matters affecting the Federal  
 F Government or any of its Agencies as per the decision of this court in Edegberos case (supra) vis-a-vis Section 251 of the Constitution of the Federal Republic of Nigeria, 1999.

- In NEPA v. Edegbero (supra) this court was invited to interpret  
 G section 230[1][q]-[s] of the constitution (suspension and modification) Decree No. 107 of 1993. The court, per Ogundare, JSC (now late) held, inter alia:

- "A careful reading of paragraphs [q] - [s] reveals that the intention of the lawmakers was to take away from the jurisdiction of*  
 H *the state High Court and confer exclusively on the Federal High Court actions in which the Federal Government or any of no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action."*

***Thus, irrespective of the nature of the claim, once any of***

**the parties before a State High Court is the Federal Government or any of its Agencies, the State High Court loses jurisdiction. It is the Federal High Court, by virtue of Section 251 of the Constitution and the interpretation given by this court to that section and or other related sections or statutes that can lawfully exercise jurisdiction thereon.** B

**It is beyond any dispute that the presence of INEC in the matter before the trial High Court was indispensable. It is more than a “mere inclusion of INEC as 2nd defendant” in the matter as nominal party, as learned counsel for the appellant persistently argued. This is because relief No. 4 of the plaintiffs’/ respondents’ statement of claim which was made in the alternative, claimed for an order mandating INEC to forthwith release and make available to the Abia State Independent Electoral Commission Voters Register in compliance with section 16 of the Electoral Act, 2006.** C D

To underscore the importance and indispensability of INEC as a necessary party in the suit before the trial court the following averments from the Statement of Claim are relevant:

*“2. The 1st defendant is a statutory body saddled with the responsibility of organizing, conducting and supervision of Local Government Elections and the delineation of Elections wards in the Local Government Areas in Abia State.* E

*5. The Plaintiffs aver that the 2nd defendant among other vested powers is vested with a mandatory statutory power to compile, maintain and update on a continuous basis a National Register of Voters.* F

*7. The plaintiffs further aver that as a result of the above, their supporters were subsequently disenfranchised.* G

*8. The plaintiffs aver that on the 5th day of May, 2007 the Chairman of the Independent National Electoral Commission (INEC) Prof. Maurice Iwu via Thisdays Newspaper Vol.12 No. 4396 pg. 4 called on State Governments preparing for council polls to forget the idea for now as the voters’ register for the exercise is not ready.* H

*9. The Plaintiffs aver that the (INEC) Chairman in the same Newspaper publication urged various States preparing for the council elections to put it on hold until June ending when the voters’ register is expected to be ready.*

10. *The Plaintiffs aver that the voters' registration from INEC is a constitutional requirement before the State Independent Electoral Commission (SIECS) could conduct Local Government elections.*"

**On the strength of the above averments, whether relief 4 (alternative) can, with all sense of responsibility, be regarded to be a mere averment in which the respondents did not seek any substantive relief against INEC? Be that as it may, it is trite law that a party is free to plead in the alternative, separately and distinctly as done by the respondents in relief 4. See Egbe v. Adefarasin (1987) 1 NWLR (Pt.47) 1; Metal Construction v. Aboderin (1998) 6 SCNJ 161, where this court held that a plaintiff is entitled to plead two or more inconsistent sets of material facts and claim relief in the alternative. I agree with the learned counsel for the respondents in his submission that the respondents sought two main reliefs: first, an order restraining the appellant from conducting the Local Government Council elections in Abia State in contravention of the provisions of the Electoral Act, 2006 and secondly, an order directing the 2nd defendant at the trial court, to release to the appellant a voters register required by the Electoral Act for the conduct of the Local Government Council Elections in Abia State. As the prayers are in the alternative, the trial court or any other court is bound to grant only one at the expense of the other where the alternative relief was made as ancillary to the main relief.**

In the appeal on hand, it is my humble understanding that the grant of the first set of reliefs which were in the main directed against the appellant was totally unrelated and did not affect in anyway, the second (alternative) relief which was directed against INEC, as that relief was sought as an option but independent of the other reliefs sought in the same action. INEC, from all intents and purposes, was a necessary party in the suit. That was what the trial court held that the 2nd defendant before it (INEC) being an Agency of the Federal Government of Nigeria could be validly sued before that court as per the provision of Section 251 of the 1999 Constitution. That is also why the court below held that it was necessary for the plaintiffs/respondents to have made INEC a party as a matter against the Abia State Government (Local Government Elections) could not be effec-

tually and conclusively determined without the Federal Government Agency, INEC, being a necessary party. It beats all imaginations that the appellants skillfully omitted the name of INEC in the appeal processes at both the court below and in this court.

***Finally, as the respondents conceded that the court below should not have determined the merit of the plaintiffs' case as it was decided on the issue of jurisdiction, I too agree that the court below overbusied itself unnecessarily by considering the merit of the suit before it at that point in time.*** B

This appeal lacks merit and it is hereby dismissed. I affirm the decision of the two lower courts. It is ordered, hereby, that the trial court should hear the substantive suit on its merit, with INEC as a necessary party, if need be. I make no order as to costs. C

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### OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother I. T. Muhammad, JSC. I agree that the appeal is devoid of any merit and should be dismissed. Just for the purpose of emphasis, I wish to state the established principle of law that it is the plaintiff's claim that determines the jurisdiction of a court. The case of hand deals with the proposed conduct of a local government election by Abia State Independent National Electoral Commission. The subject matter of the plaintiffs' claims as well as the reliefs sought are firmly within the exclusive jurisdiction of the Federal High Court to adjudicate thereupon on the authority of section 251 of the 1999 Constitution of the Federal Republic of Nigeria. F

From the nature of the claim, INEC being a Federal Government agency is a party to the suit as a 2nd defendant. It is not possible therefore to dispose of the appeal without INEC being made a party. This is a jurisdictional issue which is very fundamental and paramount. G

The two lower courts are on firm grounds in their decisions and I therefore agree with the conclusion arrived thereat by my learned brother I. T. Muhammad, JSC that the appeal lacks merit and is hereby dismissed. I also abide by the orders made therein the lead judgment inclusive of that made as to costs. H

**ALAGOA JSC**

This is an appeal against the judgment of the Court of Appeal Abuja Division (hereinafter referred to as the Court below) delivered on the 4th June, 2008. The present Respondents as Plaintiffs had  
B taken out a writ of summons against the Appellant as Defendant at the Federal High Court wherein they claimed as per paragraph 15 of their Statement of Claim as follows:-

1. A DECLARATION that by virtue of section 7(4) of the 1999  
C Constitution, section 10(1) (2) (3) (4) of the Electoral Act, 2006, S.11 (a) of the Electoral Act, 2006 and S.16 of the Electoral Act, 2006, Abia State Independent Electoral Commission has no power to conduct elections for Local Government Councils on the 19th day of May, 2007 in the absence of voters' register.

D 2. A DECLARATION that any purported method for the conduct of the forthcoming local government elections which runs contrary to the provisions of the Electoral Act, 2006 and the 1999 Constitution is unconstitutional, null and void.

3. AN ORDER of mandatory injunction restraining Abia State  
E Independent National Electoral Commission (ABSIEC) from holding and or conducting local government elections in Abia State on the 19th day of May, 2007 or any other date until the voters' register is duly corrected, updated and issued by the Independent National Electoral Commission.

F 4. In the Alternative, an order mandating Independent National Electoral Commission the Abia State Independent Electoral Commission voters' register in compliance with section 16 of the Electoral Act, 2006.

G The contention of the Respondents was that Abia State Independent Electoral Commission (ABSIEC) had no power to conduct elections for local government councils on the 19th May, 2007 in the absence of voters' register etc. The 1st Respondent (ABSIEC) was restrained by the interim order by the said Federal High Court pending the determination of a Motion on Notice. The Appellants had  
H filed a Motion on Notice challenging the jurisdiction of the Federal High Court to entertain the Respondents' suit. The Federal High Court took arguments on the preliminary objection and finding no merit in it dismissed same. Dissatisfied, the Appellants appealed to the Court

below which dismissed same hence this further appeal to this court.

I consider the sole issue formulated by the Respondent as appropriate for the hearing and determination of this appeal and that issue is whether the court below was right to have held that the Federal High Court had the jurisdiction to entertain the Respondents suit.

It is well settled on the authorities that it is the Plaintiff's claim that determines the jurisdiction of a Court. See ANYA v. IYAYI (1993) 7 NWLR PART 305 page 290; A.G. KWARA STATE V. WARAH (1995) 7 NWLR (PART 405) 121; ANIGBORO V. SEA TRUCKS NIG. LTD (1995) 6 NWLR (PART 399) 43; ONUORA v. OKEKE (2005) 10 NWLR (PART 932) 47. The subject matter of the Plaintiffs' claim as well as the reliefs being sought for is within the exclusive jurisdiction of the Federal High Court to adjudicate upon by virtue of the provisions of section 251 of the Constitution of the Federal Republic of Nigeria 1999. It is not in doubt that the 2nd Defendant, the Independent National Electoral Commission (INEC) is a Federal Government Agency. The voters register is in the custody of INEC and it is not therefore possible to dispose of the claim without INEC being made a party. The Court below is right in its findings.

It is for these reasons and the fuller reasons given by the learned brother Ibrahim Tanko Muhammad, JSC in his read judgment which I had the privilege to read before now and which I completely agree with that I am also of the view that the appeal lacks merit and ought to be dismissed. I dismiss same while abiding by the orders contained in the said lead judgment including the order on costs.

G

H