

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH FEBRUARY, 2017. SC. 396/2015  
**CORAM:- M. U. PETER-ODILI, K. B. AKA'AH, K. M. O. KEKERE-EKUN, C. C. NWEZE, E. EKO, JJSC**

REV. PROF. PAUL EMEKA ..... APPELLANT  
AND  
1. REV. DR. CHIDI OKOROAFOR  
& 18 OTHERS ..... RESPONDENTS

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COURT PROCESSES - Service - Fundamental nature of - Service of originating process is condition precedent - To exercise of Court's jurisdiction - As party against whom suit is filed should be aware of same (H1)

COURT PROCESSES - Affidavit of service - Regularity of - Affidavit of service deposed to by bailiff stating fact, place, mode and date of service - Shall be prima facie proof of the matter stated therein (H2)

COURT PROCESSES - Affidavit of service - Objection to - Where defendant intends to challenge such affidavit - He must file affidavit denying service - Detailing specific facts showing he was not served (H3)

APPEALS - Evidence - Reevaluation - Appellate Court does not ordinarily interfere with findings of trial Court - But where evidence is documentary - It is in as good a position as trial Court to evaluate same (H4)

COURT PROCESSES - Substituted service - Order for - Where there is order for specific mode of service - Bailiff must carry out the terms of the order - As he has no discretion in the matter (H5)

COURT PROCESSES - Service - Affidavit of - Deposition - Bailiff is not precluded from deposing to specific facts - Where he has

not effected service in accordance with order of Court (H6)

AFFIDAVITS - Conflict in - Resolution - Where there is material conflicts in affidavits deposed to on either side - Learned trial Judge ought to have called for oral evidence - To resolve same (H7)

COURT PROCESSES - Service - Proof - As there was challenge to mode of service - Onus shifted by extension to bailiff to prove that service was effected - In compliance with order of Court (H8)

JURISDICTION - Determination of - It is plaintiff's claim that determines the jurisdiction of Court - To entertain a cause or matter (H9)

FAIR HEARING - Observance of - Non judicial body - Administrative bodies even though they are not Courts - Are bound to observe rules of natural justice - And fairness in their decision (H10)

FAIR HEARING - Breach - Allegation of - Basis - In order to seek enforcement of right to fair hearing - The alleged violation must be in respect of proceedings before Court - And not before domestic tribunal (H11)

## **FACTS**

By a Motion on Notice filed before the High Court of Enugu State, Enugu, plaintiff/appellant applied for the enforcement of his fundamental rights. The application was brought pursuant to Order 2 Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; sections 6(6), 36(1), (2), (4) & (5), 38(1), 39(1) & (2) and 42(1) of the 1999 Constitution of the Federal Republic of Nigeria and under the African Charter on Human and Peoples Rights. The application was supported by 85-paragraph affidavit and a written address. The reliefs sought are inter alia, a declaration that the meeting held by defendants/respondents on 6th March, 2014, purportedly as a meeting of the General Com-

mittee of the Assemblies of God, Nigeria, at the National Secretariat of Assemblies of God, to determine allegations made against appellant was illegal and unconstitutional. Appellant filed *ex parte* application seeking *inter alia*, for an order of interim injunction restraining respondents and their servants from taking any further steps in connection with all matters connected to the subject of the substantive application pending the hearing and determination of the application on notice. The relief among others, was granted and the substantive application was adjourned for hearing. Thereafter, respondents brought application seeking *inter alia*, for an order setting aside the service of the originating process on them. The application challenged the service of the processes on respondents on the ground that the service was contrary to the definite address at Evangel House, plot R8 Ozubulu Street, Independence Layout, Enugu, Enugu State whereat the Honourable Court ordered that services be effected.

The parties duly filed and exchanged written addresses in respect of their applications. Having considered the various processes before it, the Court in its ruling refused the application to set aside the service of the originating processes. The objection challenging the competence of the suit was overruled and appellant's reliefs were granted. N30 Million costs were awarded against respondents and in favour of appellant. Aggrieved, respondents appealed to the Court of Appeal Enugu Division. The appeal was allowed and judgment of the trial Court set aside for being a nullity. The Court set aside the service of the *ex-parte* order and the substantive motion on notice on respondents on the ground that service of the Originating processes on respondents was not proved. The Court further set aside the *ex-parte* orders and held that appellant's suit is incompetent and that the trial Court lacks jurisdiction to entertain it, as the Fundamental Rights enforcement procedure was not the proper procedure to have been employed by appellant in seeking redress for his claims. Not being the final Court, the Court went ahead to consider the merit of the appeal. Ultimately the appeal was allowed and the suit before the trial Court was struck out. Dissatisfied, appellant appealed to the Supreme

Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right when it set aside the service of the Originating Processes on the respondents on the ground that the service was not in accordance with the Order of the High Court.

2. Whether the reliefs sought by the appellant at the High Court was (sic) competent and rightly brought under Fundamental Rights Enforcement Procedure.

**HELD** (Unanimously dismissing the appeal per **KEKERE-EKUN JSC**)

*COURT PROCESSES - Service - Fundamental nature of*  
**1. My Lords, I deem it appropriate to commence the resolution of this issue by considering, briefly, the law governing the service of originating processes. The settled position of the law was clearly stated by His Lordship, Musdapher, JSC (as he then was) in Kida Vs Ogunmola (2006) 6 SCNJ 165 @ 174 thus: "... service of process on a party to an action, particularly an originating process, is crucial and fundamental. See Auto Import Export v. Adetayo (2000) 18 NWLR (Pt. 799) 554; S.G.B.N v. Adewunmi (2003) 10 NWLR (Pt. 829) 526; Mbadinuju v. Ezuka (1994) 8 NWLR (Pt. 364) 535. Failure to serve process where service of process is required is a fundamental vice. It deprives the trial Court of the necessary competence and jurisdiction to hear the suit. In other words, the condition precedent to the exercise of the Court's jurisdiction was not fulfilled."**

**It is therefore settled beyond dispute that the service of an originating process on a party to an action is a condition precedent to the exercise of the Court's jurisdiction, as any party against whom a suit or process is filed has the right to know that a suit had been instituted against him, what the claims are and an opportunity to**

**defend himself if he has a defence thereto.** (pp. 81 F/82 F)

*COURT PROCESSES - Affidavit of service - Regularity of*

**2. Section 168 (1) of the Evidence Act, 2011 provides for the presumption of regularity of official acts. It provides thus;** B

***“(1) Where any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”*** C

**The law is trite that an affidavit of service deposed to by the bailiff of a Court stating the fact, place, mode and date of service and describing the process or document served shall be prima facie proof of the matter stated in the affidavit.** D

**The law is equally settled that the presumption of regularity in this regard is rebuttable.** (p. 90 A)

*COURT PROCESSES - Affidavit of service - Objection to* E

**3. A defendant who intends to challenge the affidavit of service deposed to by the bailiff must file an affidavit denying service and detailing specific facts, which show that he could not have been served on the date, or at the time, or at the place or in the manner deposed to. It would then be for the Court to determine whether or not the party complaining was indeed served accordingly.** F

(p. 90 D)

*Evidence - Reevaluation* G

**4. An appellate Court would ordinarily not interfere with the findings of a trial Court where that Court has carried out its duty of evaluating the evidence before it and ascribing probative value thereto. However, where the evidence is documentary, an appellate Court is in as good a position as a trial Court to evaluate same, where there is a complaint that the finding of the Court is not sup-** H

**ported by the evidence before it. (p. 90 G)**

*COURT PROCESSES - Substituted service - Order for*

**5. There was no request for service to be effected either on the 1st respondent or his agent. Also evident from the application is that Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu was the address supplied by the appellant as the 1st respondent's address for service. The word "whose" is used to identify the person or entity to whom or which something belongs. By the application filed by the appellant, the person to be served with the processes had been removed from the realm of uncertainty with the specific request that the processes be served on all the respondents by delivery to the 1st respondent at Evangel House. As rightly pointed out by Chief Agabi, SAN, once the order was made, the bailiff had a duty to carry it out according to its terms. He had no discretion in the matter. This is not an issue of technicality but compliance with an order of Court.**

**I am unable to agree with learned trial Judge that the words "whose address for service is Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu", could mean anything other than that the processes were to be served at that address.**

**It is the usual practice when applying for substituted service to specify the name in which service is to be effected, the person on whom it is to be effected and where. The applicant chooses the vocation where he believes the processes are most likely to come to the attention of the person to be served. He may also request a particular mode of service, such as pasting at the party's last known abode or place of business, by handing it to a named adult at a particular address or by publication in a widely circulating newspaper. The order would be made in accordance with the request. Having sought and obtained such a specific order, it cannot be open to a bail-**

**iff effecting service to do so at any other address or by any other means without a fresh order obtained from the Court. (p. 92 F)**

*COURT PROCESSES - Service - Affidavit of - Deposition*

**6. I had earlier reproduced the analysis of this affidavit by the lower Court as found at pages 752-753 of the record. I am in full agreement with the lower Court that there were many questions begging for answers in the said affidavit, as to how the purported service of the processes at an address other than the one contained in the order of Court came about. With due respect to the learned senior counsel for the appellant, the standard format of an affidavit of service does not preclude the bailiff from deposing to specific facts where he has not effected service in accordance with the order of Court. There was no reference in the order to any Shedrack Lawrence or to No. 5 Mbanano Street, therefore the averment that he did not know Shedrack Lawrence personally was immaterial, since he was not ordered by the Court to serve Shedrack Lawrence with any process nor was he ordered to serve any process at No.5 Mbanano Street. (p. 93 H)**

*AFFIDAVITS - Conflict in - Resolution*

**7. The initial affidavit of service deposed to by the bailiff clearly showed on its face that service was not effected in the manner stated in the order of Court. The 1st respondent deposed to facts purporting to show that the affidavit of service was false. He also averred that at 4.20pm when the processes were allegedly served on Shedrack Lawrence he was at Evangel House. The bailiff on the other hand in his further affidavit averred that the 1st respondent was not available at Evangel House when he went there to effect service; that he and the pointer,**

one Mr. Richard Akwoh were informed that the 1st respondent had left for the day and had gone home, which was why he went to serve the processes at 5 Mbanano Street. I agree with the lower Court that having regard to the material conflicts in the affidavits deposed to on either side, the learned trial Judge was not at liberty to pick and choose which averments to believe without calling for oral evidence to resolve same. The 1st respondent averred categorically in paragraph 16 of his counter affidavit to the affidavits of service of the bailiff that he was prepared to call witnesses to rebut the averments therein. In the circumstances of this case, the non-filing of a further affidavit to challenge the averments in the second affidavit sworn to by the bailiff, was not fatal. The 1st respondent had already sworn to facts stating his whereabouts at the time and on the day the processes were allegedly served on him and how the processes eventually got to his notice. No useful purpose would have been served by a further repetition of the same facts. (p. 94 G)

*COURT PROCESSES - Service - Proof*

8. It has been argued that as long as the processes came to the respondents' attention and they appeared in Court and were represented by counsel, it would amount to enthroning technicalities on the altar of substantial justice to contend that service was not proved. With due respect to learned senior counsel, the issue here is that at the behest of the appellant, a particular mode of service was ordered by the Court. On the first day the matter came up for hearing i.e. on 17/4/2014, learned senior counsel for the 1st respondent, D.C. DENWIGWE, SAN challenged the mode of service, as the processes were dropped at Mbanano Street, two buildings away from the 1st respondent's residence and not at the address provided in the order of Court.

Thus, his appearance at that stage was under pro-



**test. Having challenged the mode of service and compliance with the order of Court the onus shifted to the appellant, and by extension, the bailiff of the Court to prove that service was effected in compliance with the order of Court. As observed earlier, the learned trial Judge could not have determined the issue without oral evidence to resolve the conflicts in the affidavit evidence on either side. I therefore agree with the lower Court that service of the originating processes was not proved.**

**This issue is accordingly resolved against the appellant.** (p. 95 F)

*JURISDICTION - Determination of*

**9. It is settled law that it is the plaintiff or claimant's claim that determines the jurisdiction of the Court to entertain a cause or matter.**

**It is the appellant's contention that his fundamental rights, as guaranteed by Section 36 (1), 38 (1), 40 and 42 of the Constitution had been and/or were being violated by the respondents. Since it is the appellant's claim that will determine whether the suit was initiated by due process of law, it is immaterial at this stage that the respondents did not file a counter affidavit.**

(pp. 100 E/101 C )

*FAIR HEARING - Observance of - Non judicial body*

**10. All administrative bodies, even though they are not Courts, are bound to observe the rules of natural justice and fairness in their decisions, which affect the rights and obligations of citizens.** (p. 106 B)

*FAIR HEARING - Breach - Allegation of - Basis*

**11. However, in order to seek to enforce his fundamental right to fair hearing provided for under Chapter IV of the Constitution, the alleged violation must be in respect of**

***proceedings before a Court or Tribunal established by law and not before domestic or standing ad-hoc Tribunals.***

***Thus, while the appellant may contend that he has not been treated fairly by the respondents, since they or the***  
B ***Assemblies of God Church are not a Court or Tribunal established by law, his remedy does not lie under Chapter IV of the 1999 Constitution (as amended). The right to be a member of a particular church or the right to***  
C ***worship at a particular church or to be a minister of a particular church is not a right cognizable under Chapter IV of the 1999 Constitution.***

***In the instant case, having agreed with the Court below that the appellant's principal complaints are his***  
D ***dismissal as General Superintendent and his suspension as a member of the Assemblies of God Church, the fact that learned counsel has drafted the reliefs as seeking the enforcement of the appellant's fundamental rights,***  
E ***does not make his complaint a constitutional one.***  
(p. 106 A/G)

### **REPRESENTATION**

Chief (Mrs.) A. Z. Offiah, SAN with, S.I. Ameh, SAN, J.U. Ajii,  
F Esq., R.O. Agomo, Esq. Ikechukwu Onuomo, Esq., C. S. Nwobuoni (Mrs.), I. O. Peter, Esq., Shehu Michael, Esq., Lovett Chukwukoire (Mrs.), L.N. Dike, Esq., A. U. E. Oboi, Esq., R. O. Adokole, Esq., C. O. Sabo (Miss) and R. O. Mohammed (Miss), for the Appellant  
G Chief Kanu Agabi, SAN with him, E. C. N. Igbokwe, Esq. Jonny Asoluko, Esq., A. E. Okworo (Mrs.), Bob James, Esq., Ayo Akam, Esq., A. A. Onyeji, Esq., Joel Ejiofor, Esq., J. O. Udensi, Esq., Izeubigie lyoboso, Esq., Mary-Frances Orji (Miss), A. C. Akwuete,  
H Esq., Peter Eriwode, Esq., Uchenna Ede (Mrs.), Emmanuel Bisong Otinua, Esq., Anthony Odule, Esq. and Oporo Maxwell C., Esq., for the Respondents

**CASES REFERRED TO**

- INEC v. Musa (2003) 3 NWLR (pt. 806) 72
- Ibrahim v. JSC (1998) 14 NWLR (pt. 584) 1
- Egolum v. Obasanjo (1999) 7 NWLR (pt. 511) 255
- Okesuji v. Lawal (1991) 1 NWLR (pt. 170) 661
- Jikantoro v. Dantoro (2004) ALL FWLR (pt. 216) 390 B
- Adelusola v. Akinde (2004) 12 NWLR (pt. 887) 29
- Folorunsho v. Shaloub (1994) 3 NWLR (pt. 333) 413
- Odutola v. Kayode (1994) 2 NWLR (pt. 324) 1
- Ihedioha v. Okorochoa (2016) 1 NWLR (pt. 1492) 147 C
- John Holt Ventures Ltd. v. Oputa (1996) 9 NWLR (pt. 470) 214
- Sadiku v. A.G. Lagos State (1994) 7 NWLR (pt. 355) 235
- Iwuoha v. NIPOST Ltd. (2003) 8 NWLR (pt. 822) 308
- Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 397
- S.G.B.N v. Adewunmi (2003) 10 NWLR (pt. 829) 526 D
- Mbadinuju v. Ezuka (1994) 8 NWLR (pt. 364) 535

**STATUTES & RULES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999, ss. 6(6), 36(1), (2), (4) & (5), 38(1), 39(1) & (2) and 42(1) E
- Chiefs (Appointment and Deposition) Law Cap 20 Vol. 1 Laws of Northern Nigeria 1963, s. 6
- Fundamental Rights (Enforcement Procedure) Rules 2009, O. 2 rr. 1, 2 and 3 F

**LEAD JUDGMENT BY KEKERE-EKUN JSC**

The appellant herein, by a motion on notice filed on 15/4/2014, applied to the High Court of Enugu State, Enugu Judicial Division, Holden at Enugu, for the enforcement of his fundamental rights. The application was brought pursuant to Order 2 Rules 1, 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Sections 6(6), 36(1), (2), (4) & (5), 38(1), 39(1) & (2) and 42(1) of the 1999 Constitution of the Federal Republic of Nigeria and under the African Charter on Human and Peoples Rights. The application was supported by a statement setting out the names, address and description of the applicant, the reliefs

sought and the grounds for seeking the reliefs. It was also supported by an 85-paragraph affidavit of facts with several exhibits attached thereto and a written address. The reliefs sought, as contained at pages 29-32 of the record, are as follows:

B 1. A DECLARATION that the meeting held by the respondents on 6th march, 2014, purportedly as a meeting of the General Committee of the Assemblies of God, Nigeria, at the National Secretariat of Assemblies of God, to determine allegations made against the applicant was illegal and unconstitutional, the same not having been properly convened and constituted in accordance with the provisions of the Constitution and Bye-Laws of the Assemblies of God, Nigeria, 2002 and in contravention of the rights of the applicant to peaceful exercise of the duties of his office as General Superintendent of the Assemblies of God, Nigeria enshrined in the D 1999 Constitution of the Federal Republic of Nigeria (as amended)

E 2. A DECLARATION that the proceedings and decisions of the said purported meeting of the General Committee of the Assemblies of God, Nigeria culminating in a purported dismissal and suspension of the applicant is null and void, the proceeding having been conducted and the decisions having been reached in contravention of the Rules of Natural Justice and the applicant's right under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

F 3. A DECLARATION that the applicant's alleged dismissal from ministry and suspension as a member of the Assemblies of God, Nigeria is in contravention of the applicant's right to fair hearing as secured under Section 36 of the 1999 Constitution of G the Federal Republic of Nigeria (as amended)

H 4. A DECLARATION that the chairing of the purported General Committee meeting of 6th March, 2014 by the 4th respondent and the participation of 11 members of the Executive Committee of the Assemblies of God, Nigeria and 9th to 19th respondents, who are members of the body of Ambassadors of the kingdom, who had made the allegations against the applicant amounts to being a judge in their own cause and was in contravention of the applicant's right to fair hearing secured under Sec-

*tion 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).*

5. A DECLARATION that the letter dated 6th March, 2014 signed by the 1st, 2nd and 3rd respondents prohibiting the free association by the applicant with All Units, All Ministers, All Presbyters, All General Council Directors/Coordinators and All members in general of the Assemblies of God, Nigeria is in breach of the applicant's fundamental rights enshrined and secured under Section 40 and 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

6. A DECLARATION that the purported suspension of the applicant as a member of the Assemblies of God, Nigeria with the threatened implication of ex-communicating him from the Church is a contravention of the applicant's right to freedom of religion and worship in community with others and right to freedom of association secured under Section 38(1) and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

7. A DECLARATION that the purported dismissal and suspension of the applicant allegedly for the reason, inter alia, that the applicant sued the respondents to Court is in contravention of the applicant's right of access to Court and fair hearing as enshrined in Section 6(6) and 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

8. A DECLARATION that the decision to dismiss and suspend the applicant was ultra vires the body which met on 6th March, 2014 purportedly as the General Committee of the Assemblies of God, Nigeria, the same not being constituted of legitimate members of the General Committee and thus contravenes the applicant's rights under Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

9. A DECLARATION that the Body of Ambassadors of the kingdom and the Consultative Assembly are not persons authorized or organs cognizable under the extant 2002 Constitution and Bye-laws of the Assemblies of God, Nigeria and have no functions thereunder, no powers to try, investigate or discipline the applicant for any alleged misconduct and especially for any alleged criminal

*offences and their conducts therefore contravenes the applicants rights enshrined under Section 36(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*

B 10. AN ORDER OF INJUNCTION restraining the 5th, 6th and 7th respondents and other members of the 9-man Panel of Investigation set up to investigate allegations against the applicant, their privies, agents, cohorts, servants and any other person(s) whomsoever from taking any steps, actions or doing anything whatsoever purportedly for the purposes of trying, questioning or C investigating the applicant for any matters relating to allegations made against him by the respondents or by any other person(s) whomsoever or in respect of any other matters whatsoever relating to his actions or omissions as a member, Minister and or General Superintendent of the Assemblies of God, Nigeria.

D 11. AN ORDER OF INJUNCTION restraining the 2nd, 3rd and 8th respondents and other members of the eleven-man Constitution Review Committee purportedly set up at a supposed Emergency meeting of the Executive Committee of the General Council E of the Assemblies of God, Nigeria on 18/3/2014 from doing any act or taking any steps whatsoever for the purposes of revising, altering, re-drafting, amending, repealing, reviewing or in any manner whatsoever dealing with the extant 2002 Constitution and Bye-laws of Assemblies of God Nigeria, or bringing into existence F or operation any other Rules or Regulations for purposes of managing, organizing, administering and running of the affairs of the Assemblies of God, Nigeria.

G 12. AN ORDER declaring null and void any document in nature of a Constitution, Bye-laws, Rules, Regulations or any directives howsoever called or described intended to have any effect in the organization, administration, management and running of the affairs of the Assemblies of God, Nigeria other than the 2002 Constitution and Bye-laws of Assemblies of God, Nigeria.

H 13. AN ORDER OF INJUNCTION restraining the 1st respondent by himself, or through his servants, agents, privies, cohorts or any person(s) whomsoever, from parading himself or being paraded as the Acting General Superintendent of the Assem-

*blies of God, Nigeria.*

14. *AN ORDER OF INJUNCTION* restraining the respondents, their servants, agents, privies, cohorts by themselves or through any person(s) whomsoever, from interfering with or obstructing the applicant in the peaceful performance of his duties, functions and obligations of his office as General Superintendent of the Assemblies of God, Nigeria and the enjoyment of all the rights, privileges, benefits, remuneration and perquisites of the said office, or from exercising his rights as a Minister and member of the Assemblies of God, Nigeria.

15. *AN ORDER* for N500,000,000.00 general damages to the applicant against the respondents jointly and severally for various breaches and threats of breaches of the applicant's fundamental rights.

The appellant filed an ex-parte application along with the motion on notice, seeking various reliefs, including the following:

1. *An order of interim injunction* restraining the respondents, their servants, agents, privies, co-operators, collaborators, assigns, representatives, allies, surrogates and other person or persons whomsoever and howsoever described from taking any further steps in connection with or relation to all matters arising from or in any way connected to the subject of the substantive application pending the hearing and determination of the said application on notice.

5. *An order granting the applicant leave to serve the substantive application for the enforcement of his fundamental right and all other processes relating to the said application, on all the respondents by substituted means, to wit: by delivering same to the 1st respondent whose address for service is Evangel House, Plot R8 Ozobulu Street Independence Layout Enugu.*

The above stated reliefs, among others, were granted on 16th April, 2014 and the substantive application was adjourned to the following day, 17th April, 2014 for hearing.

On 25/4/2014, the respondents filed an application seeking the following orders:

a. *Setting aside the service of the originating process and*

*order in this suit effected by the bailiff of this Honourable Court at No. 5 Mbannano Street, Independence Layout, Enugu, Enugu State contrary to the definite address at Evangel House, plot R8 Ozubulu Street, Independence Layout, Enugu, Enugu State whereat the Honourable Court ordered that services be effected;*

- B *b. Setting aside the injunctive and restraining orders made ex-parte against the respondents on record in this suit; and*
- c. Striking out this suit for want of competence.*

The application was supported by a 12 paragraph affidavit C deposited to by the 1st respondent with two exhibits annexed thereto being the statement of claim in respect of Suit No. E/82/2014, a sister suit pending between the parties in the same Court and a copy of the proceedings of 13/3/2014 in the said suit.

D The application in essence challenged the service of the Court processes on the respondents. The 1st respondent in addition deposed to a counter affidavit in reaction to the affidavit of service deposed to by the bailiff of the Court. The bailiff also filed an affidavit in reaction to the 1st respondent's counter affidavit.

E The parties duly filed and exchanged written addresses in respect of the application. The substantive application was heard on 23/10/2014. After considering the various processes before it and the submissions of learned counsel, the learned trial Judge in a considered ruling delivered on 11/12/2014 refused the applica- F tion to set aside the service of the originating processes.

He also overruled the objection challenging the competence of the suit and granted the appellant's reliefs. N30 Million costs were awarded against the respondents and in favour of the appel- G lant.

The respondents were dissatisfied with the ruling and ap- pealed against it to the Court of Appeal, Enugu Division (hence- forth referred to as the lower Court) vide a notice of appeal filed on 22/12/2014. On 14/4/2015, the lower Court allowed the appeal H and set aside the judgment of the trial Court for being a nullity. The Court granted the application filed on 25/4/2014 and set aside the service of the ex-parte order and the substantive motion on notice on the respondents on the ground that service of the Originating



processes on the respondents was not proved.

The Court further set aside the *ex-parte* orders made on 16/4/2014 and held that the appellant's suit No. E/220m/2014 is incompetent and that the trial Court lacks jurisdiction to entertain it, as the Fundamental Rights enforcement procedure was not the proper procedure to have been employed by the appellant in seeking redress for his claims. Not being the final Court, after making these findings, the lower Court also considered the merit of the appeal. Ultimately the appeal was allowed and the suit before the trial Court was struck out. The appellant herein is aggrieved by this decision and has further appealed to this Court.

The parties before us duly filed and exchanged their respective briefs of argument in compliance with the Rules of this Court. At the hearing of the appeal on 29th November, 2016, CHIEF (MRS) A.Z. OFFIAH, SAN and S.I AMEH, SAN leading a team of learned counsel adopted and relied on the appellant's brief filed on 4/2/2016, the reply brief filed on 11/5/2016 and the list of authorities filed on 9/11/2016 and urged the Court to allow the appeal. She emphasized the fact that the dispute in this case is not between the appellant and the Assemblies of God Church but a specific dispute between the appellant and the respondents in their individual capacities. CHIEF KANU AGABI, SAN, also leading a team of learned counsel adopted and relied on the respondents' brief filed on 29/3/2016 and urged the Court to dismiss the appeal. He submitted that the fundamental rights enforcement Procedure is not the appropriate procedure for seeking the reliefs the appellant claims He also submitted that the appeal has become academic, as the tenure of office in issue expired in 2014.

The following six issues were distilled for the determination of appeal in the appellant's brief:

*1. Whether the Court of Appeal was right when it set aside the service of the Originating Processes on the respondents on the ground that the service was not in accordance with the Order of the High Court. (Ground 3 and 4)*

*2. Whether the reliefs sought by the appellant at the High Court was (sic) competent and rightly brought under Fundamental*

*Rights Enforcement Procedure. (Ground 2)*

3. *Whether the Court of Appeal was right when in its judgment it pronounced on the constitutionality of the powers of the CJN vis-à-vis Section 46(1), which was not an issue before it. (Ground 1)*

B 4. *Whether subsequent findings made by the Court of Appeal after it had held that Suit No. E/202M/2014 a nullity, is proper and valid in law. (Ground 5 and 6)*

C 5. *Whether the Court of Appeal was right when in seemingly considering the propriety of the damages awarded by the High Court, it went into a fact finding mission on issues which were not before it. (Grounds 8, 9 and 10)*

D 6. *Whether the Court of Appeal was right when in its judgment it made findings of fact and pronouncements against persons who were not parties to the suit and who were not heard. (Ground 7)*

E The respondents also formulated six issues for determination, which are similar in all material respects with the appellant's issues. I do not deem it necessary to reproduce them.

Before delving into the merits of the appeal, I consider it appropriate at this stage to set out briefly the facts that gave rise to the appeal, as can be gleaned from the record of appeal and the briefs filed.

F In November 2010, the appellant herein was elected General Superintendent of the Assemblies of God Church (henceforth referred to as the church) for a term of four years. During the course of his tenure, he was alleged to have committed various acts inimical to his oath of office involving alleged breaches of the church's  
G Constitution and by-laws. The 9th-19th respondents wrote a petition (Exhibit PE2) dated 24th September, 2013, which was circulated to all leaders of the church at various levels and was also published on the internet, social media and in the electronic and  
H print media. At the time the petition was written the appellant was also the Chairman of the Executive Committee of the Church, which committee is charged with responsibility for disciplinary matters. The appellant addressed the allegations made against him in a

letter dated 8/10/2013 (Exhibit PE3). According to the appellant, as a result of his response to the allegations, he received a vote of confidence from the pastors, presbyters and other members of the church. It was his contention that the 9th - 19th respondents were not pleased with this state of affairs and wrote a further petition accusing him of corruption and breach of the Church's Constitution. In an attempt to resolve the impasse, the appellant scheduled a meeting of the Executive Committee. It is however contended that after the meeting, the 1<sup>st</sup> - 3rd respondents and other members of the Executive Committee began to hold separate meetings in the home of the 4th respondent. On 6th March 2014, they convened a special session of the General Committee, the body which considers appeals from decisions of the Executive Committee, to consider the petitions. The appellant was invited but he declined to attend on grounds of non-compliance with the church regulations governing the convening and composition of a special session of the General Committee.

In the meantime, certain members of the church instituted a suit at the Enugu State High Court in Suit No. E/82/2014 to forestall the holding of the meeting scheduled for 6th March 2014, which was perceived to be a move by the respondents to remove the appellant from office. The appellant was not a party to that suit.

The meeting held nonetheless. Upon the conclusion of deliberations by the special session of the General Committee, the appellant's appointment as General Superintendent of the church was terminated. He was also suspended from membership of the church. He contended that his right to fair hearing had been breached in the circumstance. The action dismissing the appellant and some other members of the church was taken during the pendency of Suit No. E/82/2014. On 13/3/2014, parties in that suit were ordered to revert to the status quo ante bellum. It was the appellant's contention that notwithstanding this order, the respondents took steps to actualize their decision by ostracizing him by writing to members of the church and threatening to suspend or dismiss anyone who had dealings with him. It is also his conten-

tion that the reason given for his suspension from the church and the termination of his appointment as General Superintendent was that he had instituted an action against the church, whereas he was not a party to Suit No. E/82/2014. It was the appellant's further contention what as a consequence of the meeting of 6/3/14 he had been deprived of his remuneration/means of livelihood and that his public image had been tarnished. It was for all these reasons that he filed the application for the enforcement of his fundamental rights at the trial Court.

The respondents did not file a counter affidavit in respect of the appellant's application for the enforcement of his fundamental rights but challenged the issuance and service of the *ex-parte* orders on them, service of the originating processes and the propriety of the procedure adopted by the appellant to seek redress. Issue 1

Whether the Court of Appeal was right when it set aside the service of the originating process on the respondents on the grounds that service was not in accordance with the order of the High Court.

Arguing this issue, learned senior counsel for the appellant, Chief (Mrs.) A. J. Offiah, SAN, contended that in granting the appellant leave to serve the substantive application and all other processes on the respondents by delivering same to the 1st respondent "*whose address for service is Evangel House, Plot R8 Ozubulu Street, Independence Layout, Enugu*", the learned trial Judge did not order that service must be effected specifically at that address. She submitted that the given address is only an indication of a location where the 1st respondent could be found for the purpose of effecting service on him so as not to leave his whereabouts at large. She argued that this does not exclude the possibility of finding him at a different location and legitimately delivering the processes to him. She submitted that what is of essence is the fact that the processes have been delivered to the person to be served. She argued that it is the spirit of the order that is of paramount consideration. In support of this contention she relied on several authorities and urged the Court not to be swayed by mere legal technicalities. See: *INEC Vs Musa* (2003) 3 NWLR (pt. 806) 72; *Ibrahim vs.*

JSC (1998) 14 NWLR (Pt.584) 1: Egolum Vs Obasanjo (1999) 7 NWLR (Pt.511) 255 @ 413. She submitted that the 1st respondent having admitted that he received the processes at his residence at No.5 Mbanano Street, Independence Layout, Enugu, cannot complain of improper service. She submitted further that the service was in accordance with the Fundamental Rights (Enforcement Procedure) Rules (henceforth referred to as the Rules), particularly Order V Rules 2 and 7 thereof. B

She submitted that Order V Rule 7 of the Rules represents a paradigm shift from the usual strict requirements regarding service of originating processes and that the main consideration is the reasonable probability that the process served would, in the normal course of business, come to the attention of the person to be served. Referring to the 1st respondent's affidavit at page 434 of the record, she contended that he admitted service by deposing to the circumstances in which the processes came to his knowledge i.e. that the processes were dropped in front of a neighbour's gate, two buildings away from his, and that the said neighbour brought them to him on the night of 16/4/2014. She submitted that the initial affidavit of service deposed to by the bailiff of the trial Court was in the standard format of proofs of service and could therefore not accommodate full details of how the process was served and that the said bailiff was able to depose to fuller facts in reaction to the 1st respondent's counter affidavit challenging service. She submitted that the learned trial Judge correctly evaluated the affidavit evidence and drew the correct conclusion that the respondents were duly served. She argued that the trial Court having duly carried out the duty of ascribing probative value to the affidavit evidence, the lower Court was wrong to have embarked on a fresh assessment of the evidence, even if it would have reached a different conclusion. She cited several authorities in support of this submission. She submitted that the 1st respondent did not file a further affidavit to refute the averments in the bailiff's response to the appellant's counter affidavit. She observed that upon being served with the processes the respondents briefed counsel who represented them in Court on 17/4/2014, not to challenge service but to ask for C D E F G H

time to file their defence. Relying on the case of Okesuji Vs Lawal (1991) 1 NWLR (Pt.170) 661, she submitted that there is no better proof of service of an originating process than the appearance in Court of the person served.

B She submitted that the affidavit of service sworn to by the bailiff is prima facie evidence of proper service and that the onus is on the person who denies service to produce evidence in rebuttal. She maintained that contrary to the finding of the lower Court, the two affidavits deposed to by the bailiff were not contradictory C nor was the second affidavit an afterthought. She argued further that the trial Court, which made the order for substituted service was the best Court to interpret its own Order and that the lower Court ought to have accepted the interpretation given by the learned trial judge and his finding that services was effected in the manner D prescribed by the said Order. She submitted that alleged improper or irregular service of an originating process, as distinct from non-service goes to the procedural jurisdiction of the Court, which can be waived either by the parties or by the Court, whereas the substantive E jurisdiction of the Court cannot be waived. She referred to: Jikantoro Vs Dantoro (2004) ALL FWLR (Pt.216) 390 @ 414. She argued that in any event the respondents were not shown to have suffered any miscarriage of justice as a result of the striking out of their preliminary objection by the trial Court. She submitted F that the lower Court erred in setting aside service of the originating processes on the respondents when there was evidence that they had actual notice of the processes by virtue of service thereof on the 1st respondent's agent, one Shadrack Lawrence, at No, 5 G Mbanano Street, Independence Layout, Enugu. She submitted that to decline jurisdiction to hear the substantive application for the enforcement of the appellant's fundamental rights in the circumstance of this case would amount to enthrone technicality over substantial justice. She referred to Adelusola vs. Akinde (2004) 12 H NWLR (Pt. 887) 29.

In reaction to the above submissions, learned senior counsel for the respondents, CHIEF KANU AGABI, SAN, submitted that the basis for the setting aside of the service of the originating

processes by the lower Court was the appellant's failure to prove that service was effected on the respondents in accordance with the Order of the Court. He submitted that the lower Court did not base its findings on non-compliance with the provisions of the Fundamental Rights (Enforcement Procedure) Rules and that such contention does not arise from the judgment appealed against. B

He submitted that the Court having made an order that service be effected in a particular manner, the provisions of the Fundamental Rights (Enforcement Procedure) Rules, particularly Order V Rules 2 and 7 thereof could no longer apply to regulate the manner in which service was to be effected. He submitted that the order for substituted service took precedence over other Rules of Court that might have been applicable and automatically suspended the provisions of the Fundamental Rights (Enforcement Procedure) Rules. He argued that there were two components to the order: (i) D personal service on the 1st respondent and (ii) substituted service on 2<sup>nd</sup> - 19th respondents by delivering the processes to the 1st respondent personally. He submitted that since the Court ordered service on the 2nd - 19th respondents through the 1st respondent, E the alleged service on one Shedrack as agent of the 1st respondent could not amount to service in accordance with the order of Court. He noted that the appellant failed to appeal against the finding of the lower Court to the effect that the depositions in the bailiff's affidavit sworn to on 17/4/2014 did not prove that the originating F processes in the suit were served on the 1st respondent. He submitted that he is deemed to have accepted the finding. He contended that what the appellant has appealed against is the consequential decision of the lower Court after finding that service had G not been proved.

He argued that having impliedly conceded that service was not proved, he is not permitted to approbate and reprobate.

Learned senior counsel submitted that service on one Shedrack Lawrence, said to be one of the 1st respondent's work- H ers, did not amount to compliance with the specific order to effect service on the 1st respondent personally. He submitted further that the 1st respondent did not need to file a further affidavit in re-

sponse to the bailiff's second affidavit because the averments in the two affidavits deposed to by him were contradictory, as found by the Court below at pages 753 - 754 of the record. He relied on the case of: *Folorunsho Vs Shaloub* (1994) 3 NWLR (Pt.333) 413 @ 421 A - B. He reproduced the finding of the lower Court in this regard and highlighted a portion thereof, which he contended has not been appealed against. He noted that it was because of the inconsistency in the two affidavits deposed to by the same bailiff that the lower Court held that it lacked the power to choose which version to believe. He submitted that the inconsistency between the two affidavits was fatal, as they cancelled each other out. He submitted further that there is no appeal against the finding of the lower Court that the trial Court ought to have called for oral evidence to resolve the conflict as to the whereabouts of the 1st respondent at the time the processes were allegedly delivered to Shedrack Lawson, nor is there any appeal against the finding at page 751 of the record to the effect that the learned trial Judge did not properly consider the affidavit, which the bailiff deposed to shortly after the purported service and the averments in paragraphs 3, 4, 5 and 16 of the 1st respondent's counter affidavit. He contended that failure to appeal against the findings amounted to a concession by the appellant that the findings were correct.

Learned senior counsel submitted that the initial affidavit of service deposed to by the bailiff on 17/4/2014, one day after service was allegedly effected, suffered from several defects, to wit:

- i. No endorsement as to who received the originating process and its accompanying processes.*
- ii. No explanation as to why the copy of the process allegedly served on the 1st respondent did not bear the endorsement of Shedrack Lawrence who was alleged to have received them.*
- iii. No explanation as to why the processes were not served on 1st respondent at the prescribed address for service but purportedly delivered to Shedrack Lawrence at a different address.*

He submitted that it was only in the further affidavit sworn to on 3/6/14 that an attempt was made to explain the lapses. He argued that the inference to be drawn from this is that the facts



deposed to were not in existence at the time the original affidavit of service was sworn to and that the averments contained in the said affidavit amounted to an afterthought and were therefore not credible. He relied on: *Oghenevweta Vs The State* (1982) 1-2 SC (Reprint) 62; *Ndidi vs. The State* (2007) 5 SC 175; *Olatidayo vs The State* (2010) LPELR-9079 (CA). He urged the Court to reject the attempt to account for the failure to depose to all the material facts in the initial affidavit by blaming it on the standard format of a bailiffs affidavit of service. He also urged the Court to discountenance the contention that it was sufficient that the processes came to the respondents' knowledge and that they appeared and were represented in Court by counsel. He submitted that in the circumstances of this case, having sought and obtained an order for Substituted service on the 2<sup>nd</sup> 19<sup>th</sup> respondents by delivering the processes for the 1st respondent at a particular address, the appellant was bound to prove that the processes were served as stipulated in the order. Relying on the case of: *Odutola Vs Kayode* (1994) 2 NWLR (Pt.324) 1 @ 19-20, he submitted that delivery of the processes to Shedrack Lawrence, even if conceded, rendered the service ineffectual for non-compliance with the order of Court.

On the importance of the defendant's address for service on an originating process he cited the recent decision of this Court in: *Ihedioha Vs Okorocha* (2016) 1 NWLR (Pt.1492) 147 @ 176 D-H. He argued that the order for substituted service does not give the bailiff a discretion as to where to effect service.

With regard to the submission that the appearance of the respondents in Court was sufficient proof that the processes came to their notice and the reliance on *Jikantoro Vs Dantoro* (supra) and *Okesuji vs. Lawal* (supra), Chief Agabi, SAN distinguished the facts of those two authorities from the facts of this case on the ground that in the instant case, the respondents appeared under protest and applied by motion to set aside the service of the originating processes on the 1st respondent, whereas, in the cases referred to, the defendants did not appear under protest but submitted to the Court's jurisdiction.

He further submitted that the issue as to whether or not the

respondents suffered a miscarriage of justice by the striking out of their preliminary objection, is a departure from Issue 1 under consideration and does not arise from grounds 3 and 4 upon which the issue is predicated. In the circumstances, he urged the Court to strike out paragraphs 4.46 - 4.54 of the appellant's brief.

B He argued that where there has been improper service of an originating process the questions that arise are whether the Court has jurisdiction to proceed with the matter and whether, in the circumstances of this case, the service on Shedrack Lawrence instead of the 1st respondent was effectual. He maintained that an order of Court must be obeyed according to its specific terms. He submitted that the implication of the finding of the Court below that the bailiff's affidavit of service does not show that the processes were served, is that a condition precedent to the exercise of the Court's jurisdiction has not been fulfilled and the issue as to whether a miscarriage of justice was occasioned thereby does not arise. He urged the Court to resolve this issue in the respondent's favour.

E In her reply brief, Chief (Mrs.) Offiah, SAN, reacted to the submission that compliance with the Fundamental Rights (Enforcement Procedure) Rules was not an issue that arose before the lower Court and should be discountenanced, submitted that the Court is bound by its records. After reproducing a portion of the judgment relating to the issue, she referred to the notice of appeal, particularly Ground 3 thereof at page 828 of the records where the decision was challenged. On the need to controvert specific averments in the further affidavit of the bailiff, she cited the case of: Danladi Vs Danqiri & Ors. (2014) LPELR- 204020 (SC) and submitted that a general traverse does not meet the standard of rebuttal required by law in a counter affidavit. She contended that, having regard to the specific averments in the aforesaid affidavit, the onus shifted to the 1st respondent to show that the bailiff was lying. She also referred to Ahmed Vs Ahmed & Ors. (2013) LPELR-211143 (SC)

In reaction to the contention that the appellant did not appeal against the finding that the depositions in the affidavit of service did not prove that service was effected, she referred to Grounds

3 and 4 of the notice of appeal and submitted that the purpose of a ground of appeal is to isolate and accentuate for attack the basis of the Court's reasoning and that it is the grounds of appeal that give life, meaning and content to the issues raised in the appeal for determination. She cited several authorities including: John Holt Ventures Ltd. Vs Oputa (1996) 9 NWLR (Pt.470) 214 and Sadiku Vs A.G. Lagos State (1994) 7 NWLR {Pt.355} 235 and submitted that having complained that the lower Court erred in setting aside service of the originating processes on the respondents, the appellant was on the right track in fully canvassing the issue of service along with the reasoning, which formed the basis of the Courts findings. She submitted that it was a misconception for learned senior counsel for the respondents to isolate the Court's reasoning from the eventual decisions and contend that the appellant failed to appeal against them. She referred to: Iwuoha Vs NIPOST Ltd. (2003) 8 NWLR (Pt.822) 308, and argued that the respondents have not been misled in any way. She also submitted that a ground of appeal must be a challenge to the ratio of the decision and not every statement made by the Court in reaching its verdict. She cited Ikweki Vs Ebele (2005) 11 NWLR (Pt.936) 397. In paragraphs 2.21 - 2.25 of the reply brief she sought to distinguish the Facts in Odutola vs Kayode (supra) and Ihedioha Vs Okorochoa (supra) from the facts of this case.

***My Lords, I deem it appropriate to commence the resolution of this issue by considering, briefly, the law governing the service of originating processes. The settled position of the law was clearly stated by His Lordship, Musdapher, JSC (as he then was) in Kida Vs Ogunmola (2006) 6 SCNJ 165 @ 174 thus: "... service of process on a party to an action, particularly an originating process, is crucial and fundamental. See Auto Import Export v. Adetayo (2000) 18 NWLR (Pt. 799) 554; S.G.B.N v. Adewunmi (2003) 10 NWLR (Pt. 829) 526; Mbadinuju v. Ezuka (1994) 8 NWLR (Pt. 364) 535. Failure to serve process where service of process is required is a fundamental vice. It deprives the trial Court of the necessary competence and***

***jurisdiction to hear the suit. In other words, the condition precedent to the exercise of the Court's jurisdiction was not fulfilled."***

To underscore the importance of service, His Lordship continued at page 175 lines 5 - 7 (supra);

B *"Confining myself to the fundamental issue of service in this matter, I need not even consider the argument of counsel since where there is no service, there is no valid trial."*

The principle was re-stated in the recent decision of this Court in; Ihedioha Vs Okorocha (2016) 1 NWLR (Pt.1492) 148 @ 179 D-F by Okoro, JSC:

D *"... I agree that it is not every non-compliance with the Rules of Court that should vitiate the proceedings. However, where the non-compliance robs the Court of its jurisdiction, the processes and the proceedings must be set aside. I must emphasize that service of process is an important aspect of the judicial process. Failure to serve a named party with Court process offends Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999*  
E *(as amended). ... Any breach of this principle (of fair hearing) renders the proceedings a nullity. See Chime vs. Onyia (2009) All FWLR (Pt. 480) 673 @ 730-731 Paras H-B; (2009) 2 NWLR (Pt. 1124) 1."*

F See also: Skenconsult (Nig) Ltd. Vs Ukey (1981) 1 SC 6: Obimonure Vs Erinosho (1966) 1 ALL NLR 250: Craig Vs Kanseen (1943) K.B 256; National Bank (Nig) Ltd. vs. Guthrie (Nig) Ltd. (1993) 3 NWLR (Pt.284) 643.

G ***It is therefore settled beyond dispute that the service of an originating process on a party to an action is a condition precedent to the exercise of the Court's jurisdiction, as any party against whom a suit or process is filed has the right to know that a suit had been instituted against him, what the claims are and an opportunity to defend himself if he has a defence thereto.***  
H

Now, in the matter at hand, the issue is whether the originating processes were served on the respondents and if not, what is the consequence? The issues in contention are: whether service

of the originating processes on the 1st respondent in any manner or at any place other than in accordance with the order for substituted service was proper service and whether notice of the processes, however that knowledge was acquired, cures any defect in service on all the respondents. It is the contention of learned senior counsel for the appellant that since the 1st respondent admitted that he received the processes at his residence at No. 5 Mbanano Street, Independence Layout, Enugu, he, and by extension, the 2nd-19th respondents could not be heard to complain of improper service. Learned senior counsel for the respondents, on the other hand, argues, firstly that the lower Court was right when it held that from the affidavits deposed to by the bailiff, service had not been proved and secondly that the bailiff was bound to effect service of the originating processes on the 1st respondent in strict compliance with the terms of the order for substituted service, and that he had no discretion in the matter.

In order to better appreciate the submissions of learned senior counsel on either side, I deem it appropriate at this stage to reproduce relevant paragraphs of the affidavits and counter affidavits deposed to by the bailiff of the trial Court and by the 1st respondent. The first affidavit is the affidavit of service deposed to by the bailiff of the trial Court on 17/4/2014, one day after service which can be found at page 213D of the record. It reads thus:

*"I Emmanuel I. Ugwu Chief Bailiff of High Court Enugu make oath and say that on the 16th day of April 2014 at 4:20pm o'clock I served upon 1st -19th respondents ex parte Order, motion on notice, statement and address upon the complaint of Rev. Prof. Paul Emeka by delivering same personally to 1st respondent through Shedrack Lawrence at 5 Mabanano Street Independence Layout. Before the day I served the motion on notice I did not know Shedrack Lawrence personally, but after he was pointed out to me by Richard Akwoh, I asked him if he were Shedrack Lawrence and he said that he was. Sworn at High Court Enugu this 17th day of April 2014."*

In the 1st respondent's affidavit in support of the application to set aside service, deposed to on 25/4/14, he averred in para-

graphs 1, 2, 3, 4, 5, 6 & 9 thus:

B *“1. That in the night of 16/4/2014 a neighbour who stays next two buildings from my residence brought a bundle of documents which according to him was dropped outside their gate with a stone placed on top of it and informed me that he noticed that my name was written on the document hence he brought it to me.*

*2. That I never saw or met any person who dropped the documents at all. No such person handed the said documents to me.*

C *3. That I was shocked to hear that an affidavit of service was sworn to and filed in the Court to the effect that the bailiff of the Court handed any Court process to me on the said 16/4/2014. No Bailiff of the Court handed the Court process to me.*

D *4. The said affidavit of the said bailiff is an intentional falsehood.*

*5. That I have never been an agent to any other respondent on record in this suit.*

E *6. That the applicant - Prof. Paul Emeka has never had any difficulty in accessing me or other respondents in this suit and I verily believe that his option for substituted service of the Court processes in this suit is a ploy by him to take us unawares so that we will not be prepared to defend ourselves against him.*

F *9. That I am objecting to the purported service of process alleged against me and the competence of this alleged fundamental right application.”*

G He deposed to a second affidavit on the same day titled *“Counter affidavit against the bailiffs proof of service”* wherein he averred as follows in paragraphs 1, 2, 3, 4, 5, 10, 11, 12, 13 and 16 thereof at pages 433 - 435 of the record:

*“1. That I am the 1st respondent on record in this suit.*

H *2. That I have heard that the Bailiff of the Court swore on oath that he personally handed the Court processes including the ex parte Order of this Court made in this suit on 16/4/2014 to me at No. 5 Mbaifano Street Independence Layout, Enugu on 16/4/2014.*

*3. That up to 7.00pm on the 16/4/2014 I was not anywhere*

*within Mbanano Street. Instead I was at Evangel House at R8 Ozubulu Street, Independence Layout Enugu until after 6.00pm when I left for my residence.*

4. *That in the night of the said 16/4/2014 a neighbour who occupies the next two buildings to my residence came to inform me that he found a bundle of documents dumped in front of his gate with a stone placed on top of it and that when he examined the documents he noticed my name among others on the document, hence he brought them to me.*

5. *That when I looked at the documents I notice that they are Court processes with the applicant stated on it.*

10. *That it was during the proceedings of the Court that the applicant's counsel read out to the Court that the Bailiff of this Court swore to an affidavit of service to state that he gave the Court processes in this suit and the ex parte order of the Court personally to me.*

11. *That it was then that the attention of the Court was drawn to the fact that the address where the Bailiff claimed to have effected service on me is not the address at which the Court ordered service.*

12. *That I have never met the said Bailiff of this Court and he never met me. No officer or Bailiff of this Court or any Lawyer at all gave any process or order of this Court to me on 16/4/2014.*

13. *That the applicant had filed Suit No. E/82/2014 against myself and in this Court which is still pending before His lordship Hon. Justice A.O. Onovo. The applicant never had any difficulty in effecting service of the Court processes in that suit.*

16. *That the facts to which the Bailiff deposed in his purported affidavit of proof of service are intentional lies told by him to deceive the Court and distort the records. No service of the Court process in this suit was effected on me on 16/4/2014 by any Bailiff of the Court. I am objecting to and disputing that alleged service and I am prepared to call witnesses to show that I was not at the address and at the time when he claimed to have handed the processes or order to me."*

The bailiff deposed to another affidavit on 3rd June, 2014.

He averred in paragraphs 1 to 16 thus:

*"1. That I am a Chief Bailiff in the Enugu Judiciary, attached to High Court of Enugu State, Enugu judicial Division.*

*2. That on 2nd June, 2014, was shown Rev. Dr. Chudi Okoroafor's "Counter Affidavit against the Bailiff's Affidavit of Proof of service in Suit No. E.202m/2014*

*3. That I have read the same counter-affidavit and paragraphs 2, 3, 4, 5, 6, 12 and 16 of it is false. They are lies.*

*4. That in the course of my duty as Chief Bailiff on 16/4/2014 at about 3.05 pm, I was given 19 copies of the ex parte Order of Court and 19 copies of Motion on Notice, supporting Statement, Affidavit with Exhibits and written address for service on the respondents through the first respondent, Rev. Dr. Chidi Okoroafor.*

*5. That before then I did not know Rev. Dr. Chidi Okoroafor and I went with a pointer, Mr. Richard Akwah to Evangel House, Plot R8 Ozubulu Street, Independence Layout, Enugu.*

*6. That because it is very near the High Court we reached there quickly, Mr. Richard Akwah asked some staff there for Rev. Dr. Chidi Okoroafor in my presence, and the staff told us that he has just driven out to his house and will not come back to the office that day.*

*7. That we immediately turned and drove to Rev. Dr. Chidi Okoroafor's house at No. 5 Mbanano Street, Independence Layout where we met 3 security men wearing uniform of ALFA Security Nigeria Limited at the gate. I came out from the car and told them that I am a bailiff of the High Court and I want to serve Court processes on Rev. Dr. Chidi Okoroafor.*

*8. That one of them told me that Oga has just come back from work and he gave me visitors book to write and sign. I signed and he asked me to wait. He took the visitor's book to Rev. Okoroafor inside the house. So I waited at the gate with the other 2 security men and the pointer who was inside the car.*

*9. That after about 5 minutes, the security man did not come out. I got Rev. Dr. Chidi Okoroafor's phone number 0810 027 3333 from Mr. Richard Akwah and call him with my cell phone no. 0805*



10. *That he picked the phone, I told him that I am Chief Bailiff from High Court Enugu and I have Order of Court with Motion on Notice to serve him.*

11. *That he said Ok and instructed me to give the Court process to his security man, Mr. Shedrack Lawrence who gave me the visitor's book to sign.* B

12. *That immediately after this, the same security man came out of the house, and I asked him if his name is Shedrack Lawrence. He confirm (sic) that his name is Shedrack Lawrence and his Oga said I should give him the Court Order and Court processes to bring inside the house for him.* C

13. *That I gave all the 19 copies of the Court Order and 19 copies of the Court processes to Mr. Shedrack Lawrence. I asked him to sign my dispatch book and he declined. He said that oga told him only to receive the documents, not to sign any paper.* D

14. *That this was around 4.20 pm by the time I delivered the 19 copies of the Order and the Motion on Notice etc. to the Mr. Shedrack Lawrence on instruction of Rev. Dr. Chidi Okoroafor and we drove away.* E

15. *That it is not true that I dumped the Court Order and Court processes in the front of a gate at the no address along Mbanano street and went away. That I am a Chief Bailiff of High Court not a mad man, and I am familiar with service of Court processes.* F

16. *That my affidavit of service sworn to on 17/4/2014 is nothing but the truth. That the Counter-Affidavit against me is false and a lie.* G

After considering the various affidavits, the learned trial Judge found as a fact that the processes were not served on the 1st respondent at Evangel House, plot R8 Ozubulu Street, Independence Layout, Enugu, the address contained in the order for substituted service, but at No. 5 Mbanano Street, Independence Layout. He preferred and believed the facts deposed to by the bailiff and held at page 559 of the record: H

*"When one considers the two affidavits, the Court bailiff and*

*the 1st respondent, it would be clear that the 1st respondent has something to hide. Who is the faceless neighbour who lives two buildings away from his residence? Does the neighbour have any name? Is it the one living on the left or the right of his residence*  
 B *Such a vague description in the face of a full, positive and affirmative chronicling of the events leading to the service of the processes leaves much to be desired and a sour taste in the mouth."*

Relying on Order V Rule 7 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the learned trial Judge noted  
 C that service could be effected by handing over the processes to an adult or to someone who, for the purposes of service is regarded as an agent of the party to be served. He stated that the Rule provides for delivery of the process to an adult or some other person at the  
 D usual or last known place of abode of the party to be served if it is proved that there is reasonable probability that the document would, in the ordinary course, through the agent or that other person, come to the knowledge of the party sought to be served. He held that service was properly effected on the 1st respondent at his resi-  
 E dence through his agent. He also held that the order for substituted service did not direct that service must be effected at Evangel House but that the address described where the 1st respondent could be contacted. He held further that the processes were duly served on the 1st respondent in the manner prescribed by the order.

F As the learned trial Judge raised questions regarding the affidavits deposed to by the 1st respondent, so did the lower Court also raise some questions with regard to the affidavits deposed to by the bailiff. With regard to the affidavit of service deposed to on  
 G 17/4/2014, the Court below, at pages 752-753 of the record, had this to say:

*"The affidavit does not explain why processes ordered to be served on 1st appellant were served on one Shedrack Lawrence. The affidavit begs the question why the processes ordered to be*  
 H *served on 1st appellant whose address for service provided by the respondent was Evangel House Plot R8 Ozubulu Street, Independence Layout Enugu were rather served on Shedrack Lawrence at an entirely different address No. 5 Mbanano Street, Independence*

*Layout. The affidavit also begs the question why it was necessary that Shedrack Lawrence has to be pointed out to him (the bailiff) by Richard Akwah or why he was looking for Shedrack Lawrence to serve him the processes when his name is not listed as a party in the case and the processes were not addressed to him and when the order of the trial Court stated expressly and clearly the 1st appellant as the person to be served.* B

*It is glaring that the depositions in that affidavit did not prove that the originating processes in Suit No E/202M/2014 were served on 1st appellant. It is obvious that the judgment of the trial Court does not show that it actually considered the content of the said affidavit filed by the bailiff shortly after he effected service of the processes.* C

*The state of the depositions of the bailiff's said affidavit of proof of service sworn on 17/4/2014 gave credence to the 1st appellant's denial of services of the processes on him and his explanation in his counter affidavit of how the processes were brought to him by his neighbour residing two buildings away from his residence. The counter affidavit depose (sic) that the processes were not taken to or served at No. 5 Mbanano Street, but rather that they were dumped in front of the gate of a residence two buildings away from No. 5 Mbanano Street, Independence Layout Enugu."* D E

The lower Court proceeded to examine and identify contradictions in the two affidavits deposed to by the bailiff and held that in the circumstances the depositions were not credible and that the trial Court was wrong to have relied on them, as it was not open to the Court to choose which of the two versions to believe. The Court also held that the trial Court ought not to have relied on the irreconcilable conflicts in the affidavits of the bailiff and the 1st respondent, particularly as regards whether the 1st respondent was at Evangel House or at his residence between 3.05 pm and 7 pm, the period during which the bailiff alleged that the 1st respondent was not found at Evangel House, without resolving the conflict by calling on the parties to adduce further evidence. The Court held that the appearance of the respondents or their counsel in Court could not activate the jurisdiction of the Court to entertain the matter F G H

where service of the originating process was not in accordance with the Rules of Court or the order of the Court.

**Section 168 (1) of the Evidence Act, 2011 provides for the presumption of regularity of official acts. It provides thus;**

**B “(1) Where any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”**

**C The law is trite that an affidavit of service deposed to by the bailiff of a Court stating the fact, place, mode and date of service and describing the process or document served shall be prima facie proof of the matter stated in the affidavit. See: Schroder Vs Major (1989) 2 NWLR (Pt.101) 3 @ 11 E - H; Okoye Vs Centre Point Merchant Bank Ltd. (2008) 15 NWLR (Pt.1110) 335; Idisi Vs Ecodril (Nig) Ltd. (2016) LPELR-40438 (SC). The law is equally settled that the presumption of regularity in this regard is rebuttable. A defendant who intends to challenge the affidavit of service deposed to by the bailiff must file an affidavit denying service and detailing specific facts, which show that he could not have been served on the date, or at the time, or at the place or in the manner deposed to. It would then be for the Court to determine whether or not the party complaining was indeed served accordingly.** Earlier in this judgment I reproduced the two affidavits comprehensively deposed to by the 1st respondent.

**G An appellate Court would ordinarily not interfere with the findings of a trial Court where that Court has carried out its duty of evaluating the evidence before it and ascribing probative value thereto. However, where the evidence is documentary, an appellate Court is in as good a position as a trial Court to evaluate same, where there is a complaint that the finding of the Court is not supported by the evidence before it. See: Afolayan vs. Ogunrinde (1990) 1 NWLR (Pt.127) 369 @ 385 C; Obineche Vs**

Akujobi (2010) 12 NWLR (pt.1205) 383 416 H.

Learned Senior counsel for the appellant relied on Order V Rule 7 of the Fundamental Rights (Enforcement Procedure) Rules in support of the contention that the processes purportedly served on one Shedrack Lawrence, an agent of the 1st respondent, at his residence at No. 5 Mbanano Street, Independence Layout, Enugu, was proper in the circumstances of this case. Whether or not the said Rules were applicable to this case is one of the issues in contention in this appeal. This issue will be addressed anon. However, assuming the Rules are applicable, do they enure in the appellant's favour? The relevant provisions of Order V Rule 7 for the purposes of this appeal are Sub-rules (a) and (b), which provide as follows:

*"Order V Rule 7. Where it appears to the Court either after or without an attempt at personal service of the Court processes that for any reason, personal service cannot be conveniently effected, the Court may order that service be effected either -*

*(a) By delivery of the document to an adult person at the usual or last known place of abode or business of the party, to be served; or*

*(b) By delivery of the document to some person being an agent of the party to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or the person, come to the knowledge of the party to be served;..." (Emphasis mine).*

In prayer of the appellant's motion ex-parte filed on 15/4/2014, he sought the following relief:

*"An order granting the applicant leave to serve the substantive application for the enforcement of his fundamental right and all other processes relating to the said application, on all the respondents by substituted means, to wit: by delivering same to the 1st respondent whose address for service is Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu." (Emphasis supplied by me)*

In paragraphs 5 and 6 of the affidavit in support of the motion ex-parte, the appellant personally deposed to the following

facts:

“5. That the respondents reside in different parts of this country and some of them move about in pursuit of their various daily activities. That it will take quite some time and tedious effort for the bailiff of this Court to track them down and serve the substantive application on notice on each and every one of them personally.

6. That it will be impossible to reach and individually serve all the respondents. That as all the respondents are members of the Assemblies of God Church and is in touch with the 1st Respondent, it will be more effective that the processes be served on them by delivering same to the 1st respondent whose address is Evangel House Plot R8, Ozubulu Street, Independence Layout, Enugu, as it will easily come to their notice. (Emphasis mine)

It was on the basis of the above representation that the order was made. I have considered the views expressed by the learned trial judge and the Court below on the interpretation to be given to the order made. A careful perusal of the relief sought in the motion ex-parte and the averments in support thereof shows, as held by the lower Court, that the 1st respondent was to be served personally while the 2nd- 19th respondents were to be served through the 1st respondent, In other words the 1st respondent was to act as their agent for the purpose of service.

***There was no request for service to be effected either on the 1st respondent or his agent. Also evident from the application is that Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu was the address supplied by the appellant as the 1st respondent’s address for service. The word “whose” is used to identify the person or entity to whom or which something belongs. By the application filed by the appellant, the person to be served with the processes had been removed from the realm of uncertainty with the specific request that the processes be served on all the respondents by delivery to the 1st respondent at Evangel House. As rightly pointed out by Chief Agabi, SAN, once the***

**order was made, the bailiff had a duty to carry it out according to its terms. He had no discretion in the matter. This is not an issue of technicality but compliance with an order of Court.**

**I am unable to agree with learned trial Judge that the words “whose address for service is Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu”, could mean anything other than that the processes were to be served at that address.**

**It is the usual practice when applying for substituted service to specify the name in which service is to be effected, the person on whom it is to be effected and where. The applicant chooses the vocation where he believes the processes are most likely to come to the attention of the person to be served. He may also request a particular mode of service, such as pasting at the party’s last known abode or place of business, by handing it to a named adult at a particular address or by publication in a widely circulating newspaper. The order would be made in accordance with the request. Having sought and obtained such a specific order, it cannot be open to a bailiff effecting service to do so at any other address or by any other means without a fresh order obtained from the Court.**

The bailiff purportedly effected service of the processes on the 1st respondent on 16/4/14 and deposed to an affidavit of service the following day, 17/4/14. In the affidavit of service deposed to he averred inter alia that he effected service “*by delivering same personally to 1st respondent through Shedrack Lawrence at 5 Mbanano street Independence Layout. Before the day I served the motion on notice I did not know Shedrack Lawrence personally, but after he was pointed out to me by Richard Akwah I asked him if he were Shedrack Lawrence and he said that he was.*” **I had earlier reproduced the analysis of this affidavit by the lower Court as found at pages 752-753 of the record. I am in full agreement with the lower Court that there**

**were many questions begging for answers in the said affidavit, as to how the purported service of the processes at an address other than the one contained in the order of Court came about. With due respect to the learned senior counsel for the appellant, the standard format of an affidavit of service does not preclude the bailiff from deposing to specific facts where he has not effected service in accordance with the order of Court. There was no reference in the order to any Shedrack Lawrence or to No. 5 Mbanano Street, therefore the averment that he did not know Shedrack Lawrence personally was immaterial, since he was not ordered by the Court to serve Shedrack Lawrence with any process nor was he ordered to serve any process at No.5 Mbanano Street.** On the importance of a bailiff carrying out his statutory duty in accordance with the Rules or Order of Court. I refer to *Odutola Vs Kayode* (1994) 2 NWLR (pt.324) 1 @ 19 - 20 G - A, where Olatawura, JSC (of blessed memory) stated thus:

*“This case has brought out clearly the statutory and honest duties required of a bailiff: to serve in accordance with order of Court. Where personal service is ordered, he must serve that person personally. Where a substituted service either by pasting at the last known abode of the person required to be served, or by publication in a newspaper is ordered, any other service which is not in accordance with the clear and unambiguous language of the Court is ineffectual.*

*Bailiffs are officers of the Court. Any dereliction of duty in the discharge of their duties will cause unnecessary delay in the administration of justice. A false return of service on the part of the bailiff may lead to an attempt to deceive the Court. This in itself is an abuse of that order.”*

**The initial affidavit of service deposed to by the bailiff clearly showed on its face that service was not effected in the manner stated in the order of Court. The 1st respondent deposed to facts purporting to show that the affidavit of service was false. He also averred that at**



4.20pm when the processes were allegedly served on Shedrack Lawrence he was at Evangel House. The bailiff on the other hand in his further affidavit averred that the 1st respondent was not available at Evangel House when he went there to effect service; that he and the pointer, one Mr. Richard Akwoh were informed that the 1st respondent had left for the day and had gone home, which was why he went to serve the processes at 5 Mbanano Street. I agree with the lower Court that having regard to the material conflicts in the affidavits deposed to on either side, the learned trial Judge was not at liberty to pick and choose which averments to believe without calling for oral evidence to resolve same. The 1st respondent averred categorically in paragraph 16 of his counter affidavit to the affidavits of service of the bailiff that he was prepared to call witnesses to rebut the averments therein. In the circumstances of this case, the non-filing of a further affidavit to challenge the averments in the second affidavit sworn to by the bailiff, was not fatal. The 1st respondent had already sworn to facts stating his whereabouts at the time and on the day the processes were allegedly served on him and how the processes eventually got to his notice. No useful purpose would have been served by a further repetition of the same facts.

It has been argued that as long as the processes came to the respondents' attention and they appeared in Court and were represented by counsel, it would amount to enthroning technicalities on the altar of substantial justice to contend that service was not proved. With due respect to learned senior counsel, the issue here is that at the behest of the appellant, a particular mode of service was ordered by the Court. On the first day the matter came up for hearing i.e. on 17/4/2014, learned senior counsel for the 1st respondent, D.C. DENWIGWE, SAN challenged the mode of service, as the processes were dropped at Mbanano Street, two buildings away from the

**1st respondent's residence and not at the address provided in the order of Court.**

**Thus, his appearance at that stage was under protest. Having challenged the mode of service and compliance with the order of Court the onus shifted to the appellant, and by extension, the bailiff of the Court to prove that service was effected in compliance with the order of Court. As observed earlier, the learned trial Judge could not have determined the issue without oral evidence to resolve the conflicts in the affidavit evidence on either side. I therefore agree with the lower Court that service of the originating processes was not proved.**

**This issue is accordingly resolved against the appellant.**

#### **D Issue 2**

Whether the reliefs sought by the appellant at the High Court was (sic) competent and rightly brought under the Fundamental Rights Enforcement Procedure.

In arguing this issue, Chief (Mrs.) Offiah, SAN submitted that even though Suit No. E/82/2014 had already been filed challenging the validity of the meeting of 6/3/2014 and an order to revert to status quo had been made therein, the said suit did not address the infringement of the appellant's rights arising from the continued acts of the respondents after the order to revert to status quo had been made. She submitted that this is the gravamen of Suit No. E/202M/2014 that gave rise to this appeal. She submitted that the procedure of filing different suits though emanating from the same set of facts has received judicial endorsement in the case of: Sokoto LG Vs Amale (2007) 8 NWLR (Pt.714) 224 @ 240 - 247 G - A. On the constitutionality of the fundamental rights of citizens in Nigeria, she referred to Chapter IV of the 1999 Constitution and the following authorities: Chief (Dr.) O. Fejemirokun Vs. Commercial Bank Nig. Ltd. & Anor. (2009) 2 SCM 55 @ 71: (2009) 37 NSCQR 1 @ 27; (2009) 5 NWLR (Pt.1132) 588; Anuka Comm. Bank vs Olua (2000) 12 NWLR (Pt.682) 64.

Learned senior counsel drew the Court's attention to certain

paragraphs of the affidavit in support of the application to enforce the appellant's fundamental rights and some of the exhibits annexed thereto to illustrate the fact that the appellant had established several breaches of his fundamental rights. She referred particularly to the fact that the respondents had prohibited all members of various units of the church from associating with him including denying him the right to worship in communion with them. Referring to the finding of the lower Court that the appellant could not seek relief for the said infringement under Section 46 (1) of the Constitution, she submitted that there was no counter affidavit to challenge the appellant's averments that his right to fair hearing guaranteed by Section 36 (1) of the Constitution had been breached. That in the circumstances the averments are deemed admitted. She referred to: *Amgbare vs. Sylva* (2007) 18 NWLR (Pt.1065) 1 @ 30 - 31. She submitted that the procedure for seeking redress for the said infringements is provided for under Section 46 (1). She argued that the Court erred grievously in discounting all the proximate facts that led to the filing of the application. She submitted that the lower Court was wrong when it held that the basis of the appellant's claim was his dismissal and suspension. She referred to Exhibits PE19 (m), PE20 (m), PE21 (m) and PE22 (m), which she contended, persisted even after his dismissal and suspension. She submitted that the lower Court failed to dissociate the remote facts that gave rise to Suit No. E/82/2014 from the proximate facts that gave rise to the present application.

She submitted that it is the reliefs sought in an application for the enforcement of fundamental rights rather than the facts in support that determine the jurisdiction of the Court. She contended that the facts are not the determinant factor although they may serve as a guide. She submitted that the respondents intentionally trampled on the appellants rights with impunity. She relied on the case of: *Agbai Vs Okagbue* (1991) 7 NWLR (Pt.204) 391 where this Court deprecated such conduct. She urged the Court to resolve this issue in the appellant's favour.

In reaction to the above submissions, Chief Kanu Agabi, SAN submitted that contrary to the stand of learned senior coun-

sel for the appellant, this case is not a fundamental rights enforcement action, as the office claimed by the appellant in the action is not a fundamental right nor is the membership of the church a fundamental right enforceable by the Court. He submitted that the learned trial Judge appreciated this fact when he opined at page 533 of the record that the application relates to a previous suit (E/82/2014) in respect of the crisis rocking the Assemblies of God Church. On the true purport of the finding of the Court below on whether the appellant could come under Section 46 (1) of the Constitution, he submitted, referring to page 771 of the record, that the finding of the Court was that although a complaint that the proceedings of the General Committee violates the rules of natural justice is proper and cognizable in law, redress cannot be sought under Section 46 (1) of the Constitution but under other procedures provided in the High Court (Civil Procedure) Rules. He submitted that the said finding (reproduced at length in paragraph 4.07 of his brief) did not amount to a finding that the appellants right to fair hearing had been infringed but was a mere statement that the procedure employed by him was wrong.

He submitted that it is only when the main or principal complaint in an application is the enforcement or securing of the enforcement of a fundamental right that the Court would exercise jurisdiction to entertain the application under the Fundamental Rights (Enforcement Procedure) Rules. He submitted that where the main claim is not for the enforcement of fundamental rights, it is of no moment that ancillary claims allege the violation or threatened violation of fundamental rights. He relied on: *Tukur Vs Govt. of Taraba State* (1997) 6 NWLR (pt.510) 549; *University of Ilorin & Anor. Vs Oluwadare* (2006) 6-7 SC 154; *Jack Vs University of Agriculture* [2004] 1 SC (Pt.II) 108. He submitted that in this case, the appellant's main complaint is his dismissal as a minister of the church and the suspension of his membership by the General Committee of the Church. He urged the Court to hold that the alleged breaches of his fundamental rights were merely accessory to his principal complaint and that the proceedings by way of Fundamental Rights Enforcement were inappropriate.

Relying on several decisions of this Court, he submitted that the breach of fundamental rights under Section 36 (1) of the Constitution only arises where the allegations are against a Court or Tribunal established by law. In other words that a complaint based on breach of Section 36 (1) does not extend to non-judicial bodies and therefore the appellant's application did not fall within the purview of Section 46 (1) of the Constitution. See: Ekunola vs C.B.N. (2013) 15 NWLR (Pt.1377) 224 @ 262 G - H; Bakare Vs L.S.C.S.C. (1992) 8 NWLR (Pt.262) 641 @ 699 - 700 H - B. On this premise, he submitted that the lower Court was right when it held that reliefs 2, 3, 4 and 7, which relate to the decisions of the General Committee of the church, not being a judicial body, could not be entertained. He submitted further that the lower Court was also right when it held that the said reliefs 2, 3, 4 and 7 as well as reliefs 5 and 6 were all secondary reliefs arising from decisions taken at the meeting of 6/3/2014 and actions taken pursuant to those decisions. He agreed with the lower Court that reliefs 9, 10, 11, 12 and 15 are also secondary, ancillary and additional reliefs. He submitted that there is no appeal against the finding of the Court in respect of reliefs 2, 3, 4, 5, 6, 7, 9, 10, 11, 12 and 15.

Learned senior counsel distinguished the case of Peterside Vs IMB (Nig.) Ltd. (1993) 2 NWLR (Pt.278) 712 relied upon by learned senior counsel for the appellant on the ground that in that case, Niki Tobi, JCA (as he then was), in his lead judgment held that the Fundamental Rights Enforcement Procedure is limited to the enforcement of rights listed in Chapter IV of the Consultation and does not extend to the enforcement of a right to remain in employment. He argued that it was immaterial that the respondents did not file a counter affidavit, as this fact did not preclude the Court from determining whether the reliefs sought in the application satisfied the requirement of the law. He contended further that the law is settled that in determining the Court's jurisdiction, it is the plaintiff's claim that would be examined and that the lower Court properly examined the appellant's claims and facts deposed to in support thereof before reaching its conclusion. He referred to Ahmed Vs Ahmed (2013) 15 NWLR (Pt.1377) 274 @ 310. He

submitted finally that the appellant did not appeal against the finding of the lower Court that his principal claims do not seek the enforcement of his fundamental rights.

In reaction to the contention that the instant case does not challenge the validity of the meeting of 6/3/14, he submitted that the argument is untenable so long as the principal claims do not seek the enforcement of the appellant's fundamental rights. He argued further that by reliefs 1, 8, 13 and 14 the appellant sufficiently challenged the validity of the meeting of 6/3/14 and urged the Court to so hold.

In reply on points of law, learned senior counsel for the appellant submitted that having regard to the finding of the lower Court that there exists a complaint that the proceedings and decision of the meeting of the General Committee violated the appellant's right to fair hearing, the mode by which the appellant approached the Court is immaterial. She referred to: *F.R.N. Vs Ifegwu* (2003) 15 NWLR (842) 11. She referred to the preamble to the 1999 Constitution (as amended) and submitted that it recognizes the fact that good governance and the welfare of all citizens of this country is anchored on the principles of freedom, equality and justice.

***It is settled law that it is the plaintiff or claimant's claim that determines the jurisdiction of the Court to entertain a cause or matter.*** See: *Inakoju Vs Adeleke* (2007) 4 NWLR (Pt.1025) 427 @ 588 - 589 H - C: *Elabanjo Vs Dawodu* (2006) 15 NWLR (Pt.1001) 76; *Adeyemi Vs Opeyori* (1976) 9-10 SC 31; *Tukur vs Governor Gongola State* (1989) 4 NWLR (Pt.117) 517. It was held in: *Madukolu Vs Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 All NLR 587 at 594 that a Court is competent when:

- a. *It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;*
- b. *the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and*
- c. *the case comes before the Court initiated by due process*

*of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction”.*

See also: Skenconsult (Nig.) Ltd. Vs. Ukey (1981) 1 S.C. 6 at 62; Inakoju vs Adeleke (supra) @ 588 F.

The issue under consideration is to determine whether the application for the enforcement of the appellants fundamental rights was initiated by due process of law and upon fulfilment of any condition precedent to the Courts jurisdiction. Section 46 (1) of the 1999 Constitution (as amended) provides:

*“46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to the High Court in that State for redress.”*

***It is the appellant’s contention that his fundamental rights, as guaranteed by Section 36 (1), 38 (1), 40 and 42 of the Constitution had been and/or were being violated by the respondents. Since it is the appellant’s claim that will determine whether the suit was initiated by due process of law, it is immaterial at this stage that the respondents did not file a counter affidavit.*** See: Inakoju vs. Adeleke (supra) @ 588- 589 H-A. The Court below held that the principal reliefs do not pertain to the enforcement of the appellant’s fundamental rights but are ancillary thereto. It is for this Court to determine whether the lower Court was right. The importance of this consideration is elucidated in several decision of this Court.

Relying on the authority of Sokoto Local Government Vs Amale (2007) 8 NWLR (Pt.714) 224 @ 240-241 G-A, learned senior counsel for the appellant argued that the procedure of filing different suits emanating from the same facts is permissible and has received judicial endorsement. It is noted that being a decision of the Court of Appeal, it is of persuasive authority only. Be that as it may, it was held in that case that the case before the Court was not for a breach of or threat to the respondent’s fundamental right but a claim in respect of land. The Court held that the only option open to the respondent in the circumstances was to take out a writ of summons. Reference was made to the decision

of this Court in *Tukur Vs Govt. of Taraba State* (1997) 6 NWLR (Pt.510) 549 where it was held that in an application for the enforcement of fundamental rights it is a condition precedent that the enforcement of the fundamental right should be the main claim and not an accessory claim. It was further held per Ogundare, B JSC at 576 - 577 H - F (supra) that where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the Court cannot be properly invoked, as the suit would be incompetent.

C Interestingly, in *Tukur's* case, the main relief was for an order quashing the appellant's deposition as the Emir of Muri by the Taraba State Government. Some of the grounds for seeking reliefs under the Fundamental Rights (Enforcement Procedure) Rules were that his right to fair hearing had been breached because he was not given an opportunity of being heard before the order to depose him was given; that he was not given any notice of misconduct pertaining thereto; that the decision did not comply with the conditions precedent to the exercise of powers of deposition by the D Military Governor under Section 6 of the Chiefs (Appointment and Deposition) Law Cap 20 Vol. 1 Laws of Northern Nigeria 1963, applicable to Gongola State and was therefore null and void and of no effect. The appellant sought other reliefs including damages. E The trial High Court held that it lacked jurisdiction to entertain some of the reliefs including relief 1 seeking to quash his deposition and sub-reliefs (a) to (c) and 2 on the ground that they raised F chieftaincy questions, which ought to have been commenced by way of writ of summons. It however granted the relief for damages. On appeal to the Court of Appeal, the decision of the trial G Court was set aside on the ground that having found that it lacked jurisdiction to entertain the principal claims, it ought not to have assumed jurisdiction to entertain the other claims, which were merely accessories to the main claim.

H Upon a further appeal to this Court, it was held that the appellant ought to have come by way of Writ of summons in respect of all the reliefs. It was held that the proceedings were fatally defective, having not been initiated by due process of law. The



proceedings were held to be a nullity.

See also: *Jack Vs University of Agriculture* (2004) 1 SC (Reprint) (Pt.II) 100 @ 112 lines 5 - 23. In this case, the appellant instituted an action before the trial Court under the Fundamental Rights (Enforcement Procedure) Rules seeking various reliefs arising from her alleged wrongful suspension and dismissal by the respondent on grounds of misconduct. Some of the grounds for the reliefs sought were that she was not afforded the opportunity of a fair hearing and that the procedure for removing staff of the university on grounds of misconduct as provided for in Decree No. 48 of 1992, was not followed. This Court found and held that the real cause of action in the suit was wrongful dismissal from employment, which belongs to the common law class of claims, while an action for contravention or threatened contravention of a fundamental right belongs to a constitutional class of action specifically provided for and that the proper procedure must be adopted in each class of action. This Court reiterated its earlier position in *Tukur Vs Govt. of Gongola State* (1989) 4 NWLR (Pt.117) 517 @ 548 and *Tukur Vs Govt. of Taraba State* (supra) to the effect that where the main or principal claim is not the enforcement or protection of a fundamental right, the fundamental right procedure is not appropriate. The case of *F.R.N. Vs Ifegwu* (supra) relied upon by learned senior counsel for the appellant in fact supports the position of the respondent that for the enforcement of Fundamental rights procedure to be applicable, the principal relief must be for the enforcement of a fundamental right.

I shall now apply the above principles to the facts of the instant case. I have carefully examined the 15 reliefs sought by the appellant. I agree entirely with the learned Justices of the Court below that the main issues in controversy in Suit No. E/202M/2014 are the appellant's dismissal as a minister of the Assemblies of God Church and his suspension as a member of the Church; the unlawfulness of the meeting of the General Committee of the Church, which was not convened and constituted in accordance with the provisions of the Constitution of the Church; the illegal nature of the body (purportedly the General Committee of the

Church), which met on 6/3/2014, which was not composed of legitimate members of the General Committee of the Church. I also agree with the Court below that the complaints relating to the appellant's right to fair hearing as regards the meeting held on 6/3/14; his right to freedom of association, movement and freedom from discrimination as regards the letter written to unit heads directing them not to associate with him as General Superintendent of the Church, are all complaints arising from and incidental to his dismissal and suspension. In other words they are secondary to the main complaint. The learned senior counsel for the appellant has laboured gallantly to convince the Court that there is a difference between the remote and the proximate events that gave rise to the suit before the trial Court and that what is in issue is the action taken by the respondents even after the appellant's dismissal and suspension and in defiance of the order in Suit No. E/82/2014 to maintain the status quo ante bellum. I find myself unable to agree with this line of argument.

For purpose of illustration, I shall reproduce once again, at the risk of prolixity, reliefs 1, 8, 13 and 14 of the appellant's application:

*1. A DECLARATION that the meeting held by the respondents on 6th March, 2014, purportedly as a meeting of the General Committee of the Assemblies of God, Nigeria, at the National Secretariat of Assemblies of God, to determine allegations made against the applicant was illegal and unconstitutional, the same not having been properly convened and constituted in accordance with the provisions of the Constitution and Bye laws of the Assemblies of God, Nigeria, 2002 and in contravention of the rights of the applicant to peaceful exercise of the duties of his office as General Superintendent of the Assemblies of God, Nigeria enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended).*

*8. A DECLARATION that the decision to dismiss and suspend the applicant was ultra vires the body which met on 6th March, 2014 purportedly as the general Committee of the Assemblies of God, Nigeria, the same not being constituted of legitimate members of the General Committee and this contravenes the appli-*

*cant's rights under Section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).*

13. *AN ORDER OF INJUNCTION* restraining the 1st respondent by himself or through his servants, agents, privies, cohorts or any person(s) whomsoever, from parading himself or being paraded as the Acting General Superintendent of the Assemblies of God, Nigeria. B

14. *AN ORDER OF INJUNCTION* restraining the respondents, their servants, agents, privies, cohorts by themselves or through any person(s) whomsoever, from interfering with or obstructing the applicant in the peaceful performance of the duties, functions and obligations of his office as General Superintendent of the Assemblies of God, Nigeria and the enjoyment of all the rights, privileges, benefits, remunerations and perquisites of the said office, or from exercising his rights as a minister and member of the Assemblies of God, Nigeria. D

His Lordship, AGIM, JCA who wrote the leading judgment of the Court below, at pages 768 - 772 of the record undertook an in depth analysis of all the reliefs sought. I agree with him that reliefs 1, 8, 13 and 14 are the principal reliefs in the suit and that they stem from the main complaint that the appellant was wrongly dismissed and suspended from his positions as General Superintendent and member of the church respectively. All the other reliefs are incidental to this complaint. I also agree with the Court below that the right to the peaceful exercise of the appellant's duties as the General Superintendent of the Church is not one of the fundamental rights guaranteed under Chapter IV the 1999 Constitution. The appellant's right under Section 6 (6) of the 1999 Constitution, whatever it may be, is not one of the fundamental rights guaranteed under Chapter IV of the Constitution. F

I equally agree with the lower Court that reliefs 13 and 14 do not fall within the aforesaid fundamental rights guaranteed by the Constitution. H

Section 36 (1) of the Constitution provides:

*"36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any*

*government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other Tribunal established by law and constituted in such manner as to secure its independence and impartiality.” (Emphasis supplied)*

***All administrative bodies, even though they are not Courts, are bound to observe the rules of natural justice and fairness in their decisions, which affect the rights and obligations of citizens.*** See: Bakare Vs L.S.C.S.C. (1992) 8 NWLR (Pt.262) 641 @ 699 H. ***However, in order to seek to enforce his fundamental right to fair hearing provided for under Chapter IV of the Constitution, the alleged violation must be in respect of proceedings before a Court or Tribunal established by law and not before domestic or standing ad-hoc Tribunals.*** See: Ekunola Vs C.B.N. (2013) 15 NWLR (1377) 224 @ 262 - 263 H - A. In Bakare Vs L.S.C.S.C. (supra) @ 700 A - B, this Court, per Nnaemeka Agu, JSC had this to say:

*“The Courts in exercise of their power of judicial review are constantly called upon to scrutinize the validity of instruments, laws, acts, decisions and transactions. In the exercise of the jurisdiction, the Courts can declare them invalid or ultra vires and void, not because they are unconstitutional in terms of Section 33 of the Constitution [now Section 36 of the 1999 Constitution], but because they offend against the rules of natural Justice of audi alteram partem or nemo judex in causa sua, or offends against the rules of fairness, or otherwise offends the rule of natural justice. All these are in the realm of administrative and not constitutional law. The great divide is that Section 33 deals with judicial bodies and does not necessarily extend to all bodies not judicial but all the same deciding on rights and obligations.”*

***Thus, while the appellant may contend that he has not been treated fairly by the respondents, since they or the Assemblies of God Church are not a Court or Tribunal established by law, his remedy does not lie under Chapter IV of the 1999 Constitution (as amended). The right to be a member of a particular church or the right***

**to worship at a particular church or to be a minister of a particular church is not a right cognizable under Chapter IV of the 1999 Constitution.**

**In the instant case, having agreed with the Court below that the appellant's principal complaints are his dismissal as General Superintendent and his suspension as a member of the Assemblies of God Church, the fact that learned counsel has drafted the reliefs as seeking the enforcement of the appellant's fundamental rights, does not make his complaint a constitutional one.** His Lordship, Niki Tobi, JCA (as he then was) had this to say in *Peterside Vs I.M.B.* (1993) 2 NWLR (pt.278) 712 @ 718-719.

*"It has now become a fashion or style for parties to push or force the provisions of Chapter IV into most claims which cannot in law be accommodated by the Chapter. Parties at times take undue advantage of the general and at times nebulous provision of the Chapter and try to tailor in their actions even when the size of the 'cloth' does not fit into it. The provisions of Chapter IV though appear omnibus and large both in their character and context are chained here and there by constitutional gadgets by way of safeguards.*

*...Counsel by his professional calling and expertise may dexterously frame a claim or relief to have the semblance of a breach of a constitutional right as contained in Chapter IV of the Constitution. He does this to give the matter a higher status in the litigation process. ...But where an action does not have a constitutional flavour in the sense that the provisions of the Constitution are not breached or in the process of being breached, it cannot be elevated to the status of a constitutional wrong. A trial judge should in such circumstances, be able to apply the eye of an eagle to scrupulously examine the character and context of the claim with a view to removing the chaff from the grain and come to grips with the camouflage or disguise in the action. He has to unveil the pretentious legal phraseology of the action and take an appropriate decision."*

I am of the considered view that the Court below was properly guided in light of the above admonition. The appellant has not

shown why this Court should interfere. In conclusion, I answer issue 2 in the negative and resolve it against the appellant.

Having resolved issues 1 and 2 against the appellant, I am of the view that no useful purpose would be served by considering the remaining issues. The failure to prove that the respondents were served with the originating processes in compliance with the order for substituted service renders the service ineffectual and liable to be set aside. I also agree with the Court below that the Fundamental Rights Enforcement Procedure was inappropriate in the circumstances of this case and affected the competence of the trial Court to hear the suit. The proceedings therefore amounted to a nullity and were rightly held to be so by the lower Court See: *Madukolu vs Nkemdilim* (1962) 2 SCNLR 341. Having upheld the finding of the Court below in this regard, it follows that all other findings of the Court on the merit of the application were made obiter. The finding of the Court below that the suit is incompetent is upheld. I therefore hold that the appeal lacks merit and is hereby dismissed. The application for the enforcement of the appellant's fundamental rights in Suit No. E/202M/2014 is hereby struck out for being incompetent.

There shall be no order for costs.

### F **PETER-ODILI JSC**

I agree with the judgment just delivered by my learned brother, Kudirat Motonmori Kekere-Ekun JSC and to underscore my support I shall make some comments on the reasoning.

This appeal has arisen from the decision of the Enugu Division of the Court of Appeal dated 14th April 2015 in which that Court set aside the judgment of the High Court of Enugu State.

Until the issues giving rise to this appeal, the appellant was a Minister of the Assemblies of God Church and was elected General Superintendent of the Church in November 2010 for a term of four years which would end by November 2014. The appellant continued to hold onto the office until the problems that threw up the suit leading to this current appeal.

The appellant had at the Court of first instance sought the reliefs stated hereunder:

1. A declaration that the General Committee which examined the allegations against the appellant was unconstitutional and was a contravention of the rights of the appellant to peaceful exercise of the duties of his office. B

2. A declaration that the decision dismissing the appellant from office and suspending him as a member of the church was null and void, the Proceedings having been conducted and the decisions having been reached in contravention of the Rules of C Natural Justice and the appellant's rights under Section 36 of the 1999 Constitution.

3. A declaration that the purported dismissal of the appellant from office violated his right to fair hearing under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as D amended).

4. A declaration that the members of the General Committee which ordered the suspension of the appellant were judges in their own cause in that they were both accusers and judges thus E violating the appellant's right to fair hearing secured under Section 36 of the 1999 Constitution.

5. A declaration that prohibition of the appellant from associating with all units, all ministers, all Presbyters, all General council Directors/Coordinators and all members in general of the as- F semblies of God, Nigeria is breach of the appellant's fundamental rights.

6. A declaration that the purported suspension of the appellant from membership of the church is a contravention of the ap- G pellant's right to freedom of religion and worship in community with others and right to freedom of association.

7. A declaration that the purported dismissal and suspension of the appellant on the ground that he had instituted action against the respondents was a violation of the appellant's right of H access to Court and fair hearing.

8. A declaration that the decision to dismiss and suspend the appellant was ultra vires the General Committee the same not

being constituted of legitimate members of the General Committee

9. A declaration that the “*Body of Ambassadors of the Kingdom*” and the Consultative Assembly are not persons authorized to try the appellant and had no jurisdiction to try, investigate or discipline the appellant for any alleged misconduct and especially for any alleged criminal offences.

The trial Court granted the said reliefs and the respondents herein appealed and the Court of Appeal, Enugu Division allowed the appeal and set aside the Ruling of the trial Court which created the dissatisfaction on which the appellant has based the appeal to the Supreme Court.

The background facts are well captured in the lead judgment and I see no need to go into them here except as to utilizing any excerpts therefrom as the need arises.

Chief (Mrs.) A. J. Offiah SAN on the date of hearing 29th day of November 2016 adopted appellant’s brief of argument filed on 4/2/2016 and a reply brief filed on 11/8/16. In the brief of argument, six issues were identified for the determination of the appeal which are thus:

1. Whether the Court below was right when it set aside the purported service of the originating processes on the respondents on the ground that the service was not in accordance with the order of the trial Court. (Arising from grounds 3 and 4 of the Grounds of appeal.

2. Whether the Court below was right when it held that reliefs sought by the appellant did not qualify as fundamental rights enforceable under Section 46 of the 1999 Constitution and the Fundamental Rights (Enforcement Procedure) Rules (arising from Ground 2 of the Notice of Appeal).

3. Whether the Court below was right when it held, on the issue of damages, that the Chief Justice of Nigeria acted ultra vires his powers under S. 46(3) of the 1999 Constitution when he made rules to include redress for violations or threatened violations of African Charter on Human and Peoples Rights (Arising from Ground 1 of the Notice of Appeal.)

4. Whether having held that the Suit No. E/202M/2014 was



incompetent and that the trial Court lacked jurisdiction to determine it, the Court below, not being the apex Court was still within its duty to consider or pronounce on other issues before the Court and, if so whether the appellant has made out a case to warrant the setting aside of any of the findings made by the Court below in the exercise of that duty. (Arising from Grounds 7, 9 and 10 of the Notice of Appeal.) B

5. Whether it was competent for the Court below to consider the propriety of the damages awarded by the trial Court (Arising from Ground 7, 9 and 10 of the Notice of Appeal.) C

6. Whether the Court below made findings of fact and pronouncement in its judgment against persons who were not parties to the suit and who were not heard. (Arising from Ground 8 of the Notice of Appeal.)

Learned counsel for the respondents, Kanu G. Agabi SAN adopted the brief of arguments of the respondents filed on the 29/3/16 and also adopted the issues as crafted by the appellant. D  
ISSUE ONE

Whether the Court below was right when it set aside the purported service of the originating processes on the respondents on the ground that the service was not in accordance with the order of the trial Court. E

Learned senior counsel, Mrs. Offiah for the appellant submitted that the service of the originating process was proper, valid and in tandem with the order of the Court and the relevant provisions of the Fundamental Rights Enforcement Procedure Rules (FREPR). That from the plain words of the order and the prayers in the ex-parte application it is clear that the Court did not order that service be effected or must be effected on the respondents at Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu. F

That what was ordered is that service be effected on the respondents through the 1st respondent WHOSE address for service is Evangel House Plot R8 Ozobulu Street, Independence Layout, Enugu. That the issue raised on the different location of service is a mere legal technicality and an angle the Courts have de- G  
H

parted from. He cited *Egolum v Obasanjo* (1999) 7 NWLR (Pt.511) 255 at 413.

B Learned counsel for the appellant contended that the originating process had come to the knowledge of the respondents and so the stipulations of Order 5 Rule 7 of the FREP Rules were satisfied. That the trial Court holding so was correct and the Court below in error to have interfered with that finding. The cases of *Bello v National Bank of Nigeria* (1992) 6 NWLR (Pt. 246) 206; *Okesuji v Lawal* (1991) 1 NWLR (Pt. 170) 66 were relied upon. C That the respondents have not shown how a miscarriage of justice had been visited on them.

D Kanu Agabi SAN, learned counsel for the respondents stated that none of the grounds of appeal allege that the Court below was wrong in setting aside the service of the originating processes on the ground that it was not in accordance with the provisions of the Fundamental Rights (Enforcement Procedure) Rules and so the appellant is approaching the appeal from a ground that did not arise from the judgment of the Court below. Also that the trial Court E had ordered that the service of the processes be effected in a particular manner and so the appellant cannot call in aid service effected under Order 5 Rules 2 and 7 of the FREPR as good service with the intervening Court order on substituted service having been made.

F That upon the proper evaluation of the affidavit evidence, the Court below had found that the affidavit of proof of service deposed to by the bailiff on the 17/4/2014 did not prove that the originating processes had been served on the 1st respondent which G finding appellant did not appeal against which therefore had the effect that the appellant conceded to the judgment of the Court below which remains binding on him. He cited *Ukpong v Commissioner for Finance and Economic Development* (2006) 19 NWLR (pt. 1013) 187 at 216.

H Chief Agabi SAN of counsel further submitted that the fact that the respondents submitted themselves to the hearing of the matter at the trial Court albeit under protest did not take away their right to protest the defective service nor would it cure that

defect or confer jurisdiction where the defective service has robbed the Court of the vires to hear and determine the matter. He relied on *Adegoke Motors Ltd v Adesanya & Anor.* (1989) 3 NWLR (Pt. 109) 250; *Nwabueze v Obi-Okoye* (1998) 4 NWLR (Pt. 91) 664.

That once the Court below found that the affidavit of service does not show that the processes were served the implication was that a condition precedent to the exercise of the Court's jurisdiction had not been fulfilled and so the Court does not concern itself with whether or not a miscarriage of justice had been occasioned on the respondents.

The thrust of the question herein raised is hinged on the fact that the appellant by a motion *ex-parte* filed on 15/4/2015 prayed the trial High Court among other things for substituted service of the substantive application for the enforcement of his fundamental rights on all the respondents by serving same on the 1st respondent. The High Court in granting the application, *ex-parte* ordered as follows:

*"An Order granting the applicant leave to serve the substantive motion of his fundamental right and all other processes relating to the said application, on all the respondents by substituted means. i.e. by delivering same to the 1st respondent whose address for service is Evangel House, Plot R8 Ozobulu Street, Independence Layout, Enugu."*

The respondents at the trial Court challenged the service of the originating processes and interim order on them stating that the said processes were dumped in front of a neighbour's gate two houses from his, and that the said neighbour, seeing his name on the processes, brought them to him whereupon he briefed counsel to handle the case.

The appellants position is that the processes having got to the respondents as they did through the neighbour as kept at the neighbour's gate by the bailiff fulfilled the conditions for proper service and Order V, Rule 2 and Order V, Rule 7 had been complied with. I shall quote the provisions of the said Rules hereunder for ease of reference thus:

Order V, Rule 2 of the Fundamental Rights Enforcement Proce-

dure Rules provides that:

*“The application must be served on all the parties directly, so long as a service duly effected on the respondent’s agent will amount to personal service on the respondent.”*

B Notwithstanding the above typical provision, and precisely because of the peculiar nature of proceedings relating to enforcement of fundamental rights, the FREP Rules make other provisions for substituted service of processes.

Order V, Rule 7 provides that:

C *“Where it appears to the Court, either after or without an attempt at personal service of the Court processes that for any reason personal service cannot be conveniently effected, the Court orders that service be effected either*

D *(a) By delivery of the document to an adult person at the usual or last known place of abode or business of the party to be served; or*

E *(b) By delivery of the document to some person being an agent of the party to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or person, come to the knowledge of the party to be served.”*

The learned trial judge considering the affidavit of the appellant and the respondents made the following findings thus:

F *“The bailiff of the Court, Emmanuel Ugwu, has sworn to an affidavit to the effect that when he received the 19 copies of Court process for service on the respondents, he went with Mr. Richard Akwah to the Evangel House office of the 1st respondent to serve*  
 G *the processes on the 1st respondent. He was told by the staff there that the 1st respondent had gone to his house at No. 5 Mbanano Street where he saw security men on duty. One of them told him the 1st respondent had just come back. He was asked to and did sign the Visitor’s book which was taken by the security man to the*  
 H *1st respondent. While the security man was inside, Mr. Akwah gave him the phone number of the 1st respondent and he called him and disclosed his mission. The 1st respondent asked him to hand same over to the security man which he did but none of*

*them agreed to sign to acknowledge the receipt of the Processes. When one considers the two affidavits of the Court bailiff and the 1st respondent, it would be clear that the 1st respondent had something to hide. Who is the faceless neighbour who lives two building away from his residence? Does the neighbour have any name? Is it the one living on the left or the right side of his residence? Such a vague description in the face of a full, positive and affirmative chronicling of the events leading to the service of the Processes leaves much to be desired and a sour taste in the mouth”.* B

*At Page 561, the trial Court concluded thus:* C

*“The service is lawful, it is legal and proper. It lived up to its bidding. It cannot therefore be set aside.”*

*On appeal, the Court below held thus:*

*“The bailiff on 3/6/2014 deposed to another affidavit detailed explanations of how he conducted the service of the originating process on the 1st appellant. This further affidavit was obviously meant to answer the questions arising from his first affidavit. The trial Court in reviewing and evaluating his affidavit along with the other affidavit did not consider the obvious contradictions between the depositions in the bailiff’s affidavits of 17/4/2014 and the second bailiff’s affidavit of 3/6/14 on how the bailiff met Mr. Shedrack Lawrence and served him the originating process on behalf of the 1st appellant. In his affidavit of 17/4/2014, he stated thus: ‘before the day I served the notice, I did not know Shedrack Lawrence personally, but after he was pointed out to me by Richard Akwah I asked him if he were Shedrack Lawrence and he said that he was. In his affidavit of 3/6/2014... the bailiff stated in paragraph 7-14 therein that on arrival at the gate of the residence of the 1st appellant, he and the pointer did not know any of the three security men they met at that gate and that it was the 1st appellant who on phone identified one of them to him as Shedrack Lawrence. The two versions of evidence contradict on how he met, identified and served Shedrack Lawrence the originating processes. While the earlier affidavit states that it was one Richard Akwah who accompanied the bailiff to effect the service of the Process that identified the Shedrack Lawrence and that the serv-* D E F G H

ice was effected on him after he was so identified, in his second affidavit, the bailiff now said that Richard Akwah did not know Shedrack Lawrence and that it was the 1st appellant who by telephone identified Shedrack Lawrence to the bailiff and directed the bailiff to deliver the processes to him. See pages 753 - 754 of the record.

The Court of Appeal further stated at pages 756 and 757 of the record thus:

*"The trial Court did not consider the depositions of the 1st appellant in Paragraphs 3, 4, 5 and 16 of the counter affidavit..."*

*I have calmly and carefully read the said affidavits of the bailiff and the counter affidavit of the 1st appellant. It is glaring that the trial Court did not evaluate the contents of the said affidavits properly and that its decision to believe the affidavits of the bailiff and disbelieve the counter affidavit of the 1st appellant runs contrary to the trend of evidence."*

Again to be said is that upon the evaluation of evidence, the Court below found that the affidavit of proof of service deposed to by the bailiff on the 17/4/2014 did not prove that the originating processes had been served on the 1st respondent. That Court held thus:

*"The contents of the bailiff's affidavit sworn to and filed in the trial Court on 17/4/2014 is reproduced at page 23 (sic) of this judgment. The affidavit does not explain why processes ordered to be served on 1st appellant were served on one Shedrack Lawrence... It is glaring that the depositions in that affidavit did not prove that the originating processes in Suit No. E/202M/2014 were served on the 1st appellant."*

The appellant did not appeal against that finding in such a Situation this Court had in *Ukpong v Commissioner for Finance & Economic Development* (2006) 19 NWLR (Pt. 1013) 187 at 216 paras E - G, per Onnoghen JSC held as follows:

*"It is clear from the record that after lodging the notice of appeal, appellants or their advocate must file a written statement of their grounds of appeal. On the other hand, the respondents filed a counter affidavit which is being contended is as good as the*

*required written reply envisaged by the rules. The High Court found that it is not a written reply and there was no appeal against that finding which was not appealed against as also conceded by learned counsel for the respondents is that the respondents are deemed to have accepted that finding which is therefore binding on the parties irrespective of the allegation that the point was raised suo motu by the Court in its judgment. If it was, it was the duty of the respondents against whom the finding was made to have appealed against same at the Court of Appeal which they failed to do. The law is that the finding stands unchallenged and therefore binding.”* See *Usman v Garke* (2003) FWLR (Pt. 177) 815. B  
C

Learned counsel for the appellant had made a fuss on the fact that in spite of the disputed mode of service that the respondents appearance in Court had cured the irregularity. The Court below did not buy that trend of thought and stated thus: D

*“The Presence and participation of a party and or his counsel in proceeding before the Court without disputing service or proper service of the processes on him gives rise to a presumption of regularity of the proceedings before the Court including service of the processes on the parties. Where he and his counsel appear and not only dispute the proper service of the originating process on him but also by a motion on notice apply for an order to set aside the said service of the originating processes on him, the issue of whether the service of the originating processes on him is proper arises. The appearance of a party and his counsel in a proceeding does not preclude such party from protesting the manner of service of the originating processes on him.”* E  
F

The Court below then proceeded to find that the appearance of the respondents was made under protest. Here are the words of the Court below: G

*“It is clear from the record of this appeal that in the proceedings in Suit No.E/202M/2014 that took place for the first time on 17-4-2014, after the service of the processes on the 1st appellant on 16/4/2014, learned SAN for the 1st appellant informed the trial Court that “there is no service as required by the Rules of Court and that “the processes were dropped at Umunana Street, Inde-* H

*pendence Layout, two buildings away from the residence of the 1st respondent.” On 25/4/2014, the 1st appellant filed an application on notice praying for inter alia an order setting aside the service on the 1st appellant of the originating process and ex parte order in the suit.”*

B This Court had in the case of *Adegoke Motors Ltd v Adesanya & Anor.* (1989) 3 NWLR (pt. 109) 250, this Court held as follows:

C *“When a defendant desires to object to regularity of proceedings by which the plaintiff seeks to compel his appearance, he may, by leave of Court, enter a conditional appearance or an appearance under protest and then apply to the Court to set aside the said plaintiff’s proceedings or he may, without entering an appearance, move to set aside the service of the writ.”* See *Nwabueze v Obi-Okoye* (1998) 4 NWLR (Pt. 91) 664.

D The bottom line as I see it is that on the one side if the service on the respondents in the regular form would suffice in spite of the Court’s order for substituted service. The appellants think it is in order while the respondents say no, that the Court’s order for substituted service cannot be averted and anything outside it was defective leading to a nullification of the service.

E In *Odutola v Kayode* (1994) 2 NWLR (Pt. 324) 1 at 19- 20 paras G - A, this Court had this to say:

F *“Since the lower Court ordered a personal service on the defendant, any other service not in accordance with the order of Court was not a proper service. This case has brought out clearly the statutory and honest duties required of a bailiff: to serve in accordance with the order of Court. Where a personal service is ordered, he must serve that person personally. Where a substituted service whether by pasting at the last known abode of the person required to be served, or by a publication in a newspaper is ordered, any other service which is not in accordance with the clear and unambiguous language of the Court is ineffectual.”*

H Further at para 21 para F of *Odutola v. Kayode* (supra), this Court continued:

*“To effect personal service of Court process on a party, the bailiff or any officer of Court entrusted with the task should satisfy*



*himself that he has found the right man. It is not enough to leave a Court process with person who works with the same office with the defendant, as was done in this case, even if the latter undertakes to convey it to the appellants."*

A similar presentation had erupted in the case of *Ihedioha v Okorocho* (2016) 1 NWLR (Pt. 1492) 147 at 176 D - H B

*"The order for substituted service which the trial Court made is tied to the address for service which the appellant supplied and the specific person (i. e. the 1st respondent) named in that order. Neither the bailiff nor any person at all was competent to alter the text and subject of the order without a prior leave of the Court. See *Odutola v Kayode* (1994) 2 NWLR (pt. 334) 1 at 15 for persuasion to the effect that the Court is bound by its own orders. In *Kida v Ogunmola* (supra) at 399 A - H the Supreme Court relied on the decision of the Queen Bench Division of the Court of England *Fry v Moore* (1889) 23 QBD. 395 and decided that there cannot be substituted service of a suit which could not at the time when it was issued be served personally..... With all due respect the Supreme Court never decided in *Egolum v Obasanjo* (1999) 7 NWLR (Pt. 511) 255 or 413 that defect in service of originating process is a mere matter of technicality. Instead the Supreme Court decided in *Kida vs Ogunmola* (supra) that defect in service affects the jurisdiction of the Court."* D

What I see as the long and short of the situation is that even if in the ordinary course of events, personal service would have been considered good service, the intervention of the Court order for the service to be effected on the respondents through the 1st respondent by substituted service, that order took precedence over all else including the relevant Rules of Court on how service in the quest for enforcement of fundamental rights is to be made. Therefore it is by that substituted means along the provided routes in the order no more no less that is obedience to the order to the letter. Anything other than that would translate to no service of an originating process as in this case and that being so, the competence of the process is impaired and the result is that the jurisdiction of the Court of trial cannot be activated. F  
G  
H

The position is not changed by the appearance in Court of the respondents as once there is no jurisdiction of Court, the appearance of the protesting party would not confer the jurisdiction as the long stated issue of putting something on nothing and expecting it to stand would apply. See *Macfoy v UAC Ltd* (1961) 3 ALL ER 1169.

Also to be said is that since there is no jurisdiction in the Court, there is no vires on which the Court can make a finding on whether by the improper service the respondents had suffered a miscarriage of justice. Indeed this is not one of those instances where technical justice is not applied and so the case of *Egolum v Obasanjo* (1999) 7 NWLR (Pt. 511) 233 of 413 does not apply to aid the appellant. This is because what is at play here is fundamental, goes to the root of the jurisdiction of the Court and the situation cannot be ignored.

Clearly, the Court below was on solid ground right in making the finding and conclusion it came to and I am in tune with it in answering the question against the appellant.

ISSUE NO. 2

Whether the Court below was right when it held that reliefs sought by the appellant cannot competently be applied for under Section 46 of the 1999 Constitution and the Fundamental Rights (Enforcement Procedure) Rules.

Learned senior counsel for the appellant contended that the reliefs sought by the appellant at the trial Court are within the ambit of the rights guaranteed under the Fundamental Rights guaranteed constitutionally under Chapter IV of the 1999 Constitution of the Federal Republic. He referred to *Fajemirokun v. Commercial Bank of Nigeria Ltd & Anor.* (2009) 2 SCM 55 at 71. *Anuka Commercial Bank v. Olua* (2000) 12 NWLR (Pt. 682) 64.

That a breach of those rights secured for the appellant the right to cry out for redress. He relied on *Agbai v. Okagbue* (1991) 7 NWLR (Pt. 391).

Reacting, Learned counsel for the respondents submitted that the procedure of approaching the Court for his perceived breach of his right to fair hearing was wrong and that the lower Court

found rightly so. He cited the case of *Tukur v Government of Taraba State* (1997) 6 NWLR (pt. 510); *Jack v University of Government Agriculture* (2004) 1 SC (Pt. 11) 100 etc.

A background glimpse into the facts of the matter before this Court shows that some concerned members of the church had brought an action in Suit E.82/2014 to challenge the validity of the respondents meeting of 6/3/2014 and an order to maintain the status quo ante bellum had been made therein. Some of the events giving rise to the said suit are at the remote background of the facts of the present suit. In that said Suit E.82/2014 the matter of the infringement of the appellant's fundamental rights precipitating the present application. The appellants justify their mode of approaching this Court by way of Fundamental Rights Enforcement Procedure as guaranteed under Chapter IV of the 1999 Constitution of the Republic of Nigeria.

The respondents dispute this manner of approach to the Court in view of the facts at play. The trial Court found thus:

*"I have gone through the processes filed. I feel this application equally relates to a previous suit which is also pending in this Court over the crisis that has in recent past rocked the Assemblies of God Church Nigeria."*

The respondents' contention is that the main or principal complaint in the instant case being the appellants dismissal as minister and his suspension as member of the church and so the alleged breaches of his fundamental rights were merely accessory to his principal complaint and that the proceedings by way of the Fundamental Rights (Enforcement) Rules were inappropriate and the Court below was right to so hold.

The Court below had this to say at page 771 thus

*"There is no doubt that a complaint that the proceedings and decisions of that meeting violate the rules of natural justice and the respondent's general legal right to fair hearing is a proper and recognizable complain in law. But the respondent can seek redress for such violation by the ordinary or general process for seeking remedy for infraction of legal rights and obligations. He cannot exercise the right of action given to him by Section 46(1) of*

*the Constitution to seek redress for violation of the general rules of natural justice, including his general legal right of fair hearing,... The appropriate method to challenge the decisions of such non judicial bodies acting judicially or quasi judicially is by an application for judicial review by the writ of certiorari or prohibition or declaration under the High Court Civil Procedure Rules or by any of the ordinary methods legal actions under the High Court Civil procedure Rules like Writ of summons, Originating Motion.”*

At page 778 of the record, the Court below stated thus:

*“In all cases the Courts have treated the central issue in controversy, the casus belli or the act or event that directly led to the suit as the main complaint. In University of Ilorin & Anor. v Oluwadare, it was expulsion from school, in Tukur v Government of Taraba State it was deposition as the Emir of Muri, in WAEC v. Akinkunmi (supra) it was cancellation of result, in Sea Truck (Nig.) Ltd v Anigboro it was dismissal from employment. In our present case it is the respondent’s dismissal as minister and suspension as member of the church.*

*In all these cases the complaints of violation of the applicant’s right to fair hearing and other fundamental rights in the process of dismissal, termination, expulsion or deposition or cancellation of his result as the case may be, were held by the Supreme Court to be secondary or ancillary or accessory complaint.”*

The complaints are against decisions of a non-judicial body contrary to the provisions of Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended

The previous decisions of this Court relating to fundamental rights actions are to the effect that breach of a fundamental right under Section 36(1) of the Constitution arises only when it is charged against a Court or tribunal established by law. In *Ekunola v CBN* (2013) 15 NWLR (pt. 1377) 224 at 262, paras G - H, this Court held as follows:

*“Besides, Section 36(1) (supra) arises where the denial of fair hearing has been charged against a Court or tribunal established by law and not before domestic or standing ad-hoc Tribunals raised departmentally by parties as the 1st respondent here.”*

The implication of the above is that, there would be no case of infringement of the right to fair hearing under Section 36(1) of the 1999 Constitution when the decision alleged to have violated one's constitutional right to fair hearing is that of a non-judicial body. In *Bakare v L.S.C.C.* (1992) 8 NWLR (pt.266) 641 at 699 - 700. paras H - B, this Court had this to say of Section 33(1) of 107 the 1979 Constitution, a provision *impairi materia* with Section 36 (1) of the 1999 Constitution:

*"The Courts in exercise of their Power of judicial review are constantly called upon to scrutinize the validity of instruments, laws, acts, decisions and transactions. In the exercise of the jurisdiction, the Courts can declare them invalid or ultra vires and void not because they are unconstitutional in terms of Section 33 of the Constitution but because they offend against the rules of natural justice of audi alteram partem, or nemo judex in causa sua, or offend against the rules of fairness, or otherwise offend against the rules of natural justice. All these are in the realm of administrative and not constitutional law. The Court can by its power of judicial review set them aside. The great divide is that Section 33 deals with judicial bodies and does not naturally extend to bodies not judicial but all the same deciding on rights and obligations."*

The Court below stated further as follows:

*"Some of the said reliefs such as reliefs Number 2, 3, 4, and 7 relate to the complaint that the decision of the General Committee dismissing the respondent as minister and suspending him as a member violates his right to fair hearing under Section 36(1) of the 1999 Constitution. A decision of the meeting of the General Committee of the church, not being a Court or tribunal established by law cannot be said to have violated the respondent's right to fair hearing under Section 36(1) of the 1999 Constitution which provide that..."*

See page 678 of the record, the lower Court held thus:

*"Reliefs 2, 3, 4, 6 and 7 relate to the proceedings and decisions of the meeting of 6/3/2014 and the actions taken pursuant to those decisions in that meeting whose competence, constitution and legality is the subject of the primary or main complain and*

they seek to remedy violation of rights committed in the process of reaching the decision to dismiss the respondent and suspend him as member of the church. The reliefs seek declarations that the proceedings, decisions and actions of that body contravene rules of natural Justice and the applicant's rights under S.36, 38 (1) and 40 of the 1999 Constitution. These are clearly secondary reliefs.

On the other reliefs the Court below had this to say at Page 772 of the record thus:

*"Reliefs 9, 10, 11 and 12 are clearly secondary, ancillary and additional reliefs.*

*Relief 15 is dependent on reliefs 1 to 9 Its success or failure depends on the success or failure of relief 1 to 10. It is a secondary relief."*

The appellant had sought to call in aid the case of Anuka Community Bank v Olua (2000) 12 NWLR (pt. 682) 64. I shall quote it for effect and thus:

*"The institution or commencement of an action on fundamental rights arising from another action already in Court cannot be based on the principles governing whether an order is final or interlocutory. In my opinion, a person is entitled to enforce his fundamental rights at any time and irrespective of whether it is, in the words of learned counsel, main or principal cause of action or fundamental issue before the Court. The Constitution of the Federal Republic of Nigeria, 1979, which was in operation at the material time, clearly provided for the right of action in respect of breach or threatened breach of fundamental rights. Section 42(1) of that Constitution provided thus:*

*"Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress."*

Order 1 Rule 2(1) of Fundamental Rights (Enforcement Procedure) Rules 1979 Constitution contains similar provision in the following words:

*Any person who alleges that any of the Fundamental Rights provided for in the Constitution and to which he is entitled, has*

*been, is being, or is likely to be infringed may, apply to the Court in the State where the infringement occurs or is likely to occur, for redress.”*

The above are very clear provisions which a person can enforce where he feels that his fundamental right is contravened or being or likely to be contravened. See General Archbishop Oligis and Ors. v The Attorney General of Lagos State (1981) 1 NWLR 218; Momoh v Senate of the National Assembly and Ors. (1981) 1 NCLR 21; Saude v Abdulahi (1989) 4 NWLR (Pt. 116) 387; Uzoukwu v Ezeonu II (1991) 6 NWLR (pt. 200) 708; Lekwot v C Judicial Tribunal (1993) 2 NWLR (pt. 276) 410, Peterside v I.M.E. (Nig.) Ltd. (1993) 2 NWLR (pt. 278) 712, per Tobi JCA (23-24, paras C-E

Briefly stated hereunder are the reliefs sought by the appellant as thus: D

*“Contravention of the rights of the applicant to peaceful exercise of the duties of his office as General Superintendent of the Assemblies of God, Nigeria Enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended). E*

*...Contravention of the Rules of Natural Justice and the applicant’s rights under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria as amended).*

*...Contravention of the applicant’s right to fair hearing as secured under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) F*

*.....chairing the purported General Committee meeting of 6th March, 2014 by the 4th respondent and the participation of 11 members of the Executive Committee of the Assemblies of God, Nigeria and 9th to 19th respondents, who are members of the Body of Ambassadors of the Kingdom, all of who had made the allegations against the applicant, amounts to being a judge in their own cause and was in contravention of the applicant’s right to fair hearing secured under Section 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended). H*

*....Prohibiting the free association by the applicant with all units, all ministers, all presbyters, all General Council Directors/*

*Coordinators and all members of General of Assemblies of God, Nigeria is in breach of the applicant's fundamental rights enshrined and secured under Sections 40 and 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)*

B ....the purported suspension of the applicant as a member of the Assemblies of God, Nigeria with the threatened implication of ex-communicating him from the church is a contravention of the applicant's right to freedom of religion and worship in community with others and right to freedom of association secured under C Sections 38(1) and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)...

D ....decision to dismiss and suspend the applicant was ultra vires the body which met on 6th March, 2014 purportedly as the general Committee of the Assemblies of God, Nigeria, the same not being constituted of legitimate members of the General Committee and thus contravenes the applicant's rights under Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

E ....the "Body of Ambassadors of the Kingdom" and the "Consultative Assembly" are not Persons authorized or organs cognizable under the exact 2002 Constitution and Bye-laws of the Assemblies of God, Nigeria and have no functions thereunder, no powers to try, investigate or discipline the applicant for any alleged F misconduct and especially for any alleged criminal offences and their conduct therefore contravenes the applicant's rights enshrined under Section 36(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).... .

G From what is available before this Court and the reasoning in the Court below, it is difficult to resist going along the path trod by that lower Court. This is because as the respondents contended that the alleged breach of the appellant's right of fair hearing is found on the appellant's refusal to yield to the invitation to discuss H and deal with the complaint of the members of the church and that breach being not on its own but related to the facts which brought about an earlier suit which was alive and well before the same Court, then the method of crying out to the same Court in this



instance was better served by writ of summons or originating summons or any other appropriate originating process as stipulated in the High Court (Civil Procedure) Rules. I am emboldened by the cases of Borno Radio Television Corporation v Basil Egbuonu (1991) 2 NWLR (pt. 171) 90; FRN v Ifegwu (2013) 1 NWLR (Pt. 842) 113 at 180. B

It is clear that from what is on ground, the Court below was right that the reliefs sought by the appellant cannot be completely applied for under Section 46 of the 1999 Constitution and the Fundamental Rights (Enforcement Procedure) Rules and to this issue C 2 is answered against the appellant.

In the light of the foregoing and the fuller and better reasoning of my learned brother, Kekere-Ekun JSC, I see no light at the end of the tunnel for the appeal and so I hereby dismiss the appeal. D

I abide by the consequential orders made.

### **AKA'AHS JSC**

My learned brother, Kekere-Ekun JSC availed me before now, E her comprehensive and lucid judgment just delivered. I am in total agreement with her reasoning and conclusion that the order of substituted service of the Writ was not effected as ordered by the Court and consequently the writ was not served on the respondents and that this is not a case that can be brought under the Fundamental Rights (Enforcement Procedure) Rules, 2009 to enforce F the appellant's fundamental rights.

The circumstances leading to the application by motion on notice before the Enugu State Court for the enforcement of the G appellant's fundamental rights using the Fundamental Rights (Enforcement Procedure) Rules 2009 and the reliefs sought have been well set out in the leading judgment and the resolution of the issues raised in the appeal. I wish to limit my comment to issue no. 2. The H issue was distilled from ground 2 and it reads thus:-

*"Whether the reliefs sought by the Appellant at the High Court was competent and rightly brought under Fundamental Right Enforcement Procedure."*

Learned counsel for the appellant posited that it is important to critically look at the reliefs sought in the resolution of this issue. He contended that the facts which gave rise to the application was the validity of the meeting of 6/4/2014 and even though suit No. E/82/2014 had already been filed and an order to revert to Status quo had also been made in the said suit E/82/2014, which the respondents ignored, the application was purely aimed at protecting the rights of the appellant the infringement of which suit E/82/2014 did not address. She stated that some concerned members of the Church instituted suit E/82/2014 to challenge the validity of the respondent's meeting of 6/3/2014 and some of the events giving rise to the said suit form the remote background facts of this action

Learned Senior Counsel argued that the procedure of filling different suits though emanating from the same set of facts is allowed especially where the cause of action gives rise to multiple causes of action including a breach or threatened contravention of a fundamental right under the Constitution and relied on *Sokoto LG v. Amale* (2007) 8 NWLR Pt.714 224 at 240-241. She maintained that the appellant established various breaches of his fundamental rights in the affidavit in support of the application pointing out that one of such breaches is borne out in paragraphs 40,46, 47, 48 and 49 of his affidavit where he deposed that the respondents prohibited all members in various units of the church from associating with him and this included denying him right to worship in communion with these other members of the church and where other members would want to worship and associate with him, they were prohibited from doing so by the respondents under pain of punishment. Learned counsel said the respondents did not file a counter-affidavit to deny the averments. Despite the uncontradicted proof of the breach, the lower Court still set aside the trial Court's decision which had upheld the appellant's claims. In spite of the lower Court's finding that there had been an infringement of the appellant's rights, the panel still went on to hold that the appellant cannot seek reliefs for such infringement under S.46(1) of the Constitution.

Learned Senior Counsel submitted that the lower Court erred grievously when it discountenanced all the proximate facts leading to the filing of the fundamental rights application.

Learned Senior Counsel for the respondents submitted that the appellant's main or principal complaint was his dismissal as minister and suspension as member of the church. He argued that it is only when the main or principal complaint in an application is the enforcement or the securing of the enforcement of a fundamental right that the Court would exercise jurisdiction to entertain the application under the Fundamental Rights (Enforcement Procedure) Rules. Learned Senior Counsel also contended that the complaints are against decisions of a non-judicial body and a breach of a fundamental right under Section 36(1) of the Constitution (as amended) arises only when it is charged against a Court or Tribunal established by law; consequently there would be no case of infringement of the right to fair hearing if the decision is that of a non-judicial body.

I agree with the submissions made by the learned counsel for the respondents that the fundamental rights procedure rules enshrined in Section 46(1) of the Constitution can be invoked when the main or principal complaint in an application is the enforcement or securing of the enforcement of a fundamental right is in issue, then the Court could exercise jurisdiction to entertain the application under the Fundamental Rights (Enforcement Procedure) Rules. Where the denial of fair hearing is not charged against a Court or tribunal established by law but is against a domestic or standing ad hoc committee of a non-judicial body, the infringement of Section 36(1) of the Constitution cannot lie. See: *Borno Radio Television Corporation v. Egbuonu* (1991) 2 NWLR (pt. 171) 81.

Learned senior counsel for the appellant stated correctly that it is the reliefs sought rather than the facts in support that determine the jurisdiction of the Court.

My learned brother, Kekere-Ekun JSC set out the declaratory reliefs totalling 12 in number and two injunctive reliefs as well as the N500,000.00 being claimed by the appellant as general

damages. The application predicated on Suit E/82/2014 dealing with the crisis that has rocked the Assemblies of God Church, Nigeria which led to the removal of the appellant as a Minister of the Church and his suspension as a member of the church. His main complaint therefore is concerned with his dismissal as a minister and suspension as a member of the church. What the appellant wants to enforce through the Fundamental Rights (Enforcement Procedure) Rules are accessory or secondary complaints. The main cause of action would be entertained through Writ of summons and not through enforcement of Fundamental Rights (Enforcement Procedure) Rules. See: *Tukur v. Government of Taraba State* (1997) 6 NWLR (pt. 510) 549; *Jack v. University of Agriculture Makurdi* (2004) 5 NWLR (pt. 865) 208; *University of Ilorin v. Oluwadare* (2006) 14 NWLR (Pt. 1000) 751. The lower Court found that the primary or main complaint of the appellant was his dismissal by the General Committee of the Church as minister of the church and his suspension as a member of the church when it held at page 778 of the records:-

*"In all cases the Courts have treated the central issue in controversy, the casus belli or the act or event that directly led to the suit as the main complaint. In University of Ilorin & Anor v. Oluwadare it was expulsion from school. In Tukur v. Government of Taraba State it was deposition as Emir of Muri; in WAEC v. Akinwunmi (supra) it was cancellation of result; in Sea Truck (Nig.) Ltd v. Anigboro, it was dismissal from employment. In our present case it is the respondent's dismissal as minister and suspension as member of the church. In all these cases the complaints of violation of the applicants right to fair hearing and other fundamental rights in the process of dismissal, termination, expulsion or deposition or cancellation of his result as the case may be, were held by the Supreme Court to be secondary or ancillary or accessory complaints."*

There would be no case of infringement of the right to fair hearing under Section 36(1) of the 1999 Constitution when the decision alleged to have violated one's constitutional right to fair hearing is that of a non-judicial body. See *Bakare v. L.S.C.S.C.*

(1992) 8 NWLR (pt.266) 64; Ekunola v. CBN (2013) 15 NWLR (Pt. 1377) 224 at 262. The complaint of lack of fair hearing by the appellant was made against the General Committee of the Assemblies of God Church which investigated the complaints against the appellant, deliberated over the same and terminated his appointment as Superintendent of the Church and also suspended him from the membership of the Church. The General Committee is not a Tribunal set up by any law but the Constitution of the Church. Reliefs 2,3,4,5,6 and 7 could not be entertained under the Fundamental Rights (Enforcement Procedure) Rules on the grounds that the alleged breach of appellant's right to fair hearing is charged against a non-judicial body. The Court below found them to be secondary reliefs when it stated at page 678 of the records:-

*"Reliefs 2,3,4,5,6 and 7 relate to the proceedings and decisions of 6/3/2014 and the actions taken Pursuant to those decisions in that meeting whose competence, constitution and legality is the subject of the primary or main complaint and they seek to remedy violation of rights committed in the process of reaching the decision to dismiss the respondent and suspend him as member of the Church. The reliefs seek declarations that the proceedings, decisions and actions of that body contravene rules of natural justice and the applicant's right under ss 36, 38(1) and 40 of the 1999 Constitution. These are secondary reliefs."*

The lower Court also found that reliefs 9, 10, 11 and 12 are clearly secondary, ancillary and additional reliefs and relief 15 is dependent on reliefs 1 to 9. Reliefs 13 and 14 are dependent on the outcome of Suit E/82/2014.

It is for this and the more comprehensive reasons given by my learned brother Kekere Ekun JSC, which I totally endorse and adopt as mine that I arrived at the inevitable conclusion that the appeal is devoid of merit and I accordingly dismissed it. The application in Suit E/242/2014 is struck out for being incompetent. I also make no order on costs.

**NWEZE JSC**

My Lords, although scholars have subjected this Court's distinction between principal and accessory claims in human rights litigation to scathing strictures, see, for example, E. S. Nwauche, *The Dubious Distinction between Principal and Accessory Claims in Nigerian Human Rights Jurisprudence*. (2008) *Journal of African Law*, Vol. 52, Issue 1, 66-88, the Courts have continually espoused this distinction.

The cases that exemplify this consistent trend are legion: they are too many, indeed, that only one or two of them would be cited here, *Tukur v. Government of Taraba State and Ors* (1997) LPELR-3273 (SC) 51; *Egbuonu v. B.R.T.C.* (1997) LPELR -1040 (SC) 22; *Gafar v The Govt of Kwara State and Ors* (2007) LPELR - 8073 (SC) 22; *Thomas and Ors v Olufosoye* (1986) LPELR - 3237 (SC) 26 et seq; *Sea Trucks (Nig) Ltd v Anigboro* (2001) LPELR - 3025 (SC) 22; *WAEC v Adeyanju* (2008) LPELR - 3467 (SC) 24-25; *WAEC v Akinkunmi* (2008) LPELR - 3468 (SC) 22.

Scholars, undoubtedly, relishing their liberty under the well-cherished canon of academic freedom, have the right to interrogate any judicial pronouncement. Interestingly, this Court has responded, constructively, to such criticisms of its judgments in law journals. For example, in *Abioye v Yakubu* (1991) 5 NWLR (pt) 130, this Court acknowledged that:

*"Academic writers in various Law Journals have criticized the approach of the Courts in the interpretations of [statutes]."*

For now, since the appellant in this appeal did not invite this Court to depart or overrule its previous decisions on this point under Order 6 Rule 5 (4) of the Rules of this Court, *Opebiyi v. Oshoboja* (1976) 9 and 10 SC 195; *Oyeniran and Ors v Egbetola and Anor* (1997) 5 NWLR (pt. 504) 122 etc., I shall say no more on this.

Suffice it, therefore, to endorse the reasoning of the lower Court on this point, as did the leading judgment. I abide by the consequential orders in the leading judgment.

**EKO JSC**

I read in draft, the judgment just delivered by my learned brother, K.M.O. KEKERE-EKUN, JSC. I hereby adopt the summary of facts therein.

The Court of Appeal (hereinafter referred to as the “Court below”) had set aside the service of the originating processes on the respondents on the grounds that the service was not in accordance with the order of the trial High Court. In this appeal it forms the first issue for determination of the appeal. That is, whether the Court below was right when it set aside the said service of the originating processes on the respondents on the ground that the service was not in accordance with the order for substituted service of the processes on the respondents made by the trial High Court on 16th April, 2014.

The order for substituted service of the originating processes on the respondents was explicit and unambiguous. It directed that

The substantive application for the enforcement of [the Applicant’s] fundamental rights and all other processes relating to the said application, on all the Respondents (shall be) by substituted means to wit: by delivering same to the 1<sup>st</sup> Respondent, whose address for service is: Evangel House, Plot No. 6 Ozobulu Street, Independence Layout, Enugu. [Emphasis supplied]

It would seem that the respondents to be served by substituted means are only the 2nd - 7th respondents, since the order did not depart from the norm, as regards the 1st respondent who must be served personally, anyway. One Mr. Emmanuel L. Ugwu, the Chief Bailiff of the trial High Court, undertook the service of the processes. On 17th April, 2014, he filed his affidavit of service wherein he averred -

*“I, Emmanuel L. Ugwu, Chief Bailiff of High Court Enugu make oath and say that on the 16th day of April, 2014 at 4.20 p.m, O-clock I served upon 1st respondents ex parte order, motion on notice, statement and address upon the complaint of Prof. Paul Emeka by delivering same personally to 1st respondent through Shedrack Lawrence at Mbanano Street independence Layout.*

*Before the day I served the motion on Notice I did not know Shedrack Lawrence personally, but after he was pointed out to me by Richard Akwah I asked him if he were (sic) Shedrack Lawrence and he said that he was. Sworn at High Court Enugu this 17th day of April, 2014."*

B The purport of affidavit of service sworn on oath is that the bailiff, the deponent, who effected the service of the process on the Party or parties as directed by Court order or in his normal course of duty, as the deponent, binds himself to the truth of the facts  
C deposited to therein. Oaths have reverence. Subscribing to oath is one of the methods of establishing the truth of a fact. See ONYENGE v. EBERE (2004) 13 NWLR (pt.889) 20; (2004) 18 NSCQR 789. A man who makes his statement or declaration on oath undertakes that his statement or declaration on oath is true  
D and he is bound by his words of declaration. See S.C. CHUKWUMA v. ANTHONY EZECHI NWOYE & ORS. (2009) LPELR - 4997 (CA).

Totally embarrassed and shocked that the Chief Bailiff,  
E Emmanuel L. Ugwu, had sworn to and filed an affidavit that he handed the originating processes to him on 16th April, 2014; the 1st respondent took out an application to set aside the purported service at the trial High Court. The application was accompanied by an affidavit wherein the 1st Respondent averred, inter alia -

F "3. *That I was shocked to hear that an affidavit of service was sworn to and filed in the Court to the effect that the Bailiff of the Court handed any Court process to me on the said 16/4/2014. No Bailiff of the Court handed the Court process to me.*

G 4. *The said affidavit of the Bailiff is an intentional falsehood.*

5.....

6. *The applicant - Prof. Paul Emeka has never had any difficulty in accessing me or other respondents in this suit and I  
H verily believe that this option for substituted service of the Court processes in this suit is a ploy by him to take us unawares so that we will not be prepared to defend ourselves against him."*

The 1st respondent, on the same day, had filed counter



affidavit to debunk the Chief Bailiff's assertions in his affidavit of service; and therein averred, *inter alia*-

*"3. That up to 7.00 p.m. on the 16/4/2014 I was not anywhere within Mbanano Street, instead, I was at Evangel House at R8 Ozubulu Street, independence Layout Enugu until after 8.00p.m. when I left for my residence."* B

*4. That in the night of the said 16/4/2014 a neighbour who occupies the next two buildings to my residence came to inform me that he found a bundle of document dumped in front of his gate with a stone placed on top of it and that when he examined the documents he noticed that my name was among others on the documents, hence he brought them to me".* C

Be it noted, my Lords that the order for substituted service directed the Bailiff to serve *"1st Respondent, whose address for service is: Evangel House, Plot R6 Ozobulu Street, Independence Layout, Enugu"*. The 1st Respondent has averred that on the said 16th April, 2014 beyond minutes past 4.00p.m. and until after 6.00p.m. he was still at Evangel House at Plot R6, Ozobulu Street, Independence Layout, Enugu; and that up to 7.00p.m. he was nowhere within Mbanano Street, where the Chief Bailiff went to and effected service of the processes, D

With the indictment of the Chief Bailiff for *"intentional falsehood"*, albeit perjury he came up with another affidavit, filed on 3rd June, 2014. In this new affidavit the Chief Bailiff had shifted his position. He averred therein that on 16th April, 2014 at about 3.05p.m. He was given the processes for service on the respondents; that the address of the 1st respondent, Evangel House at Plot R8 Ozubulu Street, Independence Layout was close to the High Court, and that he and Richard Akwah, the pointer, quickly got to that address and were told that the 1st respondent had driven to his residence and would not come to the office that day. The affidavit continues - E

*"7. That we immediately tuned and drove to the 1st respondent's house at No. 5 Mbanano Street, independence Layout where we met 3 security men wearing Uniform of ALFA Security Nigeria Limited at the gate, I came out from the car and told them"* H

*that I am a bailiff of the High Court and I want to serve Court processes on the (1st respondent).*

B 8. *That one of them told me that “Oga” has just come back from work and he gave me visitor’s book to write and sign. I signed and he asked me to wait. He took the visitors book to (the 1st respondent) inside the house. So I waited at the gate with the other 2 Security men and the pointer who was inside the car*

C 9. *After about 5 minutes, the Security man did not come out. I got [the 1st respondent’s] phone number 08100273333 from Mr., Richard Akwah and call (sic) him with my cell phone No.08052422559.*

D 10. *That he picked the phone; I told him I am Chief Bailiff from High Court Enugu and I have order with motion on notice to serve him.*

11. *That he said OK and instructed me to give the process to his Security, Mr. Shedrack Lawrence who gave me the visitor’s book to sign.*

E 12. *That immediately after this, the same security man came out of the house, and I asked him if his name is Shadrack Lawrence, He confirm (sic) that his name is Shedrack Lawrence and his “Oga” said I should give him the Court orders and Court processes to bring inside the house for him.*

F 13. *That I gave all the 19 copies of the Court order and 19 copies of the Court processes to Shedrack Lawrence. I asked him to sign my dispatch book and he declined. He said that Oga told him only to receive the documents, not to sign any paper.”*

G In this further affidavit, it was not the pointer Richard Akwah (apparently the agent of the appellant) who identified Shedrack Lawrence to the Bailiff; but the 1st respondent himself. The finding of the Court below that the two affidavits deposed to by the Chief Bailiff are contradictory has not been challenged nor appealed. The rule is: facts not disputed or challenged are taken as admitted and therefore need no further proof. And the law is trite that specific findings of fact by a Court that are neither challenged nor appealed are taken as acceptable to the parties and therefore conclusive and forever binding between the parties.

H

The Court below found that the affidavit evidence of the 1st respondent materially contradicted the mutually contradictory evidence of the Chief Bailiff. Ordinarily, and in the normal circumstance, the trial Court ought to have called for oral evidence to resolve the conflicts. As submitted by Chief Kanu Agabi, SAN, for the respondents; and I agree, the appellant also conceded that the trial Court was in error when it failed to resolve the conflict in the affidavits before it. The Court below took it from there and held, correctly in my view, that the trial Court was wrong to have believed and relied on the bailiff's mutually conflicting affidavits without calling for further evidence. B C

The law is settled that a witness who has two materially inconsistent pieces of evidence on oath by him on the same issue or print of fact does not deserve to be believed or given the honour of credibility. He also does not deserve to be described as truthful. D See *AYANWALE v. ATANDA* (1988) 1 NWLR (pt.68) 22; *MONOPRIX (NIG) LTD. v. OKONWA* (1995) 3 NWLR (pt.383) 325; *BAYO AREMU v. DANIEL GEORGE CHUKWU* (2011) LPELR - 3862 (CA). A person who speaks differently from two E corners of his mouth on oath and on the same matter is a perjurer who does not deserve to be credited with any honour.

The bailiff had gone out to deliberately insubordinate the explicit Court order and thereafter went out to desecrate his office by filing blatantly false affidavits of service. The Court, in the circumstance, cannot pick and choose which of the two affidavits to believe or disbelieve. See *BOY MUKA v. THE STATE* (1976) 10 SC 305; *ALFRED ONYEMENA v. THE STATE* (1974) ALL. NLR 523. It would be perverse for the Court to hold that the materially conflicting affidavits of service of the bailiff had proved or established that the bailiff did the service of the originating processes as demanded of him by law or the Court order. Orders of Court are meant to be observed or carried out. F G

In my view the bailiff's resort to deliberate falsehood in his affidavits of service leads to one conclusion. That is, that he lied to cover up not only his insubordination to the clear order of the trial Court, but also his dereliction of duty, I say this on authority of the H

old English case of CLARKE v. MOLYNEUX (1897) 3 QB. 237 at 247 where it was stated -

*“If a man is proved to have stated that which he knew was false no one needs to enquire further. Every body assumes from thenceforth that he was malicious, that he did a wrong thing for some wrong motive.”*

The ulterior motive of the bailiff and whoever took him to the purported residence of the 1st respondent to serve originating processes at the time the 1st respondent was at the address the Court order directed them to for the service is thus obvious: to pervert the course of justice by the wrong service and the false affidavit of service.

This cannot be good service by the bailiff on whom the foundation of the imperativeness of service of Court process, being condition precedent for fair hearing, is laid. Audi alteram partem and service of originating process are imperatives of the justice ministry as directed by Section 36(1) of the Constitution, as amended. Without them justice is nothing but a hoax. The bailiff and/or the parties in litigation must never be allowed to do this in desecration of the hallowed temple of justice.

The purported service of the originating process in this suit on the 1st respondent, as ordered by the trial Court on 16th April, 2014, either by their dumping at a nearby house or delivery to one Shedrack Lawrence, has been seriously discredited. Accordingly, it cannot be the basis for the plea of presumption of regularity under Section 168(1) of the Evidence Act, 2011; the act or conduct of the bailiff having been shown to have been done in a manner substantially irregular.

Chief (Mrs.) A.I. Offiah, SAN had submitted, on authority of JIKANTORO v. DANTORO (2004) ALL FWLR (pt.216) 390 at 414 that the respondents had waived their right to complain about the wrong service of the originating processes on them by the fact of their presence at the trial Court in obedience to the processes. The respondents appeared in protest and had taken formal steps for the service of the processes on them to be set aside. That was not the situation in JIKANTORO v. DANTORO (supra) where the

rules of waiver and estoppel by conduct were held to be applicable against the defendant who, in the face of defective service of process, still submitted to the jurisdiction of the trial Court. JIKANTORO v. DANTORO (supra) followed the principle in EZOMO v. OYAKHIRE (1985} 1 NWLR (pt.2) 195 where at page 203 Aniagolu, JSC who read the Lead Judgment of this Court had stated -

*“By contesting the case to the full on the merit, without earlier taking preliminary objection before trial, the appellant must be deemed to have waived whatever right he had under.”*

Section 99 of the Sheriff’s and Civil Process Act, against improper inter state service of an originating process.

Service of originating process is not an issue of mere technicality. It goes to the roots of adjudication. This Court in SKENCONSULT (NIG.) LTD v. UKEY (1981) 1 SC (Reprint) 4 and UCHENDU v. OGBONI (1995) 5 NWLR (pt.603) 337 has held that improper service of originating process on the defendant denies the Court of its competence to adjudicate in the matter, since the suit would not have been initiated in accordance with the due process of law.

The Court has been consistent in maintaining that service of processes, particularly the originating process, is a precondition to the exercise of the Court’s jurisdiction. Where there is no service at all or there is some procedural fault in service, the subsequent proceedings are a nullity ab initio. This is based on the basic principle of law that a party should know or be aware that there is a suit against him so that he can prepare his defence thereto. If after service he chose not to put up any defence, the law assumes that he has no defence. However, where a defendant is not aware of a pending litigation because he was not served, the non service renders the proceedings null and void. See EIMSKIP LTD. v. EXQUISITE IND. (NIG) LTD. (2008) 4 NWLR (Pt.809) 88 citing with approval SKENCONSULT (NIG.) LTD. v. UKEY (supra).

The Court below was, in my view, right when it set aside the service of the originating processes on the respondent by the bailiff, accompanied by Richard Akwah (who apparently is an agent

of the appellant acted as the pointer). This issue is accordingly resolved in favour of the respondents.

Issue 2 is: Whether the main complaint of the appellant hinged on the suspension or dismissal of the appellant as a minister in the church can be enforced, as a fundamental right, under the Fundamental Rights (Enforcement Procedure) Rule (FREPR). In the determination of this issue, we are left without binding precedents. When the main or principal relief or redress cannot be raised or enforced under the FREPR; it is immaterial that in the course of committing the cause of action for the main complaint some ancillary breaches of fundamental rights were committed. See *TUKUR v. GOVT. OF TARABA STATE* (1997) 6 NWLR (pt.510) 549; *UNIVERSITY OF ILORIN & ANOR. v. OLUWADARE* (2006) 6 - 7 SC. 154; *JACK v. UNIVERSITY OF AGRICULTURE, MAKURDI* (2004) 1 SC (Pt.2)100 - all binding decisions of this Court, applied by the Court below particularly at page 778 of the Records. A cursory look at reliefs 2, 3, 4, 5, 6 & 7 claimed by the appellant at the trial reveals that he claims therein ancillary reliefs, i.e. violation of his right to fair hearing guaranteed by Section 36(1) of the Constitution (as amended), in relation to his right to employment or appointment in the Church, a private organization. The charge is not against a Court or tribunal established by law, but against a committee of a Church, a domestic tribunal. It is only when there has been an alleged violation of the right to fair hearing guaranteed by Section 36(1) of the Constitution by a Court or Tribunal established by law that such right to fair hearing can be enforced under the FREPR. See *EKUNOLA v. CBN* (2013) 15 NWLR (Pt.1377) 234 at 262. The Court below found, correctly in my view, at page 678 of the Records that reliefs 2, 3, 4, 5, 6, & 7, claimed by the appellant at the trial, “are clearly secondary reliefs”.

Reliefs 1, 8, 13 & 14 claimed by the appellant are the main reliefs in the suit. They seek to protect his office as the General Superintendent of the Assemblies of God, Nigeria, a private religious organization. The applicant, coming under FREPR to enforce his right to this office, must show, in the first place, that his

right to hold the office of General Superintendent of the Assemblies of God, Nigeria is a fundamental right. The right to this office like the office of the Emir of Muri (i.e. TUKUR v. GOV. OF TARABA STATE (supra), is not a fundamental right. Issue 2 deserves to be, and is hereby, resolved against the appellant.

The appellant in the suit at the trial Court claims that he has been ostracized and that other members of the church have been prevented from associating with him. He therefore claims, under Section 40 of the Constitution, a violation of his rights to religion (under Section 38(1) of the Constitution), freedom of association (under Section 40 of the Constitution) and the right not to be discriminated against (under Section 42 of the Constitution). These rights, from the processes the appellant had filed, are all ancillary to his right to hold the office of the General Superintendent of the Assemblies of God, Nigeria. The right of the appellant to hold this office is not coterminous with his right to practice any religion of his choice.

The right under Section 40 of the Constitution, the right to assemble and freely associate with others, works both ways. The others you want to associate with must be prepared to associate with you. None can be imposed, by order of Court, on the other. The right to freedom of association also connotes the right of the others to freely associate with or dissociate from whosoever.

Issue 1 and 2, resolved against the appellant, are enough to end this appeal. The Court below was, in my firm view, right in holding that the originating process was not served on the respondents in accordance with the due process of law, and that the appellant's claims cannot be enforced under the Fundamental Rights (Enforcement procedure) Rules.

I hereby adopt the judgment of my learned brother, K.M.O. KEKERE-EKUN, JSC, and the final order therein striking out the suit No. E/202M/2014 for being incompetent.

H