

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE
DELIVERED ON THE DAY OF MARCH 2020**

SUIT NO. FCT/HC/CV/2281/2018

M/5492/2019

M/7655/2019

BETWEEN:

**1. ATTORNEY-GENERAL
OF THE FEDERATION**

**2. MR. ABUBAKAR MALAMI SAN
AND**

CLAIMANTS

**1. CABLE NEWSPAPER LIMITED
(Carrying on business under the
Name & style of The Cable.ng)**

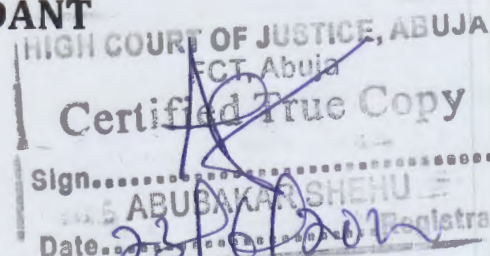
2. SIMON KOLAWOLE

DEFENDANTS

- **ADE OKEAYA-INNEH SAN, IFEANYI OKPOR ESQ FOR THE CLAIMANT**
- **AYODELE KUSAMOTU ESQ, RACHEAL OBONG, R.I.O OLOYEDE ESQ FOR THE 1ST AND 2ND DEFENDANT**

RULING

This Ruling is premised on **Two Motions** filed by the Defendants and was Consolidated as One for the purposes of this Ruling. The **First Motion** in time, was filed by the 1st Defendant, who prayed the Court to **Strike out the Name of the 1st Claimant for Lack of Locus Standi** on the Ground that the First Claimant is a Public



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WATG — 23/6/2020

Office and therefore did not have the Capacity to institute an Action in Defamation.

Both Defendants in regard to the 2nd Defendant filed the Second Motion, whereupon a **Challenge** was raised as to **the Competency of the Writ and more particularly the Concurrent Writ**.

A simple look at these Two Motions would show that the First Motion that ought to come up for consideration, would be that Motion Challenging the very Foundation and Competency of the Writs before the Court.

The Court can only assume Jurisdiction to hear and determine this Matter only when the Question of Service has first been determined.

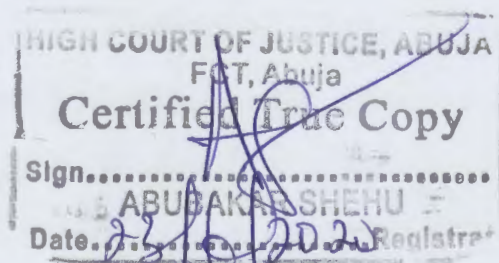
Therefore, the Motion on Notice praying this Court for the Setting Aside of the Writs for Non-Compliance with the Rules of this Court will be determined first.

Motion on Notice **M/7655/2019**, is dated and filed the 27th of June 2019 wherein the Defendants are praying the Court for the Following Reliefs: -

1. An Order Setting Aside the Original Writ of Summons, the Concurrent Writ of Summons and other Accompanying Processes in the Suit as against the 2nd Defendant/Applicant on account of Non-Compliance with the Rules of this Honorable Court, as the Original Writ of Summons and the Concurrent Writ of Summons have expired against the 2nd Defendant/Applicant.
2. An Order Striking out the Suit in respect to the 2nd Defendant/Applicant for Lack of Jurisdiction.

The Grounds upon which the Application is brought are as follows: -

1. The Original Writ of Summons issued on the 6th of July 2018 according to the Rules of this Court is to **expire three months**



from the date of issuance, unless it is renewed before its expiration.

2. The Original Writ of Summons was not renewed and there is no endorsement of a renewal before the issuance of the Concurrent Writ of Summons.
3. The Original Writ of Summons was no longer valid at the time of the issuance of the Concurrent Writ of Summons.
4. The Concurrent Writ of Summons was issued on the 6th of December 2018, which is a Period of Five (5) Months after the issuance of the Original Writ of Summons.
5. The Concurrent Writ of Summons was served on the 2nd Defendant/Applicant by Substituted means on the 27th of May, 2019, which is Five Months after the date of its issuance.
6. The Concurrent Writ of Summons also has a life span of Three (3) Months from the Date of its Issuance, which lapsed on the 6th of March 2019.
7. The Concurrent Writ of Summons was not renewed, and there is no endorsement of the renewal of the Concurrent Writ of Summons, before the Service of the said Concurrent Writ of Summons on the 2nd Defendant/Applicant by substituted means.
8. There was no valid Original Writ of Summons before the issuance of the Concurrent Writ of Summons and there was no valid Concurrent Writ of Summons before the service of the said Concurrent Writ of Summons on the 2nd Defendant/Applicant.

In support, the Defendants filed an Eight (8) Paragraph Affidavit deposed to by Timothy Agoho, a Litigation Officer in the Law Firm of Counsel to the Defendants, and a Written Submission of Counsel.



In their Written Address, Learned Counsel representing the Defendants argued that the Original Writ of Summons and the Concurrent Writ of Summons in this Suit have expired, and are no longer valid having been served outside the period allowed by the Rules of this Court, and placed reliance upon **Order 6 Rule 6 of the FCT High Court (Civil Procedure) Rules**.

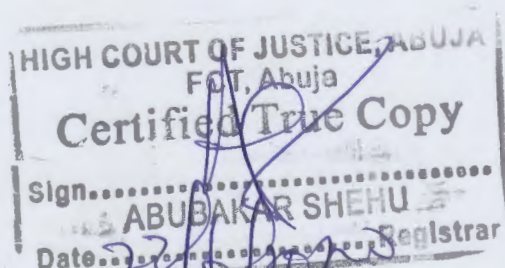
In response, the Claimants' filed a Six (6) Paragraph Counter Affidavit via a Motion on Notice dated the 4th of October 2019, filed on the 9th of October 2019. It was deposed to be Ifeanyi Okpor, a Counsel in the Law Firm representing the Claimants, and a Written Address of Counsel.

In their Written Address, Learned Counsel representing the Claimants cited **Order 6 Rule 6 of the Rules of this Court** to the effect that the Life Span of the Writ is Six Months, further submitting that the Defendants application of the Law is misconceived, as they have misunderstood the facts as regards the Time Lines for the Renewal of the Writ.

In Reply, the Defendants filed a Six (6) Paragraph Further Affidavit dated and filed on the 28th of November 2019, and annexed the Originating Processes filed by the Claimants, and a Reply on Points of Law.

Learned Counsel to the Defendant argued that the Original Writ of Summons stated therein that it must be served within Three Calendar Months from the Date of Issuance, and therefore, according to him, the Original Writ expired before the Issuance of the Concurrent Writ.

Learned Counsel further submitted that a Joint Reading of **Order 6, Rule 6 & 7 of the Rule of this Court**, shows that the Original Writ and the Concurrent Writ are valid for an initial period of Three Months, subject to Two Renewals, as the Life Span of the Writ must not exceed a period of Nine Months.



After a Careful Consideration, it is important at the get-go to draw out the sequence of events that led to the **Granting of Leave to serve the Originating Writ of Summons, the Issuance of the Concurrent Writ, Service of the Concurrent Writ outside Jurisdiction** and the **Substituted Service of the Concurrent Writ** within the Jurisdiction of this Court.

The Life of Every Writ is determined by the Rules of Court seized with Jurisdiction to hear and determine the Suit. To determine the Question of whether the Original Writ, and Concurrent Writ had expired, recourse must be made to the **Rules of this Court 2018**.

Order 6 Rule 6 (1) states that – *“The Life Span of every Originating Process shall be **Six (6) Months**.”*

Sub Rule (2) further states that- *“Where a Court is satisfied that it has proved impossible to serve an Originating Process on any Defendant within its Life Span and a Claimant applied before its expiration for renewal of the Process, the Court **may renew** the Original or Concurrent Process for **Three Months** from the Date of such Renewal. A renewed Originating Process shall be as **in Form 7** with such modifications or variations as circumstances may require”.*

In this instant Case, the Claimant took out the Writ of Summons against the Defendants on the **6th of July 2018**, dated the same Day. A logical Computation of Time would extinguish the Life Span of the Writ by the **5th of January 2019**.

From the Records of the Court, between the period from the 6th of July 2018 and the 5th of January 2019, the following sequence of events took place:

Accompanying the Originating Processes was a Motion Ex-Parte **M/7884/18**, also dated the 6th of July 2018; seeking the following;



(1) To issue a Concurrent Writ, (2) Leave to serve the Concurrent Writ on the 2nd Defendant outside Jurisdiction.

This Suit was initially assigned to my Learned Brother, **Senchi J.**, on the 27th of September 2018, who fixed the Date of the Hearing of the Motion Ex-Parte for the 17th of October 2018. On the Date of Hearing, my Learned Brother Senchi J. declined to hear and determine this Suit on the Ground that he knew one of the Parties involved, and ordered its Re-Assignment to another Judge.

On the 12th of November 2018, the Matter was re-assigned to this Court for Hearing, and fixed to the 29th of November 2018 for the Hearing of the Motion Ex-Parte.

On this Day, an Order of Court was made issuing a Concurrent Writ of Summons, as well as granting Leave to serve that Concurrent Writ of Summons and all other Originating Processes on the 2nd Defendant, whose Address was situated in Lagos State, outside the Jurisdiction of this Court. The Concurrent Writ, marked as such, was dated and filed on the **6th of December 2018**, with Hearing Notices ordered.

On the 20th of December 2018, one Alagaga Michael, a Sheriff of the High Court of Lagos State, deposed to an Affidavit of Non-Service wherein he stated that he was unable to serve the Originating Processes on the 2nd Defendant, because the 2nd Defendant was outside the Country.

On the 22nd of January 2019, Learned Counsel to the Claimants informed the Court of the Claimants inability to serve the 2nd Defendant, and had filed another Motion Ex-Parte to serve the 2nd Defendant by Substituted Means, which he later withdrew, and prayed the Court to strike out the Motion, and the Motion was accordingly Struck Out.

On the 22nd of March 2018, another attempt at Service was made to serve the 2nd Defendant in Lagos State, which also proved abortive.



The Claimant then filed yet another Motion Ex-Parte **M/4913/19** dated the 29th of March 2019, praying for Leave of Court to serve the 2nd Defendant by Substituted Means, on either an Adult Inmate or by Pasting. On the 16th of April 2019, this Order was granted with Hearing Notice and Photographic Evidence of Pasting Ordered.

This Service by Pasting was effected by this Court's Bailiff on the 17th of May 2019, with Hearing Notice for the next Adjourned Date.

Ordinarily by the 17th of May 2019, both the Writ and the Concurrent Writ, in the absence of any Application to Renew had expired.

It is however interesting to note that Service of the Originating Processes had already been acknowledged by the 1st Defendant on the 17th of December 2018, as seen clearly from the Acknowledgment Copy of the Writ marked 'End and Return'.

In response, the 1st Defendant entered a Conditional Appearance on the 18th of January 2018.

Now, the purpose of making or taking out a Concurrent Writ was aptly stated in the Case of **SUBERU & ANOR VS AFRICAN CONTINENTAL BANK & ORS (2002) LPELR-12207 (CA)**, wherein His Lordship, **ADAMU JCA** held that "the purpose of making or taking a Concurrent Writ is for Service on another Defendant or other Defendants whose particulars, (e.g. names, addresses) are different from the first person (Defendant) mentioned in the Writ or against whom the Plaintiff is claiming different Reliefs. (**Pp. 24-25, PARAS. E-A**)

ORDER 6 Rule 9 (a) and (b) OF THE RULES OF THIS COURT, states:

a) An Originating Process for service within Jurisdiction may be issued and marked as a Concurrent Originating Process, with one for service within and for service outside Jurisdiction.



b) A Claimant may at the instance of an Originating Process or at any time during its lifespan, cause to be issued one or more Concurrent Originating Processes, each to bear the same date as the initial process marked Concurrent and have stated on it, the date of issue.

From the above provision, the Original Writ is the Original Copy Writ prepared and sealed by the Registrar while the Concurrent Writ or Writs is or are Copies (or Exact Replica) (e.g. Photostat or Cyclostyled) made or produced from the Original Writ for purposes of service where more than one Defendant is involved." **Per ADAMU, J.C.A. (P. 24, PARAS A-E)**

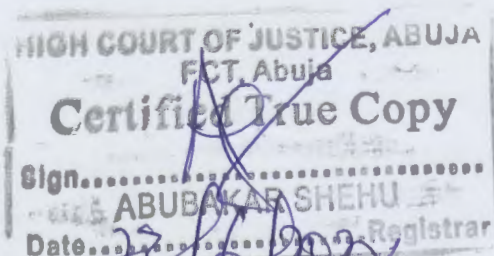
Section 98 of the Sheriff and Civil Process Act 1945 also makes adequate provisions, when it defined a Concurrent Writ as A Writ of Summons for service out of the State or the Capital Territory in which it was issued, within such State or the Capital Territory and shall in that case be marked as Concurrent.

A literal interpretation of the Order of Court is that the Lifespan of a Writ is Six Months and not Three Months as argued by Counsel, whose entire computation of time was wrong. It is clear that an Endorsement on the Writ by the Registry cannot supercede the Rules of this Court.

Moreover, it is evident that Service was effected on One out of the Two Defendants, which kept the Writ of Summons alive. Concerted efforts had been made by the Claimants to serve the 2nd Defendant and there was also the consideration of administrative factors affecting the Case File, which in any event, did not affect the timing.

In conclusion, the Service of the Processes on the 1st Defendant and his Acknowledgment of Service gave continued life to the Writ, and sustained it. Therefore, the Question of Expiration was pointless.

The Objection raised in this regard is found to be unmeritorious and is accordingly dismissed.



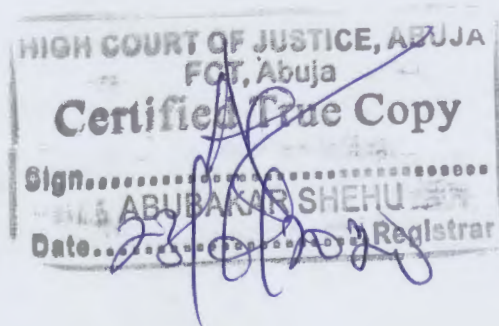
As regards the Second Motion on Notice **M/5492/2019** dated the 18th of April 2019, but filed on the 23rd of April 2019, the 1st Defendant is praying this Court for an Order to ***Strike out the Name of the 1st Claimant from the Suit*** for failing to have the Locus Standi to institute this Suit.

The Sole Ground of Objection is premised on the contention that the 1st Defendant is a Public Office established under **Section 150 of the Constitution of the Federal Republic of Nigeria (As Amended)** and therefore Lacks the Capacity to Institute or Defend an Action in Defamation, which is the Subject Matter of the instant Suit.

The 1st Defendant filed a Nine (9) Paragraph Affidavit in support, deposed to by Rachael Obong, a Legal Practitioner in the Law Firm representing the 1st Defendant, a Written Address and a Ruling of **Honorable Justice A.B. Mohammed of the FCT High Court in Suit No FCT/ABJ/CS/721/09.**

In the Written Address, Learned Counsel formulated a Sole Issue for Determination, which is '***whether the 1st Claimant/Respondent has the locus standi to institute or defend this Suit being an Action for alleged Defamation***'.

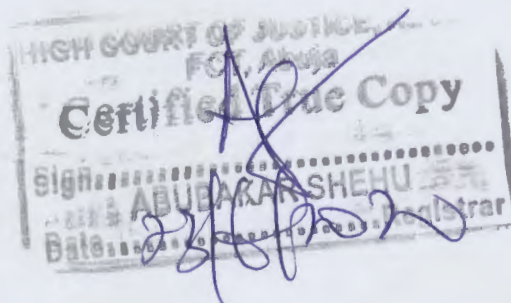
Learned Counsel to the Defendants submitted that the Locus Standi of a Claimant can be impeached by the Defendant, and cited the Cases of **AGBOOLA VS AGBODEMU (2008) LPELR-8461 (CA), NUC VS ALLI (2014) 3 NWLR PT 1393 PG33 AT 83 PARAS. C and FBN PLC VS NIREKO ENT. LTD (2001) 11 NWLR PT 723 PG 102 AT 10 PARAS B-C** on the position that the Court will then have a Judicial Perusal of the Pleadings of the Claimants as well as their Accompanying Processes.



Learned Counsel pointed out that the Averments in the Statement of Claim alleged that the 1st Defendant defamed the Claimants, and then argued, citing **Section 150 of the 1999 Constitution**, which established the Office of the 1st Claimant, that a **Public Office** cannot sue or be sued for an Action in Defamation. She made reference to the Supreme Court's Definition of the Tort of Defamation in the Case of **CHILKIED SECURITY SERVICES & DOG FARMS LTD VS SCHULMERGER (NIG) LTD & ANOR (2018) LPELR-44391 (SC)** and submitted that an Action in Defamation can only be instituted or defended by a Person, whether Natural or Artificial, and not a Public Office. She placed further reliance on the Case of **OMEGA BANK PLC VS GOVERNMENT OF EKITI STATE (2007) 16 NWLR (PT.1061) PG 455 Per OGUNWUMIJU (JCA); (2007) ALL FWLR (PT.386) PG. 658; PARAS B-D (CA) Per ABDULLAHI (JCA)** and argued that a Parties cannot maintain a Cause of Action in the Tort of Defamation through their Public Office, as they must sue in their Personal Name to protect their Reputations in their Public Office.

Learned Counsel further made reference to the Decision of my Learned Brother **A.B. Mohammed J.** wherein he relied upon the above Decision of the Court of Appeal, in his Ruling delivered on the **17th of September 2012 in Suit No. FCT/ABJ/CS/721/09 Between ESQUIRE VENTURES LIMITED & 3 ORS VS NIGERIA NAVY & 3 ORS**, to the effect that a Public Office cannot institute or Defend an Action in Defamation.

Finally, Learned Counsel cited **ORDER 13 RULES 18 AND 19 (1) OF THE HIGH COURT OF THE FCT (CIVIL PROCEDURE) RULES 2018** and urged the Court to hold that the 1st Claimant is not a Proper Party in this Action, as he lacked the requisite Locus Standi, and accordingly prayed the Court to Strike Out the Name of the 1st Claimant for being improperly joined.



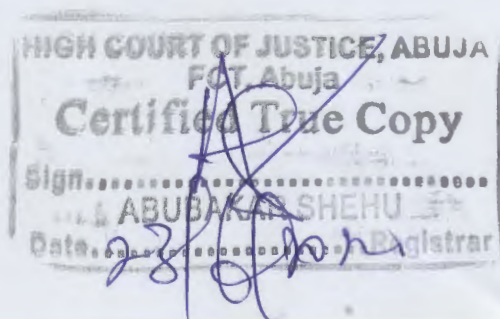
In Response, the Claimants filed a Six (6) Paragraph Counter Affidavit dated the 10th of May 2019, deposed to by Ifeanyi Okpor, a Counsel in the Law Firm representing the Claimants, and a Written Address of Counsel.

In their Written Address, Learned Counsel formulated a Sole Issue for determination, which is ***'whether the 1st Defendant is entitled to the Prayers sought in its Motion on Notice filed on the 23rd of April 2019'***.

Learned Counsel to the Claimants contended that the 1st Claimant as a Legal Person in Law is vested with the Locus Standi to institute a Civil Claim in the Tort of Defamation, to protect his Reputation and Credibility from being injured. He further argued that the Term Locus Standi means 'a Place of Standing', or the Right to be heard by the Court. According to Learned Counsel, a Person has the Right to sue in an Action if he has shown Sufficient Interest in the Action and has shown that his Civil Rights and Obligations have been or are in danger of being infringed. On these points, reliance was placed on the Cases of **PACERS MULTI-DYNAMICS LTD VS THE MV 'DANCING SISTER' & ANOR (2012) 1 SC (PT.1) 75** and **SUNDAY TAIWO VS SERAH ADEGBORO & 2 ORS (2011) 5 SC (PT.11) 179**.

He further argued that to ascertain whether a Party has Locus Standi, the Statement of Claim would be examined and he placed reliance on the Case of **BENEDICT OJUKWU VS LOUISA OJUKWU & ANOR (2008) 12 SC (PT.III) 1** and **CHIEF AROWOLO VS CHIEF OLOWOOKERE & 2 ORS (2011) 11-12 SC (PT. II) 98**.

Learned Counsel argued that the Claimants Averments show that the Publications of the Defendants were calculated to bring the Office of the 1st Claimant to disrepute, which is sufficient Locus Standi to prosecute this Action. Further, the Claimants have a Constitutional Right to be heard in the determination of their Civil Rights and Obligation before a Court of Law on any Subject Matter,



and that the 1st Claimant suffers no Legal Disability. He then placed reliance on **Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)**.

He submitted further that the 1st Claimant is a Creation of **Section 195 (1) of the 1999 Constitution**, and therefore possesses all the Powers that inure in favor of an Artificial Person, and then argued that the Law is such that an Artificial Person can be defamed in the Ordinary Course of Business.

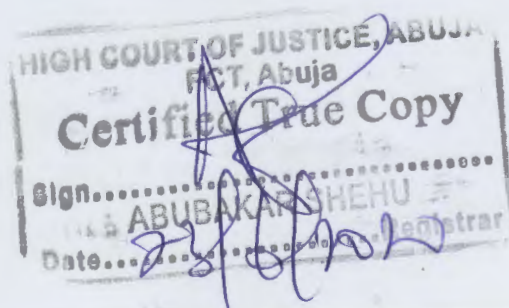
According to him, the Claimant must satisfy the Court in an action for Defamation that he is a Legal Person. On this point, Learned Counsel cited the Supreme Court's Decision in the Case of **EDEM VS ORPHEO NIG LTD (2003) 100 LRCN 1673**, to stated that the Claimant was injured by the said Publications in the Course of Business, and urged the Court to hold that the Claimant is competent to file this Suit.

In response to the Case of **OMEGA BANK PLC VS GOVERNMENT OF EKITI STATE (SUPRA)**, cited by Learned Counsel to the Defendant. Learned Counsel contended that the Facts and the Principles decided therein are not applicable to the facts of this Case, and demonstrated the distinction between that Case and the present Suit.

Finally, Learned Counsel urged the Court to refuse the 1st Defendant's Application as being Unconstitutional and brought in Bad Faith.

In Reply, the 1st Defendant filed a Ten (10) Paragraph Further Affidavit via a Motion on Notice for Extension of Time dated the 20th of June 2019, and a Reply on Points of Law.

In their Reply Address dated the 19th of June 2019, Learned Counsel maintained her stance on the Issue of Locus Standi and emphasized



that in Cases involving Natural Persons, the Question of Locus Standi is relevant to determine whether the said Natural Person has the requisite legal standing to institute or defend certain Types of Actions, which was not contemplated in **Section 36 (1) of the 1999 Constitution**, but rather provided for and determined through Judicial Authorities, as well as Relevant Laws.

Further, Learned Counsel argued that **Section 150 of the 1999 Constitution and not Section 195** is the proper Section in regard to the Office of the Attorney General, as the Office is not a Political Position, but a Ministerial Appointment, and she placed reliance on the Case of **NNPC & ANOR VS TRINITY MILLS INS BROKERS & ORD (2002) LPELR-7142 (CA) Per ADEREMI (JCA)** and **STITCH VS AG FED & ORS (1986) LPELR-3119 (SC) Per ANIAGOLU JSC**.

She rehashed her earlier argument that **Section 150 of the Constitution**, which appoints the 1st Claimant as the Chief Law Officer of the Federation, and the Head of the Ministry of Justice, restricts the Duties of the 1st Claimant to representations for the Federal Government, and any Action commenced on behalf of the 1st Claimant, through the 2nd Claimant, would amount to suing with Tax Payers Funds.

According to Counsel, the Prevention of the 1st Claimant to bring such an Action in Defamation will protect the Right to Freedom of Expression as guaranteed under **Section 39 of the Constitution**.

Learned Counsel further submitted that an Action for Libel is a Personal Action which does not survive the Parties. According to her, the 1st Claimant is a Public Office with Perpetual Succession, and it survives the Person occupying the Office. On this point, she placed reliance on the Cases of **IFEJIKA VS OPUTA (2001) LPELR-5538 (PP. 16-17, PARAS G-A) (CA) Per AKPABIO (JCA)** and **IZEJIOBI VS EBGEBU (2016) LPELR-40507 (P.42, PARAS B-C) (CA) PER OHO (JCA)** to state that the 1st Claimant cannot complain of an injury on



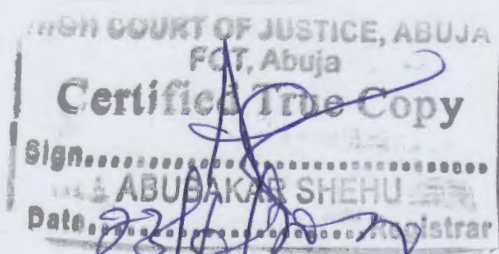
its character, as it has no Character under the Law. It is a Public Office to which Criticism and Freedom of Speech are guaranteed. The Case of **EDEM VS ORPHEO NIG LTD (supra)** as cited by the Claimants does not support their Argument, as the 1st Claimant does not carry on Trade or Business, and is not a Company.

Finally, she urged the Court to discountenance the arguments of Learned Counsel to the Claimant and grant the reliefs sought in their Motion on Notice.

After a careful consideration, it is clear that the Narrow Point of Contention is '**whether the 1st Claimant can sue for Defamation bearing in mind that he is the Chief Law Officer of the Federation**'.

In determining the Competence of a Statutory Body or Authority to be sued, it is necessary in every Case to look at the Instrument by or under which the Body/Authority is established. This is the Instrument that defined the Body's Powers, Functions, Rights and Duties and consequently, whether the Body can sue or be sued in relation to the exercise of the Powers, Functions, Rights and Duties. Reference is made to **NIKI TOBI JSC, in the Case of CARLEN VS UNIVERSITY OF JOS (1994) 1 SCNJ 72 AT 88.**

Although a Government has Corporate Capacity, the same does not follow for its various Ministries, and Functionaries, of which the Attorney General is one, through which it operates. Many of these Bodies, Authorities etc. are Unincorporated. They cannot therefore be sued except, where any of them falls within the Principles in laid down in the Supreme Court's decision of **THOMAS VS LOCAL GOVERNMENT SERVICE BOARD PP. 94-95 & 98.** In this decision,



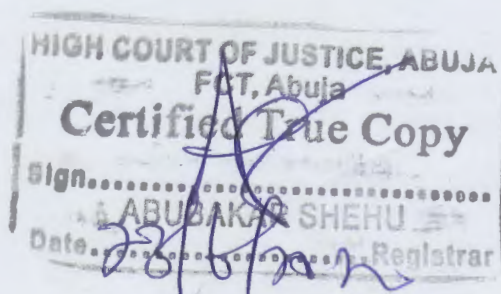
while it was argued that the Board was a 'Person' following the Definition, the Supreme Court rejected this Argument and held that the Definition of the 'Person' in the Interpretation Act is not designed of itself to confer Power to sue and be sued on every Association of Person, Body or Office and that in every Case, it is necessary to look at the Instrument by which or under which the entity is established. It is the Instrument or Statute that can tell whether the Body, Office or Association established by it can sue or be sued, judging from the Powers and Duties vested in it. The Instrument or Statute may even expressly confer on the Body, Office or Association the Power to sue and be sued.

Section 150 of the 1999 Constitution (As Amended) Provides: -

- (1) *There shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation*
- (2) *A Person shall not be qualified to hold or perform the Functions of the Office of the Attorney-General of the Federation unless he is qualified to practice as a Legal Practitioner in Nigeria has been so qualified to practices as a Legal Practitioner in Nigeria and has been so qualified for not less than Ten Years.*

Section 174 of the 1999 Constitution (As Amended) Provides: -

- (1) *The Attorney-General of the Federation shall have power -*
 - (a) *to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;*
 - (b) *To take over and continue any such criminal proceedings that may have been instituted by any other authority or person;*
 - and
 - (c) *To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or*



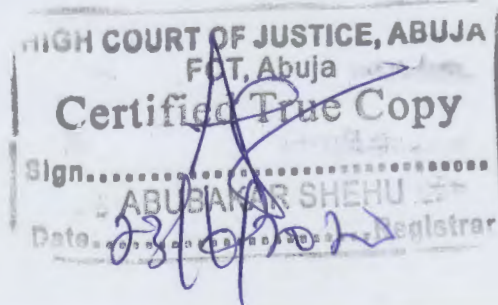
any other authority or person.

(2) *The Powers conferred upon the Attorney General of the Federation under subsection (1) of this Section may be exercised by him in person or through officers of his department.*

(3) *In exercising his powers under this section, the Attorney General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.*

In, AMAEFULE & ANOR v. THE STATE (1988) LPELR-450 (SC) On the extensive and unfettered powers of the Attorney-General, **Eso, J.S.C.** who wrote the Court's lead judgment said at **Page 178**, held that "The Pre-Eminent and Incontestable Position of the Attorney General, under the Common Law, as the Chief Law Officer of the State, either generally as a Legal Adviser or specifically in **all** Court Proceeding to which the State is a Party, has long been recognized by the Courts. In regard to these powers, and subject only to ultimate control by Public Opinion and that of Parliament or the legislature, the Attorney-General has, at Common Law, been a Master unto himself, law unto himself, and under no control whatsoever, judicial or otherwise, viz-a-viz his powers of instituting or discontinuing Criminal Proceedings." **PER NNAMANI, J.S.C. (Pp. 24-25, PARAS E-B)**

In the Case of **THE GOVERNOR OF OYO STATE VS YERIMA & ANOR (2014) LPELR-24131 (CA)** Per **EKANEM, J.C.A. (Pp. 17-20, PARAS G-B)**, It was held that "the Office of the Attorney-General of a State as provided for in **Section 195(1) of the Constitution of Nigeria, 1999 (As Amended)** makes the Attorney-General of a State the Chief Law Officer of the State and a Corporation Solely recognized by the Constitution and the Law of the Land. This Office has a Personality, which is distinct from the Personality of the Individual Holder for the time being in that Office. See also the Case of **CARLEN (NIG) LTD VS UNIVERSITY OF JOS (1994) 1 NWLR (323) 631, 656, AND ATTORNEY GENERAL OF THE FEDERATION**



VS ALL NIGERIA PEOPLES PARTY (2004) 114 LRCN 2671, 2687-2688.

In the Case of **ATTORNEY GENERAL OF ANAMBRA STATE VS ATTORNEY GENERAL OF THE FEDERATION (2007) LPELR-603 (SC)**, It was held **Per TOBI, JSC**, that "the Office of the Attorney General of a State is created under **Section 195 of the Constitution**. Although the Constitution provides only for the Duties of the Attorney General in Criminal Prosecutions, the Attorney General is the Chief Law Officer. And in that capacity, the Attorney General of a State can sue and be sued in such matters affecting the State. Thus, the Attorney General can **ONLY** intervene in Matters to secure the due Execution of a Public Right but not a Private Right. Consequently, the Attorney General cannot sue or be sued in Civil Matters affecting Persons in Cases, which are Personal or Domestic to them, and therefore not Official.

It has been held that the Constitution does not admit any limitation to the exercise of the Powers of the Attorney General. See also the Case of **IBRAHIM VS STATE (1986) NWLR (18)** and **ATTORNEY GENERAL OF ONDO STATE VS ATTORNEY-GENERAL OF THE FEDERATION (2002) 9 NWLR (772) 222, 419,**

The Office acts through a Natural Person, who holds that Office for the time being, or a Person delegated by him in respect of a particular function that can be delegated. See the Case of **ATTORNEY GENERAL OF KADUNA STATE VS HASSAN (1985) 2 NWLR (8) 483**, where the Court held in reference to **Section 8 (1) of the Interpretation Act Cap 123 Laws of the Federation of Nigeria**. The Section reads as follows; "Any Civil or Criminal Proceeding taken by or against any Person by virtue of his Office shall not be discontinued or abated by his Death, Resignation, or Absence or Removal from Office, but may be carried on by or



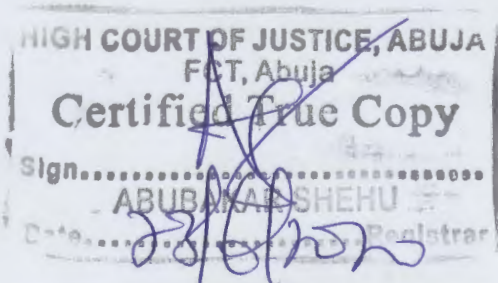
against, as the Case may be, the Person appointed to perform the Duties of the Office".

The above Provision is Clear and Unambiguous and must be given its literal meaning. See also the Case of **AMOBİ v. NZEGWU (2014) 2 NWLR (1392) 510, 545.**

The Office of the Attorney-General of the Federation is different and distinct from the Person occupying it. And so while the Office continues in Perpetuity, unless abrogated by the Constitution, the Holder of the Office could leave the Office at the Expiration of his Tenure or is Removed as the case may be. Physical Death can also result in the Person not occupying the Office any longer. This is merely saying the obvious.

IN CARLEN (NIG.) LIMITED V. UNIVERSITY OF JOS (1994) (CITED SUPRA), Per TOBI, J.S.C (Pp. 25-26, PARAS. E-D), the Supreme Court defined a Corporation as a Body of Persons (in the Case of a Corporation Aggregate) or an Office (in the Case of a Corporation Sole), which is recognized by Law as having a Personality which is distinct from the Separate Personality of the Members of the Body or the Personality of the Individual Holder for the time being of the Office in question. The Court also held that any Person Natural or Artificial may sue and be sued in Court. This Decision, by Analogy, also makes clear the distinction between the Office of the Attorney-General and the Incumbent of the Office. While the Office of the Attorney-General is Stable and Constant, being a Creation of the Constitution, the Incumbent, that is the Attorney General of the Federation himself, is Transient and Varied, in the sense that he is not personally, a Permanent Fixture of the Office.

There is no doubt that the Public Act of a Public Man may lawfully be made the subject of Fair Comment or Criticism, not only by the Press



but by all Members of the Public. In the Case of **DAVIS VS SEPSTONE (1886) 11 A.C. 187 P.80: 55 L.P.C. 51: 50 J.P.703: 34 W.R. 722: 55 L.T.L**, the Chief Justice (as he then was), **CROMPTON J** held thus, "I think the Fair Position of a Public Man is open to animadversion, and the Writer who is commenting upon it makes the imputations on his motives, which arise fairly and legitimately out of his conduct, so that a Jury shall say that the Criticism was not only honest, but also well founded. Therefore, an Action is not maintainable".

In **MASTER GIRDHARI LAL VS STATE (1969) 71 PUNJ. L.R. 322 AT P.328**, it was held that the imputation concerning a Public Servant do not amount to defamation, if they express opinion in respect to the conduct of the Public Servant, touching on Public Questions. Healthy and Wholesome Criticism of Public Functions by Public Servants while acting in the discharge of their Official Duties, is necessary to keep the Public Servants within the Grooves of Responsibility.

Finally, in the Case of **OMEGA BANK PLC VS GOV. OF EKITI STATE (2007) ALL FWLR (PT. 386) 658 AT 690-692; PARAS B-E (CA)** Per **OGUNWUMIJU JCA** held that "the Importance of the Plaintiff having Requisite Locus Standi, is further underlined by **Section 6(6) (b) of the 1999 Constitution**. It provides that the Judicial Powers vested in the Courts established under the Constitution shall extend to all Matter between Persons, or between Government or Authority and to any Person in Nigeria, and to all Actions and Proceedings relating thereto, for the determination of any Question as to the Civil Rights and Obligations of that Person. The Section places emphasis on the Civil Rights and Obligations of that Person using it and deals with Locus Standi material to it. See the Court of Appeals Judgment in **THOMAS VS OLUFOSOYE (1985) 3 NWLR (PT 13) 523 AT 539**. This point was affirmed in the **Supreme Court in (1986), 1 NWLR (PT.18) 669**.

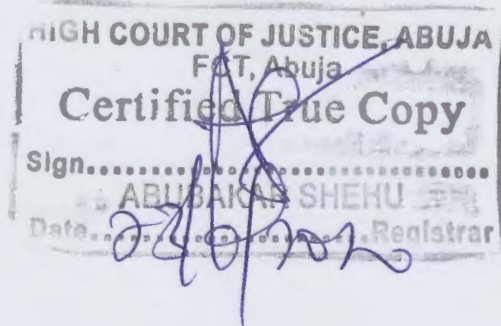


The Term Locus Standi cannot stand independently from the Provision of **Section 6(6)(b)**. As has been said, the Right to Action in Court is also a Constitutional Right exercisable by a Person who has Complaints touching on his Civil Rights and Obligations against another Person, Government or Authority. See **EYESAN VS SANUSI (1981) 4 SC 115 AT 137, PER OBASEKI JSC.**

Also, where there are no Questions as to the Civil Rights and Obligations of the Plaintiff raised in the Statement of Claim for determination, the Statement of Claim will be Struck Out and the Action dismissed. Having Locus Standi is, in Nigeria, a Constitutional Requirement in order to enable a Person to maintain an Action, and it is limited to the Prosecution of Matters relating to the Civil Right and Obligation of the Plaintiff. Be that Plaintiff a Person or Persons, a Group of Persons, a Statutory Body, a Government, an Authority or any other Juristic Person. Reference is made to the Case of **ADEFULU VS OYESILE (1989) 5 NWLR (PT 122) 377 AT 418-419.**

That Requirement is also Constitutionally defined in Civil Cases by Reference to the Criterion that only the Person or Persons whose Civil Rights or Obligations are in issue can institute any particular Suit”.

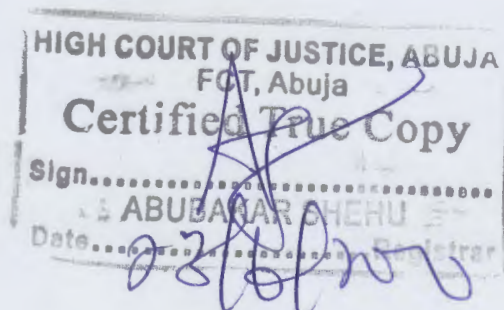
Her Lordship referred to the Case of **SENATOR ADESANYA VS PRESIDENT OF THE FRN & ANOR. (1981) 5 SC 112 AT PAGE 162. (2001) FWLR (PT. 46) 859 AT PAGE 901**, and further held that “the Interpretation and Scope of the Section featured very much in the Supreme Court. According to **BELLO JSC** (As he then was), His Lordship who later became the Chief Justice of Nigeria, opined thus: ‘it seems to me that upon the Construction of the Subsection, it is only when the Civil Rights and Obligations of the Person who invokes the Jurisdiction of the Court are in issue for determination, that Judicial Powers of the Court may be invoked.



In other words, Standing will only be accorded to a Plaintiff who shows that his Civil Rights and Obligations have been or are in danger of being violated or adversely affected by the Act complained of. If this is not shown, then the Person complaining has no Locus Standi to bring an Action to challenge the Act.

In the same Case, **NNAMANI JSC** stated thus at **PAGE 914 of FWLR** that: "**Section 6(6)(b)** to my mind, encompasses the Full Extent of the Judicial Power vested in the Courts by the Constitution. Under it, the Courts have the Power to adjudicate on a Justiciable Issue touching on the Rights and Obligations of the Person who brings the Complaint to Court. The Litigant must show that the Act of which he complains affects Rights and Obligations Peculiar Or Personal to him. He must show that his Private Rights have been infringed or injured or that there is a threat to such infringement or injury. It seems to me that the Courts must operate within the Perimeter of the Judicial Powers vested in them by **Section 6(6)(b) of the Constitution**, and that they can only take cognizance of Justiciable Actions properly brought before them in which there is a dispute, controversy and above all, in which the Parties have sufficient interest.

In Private Law Litigation, whether a Person has Locus Standi or not is dependent on the Cause of Action. The Rights in issue are generally Rights of the Individual involved in a Particular Transaction, which led to the Remedy being claimed...The Governor of Ekiti State is not an Individual but an Office which has been created by **Section 176 (2) of the 1999 Constitution**. The Occupier is a Human Being while the Office is an Abstract Entity, so that the Occupier cannot Sue personally for a Wrong committed against his Office. This means that Governor Fayose cannot sue in his Name for a Wrong done against the Governor. Similarly, the Office of the Former cannot sue for a Wrong committed personally against the Occupier of the Office. By the same Token, the Incumbent Speaker of



the House has no Right of Action for Libel committed against the House of Assembly or even against the Office of the Speaker of the House and vice-versa. It is the Statement of Claim alone that determines whether or not a Party has Locus Standi. The Publication mentioned Governor Fayose by Name. He as Fayose – an Individual Juristic Person, has Sufficient Interest to protect his Personal Reputation in whatever position, from being tarnished. He should have come to Court in his Personal Name. See **B.P.E VS N.U.E.E (2003) 13 NWLR (PT 837)**.

At all times, they have the Right to complain, to assert, or protect a Public Right or to enforce the performance of a Public Duty. However, in prosecuting such a Complaint, their Office and particularly the Office of the Attorney General of the State, has the Locus Standi to sue to protect such a Right. The Plaintiffs as named on the Writ of Summons, do not have a Public Duty or Right or Standing to sue anyone in the Tort of Defamation. Plainly being Public Offices, they have no Private Interest to Protect from Injury as a result of any Defamation committed against the Public Office. One is not quarrelling with the Justiciability of the Matter per se, if the Plaintiffs were suing in their Personal Names. An Action in Defamation is both a Private and Personal Action.

In the **DERBYSHIRE COUNTY COUNCIL VS TIME NEWSPAPER LTD (1992) 3 ALL ER PAGE 65**, the Court of Appeal in England held that the Council cannot maintain an Action in Libel for the obvious reason, that libel being a Personal Action is not available to Government Bodies. The Court went further to state that to allow a Local Government Authority to sue for Libel, would impose an added and Substantial Restriction upon Freedom of Expression, which, having regard to the ability of Individuals within a Local Authority to sue for Malicious Falsehood or to invoke the Criminal Law of Libel, cannot be regarded as necessary in our Democratic Society.

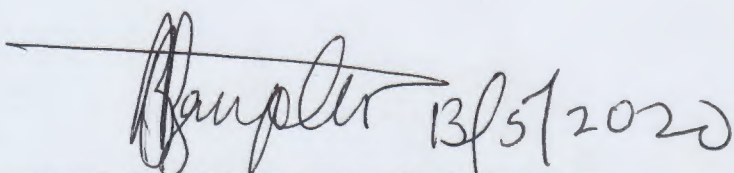


The **House of Lords in England** confirmed the above Position adopted by the Court of Appeal in **(1993) AC 534**. Thereby firmly establishing alongside **NIKI TOBI JSC** in the Case of **CARLEN (NIG) LIMITED VS UNIVERSITY OF JOS (1994) 1 NWLR (PT 323) 631**, and **OGUNWUMIJU JCA**, in **OMEGA BANK PLC VS GOV OF EKITI STATE (2007) ALL FWLR (PT 386) 658 AT 690-692; PARAS B-E** the Rule that neither the Federal Government, State Government, Local Government Council nor a Government Department or Authority, with Corporate Status can sue for Defamation.

Therefore, in conclusion this Court, aside of being bound by Judicial Precedents, is in total agreement with the above Faultless and Brilliant Decisions, and accordingly holds that the Preliminary Objection raised in respect of the inclusion of the Attorney General of the Federation as the 1st Claimant, is found meritorious and upheld.

Therefore, the Name of the 1st Claimant, the Attorney General of the Federation in this Action for the Tort of Defamation is Struck Off accordingly from the Writ of Summons.

The Claimant is ordered to amend his Pleadings to reflect the Ruling of the Court.



HON. JUSTICE A.A.I. BANJOKO

JUDGE

