

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY, THE 9TH DAY OF FEBRUARY, 2015
BEFORE HIS LORDSHIP, HON. JUSTICE A.R. MOHAMMED
JUDGE

SUIT NO: FHC/ABJ/CS/662/2014

BETWEEN:

1. OLATOYE WAHAB
2. ADEJUMO MANSOURU AJAGBE

PLAINTIFFS


AND

1. THE ATTORNEY GENERAL OF THE FEDERATION
2. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

DEFENDANTS

RULING

By a motion on notice dated and filed on 28/11/14, the Plaintiffs made a request to this Court by mode of referral to the Court of Appeal, Abuja for the interpretation of sections 135(2) (a) and (b) and 137(1) (b) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) in relation to the following questions/issues:-



- a. Whether by the combined effect of sections 135 (2) (a) and (b) and 137 (1) of the 1999 constitution (as amended) a person sworn into the office of the

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....

Date... 19-2-2015

Barr. (Mrs.) J. A. Adunni
Registrar II

FEDERAL HIGH COURT
ABUJA
CASHER'S OFFICE

Signature.....

Date.....

19/2/15
2010385668

president of the Federal Republic of Nigeria on two previous terms is deemed to have been elected to that office at two previous elections,

- b. Whether in view of section 137 (1) (b) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), any person can present himself for the purpose of being elected as the President of the Federal Republic of Nigeria, that person having participated as candidate and emerged winner at two previous presidential elections on account of which the person would have spent cumulative period of eight years by the time the Winner of the 2015 general election would be sworn into office.

The Plaintiffs' motion dated 28/11/14 is supported by a 19 paragraph affidavit sworn to by Efut Okoi, a counsel to the Plaintiffs/Applicants. The plaintiffs' motion is also supported by a 10 paragraph affidavit of urgency sworn to by the same Efut Okoi. The plaintiffs' motion is accompanied with a written address dated and filed on 28/11/14.



The 1st Defendant reacted to the plaintiffs' motion dated 28/11/14 with a counter affidavit filed on 10/12/14 and deposed to by Ehi odemwingie Esq., a legal practitioner in the law firm of solicitors to the 1st Defendants. The 1st Defendant's counter affidavit is accompanied with a written address dated 8/12/14 but filed on 10/12/14. It should be noted that the 2nd Defendant did not file process in opposition to the plaintiffs' motion for referral.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

In the Plaintiffs' written address in support of the motion dated 28/11/14, this issue was formulated for determination:

"Whether the Applicants are entitled to an order of Court referring the constitutional questions raised in this proceedings to the Court of Appeal for it's decision".

In his argument on the above issue, learned senior counsel for the Plaintiffs referred to section 295 (2) of the 1999 constitution (as amended) and stated that a party to any proceedings may apply to the Court where any constitutional question has arisen as to the interpretation or application of the constitution which makes it necessary for the Court to refer such question to the Court of Appeal for answer. It was submitted that once an applicant applies to the Court that there are constitutional questions which constitute substantial questions of law, the Court is bound to exercise it's discretion in referring such questions to the Court of Appeal especially, where, Senior counsel said, it is apparent to the Court that substantial issues of law have been raised.

Learned senior counsel for the plaintiffs then stated that it is apparent that from the originating summons and the supporting affidavits of this application, the applicants have raised two crucial constitutional questions which involve substantial question of law and that without its resolution, it would not be possible to resolve the issues in the main suit. The Court was referred to the case of DASUKI VS MU'AZU (2002) 16 NWLR PART 793, 319 on what constitutes a substantial question of law. It was stated that from the facts in the supporting

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....

Date.....

19-2-2015

affidavit, the general public is anxious to know the correct position of things with regards to the swearing in of the vice president to succeed the dead president, in that the occurrence has never happened in Nigeria and that there is no binding Judicial precedent on the matter. It was also contended that the crucial issue raised in this case is, whether the vice president of Nigeria who was elected and sworn in with the president, and was later sworn in as president upon the death of the president can be said to have been elected into office during the term in which the president died. That this question, senior counsel said, raises a very crucial issue of constitutional interpretation and application necessitating a reference to the Court of Appeal. It was further stated by the plaintiffs that the resolution of this issue will aid this Court in the consideration of the question relating to the qualification or disqualification for election to the office of president of the Federal Republic of Nigeria.



It was also the contention of learned senior counsel for the plaintiffs that the issue sought to be referred to the Court of Appeal is equally susceptible to more than one interpretation. That firstly, it could be argued that the vice president who succeeded the deceased president was only elected as vice president but later sworn in as president, while, others, senior counsel said, may interpret it to mean that the vice president was impliedly elected for the office of the president the moment the president died, and that was why he was immediately sworn in as an elected president for the same term which terminated on the very date the deceased president would, but for his death, have ended the term of office. That there is therefore divergence of opinion as to what the right interpretation should be. It was therefore contended for the plaintiffs that the

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-3-2015

questions are substantial questions of law which our Courts have not yet pronounced upon, hence the urgent need for the law in this area to be well established by judicial pronouncement as sought in this case. The Court was referred to the cases of DASUKI VS MU'AZU (2002) 16 NWLR PART 796, 319, and LABOUR VS INEC (2008) 13 NWLR PART 1103, 73 at 108 paragraphs C-D. It was finally submitted that this application is brought in good faith, to aid the Court to resolve the germane issues raised in the main suit, in that, it is not in doubt that this matter is of urgent constitutional importance, and it is in the interest of justice to have the Appellate Court pronounce on same as soon as possible to enable this Court dispose of the case in accordance with the decision of the Court of Appeal.

In the 1st Defendant's written address, this issue was formulated for determination:

"Whether the plaintiffs' application for referral has satisfied all the statutory conditions and principles for the grant of referral on questions of law to the Court of Appeal"



In his argument on the above issue, learned senior counsel for the 1st Defendant contended that the application cannot be heard by this Court as the Court lacks the competence to hear same. It was also contended that a Court that does not have jurisdiction to hear a case does not have the power to make any binding order in respect of the case, not even to make an order of referral to an appellate court. It was further contended that the issue of jurisdiction is a fundamental pre-requisite in the adjudication of any matter and where a court

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date...19-2-2015

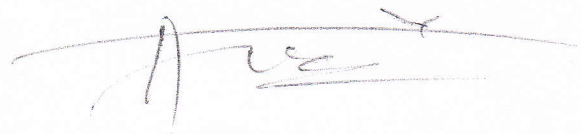
lacks jurisdiction to entertain a matter, the proceedings, however well conducted will be a nullity. The Court was referred to the cases of OLOBU VS AKEREJA (1988)3 NWLR PART 84, 508 and AKINBINU VS OSENI (1992) 1 NWLR PART 215, 97. That the reason for settling the issue of jurisdiction one way or the other is that it involves a radical, crucial and fundamental question of the competence of the Court to adjudicate a case, as defect in competence is extrinsic and not intrinsic to adjudication. The Court was referred to the cases of LAGOS STATE VS DOSUNMU (1989) 3 NWLR PART 111, 552, FUMUDOH VS ABORO (1991) 9 NWLR PART 214, 210 and MADUKOLU VS NKEMDILI (1962)2 SCNLR, 341.



Learned senior counsel for the 1st Defendant further submitted that when an issue of jurisdiction is raised before the hearing of a substantive suit, the Court must decide whether or not it has jurisdiction before going into the substance of the suit. Reference was made to the cases of DANIEL & ANOR VS AMOSUN & ORS (2009) LEPELR – CA/1/EPT/FHC/CS/84/08, OBI VS INEC (supra) and MADUKOLU VS NKEMDILIM (supra). It was also contended for the 1st Defendant that case law is clear that where there is a challenge to a Court's jurisdiction, that challenge must be determined by that Court and not by stating a case to the Court of Appeal. The Court was referred to the cases of A. G DELTA STATE VS ASIN (2010) 16 NWLR PART 1219, 347. It was submitted that the case of A. G DELTA STATE VS ASIN is on all fours with the present case, in that one of the grounds for challenging the jurisdiction of this Court by way of preliminary objection is that the plaintiff do not have the locus standi to institute this suit. It was further contended that if the plaintiffs have no locus standi to institute this suit, then, they do not as well have the standing to state a case for the

TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date..... 19-2-2015

interpretation by the Court of Appeal. That in the circumstances, the Court cannot, without addressing the issue of jurisdiction one way or the other, proceed to make an order of referral, for it will lack the competence to do so. It was therefore contended for the 1st Defendant that this Court lacks the legal power to consider the case for reference when there is a challenge on it's jurisdiction to hear the substantive suit. Again, reference was made to the case of OBI VS INEC (2007) 7 S.C 295.



It was also the contention of the learned senior counsel for the 1st defendant that the plaintiffs have not met the conditions precedent for referral, the Court was referred to section 295(2) of the Constitution of the Federal Republic of Nigeria 1999 and the cases of BAMAIYI VS A. G. FEDERATION (2001)12 NWLR PART 727, 468 FRN VS IFEGWU (2003) 15 NWLR PART 842, 191, ABUBAKAR VS A. G. FEDERATION (2007)6 NWLR PART 1031 and OBI VS INEC (2007) 11 NWLR PART 1046, 460, to the effect that the question for reference must genuinely arise in the course of the proceedings in the High Court and that the High Court must form an opinion that the question involve a substantial question of law. It was then submitted that in this case, the matter has not gone to hearing, so no question of law could be said to have arisen in the course of proceedings.

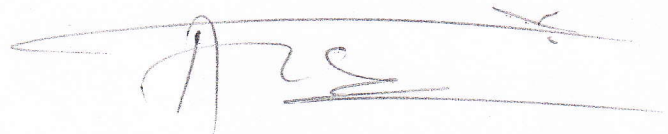
It was also the contention of the learned senior counsel for the 1st Defendant that the application for referral is an abuse of Court process in the sense that the same questions submitted by the plaintiffs in their originating summons are the same questions raised for the Court of Appeal, therefore, the application for referral, learned senior counsel said is an indirect appeal of this matter to the appellate

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

Court. That it is trite that a matter at a Court of first instance cannot be heard on appeal unless such matter has been decided by the Court of first instance. Reference was made to the case of FRN VS IFEGWU, supra.

Learned senior counsel for the 1st Defendant then stated that there is already a Judgment of a Court of competent Jurisdiction on the questions sought to be referred to the Court of Appeal. The Court was then referred to the case of CYRIACUS NJOKU VS GOODLUCK JONATHAN & 2 ORS – SUIT NO FCT/HC/CV/2449/2012 of the FCT High Court and that a pronouncement has been made, which senior counsel said, is binding on all, including the plaintiffs. That the judgment of the FCT High Court is presently a subject of appeal, which has already given the appellate court an opportunity to make a pronouncement in the matter, therefore, no cogent reason exist to make reference of this matter to the Court of Appeal.



In the brief reply of learned senior counsel for the plaintiffs, reference was made to order 29 rules 1 and 2 of the Federal High Court Rules, 2009 and the case of INAKOJU VS ADELEKE (2007) 4 NWLR PART 1025, 622, B – C and 699 BC, and it was contended that despite the 1st Defendant's notice of preliminary objection on Jurisdiction, the Court can still refer this suit to the Court of Appeal.

I have reviewed the argument of learned senior counsel for the plaintiffs and that of the 1st Defendant for and against the plaintiffs' application for reference to the Court of Appeal. The opposition of the 1st Defendant to the application for reference can be listed thus:

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date..... 19-2-2015

1. That since the 1st Defendant has raised issue of jurisdiction of this Court to entertain the plaintiffs' suit, the Court has no jurisdiction to make any order of reference.
2. That the Plaintiffs' have not satisfied the conditions precedent for applying to the Court for referral of this matter to the Court of Appeal.
3. That the application for reference is an abuse of Court process.

Let me therefore examine the above three grounds of the 1st Defendant's opposition to the application for reference.

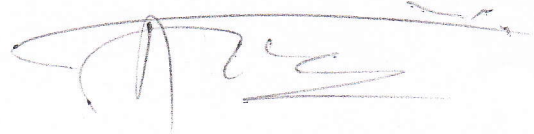
On the first ground, I am in complete agreement with the learned senior counsel for the 1st Defendant that where, as in this case, there is a challenge to the Court's jurisdiction to entertain a matter before it, the Court cannot look into any application (including the present application for reference) without determining the issue of jurisdiction. In fact, this is the holding of the Court of Appeal in the case of A.G DELTA STATE VS ASIN (2010) 16 NWLR PART 1219, 347 at 362 – 363 of the report. Now, the question to be resolved is, where a challenge to jurisdiction of a Court to entertain a suit exists side by side with an application for reference, does it mean that the Court must take the challenge to jurisdiction separately, or it can take both the issue of jurisdiction together with the application for reference? I asked this question because, the current practice of the Courts is to take issue of jurisdiction with the substantive suit, in so far as hearing in the substantive suit would not involve the taking of oral evidence of witnesses. See specifically, the provisions of order 29 rules 1 and 2 of the Federal

VERIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

High Court Rules 2009. See also, the cases of SENATE PRESIDENT VS NZERIBE (2004) 9 NWLR PART 878, 274 and INAKOJU VS ADELEKE (2007) 4 NWLR PART 1025, 622.

Although, it may be argued that the procedure only envisage taking issue of jurisdiction with the substantive suit, but looking at the rationale behind the evolution of the procedure (which the need to eliminate delay in the administration of justice, where objections to jurisdiction will stall the hearing of the substantive suit before it is finally resolved in the appellate Courts) and the conditions attached to the application of the procedure, (which is that the hearing of the substantive suit should be by affidavit evidence only), one may safely say that the procedure can also be adopted where a challenge to jurisdiction exists along with an application of a radical nature like that seeking for reference of a substantial question of law to the court of Appeal. The reason is that just as the hearing of a substantive suit should not involve calling of oral evidence, the hearing of the plaintiffs' present application for reference will not in any way involve the calling of oral evidence. This is because, the application is supported by an affidavit. It is the affidavit in support that constitutes the evidence to be considered in the determination of the application for reference. I am therefore of the humble view that in the peculiar circumstances of this case, the Court can take the 1st Defendant's issue of jurisdiction along with the Plaintiffs' application for reference dated 28/11/14.



On the 1st Defendant's second and third grounds of objection to the application for reference, I am of the view that the said grounds two and three cannot be

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date..... 19-2-2015

resolved at this stage of the ruling because of the simple reason that the said grounds are a direct attack on the application for reference. The Court will not have the competence to consider the said grounds when the issue of challenge to its jurisdiction is still pending and unresolved. I shall therefore proceed to consider the issue of jurisdiction raised by the 1st Defendant.

In the 1st Defendant's Notice of preliminary objection dated 28/10/14, the following grounds were given:



- a. The plaintiffs/Respondents have no locus standi to commence the action against the 1st Defendant/Appellate before this Court, having failed to disclose any sufficient interest to warrant a claim in public or private law.
- b. That the questions for determination and reliefs sought in the plaintiffs' originating summons dated 19th September, 2014 are indeterminable, hypothetical, merely academic and does not relate to live issues in the litigation and not grant any right or benefit on the successful party.
- c. This suit constitutes an abuse of Court process to the extent that the plaintiffs/Respondents' suit relates to the determination of the tenure of the office of the president and commander-in -Chief of the Federal Republic of Nigeria in view of the provisions of sections 135 and 137 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) which issue had already been decided by the High Court of the Federal Capital Territory, Abuja in Suit No. FCT/HC/CV/2449/2012 Mr. Cyriacus Njoku V.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

Goodluck Jonathan & 2 Ors, and which decision is a judgment in rem binding on all parties and the public and therefore cannot be re-litigated.

On the first ground in the preliminary objection, it was contended that before a party can institute a valid action in Court, that party must be vested with the requisite locus standi to do so, failing which he will be deemed by the Court to be a "meddlesome interloper" or "a busy body" who is suing in a matter where he has no interest or will suffer no injury or gain from the suit. The Court was referred to the cases of B.M. WOERMANN-LINE (2009) 13 NWLR PART 1157, 161, MR. SUNDAY ADEGBITE TAIWO VS SERAH ADEGBORO (2011) 11 NWLR PART 1259 and ABRAHAM ADESANYA VS PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR, (1981) 5 SC 112 at 148. It was submitted that the plaintiffs have failed to disclose any sufficient interest to warrant a claim in Public or private law. That the plaintiffs have shown no interest which is over and above that of the general public. That the depositions in the plaintiffs' affidavit only go to establish the fact that they are card carrying members of the All Progressive Congress (APC) and tax paying Nigerian citizens, just as well as millions of other members of the public. The Court was referred to the case of BEWAJI VS OBASANJO & ORS (2008) 9 NWLR PART 1093, 540 at 576. It was also contended that the test for determining locus standi where a plaintiff seeks to establish a private right, is that his supporting affidavit must disclose the rights, obligations or his interest which have been or are about to be violated and further that the act complained of affects rights and obligations peculiar or personal to the plaintiffs. Reference to the case of AJAYI VS ADEBIYI (2012) 11 NWLR PART 1310, to the effect that the action must be justiciable and that there must be a dispute

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date..... 19-2-2015

between the parties. It was contended that the plaintiffs' interest if any, are at par with those of all other Nigerians. The Court was urged to strike out the plaintiffs' suit.

In the plaintiffs' written address in opposition to the 1st Defendant's preliminary objection, a preliminary issue of the competence of the said objection was raised. It was then stated by the learned senior counsel for the plaintiffs that the originating summons was served on the Defendants on 3/10/14 and on 28/10/14, the 1st Defendant filed the present notice of preliminary objection. It was stated that by the provisions of order 29 rule 4 of the Federal High Court Rules, 2009, a defendant who wishes to dispute the Court's jurisdiction shall file his objection within 21 days after being served with the originating process. That in the instant case, the 1st Defendant, by filing his objection on 28/10/14 that is 25 days after being served with the plaintiffs' originating summons, is out of time and the said objection ought to be struck out. On the import of order 29 (4) (a) of the Rules of this Court, the Court was referred to the case of AMEKE IKECHUKWU VS TONY NWOYE & ANOR (2013) LPELR – 20349.



On the issue of the plaintiffs' locus standi to institute this action, it was stated that the plaintiffs approached this Court to seek its interpretative powers. That every citizen of Nigeria is vested with the capacity to seek an interpretation of any provision of the constitution. It was also stated that all the questions raised in the plaintiffs' originating summons border on constitutional breaches. That the plaintiffs are active members of their various political parties, and as politicians, they have the ambition to contest in the forthcoming general elections in 2015,

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date.....19-2-2015

therefore, they can approach this Court to seek judicial clarity before they plunge into election that may eventually turn out to be undue. The Court was referred to paragraphs 38 – 43 of the affidavit in support of the plaintiffs' originating summons, which senior counsel said, the paragraphs have raised issues of constitutional interpretation and infractions, which confer constitutional locus standi on the plaintiffs. On the current state of locus standi as it concerns issues of constitutional breach or interpretation, the Court was referred to the cases of OWODUNNI VS REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 10 NWLR PART 675, 315 and FAWEHINMI VS AKILU (1987) 4 NWLR PART 67, 797 and FAWEHINMI VS PRESIDENT, FRN (2007) 14 NWLR PART 1054 275 at 336 – 337.



On the first ground of the 1st Defendant's preliminary objection, the crux of the 1st Defendant's argument is that since the plaintiffs have not shown the rights, obligations or interest which have been or about to be violated and that the act complained of affect rights and obligations which are peculiar to the plaintiffs, then, they lack locus standi. The plaintiffs on the other hand have contended that they approached the Court to seek interpretation of certain provisions of the constitution 1999, specifically, sections 135 and 137 thereof. Plaintiffs' also argued that every citizen of Nigeria is vested with the capacity to seek interpretation of any provision of the constitution. That the questions raised in the originating summons border on constitutional breaches.

In the past, the law used to be that any person who approach the court must disclose his personal interest in the subject matter of the suit or show the injury

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date.....19-7-2015

that he has suffered or likely to suffer as a result of the act complained of. This is basically the decision in the case of ADESANYA VS PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (1981) 5 SC 112. However, in the recent decisions of the Courts, particularly, the apex Court, there has been a review or reconsideration of the issue of locus standi as it relates to the interpretation of any of the provision of the constitution. In the case of OWODUNNI VS REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 10 NWLR PART 675, 315, The Supreme Court while reviewing the case of ADESANYA VS PRESIDENT, held thus:

"it should be noted that the extract from the Judgment of FATAYI WILLIAMS, CJN in the Senator Adesanya case reproduced above sought to make a distinction of what is required as sufficient standing in matters that are constitutional and those that are not such as common law or administrative law. This distinction is valid and very important in our law having regard to the fact that section 6 subsection 6 (b) of the constitution of 1979 has created a constitutional locus standi in matters relating to challenges to the provision of the constitution and statutory enactment under it -----"



From the above quoted passage, there is no doubt that once a suit borders on challenge to allege constitutional breaches or seeks interpretation of any of the provisions of the Constitution of the Federal Republic of Nigeria, 1999, then a citizen is vested with the necessary locus standi to institute the action. In the case at hand, I have read both the questions raised and the reliefs sought by the plaintiffs in the originating summons, and it is clear that what the plaintiffs seek is the construction and interpretation of sections 135 (1) (2) (2A), 136 and 137 (1)

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date..... 19-2-2015

(b) of Constitution of the Federal Republic of Nigeria, 1999 as it relates to the tenure of office of any person elected as the president and Commander – in – Chief of the Federal Republic of Nigeria. In this wise, the plaintiffs have the necessary locus standi to institute and maintain the present action. The first ground of the 1st Defendant's preliminary objection has therefore failed.

On the second and third grounds of the 1st Defendant's preliminary objection, let me observe that the main contention of the 1st Defendant is that this suit is an abuse of Court process to the extent that the suit relates to the determination of the tenure of the office of the President and Commander – in – chief of the Federal Republic of Nigeria in view of the provisions of sections 135 and 137 of the Constitution of the Federal Republic of Nigeria, 1999. That this issue had already been decided by the High Court of the Federal Capital Territory, Abuja in suit No. FCT/HC/CV/2449/2012 – MR. CYRIACUS NJOKU VS GOODLUCK JONATHAN & 2 ORS. It was also stated by the learned senior counsel for the 1st Defendant the Judgment of the FCT High Court is presently a subject of appeal at the Court of Appeal and which senior counsel said has given the Court of Appeal the opportunity to make a pronouncement on the issue.

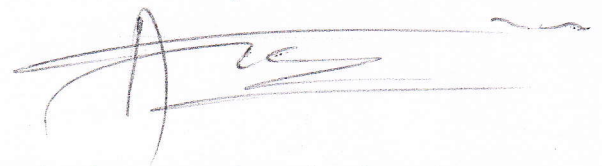
From the above scenario, it is thus clear that the issue as regards the interpretation of sections 135 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 has not been finally put to rest. A fundamental feature of the issue is that there is no decision yet by the Appellate Courts on the correct interpretation of sections 135 and 137 as it relates to the tenure of office of the president concerning whether or not an oath of office taking by the President

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

Goodluck Jonathan GCFR after the death of President Umaru Musa Yaradua should be regarded as election in to serve a term of four years in the first instance or not. It is therefore in my humble view that the constitutional issue raised in the plaintiffs' present involves substantial question of law that requires reference to the Court of Appeal for determination in accordance with the provision of section 295 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It may however be argued that since there is said to be judgment of the FCT High Court on the issue of interpretation of sections 135 and 137 of the Constitution of the Federal Republic of Nigeria, 1999, then the present suit should be struck out under the doctrine of estoppel per rem judicata or abuse of Court process. Let me however add that the parties in the FCT High Court case are not the same with the parties in the present suit before this Court. One of the features of estoppel per rem judicata is that the parties must be the same, the subject matter being the same. These features also apply in the consideration of whether or not an action amounts to abuse of Court process. As the parties in the FCT High Court judgment are not the same with the parties in this case, no abuse of Court process has arisen in this suit.



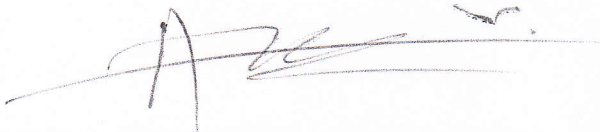
In the final analysis, it is my humble view that having regard to the fact that the incumbent occupant of the office of the President of the Federal Republic of Nigeria, Dr. GoodluckEbele Jonathan GCFR was sworn in as president and commander – in chief of the Federal Republic of Nigeria after the death of AlhajiUmaru Musa Yaradua in 2010, the issue of whether he is deemed as having

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Signature.....
Date.....19-2-2015

elected in the first instance by the said oath of office as president, involves a substantial question of law, in the sense no such situation existed or occurred in the history of this Country and there is also no previous decision on the matter by the Courts in this country. On this premise, the plaintiffs' motion dated 28/11/14 has succeed. In consequence thereof, I make the following order:

1. An order is hereby made for referral to the Court of Appeal, Abuja for the interpretation of sections 135 (2) (a) and (b) and 137 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. This order is made pursuant to the provision of section 295 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).



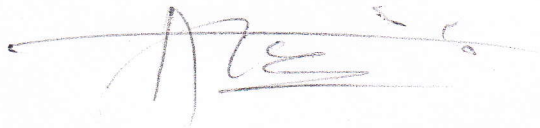
HON. JUSTICE A. R. MOHAMMED
JUDGE
9/2/2015

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date.....19-2-2015

APPEARANCES

M. A. Magaji SAN with Danjuma Ayeye Esq, A. I. A Azuomah Esq, Amina Zukogi (Miss), Efut Okoi Esq, Hammeed TukurEsq, M. M. Grema (Mrs.) Muzammil Yahaya Esq, Daniel Ibegbu Esq, Dabana Zara (Miss) and Egwuonwu Ifeanyi Esq for the Plaintiffs/Applicants.

A. O. Ade-okeaya Inneh SAN with Ibrahim Idris Esq., K. M. Nomeh Esq, Nnamdi Ekwem Esq, P. A. Obi (Miss) and Nnanna Oketa Esq for the 1st Defendant.



Abdulaziz Sani Esq with Maryam Ibrahim (Mrs.) for the 2nd Defendant.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Signature.....
Date...19-3-2015
Barr. (Mrs.) J. A. Adulau
Registrar II