

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC3/2002

**Petitioner:** Attorney-General of Abia State & 35 Ors

And

**Respondent:** Attorney-General of The Federation

Date Delivered: 2002-03-28

**Judge(s):** Muhammadu Lawal Uwais (CJN), Idris Legbo Kutigi (JSC), Michael Ekundayo Ogundare (JSC), Emmanuel Obiom

## Judgment Delivered

In paragraph 12 of their Amended Statement of Claim the Plaintiffs' claims against the Defendant read as follows:

"(i) A declaration that no law enacted by the National Assembly can validly increase or otherwise alter the tenure of office of elected officers or of Councillors of Local Government Councils in Nigeria except in relation to the Federal Capital Territory alone.

(ii) A declaration that the National Assembly has no power except in relation to the Federal Capital Territory alone to make any law with respect to the following matters or any of them, to wit:

(a) The conduct of elections into the office of Chairman, Vice-Chairman or Councillors of a Local Government Council in Nigeria.

(b) The division of Local Government Areas into wards for purposes of election into Local Government Councils in Nigeria.

(c) The qualification or disqualification of persons as a candidate for election as Chairman, Vice-Chairman or Councillor of a Local Government Council in Nigeria.

(d) The date of election into a Local Government Council and

(e) The prescribing of the event upon the happening of which a Local Government Council stands dissolved or the Chairman or Vice-Chairman of a Local government Council vacates his office or a Councillor or member thereof vacates his seat in the Local Government Council.

(iii) A declaration that the National Assembly has no power to make any law with respect to the qualification or disqualification of candidates for elections to be held pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 without complying with the requirements of Section 9 of the Constitution of the Federal Republic of Nigeria, 1999.

(iv) A declaration that save and except for laws for the Federation with respect to-

(a) The registration of voters, and

(b) The procedure regulating elections to a Local Government Council.

(v) A declaration that it is the House of Assembly of a State and not the National Assembly which has the power to make laws with respect to matters relating to or connected with elections to the office of Chairman or Vice-Chairman of a Local Government Council in that State or to the office of Councillors therein.

(vi) A declaration that the provisions contained in Sections 15 to 73 and 110 to 122 of the Electoral Act 2001 are from the date of the commencement of the said Act inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999, and are accordingly null and void and inoperative.

(vii) A declaration that by reason of the provisions of the Electoral Act 2001 which are inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the said Electoral Act is rendered null and void and inoperative in its entirety.

The claims are preceded by the following paragraphs of the Amended Statement of Claim, which I consider relevant. I set them out thus:

3. The Plaintiffs state that the National Assembly, acting pursuant to its law-making powers under section 4 of the Constitution of the Federal Republic of Nigeria, 1999, considered and passed the Electoral Bill 2001.

6. The Plaintiffs shall at the hearing contend that the Electoral Bill 2001, assented to by the President of the Federal Republic of Nigeria (hereinafter referred to as "the President") makes provisions for the following matters:

(i) National Register of Voters and Voters Registration (Part I thereof)

(ii) Procedure at Election (Part II thereof)

(iii) Political Parties (Part III thereof)

(iv) Procedure for Election to Local Government (Part IV thereof)

(v) Electoral Offences (Part V thereof)

(vi) Determination of Election Petitions Arising from Elections (Part VI) and

(vii) Miscellaneous (Part VII)

9. The Plaintiffs state further that the Constitution in section 4, 5 and 6 respectively make provisions for the distribution of Legislative, Executive and Judicial Powers of the Federal Republic of Nigeria between Federal Government and the Government of the States. Sections 7 and 8 of the Constitution similarly make provisions with regard to the establishment and continuance of Local Government Councils.

10. The Plaintiffs shall demonstrate that the distribution of the Legislative powers of the Federal Republic of Nigeria between the Federal Government and the Governments of the 36 States of the Federation has resulted in the enumeration of matters exclusively reserved for the Federal Government to legislate upon. Furthermore, the Plaintiffs shall show that the Constitution enumerates in the Concurrent Legislative List matters upon which both the Federal Government (through the National Assembly) and the State Government (through the Houses of Assembly of the States) may legislate. Specifically, the Plaintiffs shall contend as follows:

(a) By virtue of the provisions of Section 4(2) of the Constitution, the National Assembly shall have powers to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution.

(b) Subsection 3 Section 4 of the Constitution provides that the powers of the National Assembly to make laws for the peace, order and good governance of the Federation with respect to any matter included in the Exclusive Legislative List shall, except as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of the States.

(c) The Constitution further provides that the National Assembly shall have powers to make laws on any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the extent prescribed in the second column opposite thereof.

(d) The Plaintiffs state that the power to make laws set out in the Concurrent Legislative List is in addition and without prejudice to the powers, conferred by subsection 9 of Section 4.

(e) Section 7(1) of the Constitution provides that the Government of every State shall ensure the existence of Local Government under a law, which provides for the establishment, structure composition, finance and functions of such Councils.

(f) Item 22 of the Exclusive Legislative List of the Constitution, empowers the National Assembly to make laws on the Election to the offices of President and Vice-President or Governor and Deputy-Governor and any other office to which a person may be elected under the Constitution, excluding to a Local Government Council or any office in such Council.

(g) Item 32 of the Exclusive Legislative List of the Constitution empowers the National Assembly to make laws with regard to the Incorporation, Regulation and Winding up of Bodies Corporate, other than Co-operative Societies, Local Government Councils and Bodies Corporate established directly by any law enacted by a House of Assembly of a State.

(h) Item 11 of the Concurrent Legislative List grants the National Assembly power to make Laws for the Federation with respect to the registration of voters, and the procedure regulating elections to a Local Government Council.

(i) Section 197(1) of the Constitution established for each State of the Federation a State Independent Electoral Commission and the powers of the Commission are set out in Part II of the Third Schedule to the said Constitution.

(j) The Constitution makes elaborate provisions with regard to qualifications and disqualifications to all elective offices established by the said Constitution. The Plaintiffs shall show that the Electoral Bill assented to by the President has introduced fresh qualifications and disqualifying factors other than those provided for by the Constitution."

The Defendant in its Statement of Defence admitted amongst others paragraphs 3,6,9 & 10(a)(i) of the Amended Statement of Claim above. Paragraphs 2,3,4, 6 & 7 of the Statement of Defence read as follows:

"2. The Defendant admits paragraphs 2,3,4,5,6,7,8,9 and 10(a), (b), (c), (d), (e), (f), (g), (h), (i), of the Statement of Claim.

3. The Defendant admits paragraph 10(j) of the Plaintiffs' Statement of Claim only to the extent that the Electoral Bill

2001 assented to by the President has not contravened the 1999 Constitution with regard to qualifications and disqualifications to all elective offices established by the Constitution.

4. The Defendant denies paragraph 11 of the Statement of Claim and states that the provisions of the Electoral Bill 2001 assented to by the President has not altered or frozen the powers specifically assigned to the Plaintiffs under the 1999 Constitution.

6. The Defendant denies paragraphs 12 of the Plaintiffs Statement of Claim, and avers as follows:

(i) The Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998 has been expressly repealed by Decree No. 62 of 1999. Decree No. 36 of 1998 thus ceases to have any effect whatsoever, any longer.

(ii) Election of Officers into Local Government Councils had taken place before the commencement of the 1999 Constitution. Accordingly, the election into the Local Government Councils was not done pursuant to the provisions of the 1999 Constitution.

(iii) The National Assembly has inherent constitutional powers to determine the tenure of elected officers in Local Government Councils.

(iv) Section 110, 112, 113(8), 115(2) and 119 of the Electoral Bill 2001 has not contravened the provisions of the 1999 Constitution, hence the failure of the Plaintiffs to state the provisions of the 1999 Constitution that were violated by the aforementioned sections of the Electoral Bill 2001.

(v) Part IV of the Electoral Bill 2001 is consistent with the provisions of Item 11, Part II, 2nd Schedule, of the 1999 Constitution.

(vi) Sections 25(1) and 27 of the Electoral Bill 2001 are clear, unambiguous and not inconsistent with each other.

(vii) The provisions of Parts V, VI and VII of the Electoral Bill 2001 accord with the Legislative functions of the National Assembly and do not in any way conflict with the Judicial powers of the Judiciary defined in Section 6 of the 1999 Constitution.

(viii) The Independent National Electoral Commission shall have power to register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly.

(ix) The National Assembly has powers to make laws with respect to the procedure regulating elections to a Local Government Council, while the Independent National Electoral Commission shall carry out such other functions as may be conferred upon it by an Act of the National Assembly.

7. WHEREOF the Defendant urges the Court to hold:

(a) That the Electoral Bill 2001 assented to by Mr. President is not inconsistent with the provisions of the 1999 Constitution.

(b) That proper and necessary parties to this action are not before the Court.

(c) That the Plaintiffs' action lacks merit and is accordingly vexatious and an abuse of the Court's process.

(d) That the plaintiffs' action ought to and should be dismissed."

It is thus clear that from the pleadings that the main facts in this case are not in dispute as they are all admitted. Clearly when both parties have agreed about a particular matter in their pleadings such matter need not be proved and the court should accept such an agreed fact as established without proof (see section 74 of the Evidence Act). Consequently, at

the hearing of the case neither of the parties led any evidence in any form whatsoever.

Briefly stated the Plaintiffs' case is simply that the National Assembly enacted the Electoral Act 2001 (hereinafter referred to as the Act) to which the President of the Federal Republic of Nigeria gave his assent. The Act is divided into seven (7) parts as follows:

Part I: National Register of Voters and Voters Registration.

Part II: Procedure at Election.

Part III: Political Parties.

Part IV: Procedure for Election to Local Government.

Part V: Electoral Offences.

Part VI: Determination of Election Petitions arising from Election.

Part VII: Miscellaneous.

The Federal Government claimed to have acted in the belief that all the provisions contained in the Act are on matters with respect to which the National Assembly is empowered to make laws for the peace, order and good government of the country. The Plaintiffs said that a very careful perusal of the provisions of the Act would reveal that they transgress the legislative competence of the Federal Government and make serious incursions into the legislative and executive functions of the States/Plaintiffs as contained in the 1999 Constitution. The Plaintiffs said the areas of these incursions by the Defendant are as reflected in the reliefs claimed in their Amended Statement of claim. The Plaintiffs stressed the point that the dispute or controversy herein did not depend on the existence or non-existence of the Act as an enactment of the National Assembly but rather as to the scope or limits of the legislative powers of the National Assembly itself.

On the other hand, the Defendant in its Statement of Defence has denied vigorously that any provisions of the Act contravenes the provisions of the 1999 Constitution and that the Act has not frozen or altered the powers specifically assigned to the Plaintiffs under the Constitution. In addition the Act does not contain any provision that threatens the continued existence of the Federal Republic of Nigeria.

In compliance with the order of court, the parties filed and exchanged briefs of argument. These briefs were adopted at the hearing while additional oral submissions were made in amplification.

The Plaintiffs in their brief of argument have identified the following issues as arising for determination in this action:

"(i) Whether or not the National Assembly has any power to increase or otherwise alter the tenure of any of the offices mentioned in Claim (i) of this action.

(ii) Whether or not the National Assembly has any power to make laws with respect to the matters specified in Claim (ii) of this action.

(iii) Whether the National Assembly has power to make laws with respect to the qualification or disqualification of candidates for elections to be held pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 without complying with the requirements of Section 9 of the Constitution of the Federal Republic of Nigeria, 1999.

(iv) What is the scope or limit of the legislative powers of the National Assembly with respect to Local Government elections under the 1999 Constitution'

(v) Whether or not the provisions of Section 15-73 and 110-122 of the Electoral Act 2001 or of any of the said Sections

are constitutional, valid and operative.

(vi) In the light of the answers to questions (i) to (v) whether or not the Electoral Act, 2001, is unconstitutional, null and void and inoperative in its entirety (as the Plaintiffs contend) or constitutional, valid and operative (as the Defendant contends).

(vii) Whether there is any merit in the Defendant's contention that the proper and necessary parties are not before the court."

I observe that issues (i)-(vi) above correspond with the Claims or Reliefs (i)-(vi) in the Amended Statement of Claim. The extra issues (vii) is clearly the making of the Defendant, and not strictly part of the Plaintiffs' claims.

Issue (i) Claim (i)

The Plaintiffs contend that no law enacted by the National Assembly can validly increase or otherwise alter the tenure of office of elected officers or as Councillors of Local Government Councils in Nigeria except in relation to the Federal Capital Territory alone. They said Section 7(1) of the Constitution directs Government of every State to ensure the existence of the system of Local Government by a democratically elected Government Councils under the law providing for the following in relative to Local Government Councils:

(1) Establishment (2) Structure (3) Composition (4) Finance (5) Functions.

That the word "shall" used in the provision compels State Governments to make laws for the aforementioned purposes. That the provision clearly implies that it is the State, which must be responsible for the tenure of members of such Councils. That Item 22 on the Exclusive Legislative List in the Second Schedule to the Constitution places within the exclusive competence of the National Assembly, the making of legislation for election of the offices of the President, Vice-President, Governor, Deputy-Governor and any other office to which a person may be elected under the Constitution. That it specifically excludes for this purpose, the making of legislation for "election to a Local Government Council or any office in such Council". It was also submitted that Item 11 on the Concurrent Legislative List over which both the Federal and State Governments have concurrent legislative powers provides that:

"That National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a Local Government Council."

That Item 12 on the same Concurrent Legislative List makes it clear that the aforementioned Item 11 does not "preclude the State House of Assembly from making laws with respect to election to a Local Government Council in addition to but not inconsistent with any law made by the National Assembly for the registration of voters and the procedure regulating elections to a Local Government Council. It was stressed that the legislative powers conferred on the National Assembly by the aforementioned provisions of the Constitution are for the limited purpose of registration of voters and the procedure regulating elections to a Local Government Council."

Our attention is also drawn to Section 197 of the Constitution, which establishes a State Independent Electoral Commission whose functions are spelt out in Part II of the Third Schedule, Section 4 of which reads:

"4. The Commission shall have power -

(a) To organise, undertake and supervise elections to Local Government Councils within the state.

(b) To render such advice as it may consider necessary to the Independent National Electoral Commission on the compilation of and the register of voters in so far as that register is applicable to local government elections in the State."

The foregoing provisions emphasise the role of the State Independent Electoral Commission in respect of elections to

Local Government Councils within the State as well as highlight the limited role of the Independent National Electoral Commission. Again pursuant to Section 4(7)(a) of the Constitution a State House of Assembly is empowered to make laws with respect to "any matter not included in the Exclusive Legislative List." Therefore subject to the powers conferred on the National Assembly under the Concurrent Legislative List, all residual legislative powers with respect to Local Government Councils are subject to the Constitution vested in the House of Assembly. The court was urged to hold that it is the House of Assembly of a State and it alone that has the power to prescribe increase or otherwise alter the tenure of the office of elected officers or Councillors of Local Government Councils other than those in the Federal Capital Territory, Abuja. We were accordingly urged to enter judgment for the Plaintiffs on their Claim (i).

The Defendant in its brief of argument submitted that elections to offices in Local Government Councils were concluded under the Local Government (Basic Constitutional and Transitional Provisions) Decree No.36 of 1998, which made elaborate provisions on matters affecting local government system. That since the elections were not held under the 1999 Constitution, the Constitution did not provide for the tenure of elected officers of Local Government Councils and that there is no provision in the Constitution too, which empowers a State Assembly to determine the tenure of elected officers of Local Government Councils. That Decree 36 of 1998 was itself repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999 and that by virtue of the provision of section 312(2) of the Constitution, elected council officials shall be deemed to have been duly elected under the Constitution. That Item 22 on the Exclusive Legislative List should be read together with items 11 & 12 on the Concurrent Legislative List and that the legislative power of the National Assembly to make laws on the procedure regulating elections include the power to legislate on tenure and or when there will be an election. I reject this latter submission outright.

Now, Section 7(1) of the Constitution reads thus:

"7(1) The system of Local Government by democratically elected Local Government Councils is under the Constitution guaranteed; and accordingly, the Government of every State shall, subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such Councils."

Item 22 in the Exclusive Legislative List also states:

"22. Election to offices of President and Vice-President or Governor and Deputy-Governor and any other office to which a person may be elected under the Constitution, excluding election to a Local Government Council or any office in such Council."

Items 11 and 12 in the Concurrent Legislative List again read:

"11. The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a Local Government Council."

"12. Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to a Local Government Council in addition to but not inconsistent with any law made by the National Assembly."

All the above provisions are to me clear and unambiguous. They should therefore be read ordinarily and given their ordinary meaning. The Plaintiffs' case appears to me to have been built on a very strong foundation unlike that of the Defendant.

It is evident that the Defendant has no answers to the solid points of Constitutional law relied upon by the Plaintiffs. I find all the submissions of learned senior counsel for the Plaintiffs above correct and I respect them. The confusion of introducing spent Decrees into the issue by the Defendant's counsel is rather misguided. In fact the Court intimated counsel at the hearing that since the relevant Decree 36 of 1998 had been repealed, Section 6(1)(c) of the Interpretation Act (an existing law by virtue of the provision of Section 315 of the Constitution) provide that:

"6(1) The repeal of an enactment shall not -



(c) affect any right, privilege, obligation, or liability accrued or incurred under the enactment.\

This in effect means that the 3-year tenure prescribed by Decree 36 of 1998 for elected Local Government Officials remains intact.

I therefore enter judgement for the Plaintiffs on their Claim (i) and declare that no law enacted by the National Assembly can validly increase or otherwise alter the tenure of office of elected officers or of Councillors of Local Government Council except in relation to the Federal Capital Territory alone.

Issue (ii) Claim (ii)

The Plaintiffs adopt their arguments in respect of Issue (1) Claim (i) above, and emphasised that the National Assembly has no power to enact laws with respect to the conduct of elections into the office of Chairman, Vice-Chairman or Councillors of a Local Government except the power to make laws with respect to "registration of voters and the procedure regulating elections to a Local Government Council", which is itself predicated on the existence of laws with respect to elections generally.

The Defendant in fact argued or treated Plaintiffs' claims (i), (ii), (iii) and (iv) together in its brief under Question one. So what was said in respect of Claim (i) above will apply here. Plaintiffs' Claim (ii) however is in five parts (a)-(e). I will therefore answer them one after the other as follows:

(ii)(a) The National Assembly has no power except in relation to the Federal Capital Territory alone, to make any law with respect to conduct of elections into the Office of Chairman, Vice-Chairman or Councillors of a Local Government Council except the power to make laws with respect to the registration of voters and the procedure regulating elections to a Local Government Council.

This is refused, as it seems to relate to procedure of elections.

(b) The National Assembly has no power except in relation to the Federal Capital Territory alone, to make any law with respect to the division of a Local Government Area into wards for purposes of election into a Local Government Council.

(c) The National Assembly has no power except in relation to the Federal Capital Territory alone, to make any law with respect to the qualification or disqualification of a person as candidate for election as Chairman, Vice-Chairman or Councillor of a Local Government Council.

(d) The National Assembly has not power except in relation to the Federal Capital Territory alone, to make any law with

respect to the date of election into a Local Government Council.

(e) The National Assembly has no power except in relation to the Federal Capital Territory alone, to make any law in respect of the prescribing of an event upon the happening of which a Local Government Council stands dissolved or the Chairman or Vice-Chairman of a Local Government Council vacates his office or a Councillor or member thereof vacates his seat in the Local Government Council.

(b) ' (e) therefore succeeds.

Issue (iv) Claim (iv)

I think having regard to the submission by the Plaintiffs' counsel on the Issues above as well as the Defendant's reply on them, it will be convenient to deal with plaintiffs' Claim (iv) here immediately since the claim relates to the scope or limit of the legislative powers of the National Assembly with respect to Local Government elections in the States under the Constitution. In the light of what I have said above, I believe this claim too must succeed. I accordingly hereby declare that '

Save and except for laws for the Federation with respect to -

(a) Registration of voters, and

(b) The procedure regulating elections to a Local Government Council;

It is the House of Assembly of a State and not the National Assembly, which has the power to make laws with respect to matters relating to or connected with elections to the office of Chairman or Vice-Chairman of Local Government Council in that State or to the office of Councillor therein.

Issue (iii) Claim (iii)

This issue relates to the powers of the National Assembly to make laws with respect to the qualification or disqualification of candidates for elections to be held pursuant to the Provisions of the Constitution without complying with the requirements of Section 9 of the Constitution. Plaintiffs contend that since the Constitution has made very clear provisions with respect to the qualification of a person who seeks election to the office of President (See 131), Governor (See 177), membership of the National Assembly (See. 65) and membership of a State House of Assembly (Sec. 106), and similarly very clear provisions with respect to the disqualification of candidates for the same offices, President (5ec.

137), Governor (Sec. 182), National Assembly members (Sec. 66), and State Assembly members (Sec. 107), the National Assembly cannot amend or alter any of the provisions for qualification or disqualification of candidates as stipulated in the Constitution except by complying with the requirements of Section 9 of the Constitution, which relates to the mode of altering or amending the provisions thereof. It was submitted that the provisions contained in Section 25 of the Electoral Act has the effect of amending the Constitutional provisions relating to the qualification and disqualification of candidates for election when compared with the existing provisions under Sections 106, 107, 177 and 182 of the Constitution.

The court was urged to hold that the National Assembly cannot amend the provisions for qualification and disqualification of candidates as contained in the Constitution and that in accordance with the well established principles of constitutional law, if a legislature enacts a law in identical terms with what has already been enacted by another legislature whose enactments have superior legislative force, then the enactment of the subordinate legislature is void or at least inoperative. The case of Attorney General of Ogun State V Attorney-General of the Federation (1982)13 NSCC I at II per Fatai-Williams CJN was cited in support.

The Defendant said that because the National Assembly has the power to make law for peace, order and good governance for the Federation, it is in the discharge of the constitutional duty imposed on it by Section 4 of the Constitution that Section 25 of the Act was enacted to ensure orderliness and peace at elections, which are indispensable conditions precedent to the attainment of a good government and none of the provisions of the Constitution has been violated by the Act.

I accept the submission of learned senior counsel for the Plaintiffs and reject that of the Defendant. Issue (iii) Claim (iii) therefore succeeds.

It is therefore hereby declared that the National Assembly has no power to make any law with respect to the qualification or disqualification of candidates for elections to be held pursuant to the provisions of the Constitution without first of all complying with the requirements of Section 9 of the Constitution

Issue (v) claim (v)

Here the Court is required to declare that the provisions contained in sections 15 to 73 (Part II) and sections 110 to 122 (Part IV) of the Electoral Act, 2001 are from the date of commencement of the said Act inconsistent with the provisions of the Constitution and are accordingly null and void and inoperative.

The Plaintiffs contended that in enacting the Electoral Act, the Federal Government proceeded with that exercise as if the word "excluding" in Item 22 of the Exclusive Legislative List is replaced by the word "including", and proceeded to treat the legislative Powers of the National Assembly with respect to Presidential and Gubernatorial elections as if they were co-extensive with its powers over Local Government elections. For this reason therefore Parts II and IV of the Act must be treated as void on the ground of inconsistency with the Constitution. That even if some of the provisions are

good in so far as they apply to Presidential and Gubernatorial elections those provisions which purport to apply to Local Government Councils are bad and that this is not the type of situation, to which the blue pencil rule can be applied for the simple reason that one cannot sever the bad from the good. The case of *Balewa V Doherty* (1983)1 WLR 949 per Lord Devlin was cited in support.

I have recorded elsewhere that the Defendant is of the view that none of the provisions of the Act has contravened any of the provisions of the Constitution and that the National Assembly only acted in exercise of the powers conferred on it by the Constitution to make law for peace, order and good governance of the country

Part II of the Act (Sections 15 to 73) is made up of 59 sections while Part IV (Sections 110 to 122) is made up of 13 sections, excluding the various subsections and paragraphs contained in both parts. One will therefore, have to go through the various sections, subsections and paragraphs one by one (unless where they may conveniently be lumped together), in order to be able to determine exactly whether or not any of them has breached any of the provisions of the Constitution and therefore null and void and inoperative.

To carry out this exercise, I will be guided by the following considerations:

1. where the provision in the Act is within the legislative competence of the National Assembly as provided in the Constitution and it has not already been provided for in the Constitution, the provision will be regarded as valid.
2. where the provision in the Act is within the legislative powers of the National Assembly but the Constitution is found to have already made the same or similar provision, then the new provision will be regarded as invalid for duplication and or inconsistency and therefore inoperative. The same fate will befall any provision of the Act which seeks to enlarge, curtail or alter any existing provision of the Constitution. The provision or provisions will be treated as unconstitutional and therefore null and void.
3. where the provision in the Act relates to the election to the offices of Chairman, Vice-Chairman and Councillors of Local Government, unless it is in respect of the registration of voters or the procedure regulating elections to a Local Government Council, the provision or provisions will be treated as unconstitutional and therefore null and void.

It is now time to commence the exercise.

Part II (sections 15 to 73 of the Act)

Section 15

Many of its provisions are duplications of the Constitutional provisions relating to the election into the office of the President, members of the National Assembly, Governors and members of the Houses of Assembly. Many of its provisions also pertain to election to the office of Chairman, Vice-Chairman and Councillors of Local Government Council which are inconsistent with Item 22 on the Exclusive Legislative List discussed earlier in this judgement.

I have therefore no hesitation whatsoever in coming to the conclusion that the entire section is void for duplication, inconsistency and lack of legislative competence. The section is accordingly struck out

#### Section 16

The Section deals with the postponement of elections. As far as the Local Government Councils are concerned this can be regarded as part of the procedure regulating elections. The Plaintiffs have not urged anything specifically against the Section. The Section is accordingly upheld as valid.

#### Sections 17, 18, 19, 20, 21 and 22

These Sections are taken together simply because of inconsistency with the existing provisions of the Constitution. The National Assembly is incompetent to repeat in a law, things like qualification and disqualification of candidates for the elections already provided for in the Constitution. Many provisions pertaining to Local Government elections are also not matters of procedure. All the Sections are clearly incompetent. They are all struck-out.

#### Sections 23, 24 and 25

Many of the existing provisions of the Constitution have been repeated. Matters pertaining to the designation of Public Buildings as Polling Station must be left to the Independent National Electoral Commission (INEC) to handle and not strictly a matter for legislation. Section 25 in particular which relates to submission of list of candidates and their affidavits by political parties to the Commission is clearly an amendment to the Constitution. It is unconstitutional. All these Sections are hereby struck out for duplication, inconsistency and want of legislative competence.

#### Sections 26, 27, 28, 29 and 30

These Sections appear to deal only with procedure to regulate elections only. The Plaintiffs have not urged anything seriously against these Sections. They are accordingly upheld as valid.

#### Sections 31 to 73

These Sections would appear largely to have concerned themselves with the procedure regulating elections at all levels including Local Government Councils as already discussed above. Anything outside that will be unconstitutional as far as Local Government Councils are concerned. I also believe that the National Assembly can legislate for the entire country that a particular election must hold the same day throughout the country as stated in Section 42. All the provisions or Sections are therefore upheld.

#### Part IV (Sections 110 to 122 of the Act)

This part of the Act is supposed to have dealt with procedure for election to Local Government Councils.

Section 110 purports to give the State Independent Electoral Commission powers already conferred on it by the Constitution. This is clearly a duplication of the provisions of the Constitution and therefore inoperative. The proviso is unconstitutional while subsection 2 is not on a matter of procedure. The Section is therefore struck out.

#### Sections 111, 112, 113, 114, and 115(1)-(6)

These are again all not on procedural matters pertaining to elections. The National Assembly therefore lacks the necessary legislative Power to have enacted those Sections as explained earlier in this judgement. They are all null and void. They are struck out.

#### Sections 116, 117 and 118(1)(43)

I have no difficulty in holding that these provisions pertain to procedure regulating elections to Local Government Councils. They are therefore valid and I so hold.

The provision of Section 118(8) cannot, however, be said to be procedural. It is therefore incompetent and is struck out.

Clearly too, these Sections cannot be said to have dealt with the matters of procedure regulating elections to Local Government Councils. Some of the provisions in Section 121 are in fact already in the Constitution. The National Assembly lacks legislative power to enact these Sections. They are unconstitutional, in-operative, null and void. They are hereby struck-out.

It is perhaps now time to state that the Electoral Act is supposed to have dealt with all elections both at the Federal, State and Local Government levels. But as I have demonstrated above, all provisions in respect of Federal elections unless already provided for in the Constitution or where it is sought to change, alter or amend the constitutional Provision or where there is no power at all, the provision will be treated as valid except those in respect of Local Government Councils, which must not go beyond provision for registration of voters and or the procedure for regulating elections to the Local Governments. As a result of this, the Electoral Act as a whole is a mix-up, a confusion because the National Assembly seemed to have treated its legislative powers with respect to Federal elections as if they were coextensive with its powers over Local Government elections. They were wrong. I have shown above that a few provisions of the Act are good but quite a large number of them are bad and had been struck out.

For the foregoing reasons the Plaintiffs' Claim (v) succeeds in part and I declare as follows:

The provisions contained in Sections 15 to 73 and 110 to 122 except Sections 16, 26 to 41, 43 to 73, 116, 117 and 118(l)-(7), of the Electoral Act are from the date of the commencement of the Act inconsistent with the provisions of the 1999 Constitution and are accordingly null and void and inoperative.

Issue (vi) Claim (vi)

The Plaintiffs contend that in the light of the answers to Issues (i) to (v) above, the Court should examine the remaining portions of the Act not affected by the decision, which nullified parts of the Act on the ground that they are unconstitutional and void, to see whether the remaining portions still remain operative. It was submitted that what is left of the Act when all the portions attacked are expunged cannot be allowed to stand and so the Act ought to be struck-out in its entirety.

The short answer to this is that the Plaintiffs had only attacked two parts (Part 11 and IV) out of a total of seven parts (Parts I ' VII) of the Act. And even then not all Sections of the two parts attacked were struck-out. Quite a number of the Sections attacked have been held as constitutional and therefore valid. That much is made clear in our declaration in respect of claim (v) above where the valid Sections are excluded from the declaration made.

Claim (vi) therefore fails and it is dismissed.

Plaintiffs' issue (vii) is whether there is any merit in Defendant's contention that the "proper and necessary" parties are not before the Court. This is certainly not a claim by the Plaintiffs. I note that the point was pleaded by the Defendant in its pleadings only. It is one of the issues raised by the Defendant on pages 1 and 2 of its brief. It must be deemed to have been abandoned. It is accordingly struck-out.

Plaintiffs claims (i), (iii) and (iv) therefore all succeed completely while Claims (ii) and (v) succeed in part only. Claim (vi) fails and it is hereby dismissed.

In summary and in conclusion, it is declared as

1. No law enacted by the National Assembly can validly increase or otherwise alter the tenure of office of elected officers or of Chairmen and Councillors of Local Government Councils in Nigeria except in relation to the Federal Capital Territory alone.

2. The National Assembly has no power except in relation to the Federal Capital Territory alone to make law with respect to the following matters or any of them to wit:

(a) .

(b) The division of Local Government Areas into ward for purposes of election into Local Government Councils in Nigeria.

(c) The qualification or disqualification of a person as a candidate for election as Chairman, Vice-Chairman, Councillor of a Local Government in Nigeria.

(d) The date of election into a Local Government council and

(e) The prescribing of the event upon the happenings which a Local Government Council stands dissolved or the Chairman or Vice-Chairman of a Local Government Council vacates his office or a Councilor or member thereof vacates his seat in the local Government Council.



3. The National Assembly has no power to make any law with respect to the qualification or disqualification of candidate for elections to be held pursuant to the Constitution of the Federal Republic of Nigeria 1999.

4. Save and except for the laws for the Federation with respect to:

a. The registration of voters, and

b. The procedure regulating elections to a Local Government Council,

It is the House of Assembly of a State and not the National Assembly, which has the power to make laws with respect to matters relating to or connected with elections to the office of Chairman or Vice-Chairman of a Local Government Council in the State or to the office of Councillors therein.

5. The provision contained in Sections 15 to 73 and 110 to 122 except Sections 16, 26 to 41, 43 to 73, 116, 117 and 118(l)-(7) of the Electoral Act, 2001 are from the date of the commencement of the Act inconsistent with the provisions of the 1999 Constitution and are accordingly null and void and inoperative.

Uwais, Ogundere, Ogwuegbu, Mohammed, Kalgo and Ejiwunmi. JJSC concurred.