IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE: HON. JUSTICE C.O. AGASHEZE
ON TUESDAY, THE 27TH DAY OF MARCH, 2025.
SUIT NO: FCT/HC/CV/3493/2024

BETWEEN:
MR TOBENNA EROJIKWE — **CLAIMANT**

AND

1. **INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION**
2. **MR. OLUSEUN ABIMBOLA, SAN (CHAIRMAN ELECTORAL COMMITTEE OF THE NIGERIAN BAR ASSOCIATION)** — **DEFENDANTS**
3. **ELECTIONBUDDY INC.**

JUDGMENT

The Claimant commenced this suit via originating summons dated the 29th day of July, 2024 and filed on 6th day of August, 2024 seeking the determination of the following questions:

1. Whether, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) ("NBA Constitution"), and Section 25 (b) (ii), (iv), (v), and Section 30 (d) of the Nigeria Data Protection Act 2023 ('NDPA'), the Claimant is entitled to the critical information, documents, and data bases used in the National Elections of the Nigerian Bar Association ("NBA") held on 20th July 2024?

2. Whether the refusal by the 1st-3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as detailed in the letter dated 25th July 2024 from the Electoral Committee of the Nigerian Bar Association ("ECNBA") co-signed by the 2nd Defendant constitutes a breach of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution?

3. Is the refusal by the 1st - 3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as outlined in the letter dated 25th July 2024 from the ECNBA and co-signed by the 2nd Defendant, unjustifiable under the NDPA, specifically Section 25 (b) (ii), (iv), and (v) and Section 30 (1) (d) of the NDPA?

4. Whether the 1st - 3rd Defendant's refusal to provide the critical information, documents and data bases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies?

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5. Whether there is a *prima facie* case of malpractice at the NBA National Elections held on 20th July 2024 to warrant the disclosure of the requested critical information, documents and databases by the 1st – 3rd Defendants?

6. Whether by Paragraphs 8(c), 8(e) & 8(f), Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv) & (v) and 30 (d) of the NDPA, this Honourable Court ought to compel the 1st – 3rd Defendants to immediately release the requested information and databases to the candidate to the Claimant?

And if the answers to the above questions are in the affirmative, the Claimant seeks from the Court, the following reliefs:

1. **A DECLARATION** that, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv), (v), and Section 30(1) (d) of the NDPA, the Claimant is entitled to the critical information, documents, and databases used in the National Elections of the NBA held on 20th July 2024.

2. **A DECLARATION** that the refusal by the 1st – 3rd Defendants to provide the critical information, documents, and data bases used in the National Elections of the NBA held on 20th July 2024 as detailed in ECNBA's letter dated 25th July 2024 constitutes a breach of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution?

3. **A DECLARATION** that the refusal by the 1st – 3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024 as outlined in the letter dated 25th July 2024 from the ECNBA and co-signed by the 2nd Defendant, is unjustifiable under the NDPA, specifically Section 25(b) (ii), (iv), (v), and Section 30 (d).

4. **A DECLARATION** that the 1st-3rd Defendant's refusal to provide the critical information, documents, and databases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies.

5. **A DECLARATION** that the Claimant's letters of 22nd July 2024 and 25th July 2024 to the ECNBA and the 3rd Defendant respectively disclose a *prima facie case* of malpractice at the NBA National Elections held on 20th July 2024, warranting the disclosure of the requested critical information, documents, and databases by the 1st -3rd Defendants.

6. **AN ORDER OF MANDATORY INJUNCTION** compelling the 1st-3rd Defendants to immediately release the requested critical information, documents, and databases relating to the NBA National Elections held on 20th July 2024 to the Claimant, as provided for by Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution.

7. **AN ORDER OF PERPETUAL INJUNCTION** restraining the 1st - 3rd Defendants from undertaking any actions or measures that would obstruct, impede, or in any way hinder the

Claimant in the exercise of his right to appeal the result of the NBA Elections held on 20th July 2024 as enshrined and guaranteed under the NBA Constitution.

In support of the originating summons is an affidavit of 14 paragraphs deposed to by **Tobenna Erojikwe,** the Claimant himself wherein he deposed to the facts and circumstances that warranted his taking out the originating summons.

According to the Claimant, he is a Legal Practitioner who participated in the national elections of the Nigerian Bar Association ("NBA" or the "Association") organized by the Electoral Committee of the NBA (**"ECNBA"**) on 20th July 2024 (the "Election") as a candidate for the office of the President while the 1st Defendant is the legal entity responsible for managing the affairs of the NBA, and the 2nd Defendant is the Chairman of the ECNBA who in that capacity, was responsible for overseeing and managing the election. The Claimant averred that the 3rd Defendant is a company based in Edmonton, Canada which specializes in providing online voting software designed to facilitate elections for various organizations, including associations, non-profits, schools, unions and businesses and was appointed by the ECNBA to conduct the election and indeed provided the electronic voting services for the election.

The summary of the case of the Claimant as can be seen from the affidavit in support of the originating summons is that after the election which took place on the 20th day of July 2024, the ECNBA announced the result of the election and declared Mazi Afam Josiah Osigwe SAN as the winner of the election with 20,435 votes while he emerged as 1st runner-up with 10998 votes and Chukwuka Nwabueze Ikwuazom, SAN, another co-contestant in the election, was said to have polled 9018 votes to emerge as the 2nd runner-up but that there were breaches and irregularities in the conduct of the election as a result of which he resolved to conduct an audit to facilitate his right of appeal under the constitution of the Nigerian Bar Association. Mazi Afam Osigwe, the winner of the election was not made a party to the suit.

It was averred that as a result of the above, he requested for some documents (which he listed in the affidavit) from the ECNBA and the 3rd Defendant who by paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the NBA which mandates the ECNBA (and the 3rd Defendant by extension) to: provide essential information, documents, and databases used in an election to interested parties promptly; make available, freely and in a timely manner, the information on which its decisions are based; and ensure effective and reasonable access to relevant documents and information within the constitutional framework: refused to grant him access to the said documents on the ground that providing the critical information would violate the data privacy of the voters, that the Claimant has not submitted any consent letters from the voters, that the information requested are sensitive personal information, and that disclosing the information would result in the exposure of sensitive information unrelated to the NBA vote.

It is against the background of the foregoing that the Claimant took out this originating summons seeking the determination of the questions put forward and the reliefs sought therein in the event that the questions are answered in the affirmative.

This Court on the 16th day of August 2024, granted leave to the Claimant to serve the 3rd Defendant with the originating summons in Edmonton Canada, and also leave to serve the concurrent writ of summons on the 3rd Defendant via a reputable Courier Service.

The case was thereafter adjourned to the 29th day of August, 2024 for Hearing of the Claimant's Motion on Notice for Interlocutory injunction.

All the Defendants entered conditional appearance and filed Notices of Preliminary Objection. They also filed counter affidavit to the Claimant's Motion on Notice for interlocutory injunction as well as the originating summons.

The Preliminary Objections, as well as the substantive originating summons were heard together and the matter was adjourned for judgment.

Unfortunately, the matter was heard very close to the end of the annual vacation for the year 2024 and the file along with the other files, returned to the Hon. the Chief Judge for further directives.

The file came back to the Court with a directive from My Lord the Hon. Chief judge that this court should proceed and deliver judgment. The period allowed for judgment to be delivered, given the date on which the originating summons was heard, has elapsed. However, the finding of the court will not be affected by the time as affidavit evidence constitutes the evidence relied upon by the court.

As has become the standard practice, in cases heard on the basis of affidavit as in originating summons, where there is a preliminary objection, the Court hearing both the preliminary objection and the substantive originating summons, will first deliver its ruling on the preliminary objection before going into the substantive originating summons. See **INAKOJU V ADELEKE (2007) 4 NWLR (PART 1025) 427 @ 662 Paras B-C**. It is thus on the basis of the above that I will consider the preliminary objection of the three defendants before I go into the substantive originating summons.

THE PRELIMINARY OBJECTION OF THE 1ST DEFENDANT.

The first Defendant, the **Incorporated Trustees of the Nigerian Bar Association**, entered a conditional appearance and filed a Notice of Preliminary Objection wherein it challenged the jurisdiction of the court to hear and determine the originating summons on the grounds stated in the Notice of Preliminary Objection as follows:

1. *The Claimant initiated this suit vide an originating summons challenging the outcome of an election of the Nigerian Bar Association held on the 20th day of July, 2024.*
2. *The election was conducted by the 2nd Defendant, the Electoral Committee of the Nigerian Bar Association (ECNBA) and with the assistance of the 3rd Defendant who is a company that specializes in providing services in respect of online voting software designed to facilitate elections for various organization such as this.*
3. *The Claimant in his claim is asking to be given the essential documents and critical information of the members of the Nigerian Bar Association that was used in conducting the election so as to obtain evidence in support of the petition which he filed against the election of Mazi Afam Osigwe, SAN.*
4. *The materials which the Claimant seeks are not grantable by this Honourable Court as they are a breach of the right to privacy of the members of the Nigerian Bar Association who voted at the just concluded NBA General Election of 20th July 2024 protected in the Constitution and Section 24, 25 (1) (a), 30 (1) (a), and Section 65 of the Nigerian Data Protection Act of 2023.*
5. *The instant suit constitutes an abuse of the process of this Honourable Court because the Claimant has in parallel initiated a similar and or the same petition before the Election Appeals Committee of the of Nigerian Bar Association vide an undated petition*

6. *This Claimant has failed to exhaust the internal dispute resolution mechanism as contained in Clause 14 (2) (1) of the Nigerian Bar Association Constitution before resorting to litigation in this suit.*
7. *This suit which seeks the Court's intervention for the sole purpose of obtaining materials to confirm or deny the hunches of the Claimant does not disclose any reasonable cause of action against the 1st Defendant.*
8. *It will be in the interest of justice if the Applicant's/Objector's Application is granted.*

From what was expressed as the grounds for the preliminary objection, what I see and understand as the real grounds for the objection are as follows:

i. The materials which the Claimant seeks are not grantable by this Honourable Court as they are a breach of the right to privacy of the members of the Nigerian Bar Association who voted at the just concluded NBA General Election of 20th July 2024 protected in the Constitution and section 24, 25(1) (a), 30 (1) (a) and section 65 of the Nigerian Data Protection Act of 2023.

ii. The instant suit constitutes an abuse of the process of this Honourable Court because the Claimant has in parallel initiated a similar and or the same petition before the Election Appeals Committee of the of Nigerian Bar Association vide an undated petition.

iii. This Claimant has failed to exhaust the internal dispute resolution mechanism as contained in Clause 14(2) (1) of the Nigerian Bar Association Constitution before resorting to litigation in this suit.

The 1st Defendant filed an affidavit in support of the preliminary objection in which affidavit, it was averred amongst others, as follows:

That the complaint of voting continuing is bereft of any evidence as no single evidence of the voter(s) who voted after 11:59 pm of the 20th July 2024 was provided and that based on her knowledge and review of the originating summons together with the affidavit, the Claimant's suit also does not disclose any reasonable cause of action. It was also averred that the reliefs sought by the Claimant are reliefs that could be granted by the National Officers Elections Appeal Committee of the Nigerian Bar Association to which the Claimant has lodged a formal complaint but have by this action short circuited the proceedings and that the Claimant, without exhausting the internal dispute resolution mechanisms provided by the Constitution of the Nigerian Bar Association resorted to litigation before this Court.

It was averred that despite the filing of the petition to the National Officers Elections Appeal Committee of the Nigerian Bar Association on the 22nd of July 2024 as mandated by the Constitution of the Nigerian Bar Association, the Claimant filed this suit *mala fide* intention to irritate and harass the Defendants and as such, the instant suit constitutes an abuse of the process of this Honourable Court because the Claimant filed his petition before the Election Appeals

Committee of the Nigerian Bar Association vide a letter dated the 22nd day of July, 2024 seeking similar reliefs.

It was further averred that the Claimant's actions are intended to unjustly harass the Defendants and undermine the credibility and integrity of the electoral process conducted by the Nigerian Bar Association and that the Claimant has failed to exhaust the internal dispute resolution mechanism as contained in Clause 14 (2) (1) of the Nigerian Bar Association Constitution before resorting to litigation in this suit. It was also averred that the suit does not disclose any reasonable cause of action against the 1st Defendant.

In a written address in support of the preliminary objection, Counsel to the 1st Defendant raised only one issue for determination as being:

Whether this Honourable Court has the jurisdiction to entertain this suit.

Arguing the sole issue, Counsel to the 1st Defendant answered in the negative and submitted that the suit is more or less like a mock trial and that courts do not engage in mock exercises, and submitted also that the claimant failed to exhaust the internal dispute resolution mechanisms of the association.

Counsel also contended that this suit is an abuse of court process as the Claimant already has a petition before the National Officers Election Appeal Committee of the Nigerian Bar Association. Counsel also contended that the Claimant's suit is frivolous as the reliefs the Claimant is seeking are not grantable.

In opposition to the preliminary objection of the 1st Defendant, the Claimant filed a written address in which Counsel to the Claimant raised one issue for determination too as being:

Whether the instant suit constitutes an abuse of Court process or is in any way or manner rendered incompetent.

Counsel argued that the suit is not an abuse of court process and that the suit is not pre mature as the suit is only aimed at securing relevant materials needed to pursue that remedy.

The 1st Defendant filed a further affidavit in support of the preliminary objection in which affidavit the Report of the National Officers Elections Appeal Committee was attached.

RESOLUTION OF THIS ISSUE:

As stated earlier, the grounds of the objection are premised on abuse of court process, non-utilization of the internal mechanisms for resolution of the disputes as contained in the Constitution of the Nigeria Bar Association and that the suit does not disclose any reasonable cause of action against the 1st Defendant.

Abuse of process of the court is a term generally applied to a proceeding which is wanting in bona fides, and is frivolous, vexatious or oppressive. It can also mean abuse of legal procedure or improper use of legal process for instance, the re-litigation of already decided issues is an abuse of court process even if the matter is not strictly res judicata. **USMAN V. BABA (2005) 11 NWLR (PART 917) 113.**

The courts have established the meaning of what constitutes an abuse of court process. In the case of **AJAOKUTA STEEL CO. LTD V. G.I. & S.LTD (2019) 8 NWLR (PT.1674) 213,** the Supreme Court gave a clear insight as to what constitutes abuse of court process as follows:

> ***"The common feature of abuse of court process is the improper use of judicial process by a party in litigation. The most common one is multiplicity of actions on the same issues between the same parties and instituting different actions between the same parties in different courts. Abuse of the process of the court may also occur where two similar processes are deployed in the exercise of the same rights…"***

In the case of **I.T.B V. OKOYE, (2021) 11 NWLR (PT.1786) 163,** the Supreme Court listed the circumstances when a suit is said to constitute an abuse of court process and said:

"A suit is said to constitute an abuse of court process when it depicts a multiplicity of action:

a. Between the same parties;
b. On the same subject matter; and
c. On the same issues."

The apex court stated that the three conditions above must be present for the abuse to ensue.

In **SARAKI V. KOTOYE (1992) 9 NWLR (PART 264) 156,** the Supreme Court of Nigeria, after stating what abuse of court process means, also gave instances of what could be construed as an abuse of court process. The apex court said:

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. But a common feature of it is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice"

The Court listed what could constitute an abuse of the process of court as follows:

a. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of action on the same subject matter between the same parties even where there exists a right to begin the action.
*b. Instituting different action between the same parties simultaneously in **different courts** even though on different ground.*
c. Where two similar processes are used in respect of the exercise of the same right, for example, a cross appeal and a respondent notice.
d. When an application for an adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by the lower court;
e. Where there is no law supporting a court process where it is premised on frivolity or recklessness;

Also, in the case of **Registered Trustees of Evangelical Church & Ors V. Registered Trustees of Glad Tidings Tarbanacle Christian Mission & Ors (2017) LPELR- 43482 (CA),** the Court of Appeal had this to say:

"What then constitutes an abuse of Court process? In SARAKI V. KOTOYE (1992) 9 NWLR (Pt. 264) pg. 156, the Supreme Court provided the answer thus: "The multiplicity of action on the

same subject matter between the same parties, even where there exists a right to bring the actions, is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se." Also in ALI V. ALBISHIR (2008) 3 NWLR (Pt.1073) pg.94 at 141. On what constitutes abuse of Court process, the Court held as follows: "Filling two suits between the same parties, on the same subject matter and where end result of both suits was the same, even though the reliefs in the two suits were worded differently, would constitute abuse of Court process."
Per CHIOMA EGONDU NWOSU-IHEME, JCA (P. 4, paras. A-E)

From the decisions of the Supreme Court in the cases reproduced above, it is obvious that a decision on whether this case constitutes an abuse of court process will not be difficult to make.

Are there two subsisting suits before two competent courts? Are the subject matter in the suits before the two courts the same? Are the reliefs sought before the two courts the same? Are the parties in the two suits the same? As long as the answers to these questions are not in the affirmative, this court will find it difficult to view this case as an abuse of the process of court.

The answers are not far-fetched. The parties in the two suits are not the same. As a matter of fact, presently, there are not in existence, two suits in the real sense of it. And even if they are construed as suits in the sense of the word suit, the reliefs sought in the two of them are not the same and the subject matter cannot be said to be the same as what is at stake in the current suit is the quest for the data of the persons that took part in the election and not the election simpliciter whereas in the appeal before the ENCBA, what is at stake is the election. The reliefs sought are not the same either. This suit is not a petition against the election as used by the Counsel to the 1st Defendant.

There is therefore no reason why the present suit would be construed as having been instituted mala fides or calculated to irritate and or annoy the Defendants. All the Claimant herein says is that he wants the materials with which he will use in the appeal.

I therefore find and hold that this suit is not an abuse of court process in whatever way the term, abuse of court process is defined. This ground of objection will therefore not avail the 1st Defendant/ Applicant.

The second ground of the objection is that the Claimant has failed to exhaust the internal dispute resolution mechanism as contained in **Clause 14 (2) (L)** of the Nigerian Bar Association Constitution before resorting to litigation in this suit.

This ground brings to fore, the provision of Clause 14 (2) (L) of the Nigerian Bar Association Constitution which provides as follows:

Clause 14 (2):

The functions of the Standing Committees shall be as outlined hereunder:

(L) National Offices Election Appeal Committee:

Shall receive and resolve electoral complaints and disputes arising from the election of National Officers and the election of the representatives of the Association in the General Council of the Bar.

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The clause only states the function of the Standing Committee, just like all other committees set up under the constitution of the Association. There is nothing in the said clause compelling a member to first approach the National Officers Election Appeal Committee before seeking any relief in court in line with the Constitution of the Federal Republic of Nigeria wherein the combined effect of **Sections 1(1), 6(6)(b) and 36 (1) of the Constitution of the Federal Republic of Nigeria 1999** (as amended) guarantees the Claimant's right to court for the determination of any question as to his civil rights and obligations.

Of particular interest amongst the cases cited is the case of **GUSAU V LAWAL & ORS (2023) LPELR-60152-SC** referred to by Counsel to the 1st Defendant in his address. The Supreme Court indeed made an exposition on situations like this when it held as follows:

*"Where a statute or the rules of a political party or an association provides that an aggrieved person must explore internal dispute resolution mechanisms, having recourse to such internal dispute resolution mechanism is a condition precedent to the filing of a suit before a court and where same is not explored, the suit would be incompetent. See **OBE V. MTN NIG. COMMS. LTD. (2021) 18 NWLR (PT. 1809) 415; A.G. KWARA STATE & ANOR V. ADEYEMO & ORS (2016) LPELR - 41147 (SC); KAYILI V. YILBUK (2015) 7 NWLR (PT. 1457) 26.** In the instant case, the Appellant has not denied that the Guidelines of the 2nd Respondent prescribes a domestic dispute resolution mechanism. He however contended that such dispute resolution mechanism cannot supersede the provisions of the Electoral Act as well as the Appellant's constitutional right to approach the court. With due respect to learned Appellant's counsel, I am not persuaded by this argument. There is nothing in the provisions set out above that precludes an aggrieved member of the 2nd Respondent from approaching a court. All that is required is that the aggrieved member files an appeal before the Gubernatorial Appeal Panel first before approaching the court. The said provision does not in any way or manner seek to bar an aggrieved party from approaching a court, neither does it seek to oust the jurisdiction of the court. In **ORAKUL RESOURCES LTD. V. N.C.C. (2022) 6 NWLR (PT. 1827) 539,** Sections 86, 87 and 88 of the Nigerian Communications Act, 2003 which provide for recourse to certain dispute resolution mechanisms came up for this Court's consideration. It was held thus at page 594, Paras. G - A: "It is my considered view that a holistic reading of Sections 86, 87 and 88 of the Nigerian Communications Act 2003, reveals that the intention of the legislature is that anyone who has a complaint against decisions or regulations made by the Commission must first exhaust the remedies provided before approaching the court. I am also of the view that Section 88(3) of the Act does not oust the court's jurisdiction to entertain any complaint against any actions or regulations of the Commission, nor does it breach an aggrieved person's right of access to court or fair hearing. Sections 86 and 87 of the Act provide conditions to be fulfilled prior to approaching the court for any remedy." In that case, this Court affirmed the concurrent decisions of the two Courts below, to the effect that the suit was incompetent by reason of the Appellant's failure to follow the laid down procedure set out in Sections 86, 87 and 88 of the NCC Act. The aim of such provisions is to lighten the heavy docket of our Courts. The provisions of Part V Paragraph 9(h) of the 2nd Respondent's Guidelines and similar ones contained in the Guidelines of other political parties are mandatory, if they are so couched and they must be complied with. This will help to reduce the huge number of pre-election matters that our Courts have to deal with as many aggrieved members of political parties will be able to reach an amicable in-house settlement of their disputes without the need to resort to litigation. Let me reiterate that the provision does not infringe on Section 84(14) or the Appellant's constitutional right to approach a court. That is why the provisions, like those of most other political parties, provide for a short time within which the Appeal Panel must conclude its work. If for any reason,*

the Appeal Panel refuses to attend to the complaints of an aggrieved aspirant or if it drags on for too long, such an aspirant can and must approach the Court before the lapse of the Constitutional time limit of 14 days and inform the Court of steps taken and why a resolution was not reached before he filed his suit."
Per ADAMU JAURO, JSC (Pp. 44-47, paras. B-C)

What I understand from the decision of the Supreme Court in the above case and in all the cases cited by the Counsel to the 1st Defendant is that where the constitution of an association expressly provides that any member of an association aggrieved with a decision or an action taken by the Association must first utilize the internal dispute resolution mechanism provided by the constitution of the association before approaching the court to seek redress, where an aggrieved member approaches the court without first utilizing the said internal mechanism, he will be considered to have gone to court without fulfilling a condition precedent necessary for the institution of the suit. That is the position of the law.

However, the above is not the scenario in this case. The relevant paragraph of the Constitution of the NBA has been produced and there is no indication that the said provision makes it mandatory that an aggrieved person must begin and end his complaint with the National Election Appeal Panel before proceeding to Court for any other relief.

Secondly, even the 1st Defendant admitted that the Claimant has already approached the National Election Appeal Panel. This was not the position in the case of **GUSAU V LAWAL & ORS** (supra) where there was no attempt at all to utilize the internal mechanism provided by the Political Party.

Thirdly, the relief sought in this case is clearly stated to be to enable the Claimant effectively pursue his case before the National Election Appeal Panel.

Given the circumstance of this case, the decision of the Supreme Court in the case of **LAWAL V GUSAU & ORS,** which is the confirmed position of the law, is not authority for the contention of the Counsel to the 1st Defendant. The facts are different and we all know that a case is only authority for what it decided. In **IGWE V THE STATE (2022) 1 NWLR (PART 1810) 111**, the Supreme Court made it very clear that a decision is only an authority for what it actually decided. It must be considered and utilized in the light of its own peculiar facts and circumstances. See also **AGHWARIANOVWE V PDP (2024) 1 NWLR (PART 1918) 45.**

In this case, the particular clause of the NBA Constitution referred to and relied upon never made any provision that a member must go to the Appeal Panel as was the case in the **LAWAL V GUSAU & ORS.** It only established the panel. There is also evidence on record that the Claimant has gone to the Panel. In the circumstances therefore, this ground of objection cannot avail the 1st Defendant and I so hold.

The next important ground of the objection is that the materials which the Claimant seeks are not grantable by this Honourable Court as they are a breach of the right to privacy of the members of the Nigerian Bar Association who voted at the just concluded NBA General Election of 20th July 2024 protected in the Constitution and section 24, 25(1) (a), 30 (1) (a) and section 65 of the Nigerian Data Protection Act of 2023.

This ground appears to be calling upon the court to determine the substantive suit at the preliminary level. A determination of this ground is like making a decision on the entire case of the Claimant. The position is that a court is not allowed to make a pronouncement on the substantive matter while deciding a preliminary objection. I therefore will not make a finding or a pronouncement on this at this stage of the proceedings.

In the case of **APC & ORS V PDP & ORS (2022) LPELR-58317-CA**. the Court of Appeal made this point clear enough as follows:

"Courts are enjoined not to delve into substantive matters at the preliminary stage. The Court must restrict itself to the Preliminary matters and resist any invitation or urge to delve into the substantive issues or merit of the case at the preliminary stage of the case. Any pronouncement on the substantive case will be in excess of the power of the Court. It will be ultra vires the powers donated to the Court at that precursory stage. See ILORI V. BENSON (2008) FWLR (Pt. 26) 1846 at 1859. ONGWUEGBU V. IBRAHIM (1997) 3 NWLR (Pt. 491) 110. In ATTORNEY GENERAL OF FEDERATION V. ATTORNEY GENERAL ABIA STATE & ORS (2001) LPELR - 24862 (SC) the apex Court made the point that to prejudge the issues in the substantive suit yet to be decided is not permissible by law. It will therefore amount to this Court determining the appeal even before it is properly presented before us or to nailing and exterminating it on the cross even before being considered. For us to pronounce the said issue at this stage will be prejudging the appeal itself. The less we talk about the substantive appeal at this stage the better for us. Therefore, when we get to the bridge if ever we get there, we shall cross it."
Per AMINA AUDI WAMBAI, JCA (Pp. 23-24, para. E-E)

In the circumstance therefore, this ground of objection also cannot avail the 1st Defendant.

The 1st Defendant also contended that this case does not disclose any reasonable cause of action and that the Court does not have jurisdiction to entertain this suit.

Cause of action has been severally defined but the import of whatever definition one chooses to give, is that it is the entire set of circumstances that give right to a claim which consists of two elements namely:

a. The wrongful act of the defendant which gives rise to the cause of complaint, and
b. The consequential damage.

See OBAZEE V. EKHOSUEHI (2019) 17 NWLR (PART 1701) 245, THOMAS V. OLUFOSOYE (1986) 1 NWLR (PART 18,669) ADIMORAH V. AJUFO (1988) 3 NWLR (PT. 80) 1SIFAX NIG LTD V. MIGFO NIG. LTD (2018) 9 NWLR (PART 1623) 138, IYEKE V. PTI (2019) 2 NWLR (PART 1656) 217.

In **OMANG V NSA 2021 10 NWLR (PART 1783) 55 (CA)** cause of action was variously explained to mean the following:

A. A cause of complaint;
B. A Civil right or obligation for determination by a court of law;
C. A dispute in respect of which a court of law is entitled to invoke its judicial powers to determine;
D. Consequent damages,
E. Every fact which would be necessary for the Plaintiff to prove, if traversed in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to be proved;

F. All those things necessary to give a right of action whether they are to be done by the Plaintiff or a third party;
G. A factual situation which enables one person to obtain a remedy from another in court in respect of injury.

It is also the factual situation which if substantiated, entitles a plaintiff to a remedy against the defendant. **DANIEL V AYALA (2019) 18 NWLR (PART 1703) 25. ALSO, SAKI V. APC (2020) 1 NWLR (PART 1706)515.**

For a court to decipher whether a case discloses a cause of action, all the court needs to do is to look at the writ of summons and the statement of claim to see whether there are factual situations which if established, entitles the Claimant to a remedy against the defendant.
The Court does not need to look at the statement of defence of the defendant at this stage to know whether the claimant's case discloses a cause of action. See **H.S. ENGINEERING LTD V. S. A. YAKUBU (NIG. LTD (2009) 10 NWLR (PART 1149) 416.** In this case, what we have are the questions for determination, reliefs sought and the affidavit in support of the originating summons.
All the court needs to do is to find out whether there are circumstances or situations that brought the Claimant to court for which if they are established, the Claimant will be entitled to remedies by the Court.
The question now in this case is, are there facts that brought the Claimant herein to court to seek for remedy? It is therefore, a look at the originating summons and the issues for determination in the originating summons of the Claimant that will show whether there are.

The issues raised for determination, the reliefs sought as well as the averments in the affidavit in support of the originating summons show that there are. That is why the Claimant came to court. Whether or not the Claimant will at the end of the day succeed is not an issue to be reckoned with at this stage of the proceedings.

In **OMANG V NSA 2021 10 NWLR (PART 1783) 55 (CA)**, it was held that in order to determine whether or not a suit discloses a cause of action, the courts are required to examine the averments in the pleadings and see if they disclose a cause of action. Once the statement of claim raises some issues of law or fact calling for determination by the court, the mere fact that the case is weak and not likely to succeed is not ground for striking it out. Thus, a pleading can only be said to disclose no cause of action where it is such that nobody can understand what claim the defendant is required to meet.

That is not the position in this case. The court understands what the claimant is seeking. Whether the reliefs will be granted or not is an entirely different issue.

In the circumstance therefore, this ground of objection can also not avail the 1st Defendant.
All in all therefore, the preliminary objection is liable to fail and be dismissed.

Accordingly, the preliminary objection of the 1st Defendant dated and filed on the 6th day of September, 2024 is hereby dismissed.

HIGH COURT OF F.C.T. ABUJA
CERTIFIED TRUE COPY
07 APR 2025
REGISTRAR
SIGN ....Bablo.. .....

PRELIMINARY OBJECTION OF THE 2ND DEFENDANT

The 2nd Defendant filed a Notice of preliminary to the originating summons and urges the court to strike out the suit for want of jurisdiction primarily on the ground expressed to be:

1. **That SUIT NO: FCT/HC/CV/3493/2024 BETWEEN MR. TOBENNA EROJIKWE V. INCORPORATED TRUSTESS OF THE NIGERIAN BAR ASSOCIATION & 2** ORS is incurably defective and flagrantly incompetent having regard to the mandatory provision of Sections 98 and 99 of the Sheriff and Civil Process Act. Cap. S6. Laws of the Federation of Nigeria. 2004.
2. The Honourable Court ought to set aside the issuance and service of the Originating Summons in this suit for failure to comply with the mandatory provision of Sections 98 and 99 of the Sheriff and Civil Process Act. Cap. S6. Laws of the Federation of Nigeria, 2004.
3. The Honourable Court lacks the jurisdiction to entertain, hear and determine this matter as due process was not followed in the initiation of the suit.

Arguing the issue, Counsel to the 2nd Defendant raised only one issue for determination as being: *"Whether the Honourable Court ought to set aside the issuance and service of the originating summons in Suit No: FCT/HC/CV/3493/2024 Between MR TOBENNA EROJIKWE V THE INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION & 2 ORS for failure to comply with the mandatory provision of Sections 98 and 99 of the Sheriffs and Civil Process Act, Cap S6, Laws of the Federation of Nigeria, 2004".*

Arguing the issue. Counsel submitted that this court has no jurisdiction to hear this matter for failure to comply with the mandatory provisions of Sections 98 and 99 of the Sheriff and Civil Process Act, Cap S6 Laws of the Federation of Nigeria, 2004 in that the originating summons was not marked as concurrent, and the return date was not expressed to be "not less than 30 days" from the date of service. Counsel contended that compliance with the provisions of the Sheriff and Civil Process Act with regards to the marking and the return date are mandatory and as such non-compliance with the said mandatory provisions make the originating processes incompetent and as such robs the court of the jurisdiction to entertain the suit. Counsel cited series of land mark cases where the apex court and the Court of Appeal made definite pronouncements on the consequences of not complying with the mandatory provisions of the Sheriff and Civil process Act. I do not, and cannot disagree with those decisions because they represent the position of the law.

The major bone of contention is that there was no expression on the face of the originating summons that the 3rd Defendant is to enter appearance within 30 days as prescribed by the Sheriffs and Civil Process Act. It was also contended that the suit was not marked as a concurrent writ. These are part of the requirements of the S.& C.P.A which I wish to reproduce hereunder.

Section 97

Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other

endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say)- [L.N. 47 of 1955.] "This summons (or as the case may be) is to be served out of the..... State (or as the case may be)..... and in the.....State (or as the case may be)."

Section 98: *A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent.*

Section 99:

The period specified in a writ of summons for service under this Part as the period within which a defendant is required to answer before the court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period.

I would have thought that as long as the originating summons was appropriately endorsed with the information that it is for service outside jurisdiction as prescribed in Section 97 that the issue of endorsement with the word concurrent becomes an extreme case of technicality which should not be allowed to overshadow the substance of the case as this was the decision of the Court of Appeal in the case of **YAKUZAK V XELA NIG. LTD & ORS (2019) LPELR-48728(CA)** where the Court of Appeal held as follows:

"...It is clear from the express provisions of S.98 of the Sheriffs and Civil Process Act that it is the Writ of Summons for service out of the State or Capital Territory in which it is issued that would be issued as a concurrent writ with the one for service within jurisdiction and it is the one to be marked concurrent. The exact text of that provision reads thusly- "A Writ of Summons for service out of the state or the capital territory in which it was issued may be issued as a concurrent writ with one for service within such state or the capital territory and shall in that case be marked as concurrent."? So in our instant case, it is the writ for service on the 1st defendant in Lagos, outside the Federal Capital Territory in which it is issued that is the concurrent writ and is the one to be marked "Concurrent". See Order 4 Rule 13 of the High Court of FCT (Civil Procedure) Rules 2004 which provides for the practice of issuing concurrent writs. It states thusly- "13. (1) One or more concurrent writs may, at the request of a plaintiff, be issued at the time when the original writ is issued or at anytime thereafter before the original writ ceases to be valid. (2) With no limitation to the generality of Sub-rule (1), a writ for service within the jurisdiction may be issued as a concurrent writ, with one which, or notice of which, is to be served out of the jurisdiction; and a writ which or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction. (3) A concurrent writ is a true copy of the original writ with differences only (if any), as are necessary having regard to the purpose for which the writ is issued." The writ for service on the 2nd defendant in Abuja, within jurisdiction is not the concurrent writ and is not required to be marked concurrent. S.99 of the Sheriffs and Civil Process Act is not applicable to a writ for service on a party within jurisdiction, such as the writ for service on the 2nd defendant in Abuja in this case. A writ for service within jurisdiction is not a writ for service under part VII of the Sheriffs and Civil Process Act because it is not for service outside jurisdiction. S.99 of the

Sheriffs and Civil Process Act states that it applies to a writ for service under Part VII of the Act. The exact text of the provisions reads thusly- "The period specified in a writ of summons for service under this part as the period within which a defendant is required to answer before the Court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the Court within which the writ of summons is issued, not less than that longer period." The endorsement copy of the writ of summons that was served on the 1st defendant in Lagos, out of jurisdiction is reproduced at pages 74 - 75 of the record of this appeal. The name of the 1st defendant is ticked as the party to be served or served. In the last paragraph of the writ of summons at the foot it is indorsed thusly- "This writ was served by me at No. 13 Martin Street Lagos on the defendant (here insert mode of service) on the 25th day of May, 2005." On the face of the first page of the Writ of Summons, it is glaring that the typewritten eight days initially specified as the period within which the 1st defendant should enter appearance to the suit was cancelled with pen (ink) and on top of the 8, the figure 30 was written in ink. So the writ of summons that was served on the 1st defendant did specify 30 days as the period within which it should enter appearance to the suit in keeping with S.99 of the Sheriffs and Civil Process Act. But it was not marked "concurrent" contrary to S.98 of the same Act. I am not inclined to agree with the submission of Learned Counsel for the appellant that failure to mark the writ of summons "concurrent" should invalidate it. That would amount to a technical legalism that cannot help the course of justice in the case, especially as the 1st defendant has not shown or even alleged that it was prejudiced by failure to mark the writ concurrent. I find the decision of the supreme Court in Broad Bank Nig. Ltd v. Olayiwora & sons Ltd (2005) 1 SC (pt. 11) 1 on the effect of the breach of the provision of the Sheriffs and Civil Process Act concerning a writ of summons for service out of jurisdiction very instructive. It states thusly- "The provision of Section 99 of the Sheriff and Civil Processes Act is directory. Consequently, once a defendant is given 30 days to enter appearance to a writ of summons served outside jurisdiction of a Court, the failure to endorse on the writ that the defendant has 30 days within which to enter appearance to the writ would not invalidate the writ"...Where the prescription of the law is mandatory even if only on a procedural level, a Court in its quest to do justice ought generally to be imbued with the dictates of reason and the nature of the particular case to seek to accommodate a party that appears to have run foul of the dictates of a procedural law." I am influenced by this decision to condone the omission to mark "concurrent" on the concurrent writ of summons issued in the Federal Capital Territory for service on the 1st defendant in Lagos and hold that it did not vitiate the writ. It remained validly served out of jurisdiction."
Per EMMANUEL AKOMAYE AGIM, JCA (Pp. 26-30, paras. A-E)

However, a look at the decision of the same court of Appeal in the case of **COMET SHIPPING AGENCIES NIGERIA LIMITED V ENEMAKU (2023) LPELR-60768 (CA)** is more recent most comprehensive on the subject. The Court of Appeal, per **Obande Ogbuinya JCA (now JSC)** held as follows:
"Now, the main anchor of the appellant's coup de main against the suit was that the lower Court was disrobed of the jurisdiction to adjudicate over the suit in that the writ of summons was an infraction of the provisions of Section 97, 98 and 99 of the Sheriffs and Civil Process Act, Cap. S6, Laws of the Federation of Nigeria (LFN), 2004. Due to their olympian status as the cynosure of the knotty issue, it is imperative to pluck them out whence they are domiciled in the statute book, ipsissima verba, as follows: "97. Every writ of summons for service under this part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say) - "this summons (or as the case may be) is

to be served out of the State (or as the case may be) ... and in the ... State (or as the case may be)." 98. A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent. 99. The period specified in a writ of summons for service under this part as the period within which a defendant is required to answer before the Court to the writ of summons shall not be less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the Court within which the writ of summons is issued, not less than that longer period." These provisions, which do not habour any woolliness or ambiguity, have fallen for interpretation before the apex Court in loads of authorities. The Supreme Court usually employ the literal rule/canon of interpretation of statutes, id est, giving the wordings of the provisions their ordinary meaning without garnishing them with any lexical embroidery in order not to make them susceptible to convolution. They have been construed, in deserving circumstances, that non-compliance with any of the trinity provisions will render the writ of summons null and void and, by extension, the action incompetent. See Skenconsult (Nig.) Ltd. v. Ukey (supra); Owners of the MV "Arabella" v. NAIC (supra), Odu'a Investment Co. Ltd. v. Talabi (supra), Adegoke Motors v. Adesanya (1989) 3 NWLR (Pt. 109) 250, Zakirai v. Muhammed (2017) 17 NWLR (Pt. 1594) 181, CBN v. Interstella Comm. Ltd. (2018) 7 NWLR (Pt. 1618) 294, Izeze v. INEC (2018) 11 NWLR (Pt. 1629) 110, PDP v. INEC (2018) 12 NWLR (Pt. 1634) 533, B.L.L.S. Co. Ltd. v. M.V. Western Star (2019) 9 NWLR (Pt. 1678) 489, Biem v. SDP (2019) 12 NWLR (Pt. 1687) 377, Omajali v. David (2019) 17 NWLR (Pt. 1702) 438, Fayemi v. Oni (2020) 8 NWLR (Pt. 1726) 222, PDP v. Uche (2023) 9 NWLR (Pt. 1890) 523. In PDP v. INEC (2018) 12 NWLR (Pt. 1634) 533, at page 549, Rhodes-Vivour, incisively declared: "There can be no doubt whatsoever that by virtue of Section 97 of the Sheriffs of Civil Process Act, every writ of summons (or originating process) for service out of the State in which it was issued must, in addition to any endorsement of notice required have endorsed on it, a notice indicating, that the summons is to be served out of the State and in which State it is to be settled. Once again failure to endorse the required notice on an originating process for service outside a State where it was issued is not a mere irregularity but a fundamental defect that renders the originating process incompetent. A Court would be deprived of jurisdiction to hear the case if satisfied that there is non-compliance with Section 97 of the Sheriffs and Civil Process Act. See Odu'a Investment Co. Ltd. v. Talabi (1997) 10 NWLR (Pt. 523) p. 1, Nwabueze & Anor v. Justice Obi-Okoye (1988) 4 NWLR (Pt. 91) p. 664, Skenconsult (Nig.) Ltd. v. Ukey (1981) 12 NSCC p.1." For originating process emanating from the lower Court, outside the State or jurisdiction means outside the shores of the Federal Republic of Nigeria because the lower Court has a nationwide jurisdiction. See Order 6 Rule 31 of the FHC Rules; Section 19(1) of the Federal High Court Act, Cap. F12, LFN, 2004; Agip (Nig.) Ltd. v. Agip Petroleum Int' (supra), Biem v. SDP (2019) 12 NWLR (Pt. 1687) 377, Omajali v. David (2019) 17 NWLR (Pt. 1702) 438. The putative reason for the requirement of a minimum of 30 days, in Section 99 of the SCPA, is to afford defendant sufficient time to arrange himself to appear in the Court of origin of the suit. See Fayemi v. Oni (2020) 8 NWLR (Pt. 1726) 222. In due fidelity to the expectation of the law, I have consulted the record - the soul of every appeal. My port of call is at the premises of the original writ of summon which colonises pages 1 and 2 of the record. I have given a microscopic examination to it with the finery of a toothcomb. Admirably, it is comprehension-friendly. I have also married the original writ of summons with those provisions of Sections 97, 98 and 99 of the SCPA displayed earlier. The raison d'etre for the juxtaposition is not far-fetched. It is to ascertain if the writ of summons obeyed or flouted those mandatory provisions. Incidentally, I am unable to locate, even with prying eagle-eye of an appellate Court, where the respondent inserted the endorsements as decreed by the obligatory provisions of Sections 97 and [illegible] ...ions. Nor does the thirty days

minimum requirement to answer to it, as ordained by Section 99 of the SCPA, have the deserved space in the writ of summons. In the glaring absence of these, the writ of summons was/is a flagrant defilement of the sacrosanct provisions of Sections 97, 98 and 99 of the SCPA. The dire and caustic consequence of these lacunae is not moot. The writ of summons, as constituted, is a nude originating process. It is plagued by indelible incompetence and impotent to impregnate the suit with any iota of validity."

Per OBANDE FESTUS OGBUINYA, JCA (Pp. 26-31, paras. B-C)

The import of the above is that, in line with earlier cases on the subject matter, non-compliance with sections 98 and 99 of the sheriffs and Civil Process Act is fatal and renders the writ issued against the 3rd Defendant incompetent. This is so because there was no indication as to the number of days the 3rd Respondent is to enter appearance, whether it be 30 days or 42 days, having been commenced via an originating summons. This is because the Sheriff and civil process Act is very definite on this.

Section 99 states as follows:

"The period specified in a writ of summons for service under this Part as the period within which a defendant is required to answer before the court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period."

The import of the above provision is that when a writ of summons (or, as in this case, an originating summons) for service on a defendant outside jurisdiction has been issued, it must state the number of days within which a defendant served with such a writ (or originating summons) shall enter appearance and the period specified shall be not less than 30 days after service of the writ has been effected or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period.

I have looked at the originating summons served on the 3rd Defendant. No period was specified. The case came for the first time on the 15th day of August. Leave was granted to the Claimant to serve the 3rd Defendant on the 16th of August. The matter was adjourned for hearing of motion on notice for interlocutory injunction on the 29th day of August, 2024.In an affidavit of service before the court, the 3rd Defendant was served on 21st day of August, 2024. Effectively therefore, the 3rd Defendant did not get up to 30 days between the date of service of the originating summons and the date on which the Motion on notice was to be heard or the substantive originating summons heard. If for any reason it got the 30 days required, the issue of whether the said 30days was stated on the face of the originating summons would have been a different thing.

Apart from the use of the concurrent originating summons in the affidavit of service, it does not appear that the originating summons served on the 3rd Defendant was marked concurrent.

The non-specification grossly affects the validity of the originating summons and as such renders same incompetent. The objection of the 2nd Defendant succeeds on two grounds in that the Originating summons did not comply with both sections 98 and 99 of the Sheriffs and Civil Processes act. Same is accordingly upheld on this ground.

The next issue is whether the 2nd Defendant, not being a party directly affected by the originating summons in question, can bring this objection?

The Counsel to the Claimant has contended that the 2nd Defendant lacks the locus standi to bring this objection.

I do not agree with the counsel to the Claimant. This is a matter that touches on the jurisdiction of the court. A matter touching on the jurisdiction of the court can be raised at any time, even suo motu by the court, not to talk of the 2nd Defendant who is a party on record. The argument is misconceived and is accordingly discountenanced.

The only thing is that the writ is only invalid and so incompetent against the 3rd Defendant. The originating summons issued and served against the 1st and 2nd Defendants are not summons issued under part VII of the Sheriffs and Civil Process Act. They are therefore valid and competent enough to sustain the case against them.

In the circumstances, I therefore hold that the originating summons issued against the 3rd Defendant is incompetent and as such, robs the court of the jurisdiction to entertain the suit against the 3rd Defendant only. Same is liable to be struck out and is accordingly struck out against the 3rd Defendant. In that wise, the P.O of the 2nd Defendant succeeds partly.

THE PRELIMINARY OBJECTION OF THE 3RD DEFENDANT.

The 3rd Defendant also filed a preliminary Objection to the competency of the suit and the jurisdiction of this Hon. Court to pry into, hear and determine the suit on the following grounds:

1. *This Hon. Court has no jurisdiction to hear and determine this suit as presently constituted, in that the Originating Summons in this case which was addressed to be served on the 3rd Defendant in Edmonton, Canada, out of Abuja-FCT is incurably defective for failure to comply with the mandatory provisions of sections 97 and 99 of the Sheriff and Civil Process Act, Cap.S6, Laws of the Federation of Nigeria,2004.*
2. *The Claimant has no reasonable cause of action in that the suit action is speculative, incurably incompetent, and constitutes an abuse of Court process and ought to be dismissed or struck out.*
3. *None of the facts in the affidavit in support, and the documents attached thereto in support of the Originating Motion on Notice disclosed any breach of or threaten breach which aggrieved the Claimant.*
4. *This Hon. Court has no jurisdiction to grant the reliefs sought in the Originating Summons in that the action is incompetent.*

Arguing the issues, counsel to the 3rd Defendant contended that by failing to comply with the mandatory provisions of Sections 96, 97, 98, and 99 of the Sheriffs and civil process Act, the originating summons served on the 3rd Defendant was invalid and incompetent.

Counsel cited a number of cases wherein the Supreme Court pronounced such originating summons incompetent and as such incapable of activating the jurisdiction of the court

Counsel also maintained that the claimant's case did not disclose a reasonable cause of action and that this court lacked the jurisdiction to entertain this suit.

Arguing contra, the Claimant submitted that the originating summons did indeed comply with the provisions of the Sheriff and Civil Processes Act and that even if it did not, the 3rd Defendant has waived his right to protest, given that apart from the notice pf preliminary objection, the 3rd Defendant has taken further steps in the proceedings by filing a counter affidavit to the originating summons, filing a counter affidavit to the Claimant's Motion on Notice for Interlocutory Injunction, and a challenge to the jurisdiction of the court on the ground that the Claimant's action discloses no cause of action. Counsel maintained that the position is that a party wishing to raise an objection on non-endorsement of originating processes under the Sheriffs and Civil process Act must do so without taking any steps in the proceedings and that once a step is taken, that right is waived. Counsel submitted that this was the position taken by the supreme Court in the case of **ODUA INVESTMENT CO LTD V TALABI (1997) LPELR-2232 (SC) 87-88 paras D-A**. Counsel further submitted that the Court of Appeal applied this principle in the case of ATURANSE V AIYEGBUSI (2019) LPELR-48064 and also the case of **NWAIRE V NWANKWO (2022) LPELR -57656 (CA)**.

The Claimant also submitted that given the line of cases where the effect of the contention that a Claimant's case discloses no cause of action has been explained to mean *"that even if all the allegations of fact averred in a statement of claim are established, yet still the Plaintiff will not be entitled to the reliefs sought and there, instead of filing a statement of defence, the defendant should move the court to have the case dismissed."*

Counsel cited the case of **RINCO CONSTRUCTION CO V VEEPEE INDUSTRIES LIMITED (2005) NWLR (PART 929) 85 @ 99** where the Supreme Court following the case of **IBRAHIM V OSIM (1989) 3 NWLR (PART 820) 257** quoted with approval the English case of **DRUMMOND JACK V BMA (1970) 1 ALL ER 1094 @ 1100** as follows:

"... a reasonable cause of action means a cause of action with some chances of success when (as required by paragraph 2 of the rule) only allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out."

Counsel submitted and maintained that this is not the case in the present originating summons as the defendant has seen the need to defend this suit hence the filing of a counter affidavit. Counsel thus maintained that the originating summons discloses a reasonable cause of action.

Incidentally, I have already found while considering the preliminary objection of the 2nd Defendant that indeed, there was a partial compliance with the provisions of the Sheriffs and Civil Process Act in that there was an endorsement on the originating summons served on the 3rd Defendant to the effect that the originating summons is to be served outside the Federal Capital Territory, Abuja and in Edmonton, Canada, but that the said originating summons was not marked concurrent and did not carry the number of days within which the 3rd Defendant whose address was outside the jurisdiction of this court was to enter appearance and accordingly held that same was invalid and not competent to activate the jurisdiction of the court.

In line with the decision of the court on the preliminary objection of the 2nd Defendant, the originating summons served on the 3rd Defendant is accordingly struck out.

In the final analysis, it is only the preliminary objection of the 2nd and 3rd Respondents that succeed partly. The Court will now proceed to consider the substantive originating summons on its own.

JUDGMENT ON THE SUBSTANTIVE ORIGINATING SUMMONS

As stated, the claimant took out this originating summons seeking the determination of the following questions:

a. Whether, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) (**"NBA Constitution"**), and Section 25 (b) (ii), (iv), (v), and Section 30 (d) of the Nigeria Data Protection Act 2023 ('NDPA'), the Claimant is entitled to the critical information, documents, and data bases used in the National Elections of the Nigerian Bar Association ("NBA") held on 20th July 2024?

b. Whether the refusal by the 1st-3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as detailed in the letter dated 25th July 2024 from the Electoral Committee of the Nigerian Bar Association ("ECNBA") co-signed by the 2nd Defendant, constitutes a breach of Paragraphs 8(c), 8(e), and 8 (f) of Part II of the Second Schedule to the NBA Constitution?

c. Is the refusal by the 1st – 3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as outlined in the letter dated 25th July 2024 from the ECNBA and co-signed by the 2nd Defendant, unjustifiable under the NDPA, specifically Section 25 (b) (ii), (iv), and (v) and Section 30 (1) (d) of the NDPA?

d. Whether the 1st – 3rd Defendant's refusal to provide the critical information, documents and data bases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies?

e. Whether there is a *prima facie* case of malpractice at the NBA National Elections held on 20th July 2024 to warrant the disclosure of the requested critical information, documents and databases by the 1st – 3rd Defendants?

f. Whether by Paragraphs 8(c), 8(e) & 8(f), Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv) & (v) and 30 (d) of the NDPA, this Honourable Court ought to compel the 1st – 3rd Defendants to immediately release the requested information and databases to the candidate to the Claimant?

And if the answers to the above questions are in the affirmative, seeks from the Court, the following reliefs:

i. **A DECLARATION** that, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv), (v), and Section 30(1) (d) of the NDPA, the Claimant is entitled to the critical information,

documents, and databases used in the National Elections of the NBA held on 20th July 2024.

ii. **A DECLARATION** that the refusal by the 1st – 3rd Defendants to provide the critical information, documents, and data bases used in the National Elections of the NBA held on 20th July 2024, as detailed in ECNBA's letter dated 25th July 2024, constitutes a breach of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution?

iii. **A DECLARATION** that the refusal by the 1st – 3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as outlined in the letter dated 25th July 2024 from the ECNBA and co-signed by the 2nd Defendant, is unjustifiable under the NDPA, specifically Section 25(b) (ii), (iv), (v), and Section 30 (d).

iv. **A DECLARATION** that the 1st-3rd Defendant's refusal to provide the critical information, documents, and databases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies.

v. **A DECLARATION** that the Claimant's letters of 22nd July 2024 and 25th July 2024 to the ECNBA and the 3rd Defendant respectively disclose a *prima facie case* of malpractice at the NBA National Elections held on 20th July 2024, warranting the disclosure of the requested critical information, documents, and databases by the 1st-3rd Defendants.

vi. **AN ORDER OF MANDATORY INJUNCTION** compelling the 1st-3rd Defendants to immediately release the requested critical information, documents, and databases relating to the NBA National Elections held on 20th July 2024 to the Claimant, as provided for by Paragraphs 8(c),8 (e), and 8(f) of Part II of the Second Schedule to the NBA Constitution.

vii. **AN ORDER OF PERPETUAL INJUNCTION** restraining the 1st - 3rd Defendants from undertaking any actions or measures that would obstruct, impede, or in any way hinder the Claimant in the exercise of his right to appeal the result of the NBA Elections held on 20th July 2024 as enshrined and guaranteed under the NBA Constitution.

Effectively therefore, I am called upon to consider the referenced provisions of the Constitution of the NBA, and the NDPA 2023 in the light of the request of the claimant and the issues brought forth for determination. That is the central focus of this originating summons.

For a proper appreciation, I consider it necessary that the relevant sections of the NBA Constitution as well as that of the Nigeria Data protection Act (NDPA) 2023 , ie 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) **("NBA Constitution"),** and Section 25 (b) (ii), (iv), (v), and Section 30 (d) of the Nigeria Data Protection Act 2023 ('NDPA') be clearly set out hereunder so as to keep our eyes on the issues and the reliefs herein.

Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) **("NBA Constitution")** that:

The Electoral Committee of the Nigeria Bar Association has a responsibility to:

a) provide essential information, documents, and databases used in an election to interested parties promptly;
b) make available, freely and in a timely manner, the information on which its decisions are based; and
c) ensure effective and reasonable access to relevant documents and information within the constitutional framework.

From what I can see the responsibility is not tied to whether there was any irregularity in an election or not. It's a responsibility that the ECNBA owes to "interests parties" which definitely includes a member of the Association who took part in an election conducted by the Association.

From the affidavit in support of the originating summons, it is very obvious that the Claimant herein is justifiably an interested party, having contested an election conducted by the ECNBA on behalf of the 1st Defendant.

He is a person who is entitled to whom information, documents, and databases used in an election should be provided for, if he so demands it.

However, like every other constitution, the constitutional provisions of the 1st Defendant is not to be read in isolation. It has to be read and interpreted within the context of the entire constitution.

The same constitution of the NBA has in Part I, as one of the aims and objectives, the following:

Article 3:

The aims and objectives of the Association shall be the:

(11) Promotion and protection of the principles of the rule of law and respect for fundamental rights, human rights, and people's rights.

The import of the above is that whatever interpretation of the provision of the constitution one may want to give shall not deviate from one of the cardinal aim and objectives of the Association which is *"Promotion and protection of the principles of the rule of law and respect for fundamental rights, human rights, and people's rights"*.

Through **Exhibit 4**, the Claimant requested from the 1st Defendant, documents and other detailed information listed as Nos i to xx as follows:

i. *A copy of the voter's list used for the Election together with all relevant details;*
ii. *A copy of the voter's list actually submitted by ECNBA to Election Buddy with all accompanying data;*
iii. *A copy of the final result sheet relied upon by the ECNBA in announcing a winner for the election;*
iv. *A detailed explanation for displaying the Election result on a platform different from that on which the votes were cast;*
v. *Full access to server and application log files used during the election;*
vi. *Network traffic logs during the Election and all incident response documentation;*
vii. *Copies of all data backups taken, Before, during and after the Election;*
viii. *Data on system performance throughout the Election, including server response times and load statistics;*
ix. *Complete database records, including voter information and voting transactions;*
x. *Detailed logs of all voter authentication attempts (whether successful or not);*

xi. *A complete record of voting timestamps for all cast ballots;*
xii. *Information and documents relating to any changes or updates made to the voting system/platform during or immediately after the Election;*
xiii. *Detailed logs of any system errors, including timeouts and database update freezes;*
xiv. *Detailed logs of all Portable Graphics Image uploads to the ECNBA portal during the Election including timestamps, file sizes, and the account or process responsible for these uploads;*
xv. *Documentation on the process and protocols used to transfer data from the primary election platform (electionbuddy.com) to the display portal (go.ecnba.org);*
xvi. *All third-party service logs and reports from these services;*
xvii. *All formal records of voter complaints or reported issues during the Election;*
xviii. *Information on the security measures and protocols implemented for the Election;*
xix. *Records of all individuals who had administrative access to the voting system/platform during the Election;*
xx. *Any other information or document used for the Election and which may be relevant in carrying out the audit.*
xxi. *All data that the 3rd Defendant share or submitted to the ECNBA at the conclusion of the Election.*
xxii. *All data submitted by ECNBA to the 3rd Defendant for the conduct of the Election.*
xxiii. *A Copy of the final Result Sheet at the 3rd defendant's backend servers showing the winners of the Election.*
xxiv. *The spool of the votes tallies.*
xxv. *The meta date showing the IP and MAC addresses of the devices used in voting.*

It was in reply to the request that the 1st Defendant, after providing some of the requested information, offering explanation for the ones that had been given, further responded on some of the request particularly on the request touching the personal information of voters, that *"Voter information concerning voters cannot be provided as this is a direct violation of the privacy of their ballot choices and infringes the Data Privacy Act. Except you provide us with the consent letters of the voters whose voting transaction data you seek, we cannot expose to you such private data of voters choices."*

It was this response that moved the claimant into taking out the originating summons seeking the determination of the questions brought forward for determination. Among the questions are considerations whether, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) **("NBA Constitution")**, and Section 25 (b) (ii), (iv), (v), and Section 30 (d) of the Nigeria Data Protection Act 2023 ('NDPA'), the Claimant is entitled to the critical information, documents, and data bases used in the National Elections of the Nigerian Bar Association ("NBA") held on 20th July 2024?

The Claimant therefore anchors his request on Section 25 (b) (ii), (iv) (v) and Section 30 (d) of the Nigeria Data Processing Act 2023.

Section 25 of the Nigerian Data Protection Act provides as follows:
(1) Without prejudice to the principles set out in this Act, data processing shall be lawful, where –

(a) the data subject has given and not withdrawn consent for the specific purpose or purposes for which personal data is to be processed; or

(b) the processing is necessary (i) for the performance of a contract to which the data subject is a party or to take steps at the request of the data subject prior to entering into a contract, (ii) for compliance with a legal obligation to which the data controller or data processor is subject, (iii) to protect the vital interest of the data subject or another person, (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller or data processor, or (v) for the purposes of the legitimate interests pursued by the data controller or data processor, or by a third party to whom the data is disclosed.

With reference to Section 25 of the NDPA 2023, the Claimant is interested in the provisions of Section 25 (b) (ii) (iv) and (v) only to the effect that:

Data processing shall be lawful where the processing is necessary for:

(ii)compliance with a legal obligation to which the data controller or data processor is subject,
(iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller or data processor, and
(v) for the purposes of the legitimate interests pursued by the data controller or data processor, or by a third party to whom the data is disclosed.

Section 30 provides that:
(1) *Without prejudice to the principles set out in this Act, a data controller or data processor shall not process, or permit a data processor to process on its behalf, sensitive personal data, unless the –*

(a) data subject has given and not withdrawn consent to the processing for the specific purpose or purposes for which it will be processed;

(b) processing is necessary for the purposes of performing the obligations of the data controller or exercising rights of the data subject under employment or social security laws or any other similar laws;

(c) processing is necessary to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving consent;

(d) processing is carried out in the course of its legitimate activities, with appropriate safeguards, by a foundation, association, or such other non-profit organisation with charitable, educational, literary, artistic, philosophical, religious, or trade union purposes, and the – (i) processing relates solely to the members or former members of the entity, or to persons, who have regular contact with it in connection with its purposes, and (ii) sensitive personal data is not disclosed outside of the entity without the explicit consent of the data subject;

(e) processing is necessary for the establishment, exercise, or defense of a legal claim, obtaining legal advice, or conduct of a legal proceeding;

(f) processing is necessary for reasons of substantial public interest, on the basis of a law, which shall be proportionate to the aim pursued, and provides for suitable and specific measures to safeguard the fundamental rights, freedoms and interests of the data subject;

(g) processing is carried out for purposes of medical care or community welfare, and undertaken by or under the responsibility of a professional or similar service provider owing a duty of confidentiality;

(h) processing is necessary for reasons of public health and provides for suitable and specific measures to safeguard the fundamental rights, freedoms and interests of the data subject; or

(i) processing is necessary for archiving purposes in the public interest, or historical, statistical, or scientific research, in each case on the basis of a law, which shall be proportionate to the aim pursued, and provides for suitable and specific measures to safeguard the fundamental rights and freedoms and the interests of the data subject.

With special reference to Section 30, the Claimant narrows the basis of his request to Section 30 (d) which states that:

(d) processing is carried out in the course of its legitimate activities, with appropriate safeguards, by a foundation, association, or such other non-profit organization with charitable, educational, literary, artistic, philosophical, religious, or trade union purposes, and the – (i) processing relates solely to the members or former members of the entity, or to persons, who have regular contact with it in connection with its purposes, and (ii) sensitive personal data is not disclosed outside of the entity without the explicit consent of the data subject;

Interestingly, what the Claimants expects the Court to do is to solely embark on the consideration of only the various sub-sections or even paragraphs of the Nigeria Data Protection Act he bases his request on without reference to either the spirit of the entire Act or the context in which the specific paragraph is situated. This is not proper for in the interpretation of the provisions of either the constitution or a law, specific provisions are not taken in isolation, rather, it is taken holistically, and not that a section or even a paragraph is to be taken in isolation. See: **JEGEDE & ANOR V INEC (2021) LPELR-55481-SC, LAMINA V IKEJA LG (1993) LPELR-14830(CA) EMENIKE V ORJI (2008) LPELR-4103 (CA)**. In the case of **RIVERS STATE GOVERNMENT OF NIGERIA & ANOR V SPECIALIST CONSULT (SWEDISH GROUP) (2005) LPELR-2950 (SC)**, the Supreme Court had this to say:

"It is a cardinal rule of interpretation of statute that in seeking to interpret a particular section of a statute or a subsidiary legislation, one does not take the section in isolation, rather, one should approach the question of the interpretation on the footing that the section is part of a greater

whole: see James Orubu v. National Electoral Commission (1988) 5 NWLR (Pt.94) 323; Chime v. Ude (1996) 7 NWLR (Pt. 461) 379 at 432."

Per **DENNIS ONYEJIFE EDOZIE, JSC (P. 35, paras. E-G)**

Interestingly however. both Section 25 (b) (ii). (iv) and (v) and Section 30 (d) are part of a section which commences with the following:

Section 25:
(1) Without prejudice to the principles set out in this Act. data processing shall be lawful. where –

(1) *(a) the data subject has given and not withdrawn consent for the specific purpose or purposes for which personal data is to be processed;*

Whilst Section 30 commences as follows:
(1) Without prejudice to the principles set out in this Act. a data controller or data processor shall not process. or permit a data processor to process on its behalf. sensitive personal data, unless the –

(a) data subject has given and not withdrawn consent to the processing for the specific purpose or purposes for which it will be processed;

Clearly, on the face of the very sections the claimant desires the court to consider sub sections and paragraphs (ii), (iv) and (v), and (d) are embedded the issue of consent of the data subject. It is therefore obvious that obtaining the consent of the data subjects is critical to any request that is based on the Nigeria Data Protection Act.

In addition to this, both sections also commenced specifically with the following words: ***"Without prejudice to the principles set out in this Act".*** The implication is that whatever provision is made regarding the issue of data in Nigeria. it has to be in line with the principles set out in this Act. The question is, what are the principles set out in the Act?

It is to be found in the long title and the aims and objectives of the Act which are to the following effect:
It is an *"Act to Provide a Legal Framework for the Protection of Personal Information and establish Nigeria Data Protection Commission for the Regulation of the Processing of Personal Information and for Related Matters".*

The objectives of the Act are contained in Section 1 of the Act as follows:

(a) safeguard the fundamental rights and freedoms. and the interests of data subjects. as guaranteed under the Constitution of the Federal Republic of Nigeria. 1999;

(b) provide for the regulation of processing of personal data;

(c) promote data processing practices that safeguard the security of personal data and privacy of data subjects;

(d) ensure that personal data is processed in a fair; lawful and accountable manner;

(e) protect data subjects' rights, and provide means of recourse and remedies, in the event of the breach of the data subject's rights;

(f) ensure that data controllers and data processors fulfil their obligations to data subjects;

(g) establish an impartial, independent, and effective regulatory Commission to superintend over data protection and privacy issues, and supervise data controllers and data processors; and

(h) strengthen the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal data.

From the above, it is therefore manifestly clear that the central issue in the Nigeria Data Processing Act is the *safeguard of the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999. Perhaps, it is because of the centrality of the safeguarding of the rights and freedoms and interest of the data subject as guaranteed under the Constitution of the Federal Republic of Nigeria 1999 that both Sections 25 and 30 of the Act commenced with a requirement that "the data subject has given and not withdrawn consent for the specific purpose or purposes for which personal data is to be processed"*

The issue of consent of the data subject was so recurring that there is no way a consideration whether to release personal data of a data subject to an applicant will be made without reference to the question of whether the consent has been given and not withdrawn.

From the affidavit in support of the originating summons, it is also clear that the issue of consent was the central reason why whatever was not released to the applicant was held back, hence the averment in paragraph 9 of the affidavit in support of the originating summons thus:

"The EC'NBA and the 3rd Defendant communicated their refusal to grant me access to the critical information in a letter dated 25th July 2024.The reasons cited in this letter are primarily that (i) providing the critical information would violate the data privacy of the voters, (ii) I have not submitted any consent letters from the voters, (iii) the information requested are sensitive personal information, and (iv) disclosing the information would result in the exposure of sensitive information unrelated to the NBA vote. The 3rd Defendant also declined the Claimant's request in its written response. The letter dated 25th July 2024 and the 3rd Defendant's written response are hereto attached and marked **as Exhibits 6 and 6A"**

The averment of the claimant in paragraph 10 of the said affidavit to the effect that:

10. I have read the Nigeria Data Protection Act 2023 ("NDPA") and can confirm that the NDPA provides that:

a) Consent of data subjects, in this case, voters in the election, is not the sole legal basis for processing their personal data.

HIGH COURT OF F.C.T. ABUJA
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b) *Data processing shall be lawful, where the processing is necessary for (i)compliance with a legal obligation to which the data controller or data processor is subject, (ii) the performance of a task carried out in the exercise of official authority vested in the data controller or data processor, and (iii) the purposes of the legitimate interests pursued by the data controller or data processor, or by a third party to whom the data is disclosed.*

c) *A data controller or data processor shall not process, or permit a data processor to process on its behalf, sensitive personal data, unless the processing is carried out in the course of its legitimate activities, with appropriate safeguards, by a foundation, association, or such other non-profit organisation with charitable, educational, literary, artistic, philosophical, religious, or trade union purposes, and the (i) processing relates solely to the members or former members of the entity, or to persons, who have regular contact with it in connection with its purposes, and (ii) sensitive personal data is not disclosed outside of the entity without the explicit consent of the data subject.*

does not represent the situation of things with respect to the release of the information requested in the light of overwhelming provision with respect to the principles and objectives of the NDPA and the express requirement of the consent of the data subjects which in this case, are the voters in the NBA election which the Claimant could not show "the data subject" have given and have not withdrawn consent for the specific purpose for which personal data is to be processed.

I have not seen a clearer provision which sets condition for the performance of an act such as this. It is in simple and very clear words. A principle of interpretation that will also guide me in arriving at a decision here is that where the words of a statute are clear, it is the natural and literal rule of interpretation that will be given to it. See **ARAKA V EGBUE (2003) LPELR- 532 (SC)** were the supreme Court of Nigeria had this to say:

"The primary function of the court is to search for the intention of the lawmaker in the interpretation of a statute. Where a statute is clear and unambiguous, as it is in this case, the court in the exercise of its interpretative jurisdiction, must stop where the statute stops. In other words, a court of law has no jurisdiction to rewrite a statute to suit the purpose of one of the parties or both parties. The moment a court of law intends to rewrite a statute or really rewrites a statute, the intention of the lawmaker is thrown overboard and the court changes place with the lawmaker. In view of the fact that that will be against the doctrine of separation of powers entrenched in the Constitution, a court of law will not embark on such an unconstitutional act. Courts of law follow the literal rule of interpretation where the provision of the statute is clear and no more. And that is the position in this appeal."
Per NIKI TOBI, JSC (Pp. 17-18, paras. G-C)

See also **AHMED V ABUBAKAR & ORS (2024) LPELR-63075-(CA)**

It is in the light of the above rule of interpretation, and the general rule that this court will approach the issues for determination as raised in the originating summons and seek to provide answers to them.

1. *Whether, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021)* ***("NBA Constitution"),*** *and Section 25 (b) (ii), (iv), (v), and Section 30 (d) of the Nigeria Data Protection Act 2023 ('NDPA'), the Claimant is entitled to the critical information, documents,*

and data bases used in the National Elections of the Nigerian Bar Association ("NBA") held on 20th July 2024?

I have highlighted the prominence given to the issue of consent of data subjects in a consideration of whether to process the data of such subjects in favour of an applicant. There is total absence of consent in this case. What the claimant sought to do is to contend that lack of consent is not a reason for the Defendants not to avail him of the data requested. That is not the provision and the intention of the Act. In the circumstance therefore, I have no hesitation in answering this question in the negative.

2.Whether the refusal.by the 1st-3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as detailed in the letter dated 25th July 2024 from the Electoral Committee of the Nigerian Bar Association ("ECNBA") co-signed by the 2nd Defendant, constitutes a breach of Paragraphs 8(c), 8(e), and 8 (f) of Part II of the Second Schedule to the NBA Constitution?

In the course of arriving at a decision in this case, I made reference to the provisions of the Constitution of the Nigeria Bar Association which has in **Article 3 (11)** as one of its primary aim and objective, ***the promotion and protection of the principles of the rule of law and respect for fundamental rights, human rights, and people's rights.***

In the light of the above, it is not expected that the constitution of the Association referred to will constitute violation of existing laws of the Federal Republic of Nigeria. The claimant would have been entitled to the information and data requested if he complied with the requirement of consent as provided in both **Section 25 (1) and 30 (1)** of the Nigeria Data Protection Act. The failure to release whatever information and data requested cannot be said to be in contravention or violation of Paragraphs 8(c), 8(e), and 8 (f) of Part II of the Second Schedule to the NBA Constitution as the request failed to meet the conditions stipulated in the relevant provisions of the NDPA under which the application was made. In **AMASIKE V REGISTRAR GENERAL, CORPORATE AFFAIRS COMMISSION (2010) LPELR-456 (SC)**, it was held that *"It is a trite point of law that when a statute dictates a certain mode of doing something, then that method and no other must be employed in the performance of that Act."*

The Claimant here failed to show evidence of having obtained the consent of the data subjects. Unless and until that is done, he will not be entitled to same and the decision not to release the said information cannot be construed as a violation of the constitution of the NBA.
This question is also answered in the negative.

3. Is the refusal by the 1st – 3rd Defendants to provide the essential information, documents, and databases used in the National Elections of the NBA held on 20th July 2024, as outlined in the letter dated 25th July 2024 from the ECNBA and co-signed by the 2nd Defendant, unjustifiable under the NDPA, specifically Section 25 (b) (ii), (iv), and (v) and Section 30 (1) (d) of the NDPA?

This question is answered alongside the first issue for determination. Given the exposition made on the provisions of Sections 25 and 31 of the NDPA above, as long as there was no consent of the data subjects, and as long as the data requested touches on the privacy of the data subjects, it cannot be said that the refusal to provide the data requested is unjustifiable, rather, same is justifiable, given the lack of consent in the light of the objectives and principles behind the NDPA 2023. It would have amounted to a violation of the provisions of the Act if the information was provided without compliance with the requirement of consent of the data subjects. The court cannot command the doing of an illegality or an action that constitutes a violation of an existing law. This question too is answered in the negative.

4. Whether the 1st – 3rd Defendant's refusal to provide the critical information, documents and data bases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies?

This issue is not consistent with the case of the Claimant in this originating summons and is more or less an academic. The answer to this question is of no help to the Claimant, or the court as the court has already found that the claimant has not met the conditions prescribed by the Nigeria Data Protection Act to warrant being given the information and data requested for. Whether that impedes the claimant's right of appeal is a totally different issue as the appeal is not the subject matter of this originating summons. If the claimant has met the conditions for the release of the data and information to him, same will be given to him. But because the law has stipulated the condition under which the information can be given or not, what happens to the claimant's right of appeal is more or less academic. Courts are not meant to dwell on academic issues.

In **NNAEMEKA & ORS V ONWE & ANOR, (2024) LPELR-62695 (CA)**, the Court of Appeal had this to say:

"It is trite that an academic point has no utilitarian value, this position of our law is settled in a plethora of cases. This Court in Tion & Anor Vs Bgillah & Ors (2015) held thus: "It is quite trite that, an action is considered to be academic where it is merely theoretical, makes an empty sound and of no practical utilitarian value to the plaintiff or appellant as the case may be, even if judgment is given in his/her favour. A suit is academic if it is not related to the practical situation of human nature and humanity. This view was expressed per Tobi JSC (Rtd) in this case of Plateau State Vs Attorney General of the Federation (2006) 3 NWLR (Pt. 967) P. 346 @ Pg 419. His lordship stood to his ground again in the case of Odedo Vs INEC (2008) Vol 162 LRCN P 1 @ 32 para 2 - EC, where he had the following to say on this point, an academic issue or question is one which does not require answer or adjudication by a Court of law because it is not necessary to the case on hand. An academic issue or question could be a hypothetical or moot question. An academic issue or question does not relate to live issues in the litigation because it is spent as it will not enure any right or benefit for the successful party. See Tanimola Vs Mapping Godatta Limited (1995) 6 NWLR (Pt. 404) Pg. 658; Ogbonna Vs President FRN (1997) 5 NWLR (Pt. 504) P. 281 and Ndulue Vs Ibezim (2002) 12 NWLR (Pt. 780) P. 139."
Per O. O. GOODLUCK, JCA (Pp. 32-34, paras. F-A)

The court will therefore not delve into academic issue as same does not invoke the jurisdiction of the court.

5. Whether there is a *prima facie* case of malpractice at the NBA National Elections held on 20th July 2024 to warrant the disclosure of the requested critical information, documents and databases by the 1st – 3rd Defendants?

As been stated with regards to issue 4 above, this issue is academic considering the fact that the suit is not challenging the said election via this originating summons else the candidate that won the election would have been a party to the suit. I had also stated in the earlier part of the judgment that going by the provisions of the Constitution of the NBA under consideration, the responsibility of the ECNBA in Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the Constitution of the Nigerian Bar Association 2015 (as amended in 2021) **("NBA Constitution")** is not tied to whether there was any irregularity in an election or not. It's a responsibility that the ECNBA owes to "interested parties" which in this case, definitely includes a member of the Association who took part in an election conducted by it. I also stated that in the discharge of that responsibility, the ECNBA is bound to comply with extant laws with respect to the subject matter which in this instance, is the relevant provisions of the Nigeria Data Protection Act.

I had earlier made it clear that courts are not to dwell on academic questions. Apart from being academic in the circumstance, a finding on this will only dig a hole around a party who has not been joined in this suit for if a pronouncement is made on this issue, the interest of the declared winner of the election will be greatly prejudiced, meanwhile, he is not a party to the suit. This is not allowed. In **JEGEDE V INEC (2021)**, LPELR-55481- (SC) the Supreme Court stated as follows: *"... a Court has no jurisdiction to make any order against the interest of any person as in the instant case unless he is made a party. Where there is brazen and far-reaching allegation of infraction against a party, that party must be heard, the adversary will not be allowed to dig a hole around the party, so doing will amount to setting a trap or laying ambush in litigation, it will not be allowed."*

Per TIJJANI ABUBAKAR, JSC (Pp. 100-101, paras. F-A)

Will this court be able to say today that there were breaches or that there are no breaches when the winner of the election, is not a party to this suit? Or having said that there is no breach today, can the court later turn around and make a finding to the contrary if eventually called upon to do so? This question, like the question 4 above, is inappropriate in the circumstances of this case. In the circumstance therefore, I am unable to answer this question in the affirmative.

6. Whether by Paragraphs 8(c), 8(e) & 8(f), Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv) & (v) and 30 (d) of the NDPA, this Honourable Court ought to compel the 1st – 3rd Defendants to immediately release the requested information and databases to the candidate to the Claimant?

In answering this question, all I need to ask myself is whether the court can compel a party to do what is not lawful? I do not think so. In **UGWUMBA UCHE NWOSU V APP (2020) 16 NWLR (PART 1749) 28** the Supreme Court held that any act not authorized by law is an illegality and the law insists that a court should never allow itself to be used as a vehicle or an instrument to enforce an illegality for the courts administer the law of the land and will not help a plaintiff who breaks it.

The provisions of Section 25 and 30 have been considered. It has been established that in the light of the general principles of the NDPA 2023, the issue of consent of, as well as privacy of the data subject is very sacrosanct. I have also brought to the fore the fact that the Constitution of the Nigeria Bar Association specifically recognizes that the Association has as one of its aims and objectives, the *promotion and protection of the principles of the rule of law and respect for fundamental rights, human rights, and people's rights.*

In the light of the circumstances of the present case, the Court cannot compel the Defendants to release the requested information and data bases to the Claimant. This question is also answered in the negative.

At this point therefore, it is clear that all the issues brought forward for determination have all been answered in the negative by this court. I know the court can with a wave of the hand, dismiss the originating summons, having resolved all the issues that if resolved in the affirmative, would have warranted a grant of the reliefs sought. But I will still look at the reliefs one by one. I now turn to the reliefs sought.

The first relief sought is for **a declaration** that, based on the provisions of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution and Section 25(b) (ii), (iv), (v), and Section 30(1) (d) of the NDPA, the Claimant is entitled to the critical information, documents, and databases used in the National Elections of the NBA held on 20th July 2024.

As clearly stated, the relief seeks a declaration. The law is that he who seeks a declaratory relief must adduce evidence to show that he is entitled to same. In this case, rather than adduce evidence that he is entitled to the declarations, what is before the court is that the Claimant has not been able to show that he has obtained the consent of the data subjects at all, and that the consent still exists. This relief is therefore refused.

The next relief is for a **declaration** that the refusal by the 1st – 3rd Defendants to provide the critical information, documents, and data bases used in the National Elections of the NBA held on 20th July 2024, as detailed in ECNBA's letter dated 25th July 2024, constitutes a breach of Paragraphs 8(c), 8(e), and 8(f) of Part II of the Second Schedule to the NBA Constitution.

The Court has already resolved this issue in the negative. The Claimant is not entitled to this declaration also.

The next relief is a declaration that the 1st-3rd Defendant's refusal to provide the critical information, documents, and databases used in the National Elections of the NBA held on 20th July 2024 impedes the Claimant's right of appeal and ability to effectively challenge the results of the elections and seek appropriate remedies. I have already stated that this is an academic question. The courts are not to indulge in solving academic questions.

The next relief is a declaration that the Claimant's letters of 22nd July 2024 and 25th July 2024 to the ECNBA and the 3rd Defendant respectively disclose a *prima facie case* of malpractice at the NBA National Elections held on 20th July 2024, warranting the disclosure of the requested critical information, documents, and databases by the 1st-3rd Defendants. This is also an academic question. This court cannot grant this relief as it has been shown that by the combined effect of Section 25 (1) and Section 30 of the NDPA 2023, the Claimant who has not obtained the consent

of the Data Subjects, has not shown anything else that would warrant the disclosure of the requested critical information, documents, and databases by the 1st -3rd Defendants.

The next relief is an order of mandatory injunction compelling the 1st-3rd Defendants to immediately release the requested critical information, documents, and databases relating to the NBA National Elections held on 20th July 2024 to the Claimant, as provided for by Paragraphs 8(c),8 (e), and 8(f) of Part II of the Second Schedule to the NBA Constitution. The conditions for the grant of an order of mandatory are already well settled. In **UNITY HIGH SCHOOL & ANOR V. HON. MINISTER OF THE FCT & ORS (2023) LPELR-61059 (CA)** the Court of Appeal Abuja stated as follows:

"What are the guiding principles for grant of mandatory injunction such as prayed for in this Application? In the case of Kwankwaso v. Gov. of Kano State & Ors (2005) LPELR - 11627 (CA), it was held: "Generally Courts have always been, and are still reluctant to issue orders for mandatory injunction except in very clear cases. They have always required the clearest evidence as well as very high standard of proof so as to make sure that at the trial it will still appear that the order of the mandatory injunction was rightly made, as grave consequences could follow such an order. In practice therefore, there must be either a trial of a claim for mandatory injunction or at least a substantive prayer in an application for it in clear terms followed by undisputable evidence of the infringement that entitled the applicant to the order. The principles to guide the grant of order of mandatory injunction has been enunciated in the case of ATTORNEY-GENERAL ANAMBRA STATE V. OKAFOR (1992) 2 NWLR(PT. 224) 396 and they are as follows: (a) Whether in the circumstance as they exist after the breach, a mandatory order and if so (b) What kind of mandatory will produce a fair result. (c) The benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. (d) A plaintiff should not be deprived of a relief to which he is justly entitled merely because it would be disadvantageous to the defendant. (e) A plaintiff should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will materially be detrimental to the defendant. See MOBILE V. LAGOS STATE GOVERNMENT & 7 ORS. (2004) 12 NWLR (PT. 887) 354 at 383." Per BA'ABA, JCA (Pp. 24-25, paras. F-B). See also the case of Adeleye & Ors v. The Executive Governor of Ogun State (2012) LPELR - 9584 (CA) pp. 29 - 30 paras E - B; Total E & P (Nig) Ltd v. Imolade & Sons (2012 LPELR - LPELR - 14256 (CA) pp. 16-17 paras D - B. The law as stated in the above cases is that the Court should be hesitant in granting a mandatory injunction. That it should be granted only in very clear cases, that is to say, where there is credible evidence in proof of the violation of an order of interlocutory injunction."

Per JAMES GAMBO ABUNDAGA ,JCA (Pp. 12-14, paras. F-E)

In this case, none of the conditions stated in the above case has been established. The Claimant is therefore not entitled to these relief.

There was no order of court disobeyed, neither was there an attempt to steal a match on the Claimant by the Defendant, rather, the 1st and 2nd Defendants only maintained their stand on the provisions of the law and declined to grant a request that was made to them basing their actions on the provisions of the law and the protection of the rights of the data subjects whose personal information and data were sought by the Claimant.

The last relief sought by the Claimant is an order of perpetual injunction restraining the 1st - 3rd Defendants from undertaking any actions or meetings that would obstruct, impede, or in any

way hinder the Claimant in the exercise of his right to appeal the result of the NBA Elections held on 20th July 2024 as enshrined and guaranteed under the NBA Constitution.

As has been established over a period of time, the relief of perpetual injunction is granted to a party who has proved his case and is entitled to a declaration of the rights or interest sought in the suit. In **GOLDMARK (NIG) LTD & ORS V. IBAFON C LTD (2012) LPELR-9349 (CA)**, the Court of Appeal held as follows: *"The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. Commissioner of Works. Benue State vs. Devcon Ltd. 1988 3 NWLR pt. 83. pg. 407 LSPDC vs. Banire 1992 5 NWLR pt. 243 at pg. 620. Afrotec vs. MIA (2001) 6 WRN pg. 65 Globe Fishing Industries Ltd. vs. Coker (1990) 7 NWLR pt. 162. Pg. 265."*
Per OLUFUNLOLA OYELOLA ADEKEYE, JSC (P. 65, paras. B-D)

In this case, the Claimant was not able to establish that he is entitled to the reliefs sought. There is therefore nothing to protect by the order of perpetual injunction sought

The totality of what I have said is that the Claimant has not been able to establish that he is entitled to the reliefs sought in the suit. In the circumstances, the originating summons is liable to be dismissed and accordingly, the Originating Summons with Suit No: **FCT/HC/CV/3493/2024** is hereby dismissed.

I award a cost of N200,000 against the Claimant in favour of the Defendants.

This is the judgment of the court on this originating summons.

Cyprian O Agashieze
Hon. Judge.
27/03/2025.

HIGH COURT OF F.C.T. ABUJA
CERTIFIED TRUE COPY
07 APR 2025
REGISTRAR
SIGN .....

JUDICIARY
HIGH COURT
OF THE FEDERAL
CAPITAL TERRITORY
No: C1663609