

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

FHC/ABJ/CS/610/2022

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELE PLAINTIFF

AND

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



ORIGINATING SUMMONS

BROUGHT PURSUANT TO:

120683142434

1. ORDER 3 RULES 6-9 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2019.
2. THE INHERENT JURISDICTION OF THIS HONOURABLE COURT AS IS PRESERVED BY SECTION 6(6)(A) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS ALTERED.

LET all the Defendants-(1) Independent National Electoral Commission of Plot 436, Zambezi Crescent, Maitama, Abuja, (2) Attorney General of the Federation of the Federal Ministry of Justice , Abuja, respectively, within thirty (30) days after the service of this summons on them inclusive of the day of such service cause an appearance to be entered for them to this Summons which is issued upon the application of the Plaintiff, MR. GODWIN EMEFIELE for the determination of the following questions:

1. WHETHER THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022, WHICH ARE INCONSISTENT WITH THE PROVISIONS OF SECTION 137(1)(G) OF THE

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) WHICH HAVE BEEN DECLARED SO BY A COURT OF COMPETENT JURISDICTION CAN BE RELIED UPON BY THE DEFENDANTS TO DISQUALIFY THE PLAINTIFF FROM CONTESTING ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA OR FROM CONTESTING OR PARTICIPATING IN THE PARTIES' PRIMARIES OR OTHER CONVENTION OR CONGRESS FOR THE PURPOSE OF ELECTION TO THE OFFICE OF PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, SCHEDULED FOR 25TH FEBRUARY, 2023.

2. WHETHER BY THE PROVISIONS OF SECTION 84(3) OF THE ELECTORAL ACT, 2022, A POLITICAL PARTY CAN BY ITS CONSTITUTION, GUIDELINES OR RULES IMPOSE ANY NOMINATION QUALIFICATION OR DISQUALIFICATION CRITERIA MEASURE, CONDITIONS ON ANY ASPIRANT OR CANDIDATE INCLUDING THE PLAINTIFF HEREIN, IN ITS PRIMARIES OR CONSTITUTION, GUIDELINES OR RULES FOR NOMINATION OF ITS CANDIDATES FOR ELECTION BESIDES THOSE CRITERIA AS PRESCRIBED UNDER SECTIONS 65, 66, 106, 107, 131, 137, 177 AND 187 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED).

3. WHETHER BY THE COMBINED EFFECT OF THE PROVISIONS OF SECTION 84(3) OF THE ELECTORAL ACT, 2022, AND SECTION 137(1)(g) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, (AS AMENDED) WHICH REQUIRE A PUBLIC OFFICER TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST THIRTY (30) BEFORE THE DATE OF THE PRESIDENTIAL ELECTION THE PLAINTIFF CAN BE MANDATED AND/OR COMPELLED TO RESIGN, WITHDRAW, OR RETIRE HIS POSITION AS THE GOVERNOR OF CENTRAL BANK OF NIGERIA EARLIER THAN THIRTY (30) DAYS TO THE POLITICAL PARTIES PRIMARY OR

PRESIDENTIAL ELECTION AS PRESCRIBED BY SECTION 137 (1)(G) CFRN, WHICH PRESIDENTIAL ELECTION IS SCHEDULED TO TAKE PLACE ABOUT FEBRUARY, 2023; WHILE THE PRIMARIES ARE FIXED FOR 30TH MAY AND 1ST JUNE, 2022.

4. WHETHER CONSIDERING THE COMBINED EFFECT OF THE PROVISIONS OF SECTIONS 137(1)(g) AND 318 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED), THE PLAINTIFF CAN BE REGARDED AS A POLITICAL APPOINTEE WITHIN THE MEANING AND INTENDMENT OF SECTION 84 (12) OF THE ELECTORAL ACT, 2022.
5. WHETHER AS A PUBLIC OFFICER WITHIN THE MEANING AND INTENDMENT OF SECTION 318 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, AS AMENDED, THE PLAINTIFF OUGHT NOT TO BE GOVERNED BY OR SUBJECTED TO THE PROVISIONS OF SECTIONS 137(1)(g) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) WHICH REQUIRE A PUBLIC OFFICER SEEKING ELECTION TO THE OFFICE OF THE PRESIDENT OF NIGERIA TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST 30 DAYS TO THE PRESIDENTIAL ELECTION, RATHER THAN BY THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022, OR THE GUIDELINES, RULES, CRITERIA, MEASURES OR CONDITIONS MADE BY THE PLAINTIFF'S POLITICAL PARTY, OR ANY POLITICAL PARTY.
6. WHETHER THE PLAINTIFF IS A "POLITICAL APPOINTEE" FOR THE PURPOSE OF SECTION 84 (12) OF THE ELECTORAL ACT 2022?

**THAT UPON A DETERMINATION OF THE FOLLOWING QUESTIONS,
THE PLAINTIFF SEEKS THE FOLLOWING RELIEFS:**

- i) **A DECLARATION** that the provisions of section **84(12)** of the Electoral Act, **2022** (as amended), which are inconsistent with the provisions of section **137(1)(g)** of the Constitution of the Federal Republic of Nigeria, **1999** (as altered) which and have been declared so by a court of competent jurisdiction cannot be relied upon by the Defendants to disqualify the plaintiff from contesting an election to the office of the President of the Federal Republic of Nigeria or from contesting or participating in the parties' primaries, or other convention or congress for election to the office of President of the Federal Republic of Nigeria, scheduled for **25th February, 2023**.

- ii) **A DECLARATION** that by the provisions of section **84(3)** of the Electoral Act, **2022**, a political party cannot by its constitution, guidelines or rules impose any criteria, measures or conditions nomination qualification or disqualification criteria, any aspirant or candidate including the plaintiff herein in its primaries during its convention or congress for nomination of its candidates for election besides those criteria as prescribed under sections **65, 66, 106, 107, 131, 137, 177** and **187** of the Constitution of the Federal Republic of Nigeria, **1999** (as amended).

- iii) **A DECLARATION** that by the combined provisions of section **84(3)** of the Electoral Act, **2022**, and section **137(g)** of the Constitution of the Federal Republic of Nigeria, **1999**, (as amended) which require a public officer to resign, withdraw or retire from his employment at least **30** days before the presidential election,, the Plaintiff cannot be mandated and/or compelled to resign his position as the Governor of Central Bank of Nigeria earlier than thirty (**30**) days to the presidential election or the primaries at congresses and conventions of the political parties which presidential election is

scheduled to take place on **25th February, 2023**; while the primaries are fixed for the **30th May and 1st June, 2022**.

- iv) **A DECLARATION** that the Plaintiff can only be governed by or subject to the provisions of section **137(1) (g)** and **318** of the Constitution of the Federal Republic of Nigeria, **1999** (as altered), which require a public officer seeking election into a political office to resign, withdraw or retire from his appointment at least **30** days to the presidential election, rather than by the provisions of section **84(12)** of the Electoral Act, **2022** or the guidelines, rules, criteria, measures or conditions made by the plaintiff's political party or any political party.
- v) **A DECLARATION** that the Plaintiff can validly participate in the primary election of a political party and is entitled to vote and be voted for as candidate of any political party of his choice for the purpose of the nomination of candidates for the election to the office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).
- vi) **AN ORDER** that the Plaintiff cannot be hindered, stopped or precluded from participating, voting or being voted for at the congress or convention of any political party of his choice for the purpose of the nomination of candidates for the election to the office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).
- vii) **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendants whether by themselves, their agents, servants or privies or any legal representative from hindering, stopping or precluding the Plaintiff from participating, voting or being voted for at the congress or convention of any political party of his choice for the purpose of the nomination of candidates for the election to the

office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).

AND FOR SUCH FURTHER OR OTHER ORDERS as the honourable court may deem appropriate to grant in the circumstances of this case.

Dated this.....day of.....2022.



Registrar

This Summons was taken out by **Chief Mike A. A. Ozekhome, SAN, OFR, FCI Arb, LL.M, Ph.D, LL.D,** of **Mike Ozekhome's Chambers** whose address for service is **Plot 2215, Cadastral Zone, Nile Street, Opp. Divisional Police Headquarters, Maitama, FCT, Abuja,** Legal Practitioner for the above-named Plaintiff who reside at Abuja, and whose address for service is care of his Solicitor. .

The Defendant may appear hereto by entering appearance personally or by a legal practitioner either by handling in the appropriate forms duly completed at the FCT High Court Registry or by sending them to that office by post.

NOTE: If the Defendants do not respond within the time and at the place above-mentioned, such Orders will be made and proceedings may be taken, as the Judge may think just and expedient.

DATED THIS 4TH DAY OF MAY, 2022.



.....
✓ **Chief Mike A. A. Ozekhome, SAN, OFR, FCI Arb, LL.M, Ph.D, LL.D**

Benson Igbanoi, Esq.
Lady Josephine Mike Ozekhome, LL.M.
Amauche O. Onyedum (Mrs)
Godwin Iyinbor, Esq.
Richard Ebie, Esq.
Onuoha Ejieke, Esq.
S. E. O. Maliki, Esq.
Justin Omogbemeh, Esq.
Queen-Ubokutom I. Umana, (Miss)
Wilson A. Ibhazobe, Esq.
Jeffrey Iluobe Itua, Esq.
Oluchi Vivian Uche (Miss)
Azubuike Solomon, Esq.
Osilama Mike Ozekhome, Esq., LL.M, MBA
Ngozi T. Onyechi (Miss), LL.M, MSC
Adadu Obande, Esq.
Destiny E. Odianosen, Esq.
Dixon C. Odili, Esq.
Aisosa Iriangbonse Ogboro (Miss).
Oshomha Mike Ozekhome, Esq., MBA
Oghenetejiri Ruth Djegbada, (Miss)
Michael Eseose Aburime, Esq.
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Ukwe Court,
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Opposite Maitama Police Station,
Maitama, Abuja,
08035550444, 08022266688
Email: ozekmike@yahoo.com
ozekmike@nigerianbar.ng

FOR SERVICE ON:

- 1. THE 1ST DEFENDANT:
INDEPENDENT NATIONAL ELECTORAL COMMISSION,**

(INEC),
PLOT 436,
ZAMBEZI CRESCENT,
MAITAMA,
FEDERAL CAPITAL TERRITORY,
ABUJA.

2. THE 2ND DEFENDANT:

ATTORNEY GENERAL OF THE FEDERATION,
OFFICE OF THE HONOURABLE ATTORNEY GENERAL,
FEDERAL MINISTRY OF JUSTICE,
CENTRAL BUSINESS DISTRICT,
FEDERAL CAPITAL TERRITORY, ABUJA.

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

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

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S ORIGINATING
SUMMONS**

I, Maliki Sylvanus, adult, male, Christian, Nigerian citizen , a Senior Counsel of Mike Ozekhome's Chambers, Ukwé Court, Plot 2215 , Nile Street, Maitama, Federal Capital Territory, Abuja within the jurisdiction of this honourable court do hereby make Oath and state as follows:

1. That I a Senior Counsel in the law firm of Mike Ozekhome's Chambers by virtue of which position I am conversant with the facts and circumstances of this case.
2. That the facts deposed to herein be within my personal knowledge except as otherwise stated, and as duly informed by the Plaintiff, **MR GODWIN EMEFIELE.**
3. That the Plaintiff is a Nigerian citizen, Economist, Banker and financial expert who has been serving as the Governor of the Central Bank of Nigeria since **4th June, 2014.**

4. That the Plaintiff aspire to seek election to the office of the President of the Federal Republic of Nigeria and participate as a candidate in the upcoming **2023** presidential elections.
5. That at a conference meeting held on this case at our office, Ukwe Court, Plot **2215** Cadastral Zone, Opposite Maitama Divisional Police Station, Nile Street, Maitama, Abuja, on **Tuesday, the 3rd day of May, 2022**, at about **1:00 pm**, I was informed by Chief Mike Ozekhome, SAN, the lead Counsel in this case, of the following facts and I verily believe him to be true as follows:
 - a. That section **84(12)** of the Electoral Act, **2022**, provides that: "**No political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election**".
 - b. That the Plaintiff verily believes that he is not affected by these provisions, as he is not a political appointee as envisaged by the above provisions.
 - c. That the Central Bank of Nigeria as a government agency, is wholly **(100%)** owned by the Nigerian Federal Government.
 - d. That public service in Nigeria encompasses service in governmental departments and agencies, including the Central Bank of Nigeria, herein the plaintiff is the Governor.
 - e. That the Plaintiff, as the Governor of the Central Bank of Nigeria, is a person employed in the "public service of the Federation".
 - f. That consequently, the relevant section of the Constitution applicable to the Plaintiff is section **137(1) (g)** of the Constitution of the Federal Republic of Nigeria, **1999**, as amended, which provides thus: "**A person shall not be qualified for election to**

the office of President if being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election”.

- g. That the said section **137(1) (g)** of the **1999** Constitution provides that the Plaintiff is to resign, withdraw or retire from the office of Governor of the Central Bank of Nigeria at least **30** days before the date of the **2023** presidential elections; and not **30** days before a Political Party’s primaries as envisaged by section **84(12)** of the Electoral Act, **2022**.
- h. That section **84(12)** of the Electoral Act, **2022** is inconsistent with the provisions of section **137(1) (g)** of the **1999** Constitution.
- i. That the Constitution of the Federal Republic of Nigeria is the highest law of the land, the grundnorm and fons et origo, and therefore, any provision or law that is inconsistent with it shall be null and void to the extent of its inconsistency.
- j. That this was the decision of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division, who struck down section 84(12) of the Electoral Act, **2022**, in Suit No. **FHC/UM/CS/26/2022** – Between **CHIEF NDUKA EDEDE V. ATTORNEY GENERAL OF THE FEDERATION**. A certified true copy of the judgment of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia Judicial Division is hereby attached and marked **Exhibit A**.
- k. That the learned Justice held that section **84(12)** was in clear violation of the provisions of the Constitution and therefore, is unconstitutional, null, void and of no effect whatsoever and howsoever.

- i. That the effect of this judgment is that section **84(12)** of the **1999** Constitution is no longer in existence; nor form part of laws of Nigeria, and therefore cannot have any effect on the Plaintiff whatsoever and howsoever.
 - m. That the Plaintiff is within his rights to contest any party's primaries while still serving as the Governor of the Central Bank of Nigeria.
 - n. That this suit seeks a determination of the status of the plaintiff who as Governor of Central Bank of Nigeria, desires to contest elections as president of the Federal Republic of Nigeria.
 - o. That the Defendants are making frantic efforts to disqualify the Plaintiff from participating in the presidential primaries scheduled for **30th and 1st June, 2022.**
 - p. That there is the urgent need for this honourable court hear this suit and determine the right of parties before the All Progressives presidential Primaries.
 - q. That except this suit is heard timeously, the Plaintiff shall be wrongfully disqualified from participating in the presidential Primaries.
 - r. That the Defendants will not be prejudiced by a grant of this application.
9. That I depose to this affidavit in good faith, conscientiously believing the same to be true and correct in accordance with the Oaths Act, LFN, 2004.



DEPONENT

Sworn to at the Registry of the Federal High Court, Abuja.

This 5th day of May, 2022.



COMMISSIONER FOR OATHS

EXH. A

COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
APUJA
05 MAY 2022
I. ANAK ESQ
SIGN.....

(52)

4/21

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UMUAHIA JUDICIAL DIVISION
HOLDEN AT UMUAHIA
ON FRIDAY THE 18TH DAY OF MARCH, 2022
BEFORE THE HONOURABLE JUSTICE E. N. ANYADIKE
JUDGE

BETWEEN:
CHIEF NDUKA EDEDE
AND

SUIT NO: FHC/UM/CS/26/2022

--- PLAINIFF

THE ATTORNEY GEN. OF FEDERATION

=== DEFENDANT

Parties absent
Emeka Ozoani SAN for the Plaintiff with M. E. Dibia Esq, S. O. Mberekpe Esq,
and Peace Nwoke Esq.
Chris Nevo Esq with Caleb Aluya Esq for the Defendant.

Court: Judgment delivered in open Court and reliefs granted as prayed.

SGD
E. N. ANYADIKE
JUDGE
18/3/2022.

1506-2662-58
25 MAR 2022
CASH

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FEDERAL HIGH COURT
Oke Umuahia
REGISTRAR
DATE 25/03/2022

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IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UMUAHIA JUDICIAL DIVISION
HOLDEN AT UMUAHIA
ON FRIDAY THE 18TH DAY OF MARCH, 2022
BEFORE THE HONOURABLE JUSTICE E. N. ANYADIKE
JUDGE

SUIT NO: FHC/UM/CS/26/2022

BETWEEN:
CHIEF NDUKA EDEDE ===== PLAINTIFF
AND
ATTORNEY-GENERAL OF THE FEDERATION ===== DEFENDANT

JUDGMENT

The Plaintiff commenced this suit against the Defendant by way of Originating Summons dated 7th day of March 2022 and filed on 8th day of March 2022.

By the Originating Summons the Plaintiff is seeking for the determination of the following questions:-

1. Whether by the combined effect of Sections 1(3), 6(6)(a) and (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the

FHC/UM/CS/26/22 CHIEF NDUKA EDEDE V. ATTORNEY GENERAL OF FEDERATION Page 1



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FEDERAL HIGH COURT
UMUAHIA
REGISTRAR *[Signature]*
DATE: 18/3/2022
[Signature]

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- purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election.
2. Whether by the combined effect of Sections 1(3), 6(6)(a) and (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 in so far as it seeks to limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office at least 30 days before the date of the election, is not unconstitutional, ultra vires and inconsistent with the Constitution, invalid and therefore null and void in its entirety?

Upon the determination of the above questions, the Plaintiff is now seeking for the following reliefs:-

1. A Declaration that Section 84(12) of the Electoral Act, 2022 cannot validly and constitutionally limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such

person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

2. A Declaration that the provisions of Section 84(12) of the Electoral Act, 2022 which seeks, tends or purports to limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with Sections 6(6)(a) and (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null, void and of no effect whatsoever.
3. AN ORDER OF COURT nullifying and/or setting aside Section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with the Section 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
4. AN ORDER OF COURT directing and compelling the Defendant to FORTHWITH delete the provisions of Section 84(12) from the Electoral Act, 2022 with immediate effect.

(52)

In compliance with the Rules, the Summons is supported by a 31 paragraphs affidavit and Written Address. Attached to the affidavit is the Plaintiffs voter's card information marked exhibit I.

In opposition the Defendant filed a 7 paragraphs affidavit of fact and a Written Address dated 10th day of March 2022 on 14th day of March 2022.

In response to the Defendant's affidavit of facts, the Plaintiff filed a 5 paragraph Further Affidavit on 11th day of March 2022 and attached to it is the Plaintiffs party membership card and marked exhibit A.

FACTS OF PLAINTIFF'S CASE:

The facts upon which the suit is premised are contained in the relevant paragraphs 3, 4, 7, 9, 11, 12, 13, 17 and 27 of the Plaintiffs supporting affidavit to wit:-

Paragraph 3: That the Plaintiff is a Constitutional Lawyer, Politician and a citizen of the Federal Republic of Nigeria having been born in Nigeria with his both parents as well as grandparents being citizens of Nigeria.

Paragraph 4: That the Plaintiff is also a registered voter and was duly issued with Voter's Card by the Independent National Electoral Commission (INEC) and have continually exercised his civil duties and franchise since return to democratic rule in 1990 till date. A copy of the Plaintiff Voter's Card Information is attached as Exhibit I

Paragraph 7:

(57)

That the Plaintiff equally has constitutional interest in ensuring that he is governed by elected political office holders of his choice; and have always voted for his preferred candidates in all election since 1999 to date.

Paragraph 9:

That I know as of fact that under the Constitution of the Federal Republic of Nigeria every political office or public office holder has the constitutional right and also eligible to vote or be voted for at any Convention or Congress of any political party, of his choice, for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

Paragraph 11:

That many of the nationalistic persons or politicians, whom the Plaintiff desires to vote for various elective political offices are political office or public office holders.

Paragraph 12:

That many of these political office or public office holders may be desirous of resigning, withdrawing or retiring from any political or public office, which they presently occupy, at least 30 days before the date of the election, to enable them become qualified and eligible to vote or be voted for at any Convention or Congress of their party.

Paragraph 13: That regrettably Defendant, being the Chief Law Officer the Federal Government of Nigeria has now advised the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria to sign into law the Electoral Act 2022, including the provisions of Section 84(12) thereof.

Paragraph 17: That Section 84(12) of the Electoral Act, 2022 has unconstitutionally taken away the constitutional right of every political appointee to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, thereby breaching the Plaintiff's right to have any of his preferred candidate, who be presently political appointees and willing to resign, withdraw or retire from the said political or public office, at least 30 days before the date of the election, to participate in any election, in Nigeria against the express provisions of the Constitution.

Paragraph 27: That it is in the interest of justice for Section 84(12) of the Electoral Act, 2022 to be struck down for being unconstitutional, null and void to the extent of its inconsistency with the Constitution of the Federal Republic of Nigeria 1999 (as amended).

ISSUES:

(59)

The sole issue formulated by the Plaintiff for determination is:

"Whether by the combined effect and interpretation of (3), 6(6)(a) and (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84(12) of the Electoral Act, 2022 is not in conflict with the express provision of the 1999 Constitution on the qualification and/or disqualification of persons employed in the public service of the federation or of any state?"

He submitted that Section 84(12) of the Electoral Act, 2022 is in direct conflict with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which has clearly mandated all the persons employed in the civil or public service of the federation or state to resign, withdraw or retire at least 30 days before any of the elections he or she intends to contest as clearly spelt out in Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He posited that the implication therefore is that any other law which introduces any other restriction or disqualification which is not contemplated in the constitution shall be void to the extent of its inconsistency with the provision of the constitution. He referred to Section 1(3) of the 1999 Constitution (as amended) and the case of GOVERNOR OF EKITI STATE V. OLUBUNMO (2017) 3 NWLR PART 1551 PAGE 1 AT 32 PARA C-F PER NWEZE JSC.

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REGISTRAR Nwachukwu C.
DATE 18/03/2022

(20)

He submitted that the law is trite that where the provisions of an Act are inconsistent with the Constitution, the constitution will prevail. He referred to ADEYAJU V. WAEC (2002) 13 NWLR PART 785 PAGE 479 AT 499 - 500 PARA G - B.

He added that aside the provisions of the constitution of Nigeria 1999 (as amended) the Universal Declaration of Human Rights, Article 21, which is same as Article 25 of the International Convention on Civil & Political Rights stipulate that every citizen has right to vote and to be elected at genuine election which shall be by universal and equal suffrage and pointed out that Nigeria subscribes to these two and cannot seek to depart from global best electoral practices in this time and age.

He submitted that the provisions of an ordinary statute are subject to, and cannot render nugatory the provisions of the constitution. He relied on:

GOVERNOR OF OYO STATE V. OBA AFOLAYAN
(1995) 8 NWLR PART 413 PAGE 292 AT 329 PARA D -
E.

He submitted that the law is trite that a right conferred by the constitution cannot be taken away by any other law. He referred to AQUA LIMITED V. ONDO STATE SPORTS COUNCIL, (1988) LPELR 527.

He submitted that a person who is qualified to contest an election by virtue of Constitution cannot be disqualified by operation of any other law in force in Nigeria. He made reference to:

AGI V. PDP 2016 LPELR 425688.

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CHIEF NDUKA EDEDE V. ATTORNEY

BY GEN. OF FEDERATION

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(Snr. Admstr)

It is his further submission that this Honourable Court under PENCIL RULES principle is empowered to sieve out this offending Act 2022 the newly assented Electoral Act i.e Section 84(12) of the constitution. for being inconsistent with the clear pro vision of the constitution (2002) 6

He referred to-

AG. ABIA STATE V. AG. FEDERATION TAFAWA
NWLR (PART 763) 264 AT 436.

T. A. DOHERTY V. SIR ABUBUKAR BALEWA (1961) ALL NLR 630.

He concluded that the Honourable Court has the requisite jurisdiction to declare Section 84(12) of the Electoral Act 2022 null and void for being inconsistent with the provisions of the constitution as shown above using the principle of the blue pencil rule to save the good part of the Act.

The Learned Counsel for the Defendant formulated the sole issue for determination:-

"Given the circumstances, is the provision of Section 84(12) of the Electoral Act 2022 not in conflict with and inconsistent with Constitution of the Federal Republic 1999 (as amended) entitling the court to declare it illegal, null and void on the grounds of the inconsistency?"

He submitted that by virtue of the provision of Section 1(3) of the Constitution, the provision of the Constitution is supreme and no other law must come in conflict with it and where any other law or statute conflicts

(62)

NIGERIA OILSEEDS & CHEMICAL PRODUCTS
LIMITED V. ATTORNEY GENERAL IMO STATE
(1984) 5 NCLR 487;

MUSA & ORS V. INEC & ORS (2002) LPELR - 11119
(CA) at Pages 77 - 79, paras A - C.

He submitted that no statutory provision or any Act of the National Assembly can counteract, override, negate or derogate from the sacrosanct provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) notwithstanding the noble intention or purpose of the statute.

He referred to-

INEC V. MUSA (2003) LPELR - 24927 (SC); NWLR,
PT. 806, PG.72.

He submitted that the time-line has been set and adequately provided for by the Constitution and there was no need any more for the National Assembly to embark on a needless legislative surplusage, in clear contradiction of the Constitution with massive and far reaching political and undemocratic implications, as most eligible Nigerians would be deliberately disenfranchised or barred from pursuing their legitimate political ambitions or aspirations, simply because they were in service of their fatherland. Corollary to that is that some citizens may not participate in their party conventions/congress because their preferred aspirants are not on the ballot box.

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He referred to

(63)

(1982)

AG. OGUN STATE V. A.G. FEDERATION (1982)
NSCC I,

INEC V. MUSA (2003) 3 NWLR (Pt. 806) 72.

He submitted that while it is the National Assembly that has the competence to amend, change or alter the provision of an existing law, vide the legitimate process, it cannot so do, in violation of the provisions of the Constitution, besides, where the Constitution has already covered the field or addressed the issue intended by the Act, the new provision will be regarded as invalid or inconsistent and therefore illegal and null and void.

He referred to-

ABIA STATE & 35 ORS V. A. G. FEDERATION (2002)

6 NWLR (PT. 763) 264 at 369.

MARWA & ORS V. NYAKO & ORS. (2012) LPELR -

7837 (SC).

A. G. ABIA V. A. G. FEDERATION (2003) 6 NWLR

(PT. 763) 264.

It is submitted therefore that the provisions of Section 84(12) of the Electoral Act, 2022 for adding new grounds for the disqualification of a person for office or to vote and or be voted for is an addition to the constitutional provisions on the subject matter and is unconstitutional, null and void and

(64)

He concluded that the court is also duty bound to interpret the Constitution whenever it is called to do so.

He called in aid --

NYAME V. FEDERAL REPUBLIC OF NIGERIAN
(2009) LPELR – 8872 (CA).

He urged the Honourable Court to apply the Blue Pencil Rule to strike down Section 84(12) of the Electoral Act, 2022 and save the remainder of the Act and the Labour and resources put into making it for the benefit of all Nigerians without derogating from their constitutionally guaranteed rights, also recognised by the domesticated African Human Rights Charter.

RESOLUTION OF ISSUES

I adopt the lone issue canvassed on both sides rephrased to wit:

Whether the provision of Section 84(12) of the Electoral Act, 2022 is in conflict with the provisions of Sections 1(3), 6(6)(a) & (b), 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and ought to be declared null and void and deleted.

I shall reproduce the above sections of the law here under.

Section 84(12) of the Electoral Act, 2022 provides that no political appointee at any level shall be voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election.

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(*Snr. Adm'n*)

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Section 66(1)(f) of the 1999 Constitution provides -- "No person shall be qualified for election to the senate or the House of Representatives if --

(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the date of election;"

107 - (1)(f) "No person shall be qualified for election to a House of Assembly if --

(f) he is a person employed in the public service of the Federation or of any State and he has not resigned, withdrawn or retired from such employment thirty days before the date of election;"

137 - (1)(g) "A person shall not be qualified for election to the office of President if --

(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election;"

182 - (1)(g) "No person shall be qualified for election to the office of Governor of a State if --

(g) being a person employed in the public service of the Federation or of any State he has not resigned, withdrawn or retired from the employment at least thirty days to the date of the election;"

In the face of Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the 1999 Constitution, what is the purport of Section 84(12) of the Electoral Act,

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(Snr. Admin)

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22. I mean what does Section 84(12) of the Electoral Act 2022 tend to achieve.

By the said Section 84(12) of the Electoral Act, 2022, every political appointee both at the local, state and National levels shall not vote for candidates of their choice and shall not be voted for as a candidate for any election at any political party Convention or Congress in Nigeria. The implication is that political appointees who by virtue of their appointments are public office holders are automatically disenfranchised from voting and being voted for at party conventions and congresses where candidates for local, State and National elections shall emerge. On the other hand the citizens are also disenfranchised from voting for their preferred candidates who are political appointees/public office holders who wishes to contest for election at such conventions and congresses.

It is common knowledge that candidates for elections in Nigeria are commonly chosen at party conventions and congresses. A candidate who wishes to contest for any political position who is also a member of a political party must first pass the huddle of being nominated at such conventions and congresses before his name will be submitted and included in the list of candidate for elections. Whereby such political appointees who wishes to contest in the future elections are denied the right to vote or be voted for at party congresses and conventions, then they are automatically disenfranchised from contesting in the National elections.

The Sections 66(1)(f) 107(1)(f), 137(1)(g), and 182(1)(g) of the 1999 Constitution has already made provisions that such political appointees can

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contest for elections so long as they resign, withdraw or retire from their respective employments at least 30 days to the date of elections.

The question now is if a political appointee who is a member of a political party and who is desirous of contesting an election is denied the right to vote and be voted for at the party convention and congress, and therefore does not emerge as a party flag bearer for election, how then will such a person be voted for at the election even if he resigns or retires or withdraw 30 days to the date of such election.

The effect is that this new Section 84(12) of the Electoral Act, 2022 places a limitation on the voting rights of political appointees in Nigeria irrespective of whether they want to contest for elections or not. It places a disenfranchisement on the political appointees who may wish to contest for elections to serve their father land. It also places restrictions on citizens of Nigeria who may wish to vote for candidates of their choice who are political appointees for election as all levels in Nigeria.

The 1999 Constitution (as amended) is the supreme law of the land and have made adequate provisions for qualification and disqualification of candidates for elections in Nigeria and Section 84(12) of the Electoral Act, 2022 is not only inconsistent with the provisions of the 1999 Constitution as amended particularly Sections 66, 107, 137 and 182 of the said Constitution, but is also an unnecessary surplusage, overreaching and a total deprivation of the voting rights of Nigeria citizens.

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here the provisions of an Act are inconsistent with the
tution will prevail and such offending provisions of the
Constitution, null and void and of no effect.

1999 Constitution (as amended) .

OF EKITI V. OLUBUNMO (supra)

C V. MUSA (2003) LPELR - 24927 S C

question No: 1 in the negative and question No: 2 in
sed on which I hereby enter judgment for the Plaintiff
as follows:-

ection 84(12) of the Electoral Act, 2022 cannot validly
ally limit, remove, abrogate, disenfranchise, disqualify,
stitutional right or eligibility of any political appointee,
blic office holder to vote or be voted for at any
Congress of any political party for the purposes of
uch person or candidate for any election, where such
gned, withdrawn or retired" from the said political or
least 30 days before the date of the election.

the provisions of Section 84(12) of the Electoral Act,
its, removes, abrogates, disenfranchises, disqualifies,
onstitutional right and eligibility of any political
al or public office holder to vote or be voted for at any
ongress of any political party for the purposes of
ch person or candidate for any election, where such

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(69)

person has "resigned, withdrawn or retired" from the said political or public office, -at least 30 days before the date of the election, is grossly ultra vires and inconsistent with Sections 6(6) (a) & (b), 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and therefore unconstitutional, invalid, illegal, null, void and of no effect whatsoever.

- 3. I hereby nullify and set aside Section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null and void to the extent of its inconsistency with Sections 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- 4. I hereby Order the Defendant (The Attorney General of the Federation) to delete the provisions of Section 84(12) from the Electoral Act, 2022 with immediate effect.

This is my judgment.

E. N. ANYADIKE
JUDGE
18/03/2022.

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 UMUAHIA
 REGISTRAR *[Signature]*
 18/03/2022
(S. M. Andrew)

APPEARANCES:

Parties absent
 Emeka Ozoani SAN with M. E. Dibia Esq, S. O. Mberekpe Esq and Peace Nwoke Esq for the Plaintiff.
 Chris Nevo Esq with Caleb Aluya Esq for the Defendant.



**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

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

WRITTEN ADDRESS IN SUPPORT OF ORIGINATING SUMMONS

1.1 INTRODUCTION

1.2 By this Originating Summons, the Plaintiff seeks for the resolution by this honourable court of the following questions for determination:

- i) **WHETHER THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022, WHICH ARE INCONSISTENT WITH THE PROVISIONS OF SECTION 137(1)(G) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) WHICH HAVE BEEN DECLARED SO BY A COURT OF COMPETENT JURISDICTION CAN BE RELIED UPON BY THE DEFENDANTS TO DISQUALIFY THE PLAINTIFF FROM CONTESTING ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA OR FROM CONTESTING OR PARTICIPATING IN THE PARTIES' PRIMARIES OR OTHER CONVENTION OR CONGRESS FOR THE PURPOSE OF ELECTION TO THE**

OFFICE OF PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, SCHEDULED FOR 25TH FEBRUARY, 2023.

- ii) WHETHER BY THE PROVISIONS OF SECTION 84(3) OF THE ELECTORAL ACT, 2022, A POLITICAL PARTY CAN BY ITS CONSTITUTION, GUIDELINES OR RULES IMPOSE ANY NOMINATION QUALIFICATION OR DISQUALIFICATION CRITERIA MEASURE, CONDITIONS ON ANY ASPIRANT OR CANDIDATE INCLUDING THE PLAINTIFF HEREIN, IN ITS PRIMARIES OR CONSTITUTION, GUIDELINES OR RULES FOR NOMINATION OF ITS CANDIDATES FOR ELECTION BESIDES THOSE CRITERIA AS PRESCRIBED UNDER SECTIONS 65, 66, 106, 107, 131, 137, 177 AND 187 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED).
- iii) WHETHER BY THE COMBINED EFFECT OF THE PROVISIONS OF SECTION 84(3) OF THE ELECTORAL ACT, 2022, AND SECTION 137(1)(g) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, (AS AMENDED) WHICH REQUIRE A PUBLIC OFFICER TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST THIRTY (30) BEFORE THE DATE OF THE PRESIDENTIAL ELECTION THE PLAINTIFF CAN BE MANDATED AND/OR COMPELLED TO RESIGN, WITHDRAW, OR RETIRE HIS POSITION AS THE GOVERNOR OF CENTRAL BANK OF NIGERIA EARLIER THAN THIRTY (30) DAYS TO THE POLITICAL PARTIES PRIMARY OR PRESIDENTIAL ELECTION AS PRESCRIBED BY SECTION 137 (1)(G) CFRN, WHICH PRESIDENTIAL ELECTION IS SCHEDULED TO TAKE PLACE ABOUT FEBRUARY, 2023; WHILE THE PRIMARIES ARE FIXED FOR 30TH MAY AND 1ST JUNE, 2022.
- iv) WHETHER CONSIDERING THE COMBINED EFFECT OF THE PROVISIONS OF SECTIONS 137(1)(g) AND 318 OF THE

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED), THE PLAINTIFF CAN BE REGARDED AS A POLITICAL APPOINTEE WITHIN THE MEANING AND INTENDMENT OF SECTION 84 (12) OF THE ELECTORAL ACT, 2022.

- v) WHETHER AS A PUBLIC OFFICER WITHIN THE MEANING AND INTENDMENT OF SECTION 318 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, AS AMENDED, THE PLAINTIFF OUGHT NOT TO BE GOVERNED BY OR SUBJECTED TO THE PROVISIONS OF SECTIONS 137(1)(g) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) WHICH REQUIRE A PUBLIC OFFICER SEEKING ELECTION TO THE OFFICE OF THE PRESIDENT OF NIGERIA TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST 30 DAYS TO THE PRESIDENTIAL ELECTION, RATHER THAN BY THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022, OR THE GUIDELINES, RULES, CRITERIA, MEASURES OR CONDITIONS MADE BY THE PLAINTIFF'S POLITICAL PARTY, OR ANY POLITICAL PARTY.
- vi) WHETHER THE PLAINTIFF IS A "POLITICAL APPOINTEE" FOR THE PURPOSE OF SECTION 84 (12) OF THE ELECTORAL ACT 2022?

THAT UPON A DETERMINATION OF THE FOLLOWING QUESTIONS, THE PLAINTIFF SEEKS THE FOLLOWING RELIEFS:

- i) **A DECLARATION** that the provisions of section 84(12) of the Electoral Act, 2022 (as amended), which are inconsistent with the provisions of section 137(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) which and have been declared so by a court of competent jurisdiction cannot be relied upon by the Defendants to disqualify the plaintiff from contesting

an election to the office of the President of the Federal Republic of Nigeria or from contesting or participating in the parties' primaries, or other convention or congress for election to the office of President of the Federal Republic of Nigeria, scheduled for **25th February, 2023**.

- ii) **A DECLARATION** that by the provisions of section 84(3) of the Electoral Act, 2022, a political party cannot by its constitution, guidelines or rules impose any criteria, measures or conditions nomination qualification or disqualification criteria, any aspirant or candidate including the plaintiff herein in its primaries during its convention or congress for nomination of its candidates for election besides those criteria as prescribed under sections **65, 66, 106, 107, 131, 137, 177** and **187** of the Constitution of the Federal Republic of Nigeria, **1999** (as amended).
- iii) **A DECLARATION** that by the combined provisions of section **84(3)** of the Electoral Act, **2022**, and section **137(g)** of the Constitution of the Federal Republic of Nigeria, **1999**, (as amended) which require a public officer to resign, withdraw or retire from his employment at least **30** days before the presidential election, the Plaintiff cannot be mandated and/or compelled to resign his position as the Governor of Central Bank of Nigeria earlier than thirty (**30**) days to the presidential election or the primaries at congresses and conventions of the political parties which presidential election is scheduled to take place on **25th February, 2023**; while the primaries are fixed for the **30th May** and **1st June, 2022**.
- iv) **A DECLARATION** that the Plaintiff can only be governed by or subject to the provisions of section **137(1) (g)** and **318** of the Constitution of the Federal Republic of Nigeria, **1999** (as altered), which require a public officer seeking election into a political office to resign, withdraw or retire from his appointment at least **30** days to the presidential election, rather than by the provisions of section **84(12)** of the Electoral Act, **2022** or the guidelines, rules, criteria,

measures or conditions made by the plaintiff's political party or any political party.

- v) **A DECLARATION** that the Plaintiff can validly participate in the primary election of a political party and is entitled to vote and be voted for as candidate of any political party of his choice for the purpose of the nomination of candidates for the election to the office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).
- vi) **AN ORDER** that the Plaintiff cannot be hindered, stopped or precluded from participating, voting or being voted for at the congress or convention of any political party of his choice for the purpose of the nomination of candidates for the election to the office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).
- vii) **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendants whether by themselves, their agents, servants or privies or any legal representative from hindering, stopping or precluding the Plaintiff from participating, voting or being voted for at the congress or convention of any political party of his choice for the purpose of the nomination of candidates for the election to the office of President or any other office under the constitution of the Federal Republic of Nigeria (as amended).

AND FOR SUCH FURTHER OR OTHER ORDERS as the honourable court may deem appropriate to grant in the circumstances of this case.

- 1.3 In support of the Plaintiff's originating Summons is an affidavit of 9 paragraphs deposed to by the **Maliki Sylvanus**, a senior counsel in the law firm of Mike Ozekhome's Chambers.

- 1.4 We adopt and place reliance on all the depositions in the said affidavit and the attached **Exhibit A**.
- 1.5 In compliance with the rules of this honourable court, this Originating Summons is accompanied by a written address in support of the Plaintiff's Originating Summons.
- 1.6 There is also an affidavit of urgency and a separate motion for abridgement of time within which to determine this case.

2.0. **STATEMENT OF FACTS RELEVANT TO THIS SUIT**

- 2.1. Facts relevant to this suit are as copiously captured in the affidavit in support of the Originating Summons.

3.0. **ISSUES FOR DETERMINATION**

- 3.1 Having regards to the questions for determination set out in the Originating Summons and from the entire circumstances of this suit, the Plaintiff humbly formulates the following three (3) issues for the determination of this honourable court to wit:

- i) **WHETHER ANY POLITICAL PARTY IN NIGERIA CAN VALIDLY RELY ON THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022 (AS AMENDED) TO DISQUALIFY THE PLAINTIFF FROM PARTICIPATING IN ITS CONVENTION, CONGRESS OR PRIMARIES FOR ELECTION OF CANDIDATES TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, WHERE THE PLAINTIFF IS PROTECTED BY THE PROVISIONS OF SECTION 137(1) (G), 318, AND SECTION 84(12) OF THE ELECTORAL ACT, 2022.**
- ii) **WHETHER BY VIRTUE OF THE EXTANT PROVISIONS OF SECTION 137(1)(g) OF THE CONSTITUTION OF THE**

FEDERAL REPUBLIC OF NIGERIA, 1999, (AS ALTERED) WHICH REQUIRE A PUBLIC OFFICER TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST THIRTY (30) TO THE PRESIDENTIAL ELECTION, THE PLAINTIFF CAN BE MANDATED AND OR COMPELLED TO RESIGN, WITHDRAW OR RETIRE FROM HIS POSITION AS THE GOVERNOR OF CENTRAL BANK OF NIGERIA EARLIER THAN THIRTY (30) DAYS TO ANY POLITICAL PARTY'S CONGRESS OR CONVENTION FIXED FOR 30TH MAY, AND 1ST JUNE, 2022 ;OR THE PRESIDENTIAL ELECTIONS TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, WHICH IS SCHEDULED TO TAKE PLACE ON 25TH FEBRUARY, 2023.

- iii) WHETHER THE PLAINTIFF IS A POLITICAL APPOINTEE WITHIN THE MEANING AND INTENDMENT OF SECTION 84 (12) OF THE ELECTORAL ACT 2022.

3.2 LEGAL ARGUMENT ON ISSUE ONE

- i) WHETHER ANY POLITICAL PARTY IN NIGERIA CAN VALIDLY RELY ON THE PROVISIONS OF SECTION 84(12) OF THE ELECTORAL ACT, 2022 (AS AMENDED) TO DISQUALIFY THE PLAINTIFF FROM PARTICIPATING IN ITS CONVENTION, CONGRESS OR PRIMARIES FOR ELECTION OF CANDIDATES TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, WHERE THE PLAINTIFF IS PROTECTED BY THE PROVISIONS OF SECTION 137(1) (G), 318, AND SECTION 84(12) OF THE ELECTORAL ACT, 2022.

3.2 We respectfully submit that having regard to the fact that section 84 (12) of the Electoral Act, 2022, has been nullified by a court of

competent jurisdiction, for being inconsistent with the provisions of Section 6 (6) (a) and (b), 66 (1) (f), 107 (1) (f), (g), 137(1)(g) and 182 (1) (g) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), it is null, void and of no legal effect except when set aside and consequently no political party in Nigeria can rely on same to disqualify the Plaintiff from participating in its convention, congress or primary election leading to the 2023 presidential elections.

- 3.3 It is our respectful submission that where any law is inconsistent with the provisions of the Constitution, the Constitution shall to the extent of such inconsistency prevail over such other law. See the case of **YENGE v. AG FEDERATION (2021) LPELR-56423(CA)**, where the Court of Appeal, in agreeing with our above submission held that:

"The settled position of the law is that any enactment passed by the National Assembly which contravenes the Constitution of the Federal Republic of Nigeria shall be null and void as provided in section 1(3) of the said Constitution which proclaims that such law shall be to the extent of its consistency with the Constitution void? Any law or provisions of the said law that are inconsistent with the provisions of the Constitution will be struck down by a court of competent jurisdiction. See: 1. THE ATTORNEY-GENERAL OF THE FEDERATION VS THE ATTORNEY-GENERAL OF LAGOS STATE (2013) 16 NWLR (PART 1380) 349 AT 329 D-G per I. T. MOHAMMED, JSC now CJN who said:- "In asserting its supremacy the Constitution, in section 1 (3) provides that: "If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void." "Inconsistency", in law, to me, can be taken to be a situation where two or more laws enactments and/or rules are mutually repugnant or contradictory, contrary, the one to the other so that both

cannot stand and the acceptance or establishment of the one implies the abrogation or abandonment of the other. It is thus, a situation where the two or more enactments cannot function together simultaneously. The Constitution does not tolerate that. In Ishola v. Ajiboye (1994) 7-8 SCNJ (Pt. 1) 1, (1994) 6 NWLR (Pt.352) 506 this Court held that the Constitution is not only supreme when another law is inconsistent with it, but also when another law seeks to compete with it in an area already covered by the Constitution..." Per PETER OLABISI IGE, JCA (Pp 20 - 23 Paras D - E). (Bolding & underlining supplied).

3.4 In **AIR LIQUIDE (NIG) PLC V. NNAM (2014) LPELR-23231(CA)**, the appellate court held thus:

"Because the 1999 Constitution of the Federal Republic of Nigeria, as amended (hereinafter 1999 Constitution) is the Supreme law in this Country and by its section 1 (3) any law that is inconsistent with its provisions shall remain void to the extent of that inconsistency. As a corollary to that, any action by any person or authority that does not strictly comply with its mandatory or imperative prescriptions must also remain unconstitutional, illegal, null, void and of no effect whatsoever.

3.5 Where there is a conflict, the constitution prevails." Per ALI ABUBAKAR BABANDI GUMEL, JCA (Pp 11 - 12 Paras F -B). (Bolding & underlining supplied).

3.6 We respectfully submit that the sole reason why the court in its wisdom nullified section **84 (12)** of the Electoral Act, **2022**, (as altered), is that the said section cannot validly and constitutionally limit, remove, abrogate, disenfranchise, disqualify, and oust the constitutional right or eligibility of any public office holder to vote or be voted for at any convention or congress of any political party for the purposes of

nomination of such a person or candidate for any election, where such person has resigned, withdrawn or retired from the said political or public office at least 30 days before the date of the election.

- 3.7 The Supreme Court in the case of **UGBOJI v. STATE (2017) LPELR-43427(SC)**, held that:

"My lords, permit me to reiterate that the Constitution of the Federal Republic of Nigeria of 1999, as amended, had by section one, made provision to emphasize or assert its supremacy. By that provision, any law/statute or provisions thereof that runs riot and violent to the provisions of the Constitution or is in conflict with the constitutional provision is null and void to the extent of inconsistency. See A.G. Ondo State vs AG of the Federation and Ors (2002)9 NWLR (pt 772) 226." Per AMIRU SANUSI, JSC (Pp 23 - 23 Paras B - D). See also the case of OBAYUWANA v. GOV. BENDEL STATE & ANOR (1982) LPELR-2160(SC)"...if any provision of an existing law is inconsistent with any provision of the Constitution of 1979 such provision shall be void (See Sections 274(3)(d) and 1(3) of the Constitution)." Per AUGUSTINE NNAMANI, JSC (Pp 46 - 46 Paras D - E).

- 3.8 We respectfully submit that even if section **84(12)** is held to be valid and constitutional, it does not operate to affect the Plaintiff whose position as a public officer being the Governor of the Central Bank is strictly governed by section **137(1)(g)** of the Constitution.
- 3.9 We humbly submit flowing from the above legal submissions that the Plaintiff cannot be disqualified from participating in any of the political party's congress, convention or primary election. We humbly urge your lordship to respectfully so hold and resolve issue one in favour of the Plaintiff.

4.0.

LEGAL ARGUMENT ON ISSUE TWO

- 4.1 WHETHER BY VIRTUE OF THE EXTANT PROVISIONS OF SECTION 137(1)(g) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999, (AS ALTERED) WHICH REQUIRE A PUBLIC OFFICER TO RESIGN, WITHDRAW OR RETIRE FROM HIS EMPLOYMENT AT LEAST THIRTY (30) TO THE PRESIDENTIAL ELECTION, THE PLAINTIFF CAN BE MANDATED AND OR COMPELLED TO RESIGN, WITHDRAW OR RETIRE FROM HIS POSITION AS THE GOVERNOR OF CENTRAL BANK OF NIGERIA EARLIER THAN THIRTY (30) DAYS TO ANY POLITICAL PARTY'S CONGRESS OR CONVENTION FIXED FOR 30TH MAY, AND 1ST JUNE, 2022 ;OR THE PRESIDENTIAL ELECTIONS TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, WHICH IS SCHEDULED TO TAKE PLACE ON 25TH FEBRUARY, 2023.
- 4.2 It is our respectful submission that the provisions of section 137(1) g of the Constitution of the Federal of Nigeria, 1999, (as altered) which mandates an aspirant to a political office in the civil or public service of the Federation to resign, withdraw or retire from employment at least thirty (30) days before the date fixed for the presidential election does not apply to bar or stop the Plaintiff from participating in the congress , convention or primary election of any of the political parties; or the presidential election of 2023. Rather, the section aids the plaintiff .For the avoidance of doubt, the presidential primary election are scheduled for the 30th May and 1st of June, 2022, while the presidential general election is scheduled by the INEC (1st Defendant herein) 25th February, 2023. The plaintiff as a public officer within the meaning of sections 137(1)(g) and 318 of the political party's congress, convention and primaries and also contest the 2023 presidential elections if he resigns withdraws or retires from his office as the Governor of the Central Bank of Nigeria, at least 30 days before the said convention, congress, primaries and presidential elections.

- 4.3 For the avoidance of doubt, section **137(1)** g of the Constitution of the Federal of Nigeria, **1999**, (as altered), provides thus:

"A person shall not be qualified for election to the office of President if-being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the ELECTION..."
(Bolding & capital letters supplied).

- 4.4 My lord, from the wordings of the Constitution as reproduced above, it is beyond per adventure that the Plaintiff is **ONLY** required to resign, withdraw or retire from his employment as the Governor of Central Bank of Nigeria at least thirty (**30**) days before the date of the presidential election to the office of president and not afortiori, convention or primaries of any of the political parties. The Constitution specifically mentioned "**ELECTION**" as against "**PRIMARY ELECTION**", which takes place at a congress or convention of a political party.

- 4.5 The appellate court in the case of **UMAR & ANOR v. KWARI & ORS (2019) LPELR-49454(CA)**, was faced with the interpretation of section **66(1)** (f) of the Constitution **1999**, (as altered), in a similar situation as regards legislators who must resign their appointment before contesting in an election. The appellate court held as follows:

"Let me first of all address the issue as to whether under the Nigerian Constitution, the 1st Respondent was required to resign his appointment before he contested the election and if he did not do so, whether he is liable to vacate his seat in the senate having been elected. "No person shall be qualified for election to the senate if- (f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty (30) days to the election." The combined effect of the above

provisions of the Constitution is that the 1st Respondent is liable to vacate his seat if and only if he qualifies to be referred to as a person employed in the public office of Kaduna State and did not resign such employment 30 days before election. The 1st Respondent was therefore not under a duty in law to resign his appointment in order to contest election." Per JAMES GAMBO ABUNDAGA, JCA (Pp 30 - 33 Paras A - D). (Bolding, underlining supplied).

- 4.6 We submit most humbly that the express mention of election excludes primary election which was not mentioned. See the case of **AMAKA v. A-G ONDO STATE & ORS (2012) LPELR-8478(CA)**, where it was restated thus:

"...As stated by Appellant's counsel in the reply brief, Mr. Olamide's assertion cannot stand in the face of well-established rules of statutory interpretation and many decided authorities that the express mention of one thing is the exclusion of others. Courts do not have the jurisdiction to read into a statute what the legislators did not provide for. See Buhari v. INEC (2008)18 NWLR (Pt. 1120) 246." Per CHINWE EUGENIA IYIZOBA, JCA (Pp 23 - 24 Paras G - B). (Bolding & underlining supplied).

- 4.7 See also the case of **EBUBEDIKE v. FRN & ORS (2013) LPELR-22061(CA)**, where the appellate court held:

"It is trite law that where the Constitution or the statute confer exclusive power to an organ or body, those not specifically mentioned are therefore excluded. The Supreme Court in the case of the ATTORNEY GENERAL OF BENDEL STATE & 2 ORS. VS. AIDEYAN (1989) 9 SC 127 stated as follows: "It is now firmly established that in the construction of a statutory provision where a statute mentions specific things or persons the intention

is that those not mentioned are not intended to be included." On the same point also see: **EHUWA vs. ONDO STATE (2006) 11 - 12 S.C. 102.**" Per **SIDI DAUDA BAGE, JCA (Pp 26 - 26 Paras C - E).** (Bolding, Underlining supplied).

4.8 Flowing from above, we humbly submit further that the Constitution having expressly provides for resignation, withdrawal or retirement from employment at least thirty **(30)** days before the date of the election, only election can be the basis for the invocation of section **137(1)** g of the Constitution of the Federal of Nigeria, **1999**, (as altered) not primary election which is not provided therein. We humbly urge your lordship to respectfully so hold.

4.9 **LEGAL ARGUMENT ON ISSUE 3**

4.10 **WHETHER THE PLAINTIFF IS A POLITICAL APPOINTEE WITHIN THE MEANING AND INTENDMENT OF SECTION 84 (12) OF THE ELECTORAL ACT 2022.**

4.11 Assuming, but not conceding that section **84(12)** of the Electoral Act, **2022**, (as amended) is valid and subsisting, it is our respectful submission that the Plaintiff is not affected by the provisions as he is not a political appointee as contemplated under section **84(12)** of the Electoral Act, **2022**, (as amended).

4.12 Section **84(12)** of the Electoral Act, **2022**, (as amended) provides as follows:

"Political Appointee not Eligible as a voting Delegate or Aspirant. No political appointee at any level shall be a voting delegate or be voted for at the Convention, or Congress of any political party for the purpose of the nomination of candidates for any election."

4.13 A perusal of the above provision of the Electoral Act, 2022 (as amended), shows clearly that it only bars a political appointee as a delegate or an aspirant from being voted for or being a delegate at political party's convention or congress. This is clearly not the case of the Plaintiff whose office as the governor of the Central Bank of Nigeria is a statutory officer by virtue of section 8 of the CBN Act, LFN 2004.

4.14 Section 8(1) of the Central Bank Of Nigeria Act provides as follows:

"The Governor and the Deputy- Governor shall be persons of recognized experience and shall be appointed by the President subject to the confirmation by the Senate on such terms and conditions as may be set out in the respective letter of their appointment". (Bolding supplied).

4.15 The office of the Plaintiff is a creation of an Act of the National Assembly.(the CBN Act). He is not a political appointee.

4.16 Our courts have been consistent that by virtue of section 318(1) (e and f) of the 1999 Constitution, any Staff of any statutory corporation established by an Act of the National Assembly is a public officer. See the case of **ADETOYE v. FEDERAL INSTITUTE OF INDUSTRIAL RESEARCH OSHODI & ORS (2011) LPELR-3615(CA)**, where the appellate court stated the law thus:

"I notice however that right from the trial court, the Appellant has in his prayers referred to himself as a civil servant. A civil servant is a public servant in the employment of the civil service of the Federation or a State. The Civil Service of the Federation is defined in S.318 (1) of the Constitution of the Federal Republic of Nigeria 1999 as "service of the Federation in a civil capacity as a staff of the office of the President, Vice-President, a Ministry or Department of the Government of the Federation assigned with the responsibility for any

business of the Government of the Federation." As I stated earlier the Appellant is a public servant. He is an employee of an institution created by Decree No. 33 of 1992. S.318(1) (e and f) of the 1999 Constitution which defines public service of the Federation to include "(e) Staff of any statutory corporation established by an Act of the National Assembly." Per RAPHAEL CHIKWE AGBO, JCA (Pp 33 - 34 Paras D - D). (Bolding & Underlining supplied).

4.17 In the case of **FAYOSE v. EFCC & ANOR (2018) LPELR-46474(CA)**, where the appellate court held the status of the Plaintiff herein as a public officer. It was held as follows:

"In the circumstance, offices of CBN are Public Officers but CBN is not a Public Officer."...I find the ruling of the learned trial court compelling and therefore crave indulgence to extensively reproduce part in this Judgment as follows: ...(b)A careful perusal of S. 318 (1) of the Constitution of Federal Republic of Nigeria (as amended) reveals that the definition of "public service of the Federation is construed as "service of the Federation in any capacity in respect of the Government of the Federation, and includes service as (e) "Staff of a statutory corporation established by an Act of the National Assembly" In the light of the exposition in sub "e" above, S. 19 of the 5th Schedule to the Constitutional of Federal Republic of Nigeria 1999 (as amended) (the interpretation section) - Interpreted "public officer" to mean a person holding any of the offices specified in part II of this schedule. An overview of Paragraph 14 of the 5th Schedule provides that chairman, and members of the boards or other governing bodies and staff of statutory corporations and of companies in which the Federal Government or State Government has controlling interest from the above. It is my firm view,

the constitutional provision as expounded in the above section of the Sheriffs and Civil Process Act and the Constitutional of Federal Republic of Nigeria 1999 (as amended) clearly envisaged that the Central Bank of Nigeria is a public service body manned by a public servant herein the Attorney General of the Federation and therefrom by interpretation a public officer. This was also decisively held in the case of Ibrahim Vs Judicial Service Commission Kaduna State (Supra). "Per MONICA BOLNA'AN DONGBAN-MENSEM, JCA (Pp 15 - 26 Paras B - D). (Bolding, underlining supplied).

- 4.18 In the case of **WULANGS v. CBN (2019) LPELR-48085(CA)**, it was held that even the Central Bank of Nigeria is a public officer. It was held thus:

"There is no doubt that for the purposes of Section 2(a) of the Public Officers Protection Act, the Respondent is a Public Officer and it is also firmly established that the Public Officers Protection Act is applicable to contract of employment. That has been laid to rest a long time ago in the cases of:- 1. ALHAJI ALIYU IBRAHIM V JUDICIAL SERVICE COMMITTEE, KADUNA STATE & ANOR (1998) 14 NWLR (PT. 584) 1 AT 35 & 37D per IGUH, J5C: who said:- "I have also referred to the definition of the word "person" under Section 3 of the Interpretation Law and Section 18 of the Interpretation Act respectively. This is defined to include any body of persons corporate or unincorporate. It is my view therefore that the words "any person" as provided in Section 2 of the Public Officers (Protection) Law of Northern Nigeria, 1963 are not limited only to natural persons or human beings or to persons sued in their personal names. Unless the contrary intention is indicated and no such intention is therein manifested those words in the Public Officers

(Protection) Law include persons known to Law, inclusive of artificial persons, public bodies or body of persons corporate or incorporate as well as statutory bodies or persons, whether sued by their official titles or not, so long they are sued in respect of an act or acts done in pursuance or execution of any law or of any public duty or authority." (Underlined mine). "Per PETER OLABISI IGE, JCA (Pp 37 - 52 Paras C - D). (Bolding & Underlining supplied).

- 4.19 See further the case of **CBN v. NJEMANZE & ORS (2014) LPELR-24016(CA)**.
- 4.20 On the strength of the above canvassed position of the law, it is our respectful submission the Plaintiff is not a political appointee as envisaged by the Electoral Act and as he seeks to contest for the office of the president in the new electoral calendar, he shall only be governed or guided by the Constitution of the Federal Republic of Nigeria, 1999, as amended, which requires that he gives at least thirty (30) days' notice of resignation, withdrawal or retirement from the office of the Governor of the Central Bank of Nigeria before any elections. We humbly urge this honourable court to so hold.

4.21 **CONCLUSION**

- 4.22 Having regard to the legal argument canvassed above and the time honoured decisions commended to this honourable court, we humbly urge this honourable court to resolve all the issues submitted for determination in favour of the Plaintiff and grant all the reliefs in the terms sought before this honourable court. May it please this honourable court!

DATED THIS 4TH DAY OF MAY, 2022.



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FOR SERVICE ON:

**THE 1ST DEFENDANT:
INDEPENDENT NATIONAL ELECTORAL COMMISSION,
(INEC),
PLOT 436,
ZAMBEZI CRESCENT,
MAITAMA,
FEDERAL CAPITAL TERRITORY,
ABUJA.**

**THE 2ND DEFENDANT:
ATTORNEY GENERAL OF THE FEDERATION,
OFFICE OF THE HONOURABLE ATTORNEY GENERAL,
FEDERAL MINISTRY OF JUSTICE,
CENTRAL BUSINESS DISTRICT,
FEDERAL CAPITAL TERRITORY,
ABUJA.**

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

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

AFFIDAVIT OF NON-MULTIPLICITY OF ACTION

I, Maliki Sylvanus, adult, male, Christian, Nigerian citizen , a Senior Counsel of Mike Ozekhome's Chambers, Ukwe Court, Plot 2215 , Nile Street, Maitama, Federal Capital Territory , Abuja within the jurisdiction of this honourable court do hereby make Oath and state as follows:

1. That I a Senior Counsel in the law firm of Mike Ozekhome's Chambers by virtue of which position I am conversant with the facts and circumstances of this case.
2. That the facts deposed to herein be within my personal knowledge except as otherwise stated, and as duly informed by the Plaintiff, **MR GODWIN EMEFIELE**
3. That he has not previously filed any other action on this same subject matter either in the Federal High Court of any other court, nor has he directed anyone to file any matter on this same subject matter on his behalf other than this suit.

4. That the Plaintiff has no other matter on this same subject matter pending in this court or any other court.
5. That I depose to this Affidavit in good faith believing its contents to be true and correct and in accordance with the Oath Acts 2004.

OM

.....
DEPONENT

Sworn to at Federal High Court's Registry, Abuja.

This 5th Day of May 2022.



COMMISSIONER FOR OATHS

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO.....

BETWEEN

MR GODWIN EMEFIELEPLAINTIFF

AND

- 1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)**
2. ATTORNEY GENERAL OF THE FEDERATION } **DEFENDANTS**

CERTIFICATE OF PRE-ACTION COUNSELING

I, **Chief Mike Ozekhome, SAN**, hereby certify that as the legal practitioner representing Mr. Godwin Emeziele, the Plaintiff in this suit, I have counseled my client on the strength and weaknesses of his cause or matter and informed him of the opportunities available for the alternative dispute resolution of this case and the possibility of a reconciliation between the parties being effected either with or without the assistance of such an organization and same was fully understood by him and he has instructed me to commence the said action in his name and on his behalf and that should this suit turn out to be frivolous, I am prepared to be liable as per the provisions of the rules of this court.

DATED THIS 4TH OF MAY, 2022.



.....
**Chief Mike Ozekhome, SAN,
(PLAINTIFF'S COUNSEL)**