



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

**ON WEDNESDAY, 14<sup>TH</sup> JUNE, 2023**

**BEFORE HON.JUSTICE NJIDEKA K. NWOSU-IHEME**

**SUIT NO: FCT/HC/CV/2757/2023**

**MOTION NO: FCT/HC/M/6475/2023**

**BETWEEN:**

**MR OLALEKAN POPOOLA**

**APPLICANT/RESPONDENT**

**VS**

**MR GODWIN EMEFIELE**

**DEFENDANT/APPLICANT**

**JUDGEMENT**

The respondent on the 22<sup>nd</sup> day of May, 2023 raised a preliminary objection challenging the competence of this suit and the jurisdiction of this court to hear and determine same and praying this court to strike this suit for being incompetent and for the lack of vires by this court to hear and determine same.

On 31/5/2023, the matter came up for hearing, the applicant/respondent was absent but the originating motion and preliminary objection was adopted in his absence and matter adjourned for judgement.

In support of the preliminary objection is a 5 paragraph affidavit deposed to SALIHU OMEIZA, a litigation secretary in the law firm, Greenfield Chambers, Counsel to the defendant/applicant. The affidavit deposed to the following amongst others;

- a. Defendant was not a party to the interim orders of the Supreme Court. The interim Orders of the Supreme Court made on 8/2/2023 and judgement delivered on 3<sup>rd</sup> March, 2023 made against the President of the Federal Republic of Nigeria and not against the defendant herein.
- b. This court does not have the jurisdiction to commit the defendant to prison as there is no order against the defendant by the Supreme Court, which the defendant disobeyed.
- c. Claimant's suit does not disclose a reasonable cause of action against the defendant.

- d. Claimant was not a party at the Supreme Court and has not demonstrated sufficient interest to grant him locus standi to commence this suit.
- e. Claimant cannot enforce an order made on the application of another party.
- f. The order of court which the claimant seeks to enforce has already been complied with.
- g. That the claimant has not shown that he is from any of the states that were parties at the Supreme Court.

Applicant/Respondent did not file a counter affidavit in opposition to the respondent's notice of preliminary objection.

The defendant/applicant's written address, Davidson Duru submitted 2 issues for determination to wit:

- a. Whether the claimant has the locus standi to institute this suit**
- b. Whether having regards to the facts and circumstances of this case, the claimant's case discloses a reasonable cause of action.**

This court shall determine this objection on the issues as formulated by the defendant/applicant.

#### **DEFENDANT/APPLICANT'S ARGUMENT ON ISSUE ONE**

Duru Esq's contention is that the claimant/respondent lacks locus standi to institute this action. The claimant/respondent has not established what benefit the reliefs sought in the suit would confer on him and is at best a busy body. Relying on **CHIEF EGOLUM V GENERAL OBASANJO & 3 ORS (1999) 7 NWLR (PT 611) 423** and **OLORIODE & ORS V OYEBI & ORS (1984) 1SCNLR 390**. The claimant has not shown any harm he will suffer as the affidavit in support of the origination motion on notice does not reveal same. Relying on **WUSHISHI V IMAM & ORS (2017) LPELR 41906 SC**. Claimant has not shown sufficient interest in the subject matter of the action and that his civil rights and obligations have been or are in danger of being infringed.

#### **DEFENDANT/APPLICANT'S ARGUMENT ON ISSUE TWO**

Counsel submits that this suit reveals that there is no reasonable cause of action relying on **UWAZURONYE V GOV. IMO STATE (2013) 8 NWLR (PT 1355) 28 @ 51**.

Counsel argued that the claimant seeking an order of the court to commit the defendant to prison for having disobeyed the interim order and judgement of the Supreme Court and the order was not directed at the defendant. The judgment of the Supreme Court relied upon does not mention the defendant as a party to the suit and cannot see how he can be held in contempt of an order made against him.

Relying on **BELLO V INEC (2010) LPLER 767 SC** court cannot make an order against a non-party.

Counsel submitted that for a reasonable cause of action to be a cause of action which, when only the allegation in the claimants originating process and/or pleadings are considered has a chance of success referring to **BARBUS & CO. NIG LTD V OKAFOR-UDEJI (2018) 11 NWR (PART 1630) 298.**

### **DECISION OF THE COURT**

Whenever the issue of jurisdiction, which is both intrinsic and extrinsic to judicial proceedings, arises or is raised in the course of proceedings (at all stages or steps of the judicial ladder), the court before which it arises or is raised has the duty and obligation to consider and determine it first before proceeding with other issues or taking further steps in the case. See **ADEYEMI V ACHIMU/NDIC (2023) PART 1866 1NWLR P. 583 @ P. 610 PARAS B-D.**

The order being relied upon by the claimant was made against the President of the Federal Republic of Nigeria and not against the defendant herein. Defendant was not a party to the suit before the Supreme Court as seen in Exhibits 1 & 2.

Jurisdiction is the life-wire of a court as no court can entertain a matter where it lacks jurisdiction. The issue of jurisdiction can be raised at any time. See apex decision of **DAIRO V UBN PLC (2007) 7 SC (PT II) PAGE 97 @ 111 paras 5-10** In the apex court decision of **AUDU V APC (2019) LPLER 48134 SC PAGE 12**, the court defined jurisdiction thus;

**"Jurisdiction simply means "a Court's power to decide a case or issue" Black's Law Dictionary 9th Ed. Jurisdiction also refers to "the authority a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision" - Mobil Producing (Nig.) Unlimited V. LASEPA (2002) 18 NWLR (R. 798) 1 SC. Jurisdiction are of various types; substantive jurisdiction refers to matters over which the Court can adjudicate, and it is usually expressly provided by the Constitution or enabling statutes. PAGE 21**PER AMINA AUGIE JSC held thus;

**"... jurisdiction is the pillar under which the entire case stands, therefore, filing an action in a Court presupposes that the Court has**

**jurisdiction. However, once the Defendant shows that the Court has no jurisdiction then the "foundation of the case is not only shaken but is broken. The case crumbles."**

**See Okolo V. UBN (2004) 3 NWLR (Pt. 859) 87, wherein Tobi, JSC, added;**

**"In effect, there is no case before the Court for adjudication. The Parties cannot be heard on the merit of the case. That is the end of the litigation."**

**In EKWEOZOR V REGISTERED TRUSTEES OF THE SAVIOURS APOSTLE CHURCH (2020) SC LPLER 49568 PAGE 16** the apex court held thus;

**"The jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. However, when evidence has been taken before the raising of the issue of jurisdiction, the Court may refer to any part thereof necessary. In this instance a reference to the plaintiff's pleadings becomes necessary to clarify any grey areas. See Tukur v Government of Gongola State (NO. 2) (1989) 4 NWLR (Pt. 117) P. 517; Mustapha v Government Lagos State (1987) 2 NWLR (Pt.58) 539; Attorney General Kwara State v Olawale (1993) 1 NWLR (Pt. 272) 645; Adeyemi v Opeyori (1976) 9 - 10 SC 31."**

Due to the decisive nature of jurisdiction, it cannot be conferred on or taken away from any court because the parties have agreed or consented to do so. See **DAIRO V UBN PLC (2007) SUPRA @ 111 PARAS 10-15 and ADEYEMI V ACHIMU/NDIC (supra) P. 618 paras B-C.**

Flowing from the position of the law on jurisdiction, there are conditions which must be satisfied before this court can exercise jurisdiction. In the recent decision of **PEOPLES DEMOCRATIC PARTY v. CHIEF NDUKA EDEDE & ANOR (2022) LPELR-57480(CA) (Pp. 28-29, paras. E-B)**, court held;

**"I also agree with the learned counsel, that going by the parameters set by Madukolu vs. Nkemdilim (1962) SCNLR 341, and followed in Salati vs.**

**Shehu (1986) INWLR (pt. 15) 198 @ 218, that a Court of law can only have and properly exercise its jurisdiction to hear and to determine a case before it where it is satisfied that: (i.) The proper parties are before the Court. (ii.) The Court's properly constituted as to its membership and qualification. (iii.) Where the subject matter of the case is within the jurisdiction and there are no features in the case which prevent the court from exercising jurisdiction. iv. Where the case comes before the Court initiated by due process of the law, and upon fulfillment of any condition precedent to the assumption of jurisdiction."**

On whether the claimant has locus standi to file this suit?

Locus standi has been defined by **PETER-ODILI, J.S.C** in **MUFUTAU BAMIDELE AKANDE v. PROF. OLUGBEMIRO JEGEDE & ORS(2022) LPELR-58911(SC) (PP. 13-15 PARAS. E)** as "the legal right of a party to an action to be heard in litigation before a Court of law or tribunal. The term entails the legal capacity of instituting or commencing an action in a competent Court of law or Tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the Court lacks the jurisdiction to entertain it, the only order the Court can make in the circumstance is that of dismissal...

"It is trite that "the relationship between locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect jurisdiction of the Court before which an action is brought. Thus, where there is no locus standi to file an action. Locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of Court or by the Court itself suo motu... Locus standi to institute proceedings in a Court is not dependent on the success or merits of a case: it is a condition precedent to the determination of a case on the merits".

The claimant in paragraphs 3 and 4 has set out the basis for his filing this suit;

***3. That I am citizen of Nigeria and bankable adult with bank accounts domiciled in several banks in Nigeria.***

***4. That I also pay taxes and other charges for the operation of my bank account and also uses the ₦200, ₦500 and ₦1000 bank notes in Nigeria.***

In the most recent decision of **HON. GEORGE U. TIMINIMI & 9 ORS V INEC PART 1882 (2023) 7NWLR PAGE 109 @ 132 PARAS G-H**, the apex court has set out a wider coverage of locus standi thus;

**“... it is apparent that this court had shifted from its hitherto conservative stance on locus standi when it would be a lacuna in the system of public law if a pressure group, a single public spirited tax payer or ... a group of politicians involved in the electoral process were prevented by outdated technical rules of locus standi from bringing a matter to the attention of the court to vindicate the rule of law and get an unlawful or wrongful conduct stopped”.**

The claimant being a tax payer should ordinarily fall under the category of individuals who have locus in this suit before me. However, the claimant/respondent has not shown before this court that he is a tax payer. He has not tendered any document to show he actually pays his tax, merely stating so in his affidavit without actually proving same goes to no purpose. It is trite that he who asserts must prove and failing to prove same will be in favour of the defendant. See **SOMORIN & ORS V. ADEKANBI & ORS (2011) LPELR-3681(CA) (PP. 29 PARAS. B)**, Thus, issue 1 is answered in the negative and in favour of the defendant.

**On whether this case discloses a reasonable cause of action against the defendant?**

The case of the claimant in a nutshell is that the defendant should be committed to prison for alleged disobedience of orders of the Supreme Court in **SC/162/2023 between AG KADUNA STATE & ORS V AG FEDERATION & 2ORS**. The defendant was not a party to the suit before the Supreme Court.

Paragraphs 5 to 20 of the affidavit in support of the originating motion states thus;

- 5. That the defendant is the Governor of the Central Bank of Nigeria and responsible for the implementation of the policies, directives and programmes of the Central Bank of Nigeria***
- 6. That the defendant, while holding office as the Governor of the Central Bank of Nigeria on 26th October, 2022 issued a directive introducing new ₦200, ₦500 and ₦1000 bank notes, which personally affected me as a citizen of Nigeria, who is also resident in Nigeria.***
- 7. That based on the policy/directives, the defendant set the termination date of use of the old ₦200, ₦500 and ₦1000 bank notes to be 31st day of January, 2023.***
- 8. Some aggrieved State approached the Supreme Court of Nigeria in its original Jurisdiction, whereupon the Supreme Court made interim order directing that the old ₦200, ₦500 and ₦1000 will continue to be legal tender in Nigeria.***
- 9. That on 8th February, 2023 the Supreme Court also made an interim order and also on 3rd March, 2023 the Supreme Court delivered its Judgment in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors, that the old ₦200, ₦500 and ₦1000 will continue to be a legal tender in Nigeria. A copy of the interim order is attached as Exhibit 1.***
- 10. That the defendant, as the Governor of Central Bank of Nigeria is the party saddled with the responsibility of comply with the orders of the Supreme Court by ensuring, amongst other things, that the "old version of ₦200, ₦500 and ₦1000 naira notes shall continue to be legal tender alongside with the new or redesigned version until 31-12-2023".***
- 11. That the defendant is directly affected by the Orders of the Supreme Court and has the duty to ensure the "reception of old ₦200, ₦500 and ₦1000 naira notes and the swapping of same with new naira notes shall continue till 31<sup>st</sup> December, 2023."***
- 12. That the defendant has a duty and legal obligation to obey the Orders of the Supreme Court made in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors. A copy of the judgment of the Supreme Court is attached as Exhibit 2.***
- 13. That the defendant deliberately disobeyed the Orders of the Supreme Court.***

***14. That the defendant did not comply with the interim orders of the Supreme Court made on 8th February, 2023 or the judgment of the Supreme Court made on 3rd March, 2023.***

***15. That the defendant did not obey or comply with the interim orders within the 31st December, 2022 set by the Supreme Court.***

***16. That the defendant is in disobedience of the interim orders and Judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors by failing to recognize the old version of ₦200, ₦500 and ₦1000 naira notes as legal tender alongside with the new or redesigned version as at 31st December, 2022 or issue any circular/directives to the banks and financial institutions for the acceptance, deposit and use of the old ₦200, ₦500 and ₦1000 notes at the material times.***

***17. That the action of the defendant is illegal and amounted to disobedience to Orders of the Court, for which he is liable to be committed to prison.***

***18. That this Honourable Court has the jurisdiction to enforce the orders/Judgment of the Supreme Court of Nigeria by committing the defendant to prison.***

***19. That there is need to enforce the Orders/Judgment of the Supreme Court of Nigeria by committing the defendant to prison.***

***20. That the defendant disobeyed the interim orders and judgment of the Supreme Court at the times required for compliance.***

Looking at the prayers granted by the supreme court in **ATTORNEY GENERAL OF KADUNA STATE & ATTORNEY GENERAL OF THE FEDERATION & ORS** delivered on **3<sup>rd</sup> day of March, 2023 at pages 52 to 54** of the judgement of the apex court attached as Exhibit 2 to the affidavit in support of the originating motion (also reported at **(2023) LPELR-59936(SC)**).

The parties in the apex decision are;

- 1. ATTORNEY GENERAL OF KADUNA STATE**
- 2. ATTORNEY GENERAL OF KOGI STATE**
- 3. ATTORNEY GENERAL OF ZAMFARA STATE**
- 4. ATTORNEY GENERAL OF ONDO STATE**
- 5. ATTORNEY GENERAL OF EKITI STATE**
- 6. ATTORNEY GENERAL OF KATSINA STATE**

- 7. ATTORNEY GENERAL OF OGUN STATE**
  - 8. ATTORNEY GENERAL OF CROSS RIVER STATE**
  - 9. ATTORNEY GENERAL OF LAGOS STATE**
  - 10. ATTORNEY GENERAL OF SOKOTO STATE**
- APPELLANT(S)**

**And**

- 1. ATTORNEY GENERAL OF THE FEDERATION**
  - 2. ATTORNEY GENERAL OF EDO STATE**
  - 3. ATTORNEY GENERAL OF BAYELSA STATE**
- RESPONDENT(S)**

It is important to see that defendant was not a party to the matter at the apex court. The reliefs that were granted at the apex court are as follows;

1. A DECLARATION that the demonetization directive/policy by the President of the Federation to wit: withdrawal of the old 200, 500 and 1000 Naira notes is not consistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which make provision for the Executive Powers of the President of the Federation and the extant laws on the subject matter.
2. A DECLARATION that the 3-month notice given for the implementation and completion of the said demonetization policy by which time the old N1000, N500 and N200 Naira notes shall cease to be legal tender does not satisfy the condition set out in Section 20(3) of the CBN Act, 2007.
3. A DECLARATION that the President cannot unilaterally give a directive to embark on the demonetization policy pursuant to Section 20(3) of the CBN Act, 2007, in view of Nigeria's fiscal federalism, the economic interests of the constituents of the Federation and without consultation with, and advice from the plaintiffs individually, and in their capacity as members of the National Council of States and National Economic Council, and that the Directive cannot be given without consultation with, and advice from the Cabinet, the National Security Council and other stakeholders.
4. A DECLARATION that in issuing the directive for demonetization policy pursuant to Section 20(3) of the CBN Act, 2007 on behalf of the Federation of Nigeria, the President is under an obligation to ensure that adequate structures are put in place for the plaintiffs and Nigerian citizens prior to the implementation of the said directives.

5. A DECLARATION that the demonetization directive/policy by the President of the Federation to wit: withdrawal of the old N200, N500 and N1000 Naira notes unlawfully impedes the exercise of the Executive powers of the plaintiffs' States and other obligations to facilitate and protect the welfare of the citizens of the said States pursuant to Section 5(2) and other provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as other extant laws.
6. A DECLARATION that the directive given by the President pursuant to Section 20(3) of the CBN Act 2007 limiting the amount that can be withdrawn and the charges therein without an enabling law is unconstitutional and not binding on the plaintiffs'.
7. A DECLARATION that the directive of the President of the Federation exercised is illegal to the extent that it restricts, without an enabling law, the rights of the plaintiffs to freely use their money in various bank accounts.
8. An order that the old version of N200, N500 and N1000 Naira notes shall continue to be legal tender alongside with the new or redesigned version until 31-12-2023.
9. An order that the reception of old N200, N500 and N1000 Naira notes and the swapping of same with new Naira notes shall continue till 31st December, 2023.

The present application filed by the applicant is an originating motion brought pursuant to Order 41 Rules 1 and 2 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2019, Order 9 Rules 13 (2) and (3) of the Judgment Enforcement Rules and section 287 (1) Of The Constitution of The Federal Republic Of Nigeria, 1999 (As Amended) and under the inherent jurisdiction of the Honourable Court seeking the following reliefs;

1. A DECLARATION that the defendant is in disobedience of the interim orders and Judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9Ors v. Attorney-General of the Federation & 2 Ors by failing to recognize the old version of ₦200, ₦500 and ₦1000 naira notes as legal tender alongside with the new or redesigned version as at 31<sup>st</sup> December, 2022 or issue any circular/directives to the banks and financial institutions for the acceptance, deposit and use of the old ₦200, ₦500 and ₦1000 notes at the material times.
2. A DECLARATION that the subsequent or any compliance by the defendant with the interim orders and judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors does not operate to

exculpate him of the earlier disobedience of the interim orders and judgment of the Supreme Court of Nigeria at the material times.

3. AN ORDER enforcing the interim Order and/or judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors.
4. AN ORDER committing the defendant to prisons for having disobeyed the interim order and Judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

From the reliefs sought in the originating motion and the decision of the Supreme Court reproduced above; this court has been able to bring out the following salient points;

- The Claimant was not a party to the suit at the supreme court
- The Defendant was not a party to the suit at the supreme court
- The reliefs granted at the Supreme Court were directed at the President of The Federal Republic of Nigeria who is not a party in the suit before me.
- This suit seeks to enforce the decision of the Supreme Court on the defendant by ordering that he be arrested for disobeying the orders of the Supreme Court.

What is a cause of action?

A cause of action is the fact which establishes or gives rise to a right of action; that is the factual situation that gave rise to a judicial relief. In **BELLO V. AG OYO STATE (1986) LPELR 764@81, KARIBI-WHIYTE, JSC** explained what a cause of action is in the following way:

**"...a cause of action is constituted by the bundle or aggregate of facts which the law will be recognised as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other word, the factual situation relied upon must constitute the essential ingredients of an enforceable right of claim." Per LAMIDO, J.C.A In INEC V. ADP & ANOR (2023) LPELR-60333(CA)(PP. 22-23 PARAS. C)**

It is clear from the facts of this suit that no reasonable cause of action has been established against the defendant which would give the plaintiff a substantive right to make the claim against the defendant.

It is clear that the defendant is not a proper party to the proceedings in **CHIEF EMMANUEL BELLO v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2010) LPELR-767(SC)**The supreme court held that **"A Court cannot make an order against a non-party. Per GEORGE ADESOLA OGUNTADE, JSC (P.49, para. E).**

The counsel to the defendant had also argued that what is being sought is to enforce the judgement of the Supreme Court. However, this can only be done by filing contempt proceedings (FORM 48 & 49) this is clearly not the appropriate application to make before this court. Applicant had also applied that defendant be committed to prison. The law is clear that a party in disobedience of court order be served Form 48 and 49 before committal of a person for Contempt.

Indeed, the law is now well settled beyond equivocation that before a court of law can validly and lawfully assume jurisdiction over a committal proceedings against a party, such a party MUST have been personally served with FORMS 48 and 49, prior to the commencement of the said contempt proceedings.

**Form 48, titled: "Notice of Consequences of Disobedience to Order of Court" and Form 49 "Notice to show why order of attachment should not be made".** These forms must be served personally to the person or persons before an order committal for contempt to be made by the said trial Court. **See ODU V. JOLAOSO & ORS (2002) LPELR-6008 (CA) (Pp. 8-15 paras. B-B) As Per AKINTAN, JCA (as he then was)** where it was held that:

**"The application before the learned trial Judge was for the committal of the appellant for contempt in that he failed and continued to disobey the order of the Court to exhume the corpse of his late father from the place where he buried it. At the time the matter came up before the learned trial Judge, both Forms 48 and 49 had been served on the Appellant. Form 48, titled: "Notice of Consequences of Disobedience to Order of Court" provides, inter alia, as follows:**

**"To ... of... Take notice that unless you obey the directions contained in this order you will be guilty of contempt of Court and will be liable to be committed to prison. Dated ... Day of ... Registrar..."**

It is clear from the contents of the Form 48, as set out above, that it is aimed at giving notice to anyone believed to be in contempt of an order of court that unless he takes steps to comply with the court order in question he would be committed to prison for contempt of the said order of court.

It follows therefore that if the person upon whom the form was served takes immediate step to comply with the said order of court; all he needs to do is merely to immediately inform the Court that he had complied with the order. There would therefore be no need to proceed further with him. The Forms 48 and 49 are required to be signed by the registrar of the Court in whom the application for committal is made.

If upon service of Form 48 on the person accused of failing to comply with the Court's order, he fails to comply with the said order, then Form 49 would be served on him. Form 49 reads, inter alia, as follows:-

**"Take notice that the plaintiff (or defendant) will on ... apply to this Court for an order for your committal to prison for having disobeyed the order of this Court made on enjoining you (and or restraining you) from.  
..... And further take notice that you are hereby required to attend the Court on the first-mentioned day to show cause why an order for your committal should not be made ..."**

If any person refuses to comply with an order made against him, other than for payment of money, the Court, instead of dealing with him as a judgment debtor guilty of misconduct defined in Paragraph (f) of Section 57, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the Court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the Court directs.

The procedure for bringing the contemnor to Court to give effect to the provisions of Section 63 is as stipulated in **Order 9 Rule 13 of the Judgments (Enforcement) Rules. Order 9 Rule 13(1) provides for the service on the contemnor of Form 48 to be endorsed with the Order in question if he was not present when the order for which he is in default was made. Order 9 Rule 13(2), on the other hand, provides for the issuance by the registrar of Form 49 if the contemnor fails to obey the order of the Court (after having been served with Form 48).**

Disobedience to Court order is a very serious offence, which every Court should not allow to go unpunished. This is because treating such act with levity could lead to total destruction of the entire judicial system and all that administration of justice stands for.

The law will by that be rendered incapable of commanding any respect. Such a situation will no doubt portend a very bad omen for not only the administration of justice, but could constitute a great danger to the existence of the nation. This is the main reason why the onus is on every judicial officer, including counsel, to ensure that instances of contempt of order of Court should never be treated with levity **see ODOGWU V. ODOGWU (1992) 2 NWLR (Pt.225)539; and MOBIL OIL (NIG.) LTD V. ASSAN (1995) 8 NWLR (Part 412) 129**

It is clear from the case before me that the Forms 48 and 49 were not served on the defendant/applicant to enable committal proceedings to commence against the defendant/applicant. The forms are vital for the activation of the jurisdiction of the court in committal proceedings.

I find that the suit discloses no reasonable cause of action against the defendant and the claimant lacks the requisite locus to file this suit and I so hold. The preliminary objection is meritorious and this suit is hereby dismissed.

Assuming but not conceding that this court is found to be infallible, i will delve into the substantive suit.

I have already earlier captured the reliefs being sought in this present suit as well as the facts deposed in support of the originating motion by the claimant.

### **ISSUES FOR DETERMINATION**

The claimant, O. F. Ekengba distilled a sole issue for determination to wit;

**Whether this Honourable Court does not have the power to enforce the Judgment of the Supreme in Appeal No: SC/CV/162/2023 by granting the reliefs sought in this Suit?**

That in the Respondents written address Davidson DuruEsq distilled four issues for determination;

- a. Whether the Claimant has the locus standi to bring this suit.**
- b. Whether having regards to the facts and circumstances of this case, the Claimant's case discloses a reasonable cause of action.**
- c. Whether the Defendant can be arrested in the absence of proof of commission of an offence.**
- d. Whether the Claimant is entitled to the declaratory reliefs sought.**

## **CLAIMANT ARGUMENT ON THE SOLE ISSUE**

Counsel submits relying on Section 287(1) of the constitution, that decisions of the Supreme Court shall be enforced in any part of the federation by all authorities and persons, and by courts of law with subordinate jurisdiction and thus this court has the constitutional obligation to enforce the decision of the apex court in **SC/CV/162/2023**. The defendant is in disobedience of the interim orders of 8/2/2023 and judgment of 3/3/2023 and this is clear contempt of court as any person aware of the order of court is bound to obey same. Relying on **IBRAHIM V NIGER STATE & ORS (1996) 2 NWLR (PT 430) 222 PARA C**.

Defendant is in disobedience of the interim order and judgement of the Supreme Court by failing to recognize the old version of N200, N500, and N1000 as legal tender alongside the new notes as at 31<sup>st</sup> December, 2022 or issue any circular to the banks for acceptance of the old notes. Thus, defendant is in contempt of the orders/judgements of the court in Exhibit 1 and ought to be committed to prison. Referring to **JOHNSON V EDIGUN (1990) 1 NWLR (PT 129) 659 @ 668**.

## **DEFENDANT ARGUMENT**

On the issue of locus standi counsel argued that the claimant/respondent has not established what benefits the reliefs being sought by the claimant would confer any benefit on them. The originating motion on Notice did not disclose any locus stand whatsoever to warrant commencing this suit. Claimant has not shown sufficient interest in the subject matter and that his civil rights and obligations have been or are in danger of being infringed upon. Relying on **WUSHISHI V IMAM & ORS (2017) LPELR 41906 SC** and **AMADI V ABRAHAM & ORS (2019) LPELR 48314 CA**.

On the issue of cause of action, Duru Esq. argued that the claims as contained in the originating motion on Notice does not have any basis in law as the order being relied upon by the claimant was made against the President and not against the defendant herein. The defendant was also not a party to the case at the Supreme Court in Exhibits 1 and 2 and court was urged to dismiss the suit for failure to disclose any reasonable cause of action. Relying on **BARBUS AND CO. NIG LTD V OKAFOR-UDEJI (2018) 11 NWLR (PT 1630) 298**.

On the issue of whether the defendant can be arrested in the absence of proof of commission of an offence, counsel submitted that the absence of any concrete proof of commission of an offence, the defendant cannot have his right to personal liberty deprived of him. Relying on **OLIVER V PRO-LOVE VENTURES LTD & ORS (2022) LPELR 56543 CA**.

On issue 4, counsel argued that claimant has not put sufficient facts before this court, to entitle to the reliefs sought. The burden of proof lies with the claimant and he alone has the onus to discharge same referring to section 131 of the evidence act and **NNORODIM & ANOR. V EZEANI & OR (1994) LPELR 14233 CA**. Claimant has placed nothing before this court in proof of its case as a claimant seeking a declaratory relief must place material facts before the court to be entitled to the relief sought. Relying on **OYEBODE V AWE (2011) LPELR 4272 PP. 31 PARAS A**.

Counsel urged Court to dismiss the suit for being unmeritorious.

### **DECISION OF THE COURT**

Before proceeding to treat the issues canvassed by parties, issues 1 and 2 of the defendant issues for determination have already been treated in the preliminary objection and this court shall not delve into same again as it is academic. The relevant paragraphs for consideration are paragraphs 13 to 17 of the affidavit in support of the originating motion;

13. That the defendant deliberately disobeyed the Orders of the Supreme Court.

14. That the defendant did not comply with the interim orders of the Supreme Court made on 8th February, 2023 or the Judgment of the Supreme Court made on 3rd March, 2023.

15. That the defendant did not obey or comply with the interim orders within the 31st December, 2022 set by the Supreme Court.

16. That the defendant is in disobedience of the interim orders and Judgment of the Supreme Court of Nigeria in Appeal No: SC/CV/162/2023 between Attorney-General of Kaduna State & 9 Ors v. Attorney-General of the Federation & 2 Ors by failing to recognize the old version of ₦200, ₦500 and ₦1000 naira notes as legal tender alongside with the new or redesigned version as at 31st December, 2022 or issue any circular/directives to the banks and financial institutions for the acceptance, deposit and use of the old ₦200, ₦500 and ₦1000 notes at the material times.

The law is trite that he who asserts must prove, the duty of the claimant was to show to this court how the order of the Supreme Court was disobeyed by the defendant which they failed so to do. The duty to disprove such allegation can only arise when the party so alleging has discharged the burden to prove it. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other." Subsection (2) of the same S. 136 provides that:"

In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the Court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively. See the case of **KINGSLEY EMESIANI v. LEVI EMESIANI (2013) LPELR-21360(CA)**.

I find no merit in this suit as the originating summons does not show how the defendant flouted or disobeyed the order of the court every order in this court must be supported by facts it is clear that this matter lacks merit and is accordingly dismissed.

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**HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**[JUDGE]**

**Appearance:**

- 1. Claimant absent and Unrepresented**
- 2. Onyinye Princess James with B.O Ayinde H.B of Emeka Obegolu SAN for the respondent**