IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE OWERRI JUDICIAL DIVISION
HOLDEN AT OWERRI
BEFORE HIS LORDSHIP, HON.JUSTICE N.C.S OGBUANYA

SUIT NO: NICN/0W/05/2024

DATE: JULY 26, 2024

BETWEEN:
ATTORNEY GENERAL OF ABIA STATE] – CLAIMANT
AND
1. ABIA STATE JUDICIAL SERVICE COMMISSION
   (EXCLUDING THE CLAIMANT)
2. MR. E.E J AGWULONU
3. NKUME [JOY] IJEOMA OLUCHI
   (Corrected by Order of Court as Misnomer)
   [FOR HERSELF AND AS REPRESENTING THE 2022 SHORTLISTED CANDIDATES FOR APPOINTMENT OF JUDGES IN THE ABIA STATE JUDICIIARY]
4. NATIONAL JUDICIAL COUNCIL] – DEFENDANTS

REPRESENTATION:
C.O Ogwo, Esq. (Ag. Director, Civil Litigation, Abia State Ministry of Justice) -for the Claimant; Kelechi Nwiwu, Esq., –for the 1st Defendant;
O.O Nkume, Esq. (with C.Nwoke, Esq., G.E Ugber, Esq., and J.U Amadi,Esq.) -for the 2nd and 3rd Defendants; No Appearance for the 4th Defendant.

JUDGMENT

1. This Suit concerns the protracted Judicial Appointment exercise of the Abia State Judiciary. The Claimant, the Attorney General of Abia State, being the Chief Law Officer of the State, brought this suit against the Defendants, seeking protective reliefs, and basically, challenging the threatened interference with the ongoing judicial appointment exercise in Abia State Judiciary, which previous exercise was enmeshed in controversies and marred by litigation which stalled that exercise, and the fresh exercise has also been threatened by petitions against its continuation, thereby casting doubt and creating impression that the Abia State Government can no longer engage in a fresh process of appointment of Judges for the State Judiciary unless the previous stalled exercise is revived, even when it has been marred by controversies of impropriety and numerous litigations, even at the appellate court.

2. By an *Originating Summons dated and issued on 29th February 2024,* and *brought pursuant to the Part II, Section 6(A) of the Third Schedule To the 1999 Constitution of the Federal Republic of Nigeria (As Amended) ; 2014 Revised NJC Guidelines & Procedural Rule For Appointment of Judicial Officers of All Superior Courts of Record in Nigeria, and under the Inherent Jurisdiction of the Honourable Court*, the Claimant raised *Two (2) legal Questions* for determination, viz:

   a. *Whether having regard to the provisions of Part II, Section 6(A) of the Third schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, the 1st Defendant has the power to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary Approval from the 4th Defendant;*

   b. *If the answer to the question a.[1] above is in the affirmative, whether having regard to the provisions of Part II, Section 6(A) of the Third Schedule to the 1999 constitution of the Federal Republic of Nigeria, (as amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of the Superior Court of Record in Nigeria, the 2nd and 3rd Defendants have the power to interfere with the power of the 1st Defendant to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary approval from the 4th Defendant.*

3. The Claimant seeks for the following Reliefs against the Defendants, jointly and severally, upon determination of the said two legal Questions :

   a. *A DECLARATION that having regard to the provisions of Part II, Section 6(A) of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, the 1st Defendant has the power to call for a further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of Abia State Judiciary, having obtained the necessary approval from the 4th Defendant;*

   b. *A DECLARATION that having regard to the provisions of Part II, Section 6(A) of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, the 2nd and 3rd Defendants do not have the power*

to interfere with the 1st Defendant's power to call for a further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary approval from the 4th Defendant;

c. *AN ORDER restraining the 2nd and 3rd Defendants, whether by themselves, agents, servants or privies, from further interfering with the 1st Defendant's power to call for further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary approval from the 4th Defendant;*

d. *AN ORDER directing the 1st Defendant to continue with the process of appointment of Judges of the Abia State Judiciary, having obtained the necessary approval from the 4th Defendant.*

4. The Originating Summons was accompanied with a *Motion Ex-parte with supporting Affidavit of Urgency* by which the Claimant sought for an Order of Interim Injunction against the Defendants pending the determination of the *Motion on Notice for Interlocutory Injunction*, also filed along. At the proceedings of 7th March 2024, the said *Motion Ex-parte* was heard but the Court declined to grant the *Interim Order Ex-parte,* and directed that the Defendants be put on notice and served with the *Motion on Notice for Interlocutory Injunction together with the substantive Originating Summons.*

5. Upon service of the court processes on the Defendants, the 1st to 3rd Defendants reacted with filing and exchange of their processes among themselves and the Claimant. The 4th Defendant did not enter appearance or file any process, despite receiving *Hearing Notices* at all dates of the Hearing proceedings.

6. The suit soon attracted and witnessed numerous voluminous barrage of processes and interlocutory applications (numbering about 7), filed and exchanged in the proceedings, necessitating adopting an effective case management measures to ensure timely disposal of the recondite suit, which entails: *Identification of all processes filed by each of the respective counsel; Hearing of the Preliminary Objections /Interlocutory Applications, followed by Hearing of the substantive suit, in a combined Hearing of the Interlocutory Applications together with the substantive suit.* Judgment was thereafter reserved for the Substantive Suit, inclusive of Rulings on the Interlocutory Applications.

7. At the resumed proceedings of 28th May 2024, the following processes, spanning over 500 pages, were identified and confirmed as filed for the parties by each of their respective counsel on record:

For the Claimant, led by *C.O Ogwo, Esq* –

Processes on the Substantive Suit:

i. Originating Summons dated and filed on 29th February 2024.
ii. Further Affidavit of 10th May 2024 in the Originating Summons.
iii. Exhibit (4 marked Exh. A-D in the Originating Summons; 6 Exhibits-marked Exhs. A-F in the Further-Affidavit).
iv. Counter-Affidavit to the Notice of Counter-Claim of the 2nd & 3rd Defendants with accompanied Written Address dated 10th May 2024- with 5 Exhs –marked Exh. A-E.
v. Motion Ex-parte & Motion Notice, dated 29th February2024.

Processes on Preliminary Objection:

i. Notice of Preliminary Objection dated and filed on 10th May 2024-Counter-Claim is not available in Originating Summons.
ii. Another Notice of Preliminary Objection dated and filed on 28th May 2024-Counter-claim, not available in Originating Summons -This is the one to use.

Responses to Preliminary Objections-

a. Response on point of law-Written Address dated 10th May 2024-on Notice of preliminary objection by the 2nd & 3rd Defendants dated 18th March 2024 and filed on 19th March 2024-on issue of Jurisdiction of NICN on the cause of action of this suit.
b. Counter Affidavit of the Claimant/Respondent of 10th May 2024, on the 2nd & 3rd Defendant's Motion Notice dated and filed on 12th March 2024, in respect of issue of locus standi of the Claimant.
c. Counter-Affidavit of the Claimant/Respondent of 10th May 2024-in response to the 2nd & 3rd Defendants' Motion dated 18th March 2024 and filed on 19th March 2024, on the issue of Abuse of Court and Stay of Proceedings pending outcome of matter at Court of Appeal Owerri.

For the 1st Defendant, led by *Kelechi Nwiwu Esq-*

Processes on the Substantive Suit: None on the Claimant's Originating Summons but filed other processes on the 2nd & 3rd Defendants' processes-

i. 1st Defendant's Counter-Affidavit of 16th May 2024 in opposition to 2nd & 3rd Defendants' Notice of Counter-Claim;

Processes on the Preliminary Objection: Did not file any but filed Responses on

i. 1st Defendant's Written Address on point of law dated 9th May 2024 and filed on 16th May 2024 in response to Notice of preliminary objection of the 2nd & 3rd Defendants dated 18th March 2024 and filed on 19th March 2024.

ii. 1st Defendant's Counter-Affidavit sworn to on 16th May 2024 in opposition to the 2nd & 3rd Defendant's Motion on Notice dated 18th March 2024 and filed on 19th March 2024, in respect of Stay of Proceedings and Abuse of Court process.
iii. 1st Defendant's Counter-Affidavit of 16th May 2024 to the 2nd & 3rd Defendants Motion Notice for Striking of the Substantive Suit for Want of Jurisdiction.

Regularization of Process-

i. Notice of fiat dated 24th May 2024 and filed on 28th May 2024;
ii. Memo of Appearance dated 9th May 2024 and filed on 16th May 2024;
iii. Motion/Notice 9th May 2024 and filed on 16th May 2024 for extension of time to tender Appearance and file Defence and regularize same.

For the 2nd & 3rd Defendants, led by *O.O. Nkume Esq.*-

Processes on the Substantive Suit:

i. Counter-Affidavit of the 2nd & 3rd Defendants in opposition to the Originating Summons, sworn to on 19th March 2024; No Exhibits.
ii. Notice of Counter-Claim of 2nd & 3rd Defendants dated 18th March 2024 and filed on 20th March 2024;

Processes on the Preliminary Objections:

i. Motion Notice dated and filed on 12th March 2024 for Striking out the Suit for incompetence and lack of jurisdiction mainly on ground of locus standi.
ii. Notice of Preliminary Objection by the 2nd & 3rd Defendants dated 18th March 2024 and filed on 19th March 2024- Challenging the jurisdiction of NICN to entertain the subject matter of Appointment of Judges.
iii. Motion on Notice dated 18th March 2024 and filed on 19th March 2024-for Dismissal of the suit as Abuse of Court process or Stay of Proceedings.
iv. Motion on Notice dated 24th May 2024 and filed on 22nd May 2024-for Striking out Court processes filed by 1st Defendant & Conversion of Originating process to Pleadings.

Responses on Other Processes

i. Further-Affidavit of 15th April 2024 in support of Motion on Notice for Dismissal of the Suit- In response to the Counter-Affidavit of the Claimant;
ii. Further-Affidavit of 22nd May 2024- In respect of Counter-Affidavit of the 1st Defendant in opposition to the Motion on Notice for Dismissal of the Suit /Stay of proceeding's processes.

8. At the resumed Hearing proceedings of 5th , 6th and 7th June 2024, scheduled for Hearing of the pending Interlocutory Applications together with the Substantive Originating Summons, learned counsel for the 1st Defendant, *Kelechi Nwiwu, Esq.,* had drawn attention of the Court to his pending Application, seeking to regularize his appearance and processes filed, *vide* the *Motion on Notice dated 9th May 2024 and filed on 16th May 2024,* seeking to regularise the 1st Defendant's counsel appearance, and processes filed and served by the 1st Defendant in this suit, and deeming same to be properly filed and served. No objection by the learned Claimant's counsel. Also, no objection by the 2nd &3rd Defendants on the regularization of the processes. But learned counsel for the 2nd & 3rd Defendants sought leave of the Court to address the Court on Point of Law on his oral objection in respect of the appearance of the 1st Defendant's counsel, on ground of incompetence, having regard to the fiat he presented, dated 10th May 2024, to represent the 1st Defendant (Abia State Judicial Service Commission).

9. Leave was granted, and learned counsel, *O.O Nkume, Esq*., submitted that the 1st Defendant, by *S.197 of the Constitution (As Amended)*, is a *State Executive Body*, and the power that can be exercised by that body is circumscribed under *S.197 (2) and stipulated in part 11 of 3rd schedule paragraph 5 of the Constitution,* to the effect such power does not include issuance of fiat. To counsel, by virtue of being a State Executive body, it is only the Attorney General that can issue fiat to a private counsel. In other words, once, the State is involved in my legal proceedings, be it criminal or civil proceedings, the only competent person to issue fiat or appoint a private lawyer to represent the State body is the Chief law officer of the State, being the Attorney General of the State. To that effect, counsel submitted that the Secretary to the 1st Defendant body cannot do so, as he does not have power to issue the letter. That even the Secretary who signed the letter is not a legal entity or body known to law, and therefore cannot give power it does not possess. Counsel urged the court to disapprove the appearance of the 1st Defendant's counsel in the proceedings.

10. Responding, learned counsel for the 1st Defendant, urged the Court to discountenance the argument of the 2nd & 3rd Defendants' counsel challenging his appearance for the 1st Defendant, as it is misconceived. Counsel pointed that the 1st Defendant being a Commission, is a legal entity, and can decide to instruct a private lawyer to represent it in court, as it does not fall within the realm of the *S.197 of the Constitution* being relied on by the learned counsel for the 2nd & 3rd Defendants in opposition to his appearance for the 1st Defendant. That it is not a State

Executive body as it is neither chaired by the Governor nor the Attorney General, rather, it is a judicial body chaired by the Chief Judge of the State.

11. On the issue of the Secretary of the Commission being an unknown person, counsel refers to the wordings of the said letter, indicating "approval was granted". Counsel refers to *S.168 Evidence Act (as amended*) to submit that the document should be presumed regular, as it is a mere letter of authorization, and should be presumed to be regular, in absence of any other contrary evidence. Counsel urged the court to so hold, and discountenance the objection against his appearance for the 1st Defendant.

12. In a brief *Bench Ruling*, while granting the 1st Defendant/Applicant's Application regularizing its processes filed and served out of prescribed timeline, I had directed its learned counsel whose appearance was challenged by the learned counsel for the 2nd & 3rd Defendants, to continue his appearance for the 1st Defendant, subject to Ruling on the objection against his appearance, to be incorporated in the Judgment to be delivered. I have reviewed the submissions of both counsel, for and against the propriety of appearance of a private lawyer for the 1st Defendant. The learned counsel for the 2nd & 3rd Defendant hinged his objection on *S.197 of the Constitution (As Amended)*, in that the 1st Defendant is a State Executive body, and therefore, cannot give fiat for a private counsel to represent it in court, a power which vests only on the Attorney General of the State, being the Chief Law Officer.

13. Much as I agree with the learned counsel on this perspective regarding issuance of fiat by Attorney General, yet, the question is, does that principle apply to the circumstance of appearance of the learned counsel for the 1st Defendant? Even as this matter is not a criminal matter requiring 'fiat to prosecute' by private legal practitioner, issued by the Attorney General, the letter issued by the 1st Defendant signed by its Secretary, *dated 10th May 2024*, and *titled 'Letter of Authority (Fiat)*', which was presented by the learned 1st Defendant's counsel can only be construed as a mere letter of instruction, as shown clearly in the body of the letter, which reads thus: "*I hereby convey the approval of the Commission for you to represent the Commission at the National Industrial Court holden at Owerri Imo State in respect of Suit No. NICN/OW/05/2024-ATTORNEY GENERAL OF ABIA STATE VS ABIA STATE JUDICIAL SERVICE COMMISSION & 3 ORS*".

14. In my considered view, the 1st Defendant, being a Commission, a legal entity created by the Constitution, imbued with legal capacity to sue and be sued, can, in furtherance of such legal capacity, instruct a legal practitioner of its choice, to represent it in court of law. I find nothing in law which inhibits that legal capacity, and no evidence was presented to the contrary, other than the oral submissions by learned counsel for the 2nd & 3rd Defendants, which I find to be grossly misconceived. In the circumstance, I uphold the appearance of the learned counsel for the 1st Defendant. Accordingly, the objection raised against the appearance of the counsel who entered appearance for the 1st Defendant presenting the letter of authority conveying the instruction to so represent the 1st Defendant, is hereby dismissed. I so hold.

15. Another regularization issue borders on the Name of the 3rd Defendant which was pointed in their Affidavit to have contained an error made by the Claimant, as her correct full name is NKUME IJEOMA OLUCHI, not NKUME JOY OLUCHI as she was wrongly described in the Originating Summons. This is a misnomer, which the court can correct *suo motu*, without formal Application. Accordingly, same is corrected, and IJEOMA should reflect and JOY removed and marked '[ ]' in the court process, particularly in the copy of the Judgment. I so direct.

16. Having cleared the regularization Applications, and as the pending Interlocutory Applications were heard together with the substantive Originating Summons, and Judgment reserved to be delivered with the Rulings on the various Interlocutory Applications, it is time to consider and determine the various pending Interlocutory Applications bordering which were heard in order of priority of Hearing of multiple interlocutory applications in multi-party litigation, as in the instant suit:

RULING ON OTHER PENDING CONTESTED INTERLOCUTORY APPLICATIONS-

1. *RULING ON THE 2ND & 3RD DEFENDANTS' NOTICE OF PRELIMINARY OBJECTION CHALLENGING JURISDICTION OF THE COURT ON THE SUBJECT MATTER OF THE SUIT*

17. Learned counsel for the 2nd and 3rd Defendants, *O.O Nkume, Esq*, drew attention of the Court to the *Notice of Preliminary Objection dated 18th March 2024 and filed on 19th March 2024*, by the 2nd and 3rd Defendants. No Affidavit and Exhibit attached. It is accompanied with *Written Address dated 18th March 2024 and filed on 19th March 2024.* It challenges the jurisdiction of the *National Industrial Court* to hear and determine the subject matter of the suit, as not being the appropriate Court for adjudication of this matter.

18. The Grounds upon which the Preliminary Objections are based, are as set out in the Application, that:

"*1. Subject matter of the suit relates to the Reliefs in this suit relating to the determination of the extent of power of the 1st Defendant Abia State Judicial Service Commission (JSC) which is a State Executive body under S.197(2) and paragraph 5 of part II of the third Schedule to the 1999 Constitution exercisable in the appointment of Judges of Abia State which is outside the matters which the National Industrial Court can exercise jurisdiction to entertain under Section 254(1) (a)-(m) of the 1999 Constitution as Nigeria as amended (sic).*

2. The cause or matter in this Suit concerns Executive Acts or administrative acts of the 1st Defendant in the appointment of Judges which is a pre-employment matter and does not involve any employer/employee relationship which this honourable court has no jurisdiction to entertain.

3. The Claimant is not complaining of any Employer/Employee dispute or relationship with the Defendants and NO Labour matter is in issue because 2nd & 3rd Defendants are not yet Judicial Officers in the Employment of the Claimant or 1st & 4th Defendants".

19. Moving the Application, counsel adopted his said *Written Address*, and pointed that the objection is predicated on the ground that the subject matter of the suit relates to the reliefs relating to the determination of the extent of the power of the 1st Defendant, Abia State Judicial Service Commission, which is executive body under *S. 197(2) and paragraph 5 of part 11 of the third schedule of the 1999 Constitution*, exercisable in the appointment of Judges of Abia State, which is outside the matters which the *National Industrial Court* can exercise jurisdiction to enter under *S.254C(1)(a)-(m) of the 1999 Constitution of Nigeria(as amended).* Counsel raised a sole issue for determination- "*whether this honourable Court has the requisite jurisdiction to entertain and determine this action over the power of the 1st Defendant to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant in the process of appointment of Judges of Abia State, having regards to the Statutory Jurisdictions of the Honourable Court under Section 254C (1) (a)-(m) of the 1999 Constitution of Nigeria as amended".* Counsel further stated that he relies also on the averments in the Affidavit in Support of the Originating Summon, particularly *paragraphs 14-22*, which disclosed that the subject matter of the suit relates to the power of the Abia Abia State Judicial Service Commission (the 1st Defendant) to call for Expression of Interest and shortlist suitable candidates for recommendation to the 4th Defendant in the process of appointment of Judges of Abia State.

20. Counsel submitted that the kernel of the objection is that *S.254C (1) (a)-(m) of the 1999 Constitution (as Amended)* clearly confined the jurisdiction of this Court, and anything not within the confines of the said section is not within the jurisdiction of this Court, citing and relying on *NNPC v. Orhiowasele [2013]13 NWLR (Pt.1371) 211@pp.215-6* on importance of jurisdiction. Counsel argued that the reliefs as couched is what will determine the subject matter, and that the *reliefs (a)-(d*) has to do with the exercise of the 1st Defendant's power to call for "further expression of interest and shortlist of suitable candidates for recommendation to 4th Defendant for appointment of Judges of the Abia State Judiciary", which is pre-mature to be brought before this Court without any relationship of employee/employer, and that there is nothing in this case amenable to the jurisdiction of the National Industrial Court. Instead, it is the Federal High Court that has jurisdiction, counsel vociferously submitted, and urged the Court to hands off the suit and make an Order of Striking Out for want of requisite jurisdiction to entertain and determine same.

21. Given the vehement stance of the learned counsel on the jurisdiction objection, as he placed heavy reliance on the provisions of the *S.254C(1) (a)-(m) of the 1999 Constitution (as amended*), and confirmed that he has thoroughly read the said provisions, I have had to ask all counsel on record, to read through the said provisions along with the uncontested subject matter of this suit, and address the Court further, on *whether the dispute/issue in this suit does not deal with employment policy ie recruitment exercise for Judicial Officers?, and if so, which Court in Nigeria has jurisdiction, over employment policy litigation in Nigeria*? And also, to *clarify whether the jurisdiction of the National Industrial Court is limited to only employee/employer dispute, upon a robust reading and understanding of the provisions of S.254C(1)(a)-(m) of the extant Constitution*, which learned counsel relied on for his contentions in this Preliminary Objection.

22. Reacting, learned counsel submitted that going by the facts and reliefs sought in this Originating Summons, there is no dispute/issue of any recruitment exercise between the Claimant and the Defendants. Counsel further submitted that until relationship of employer and employee comes into existence with conditions of service, there cannot be any employment policy issue/dispute among the parties. On the aspect of the issue of the jurisdiction of National Industrial Court being said to be limited to only employee/employer dispute, learned counsel submitted that after reading robustly S.*254C (1) (a)-(m) of the Constitution*, there is no employee/employer relationship, and until it comes into being between the Claimant and 2nd and 3rd defendant, the National Industrial Court lacks jurisdiction.

23. On the part of the 1st Defendant, learned counsel for the 1st Defendant, *Kelechi Nwiwu, Esq*., informed that the 1st Defendant opposed the said Preliminary Objection on point of law, in furtherance of which, he filed a *Written Address dated 9th May 2024 and filed on 16th May 2024,* in opposition to the *2nd & 3rd Defendants' Notice of Preliminary Objection*. Counsel adopted same, and submitted that the National Industrial Court has ample jurisdiction over the subject matter of this suit. Counsel maintained that by *S. 254C (1)(a) of the extant Constitution*, the words and expressions of "employment'', "connected with", and "incidental to", indicate that this matter falls squarely within the jurisdiction of this Court, the National Industrial Court of Nigeria. It is counsel's submission that there is an employment related dispute from the questions the Claimants is asking the Court to resolve and the reliefs sought.

24. On the further issues raised by the Court, counsel submitted that the Claimant's questions and reliefs sought relate to employment policy, the employment policy for appointment of Judges starts from recruitment exercise right down up to swearing-in. And that as it is a process, any issue/dispute can arise right from commencement to swearing- in, and such dispute falls within the provisions of *S.254C (1) (a) of the Constitution*, which vests jurisdiction over such issues on the National Industrial Court. Counsel urged the Court to hold that the issues in dispute in this suit involve employment policy. On the aspect of the issue, as to whether employer/employee relationship must exist before National Industrial Court would have jurisdiction, counsel submitted that it cannot be so. Counsel submitted that issue bordering on employment policy does not have to involve employee and employer relationship between/among the parties, before this Court would have jurisdiction. Counsel concluded and urged the Court to so hold.

25. For the Claimant, learned counsel, *C.O Ogwo, Esq*., informed that in opposition by the Claimant to the Notice of Preliminary Objection, he filed and served a *Written Address on Point of law dated and filed on 10th May 2024*. Counsel adopted his written Address, and submitted that the 2 questions for determination and the reliefs so sought on the Originating Summons, raised an issue relating to *S.254C(1) (a) of the extant Constitution* dealing with the jurisdiction of the *National Industrial Court*. Counsel submitted that to that effect, this Court not only has jurisdiction, but it is the only Court by virtue of *S.254C (1) of the Constitution* with the requisite jurisdiction to entertain the instant suit.

26. On the further issues raised by the Court, counsel submitted that this matter deals with employment policy, such as any aspect of calling for express of interest and recruitment exercise form part of employment process, including any interpretation of any aspect of appointment policy for the judiciary, and such is only cognizable under the jurisdiction of the National Industrial Court. On the aspect of the issue as to whether the jurisdiction of the National Industrial Court is limited to employer/employee relationship, counsel said 'No, Not at all', and submitted that even mere Application process triggers employment right issues, and that the Constitution did not use of the word 'employer/employee relationship'. Counsel urged the Court to discountenance the objection by the 2nd & 3rd Defendants, and uphold its jurisdiction to adjudicate this matter.

27. There is no doubt that the issue bordering on jurisdiction of court is a radical one and always occupies a pride of place in the proceedings towards addressing of issues raised for determination for effectual resolution of the matter in dispute between/among the parties before the court. For me, if it comes to the fore that the court lacks jurisdiction to hear and determine a subject matter, that is the end of the judicial exercise of power in entertaining the suit and the rest of the issues awaiting determination abate forthwith, having lacked foundation to rest upon and anchor judicial efforts for valid resolution of the matter in dispute. It may be on the basis of this axiomatic legal precept that this suit witnessed a barrage of jurisdictional challenges from the 2nd and 3rd Defendants. Perhaps, it would not survive this round of bout! But then, as every Court guards its jurisdiction jealously, challenging court's jurisdiction becomes more intense when the Court believes that it is the appropriate Court with the jurisdiction over the subject matter submitted for adjudication.

28. It has been an established and settled principle of law and procedure that subject matter jurisdictional issue bordering on the appropriate court to adjudicate a matter is a potent and fundamental jurisdictional challenge as it is substantive in nature. And if found defective, is incurable, not even by acquiescence/waiver by parties. The Supreme Court had restated the seriousness and imperative of resolution of this aspect of jurisdictional challenge in *Matthew Lakekpe v. Warri Refinery & Petrochemicals Co Ltd & Anor. (2018) LPELR-44471 (SC),* wherein the apex court stated thus: "*It is therefore treated with seriousness when the issue of jurisdiction is brought up for determination in the course of adjudication. It becomes more serious where the issue borders on the appropriate court before whom an action should be commenced…*"

29. The challenge of substantive jurisdiction of a court always revolves around the parties and subject matter in contention submitted for adjudication before the court. Whereas the learned counsel for the 2nd &3rd Defendants contended that the subject matter of this suit is not within the ambit of jurisdictional competence of this Court, the 1st Defendant's counsel and that of the Claimant thought otherwise, and held the view that this Court has ample jurisdiction to hear and determine the subject matter of the instant suit. On that note, I now proceed to resolve the issue on this aspect of jurisdictional challenge. For elucidated resolution of this issue of jurisdiction, a quick resort would be to the processes filed and exchanged, particularly the *Originating Summons,* being the originating process that anchored the suit. From the record, it is common ground among all contending parties, and I find, that the subject matter of the dispute herein, borders on interpretation and protection of the sanctity of the powers of the 1st Defendant Commission in charge of recommending suitable candidates for appointment of Judges, which the Claimant had alleged interference with, of which threatens the exercise of the powers of the 1st Defendant in activating another recruitment exercise for appointment of Judges of Abia State Judiciary.

30. From the gamut of the processes filed and exchanged among the parties, and the Originating Summons, on record, the crux of the dispute submitted for adjudication, constituting the subject matter of this suit, is that the 1st Defendant was involved in an earlier recruitment exercise for appointment of Judges of the Abia State Judiciary christened '2022 Appointment exercise', which witnessed allegations of impropriety culminating in suits that went up to the Court of Appeal awaiting disposal. And the 1st Defendant, acting under its constitutional powers started off another recruitment exercise christened '2024 Appointment exercise', but which triggered objections and petitions to discontinue, until issues around the 2022 exercise were resolved and that exercise pursued to conclusion. Whereas the Claimant, the Attorney General of Abia State, on behalf of Abia State Government, believes that a fresh exercise can be initiated to navigate from the controversy around the previous exercise, some of those involved in the previous exercise, inclusive of the 2nd and 3rd Defendants and those they represent, objected and wrote protest letters threatening to challenge a fresh exercise if not discontinued in favour of the previous 2022 exercise which was halted while the list of shortlisted candidates were sent to the 4th Defendant, the National Judicial Council, who has the power to make final selection of successful candidates in a final selection interview which did not hold.

31. Given the development, the Attorney General, being the Chief Law Officer for the State, instituted this suit in this Court seeking reliefs bordering on judicial intervention for continuation of the fresh recruitment exercise which was said have started with approval from the 4th Defendant. The 2nd & 3rd Defendants through their counsel, challenges the jurisdiction of the National Industrial Court to adjudicate the matter.

32. With this succinct undisputed case theory of this matter, the pertinent arising question is- *Which Court, if not the National Industrial Court, that is the appropriate Court vested with jurisdiction to adjudicate the dispute, in the light of the provisions of Section 254C(1) of the extant Constitution?* A prelude towards resolution of this jurisdictional issue would need a quick clarification of certain fundamental analytical thresholds of employment features of judicial career, such as that: Judicial Appointment is not Political Appointment, as Judicial Officers undergo a strict appointment process, which involves competitive selection in a recruitment exercise in line with the *Judicial Appointment Policy of the National Judicial Policy*, and *2014 Revised NJC Guideline & Procedural Rules for Appointment of Judicial Officers of All Superior Courts of Record in Nigeria*, which brings judicial appointment process within the realm of the concept of employment policy.

33. Also, judicial career is imbued with statutory protection in terms of security of tenure, subject to disciplinary measures of dismissal or suspension from duty, such that a Judicial Officer enjoys the features of statutory employment and can be Re-instated back to office if removed or suspended wrongfully. The *extant Nigerian Constitution*, guaranteeing independence of judiciary, as well as the *Rules of the National Judicial Council (NJC)*, t*he apex Regulatory body for judicial career in Nigeria*, provides for appointment procedure and tenure of holders of Judicial Office (Judicial Officer), with elaborate provisions on *Condition of Service and Codes of Conduct for Judicial Officers*. Thus, a Judicial Officer holds statutory contract of service, and is described as '*Holder of Judicial Office*', within the meaning of *S.318 (1) of the extant Constitution*. In this circumstance, *can it be said that Judges/Judicial Officers are in Statutory Employment?* I answer in affirmative, to the effect that although not classified as ordinary workers bound by regular terms of defined employer/employee relationship, *Judicial Office Holders* (*Judicial Officers*) are classified as "*Workers in Crown/ Statutory Employment*", so as not to misconstrue holding Judicial Office as Political Appointment by the State, merely because of involvement of the Executive body in the appointment and removal process.

34. The stringent statutory provision on appointment and removal of Judicial Officers imbues judicial career as employment with statutory flavour. To say otherwise, would expose Judicial Officers to the vagaries of political appointment and loss of statutory employment benefits. This view accords with judicially acclaimed international best practice! The *United Kingdom Supreme Court* in *Gilham v. Ministry of Justice [2019] UKSC44* had to ascribe *Judges* as '*Workers' in 'Crown Employment'* so as to be afforded the benefit of discriminatory disability claim pursuant to *S.83 (2) and (9) of the Equality Act 2010.* Those in '*crown employment'* were defined to include '*officers appointed by or on recommendation of a member of the executive (such as the Lord Chancellor*)', similar to judicial appointment in Nigeria. Thus, *Judicial Office Holders* were clearly protected by these provisions. This was following the decision of the same *United Kingdom Supreme Court* in *O'Brien v. Ministry of Justice (formerly Department for Constitutional Affairs) [2013] UKSC6; [2013]1WLR522,* in the light of the guidance given by the *Court of Justice of the European Union in (Case C-393/10) [2012] ICR955),* which held that a *Judge* is a *"worker" for the purpose of European Union Law, and national law has to be interpreted in conformity with that".* That was a case that concerned discrimination issue against part-time workers. Similar decision was reached in by the *Court of Appeal for Northern Ireland* in *Perceval-Price v. Department of Economic Development [2000]1 IRLR 380*, which held that Tribunal Judges were "workers" for the purpose of discrimination on grounds of sex. Thus, as judicial appointment is career-based and laced with statutory flavour, Judges are in statutory employment. I so hold.

35. Learned counsel for the 2nd & 3rd Defendants, had also submitted that what is involved in this matter is *Pre-Employment* issue, of which, to counsel, is not within the jurisdictional remit of the National Industrial Court. Counsel had argued that since the dispute is not involving parties in employment relationship, as the judicial appointment exercise has not matured to employment level, the arising dispute is beyond the jurisdiction of the National Industrial Court, not being employment dispute properly so called. Invariably, this assertion by learned counsel would sparks-off another clarification as to conceptualization of the stages and scope of employment rights claims, which counsel appears to lack basic understanding of, going by his blurred standpoint in his submissions. A cursory conceptualization of the legal regime of employment rights claims would reveal three stages of employment claims, thus: *Pre-Employment, Subsisting Employment and Post-Employment*. Certain employment rights arise at these stages, and claims, including policy issues, arising fall within the remit of the jurisdiction of the National Industrial Court.

36. Employment rights can give rise to employment claims at any of the three stages: *(i).Pre-Employment rights* includes- issues of compliance with statutory requirements/qualification/procedure for appointment, for example, as set out in the *2014 Revised NJC Guideline & Procedural Rules for Appointment of Judicial Officers of All Superior Courts of Record in Nigeria. (ii).Subsisting Employment rights* arise in the course of employment, on issues which concern existing employment, such as labour rights, welfare and workplace issues, conditions of service while in active service, security of tenure, etc. And *(iii). Post-Employment rights* arise after cessation of employment, which involves issues such as- pension rights, retirement/terminal benefits, and reinstatement to office after removal/ indefinite suspension, etc. Note that employment policy litigation permeates, and can occur at any of the three stages of employment rights claims, and being policy matters, there is no requirement for prior or subsisting employer/employee relationship for such matter to be cognizable litigation at the National Industrial Court. Examples of labour /employment policy matters, include matters involving issues of constitutional interpretation/construction of statutes/laws/policies on subject matter of labour/employment or connected matter, strike actions/labour agitations, minimum wage issues, discriminatory terms and practices on labour/employment matters, retirement age of public /civil servants, and appointment and removal from public office not of political nature, which are all matters within the jurisdictional turf of the National Industrial Court.

37. Just recently, in *Shell Petroleum Development Co Ltd. v. Minister of Petroleum Resources & 2 Ors (Suit No.NICN /ABJ/178/2022, Judgment of which was delivered on 28th July 2022),*the National Industrial Court *per the Hon. President of the Court, His Lordship Hon.Justice B.B Kanyip, PhD, OFR,* adjudicated a dispute on employment policy issue regarding application of the *GUIDELINES FOR THE RELEASE OF STAFF IN THE NIGERIAN OIL AND GAS INDUSTRY 2019*, issued by the *then Department of Petroleum Resources (DPR)*, which parties in the suit are not in any employment relationship but involved in a dispute over the application of the employment policy on security of employment of Nigerian workers in the Oil & Gas Industry. Also, in *Incorporated Trustees of O-E'la Obor Eleme Organization & Anor v. Nigeria Content Development & Monitoring Board(NCMDB) and Nigerian National Petroleum Corporation (NNPC) Limited (Suit No.NICN/PHC/32/2022, Judgment delivered on June 07 2023),* involving the issue arising during the *2020 NNPC Graduate Trainee Recruitment exercise*, around non-compliance with the *employment quota* reserved for the host community under the *Community Content Guidelines 2017*, made pursuant to *Nigerian Oil and Gas Industry Content Development Act 2010,* and

administered by the *Nigerian Content Development And Monitoring Board*. The National Industrial Court, *per His Lordship NCS Ogbuanya J*, assumed jurisdiction and resolved the employment policy issue in dispute bordering on enforcement of employment quota.

38. Learned counsel for the 2nd & 3rd Defendants/Objectors, had confirmed reading the provisions of *S.254C(1) (a)-(m) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended by the 3rd Alteration Act 2010) effective 4th March 2011*, yet persistently pressed home his points of objection and came to a stout conclusion, anchored on the ground: "*that the cause or matter in this suit concerns the Executive Acts or administrative acts of the 1st Defendant in appointment of Judges ...*" And that the matter "*concerns the interpretation of the Constitution on the extent of the power of the 1st Defendant which is an Executive body under S.197(2) and paragraph 5 of part II of the third Schedule to the 1999 Constitution which this Court has no jurisdiction to entertain under S.254(1) (a)–(m) of the 1999 Constitution as amended*." By this jurisdictional challenge posturing, learned counsel sounded as if the National Industrial Court is bereft of, and not vested with jurisdiction to interpret the Constitution or deal with matters involving Executive body or administrative act. Counsel had alluded to the impression that only Federal High Court possesses such jurisdiction to interpret Constitution and deal with matter involving executive body or administrative act. That view is the undercurrent of his objection, and deserves proper clarification. The rearing question is- *Can this still be the correct position of the law even after the National Industrial Court has been granted the status of Superior Court of Record and vested with specific subject matter jurisdiction on any aspect of employment and labour relations, incidental matters and matters connected or arising therefrom?*

39. Contrary to what the learned counsel for the Objectors propagates, and would want this Court to endorse, dispute around judicial appointment exercise or removal from office, is nowhere nearer the jurisdiction of the Federal High Court than it is to the National Industrial Court, which is the Court vested with exclusive jurisdiction over employment and incidental matters, such as the issues arising in the instant suit. I take liberty to reproduce the provisions of the *S.254C (1) (a) and (b) of the Constitution (As Amended)*, which are empathic as it concerns the subject matter of the dispute herein. It reads:

> *254C-(1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-*

(a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;

(b) relating to, connected with or arising from factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactments replacing the Acts or Laws.

40. Note that in the *S.254C(1) of the extant Constitution*, the *Courts* mentioned as *Sections 251,257, and 272* are: *Federal High Court, High Court of the Federal Capital Territory and States High Courts*, respectively, which were all excluded from delving into matters within the jurisdiction of the National Industrial Court by virtue of the *opening provisions of the S.254C(1*). It is clear that the *extant Constitution in the S.254C(1)(a),* granted this Court an exclusive jurisdiction, over such civil causes or matters '*relating to or connected with any labour, employment…and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith*'. And the applicable laws to be used in the resolution of the matter in dispute is not limited to the Acts already indicated in *S.254C(1)(b)*, but includes the Constitution and '*any other Act or Law relating to labour, employment, industrial relations, workplace …*'

41. But then, a pertinent arising question is- *Could it be the intention of the extant Constitution that despite the exclusive jurisdiction it vested on the National Industrial Court over labour and employment related matters conferred under S.254C (1) of the extant Constitution, the Federal High Court would still be assuming jurisdiction on labour/employment related matters on the guise of the provisions of the said S.251 (1) (q) and(r) of the extant Constitution?* An elucidated analysis of the interplay of skewed jurisdictional challenge of the National Industrial Court may have been borne out of isolated interpretation resulting in ill-construction of the overlapping provisions of the jurisdictions of the National Industrial Court and that of the Federal High Court on matters involving Interpretation of the Constitution and Decisions of Federal Government/its Agencies, Executive bodies and Administrative acts. In *Aiewero v. A.G Federation [2015]15 NWLR (Pt.1482)353, t*he Court *@P.382, paras. D-E,* cautioned thus:

> Where an interpretation of statute will result in defeating the object of the statute, the court will not lend its weight to such interpretation. The language of the statute must not be stretched to defeat the aim of the statute.

42. In *ACB Plc v. Losada (Nig) Ltd [1995]7NWLR (PT.406] SC 26 @ 47 Para.D*, the Supreme Court held thus: "*In construing the provision of a statute a particular provision should not be read in isolation from other provisions. Rather, the whole statute should be construed as a whole*". On that note, a holist perusal of the *S.254C 1(a) and (b) of the extant Constitution* granting exclusive jurisdiction to the National Industrial Court on civil matters of labour and employment or connected matters and interpretation and application of any related Statute (inclusive of the Constitution), when read together with the provisions of S.*251 (q) and (r) of the Constitution* granting Federal High Court the jurisdiction over matters of interpretation of Constitution and matters of administrative act/decision of Federal Government/its Agencies, would show that the said Federal High Court's jurisdiction is of general nature, and does not affect or extend to the specific subject matter jurisdiction of the National Industrial, preserved with the opening exclusivity provision under *S.254C (1) of the extant Constitution*, coming even later in time, *effective 4th March 2011*. In *Integrated Data Services Ltd v. Adewumi (2013) LPELR-21032(CA*), it was held that where there is a specific law and a general law on the same issue, it is the specific law made on the issue that will prevail. Thus, the said provisions of *S.251 (1) (q) and (r) of the Constitution* are not of universal application, but limited to the areas of jurisdiction of the Federal High Court, and cannot stretch into labour and employment matters, exclusively reserved for the National Industrial Court in *S.254C(1)(a)* of the same Constitution.

43. It is therefore, my considered view that the intention of the *extant Constitution* while delineating the jurisdictions of the *Federal High Court in S.251 (a)-(r)* and that of *the National Industrial Court in the S.254C (1) (a)-(m),* is not to grant the Federal High Court concurrent jurisdiction with the National Industrial Court on matters relating to or connected with employment, even if involving Federal Government/its Agencies or administrative acts/decisions or interpretation of Constitution, given that by the tenor of the *S.254C(1) of the Constitution,* the jurisdiction of the *National Industrial Court*, within its delineated subject matter, is neither party-denominated nor issue-circumscribed, and by *S.254D(1) of the Constitution*, the *National Industrial Court* is also vested with the powers of a High Court on matters involving its jurisdiction, and in the exclusivity provisions of *S.254C(1)* (*Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution*), the Federal High Court (which is the court in the *S.251*), is expressly mentioned and its provisions, inclusive of the *S.251(1) (q) and (r)*, totally excluded on matters involving the exclusive civil jurisdiction of the National

Industrial Court, which are- labour/employment/workplace and related/incidental matters . I so hold.

44. To my mind, that is the *bonafide* intention of the *extant Constitution*, and should be so construed going forward! This interpretative approach has been adopted in *Aiewero v. A.G Federation (supra),* in respect of encroachment of the Federal High Court on criminal jurisdictions outside its reserved jurisdictional matters. The Court@*p.381, Para.D-E* , held thus:

> Section 252(1) of the 1999 Constitution created and explained the nature and scope of the power exercisable by the Federal High Court in the exercise of the jurisdiction conferred on it by section 251(1) (a)-(r) of the Constitution or any other jurisdiction as may be conferred upon it by an Act of the National Assembly. Thus, section 252(1) of the 1999 Constitution did not by any stretch of imagination expand or increase the scope of the jurisdiction of the jurisdiction of the Federal High Court from limited to unlimited (underline emphasis mine).

45. In *UTC v. Pamotei [1989]2NWLR (Pt.103)244@303, para.A-B,* the legendary jurist, *Oputa JSC*, remarked thus: "*it is now a settled principle of construction of statutes that the legislature does not use any words in vain'*. Thus, the repetitive use of the words '*connected with*', '*related to*', '*arising from*' or *connected therewith*', variously in *S.254C of the extant Constitution* is deliberate and for emphasis on the jurisdictional scope of this court on matters involving issues of employment, labour and workplace.

46. A distinguished legal scholar and senior counsel, *Prof. Offornze Amucheazi SAN*, shared similar thoughts, when he stated thus: "*The idea behind this provision …is to remove any limitation on the categories of claims/reliefs the court can entertain arising from workplace or employment issues*". (*See: "Liberalizing the National Industrial Court's Approach in Intermediate Claims to Provide Comprehensive Redress For Labour Claims: Lessons from Foreign Jurisdiction", Guest Lecture at the Workshop on Industrial Relations and the Law for Judicial Officers of the National Industrial of Nigeria, Organized by Jursistrust Centre for Socio Legal Research and Documentation, held at Ibom Golf Hotel Uyo, Akwa Ibom State, on 19th January 2021*).

47. The Court of Appeal took similar view in *NUT Niger State v. COSST Niger State [2012] 10 NWLR (Pt.1307)89*, when it held that *S.254C of the 1999 Constitution (As Amended) by the Third Alteration Act*, expanded the jurisdiction of the National Industrial Court by vesting it with exclusive jurisdiction over all labour and employment related matters. Similarly in *Omang v. NSA [2021] 10NWLR (Pt.1788)55*, the Court of Appeal held that the exclusive jurisdiction of the Industrial Court extends to matters having nexus, inextricably linked or reasonably connected to subject

matters over which jurisdiction is conferred in *Section 254C of the Constitution of the Federal Republic of Nigeria 1999 (As Amended*).

48. Also, in *S.C.C (Nig) Ltd v. Sedi [2013]1 NWLR (Pt.1335) CA 230 (Sedi's case),* the Court had cause to interpret similar provision of the *S.254C (1) (a)(b)* of the extant Constitution relating to jurisdiction over causes of action founded on workmen's compensation. In arriving at its decision, *Sections 38 and 41 of the then Workmen's Compensation Act (now replaced with Employee Compensation Act 2010),* which gave High Court jurisdiction on such civil causes, was construed and struck down when juxtaposed with the new provisions of the Constitution that vested exclusive jurisdiction on the National Industrial Court over such matters. The reasoning of the Court of Appeal in the *Sedi's case (supra), per Mukhtar JCA @ Pp.247-248*, *Paras.G-C* is illustrative and illuminating, thus:

> The provisions of sections 38 and 41 of the Workmen's Compensation Act clearly confer jurisdiction, in respect of claims under the Act, on a High Court which the National Industrial Court is obviously not. That would have led to the success of the appeal per force without much ado on the one hand. On the other, it is pertinent that the law has changed with the passing of the Constitution of the Federal Republic of Nigeria (Third Alteration) ACT 2010 which, inter alia, creates section 254C(1) that vests the National Industrial Court with an exclusive jurisdiction in all causes and matters related to or connected with any labour, employment, trade unions, industrial relations and matters arising from work place, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith. This new provision in the Constitution has reduced sections 38 and 41 of the Workmen's Compensation Act to a total nullity. Thus even if the matter had been instituted in a High Court as provided by the Workmen's Compensation Act, which was the correct position of the law before the constitutional amendment, it would have metamorphosed into incompetence and would have led to striking out the suit therefrom or transferring it to the National Industrial Court, the only forum where exclusive jurisdiction in the matter resides.(Underlined emphasis mine).

49. In the *Sedi's case (supra) @ P.244, Para.E*, the Court in a lead Judgment *per Eko JCA (as he then was, later JSC, now JSC rtd.*) held that: "*where a statute has identified a court and donated to it an exclusive jurisdiction over a particular cause of action, the jurisdiction of other courts not similarly mentioned would appear to have been ousted*".

50. It is actually from the backdrop of the phrasal concept of '*arising from, related to, connected with labour/employment/workplace*' used variously in the provisions of *S.254C (1)-(5) of the extant Constitution* that this Court derives its amplified jurisdiction to entertain other core civil claims bordering on contract and tort, such as tenancy, libel, negligence, policy issues, fundamental human rights, and even criminal jurisdiction. Going forward, I dare say that this provision has over time become a one stop-shop for gauging the amplification of the new jurisdictional mandate of this Court in its one-subject matter adjudicatory-stock, which is: employment, workplace, labour-related, connected and/or arising matters!

51. I need also to emphasize that the *extant Constitution* neither restricted this Court's jurisdiction to any class of parties nor limited it to class of dispute, as far as such civil dispute arises from, related to, or connected with labour/employment/workplace, it does not matter the type of parties (private/public/corporate) and the nature of the dispute (be it contractual or tortious claim or policy issues or statutory interpretation, and even criminal offence). The only limitation is as regards criminal matter, which by *S.254C (5) of the extant Constitution,* it shares jurisdiction with a High Court, and not with exclusive jurisdiction as in civil claims. Its jurisdiction is therefore based only on the 'subject matter' test i.e any dispute involving issues of labour/employment/workplace. I so hold. See: *Cocoa Cola (Nig) Ltd v. Akinsanya [2017] 17 NWLR (Pt.1593)74; Standard Chartered Bank v. Adegbite [2019]1NWLR (Pt.1653)348@369; Omang v. NSA [2021] 10 NWLR (Pt.1788) 55*

52. I have had the opportunity to take similar position in a number of cases across various judicial Divisions of this Court where this sort of substantive jurisdictional challenge were raised before me, such as: *West African Cotton Co Limited v. Oscar Amos (Suit No. NICN/YL/10/2015, Judgment delivered on June 13 2018); Amadi Okaka Lucy Erusi v. Henry Spencer (Nig.) Ltd & 3 Ors. (Suit No. PHC/135/2018, Judgment delivered on October 30 2020); Miebi Aguma & Anor v. NIMASA & Anor. (Suit No. NICN/PHC/26/2020, Judgment delivered on March 26 2021); Fedison Manpower Supply Ltd v. Niger Blossom Drilling Nig.Ltd (Suit No.NICN/YEN/444/2016,Judgment delivered on March 29 2022); E'la Obor Eleme Organization & Anor v. Nigeria Content Development & Monitoring Board(NCMDB) and Nigerian National Petroleum Corporation (NNPC) Limited (Suit No. NICN/PHC/32/2022, Judgment delivered on June 07 2023), and Maritime Workers Union of Nigeria v. Incorporated Trustees of Freight Forwarders Transport Association (Suit No. NICN/PHC/48/2022, Judgment delivered on October 03 2023) (per Ogbuanya, J).*

53. From the analysis thus far, it is clear that the subject matter of the dispute in this suit involves issues of employment, as the exercise of power of the 1st Defendant to '*call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary*', is certainly an incidence of employment procedure for such statutory employment. Even if the delusive confusion of learned counsel is borne out a syntax issue, it still has to be understood that an 'Appointment' exercise which results to employment with features of statutory employment does not lose the status of statutory employment merely because it is christened 'Appointment'. Even *Political Appointment which comes with feature of statutory employment in terms of fixed and secured tenure*, such as those of *Heads and Officers of Ministries, Department and Agencies (MDAs)*, fall under the conceptualized employment legal regime, which arising dispute on security of tenure enjoys judicial intervention of the National Industrial Court, going by the jurisdictional purview of the National Industrial Court, pursuant to the provisions of the *S.254C (1) of the extant Constitution*. I so hold.

54. Counsel needs to be enlightened that by *S.254C(1) of the 1999 Constitution (3rd Alteration*), the jurisdiction of the National Industrial Court is based on 'subject matter test', as its subject-matter jurisdiction spans across various aspects of issues of interpretation and application of Constitution and statutes, review of decisions and actions of administrative bodies and persons; be it public, private, corporate or individual, and all strata of government institutions and agencies operating at federal, state or municipal level, which accounts for the appellation of '*National*' in its Name- *National Industrial Court of Nigeria.* As it stands, the jurisdiction of the National Industrial Court is not party-denominated or issue-circumscribed, but based on the 'subject matter' test i.e any dispute involving issues of labour / employment/workplace. I so hold.

55. Thus, the often mischievous practice by some legal practitioners in approaching the Federal High Court or even objecting to the jurisdiction of the National Industrial Court on matters constitutionally falling within the jurisdictional circumference of the National Industrial Court, as witnessed in this suit, and acceptance of same for adjudication at the Federal High Court despite provision for transfer to the National Industrial Court, to say the least, does not augur well for the expected entrenching of the evolving and espoused labour law jurisprudence in Nigeria, even over a decade of the constitutional intervention that elevated the National Industrial Court to a pride of place, among the Superior Courts of Record in Nigeria, *vide the 3rd Alteration 2010, effective 4th March 2011.* I so hold.

56. On the whole, I hold a humble but tenaciously considered view that given the expanded and espoused jurisdiction of the National Industrial Court under the current legal regime in Nigeria, all matters involving issues of employment, ranging from pre-employment, subsisting-employment, to post-employment disputes, inclusive of disputes on matters of appointment or removal of judicial officer, being in statutory employment, is within the exclusive jurisdiction of the National Industrial Court, by virtue of its Constitutional mandate vested on the Court under *S.254C (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended by the 3rd Alteration Act 2010, effective 4th March 2011).* To that end, I tend towards the view that, in line with the provisions of S*.254C (1) (a) and (b) of the extant Constitution, any dispute, as in the instant suit, around interpretation and application of* the *S.197 S.197(2) and paragraph 5 of part II of the third Schedule to the 1999 Constitution and the 2014 Revised NJC Guideline & Procedural Rules for Appointment of Judicial Officers of All Superior Courts of Record in Nigeria, being matter relating to appointment of Judicial Officers,* fall squarely within the exclusive jurisdictional sphere of the National Industrial Court. I so hold.

57. Being enabled by the apt judicial support and community reading of *the S.254C (1) (a) and (b) of the extant Constitution,* coupled with other legal resources dealing with the jurisdiction of this Court, copiously referenced in this jurisdictional objection resolution, it is my humble but stout view, that the subject matter of the dispute in the instant suit, which involves employment policy issue arising from the further call for expression of interest for appointment of judicial officers for the Abia State Judiciary is connected with employment, and therefore, falls within the jurisdictional scope and competence of this Court- the National Industrial Court of Nigeria. I so hold. In the circumstance, this Preliminary Objection by the 2nd & 3rd Defendants challenging the Jurisdiction of the National Industrial Court to adjudicate the subject matter of this suit, hereby fails, and is accordingly dismissed. I so hold.

58. I now assume jurisdiction to consider and resolve the other contested Interlocutory Applications numbering about 4 more, and the substantive dispute in issue in the suit herein.

2. *2ND &3RD DEFENDANTS' OBJECTION ON CLAIMANT'S LOCUS STANDI AND REASONABLE CAUSE OF ACTION-*

59. Learned counsel for the 2nd & 3rd Defendants moved the *Motion Notice dated and filed on 12th March 2024, supported by 14 paragraphs Affidavit sworn to by the 3rd Defendant. No Exhibit attached, but accompanied with a Written Address dated and filed on 12th March 2024.Counsel adopted same*. It prays the Court to Strike out the suit for being incompetent, on grounds, that the suit did not disclose any reasonable cause of action, and that the Claimant lacks requisite *locus standi* to initiate the suit. On the aspect of the suit not disclosing reasonable cause of action, counsel submitted that there is no dispute between the Claimant and any of the Defendants. And pointed that the Claimant had filed this suit excluding the Claimant in the 1st Defendant.

60. On issue of the Claimant's lack of locus standi, counsel contended that on the basis of plethora of case law authorities, the Claimant must show on the body of the claim, his civil right and obligation that are violated, and that there must be a dispute and not interpretation of hypothetical question. Counsel submitted that in the instant case, the AG is a different body from Abia State Judicial Service Commission, and the obligation/duty of the Commission is not transferable. Counsel submitted further that there being no justifiable right infringed upon, this matter is pure academic exercise and should be dismissed. Counsel cited and relied on *AG Anambra v AG Fed. {2005}9 NWLR (pt 931) 572 @ 588, 607, para A 61 para.C-C.*

61. Incidentally, both the 1st Defendant and the Claimant are opposing the Application, and have filed their respective processes in opposition. For the 1st Defendant, its learned counsel**,** informed that in opposition, he had filed a *Counter Affidavit deposed to on 16th May 2024, accompanied by a Written Address dated 10th May 2024 and filed on the 16th May 2024*. Counsel adopted his submission, and on the issue of non-disclosure of reasonable cause of action, contended that, it is a case founded on employment policy and the Claimant is seeking the interpretation of employment policy as regards appointment of Judges, including "*Exh.C"of the Affidavit in support of the Originating Summons,, which is a protest letter written by the 2nd Defendant*, threatening an action, which would cripple the recruitment process, which clearly indicates that there is a dispute, which raises a cause of action anchoring this suit.

62. On the issue of *locus standi* of the Claimant to institute the action, counsel pointed that the Abia State Attorney G is the Chief Law Officer of the State, and on that basis, he has sufficient interest on the issue of ensuring that the appointment of Judges in Abia State is not crippled. Counsel refers to *S.197 of the Constitution (as Amended*), which disclosed the AG's legal interest on the subject matter in his capacity as the Chief Law Officer of the State. Counsel finally, contended that the critical question is the effect of uncontroverted averments in its Counter- Affidavit, as the 1st Defendant's averments were not controvert by the 2nd & 3rd Defendants. Counsel urged the Court to hold that such averments are deemed admitted by the 2nd & 3rd Defendants.

63. For the Claimant, learned Claimant's counsel, informed that in opposition, the *Claimant filed a 13-Paragraph Counter-Affidavit of 10th May 2024, deposed to by one Mr. Chibuzo Lucky, a Senior Clerical Officer in the Office of the Claimant. Also filed a Written Address, dated 10th April 2024 but filed on 10th May 2024,* and adopted same. Counsel submitted that on issue of cause of action, that the Claimant is suing based on the *2 Question for determination and the 4 Reliefs contained in the Originating Summons*, constituting this suit, as the suit is anchored on interpretation of employment policy of recruitment of Judges in Abia State, so as to ward off/shepherd any attack on this process. Counsel refers to and relied on "*Exh. C"*and *Paragraph 16 of the Originating Summons,* which laid credence to this position. And to accentuate this position, the 2nd & 3rd Defendants, upon this suit, filed their Counter-Claim.

64. On the issue of *locus standi*, counsel argued that by the same *S.197 of the Constitution (As amended)*, it puts the Claimant in prime position as the Chief shepherd on issues relating to administration of justice in Abia State Government, what recruitment/appointment process of Judges, falls in. On the point that the AG sued the State Judicial Service Commission excluding himself, counsel submitted that the AG can legitimately institute an action against any Agency/body/person in relation to the duties, which the AG is bound to protect by the Constitution. Counsel refers to *FAAN v. Bi-Courtney Ltd LPELR-19742 9SC) P-1@ 50-51*, to the effect that AG can conduct proceedings wherever the State's interest in issue. Counsel urged the court to dismiss the Application.

65. I have reviewed the processes relating to this Application and submissions of learned counsel on their respective divide, for and against the Application. In an adversarial legal jurisprudence of our clime, the doctrine of *locus standi* and reasonable cause of action, occupy a prime position as aspects of jurisdictional issue which may threaten survival of a suit filed by a Claimant in the court of law. Learned counsel for the 2nd & 3rd Defendants had contended and vigorously canvassed the view that the suit discloses reasonable cause of action, in that it raises hypothetical question without any dispute between the parties and that the Claimant lacks locus standi to institute this suit. The Claimant as well as the 1st Defendant however, disagreed, and maintained common position that the suit disclosed sufficiently reasonable cause of action on the triable issues arising in the matter regarding interpretation of the powers of the 1st Defendant to engage in the appointment processes for Judges of the Abia State Judiciary, unhindered, by the threatened acts of the 1st and 2nd Defendants as shown in *Exh.C,* which is a protest letter and demand to discontinue the fresh appointment process commenced by the 1st Defendant upon approval by the 4th Defendant, and the Claimant is the Attorney General of Abia State.

66. The arising pertinent questions are- *If this is the state of the material facts as disclosed in the processes triggering this suit, can it be said that the suit disclosed no reasonable cause of action, more so as the 2nd & 3rd Defendants also filed a Counter-Claim?* And *does the Attorney General of the State lack locus standi to institute such matter seeking judicial intervention on the legal controversy around the exercise of power of the 1st Defendant under the Constitution and NJC Rules in respect of appointment process for Judges of the Abia State Judiciary?* The courts have variously restated the judicial meaning of *cause of action*. In *A.G Adamawa State & ors v. A.G Federation (2014) LPELR-23221(SC),* it was defined thus: "*…cause of action is the fact or facts which establish or give rise to a right of action. It is the factual situation which gives a person right ro judicial relief*". In *Oko & Ors v, A.G, Ebonyi State (2021) LPELR-54988(SC)*, the Supreme Court again held thus: "*a cause of action invariably denotes a combination (group) of operative facts thereby resulting in one or more bases for suing. In a sense, a cause of action is a factual situation that entitles one person to a remedy in court from another person*". If the meaning of *cause of action* is anything to go by, as enunciated in the above cases, in my considered view, *cause of action* is simply, the *material facts constituting the story line of a litigant that gives rise to a right of action and provides the basis for the suit*. Is it absent in this suit?

67. From the record, I find that, apart from filing Counter-Claim, the learned counsel for the 2nd & 3rd Defendants, may have forgotten that he had filed a pending Application praying for *Conversion of the Originating Summons Pleadings,* on the ground of much controversy on the suit. *Could such suit of that nature still be said to have not disclosed reasonable cause of action by the same counsel?* In my view, the court at this stage should not even be concerned with 'reasonableness' of cause of action. At the threshold, the court should rather be actually interested in assessing if a suit discloses 'any' "cause of action", instead of 'reasonable' "cause of action", as the test of 'reasonableness' is a matter for trial, not for commencement of action. Once there is a "cause of action", the suit can survive and stand ready for trial/hearing, which is at the stage where the 'reasonableness' is gauged by cross-fire of litigation process, and determined in a Judgment.

68. On that note, it is my considered view that the instant suit discloses sufficient material facts of dispute between the parties, and thus, there is not only a dispute anchoring a cause of action, but also reasonable cause of action to be litigated in this matter. I so hold.

69. On the aspect of the *issue of alleged lack of locus standi by the Office of the Attorney General of Abia State, the Claimant herein,* the arising question is- *Does the Claimant, the Attorney General of Abia State, possess the requisite locus standi to institute this suit?* The law of 'standing to sue', otherwise encapsulated in the concept of '*locus standi*', has been evolutionary; oscillating between the restrictive and liberal judicial approach, depending on the facts, circumstances and nature of the case as well as disposition of the *judex*. At the core of judicial consideration of *locus standi* of a litigant when challenged, is the nature and quantum of interest which the Claimant, as litigant has disclosed to the court *vide* the originating court process, that agitated the litigation, and the expected reliefs sought as remedy for the perceived anomaly, in line with the concept of '*ibi jus ibi remedium*'- a hitherto M*otto* of the *Nigerian Bar Association (NBA*)- literarily meaning-*where there is right, there is remedy to protect the right if injured!*

70. The concept of *locus standi* simply requires a litigant approaching court to disclose the basis of his/her interest in the issues being submitted for judicial intervention, so as to be allowed a platform to litigate same in court of law, if found that he/she has sufficient interest to institute the suit. It does not extend to consideration of the strength or weakness of the suit, as per potential success or failure of the suit. I so hold.

71. This principle permeates a host of judicial authorities on the issue of l*ocus standi*, many of which, all the learned counsel for the parties cited and relied on, in their respective contentions, for and against the Claimant's *locus standi.* It should however, be clarified that because of the constitutional role of the Attorney General of the State/Federation as the Chief Law Officer of the State/Federation, the scrutiny for *locus standi* of the Attorney General is not the same as that of private citizens when it comes to challenge of actions of public nature raising issues of law, as in the instant suit, involving employment policy litigation over the exercise of the constitutional powers of the 1st Defendant, the State Judicial Service Commission, pursuant to *S. 197(2) and paragraph 5 of part 11 of the third schedule of the 1999 Constitution (As Amended) and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria.* Thus, for the person holding public office, like the Attorney General, the 'sufficient interest' test to ground a *locus standi* need not be personal, but official interest of public nature, as in the instant suit. I so hold.

72. From the processes filed and exchanged on record, I find that as the Chief Legal Officer of the State, the Claimant's core interest which snowballed to this suit, is borne out of the 2nd & 3rd Defendants' overt threats as disclosed in the "*Exh.C*" against the continuation of the fresh exercise for appointment processes following the 1st Defendant's 'call for expression of interest for Judicial Appointment in the Abia State Judiciary', christened '*2024 exercise*', of which the 2nd & 3rd Defendants (in representative capacity) are opposed to, and vowed to resist, if not discontinued, and the previous exercise, christened '*2022 exercise*' revived and concluded with already shortlisted candidates sent to the 4th Defendant for final interview and recommendation to the State Governor for Appointment and Swearing-In. The arising dispute calls for judicial intervention as to way forward out of the logjam. The dispute herein is certainly of public nature with interests affecting the judicial arm of Government of Abia State. This is the fulcrum of the Claimants' case against the Defendants. *Would the Claimant be said not to have locus standi in the light of the facts and circumstances of the instant suit?* On that note, I take recourse on the Supreme Court's approach to *locus standi* on issue relating to environmental degradation in *Centre for Oil Pollution Watch v. NNPC [2019] 5NWLR (Pt.1666) SC518 (Centre for Oil Pollution Watch'Case)*, wherein the apex court @ *P.601, paras.F-G*, held thus: "*The courts, in recent times, applied more liberal tests, and the trend is away from restrictive and technical approach to questions of locus standi. <u>The approach these days is one finding out whether the plaintiff has a genuine grievance</u>*". (underlined emphasis mine)

73. It is my considered view that the law of *locus standi* is not designed to defeat legitimate suits disclosing genuine grievance, particularly those of public interest, after all, as held in *A.S.U.U v. B.P.E [2013]14 NWLR (Pt.1374) CA 398, @P423, paras. D-E*: "*The doctrine of locus standi was developed to protect the court from being used as a playground by professional litigants and busybodies who have no real stake or interest in the subject matter of the litigation they wish to pursue*". *See* also: *Amah v. Nwankwo [2007]12NWLR (Pt.1049)552.*

74. In the circumstance, I hold that the Claimant, the Attorney General of Abia State, in official capacity as the Chief Law Officer of Abia State, on behalf of Abia State Government, has requisite *locus standi* to institute this Suit in this Court Accordingly, the objection by the 2nd & 3rd Defendants challenging the Claimant's *locus standi* is hereby over-ruled and dismissed. I so hold.

3. 2ND & 3RD DEFENDANTS' APPLICATION FOR STRIKING OUT 1ST DEFENDANT'S PROCESSES AND CONVERTION OF ORIGINATING SUMMONS TO PLEADING-

75. Learned 2nd & 3rd Defendant's counsel informed that the Application is a *Motion Notice dated 21st May 2024 and filed on 22nd May 2024. It is supported with 9-paragraph Affidavit deposed to by 3rd Defendant. Also filed is a Written Address dated 21st May 2024 and filed on 22nd May 2024*.Counsel adopted same. The Application has 2 arms-(1*) One for Striking Out the Counter-Affidavit and Written Address filed by the 1st Defendant in opposition to the 2nd & 3rd Defendants' Notice of Preliminary Objection and Motion Notice, and (2) for conversion of the Originating Summons to pleadings and directing the parties to file and exchange pleadings*. On the 1st arm, seeking for an Order Striking Out the 1st Defendant's processes, counsel refers to *Order 17 Rule 10 of the Rules of this Court*, to the effect that where a Respondent served with Motion on Notice, wants to oppose, shall file a Counter-Affidavit and Written Address within 7 days of the service on the Respondent of such Application. Counsel pointed that the Rule is applicable.

76. To counsel, as the 1st Defendant is not written as Respondent in the face of the process, it is not entitled to respond not being a Respondent in that particular Motion on Notice (Application). In other words, the legal question arising is- *Does an Applicant in an Interlocutory Application have liberty to ascribe a party as Respondent or not Respondent in a process filed and served in the process*? I have asked learned counsel to address the Court further on that his submission on the legal issue he raised, so as to contextualize the basis of this arm of his Application in the Application under consideration herein.

77. Counsel had answered that the issue of who is a Respondent in any Application before the Court challenging any process is the originator of the process being attacked by the Application i.e. the owner of the process being attacked. To counsel, in multiparty suit, as in the instant suit, service on a party does not make such a party a Respondent to any Application, which is not challenging that party's process. And a Co-Defendant cannot challenge an Application of a Co-Defendant against the Claimant. Counsel pointed that there are no Counter-Affidavit in opposition. On the last arm seeking for Conversation of the Originating Summons to Pleadings, counsel contended that based on the critical issue of the appointment of Judges which the 1st Defendant intends to embark on, there is a serious dispute of facts, as to whether the 7 High Court Judges approved in the Budget consists of the existing 6 vacancies of Judges of the Abia State Judiciary, which the 2022 shortlisted candidates have been recommended.

78. For the 1st Defendant, in opposition, learned counsel applied for leave to reply on point of law, as he did not file formal process, which leave was granted. On the issue as to whether the 1st Defendant is supposed to be a Respondent in the process/Notice of Objection filed by the 2nd & 3rd Defendants, counsel refers to *Order 17 Rule 9 of the Rules*, to the effect that all parties to the suit are Respondents to any Application filed in the suit. Counsel pointed that it would amount to denial of *fair Hearing under S.36 of the Constitution*, if any Respondent/other parties are prevented from responding, especially if it would affect the party's interest as in this matter. On the issue of conversion to pleading counsel submitted referring *Paragraph 3.12 of the 2nd & 3rd Defendants/Applicants' counsel's Written Address*, where learned counsel sought interpretation of *Order 3 Rule 17 (1) & (2) of the Rules of this Court* on Conversion of Originating Summons to a complaint. Counsel submitted the use of the word 'likely' to involve substantial disputes is speculative, as it did not show any evidence of such.

79. On the part of the Claimant, learned Claimant's counsel also applied for leave of the Court to respond orally on point of law, which leave was granted. Submitting on the 1st leg, regarding the position of the 2nd & 3rd Defendants' counsel, arguing that the 1st Defendant is not supposed to be a Respondent, learned counsel stated that it is in line with rule of fair hearing that Claimant is to be served and to respond to such Application in the suit. Counsel submitted that a party being an Applicant in an Application cannot pick and choose who among the parties can be Respondent to his Application in a multiparty suit, like the instant issue.

80. On the 2nd leg of the issue on conversion of the suit to pleadings for oral trial, counsel urged the court to assess and determine whether the suit is properly commenced under Originating Summons procedure of the Rules of the Court.

81. I have reviewed the process and submissions of all counsel on record on the Application. I cannot but express sheer surprise on the submission of the learned counsel for the 2nd & 3rd Defendants' counsel, contending that the Rules of this Court allows a party to decide whether to name another party as a Respondent in its Application, to the extent that the Application under review was deliberately omitted to indicate the 1st Defendant as a Respondent. Counsel brazenly cited and relied on the provisions of the *Order 17 Rule 9 of the Rules,* which did not support his submission, rather said the opposite. It is common knowledge of legal practice anchored on the rule of fair hearing under *S.36 of the Constitution* that all Applications must be served on all parties on record, particularly in a multi-party suit of this kind.

82. It therefore does not lie on a party to pick and choose, who among the parties in a multi-party suit, to be named as Respondent or serve the process to respond. Also, the status of parties in multi-party suit are sacrosanct and preserved, and where Defendant parties are not represented by same counsel , any of such parties cannot dictate to the other(s) on its/their line of defence or how such defence counsel prepares its/their defence. It is sheer grandstanding for a party in a multi-party suit to pose or purport to act as supervisor of Co-Defendant in a suit. Learned counsel for the 2nd & 3rd Defendants should so take note. To that end, the 2nd & 3rd Defendants showed no legal basis to apply to strike out defence processes filed by the 1st Defendant, a Co-Defendant in this suit, not being represented by same counsel. Thus, the non-indication of the 1st Defendant as a Respondent in the said Application taints the competency of the Application and renders same incompetent. I so hold.

83. On the aspect of the Application seeking for Conversion of the Originating Summons to Pleadings, on the alleged ground of the suit raising serous issue of facts in dispute between the parties, a cursory resort to the provisions of the Rules of this Court would aid the discourse.

84. The *Or.3 Rule 3 of the extant Rules of this Court* provides for actions that can be instituted using the Originating Summons. It states:

> *"Civil proceedings that may be commenced by way of Originating Summons include matters relating principally to the interpretation of any constitution, enactment, agreements or any other instrument relating to employment, labour and industrial relations in respect of which the court has jurisdiction by virtue of the provisions of section 254C of the Constitution of the Federal Republic of Nigeria 1999 (as amended) or by any Act or law in force in Nigeria"*. (Underlined emphasis, mine).

85. I have taken another deeper look at the processes and issues submitted for determination in furtherance of the legal question formulated for resolution anchoring the reliefs sought, I am unable to find, any serious issue of facts in controversy. What is rather the state of the case theory, is the interpretation and application of the *extant provisions of the Constitution and the NJC Rules regarding the process for appointment of Judges and exercise of powers therein reserved for the 1st Defendant*, which if clearly interpreted would be applied to the materials facts that are not frontally disputed by the Defendants, particularly the 2nd and 3rd Defendants. Such scenario falls squarely under the category of matters billed for commencement *vide* Originating Summons in this Court, going by the provisions of the said *Or.3 Rule 3.* In the circumstance, this wing of the Application also fails. In consequence, the 2nd & 3rd Defendants' said Application is ill-fated, and is hereby dismissed for lacking merit. I so hold.

4. 2ND & 3RD DEFENDANTS' APPLICATION FOR DISMISSAL OF THE SUIT AS ABUSE OF COURT PROCESS AND FOR STAY OF PROCEEDINGS-

86. The 2nd & 3rd Defendants' learned counsel informed that the *Motion Notice is dated 18th March 2024 and filed on 19th March 2024. It is supported by 13-paragraph Affidavit sworn to by the 3rd Defendant Application. Also filed is a Written Address dated 18th March 2024 and filed on 19th March 2024.* Counsel adopted his submissions therein. The Application has *2 wings*-(*1) Dismissal of the Suit as an Abuse of Court process, and - (2) Alternatively – Stay of Proceedings.* On the leg of Dismissal as Abuse of Court process, counsel submitted that the 2nd Defendant in this Suit has earlier filed at the *Federal High Court Umuahia Division* a *Suit No. FHC/UM/CS/09/2024 on 27th February 2024* against the parties in this suit, on the same subject matter and the same issue relating to the exercise of the power of 1st Defendant to shortlist suitable Candidates and make Recommendation to the 4th Defendant, which suit preceded this *Suit No. NICN/OW/05/2024 filed at the National Industrial Court Owerri Division on 29th February 2024.*

87. Counsel submitted that the issue the Claimant is litigating in this Court in this Suit is of the same subject matter, with that of the earlier one filed at the Federal High Court, and therefore this suit herein constitutes abuse of court process. On the 2nd leg asking for Stay of Proceedings in the alternative, counsel urged that the matter be stayed pending the matter in *Court of Appeal in 3 Suits- Nos.CA/OW/28D/23; CA/OW/281/23 and CA/OW/298/23* in respect of matters decided at the Federal High Court over the issue of Appointment of Judges of Abia State.

88. I have had to ask counsel if there is any of the suits that have decided the substance of the issue of the Appointment of Judges. Counsel did not border to clarify this aspect that would enable the Court to know the true status of the subject of the said Appeals, which I found to only border on locus standi of the Claimants that instituted those suits, and not any issue before this court as shown in the Originating Summons. Counsel further submitted that the Application is also based on "*Exh. NIC5"* filed at the Court of Appeal, which counsel said is seeking for a Prohibitive Injunction restraining the 1st Defendant and 4th Defendants from embarking on the Appointment process to fill the same position and supplant the old one which, according to him is the subject of appeal, and thus, the trial Court cannot hear this matter.

89. In opposition for the 1st Defendant, counsel indicated that the 1st Defendant deposed to *Counter-Affidavit with 3 Exhibits-marked as "Exhs. A, B, C 1-8"*. Also *filed is a Written Address dated 10th May 2024 and filed on 17th May 2024.* Counsel adopted same. On the issue of abuse of court process by multiplicity of suit, counsel argued that the Claimant is not a party to the matters at the Court of Appeal. Counsel pointed that the suit in this Court was filed on 29th February 2024, barely 2 days after the one the Defendants filed at the Federal High Court on 27th February 2024, and it was clearly averred that the Claimant or the 1st Defendant herein were not aware of the existence of the matter at Federal High Court before this suit was instituted at the National Industrial Court. And as such, it would not amount to multiplicity of suit, as the scenario of the case does not also entail multiplicity of suit. On the aspect of *Stay Proceedings*, counsel submitted that the appeal pending at the Court of Appeal cannot affect the proceedings of this Court. Firstly, that the appeals are on issue of *locus standi* and not on the substantive issue as to the right of the parties. Secondly, that the Claimant in this suit is not a party in the matters pending at the Court of Appeal, pointing that in all the processes including the "*Exh. NIC5*" that learned counsel for the 2nd & 3rd Defendants had relied on, there is no indication that the Claimant is a party.

90. Counsel maintained that given the factual circumstance of this suit, the said the pending Motion for Injunction at the Court of Appeal, cannot restrain the Claimant from seeking interpretation of employment policy issue in respect of judicial recruitment in this Court. Counsel also refers for *Or.64 Rule 14 of the Rules of this Court*, on Stay of Proceedings, and contended that this Application is not envisaged by the Rules of this Court, as this appeal being talked about did not emanate from this Court. Counsel urged the Court to dismiss the Application with substantial cost.

91. On the part of the Claimant, learned counsel informed that in response, *Claimant filed 15-paragraph Counter-Affidavit sworn to on 10th May 2024.Attached are 3 Exhibits, marked "Exhs.A-C".* There is also filed a *Written Address dated 10th May 2024 and filed on the same day.* Counsel adopted same. On issue of abuse of court process, counsel pointed that the Claimant was not aware of pendency of my suit in Federal High Court *(Exh.NICN4),* which counsel pointed out in *Para.1 of the Counter-Affidavit,* was not controverted, even as the 2nd & 3rd Defendants filed Further Affidavit and still did not controvert the averments in the *Paragraph 1 of the Counter Affidavit*. Also, that the Claimant is not a named party in any of the Appeals mentioned. On the aspect of *Stay Proceedings*, counsel submitted that every Court is bound by its Rules, and the Rules of this Court did not provide for this type of Application for Stay of proceedings. Counsel urged the Court to dismiss the Application and award substantial cost against the 2nd & 3rd Defendants/Applicants.

92. Having reviewed the processes and submissions of all counsel, for and against the 2nd & 3rd Defendants' application for dismissal of this suit on ground of abuse of court process or in alternative stay the proceedings, the arising issue is- *Can this Application succeed in the light of the circumstances of this suit on record?* I find from the record, that there is no decision from this Court that is on appeal at the Court of Appeal, and among the said suits pending at the Court of Appeal Owerri Division. I find also, that the subject matter of the appeals said to be pending at the Court of Appeal concern issues around the *locus standi* of the Claimants who approached the Federal High Court Umuahia over the 2022 Abia State judicial appointment exercise. Also, it is the 2024 exercise, that is the subject matter of this suit, which borders on exercise of the 1st Defendant's power to call for fresh expression of interest for a fresh exercise of appointment of judicial officers for the Abia State Judiciary, after the previous exercise was marred by controversy and allegation of impropriety and corruption, resulting in litigations at the Federal High Court Umuahia with the offshoot appeals at the Court of Appeal Owerri Division.

93. It is also not disputed that the Claimant is not a party to those three suits pending at the Court of Appeal, and was not served with the originating process of the new suit at the Federal High Court at the time of filing this suit at the National Industrial Court, barely two days after the one at the Federal High Court was filed by the 2nd Defendant. I find also, that apart from listing those other pending cases at the Court of Appeal and the Federal High Court, learned counsel for the 2nd & 3rd Defendants/ Applicants could not show how the said pending suits would be affected by this suit. I dare ask: *Is it that this Court is capable of restraining the Federal High Court, a Court of coordinate jurisdiction, or the Court of Appeal, an appellate Court with higher hierarchical ranking and supervisor of this Court?* I do not know and I was not told by learned counsel. Again, would *multiple suits pending on one subject matter, per se, amount to abuse of court process?* In *R-Benkay (Nig,) Ltd v. Cadbury (Nig.) Plc [2012]9NWLR (Pt.1306) SC596 @ Pp. 616-618, paras. H-C*, the Supreme Court, provided an insight on the concept and incidence of abuse of court process, when it considered two suits filed by both parties against themselves, and given the disclosed circumstances of filing of the two suits, held thus: "*In this instant case, the appellant and the respondent were exercising respective feasible rights of action. In suit No. ID/749/99, the appellant, maintained its counter-claim while the respondent filed suit No.ID/990/2000 to seek a remedy for its grievance against the appellant*".

94. This simply shows that, for the new/later suit among multiple suits situation to amount to abuse of court process, there must be evidence of the alleged 'abuse of process' showing the '*malafide*' use of court process. I need to also contribute on this concept of abuse of court process, and add that, as a subject matter can give rise to different cause of action and reliefs, only the repeat of similar cause of action and reliefs could make a later suit in multiple suits to amount to abuse of court process. I so hold. Again, as contended by the learned counsel for the 2nd & 3rd Defendants/Applicants, that the earlier suit filed at the Federal High Court involves the Claimant and is on the same subject matter, and therefore amounts to abuse of court process, alleging even forum shopping, the flowing question is - *Can the later suit amount to abuse of court process if it is found that the earlier suit is filed at a Court that has no jurisdiction over the said subject matter?* In his reaction, learned Claimant's counsel likened the scenario to 'filing land matter in Federal High Court and using the suit to be earlier than the one later filed at the State High Court'. This scenario captures the anomaly of un-scrutinized abusive suit that could be ironically used to defeat genuine suit in appropriate Court of competent jurisdiction, on the basis of the concept of abuse of court process on account of mere multiple suit.

95. Given the potency of jurisdictional issue being fundamental and capable of uprooting a suit well filed and even well adjudicated in wrong Court, I hold the view that the issue of the appropriate court to adjudicate a subject matter can provide a reasonable ground, so as to relieve the later suit of the challenge of amounting to abuse of court process. On that note, it is my considered view that this suit filed at the National Industrial Court, being the appropriate Court to adjudicate the subject matter of the dispute, cannot give way to the suit filed at the Federal High Court on a subject matter of employment issues, being a wrong Court for adjudication of the matter. Accordingly, this wing of the Application on abuse of court process fails, and is hereby dismissed. I so hold.

96. On the alternative prayer of *Stay of Proceedings*, the critical question is- *Why should the proceedings of a Court seized of the subject matter of the dispute between the parties be stayed in favour of the proceedings at a Court that has no requisite jurisdiction over the subject matter of the dispute? Why not the other way round?* And *can a stay of proceedings be granted where the decision on appeal does not involve the matter pending in a different trial court, going by the Rules of this Court and established judicial authorities on stay of proceedings?* In other words, *is this Application for stay of proceedings well-conceived?* From the record, there is no decision from this Court that is on appeal upon which an Application for Stay of proceedings could be predicated on, as required by *Or.64 Rule 14(1) of the Rules of this Court*.

97. Also, this suit has multiple Defendants, as the 2nd & 3rd Defendants are not the only Defendants, and in fact, the 1st Defendant is opposed to the Application. A common principle of law that runs across all the authorities on Stay of Proceedings is that there must be a valid pending appeal against the decision of the court in the ongoing matter which is sought to be stayed, as the order is usually made 'pending the determination of the Appeal'. *See: AgroChemicals (Nig) Ltd v. Kudu Holding Ltd [2000] 15 NWLR (Pt.691)493SC.* That is the exact prescriptions of the *Rules of this Court*. I have taken a deeper reading of the host of authorities cited and relied on in support of this Application, and find that none lends itself to or shares any of the afore-mentioned common essential features with that of the instant suit, such as to form a binding precedent on the recondite legal issues thrown up in this Application under consideration for stay of further proceedings. In *C.N Ekwuogor Invest. (Nig) Ltd v. ASCO Invest. Ltd [2011]13 NWLR (Pt.1265)CA565 @587 Para.G*, it was held that : "*Although lower courts are bound to follow the decision of higher courts, it is not in all cases that the lower court is bound to follow all the cases cited before it, they must be seen to be in line with the case at hand*".

98. I find that this Application is not well-conceived, particularly within the prescriptions of the *Rules of the Court,* which ought to be complied with. Otherwise, the erring party would be visited with the wrath of non-compliance. *See: A.G Federation v. Bi-Courtney Ltd [2012]14 NWLR (Pt.1321] CA467@481; MC Inv. Ltd v. C.I. M.C Ltd [2012]12 NWLR (Pt.1313]SC1@17-21.* In consequence, as the Application failed to satisfy the pre-condition set out under *Or.64 R.14 (1) of the NICN (CP) Rules 2017*, guiding granting of Application for Stay of Proceedings in this Court, this Application, again fails, even in the Alternative, and is hereby entirely dismissed. I so hold.

5. CLAIMANT'S NOTICE OF PRELIMINARY OBJECTION TO THE 2ND & 3RD DEFENDANTS' COUNTER-CLAIM ON THE ORIGINATING SUMMONS-

99. Claimant's learned counsel informed that he has two processes filed in respect of this Application. The one dated 10th May 2024 and the other dated 28th May 2024. Counsel applied to withdraw the one dated 10th of May 2024, and to rely on the one dated and filed on 28th May 2024 for the Application. Same was granted, and *the said Notice of Preliminary Objection dated 10th May 2024 was struck out, leaving the one dated 28th May 2024 for use in this proceedings*. Arguing the Application learned Claimant's counsel pointed that the *Notice of Preliminary objection on the Counter- Claim filed by the 2nd & 3rd Defendants, has no Affidavit but was accompanied with a Written Address dated 10th April 2024 and filed on 10th May 2024*, of which counsel adopted. The crux of the submissions of the learned Claimant's counsel is that there is no provision in the Rules of this Court for Counter- Claim to Originating Summons, just as it is the convention in civil litigation practice. Counsel, urged the Court to discountenance the Notice of Counter-Claim and Strike out/Dismiss same.

100. For the 1st Defendant, counsel pointed that he did not file any formal response but sought leave to speak orally on point of law. The leave was granted, and counsel stated that he allied with the submissions of the learned Claimant's counsel that there is no such practice as filing Counter-Claim in Originating Summons, and urged the Court to dismiss same.

101. In response, learned counsel for the 2nd & 3rd Defendants, stated that he did not file any formal process but sought leave of the Court to speak orally on point of law. Leave was granted, and counsel pointed that he understands the Application, as geared to challenge the jurisdiction of this Court to entertain the Counter-claim in Originating summons. Counsel submitted that he concedes that this Court does not have jurisdiction to entertain the Counter-claim. Counsel however, submitted that the proper Order to be made by the Court is that of Striking Out and not Dismissal, contrary to the position taken by the opposing counsel. Counsel cited and relied on *Gombe v PW (Nig) Ltd [1995] 6NWLR (PT.402) 4030 418-419.Para 4-7,* and applied to discontinue the Counter-claim and withdraw same.

102. While the Counter-Claim was slated for Hearing, learned counsel for 2nd & 3rd Defendants/Counter-Claimants, pointed that during the Hearing of the Claimant's Notice of Preliminary Objection in respect of the Counter-Claim filed by the 2nd & 3rd Defendants, the learned Claimant's counsel had argued that the Court lacks the jurisdiction to entertain and determine the Notice of Counter-Claim, in that it is generally unknown to civil procedure relating to Originating summons, and that he agreed with the objection, as being incompetent, but had submitted that the natural consequence is that the Counter-Claim be struck out as incompetent and not dismissed, as it was not heard on merit.

103. Counsel urged the Court to so Strike out the Counter-Claim. Counsel cited and relied on *Ogbuji v. Amadi [2022] 5NWLR (pt. 1822) 99 @ 157 para. C-D; E-G.*, to the effect that where a Court lacks the requisite jurisdiction to entertain and adjudicate over a matter, it cannot make any other valid pronouncement or Order in the case than the one Striking out the suit.

104. In response, learned Claimant's counsel had submitted that by the success of the Notice of Preliminary Objection challenging that Notice of Counter-Claim by the 2nd & 3rd Defendants as Counter-Claim is not cognizable in matters commenced by Originating summons, which renders the said Notice of Counter-Claim incompetent, same should be struck out or dismissed, as the Court may Order.

105. On the side of the 1st Defendant, learned counsel pointed that the 1st Defendant had formally challenged the said Counter-Claim filed by the 2nd& 3rd Defendants on the Originating Summons, by a *Counter-Affidavit deposed to on 16th May 2024, accompanied with a Written Address* in opposition to the 2nd & 3rd Defendant's said Notice of Counter-Claim. Counsel adopted same, and submitted that the learned counsel for the 2nd & 3rd Defendants having taken the position in agreement with the submission of the Claimant's counsel and concede to the objection, what has not been resolved is as to what happens to the Counter-Claim where issues have been joined, the 1st Defendant having filed a Counter-Affidavit and Written Address in opposition. Counsel concluded and urged the Court to invoke *Order 61 Rule 7 of the Rules of this Court*, and dismiss this Notice of Counter-Claim with substantial cost.

106. Replying on point of law, learned counsel to the 2nd & 3rd Defendants, contended that the position taken by the 1st Defendant's counsel is untenable in law, in that the 2nd & 3rd Defendants had conceded to the learned Claimant's objection that the Notice of Counter-Claim is unknown to law, improper, incompetent and that the Court does not have jurisdiction to determine it on merit. Counsel submitted that the proper Order to be made is striking out and not that of dismissal and that in the circumstance, the provisions of *Or.61 Rule 7 of the Rules of this Court*, is not applicable. Counsel urged the Court to so hold.

107. From the line of submissions of the respective counsel on record, it is common ground that learned counsel for the 2nd & 3rd Defendants conceded that the objection raised by the Claimant's counsel in response to their Notice of Counter-Claim is valid, as Counter-claim is alien to matters being tried *vide* Originating Summons procedure of civil litigation generally, and specifically not conceivable and cognizable in the Rules of this Court. What is rather, hotly debated is, as to what *would be the proper Order to be made by the court, in the circumstance, particularly, in the light of the Counter-Affidavit filed by the 1st Defendant in opposition*? Learned counsel for the 2nd and 3rd Defendants maintains that the proper Order should be that of Striking out, as the Counter-Claim was not heard on the merits but found incompetent upon an objection by the opposing Claimant's counsel.

108. For the 1st Defendant's counsel, the proper Order should be Dismissal, as opposing parties have joined issues on the said Counter-Claim, placing reliance on the provisions of *Or.61 Rule 7 of the Rules of this Court*. The learned Claimant's counsel did not take stiff position, but would rather, want the Court to make an Order, either striking out or dismissing the said Counter-claim. But learned counsel for the 2nd & 3rd Defendants / Counter-claimants, while replying on point of law, insisted that the proper Order is that of striking out and that the *Or.61 Rule 7 of the Rules* relied on by the learned counsel for the 1st Defendants does not apply.

109. What therefore calls for resolution is - *whether the provisions of Or.61 Rule 7 of the Rules of this Court is applicable to the circumstance of the Counter-Claim, bearing in mind that a Counter-Claim, in civil litigation parlance, is legally deemed to be a separate suit ?* The rule guiding withdrawal or discontinuance of a claim or suit is contained in the provisions of *Or.61 Rules 6 and 7 of the Rules of this Court.* By *Or.61 Rule 6*, any claim or suit withdrawn or discontinued before parties join issues by filing and exchanging defence process, would attract Order of Striking out. On the other hand, by *Or.61 Rule 7,* any such withdrawal or discontinuance after issues have been joined by way of the filing and exchange of defence process would attract an Order of Dismissal. Thus, the consequence depends on the stage of the withdrawal or discontinuance. If at the stage where issues were not yet joined (no formal reaction of the opposing party by filing defence), the appropriate Order would be Striking Out, but if issues were already joined, the Order would be that of Dismissal, as the contest is already slated at that stage, and thus, any conceding by the Claimant at such stage, would be construed to be total failure and weakness of the claim/suit, which will warrant awarding the trophy to the opposition in such a contest, which is deemed consideration of the suit/claim on the merits. That is the intendment of the *Or.61 Rule 7 of the Rules of this Court.*

110. It is obvious that, as the Counter-claim constitutes a separate action, the 2nd & 3rd Defendants/Counter-claimants are the Claimants within the meaning of the provisions of *Or.61 Rules 6 and 7* , while any defence process filed and exchanged in opposition, such as the Preliminary Objection by the Claimant/Respondent to the Counter-claim, as well as the 1st Defendant's Counter-Affidavit to the Counter-claim, would amount to joinder of issues, for the purposes of invocation of the provisions of *Or.61 Rule7 of the Rules of this Court*.

111. I find from the record, that at the stage learned counsel for the 2nd & 3rd Counter-claimants sought to withdraw/discontinue their said Notice of Counter-claim, for being incompetent, as indicated by the learned Claimant's counsel, who had formally challenged same, by filing a Notice of Preliminary Objection, and the 1st Defendant had filed Counter-Affidavit against the said Notice of Counter-claim, issues were properly joined on the said Counter-claim.

112. Accordingly, the Counter-claim of the 2nd & 3rd Defendants so withdrawn/discontinued by their learned counsel at the stage the opposing parties involved i.e the Claimant /Defendant to Counter-claim and 1st Defendant/ Defendant to Counter-claim, had joined issues with the 2nd & 3rd Defendants/Counter-Claimants, requires invocation of the provisions of the *Or.61 Rule 7 of the Rules of this Court*. I therefore agree with the submissions of the learned opposing counsel, particularly the learned counsel for the 1st Defendant, that the appropriate Order to be made in the circumstance of the withdrawal/discontinuance of the Counter-claim is that of Dismissal and not Striking Out. To that end, the said 2nd & 3rd Defendants' Counter-claim is hereby dismissed, pursuant to the provisions of *Or.61 Rule 7 of the Rules of this Court*. I so hold.

113. On issue of Cost, both counsel for the Claimant and the 1st Defendant had prayed for substantial Costs to be awarded against the 2nd & 3rd Defendants, on account of numerous interlocutory Applications their counsel deployed to wear-down the Court and the other parties, perhaps truncate the proceedings. I have noted the antics of learned counsel for the 2nd & 3rd Defendants, who utilized every opportunity as defence counsel, to pursue every imaginable interlocutory objectionable applications, even copiously accusing this court of not only lacking jurisdiction but engaged in forum shopping. The barrage of those multiple interlocutory objection Applications were studiously considered and ruled on, and all failed and were dismissed, as lacking in merit. Ordinarily, this calls for award of punitive Cost against them or their counsel personally in line with *Or.38 Rule 32 of the Rules of this Court*, or at least award of general Cost, as the principle guiding award of Cost, is that '*Cost follows event*', such that the erring party pays Cost to the successful party (ies), including the Court, going by *Or.55 Rules1,4 and 5 of the Rules of this Court*. Nevertheless, I am not so tempted. On that note I would make no Order as to Cost. I so hold.

114. Having considered and determined all pending Interlocutory Applications, it is time to deal with the substantive dispute presented in the Originating Summons.

RESOLUTION OF THE SUBSTANTIVE DISPUTE IN THE ORGINATING SUMMONS-

115. Learned Claimant's counsel drew attention to the *Originating Summons dated and filed on 29th February 2024,* constituting the suit herein. It is supported by a *31-paragraph Affidavit sworn to on 29th February 2024 by one Chibuzo Lucky, senior clerical officer in the office of the Claimant*. There are *4 Exhibits attached marked as Exhs "A-D"*. Also filed is a *Written Address dated and filed on 29th February 2024* wherein counsel canvassed argument in support of the Originating Summons. Upon receipt 2nd & 3rd Defendant's Counter-Affidavit, *Claimant also filed a 13- paragraph Further Affidavit on the 10th May 2024, also sworn to by the said deponent.* Attached is *4 Exhibits, also marked as Exhs. "A-D".*

116. Hearing the Summons, counsel relied on the averments in the Affidavits and Exhibits in support, and as well adopted the written submissions as arguments in support of the Originating Summons. Counsel pointed that the Claimant *formulated 2 questions (a)-(b)* and *4 reliefs (a)-(d)*. Counsel submitted that the questions are firmly anchored on the issue of judicial appointment policy as applicable in Abia State- *whether the 1st Defendant has power to initiate recruitment process for appointment of Judges for the State Judiciary, and if the 2nd & 3rd Defendants have the power to stop or interfere with the process?*
117. On the *reliefs,* counsel pointed that *relief (a)* is tied to *question (a*) while *relief (b)* is tied *to relief (b*) and *relief (c)* and (*d)* are consequential reliefs tied to *relief (a) and (b),*based on the success of *reliefs (a) & (b).* Counsel pointed that 2 issues for determination were raised in *paragraph 3.1 of the Written Address*, and arguments set out in *paragraphs 4.1-5*.1.

118. On *issue (a),* counsel contended that the 1st Defendant has the abundant power by the *Constitution and NJC Rules for Appointment of Judges*, to call for expression of interest, and shortlist suitable candidates, and recommend to the NJC, having obtained the necessary approval, which are *Exhs. A, B & C in the Further Affidavit.* On *issue (b)*, the Claimant's learned counsel submitted that the 2nd & 3rd Defendants do not have the authority to interfere with the judicial appointment process by the 1st Defendant by threat of litigation or any other means, as in '*Exh-C' of the Affidavit in support of the Originating Summons,* the 1st Defendant having substantially complied with the requirements of commencing judicial appointment process. Counsel pointed that the *2nd & 3rd Defendants in their Counter-Affidavit, particularly in paras.11 (iii) and (iv) stated that the 1st Defendant cannot commence the process as reflected in the call for expression of interest, (Exh.B in the Affidavit in support*).

119. Counsel submitted that the 2nd & 3rd Defendants' contention that there cannot be another judicial appointment process distinct from the 2022 process is threatening the exercise of the power of the 1st Defendant to initiate another appointment process, such as the 2024 exercise. Counsel pointed that the said 2022 process stopped at the stage for Recommendation for interview by the 4th Defendant, and there is no evidence that there was any interview conducted, as litigation over the allegation that it was not done properly and conferring undue advantage to some candidates through corruption. On the alleged non-compliance with requisite notices for calling for expression of interest as alleged in the *2nd & 3rd Defendants' Counter-Affidavits in paras.11 (cx) (a) (b) (c) and (d*), counsel refers to the *Claimant's 'Exhs. A, B, C' in the Further Affidavit*, to the effect there was requisite approval, particularly that of NJC and the Government (the Governor). Counsel further pointed that by '*Exh.D'*, the 3rd Defendant also applied in this 2024 exercise, thereby confirming that it is a distinct process. Counsel concluded and urged the Court to uphold the Claimant's case and grant the reliefs sought.

120. The 1st Defendant did not oppose the Originating Summons, having not filed any process in opposition, just as the 4th Defendant, thereby leaving the contest in the Originating Summons between the Claimant and the 2nd & 3rd Defendants.

121. In opposition, learned 2nd & 3rd Defendants' counsel drew attention to the *2nd & 3rd Defendants' Counter-Affidavit of 12 paragraphs sworn to by the 3rd Defendant on 19th March 2024. No Exhibit attached*. Also filed is a *Written Address dated 18th March 2023 and filed on 19th March 2024.* Counsel adopted the submissions in the *Written Address*. Counsel pointed that the basis of the Originating Summons is that the 1st Defendant obtained the necessary approval from the NJC (the 4th Defendant). To counsel, that is the main document that has to be available before the questions can be determined and reliefs granted. Counsel pointed that the reliefs flow from the phrase "having obtained the necessary" approval from the 4th Defendant. Counsel submitted that the issue is not about who has power, as appointment process starts with the 1st Defendant and concludes with the 4th Defendant, by virtue of their statutory functions as statutory bodies created by law.

122. Counsel refers to *NJC guidelines and procedures Rules for the Appointment of Judicial Officers 2014,* which is the instrument that prescribe the procedure to be followed in the discharge of the statutory power/duty, and which procedure must be complied with, otherwise the exercise would be nullified if challenged successfully. Counsel cited and relied on *Oluwabukara v. AG Lagos State [2022] 2NWLR (pt1815) 499@ 595, para B-C, 596, para A,* to the effect that in discharge of a statutory function or exercise of a power/authority under a statutory provision, the provisions to be followed for the discharge of the function or exercise of the power must be strictly complied with otherwise the exercise will be illegal. Counsel refers to *paras 4.4-4.11 of the Written Address*. Counsel specially pointed non-compliance with provisions of *NJC Rules 2 (1) (3) (4) and (5),* which provide for necessary approvals to validate the exercise. Counsel further submitted that the '*Exhs.A&D*' are not the required approval, and contended that the *averments in para 11 (iii) of their Counter-Affidavit* was not controverted, and therefore admitted. It is counsel's further contention that what the *Claimant averred in paras.11, 12, 13, 14 and 15 of their Affidavit in support of the Originating Summons,* is clear that they are aware of the matter in Court of Appeal, which made them to set up a panel to investigate the circumstances of the initial exercise in the nomination of the 2022 shortlisted candidates.

123. Counsel pointed that the said shortlisted 2022 candidates include the 3rd Defendant, and contended that it is the setting up of the panel of investigation and discarding of that 2022 process by the decision of the investigation panel that denied the 3rd Defendant and her colleagues the right of having their position in the shortlisting as candidate recommended in the 2022 exercise. And that is why they are contesting the 2024 exercise. Citing and relying on *Abioduns v. CJ kwara State [2017] 18 NWLR (pt 1065) 109 @ 166 para. C,* **c**ounsel concluded and urged the Court to dismiss the suit for lacking merit.

124. I have reviewed the processes and submissions of all counsel for the parties on the legal issues raised and canvassed in respect of this recondite employment policy litigation bordering on Judicial Appointment of Abia State Judiciary, and pruned down the issues to a lone core issue, underpinning the substantive suit-*Given the facts and circumstances of this suit, whether the Claimant made out a good case requiring judicial intervention to be entitled to the reliefs sought?*

125. I would proceed along line this core sole issue for determination, encompassed in the *two (2) legal Questions* formulated for determination in the Originating Summons-*(a):*

a. *Whether having regard to the provisions of Part II, Section 6(A) of the Third schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, the 1st Defendant has the power to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary Approval from the 4th Defendant;*

b. *If the answer to the question a.[1] above is in the affirmative, whether having regard to the provisions of Part II, Section 6(A) of the Third Schedule to the 1999 constitution of the Federal Republic of Nigeria, (as amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of the Superior Court of Record in Nigeria, the 2nd and 3rd Defendants have the power to interfere with the power of the 1st Defendant to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, having obtained the necessary approval from the 4th Defendant".*

126. From the record, the *Claimants' four (4) Reliefs (a)-(d)* are anchored on affirmative answers to the *Claimant's said two legal Questions*, bordering on threatened disturbance of/interference with the 1st Defendant's exercise of its power, *pursuant to the provisions of Part II, Section 6(A) of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for Appointment as Judges of the Abia State Judiciary, having obtained the necessary Approval from the 4th Defendant.*

127. Setting the tone of the discourse, there is no doubt, and it is not disputed by the parties, that by virtue of *provisions of Part II, Section 6(A) of the Third schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria,* the 1st Defendant (*Abia State Judicial Service Commission*) is empowered *to call for expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant (National Judicial Council) for Appointment as Judges of the Abia State Judiciary, upon obtaining necessary Approval from the 4th Defendant.*

128. What is rather disputed hotly that triggered this suit is as to- *whether the 2024 exercise is the same or continuation of the 2022 exercise or different fresh exercise, so as to determine the validity of the exercise of power of the 1st Defendant in calling for expression of interest for appointment of judicial officers for the Abia State Judiciary, given that the 2022 exercise has reached advanced stage awaiting interview by the 4th Defendant before it was stalled being marred by allegations of corruption resulting in various litigations at the Federal High Court and the Court of Appeal?* While the State Government had set up a panel of investigation on what transpired in the 2022 exercise that gave rise to such allegations of corrupt practices, and got report of such malfeasances, it thought safer to navigate out of the controversy and start off a fresh exercise, but the 2nd & 3rd Defendants representing those interested candidates of the 2022 exercise, quickly opposed and threatened to resist another exercise until the truncated 2022 exercise is revived and concluded. This stance as expressed in "*Exh.C" attached to the Originating Summons*, had posed a challenge to the Abia State Government and the candidates already responding to the Abia State Judicial Service Commission (1st Defendant)'s call for expression of interest and nomination of suitable candidates, prompting the Claimant, being the Chief Law Officer of the State to institute this suit seeking judicial intervention to interpret and apply the law as regards the extent of exercise of power of the 1st Defendant in calling for expression of interest to kick-start a fresh exercise, and whether the 2nd &3rd Defendants can validly interfere with the exercise of the power of the 1st Defendant in the fresh exercise for judicial appointment in Abia State.

129. From the record, upon a digest of the gamut of the processes and submissions of the respective learned counsel for the parties, I have made the following findings of facts:
    a. The two exercises of the judicial appointment, christened '2022' and '2024' exercises, are different. The 2024 exercise is not a continuation or repeat of the 2022 exercise, as a separate approval was obtained from the 4th Defendant (National Judicial Council) along with other approvals for the 2024 exercise, as shown in "*Exhs. A, B and C*", attached to the *Claimant's Further Affidavit in support of the Originating Summons*;

    b. Approval of the 4th Defendant preceded the Calling for Expression of Interest by Candidates for the 2024 exercise by the 1st Defendant, which kick-started the fresh appointment exercise (the 2024 exercise);

c. The 2022 exercise stopped at the stage of invitation for interview for the recommended candidates by the 1st Defendant, to be interviewed by the 4th Defendant, being the last competitive selection exercise for the appointment, as only successful candidates at that stage would be recommended by the 4th Defendant (National Judicial Council) to the Governor for the appointment. No such interview took place and no candidate was selected as candidate to be recommended to the Governor for appointment;

d. The 2024 exercise is on course, and there is no procedural rule breached as it has just kick-started with the initial stage of the 1st Defendant's call for expression of interest by suitable candidates;

e. The 2022 exercise was indeed enmeshed with controversies and allegations of corrupt practices which led to the stalling of the exercise marred by multiple litigations at the Federal High Court and Court of Appeal;

f. The 3rd Defendant who is part of those candidates involved in the 2022 exercise, also applied in this 2024 exercise (as shown in '*Exh.D1*'), while being part of the Claimants in the suit challenging same at the Federal High Court, and also interested party to the suits pending at the Court of Appeal;

g. The litigation cases pending at the Court of Appeal did not concern or arose from the 2024 exercise, and did not emanate from any decision of this Court- National Industrial Court;

h. Since the stalled 2022 exercise, no judicial appointment has taken place in Abia State Judiciary, despite arising vacancies from retirements of serving Judges.

130. The arising recondite legal question is- *at what stage of judicial appointment process would irreversible legal right accrue to candidate under the extant rules and procedure for appointment of judicial officer of superior courts of record in Nigeria?* I take liberty to set forth the relevant provisions of the *2014 REVISED NJC GUIDELINES & PROCEDURAL RULES FOR THE APPOINTMENT OF JUDICIAL OFFICERS OF ALL SUPERIOR COURTS OF RECORD IN NIGERIA (Published 3rd November 2014)(NJC Rules), indicating the procedural steps for the Judiciary Appointment exercise.*

131. As concerns appointment of State Judicial Officers, involved in the instant suit, by *Rule 2(1)(4) of the NJC Rules*, the preliminary step to commence a fresh appointment exercise is for the *Chairman of the State Judicial Service Commission* to notify the *Governor of the State* of the proposal to embark on the process for the appointment, which notice is also forwarded to the *National Judicial Council (NJC),* and the NJC shall upon due consideration notify the Chairman of the State Judicial Service Commission of Approval to proceed with a specified number of Judicial Officers to be appointed. By *Rule 3(1) (a) (i),* upon receipt of the approval pursuant to the *Rule 2(4),* the Judicial Service Commission shall "*call for expression of interest by suitable candidates by way of public notice…"*

132. By *Rule 3(3) (4),* the Judicial Service Commission shall receive applications and/or nominations in the call of expression of interest and in request for nomination, and after the closing date, "*make a provisional shortlist on the merits consisting not less than twice the number of Judicial Officers intended to be appointed at the particular time and circulate the provisional shortlist together with request for comments on suitability or otherwise of any of the shortlisted candidates..*" As required by *Rule 3(5*), after expiration of the period slated for the comments, the Chairman of the Judicial Service Commission "*shall place the provisional shortlist before the Judicial Service Commission /Committee for approval and upon such approval, with or without modification, the provisional shortlist shall become the final list*". It is this *Final List* learned counsel for the 2nd & 3rd Defendants contended that the 1st Defendant could no longer review.

133. I agree to the extent that the 1st Defendant is bound to submit the shortlisted names at that stage to the 4th Defendant for final interview, but that is not the final selection, for the purposes of making a candidate the one Recommended for the Appointment by the 4th Defendant who is vested with such power, and not the 1st Defendant, who only performs intermediate role in the process. This *Final List* upon completion of the '*NJC Form A'* by every shortlisted candidate *(Rule4 (1)* and with medical report as well as security report by the Department of State Security *(Rule 4 (2) (d) (e),* is authenticated by the *Minutes of the Meeting of the Judicial Service Commission, duly adopted and signed by the Chairman and Secretary of the Commission (Rule 4(5). By Rule 5(1), "upon compliance with Rules 1-4 of these Rules, the Chairman of the Judicial Service Commission/Committee shall advise, or as the case may be, recommend to, the National Judicial Council by a Memorandum which shall conclude with a clear declaration that the NJC Guidelines and Procedural Rules have been complied with strictly and fully".*

134. After compliance with the *Rule 5,* the final stage of the competitive selection process is at the *National Judicial Council (NJC),* where the final interview would be conducted for the successful candidates contained in the *Final Shortlist* forwarded by the *Judicial Service Commission* to the *NJC*. After successful navigation of this penultimate stage in the process of appointment, successful Candidate(s) that emerged at the *NJC Interview would be Recommended to the Governor for the Appointment pursuant to the extant Constitution*, which in *S.271 (1) (2),* provides that: "*The Appointment of a person to the office of a Judge of the High Court of a State shall be made by the Governor of the State acting on the recommendation of the National Judicial Council*". This creates irreversible right in favour of the successful candidate(s) so recommended. In my considered view, it is therefore, at this stage that the Appointment becomes sacrosanct as laced with statutory flavour vesting irreversible right to the candidate who has become *Judicial Officer-Designate*, and must be *Sworn-In* by the Governor without more, as it has then become a statutory duty, admitting of no discretionary power to reject such NJC Recommended Candidate(s) or cancel the exercise. Thus, upon the *NJC Recommendation* in the judicial appointment process, an irreversible legal right accrues to successful Candidate(s) under the extant *Rules & Procedural Guidelines for Appointment of Judicial Officer of Superior Courts of Record in Nigeria*. I so hold.

135. As per the instant suit, I find from the record that at the stage the 2022 exercise was stalled at the NJC interview stage, as there was no evidence of any interview held at the NJC or any candidate emerged and recommended to the Governor for the appointment, thus, no such vested legal right has accrued to any of the candidates in the final list of the 1st Defendant submitted to the 4th Defendant, so as to challenge another repeat exercise. I so hold.

136. It is pertinent to note that, going by the outlined procedural steps/guidelines for judicial appointment, this stage of forwarding the memorandum containing the final shortlist of successful candidates to the National Judicial Council, pursuant to the *Rule 5(1) of the NJC Rules*, is the last stage of exercise of power by the Judicial Service Commission. Anything beyond that stage is no longer within the control of the Judicial Service Commission. As shown in the instant suit, the 1st Defendant acting within its powers concluded the extent of its powers during the 2022 exercise, and it is no longer under its control to revive and continue with the exercise laced with gross allegations of corruption.

137. Thus, on the contention by the 2nd & 3rd Defendants that the 2024 exercise was intended to foreclose their interest in the 2022 exercise, I find no convincing evidence laid on record, by the 2nd & 3rd Defendants, as to how the 2024 exercise has adversely affected the 2022 exercise, given that the 3rd Defendant also responded and submitted expression of interest in the 2024 exercise. More so, as judicial appointment exercise is not one-off, but regular and periodic, subject only to obtaining requisite approval. On that note, I take judicial notice of the fact that the controversy that surrounded the said '2022 exercise', apart from being enmeshed with unresolved litigations, got so intense, that the former Attorney General of Abia State, *Uche Ihediwa* was reportedly recently suspended from using his rank of *Senior Advocate of Nigeria (SAN)* on account of issues arising from allegations of corruption that marred the said 2022 exercise.

138. It is therefore, within the competence of the powers of the 1st Defendant to commence a fresh exercise which it has powers to so initiate to navigate from the previous exercise which had got stalled at the NJC due to the allegations of corruption and unresolved litigations around that exercise. I so hold. It is also imperative to note that the entire exercise of judicial appointment is gauged with integrity test of the candidate(s) and the process, given that *Rule 4(2)(c) of the NJC Rules* allows for petition or protest against shortlisted candidate (s), as *Rule 4 (4)(i)(a)* makes "*good character and reputation, diligence and hard work, honesty, integrity and sound knowledge of law and consistent adherence to professional ethical*" as core criteria/qualities constituting essential requirements for the selection of suitable candidates for the judicial office in any of the Superior Courts of Record in Nigeria. To that end, any proven incidence of corruption allegation and impropriety that taints the appointment process, particularly such agitation/allegation that enmeshed the process in unresolved litigation, as in the instant suit, can result to discarding of the said process at any of the competitive selection stages, and thus, could warrant commencement of a fresh exercise. I so hold.

139. In the circumstance of the discarding of the 2022 exercise, arising nagging question is-*Can the 2nd & 3rd Defendants and their colleagues involved in the 2022 exercise, and interested parties against the 2024 exercise, legitimately challenge the 1st Defendant's power by the said protest letter and threats issued against the 2024 exercise?* Also, *does it mean, given the posturing of the 2nd & 3rd Defendants, that unless the 2022 exercise is revived, there would be no more judicial appointment exercise for the Abia State Judiciary, even with depleted number of Judges arising from retirement, and the Government thereby hampered from performing such statutory duty, with attendant implications?*

140. There lies the worry of the Abia State Government as expressed by the Claimant, the Attorney General, prompting the filing of this suit for interpretation and application of the relevant laws in the circumstance. This is where this Court, the National Industrial Court of Nigeria, acting within its constitutional mandate as a *Policy Court of first instance on employment matters*, can judicially intervene to break forth the logjam, as it is of public interest that judicial appointment in Abia State is not kept in suspense *ad infinitum*, while other States in the country have been involved in producing Judges, who are also being eligible for elevation to the Court of Appeal, since the last exercise around 2020, over 4 years ago. Career choice of other aspirants cannot also be hanged and trapped in quagmire, and administration of justice hampered by the depletion of Judicial Officers in the Abia State Judiciary.

141. As a policy issue, this Court cannot close its judicious eyes to such anomalous awful development plaguing the judicial system in Abia State! As the Presiding Judge, I cannot abdicate this responsibility, contrary to the Oath of judicial office!!

142. In the circumstance, with the evidence laid by the Claimant before this Court buttressed in averments in the Affidavits in support of the Originating Summons and documentary evidence exhibited thereto, inclusive of the policy issues involved in the dispute, this suit succeeds. As the Claimant has made out a good case requiring judicial intervention to be entitled to the reliefs sought, I answer *Questions (a)-(b)* in the affirmative (Yes), in favour of the Claimant, and proceed to grant the *Claimant's Reliefs (a)-(d)* as prayed. Accordingly:
    1. It is hereby Declared, that having regard to the provisions of *Part II, Section 6(A) of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria*, the 1st Defendant has the power to call for a further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of Abia State Judiciary, the requisite approval for the 2024 exercise, having been obtained from the 4th Defendant, the National Judicial Council;

2. It is hereby Declared, that having regard to the provisions of *Part II, Section 6(A) of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as Amended), and Rule 3 of the 2014 Revised NJC Guidelines & Procedural Rule for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria*, the 2nd and 3rd Defendants do not have the power to interfere with the 1st Defendant's power to call for a further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, the requisite approval for the 2024 exercise, having been obtained from the 4th Defendant, the National Judicial Council;

4. AN ORDER is hereby granted Restraining the 2nd and 3rd Defendants, whether by themselves, agents, servants or privies, from further interfering with the 1st Defendant's power to call for further expression of interest and shortlist suitable candidates for recommendation to the 4th Defendant for appointment as Judges of the Abia State Judiciary, the requite approval for the 2024 exercise, having been obtained from the 4th Defendant, the National Judicial Council;

5. AN ORDER is hereby granted Directing the 1st Defendant to continue with the process of appointment of Judges of the Abia State Judiciary, the requisite approval for the 2024 exercise, having been obtained from the 4th Defendant, the National Judicial Council.

6. Judgment is entered accordingly. I make no Order as to Cost.

HON. JUSTICE N.C.S OGBUANYA
JUDGE
26/07/24