1. BASHORUN MAJEED BOSUN AJUWON
2. EVANGELIST WILLIAMS GBENJO OGUNRINDE
3. HON. OLUYINKA JESUTOYE
4. HON. HABIB ADEGOKE IBRAHIM
5. PRINCE SAMUEL MODEPOOLA EGUNJOBI
6. HON. AYOBAMI JOSEPH AKINPADE
7. HON. YOMI ADE ADEFUSI
8. HON. TAJUDEEN ADEBISI OLADEJI
(For themselves and on behalf of all elected Chairmen of all the Local Government Areas and Local Council Development Areas in Oyo State)
9. IDRIS OLUSESI
10. IDOWU ITUNU ADEWOYE
11. JUMOKE TAWAKAT FAKAYODE

V.

1. GOVERNOR OF OYO STATE
2. ATTORNEY GENERAL OF OYO STATE
3. COMMISSIONER FOR LOCAL GOVERNMENTS AND CHIEFTAINCY AFFAIRS, OYO STATE
4. ACCOUNTANT GENERAL OF OYO STATE
5. SPEAKER, OYO STATE HOUSE OF ASSEMBLY
6. OYO STATE HOUSE OF ASSEMBLY
7. OYO STATE INDEPENDENT ELECTORAL COMMISSION (OYSIEC)

SUPREME COURT OF NIGERIA

SC/CV/556/2020

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C. (Presided)

JOHN INYANG OKORO, J.S.C.

EJEMBI EKO, J.S.C. (Read the Leading Judgment)

IBRAHIM MOHAMMED MUSA SAULAWA, J.S.C.

ADAMU JAURO, J.S.C.

FRIDAY, 7TH MAY 2021

ACTION -Cause of action - Reasonable cause of action - Meaning of - How determined - Processes court will look at.

ACTION - Locus standi Constitutionality of a statute - Locus standi of every Nigerian to challenge.

ACTION - Locus standi - Rule of - Application of.

ACTION - Locus standi of plaintiff - Determination of - Relevant Considerations - What court considers.

ADMINISTRATIVE LAW - Judicial review of administrative actions - Requirements for - Applicant therefor - Need to have locus standi - Issues involved - Need to be real, present, and Imminent.

APPEAL - Preliminary objection to an appeal - Purpose of- When it should be raised - When it should not be filed - Where successful - Effect of.

APPEAL - Supreme Court - Powers of under Section 22, Supreme Court Act - Exercise of- Proper case for invocation of.

CASE LAW - Gov, Ekiti State v. Olubunmo (2017) 3 NWLR (Pt. 1551) 1 - What the Supreme Court decided therein.

CONSTITUTIONAL LAW Access to court - Constitutional guarantee of - Sections 6(6)(b) and 17(2) (e), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CONSTITUTIONAL LAW - Arms of government - Duties of to accord protect, preserve, and defend the Constitution.

CONSTITUTIONAL LAW- Constitution of the Federal Republic of Nigeria. 1999

(as amended) - Supremacy of- Law inconsistent therewith - How treated.

CONSTITUTIONAL LAW - Constitutional provisions - How interpreted.

CONSTITUTIONAL LAW- Democratic elections - Sacrosanctity of - Elected person

- Whether an employee of anybody except the electorate that voted him in.

CONSTITUTIONAL LAW - Judicial powers - Extent of- Section 6(6)(b), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CONSTITUTIONAL LAW - Local Government Law of Oyo State, 2001, (as amended) - Sections 11 and 21 thereof - Whether inconsistent with Section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) - Where so found by court - Effect.

CONSTITUTIONAL LAW - Local Government system - Democratically elected Local Government Councils - Existence and operation of - Constitutional guarantee of Section 7(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CONSTITUTIONAL LAW - Rule of law - Meaning of.

CONSTITUTIONAL LAW - Statute Constitutionality of - Locus standi of every Nigerian to challenge.

COURT- Access to court - Constitutional guarantee of - Sections 6(6)(b) and 17(2)(e), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

COURT - Court process - Impropriety of - Whether improper procedure can be used

to complain about.

COURT- Issues before the court - Whether party can approbate

and reprobate on the same issue.

COURT- Judicial powers - Extent of- Section 6(6)(b), Constitution of the Federal

Republic of Nigeria, 1999 (as amended)

COURT- Supreme Court - Powers of under section 22, Supreme Court Act - Exercise

of - Proper case for invocation of.

ELECTIONS - Democratic elections- Sacrosanctity of - Elected person- Whether an

employee of anybody except the electorate that voted him in.

GOVERNMENT - Arms of government - Duties of to protect, preserve, and defend

the Constitution.

INTERPRETATION OF STATUTES Constitutional provisions - How interpreted.

JUDICIAL PRECEDENT- Gov, Ekiti State v Olubunmo (2017) 3 NWLR (Pt. 1551)

1 - What the Supreme Court decided therein.

JUDICIAL REVIEW- Administrative actions - Judicial review of - Requirements therefor - Applicant therefor - Need to have locus standi - Issues involved - Need to be real, present, and Imminent.

JUSTICE - Rule of law - Meaning of.

LEGAL PRACTITIONER - Duties of legal practitioner - Duty on not to deal with the

court otherwise than candidly or fairly - Duty on not to promote a case which to his knowledge is false - Rule 32(1), (2)(a) & 3(j), Rules of Professional Conduct for Legal Practitioners, 2007.

LEGAL PRACTITIONER - Duties of legal practitioner - Duty on not to do any act

or conduct himself in any manner that may delay or adversely affect the administration of justice - Rule 30, Rules of Professional Conduct for Legal Practitioners, 2007.

LEGAL PRACTITIONER - Legal practitioner- Duty of to always speak the truth and

conduct his matter professionally.

LOCAL GOVERNMENT - Local Government system - Democratically elected Local

Government Councils - Existence and operation of - Constitutional guarantee of Section 7(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

LOCAL GOVERNMENT -Local Government system - Local Government Law of

Oyo State, 2001 (as amended) - Sections 11 and 21 thereof - Whether inconsistent with section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) - Where so found by court - Effect.

LOCUS STANDI - Constitutionality of a statute - Locus standi of every Nigerian to

challenge.

LOCUS STANDI - Rule of locus standi - Application of.

LOCUS STANDI - Locus standi of plaintiff - Determination of - Relevant considerations - What court considers.

MAXIMS - Ubi Jus ibi remedium - Application of.

PRACTICE AND PROCEDURE - Cause of action - Reasonable cause of action –

Meaning of How determined - Processes court will look at.

PRACTICE AND PROCEDURE - Court process - Improper procedure - Whether

can be used to complain about impropriety of a process.

PRACTICE AND PROCEDURE - Locus standi - Constitutionality of a statute – Locus standi of every Nigerian to challenge.

PRACTICE AND PROCEDURE - Locus standi - Rule of Application of.

PRACTICE AND PROCEDURE - Locus standi plaintiff - Determination of – Relevant considerations - what court considers.

PRACTICE AND PROCEDURE - Preliminary objection to an appeal - Purpose of

- When it should be raised - When it should not be filed - Where successful - Effect of.

PRACTICE AND PROCEDURE - Supreme Court - Power under Section 22, Supreme Court Act - Exercise of - Proper case for invocation of.

PRACTICE AND PROCEDURE- Issues before the court - Whether party can approbate and reprobate on the same issue.

STARE DECISIS - Gov, Ekiti State v Olubunmo (2017) 3 NWLR (Pt. 1551)1- What the Supreme Court decided therein.

STATUTE - Local Government Law of Oyo State 2001 (as amended) - Sections 11 and 21 thereof - Whether inconsistent with Section 7 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) - Where so found by court - Effect.

STATUTE - Section 22, Supreme Court Act - Powers of Supreme Court thereunder - Exercise of - Proper case for invocation of.

WORDS AND PHRASES - Cause of action - Reasonable cause of action - Meaning of.

WORDS AND PHRASES - Rule of law - Meaning of.

Issue:

Whether sections 11 and 21 of the Local Government Law of Oyo State, 2001 (as amended) were not inconsistent with the provisions of Section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Facts:

In the Local Government elections conducted on 12th March 2018 by the Oyo State Independent Electoral Commission (OYSIEC) (the 7th respondent), the appellants were elected for a definite term of 3 years after assuming the respective offices they were each elected into.

Ten (10) months into the terms of 3 years the appellants were to remain in office, however, the 1st respondent, purporting to act pursuant to sections 11

and 21 of the Oyo State Local Government Law 2001 (as amended), dissolved (in May 2019) the democratically elected Local Government Councils. The appellants were removed from their various offices of either the Chairman of the Local Government Council (LGC) or as Councilors in the LGCs.

In anticipation of the intent of the respondents to dissolve the duly elected LGCs, the appellants firstly challenged in the court of law the constitutionality of the powers vested in the 1st, 5th & 6th respondents by sections 11 & 12 of the Oyo State Local Government Law to dissolve a duly elected LGC and remove democratically elected Local Government Chairman and/or Councilors and replace them with hand-picked non-elected Transition/Caretaker Committees for being in violation of Section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Their challenge came by way of originating summons.

The trial court agreed with them that such power vested in the 1st, 5th & 6th respondents to dissolve duly elected LGC and remove democratically elected Chairmen and Councilors, and replace them with unelected handpicked Transition/Caretaker Committees were ultra vires and unconstitutional. The trial High Court granted several declaratory reliefs and issued injunctive orders in support of the declaratory reliefs in favour of the appellants.

On 29th May 2019, in contempt of the judgment and orders of the Oyo State High Court, the 1st respondent dissolved the elected LGCs in Oyo State. He then appointed unelected Care-
Taker/Transition Committees to run and manage the affairs of the Local Government Councils throughout the State. Thereafter, the respondents, after their contemptuous affront to the decision and orders of the Oyo State High Court, decided to appeal the judgment to the Court of Appeal.

On 15th July 2020, the Court of Appeal allowed the appeal, set aside the judgment and the orders made by the High Court, and consequentially struck out the suit for disclosing no reasonable cause of action.

The appellants were dissatisfied with the disclosing of the court of Appeal and they appealed against it to the Supreme Court.

The respondents, by way of motion on notice filed on 4th November 2020, raised notice of preliminary objection to the competence of the appeal.

In determining the appeal, the Supreme Court considered the provision of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides as follows:

> "The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, law which provides for the establishment, structure, composition, finance and function of such councils."

Held (*Unanimously allowing the appeal*)**:**

1. *On Constitutional guarantee of democratic Local Government system* -

A democratically elected Local Government Council does not exist at the pleasure, whims and caprice of either the Governor or the House of Assembly. The intendment of the Constitution is to vouchsafe the inviolability of the sacred mandate which the electorate, at that level, democratically donated to the Local Government Chairman and Councilors. The misconception by the State authorities that the Constitution does not intend to grant and guarantee autonomy to the Local Government is only a brain wave nurtured by sheer aggrandizement and megalomaniac instinct to conquer and make the Local Government mere parastatals of the State. That is the very mischief section 7(1) of the Constitution has set out to address, and it must be so read and construed purposefully. In the instant case, the Court of Appeal was wrong not to follow and be bound by the authoritative pronouncement of the Supreme Court in *Governor of Ekiti State v. Olubunmo* **(2017) 3 NWLR (Pt. 1551**) **1 on the core issue before it. That is, whether the Governor of Oyo State can dissolve democratically elected Local Government Councils and replace them with unelected Caretaker Committees; which question the Supreme Court had previously answered negatively, and firmly too.** [*Gov., Ekiti State v. Olubunmo* **(2017) 3 NWLR (Pt. 1551) 1 referred to.]** (*Pp. 35-536, paras. D-B)*

Per EKO, J.S.C. at pages 536-537, paras. B-A:

> **"I will not conclude this appeal without commenting on the disturbing ugly face of impunity displayed by the Governor of Oyo State, 1st respondent herein, on 29th May, 2019, tantamounting to executive lawlessness, outrightly and vehemently condemned by this Court in** *The Military Governor of Lagos State v. Ojukwu (supra)***. This court has always insisted that the Nigerian Constitution is founded on the rule of law; the primary meaning of which is that everything must be done according to law.**
>
> **The trial court on 6" May, 2019 issued its judgment in the suit of the appellants, as claimants; and granted to them the declaratory reliefs and the injunctive orders sought in their originating summons. In exercise of their inalienable constitutional right of appeal, assured also by sections 241 and 242 of the Constitution, the defendants, the respondents herein which included the Governor of Oyo State, filed their joint notice of appeal on 21st June, 2019 to express**

their dissatisfaction with the decision of the trial court to the Court of Appeal. But before then, particularly on 29th May, 2019, the Governor of Oyo State, herein the 1st respondent, had issued imperial directives dissolving all democratically elected Local Government Councils in spite of the subsisting judgment of Oyo State High Court in the suit No. 1/347/2017. I repeat, the Government state was the 1st defendant in that suit. Series of applications were filed by the judgment creditors, the present appellants, to restrain, particularly the 1st respondent (the Governor), from embarking on the self-help designed to contemptuously frustrate the judgment of the High Court. He was not dissuaded. He proceeded in his imperial omnipotency to continue in his untrammeled, albeit invidious contemptuous, disregard of subsisting Judgment of the High Court. It is unthinkable that a democratically elected Governor would embark on these unwholesome undemocratic tendencies. These tendencies no doubt endanger democracy and the rule of law.

It is almost becoming universal phenomena that the democratically elected Governors have constituted themselves a specie most dangerous to democracy in this country. They disdainfully disregard and disrupt democratically elected Local Government Councils and appoint their lackeys as caretaker committees to run affairs of the Local Governments."

2. *On Constitutional guarantee of democratic Local Government system -*

The existence and administration of Local Government Councils in Nigeria are guaranteed by section 7 of the Constitution and their functions enumerated in the Fourth Schedule thereto and such other functions as may be conferred on the council by the House of Assembly of a State. Any law therefore which seeks to limit the full exercise of powers provided under section 7 of the 1999 Constitution is in contravention of the Constitution and is to the extent of such contravention, void. In the instant appeal, Sections 11 and 21 of the Local Government Council Law of Oyo State purported to empower both the Oyo State House of Assembly and the Executive Governor of Oyo State to truncate the tenure of democratically elected Local Government officials for no reason whatsoever. They were inconsistent with the

provision of section 7(1) of the Constitution and therefore void to the extent of such inconsistency. Consequently, the act or contemplated act of the Governor, relying on these void provisions to dissolve the democratically elected Local Government Councils before the expiration of their tenure was a nullity. The Supreme Court could not allow it to stand. (*P 542, paras. C-G*)

3. *On Sacrosanctity of democratic elections and whether elected person is an employee of anybody except the electorate that voted him in -*
An elected person is not an employee of anybody except the electorate that voted him in. It is only the electorate that can fire him. Democratic elections should always be sacrosanct in this country, like in any other country, for democracy to thrive. Local Government Chairman and Councilors, being persons duly elected by the people, cannot just be removed and their councils dissolved whimsically and arbitrarily by any other elected persons in clear abuse of their office and powers. It is not right in law and under the Constitution to do that. [*Abubakar v. A-G., Fed***. (2007) 3 NWLR (Pt. 1022) 601 referred to.]** (*P. 537, paras. A-D*)

4. *On What the Supreme Court decided in Gov, Ekiti State v. Olubunmo (2017) 3 NWLR (Pt. 1551) 1 -*
It was decided by the Supreme Court in *Gov., Ekiti State v Olubunmo* **(2017) 3 NWLR (Pt. 1551) that section 23B of the Local Government Administration Law of Ekiti State (similar in all intents and purpose to Sections 11 and 21 of the Oyo State Local Government Law) was not intended to ensure the existence of a system of democratically elected Local Government Council, but merely to snap their continued existence by their substitution with caretaker committee; that the provision was enacted in clear breach of section 7(1) of the Constitution, and further that to the extent it (section 23B) could not co-habit with section 7(1) and 1(3) of the Constitution read together.** (*P. 535, paras. A-C*)

5. *On Supremacy of Constitution of the Federal Republic of Nigeria and treatment of law inconsistent therewith -*
By virtue of section l of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Constitution proclaims its supremacy to any other law, including the Oyo State Local Government Law, and declares poignantly, in sub-section (3) thereof that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall

to the extent of the inconsistency be void. In the instant case, the present appellants were duly elected as Local Government Chairmen and Councilors in their respective Local Government Areas. They were incumbents in those their respective offices. The counter-affidavit did not deny these facts. They had the right to remain in and perform their respective offices for the three-year tenure the electorates gave them as part of their mandate. They had alleged that unless sections 11 and 21 of the Local Government Law were nullified, as being *ultra vires* **section 7(1) of the Constitution and therefore unconstitutional, the defendants might invoke them to arbitrarily truncate their democratic mandate. That was the question of the rule of law they had drawn the attention of the court of law to, and were seeking the court to stop the alleged unlawful conduct of the respondents. The existence of sections 11 and 21 of the Oyo State Local Government Law was as real and factual, as the existence of section 7 of the Constitution (the grundnorm). Therefore, the Court of Appeal had clearly got it wrong there and consequently came to the wrong conclusion that the appellants' claim in the originating summons was premised on mere speculation, conjecture, and suspicion thereby not disclosing any reasonable cause of action.** (*Pp. 528, paras. B-F*)

Per EKO, J.S.C. at pages 527-528, paras. D-A:

> **"The defendants had prefaced their averments with the acknowledgement that this court, in** *Governor of Ekiti State v Olubunmo & Ors. (supra),* **had struck down provisions of the Local Government Administration Law of Ekiti State similar to sections 11 and 21 of the Oyo State Local Government Administration Law.**
>
> **In its judgment at pages 562 - 563, the lower court seemed to acknowledge "that it may well be so, - that (the) claimants had approached the trial court for the determination of the constitutionality and validity of sections 11 and 21 of the Local Government Law of Oyo State". It nonetheless insisted that "before the court could proceed on the determination of the question(s) presented before it by the (claimants), there must be facts which will act as trigger for the (claimants) to exercise their right of action". It insisted, even in spite of the claimants contending, and the defendants seemingly conceding, that sections 11 and 21 of the Local Government Law, as enacted by the House of Assembly of Oyo State were** *ultra vires* **section 7 of the Constitution, that there was not enough cause of action shown by them to clothe the claimants with the right to challenge or question the validity and constitutionality of the provision. This coming notwithstanding the defendants fence-sitting admission that similar provisions in the Ekiti State Local Government**

Administration Law were struck down by this court for being unconstitutional and invalid. The lower court, and in my view, had clearly got it wrong here and consequently came to the wrong conclusion, that the claimants "claim in the originating summons was premised on mere speculation, conjecture and suspicion thereby not disclosing any reasonable cause of action".

6. *On Supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and treatment of law inconsistent therewith -*
The Constitution of the Federal Republic of Nigeria, 1999 (as amended), is the grundnorm. It is the fountain from which all other laws derive their legitimacy. It admits of no rivals, as shown in section 1(1) and (3) thereof. In the instant case, a determination by the court as to whether sections 11 and 21 of the Local Government Law of Oyo State were in violation of section 7 of the Constitution, was a live issue and certainly constituted reasonable cause of action. The mere existence of those provísions and their potential invocation by any governor at any time, to truncate their tenure as democratically elected chairmen and councilors, constituted a cause of action. Their tenure of office was a right they could protect. Therefore, sections 11 and 21 of the Local Government Law of Oyo State, 2001 (as amended), were in clear violation of section 7 of the 1999 Constitution (as amended). Pursuant to section 1(3) of the Constitution, the said provisions were null and void to the extent of their inconsistency with Section 7 thereof. (*P 541, paras. B-E*)

7. *On Supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and treatment of law inconsistent therewith -*
The supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is provided in section 1(1) and (3) thereof to the effect that if any other law is inconsistent with the provisions of the Constitution, such law shall to the extent of the inconsistency be void. [*Akpamgbo-Okadigbo v Chidi* **(No.1) (2015) 10 NWLR (Pt. 1466) 171;** *Coca-Cola* (*Nig.*) *Ltd. v. Akinsanya* **(2017) 17 NWLR (PL 1593) 74;** *Kayili v. Yilbuk* **(2015) 7 NWLR (Pt. 1457) 26 referred to.]** (*P 542, paras. A-C*)

8. *On Supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and treatment of law inconsistent therewith -*
The Constitution is the organic law of the land and by operation of section 1(3) of the 1999 Constitution, any law that constitutes an affront to it is dead on arrival. In the instant case, sections 11 and 21 of the Local Government Law of Oyo State were *ultra vires,* **illegal, unconstitutional, null and void**. **[***Gov, Ekiti State v. Olubunmo* **(2017)**

13 NWLR (Pt. 1551) 1; *Eze v, Gov, Abia State* **(2014) 14 NWLR (Pt. 1426) 192 referred to.]**(*P 547, paras. F-H*)

9. *On Duties of all arms of government to protect, preserve, and defend the*
Constitution -
Every arm of Government, be it the Legislature, the Executive, or the Judiciary, has the onerous duty to accord unreserved deference to, comply with, protect, preserve, and defend the grundnorm - the Constitution. To act contrary to the provisions of the Constitution will not, if properly brought to the notice of the court, be condoned but such an act will invite the proper sanctions and reliefs. In the instant case, the controversial sections 11 and 21 of the Oyo State Local Government Law were purportedly designed to sabotage and truncate the democratically elected Local Government system in the state. Undoubtedly, sections 11 and 21 of the Oyo State Local Government Law were violently in conflict with the fundamental provisions of sections 7(1) and 1(3) of the 1999 Constitution. [*Igbe v. Gov., Bendel State*** **(1983) 1 SCNLR 73;** *Gov., Ekiti State v. Olubunmo* **(2017) 3 NWLR (Pt. 1551) 1 referred to.]** (*P 546, paras, A-F*)
Per JAURO, J.S.C. at page 547, paras, A-F:

> **"The appellants by their originating summons and accompanying affidavit challenged the provisions of sections 11 and 21 of the Amended Local Government Law of Oyo State in the light of section 7 (1) of the 1999 Constitution (as amended) and the planned removal from their positions as elected Chairmen and Councilors of Local Government Councils and Local Council Development Areas in Oyo State by the 1st and 6th respondents.**
>
> **The lower court held that the case of the appellants was futuristic and speculative and thus disclosed no reasonable cause of action. I humbly disagree /with their lordships.**
>
> **The appellants were not only challenging the legality or validity of the provisions of sections 11 and 21 of the Amended Local Government Law of Oyo State, but the mere enactment of the said provisions of the Local Government Law constituted an imminent threat to their tenure as guaranteed by section 7 (1) of the Constitution. Hence, I do not see how such an action can be said to be speculative or futuristic. What is more? The respondents averred in their counter-affidavit that they are aware that this court had in a recent decision struck down similar provisions to those being challenged as unconstitutional, ostensibly admitting that the sections 11 and 21 of the Amended Local Government Law are unconstitutional."**

10. *On Constitutional guarantee of access to court for determination of questions as to civil rights and obligations of any person -*
The courts, under sections 6(6)(b) and 17(2)(e) of the Constitution, have been set up to grant easy accessibility thereto to entertain all questions between persons and Government or authority for the determination of any question as to the civil rights and obligations of any person. (*P 528, paras F-G*)

11. *On Constitutional guarantee of access to court and application of rule of locus standi -*
It is important to always bear in mind that ready and easy access to the court for the determination of his civil rights and obligations by a genuine claimant is one of the attributes of a civilized legal system. For a genuine claimant, not a busy body, easy accessibility to the court for the determination of his civil rights and obligations is a basic constitutional right, by virtue of sections 6(6)(b) and 17(2)(c) of the Constitution. Thus, limiting the opportunity for citizens to seek redress in courts of law by rigid adherence to the principle of *locus standi* **(which is whether a person has the standing to sue and seek redress in court) could be dangerous. In the instant case, at the time the appellants took out their originating summons sections 11 and 21 of the Local Government Law, in view of section 7(1) of the Constitution, posed a real, imminent and actual threat to their tenure as elected Chairmen and Councilors. They were genuine claimants seeking an answer as to whether sections 11 and 21 of the Local Government Law were/are inconsistent with the Constitution. The mere fact that they apparently sought to know and/or insist that they be governed by laws validly enacted in accordance with the Constitution made them genuine claimants. The appellants had raised the question: whether the Governor of Oyo State and the House of Assembly of Oyo State, respectively the 1st and 6th defendants, could, with impunity, breach the constitution of the Federal Republic of Nigeria and/or whether by outright outlawry they earned a right not to submit themselves to the rule of law? In the instant case, the suit challenging the near absolute discretion, in the toga of arbitrary powers, given to the Governor and the House of assembly by sections 11 and 21 of the Local Government elections, which provisions vesting these powers were said to be** *ultra vires* **and inconsistence with Section 7(1) of the Constitution could not be said to be speculative, as the Court of Appeal erroneously held. Accordingly, the decision or order of the Court of Appeal striking out the suit and consequentially setting aside the decision and orders of the High Court of Oyo State (in the Suit No. 1/347/2019, delivered on 6th May, 2019) made in favour of the claimants for, allegedly, not disclosing any reasonable cause of action/or and sufficient interest for approaching the trial court, was accordingly set aside.**

[*Fawehinmi v. Babangida* **(2003) 3 NWLR (Pt. 808) 604;** *Ladejobi v. Oguntayo* **(2004) 18 NWLR (Pt. 904) 149 referred to.]** (*Pp. 531-532, paras. E-D; H; 533 paras. A-B*)

12. *On Extent of Judicial powers-*
By virtue of section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the judicial powers of the court extends to all matters between persons, or between government and authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. The claimants, in the instant case, derived their mandate from the electorates (and not the defendants) to manage the affairs of their respective Local Government Councils for 3 years on behalf of the people who elected them. Sections 11 and 21 of the Local Government law, which they alleged were inconsistent with the section 7(1) of the Constitution, posed and continue to pose real, imminent and ominous threat to the security of their tenure. Sections 11 and 21 of the Law, unless lawfully quashed, remain a perpetual threat hanging over their heads like the Sword of Damocles - thus subjecting them to the whims and caprices of the Government and House of Assembly. The dangers, if not hazard, posed by section 11 and 21 of the Local Government Law to the system of democratically elected Local Government Councils was real and imminent. It was not speculative, as the Court of Appeal erroneously held to deny the claimants access to court.
(*P. 530, paras. C-G*)

13. *On Need for applicant for judicial review of administrative actions to have locus standi -*
The general qualification for judicial review of the administrative actions is that the claimant or the applicant must have the standing or *locus standi* **to challenge the administrative action. He must have an interest cognizable in that he has been sufficiently affected by the administrative action; and for the case to be "ripe" for adjudication or judicial consideration, the issues involved must be real, present and imminent; and not merely abstract or hypothetical. In the instant case, the enactment of sections 11 and 21 of the Local Government Law by the House of Assembly (6th respondent) empowering either the Governor (1st respondent) or the House of Assembly to truncate the tenure of democratically elected Local Government Councils, and in their place to appoint unelected Caretaker Committees, posed real threat to those elected Local Government Chairmen and Councilors. The issue viewed particularly vis-a-vis section 7(1) of the Constitution that guarantees**

the system of democratically elected Local Government Councils was real and live. It was neither hypothetical nor academic.
(*Pp. 528-529, paras. G-B*)

14. *On Application of locus standi -*
Where a party has *locus standi* **to request adjudication he is said to have the right, in law, to seek the adjudication upon a legal grievance or cause of action. The cause of action discloses the facts from which it could be ascertained whether there is an infringement or violation of the civil rights or obligations of the claimant which, if established before the court, entitles him to the relief or remedy sought. [***Adesanya v. President,* **F.R.N. (1981) 2 NCLR 358;** *Fawehinmi v. Akilu* **(1987) 4 NWLR (Pt. 67) 797;** *Oloriede v. Oyebi* **(1984) 1 SCNLR 390;** *Thomas v. Olufosoye* **(1986) 1 NWLR (Pt. 18) 669 referred to.]** (*P. 529, paras. B-D*)

15. *On Locus standi of every Nigerian to challenge constitutionality of a statute -*
Since every Nigerian has a duty to ensure that we are governed by laws validly enacted, in accordance with the Constitution; a citizen who challenges the constitutionality of a statute, allegedly enacted in a manner inconsistent with the Constitution, has *locus standi* **to raise the issue: his cause of action being the alleged unconstitutionality of such statute. In the instant case, the alleged unconstitutionality of a provision(s) of a statute gave the citizens the right to direct and easy accessibility to the court to be heard by the Judge on the issue.**
[*Fawehinmi v. Babangida* **(2003) 3 NWLR (Pt. 808) 604;** *Center for Oil Pollution Watch v. N.N.P.C.* **(2019) 5 NWLR (Pt. 1666) 518 referred to.] (***P. 530, paras. A-C***)**

16. *On Relevant considerations for determining whether an applicant for judicial review has locus standi -*
A court, when it has been called upon to decide whether a claimant or an applicant for judicial review has sufficient interest in the matter to which the suit is related, should take into consideration, in exercise of its judicial discretion, the nature of the litigant, the extent of his interest in the issues raised, the remedy he seeks to achieve and the nature of the reliefs sought. In the instant case, the existence in the statute books, or *corpus juris***, of Oyo State of the provisions in Sections 11 and 21 of the Local Government Law itself posed real, actual and legal threat to the security of tenure, and indeed the existence, of a system of democratically elected**
Local Government Councils. The defendants, in their counter-affidavit, acknowledged that the Supreme Court had struck down a similar provision in Ekiti State Local Government Administration Law in the *Gov, Ekiti State v. Olubunmo* **(2017) 3 NWLR (Pt. 1551) 1**

case. The provisions were said to be inconsistent with Section 7 of the Constitution and invalid - a situation analogous to the situation in *Fawehinmi v. Babangida* **(2003) 3 NWLR (Pt. 808) 604. The Court of Appeal, in the circumstances, should have been more liberal than the stance it took. (***Pp. 530-531, paras. H-D***)**

17. *On Meaning of "rule of law" -*
The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame-work of recognized rules and principles which restrict discretionary power as opposed to the uncertain and crooked cord of discretion. Rule of law means that disputes as to the legality of acts of government are to be decided by Judges who are independent of the executive. [*Mil. Gov, Lagos State v. Ojukwu* **(1986) 1 NWLR (Pt. 18) 621 referred to.]**
(*P 532, paras. E-G***)**

18. *On Interpretation of constitutional provisions –*
The Constitution and its provisions are to be read and construed broadly and liberally to promote their purpose. In the instant case, the Court of Appeal was wrong not to follow and be bound by the authoritative pronouncements of the Supreme Court in *Governor of Ekiti State v. Olubunmo* **(2017) 3 NWLR (Pt. 1551) 1 on the core issue before it. That is, whether the Governor of Oyo State can dissolve democratically elected Local Government Councils and replace them with unelected Caretaker committees; which question the Supreme Court had previously answered negatively, and firmly too. [***Eze v. Gov., Abia State* **(2014) 14 NWLR (Pt. 1462) 192;** *A.-G., Plateau State v. Goyol* **(2007) 16 NWLR (Pt. 1059) 94;** *A.-G., Benue State v. Umar* **(2008) 1 NWLR (Pt. 1068) 311;** *Rabiu v. State* **(1981) 2 NCLR 293;** *Onyema v. Oputa* **(1987) 3 NWLR (Pt. 60) 259 referred to.] (***Pp. 534-535, paras. G-D; F-H: 536 paras. A-B***)**

19. *On Meaning of "reasonable cause of action" -*
A reasonable cause of action is a cause of action with some chance of success when only the allegations in the pleading are considered. So long as the statement of claim or the particulars disclose some questions fit to be decided by a Judge or Jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. Where no question as to the civil rights and obligations of the plaintiff is raised in the statement of claim for determination, the statement of claim will be struck out and the action dismissed. [*Thomas v. Olufosoye* **(1986) 1 NWLR (Pt. 18) 669 referred to.] (***Pp. 538- 539, paras. G-B***)**

20. *On Meaning of "cause of action" -*
A cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to be proved. [*Fadare v. A.-G., Oyo State* **(1982) 1 All NLR (Pt. 1) 4;** *Rinco Const. Co. Ltd v. Veepee Industries Ltd.* **(2005) 9 NWLR (Pt. 929) 85;** *Thomas v. Olufosoye*
(1986) 1 NWLR (Pt. 18) 669 referred to.] (*P 539, paras. B-D***)**

21. *On what court considers to discover whether suit discloses reasonable cause of action -*
In determining whether a suit discloses a reasonable cause of action, the court must have recourse to the originating processes alone, i.e. the writ of summons and statement of claim or the originating summons and supporting affidavit. What the originating process must show is that there is a question fit to be decided by the court and that the applicants have a legal right to be protected. In the instant case, section 11 of the Local Government Law of Oyo State empowered the 1st respondent to set up a 7-member transitional committee, one of whom shall be the chairman to run the affairs of the Local Government Council where its tenure has expired and no election has been held to reconstitute it or where it has become "impractical to immediately conduct elections" to fill the vacancies thereby created. Section 21 further empowered the 1st respondent to suspend or remove from office, any democratically elected chairman or vice chairman. The appellants were democratically elected chairmen and councilors and represented all other democratically elected chairmen and councilors of the Local Government Areas and Local Government Development Areas of Oyo State, who had been sworn into office and, at the time of the suit, were already discharging the functions of their office. By their averments in the affidavit in support of their amended originating summons, there was an imminent threat of the dissolution of the Local Government Councils and the imposition of a hand-picked transition committee to run the affairs of the council for an unspecified period. It was the contention of the respondents that the allegation was speculative and unfounded and therefore could not find a cause of action. The Court of Appeal wrongly agreed with them. In the circumstances of this case, the mere existence of sections 11 and 21 of the Local Government Law of Oyo State as amended, was like the Sword of Damocles hanging over the appellants' heads, waiting to be wielded at the whims and caprices of the 1st respondent. A determination by the court as to whether sections 11 and 21 of the Local Government Law of Oyo State were in violation of section 7 of the Constitution was a live issue and certainly constituted a reasonable cause of action. The mere existence of those provisions

and their potential invocation by any governor at any time, to truncate their tenure as democratically elected chairmen and councilors, constituted a cause of action. Their tenure of office was a right they could protect. (*Pp. 540, paras. A-H: 541, paras. C-D***)**

22. *On Duties of legal practitioner* -

A counsel, as an officer of the court, is enjoined by Rule 30 of the Rules of Professional Conduct for Legal Practitioners, 2007, not to do any act or conduct himself in any manner that may delay or adversely affect the administration of justice. A counsel, when he appears in court in a matter in his professional capacity, shall not deal with the court otherwise than candidly or fairly. In presenting a matter to the court in that capacity, he shall disclose any legal authority in the jurisdiction known to him to be directly adverse to the position of his client. In that capacity, also, counsel before the court in a matter, shall not promote a case which to his knowledge is false by virtue of Rule 32(1), 2) (a) & 3(j) of the Rules of Professional Conduct for Legal Practitioners, 2007. In the instant case, the respondents counseled by their counsel, had in their counter-affidavit averred that they knew "as of fact that the Local Government Law of Oyo State empowers the (Governor) to dissolve the executive of the Local Government Councils" and that they know, also as of fact, that "the Supreme Court has in its recent decision against the Government of Ekiti State struck down a similar provision as the ones being challenged in this suit as unconstitutional".

The respondents' counsel (particularly at the Court of Appeal and at the Supreme Court), however, persisted in spite of the admissions in their counter- affidavit above referred. By so doing they, as officers of the court, enjoined by Rule 30 of the Rules of Professional Conduct for Legal Practitioners, 2007, not to do any act or conduct himself in any manner that may delay or adversely affect the administration of justice, had buckled under. (*Pp. 533-534, paras. H-E***)**

Per EKO, J.S.C. at pages 533-534, paras. C-C:

> **"It appears, from page 564 of the records, that the only distinction the lower court found between the instant case and the Governor of** *Ekiti State v. Olubunmo & Ors. (supra)* **is the fact that; while in the Olubunmo case "the Governor of Ekiti State actually dissolved the Local Government Councils and removed the Chairmen from, there is no such claim in this case", and that "the claim here is that (Governor) planned to dissolve the councils and remove the (claimant) from office" and further that "there is no fact pleaded in the affidavit in support of the originating summons that the (Governor) planned to dissolve the councils". It is on these grounds that**

the lower court found that the suit was founded on speculation and mere conjecture. The respondents, capitalising on that finding, submitted "that the lower court rightly distinguished the fact of the case in *Gov. Ekiti State v. Olubunmo* **from the fact of this case herein which is based a speculative apprehension" that the claimants will be removed from their respective offices by the dissolution of the Local Government Councils "without any verifiable facts as to the positive acts from the (defendants) threaten their offices". I had earlier in this judgment opined that the mere existence in the statute books of Oyo State of the provisions of sections 11 and 21 of the Local Government Law, enacted in conflict, or inconsistent, with Section 7 of the Constitution, is like the Sword of Damocles hanging over the head of the claimants, and thus constituting or posing a real and imminent threat or danger to the Security of the tenure they enjoyed by the fact of the mandate they, each, received from the electorates in consequence of the democratic elections.**

The respondents' counsel seemed to have spinelessly shifted their position. Their clients, the defendants counseled by them, had in their counter-affidavit averred that they knew "as of fact that the Local Government Law of Oyo State empowers the (Governor) to dissolve the executive of the Local Government Councils" and that they know, also as of fact, that "the Supreme Court has in its recent decision against the Government of Ekiti State struck down a similar provision as the ones being challenged in this suit as unconstitutional". From this point thenceforth, the honourable thing the defence counsel had to do was to sum up his professional courage and submit to judgment, the issues in *Governor of Ekiti State v. Ohubunmo (supra)* **and the instant case being substantially the same, on the basis of** *stare decisis* **in the principle of judicial precedence. The defence counsel (particularly at the lower court and here), however, persisted in spite of the admissions in their counter-affidavit above referred. By so doing they, as officers of the court, enjoined by Rule 30 of the Rules of Professional Conduct for Legal Practitioners, 2007, "not to do any act or conduct himself in any manner that may - delay or adversely affect the administration of justice, had buckled under."**

23. *On Duty of legal practitioner to always speak the truth and conduct his matter professionally -*

No Matter how powerful a client is or viable the brief, a counsel should always be worth his professional honour and pride to speak the truth and conduct the matter professionally. (*P. 534, paras. F-G***)**

24. *On Whether party can approbate and reprobate on same issue -*
Consistency is the rule of the game. A party is not allowed to approbate and reprobate on one issue. [*Compt.-Gen., Customs v. Gusau* **(2017) 18 NWLR (Pt. 1598) 353 referred to.] (***P. 534, para. F***)**

25. *On Proper case for invocation of section 22 of the Supreme Court Act -*
Per EKO, J.S.C. at pages 537-538, paras. D-A:

> **"This is a proper case for invocation of section 22 of the Supreme Court Act, 2004. The claimants/ appellants were elected and were to hold their respective offices for 3 years commencing from 12th May, 2018 - the tenure which has since elapsed. Their tenure was summarily, albeit illegally and unconstitutionally, truncated on 29th May, 2019 upon the Governor's directive. They had, each, at least 23 months to run out their term of 3 years. Since they can no longer be reinstated to complete their respective terms; the appellants, on the basis of** *ubi jus ibi remedium* **cannot go without any remedy. On the authority of** *A.-G., Benue State v. Umar* **SC.199/2007 of 15th April, 2008, reported in (2008) 1 NWLR (Pt. 1068) 311;** *Gov of Ekiti State v Olubunmo & Ors. (supra)* **together with section 22 of the Supreme Court Act, it is hereby ordered that the claimants/appellant be each paid the salaries and allowances they were each entitled to be paid for the balance of the period from 29th May 2019 ending on 11th May, 2021 when the respective tenures they were elected for would end. The 1st defendant/respondent, Government of Oyo state, shall forthwith pay the said salaries and allowances of the claimants as ordered. The Attorney - General of Oyo State, the 2nd, respondent herein (being also an authority or person charged mandatorily or obligated by section 287 of the Constitution to enforce decisions and orders of courts), shall cause to be filed, on or before 7th August, 2021 an affidavit (under the hand of the incumbent of that office) attesting to the payment of the salaries and allowances hereby ordered to be paid to the claimants/appellants in compliance with this order(s)."**

26. *On Purpose of preliminary objection to an appeal and when it should not be filed -*
A Preliminary objection is only raised to the hearing of an appeal, and not to a few grounds of appeal. The purport of preliminary objection is the termination or truncation of an appeal *in limine***. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there**

are other grounds to sustain the appeal; such a purported preliminary objection is, therefore, not capable of truncating the hearing of the appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal. In the instant case, the 1st - 6th respondents' preliminary objection challenged the competence of some specific grounds of appeal: namely: grounds 2, 3, 4 and 5; and only particular (II) of ground 7 of the appellants' 7 grounds of appeal. The purported preliminary objection did not challenge the competence of grounds 1 & 6 and ground 7 (except its particular (ii). The purported preliminary objection, being incompetent, was discountenanced. [*Adejumo v. Olawaiye*** **(2014) 12 NWLR Pt. 1421) 252 referred to.]** *(Pp. 518-519, paras. B-B)*

27. *On Purpose of preliminary objection to an appeal and when it should not be filed -*
The essence of preliminary objective is to challenge the competence of an appeal in its entirety. Thus, once a preliminary objection is upheld, the appeal is liable to be truncated and struck out *in limine***. Contrariwise, however, once there are other grounds that can conveniently sustain the appeal, a preliminary objection ought not to be filed. Instead, a notice of motion seeking to strike out the apparently defective grounds need to be filed. In the instant case, the pith of the 1st - 6th respondents' grouse vide the preliminary objection in question was strictly in regards to only grounds 2, 3, 4, 5 and 7 of the appellants' grounds of appeal, and curiously enough, grounds 1st - 6th of the notice of appeal were not objected to. In the circumstance, the 1st - 6th respondents' preliminary objection was adjudged to be grossly incompetent and same was summarily struck out. [***S. P. D. C. v. Amadi*** **(2011) 14 NWLR (Pt. 1266) 157;** ***Dada v. Dosunmu*** **(2006) 18 NWLR (Pt. 1010) 134 referred to.] (***Pp. 544-545, paras. F-E***)**

28. *On Whether an improper procedure can be used to complain about impropriety of a process -*
Since the Supreme Court is a court of justice as well as law, a respondent cannot by improper procedure complain about the impropriety of an appellant's process. After all, he who comes to justice must come with clean hands. A competent preliminary objection is the one raised in accordance with the due process of law - Order 2 rule 9(1) of the Rules of the Supreme Court in the instant case. The purported preliminary objection being incompetent, was discountenanced.
(P 519, paras. A-B)

Nigerian Cases Referred to in the Judgment:

A-G., Benue State v. Umar (2008) 1 NWLR *(Pt. 1068) 311*
A-G. Plateau State v. Goyol (2007) 16 NWLR *(P: 1059) 94*
Abubakar v. A.-G, Fed. (2007) 3 NWLR *(Pt. 1022) 601*
Adejumo v. Olawaiye (2014) 12 NWLR *(Pt. 1421) 252*
Adesanya v. President, FRN (1981) 2 NCLR *358*
Akpamgbo-Okadigbo v. Chidi (No. 1) (2015) 10 NWLR *(1466) 171*
Centre for Oil Pollution Watch v. N.N.P.C. (2019) 5 NWLR *(Pt. 1666) 518*
Coca-Cola (Nig) Ltd. v. Akinsanya (2017) 17 NWLR *(Pt. 1593) 74*
Compt.-Gen., Custom v. Gusau (2017) 18 NWLR *(Pt. 1598) 353*
Dada v. Dosunmu (2006) 18 NWLR *(Pt. 1010) 134*
Eze v. Gov, Abia State (2014) 14 NWLR *(Pt. 1462) 192*
Fadare v. A.-G., Oyo State (1982) 4 SC *1*
Fawehinmi v. Akilu (1987) 4 NWLR *(Pt. 67) 797*
Fawehinmi v. Babangida (2003) 3 NWLR *(Pt. 808) 604*
Gov., Ekiti State v. Olubunmo (2017) 3 NWLR *(Pt. 1551)*
Igbe v. Gov, Bendel State (1983) SCNLR *73*
Kayili v. Yilbuk (2015) 7 NWLR *(Pt. 1457) 26*
Ladejobi v. Oguntayo (2004) 18 NWLR *(Pt. 904) 149*
Mil. Gov, Lagos State v. Ojukwu (1986) 1 NWLR *(Pt. 18) 621*
Oloriede v. Oyebi (1984) 1 SCNLR *390*
Onyema v. Oputa (1987) 3 NWLR *(Pt. 60) 259*
Rabiu v. State (1981) 2 NCLR *293*
Rinco Const. Co. Ltd. v. Veepee Industries Ltd. (2005) 9 NWLR *(Pt. 929) 85*
S.P.D.C. Amadi (2011) 14 NWLR *(Pt. 1266) 157*
Thomas v. Olufosoye (1986) 1 NWLR *(Pt. 18) 669*

Foreign Cases Referred to in the Judgment:

Inland Revenue Commissioners v. National Federation of Self-Employed and Small Scale Businesses Ltd. (1982) AC *617* (HL) *617*
R. v. Inspectorate of Pollution Exp. P. Greenpeace Ltd. (No.2) (1994) 4 All ER *329*

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ss. 4, 6(6)(b), 7(1)1(3), 17(2)(e), 242 and 244
Local Government Administration Laws of Ekiti State, S. 23B
Local Government Law of Oyo State, 2001 (as amended), Ss. 11, 12, 21
Rules of Professional Conduct for Legal Practitioners, 2007, Rr. 30, 32(1), (2)(a) & 3(j)
Supreme Court Act, 2004, S. 22
Tribunals of Inquiry Act, 1966, S. 1

Nigerian Rules of Court Referred to in the Judgment:

Supreme Court Rules, O. 2 r. 9(1)

Book Referred to in the Judgment:

Iluyomade & Eka: Cases and Materials on Administrative Law in Nigeria, 2nd Ed.,1992, P. 98

Appeal:

This was an appeal against the decision of the Court of Appeal, which allowed the respondents' appeal and struck out the appellants' action for want of reasonable cause of action. The Supreme Court, in a unanimous decision, allowed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C. (*Presided*); John Inyang Okoro, J.S.C.;
Ejembi Eko, J.S.C. (*Read the Leading Judgment*); Ibrahim Mohammed Musa Saulawa, J.S.C.; Adamu Jauro, J.S.C.
Appeal No.: SC/CV/556/2020

Date of Judgment: Friday, 7th May 2021

Names of Counsel: Yusuf Ali, SAN (*with him*, Adekunle Sobaloju, Esq: Alex Akola, Esq: N.N. Adegboye, Esq. and Oladele Oyelami, Esq.) - *for the Appellants*

Otunba Kunle Kalejaiye, SAN (*with him* Akintoba Kalejaiye, Esq and D.D. Owoeye, Esq.) - *for the 1st - 6th Respondents*

Yusuf Olatunji Ogunrinde, Esq. (*with him*, Joseph Adeoye, Esq.) - *for the 7 Respondent*

Court of Appeal:
Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Ibadan

Names of Justices that sat on the appeal: Jimi Olukayode Bada, J.C.A. (*Presided*); Haruna Simon Tsammani J.C.A. (*Read the Leading Judgment*); Folasade Ayodeji Ojo, J.C.A.

Appeal No.: CA/IB/300/2019

Date of Judgment: Wednesday, 15th July 2020

Names of Counsel: Kunle Kalejaiye, SAN (*with him* S.S. Akinyele, Esq; Oluwasesan Dada, Esq; Adetunji Muraina, Esq and Akintoba Kalejaiye, Esq.) - *for the Appellants*

Yusuf Ali, SAN; Chief Niyi Akintola, SAN (*with them* Adekunle Sobaloju, Esq; Abiodun Amole, Esq and Yakubu Dauda, Esq) - *for the Respondents*

High Court:
Name of the High Court: High Court of Oyo State, Ibadan
Name of the Judge: Aderemi, J.
Suit No.: /347/2019
Date of Judgment: Monday, 6th May 2019

Counsel:

Yusuf Ali, SAN (*with him*, Adekunle Sobaloju, Esq; Alex Akola, Esq; N.N. Adegboye, Esq. and Oladele Oyelami, Esq.) - *for the Appellants*

Otunba Kunle Kalejaiye, SAN (*with him*, Akintoba Kalejaiye Esq and D.D. Owoeye, Esq.) - *for the 1st - 6th Respondents*

Yusuf Olatunji Ogunrinde, Esq. (*with him*, Joseph Adeoye, Esq.) - *for the 7th Respondent*

EKO, J.S.C. (Delivering the Leading Judgment): In the Local Government elections conducted on 12th March 2018 by the Oyo State Independent Electoral Commission (OYSIEC) (herein the 7th respondent), the appellant were elected for a definite term of 3 years after assuming the respective offices they were each elected into. Ten (10) months into the terms of 3 years the appellants were to remain in office, the 1st respondent, purporting to act pursuant to sections 11 and 21 of the Oyo State Local Government Law 2001, as amended, dissolved (in May 2019) the democratically elected Local Government Councils. The appellants were removed from their various offices of either the Chairman of the Local Government Council (LGC) or as Councilors in the LGCs.

In anticipation of the intent of the respondents to dissolve the duly elected LGCs the appellants firstly challenged in court of law the constitutionality of the powers vested in the 1st, 5th and 6th respondents by sections 11 & 12 of the Oyo State Local Government Law to dissolve a duly elected LGC and remove democratically elected Local Government Chairman and/or Councilors and replace them with handpicked non-elected Transition/Caretaker Committees for being in violation of section 7(1) of the 1999 Constitution, as amended. Their challenge came by way of originating summons. The trial court agreed with them that such power vested in the 1st, 5th and 6th respondents to

dissolve duly elected LGC and remove democratically elected Chairmen and Councilors, and replace them with unelected handpicked Transition/Caretaker Committees were *ultra vires* and unconstitutional. The trial High Court granted several declaratory reliefs and issued injunctive orders in support of the declaratory reliefs in favour of the appellants.

On 29th May 2019, in contempt of the judgment and orders of the Oyo State High Court, the 1st respondent dissolved the elected LGCs in Oyo State. He then appointed unelected Caretaker Transition Committees to run and manage the affairs of the Local Governments throughout the State. Thereafter, just in mere *fait accompli*, the respondents, after their contemptuous affront to the decision and orders of the Oyo State High Court, decided to appeal the judgment - apparently (may be) to fulfil all righteousness. On 15th July 2020 the Court of Appeal (hereinafter called "the lower court") allowed the appeal, set aside the judgment and the orders made by the High Court, and consequentially struck out the suit for disclosing no reasonable cause of action. The lower court had, in so doing allegedly considered only the averments in the respondents' counter affidavit. It is against this decision that the appellants have appealed on 7 grounds of appeal.

The respondents, by way of motion on notice filed on 4th November 2020, raised notice of preliminary objection to the competence of the appeal, which they wanted dismissed "*in limine* for being incompetent". The motion was not moved nor was it argued. On the same 4th November, 2020, the respondents (apparently 1- 6th respondent, independent of the 7th respondent) filed their joint brief wherein in Paragraph 3 they challenged the competence of some specific grounds of appeal; namely: grounds D 2, 3, 4 and 5; and only particular (II) of ground 7 of the appellants 7 grounds of appeal. The purported preliminary objection did not challenge the competence of grounds I & 6 and ground 7 (except its particular (ii)). The attack on particular (II) of ground 7 is on the ground that it raises a fresh issue. I am yet to see the fresh issue allegedly raised by particular (II) of ground 7 which in substance complains that the lower court was wrong for, on the principle of *stare decisis*, electing not to be bound by this court's decision in Governor of Ekiti State v. Olubunmo (2017) 3 NWILR (Pt. 1551) 1.
I want to believe that the preliminary objection, purportedly argued by the respondents (1 - 6 respondents) in their joint brief of argument, was brought pursuant to Order 2, rule 9 of the extant Rules of this court. A preliminary objection is only raised to the hearing of the appeal, and not to a few grounds of appeal. The purport of preliminary objection is the termination or truncation of the appeal in *limine*. A preliminary objection should only be filed against the hearing of an appeal and not against one or more grounds of appeal when there are 6 other grounds to sustaining the appeal; which purported preliminary objection is, therefore, not

capable of truncating the hearing of the appeal. In such a situation, a preliminary objection is not the appropriate procedure to deploy against defective grounds of appeal when there are other grounds, not defective, which can sustain the hearing of the appeal: Adejumo & Ors. v. Oludayo Olawaiye (2014) 12 NWLR (Pt. 1421) 252 (SC); (2014) LPELR-22997 (SC). It is my firm opinion that, since this 1s a court of justice as well as law, a respondent cannot by improper procedure complain about the impropriety of the appellant's process. Afterall he who comes to justice must come with clean hands. A competent preliminary objection is the one raised in accordance with the due process of law - Order 2 rule 9(1) of the Rules of this court in the instant case. The purported preliminary objection, being incompetent, shall be and is hereby discountenanced in the instant appeal.

Let me briefly highlight the basis of the decision of the lower court that has agitated the filing of this appeal. The appellants, as plaintiffs, in their amended originating summons had averred in their supporting affidavit in paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 to wit:

9. That the Government of Oyo State in 2016 amended the local government law by creating 35 Local Council Development Areas as contained in the Oyo State of Nigeria Gazette No. 21, Vol. 41 of 20th October, 2016 to be manned by democratically elected individuals. A copy of the said Gazette is attached as "exhibit A".
10. That sometime in the year 2018 the Oyo State Independent Electoral Commission (OYSIEC) conducted election into the Local Government
Councils and 35 Local Council Development Areas in Oyo State.
11. That I and other claimants participated in the said election by contesting for the position of Chairman and Councilors in our respective Local Government Areas.
12. That I and the other claimants were elected as Chairmen and Executive Officers of Local Government Councils and Local Council Development Areas during the said election conducted by the Oyo State Independent Electoral Commission (OYSIEC) on 12th May, 2018.
13. That I and the other claimants having been declared the winner of our respective Local Government Areas and Local Council Development Areas were issued certificate of returns by the Oyo State Independent Electoral Commission (OYSIEC). Attached herewith as exhibits 8, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9 and 8.10 are the certificates of returns issued to some of the claimants.
14. That pursuant to our election and issuance of certificate of returns, myself and other claimants were subsequently

sworn in as Chairmen and Councilors of our respective Local Government Councils and Local Councils Development Areas.

15. That upon assumption of office, we began to discharge our duties and functions in accordance with the relevant laws.

16. That after the 9th March, 2019 election into State Houses of Assembly and Governorship election, the 1st defendant and top officers of his political party had a meeting on the political developments in Oyo State.

17. That at the meeting the 1st defendant inform all the members at the meeting of his plan to remove the Chairman and vice chairman of the 33 Local Government Councils and appoint a Transition Committee comprising loyal members of the party so as to restructure the political landscape of his party in the State.

18. That the defendants are planning to dissolve all the Local Government Councils and Local Councils Development Areas Oyo State and replace them with appointed persons known as Transition Committee.

19. That in view of the above, we then sought the legal advice of our counsel, Mr. Kunle Sobaloju, Esq. in respect of the said plans of the defendants to remove the chairmen and Vice Chairmen and dissolve the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State.

20. That I was informed by our Counsel Mr. Kunle Sobaloju, Esq., on Friday, 15th March, 2019 at his office at 3D, Old Lagos Road, Ibadan and I verily believe him as follows:

    (i) That the defendants have no power or authority to dissolve any democratically elected Local Government Council in Oyo State or suspend or remove any person democratically elected into any Local Government Council and local development Areas in Oyo State.

    (ii) That section 11 and section 21 of the Local Government Law of Oyo State, 2001 (as amended) violates section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and is therefore unconstitutional, ultra vires, null and void.

(iii) That any law, order or directive empowering the Governor of Oyo State or any person whosoever to dissolve Local Government Councils and Local Council Development Areas in Oyo State whose tenure is yet to expire is unconstitutional, ultra vires, null and void.

(iv) That the 1st defendant lacks the power to dissolve the executive council of all or any of the 33 Local Governments and 35 Local Council Development Areas in Oyo State.

(v) That the 1, 5th and 6h defendants also lack power to remove a democratically elected local Government Chairman and Councilor in Oyo State.

(vi) That it is necessary to approach this honourable court for the determination of the questions raised in our originating summons by which his suit was commenced.

21. That unless the questions raised in the originating summons is determined and reliefs sought are granted, the unlawful, unconstitutional and wrongful provisions of section 11 and section 21 of the Local Government Law of Oyo State, 2001 (as amended) will be employed by the defendants to carry out their plan to dissolve all democratically elected Local Government Council in Oyo State in disregards to the Constitution and to the detriment of myself and other claimants.

The defendant, the respondents herein, filed a joint counter- affidavit wherein in one breath, in paragraph 3 particularly, they denied as false all the averments in paragraphs 2, 16, 17, 18, 20(i), (ii), (iv) & (V), 21, 22 and 23 of the supporting affidavit. In paragraph 4 of the counter affidavit the defendant "paragraphs 17 and 18 of the supporting affidavit are speculative and futuristic". In another breadth they averred in paragraph 5 thereof-

5. That in response to paragraph 20 (i, ii, ii, iv, v) of the claimants' affidavit in support of the originating summons, I know as a fact that the Local Government Law of Oyo State *empowers the 1st defendant to dissolve the executive of the* Local Government Councils.

In apparent acknowledgment of the unconstitutionality of a similar provision in the Local Government Administration Law of Ekiti State struck down in Governor of Ekiti State v. Olubunmo (2017) 3 NWLR

(Pt. 1551) 1, the defendants, in paragraphs 6 of the counter-affidavit, wit –

6. That I was further informed by the 2nd defendant at the same time and place.

   i. That of recent, the defendants have become aware of the decision of the Supreme Court in respect of a similar provision empowering the defendants especially the 1st defendant dissolve local government councils in the State.
   ii. That the defendants are aware that the Supreme Court has in its recent decision against the Government of Ekiti State struck down a similar provision as the ones being challenged in this suit as unconstitutional.
   iii. That the defendants are law abiding institutions of Government and will always abide by the Rule of law and lawful judgements of superior courts of records especially the Supreme Court of Nigeria.
   iv. That the defendants acknowledge the claimants were elected into office on 12th May 2018 in that the claimants have a 3-year tenure under their enabling Local Government Laws of Oyo State.
   v. That other than as provided by the Constitution, and by constitutionality recognized means, the defendants do not intend to summarily dissolve the Councils of Local Government Councils, Local Council Development Areas, nor suspend the claimants from office as suggested by the claimants.
   vi. That the court remains the arbiter of disputes between parties and the interpreter of statutes, whose interpretation and pronouncement, and the defendants have always sought to abide with and where the defendants disagree, only explore the unconstitutional process of appeal.
   vii. That it will be in the interest of justice that this honourable court resolves the claimants' originating summons and the relief's sought therein in favour of constitutionality and the Rule of Law.

It is thus clear that both the claimants and defendants are *ad idem* that the matter the claimants were "bringing to the attention of the court to indicate the rule of law and get the unlawful conduct stopped" - to borrow the words of Lord Diplock in *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Scale Businesses Ltd* (1982) AC 617 (HL) at 644, is the unconstitutionality of the law permitting or empowering the Governor to dissolve a democratically elected Local Government Council and appoint Caretaker Committee in its place.

The claimants in their amended originating summons had entreated the trial court to determine the following questions, that is-

1. Whether the provision of section 11 of the Local Government Law of Oyo State, 2001 (as amended) which empowers the Executive Governor of Oyo State to nominate Transitional Committee to run the affairs of the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State of which the claimants are democratically elected Chairmen, Councilors and members otherwise than in accordance with relevant constitutional and statutory provisions and which empowers the Oyo State House to determine the term of the Transitional Com is in breach of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and is thus unconstitutional, *ultra vires*, null and void and no effect whatsoever?
2. Whether the provision of section 21 of the Local Government Law of Oyo State, 2001 (as amended) which empowers the Oyo State House to recommend the suspension or removal of Chairman or Vice Chairman of a Local Government or Local Council Development Area in Oyo State is in breach of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and is thus unconstitutional, ultra vires, null and void and of no effect whatsoever?
3. Whether in view of the combined effect of sections 7 and Section 1(3) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and the provisions of section 10 of the Local Government Law of Oyo State, 2001 (as amended) the 1st, 5th and 6th defendants have the power to appoint Transition Committee for a term determinable by the 6th defendant contrary to the democratic Local Government System guaranteed by the Constitution?

They thereafter sought the following reliefs –

1. A declaration that section 11 of the Local Government Law of Oyo State, 2001 (as amended) are in conflict with section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and thus unconstitutional, *ultra vires*, null and void and of no effect to the extent that it empowers the Executive Governor of Oyo State to nominate a Transitional Committee to run the affairs of the Local Government Council and which empowers Oyo State House of Assembly to determine the term of the Transitional H Committee contrary to the democratic system of Local Government guaranteed by the Constitution.
2. A declaration that the provision of section 21 of the Local Government Law of Oyo State, 2001 (as amended) which empowers the Oyo State House of Assembly to recommend the suspension or removal of a Chairman or Vice Chairman of a Local Government or Local Council Development Area in Oyo State is in breach of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and is thus Unconstitutional, *ultra vires*, null and void and of no effect whatsoever.
3. A declaration that any law, order or directive empowering the Governor of Oyo State, the Oyo State House of Assembly or any person whatsoever to suspend or remove a Chairman, Vice Chairman or any democratically elected into Local Government Councilor Local Council Development Area in Oyo State or to appoint a Transition Committee or any committee to run the affairs of Local Government in Oyo State before the expiration of the tenure of democratically elected members of the council or for an indefinite period is in conflict with section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and thus unconstitutional, *ultra vires*, null and void.
4. A declaration that by virtue of the combined effect of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the provisions of section 10 of the Local Government Law of Oyo State, 2001, the 1st and 6th defendants have no power to suspend or remove a Chairman, Vice Chairman or any other person democratically elected into the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State before the expiration of their tenure.
5. A declaration that by virtue of the combined effect of section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the provisions of Section 10 of the Local Government Law of Oyo State, 2001 (as amended) the 1st and 6th defendants have no power to nominate or appoint a Transitional Committee to run the affairs of any local government for any desired term in breach of the aforesaid constitutional provisions which guarantees a democratic system of local government.

6. A declaration that the tenure of the claimants is statutorily set at 3 years with effect from the date they took their respective oath of office.
7. An order of perpetual injunction retraining the 1st defendant, his servants, agents, privies or any person whomsoever from dissolving the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State or removing, suspending. terminating and or doing anything whatsoever to truncate the tenure of the claimants except in accordance with the provisions of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
8. An order of perpetual injunction restraining the defendants, their servants, agents, privies or any person whosoever from dissolving the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State or doing anything to truncate the effective administration of the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State.
9. An order of perpetual injunction restraining the defendants, their servants, agents, privies or any person whomsoever from withholding or diverting the allocations, funds and resources of the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State or doing anything to truncate the effective administration of the 33 Local Government Councils and 35 Local Council Development Areas of Oyo State.
10. An order of perpetual injunction retraining the defendants, their servants, agents, privies or any person whomsoever from appointing a Transitional Committee to run the affairs of the 33 Local Government Councils and 35 Local Council Development Areas in Oyo State.

The lower court was told by the counsel for the claimants (respondents before that court) that "the cause of action in this case was primarily the application of sections 11 and 21 of the Local Government Law of Oyo State and the decision of the 1st (defendant) to dissolve the democratically elected Local Government Chairmen and Councilors. That this is clear from the questions for determination, the accompanying affidavits and the reliefs sought. In other words, that the issue for the determination in this case before the trial court boils down to the validity of sections (11 and 21) of the Local Government Law and nothing more".

That is, whether Sections 11 and 21 of the Local Government Law of Oyo State were not inconsistent with the provisions of section 7 of the Constitution. From paragraph 6 of the counter-affidavit the defendants seemed to agree with the claimants that the only issue in the originating summons is: whether sections 11 and 21 of the Local Government Law are inconsistent with 7 of the 1999 Constitution, as amended. The defendants had prefaced their averments with the acknowledgement that

this court, *in Governor of Ekiti State v. Olubunmo & Ors. (supra)*, had struck down provisions of the Local Government Administration Law of Ekiti State similar to Sections 11 and 21 of the Oyo State Local Government Administration Law.

In its judgment at pages 562 - 563, the lower court seemed to acknowledge that it may well be so, - that (the) claimants - had approached the trial court for the determination of the constitutionality and validity of sections 11 and 21 of the Local Government Law of Oyo State". It nonetheless insisted that "before the court could proceed on the determination of the question(s) presented before it by the (claimants), there must be facts which will act as trigger for the (claimants) to exercise their right of action". It insisted, even Gin spite of the claimants contending, and the defendants seemingly conceding, that sections 11 and 21 of the Local Government Law, as enacted by the House of Assembly of Oyo State were ultra vires Section 7 of the Constitution, that there was not enough cause of action shown by them to clothe the claimants with the right to challenge or question the validity and constitutionality of the provisions. This is coming notwithstanding the defendants fence sitting admission that similar provisions the Ekiti State Local Government Administration Law were struck down by this court for being unconstitutional and invalid. The lower court, in my view, had clearly got it wrong here and consequently came to the wrong conclusion that the claimants "claim in the originating summons was premised on mere speculation, conjecture and suspicion thereby not disclosing any reasonable cause of action".

The existence of sections 11 and 21 of the Oyo State Local Government Law is as real and factual, as the existence of section 7 of the Constitution (the grundnorm) that proclaims in its Section 1, its supremacy to any other law, including the Oyo State Local

Government Law, and declares poignantly, in sub-section (3)

thereof that -

> (3) If any other law is inconsistent with the provisions of C this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

The claimants, the present appellants, were duly elected as Local Government Chairmen and Councilors in their respective Local Government Areas. They were incumbents in those their respective offices. The counter-affidavit did not deny these facts. They had the right to remain in and perform their respective offices for the three-year tenure the electorates gave them as part of their mandate. They had alleged that unless sections 11 and 21 of the Local Government Law were nullified, as being *ultra vires* section 7(1) of the Constitution and therefore

unconstitutional; the defendants may invoke them to arbitrarily truncate their democratic mandate. That is the question of the rule of law they had drawn the attention of the court of law to, and were seeking the court to stop the alleged unlawful conduct of the defendants. The courts, under sections 6(6)(b) and 17(2)(e) of the Constitution, have been set up to grant easy accessibility thereto to entertain all questions between persons and Government or authority "for the determination of any question as to the civil rights and obligations of that person".

The general qualification for judicial review of administrative actions is that the claimant or the applicant must have the standing or *locus standi* to challenge the administrative action. He must have an interest cognisable in that he has been sufficiently affected by the administrative action; and for the case to be "ripe" for adjudication or judicial consideration the issues involved must be real, present and imminent; and not merely abstract or hypothetical: *Cases and Materials on Administrative Law in Nigeria* - Iluyomade & Eka, nd Ed. (1992) page 98. In the instant case the enactment of Sections 11 and 21 of the Local Government Law by the House of Assembly (6th defendant) empowering either the Governor (1st defendant) or the House of Assembly to truncate the tenure of democratically elected Local Government Councils, and in their place to appoint unelected Caretaker Committees, poses real threat to those elected Local Government Chairmen and Councillors. The issue viewed particularly vis-à-vis section 7(1) of the Constitution that guarantees the system of democratically elected Local Government Councils, is real and live. It is neither hypothetical nor academic.

When a party has *locus standi* to request adjudication he is said to have the right, in law, to seek the adjudication upon a legal grievance or cause of action: *Adesanya v. The President of Nigeria* (1981) 2 NCLR 358 at 393. The cause of action discloses the facts from which it could be ascertained whether there is an infringement or violation of the civil rights or obligations of the claimant which, if established before the court, entitles him to the relief or remedy sought: *Fawehinmi v Akilu & Anor* (1987) 12 SC 136; (1987) 4 NWLR (Pt. 67) 797 (SC); *Oloriede v. Oyebi* (1984) 1 SCNLR 390; Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669.

The claimants' cause of action and their right to approach the court to seek redress were even more real and imminent than that of the plaintiff in *Fawehinmi v. Babangida* (2003) 3 NWLR (Pt. 808) 604 (SC) who, a lawyer, upon the Constitution and appointment of a Judicial Commission of Inquiry called the Human Rights Violations (Investigation) Commission, by the President of the Federal Republic of Nigeria, pursuant to the powers said to have been derived under section 1 of the Tribunals of Inquiry Act, 1966, challenged the constitutionality and validity of the Act. He had sought, amongst others,

> "a declaration that the Tribunals of Inquiry Act No. 41, 1966 is not an enactment on any matter with respect to

> which the National Assembly is empowered to make laws under the Constitution of the Federal Republic of Nigeria, 1999 and it accordingly took effect as a law (deemed) enacted by the House of Assembly of a State"

- the National Assembly not having been empowered by the said Constitution to enact laws in respect of residual matters outside both the Exclusive and the Concurrent Lists under section 4 of the Constitution. Recognising his *locus standi* and right in law to raise the issue of the rule of law this Court held that since every Nigerian has a duty to ensure that we are governed by laws validly enacted, in accordance with the Constitution: a citizen who challenges the constitutionality of a statute, allegedly enacted in a manner inconsistent with the Constitution, has *locus standi* to raise the issue: his cause of action being the alleged unconstitutionality of such statute. The alleged unconstitutionality of a provision(s) of statute gives the citizen the right to direct and a easy accessibility to the court to be heard by the Judge on the issue: *Centre for Oil Pollution Watch v NNPC* (2018) LPELR-50830 (SC); (2019) 5 NWLR (Pt. 1666) 518.

The judicial powers of the court, by virtue of Section 6 (6)(b) of the Constitution, afterall, "extend to all matters between persons, or between Government and authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." The claimants, in the instant case, derived the mandate from the electorates (and not the defendants) to manage the affairs of their respective Local Government Councils for 3 years on behalf of the people who elected them. Sections 11 and 21 of the Local Government Law, which they alleged are inconsistent with section 7(1) of the Constitution, posed and continue to pose real, imminent and ominous threat to the security of their tenure. Sections 11 and 21 of the Law, unless lawfully quashed, remain perpetual threat hanging over their heads like the Sword of Damocles-thus subjecting them to the whims and caprices of the Governor and the House of Assembly. The danger, if not hazard posed by section 11 und 21 of the Local Government Law to the system of democratically elected Local Government Councils was/ is real and imminent. It was/is not speculative, as the lower court erroneously held to deny the claimants access to court.

It is not enough, the lower court reasoned, in order to deny the claimants the right of access to the court, that they merely averred that they heard, by rumour, the intent of the Governor, the 1st defendant. to dissolve the democratically elected Local Government Councils in the State; remove the Chairmen and Councillors, and replace them with a system of unelected Caretaker/Transition Committees. The existence in the statute books, or *corpus juris*, of Oyo State of the provisions in sections 11 and 21 in the Local Government Law itself poses real, actual

and legal threat to the security of tenure, and indeed the existence, of a system of democratically elected Local Government Councils.

It is interesting to note that the defendants, in their counter-affidavit, acknowledged that this court had struck down a similar provision in Ekiti State Local Government Administration Law (in the *Olubunmo* case (supra). The provisions were said to be inconsistent with section 7 of the Constitution and invalid - a situation analogous to the situation in *Fawehinmi v. Babangida* (supra). The lower court, in the circumstances, should have been more liberal than the stance it took. In this regard, therefore, a court, when it has been called upon to decide whether a claimant or an applicant for judicial review has sufficient interest in the matter to which the suit is related, should take into consideration, in exercise of its judicial discretion, the nature of the litigant, the extant of his interest in the issues raised the remedy he seeks to achieve and the of the reliefs sought: R. v. *Inspectorate of Pollution & Anor. Exp. P. Greenpeace Ltd (No.2)* (1994) 4 All ER 329.

The question the lower court should have asked itself, but failed to ask, is: whether the claimants were genuine claimants seeking the court to decide whether Sections 11 and 21 of the Local Government Law were *ultra vires* section 7(1) of the Constitution? His Lordship, Pats Acholonu, JSC in *Ladejobi v Oguntayo* (2004) 18 NWLR (Pt. 904) 149 (SC) at page 171 stated that it is important to always bear in mind that ready and easy access to the court for the determination of his civil rights and obligations by a genuine claimant is one of the attributes of civilised legal system. For a genuine claimant, not a busy body, easy accessibility to the court for the determination of his civil rights and obligations is a basic constitutional right, by virtue of sections 6(6)(b) and 17(2)(c) of the Constitution. It is for this reason that his Lordship, Pats Acholonu, JSC (supra) warned that limiting the opportunity for citizens to seek redress in courts of law by rigid adherence to the principle of *locis standi* (which is whether a person has the standing to sue and seek redress in court) could be dangerous.

At the time the claimants (appellants herein) took out their originating summons sections 11 and 21 of the Local Government Law, in view of section 7(1) of the Constitution, posed a real, imminent and actual threat to their tenure as elected Chairmen and Councillors. They were, in my view, genuine claimants seeking an answer as to whether sections 11 and 21 of the Local Government Law were/are inconsistent with the Constitution. The mere fact that they apparently sought to know and/or insist that they be governed by laws validly enacted in accordance with the Constitution them genuine claimants like the plaintiff in *Fawehinmi Babangida* (supra). In the English case: Inland Revenue Commit National Federation of Self-Employed and Small Business (HL) (supra) Lord Diplock was of the opinion that the plaintiffs who requested adjudication on whether a public authority can condo illegality by

abdicating or shirking its statutory responsibility, had genuine and real cause of action, and that they had sufficient interest in ensuring that public authorities or corporations submit to the of law, and further that no public authority has power to, aby and with impunity, break the law or the general statute. This Inland Revenue Commissioners' case (supra) is almost on all fours with what the claimants (appellants herein) had sought at the trial. They had raised the question: whether the Governor of Oyo State and the House of Assembly of Oyo State, respectively the 1st and 6th defendants, can, with impunity, breach the Constitution of Federal Republic of Nigeria and/or whether by outright outlawry they earned a right not to submit themselves to the rule of laws

In Military Governor of Lagos State Ojukwu (1986) 1

NWLR (PL. 18) 621 (SC); (1986) LPELR-3186 (SC) at 21-22 Obaseki, JSC, speaking about the rule of law stated thus.

> The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the frame work of recognised rules and principles *which restrict discretionary power* which Coke colourfully spoke as "golden and straight and of low as opposed is the uncertain and crooked cord of discretion". See 4 Inst. 41. More relevant to the case in hand, *the rule of law means that disputes as to the legality of act of government are to be decided by Judges who are independent of the executive.*

The suit challenging the near absolute discretion, in the toga of arbitrary powers, given to the Governor and the House of Assembly by sections 11 and 21 of the Local Government Law to dissolve duly elected Local Government Councils in democratically conducted Local Government elections, which provisions vesting these powers are said to be *ultra vires* and inconsistent with section 7(1) of the Constitution cannot be said to be speculative, as the lower court erroneously held. Accordingly, the decision or order of the lower court striking out the suit and consequentially setting aside the decision and orders of the High Court of Oyo State (in the suit No. 1/347/2019, delivered on 6 May, 2019) made in favour of the claimants for, allegedly, not disclosing any reasonable cause of action/or and sufficient interest for approaching the trial court, is hereby set aside.

It appears, from page 564 of the records, that the only distinction the lower court found between the instant case and the *Governor of Ekiti State v. Olubunmo & Ors*. (supra) is the fact that; while in the Olubunmo case "the Governor of Ekiti State actually dissolved the Local Government Councils and removed the Chairmen from, there is no such claim in this case", and that "the claim here is that (Governor) planned to dissolve the councils and remove the (claimant) from office" and

further that "there is no fact pleaded in the affidavit in support of the originating summons that the (Governor) planned to dissolve the councils". It is on these grounds that the lower court found that the suit was founded on speculation and mere conjecture. The respondents, capitalising on that finding submitted "that the lower court rightly distinguished the fact of the case in *Gov. Ekiti State v Olubunmo* from the fact of this case herein which is based on speculative apprehension" that the claimants will be removed from their respective offices by the dissolution of the Local Government Councils "without any verifiable facts as too the positive acts from the (defendants) that threaten their offices". I had earlier in this judgment opined that the mere existence in the statute books of Oyo State of the provisions of sections 11 and 21 of the Local Government Law, enacted in conflict, or inconsistent, with Section 7 of the Constitution, is like the Sword of Damocles hanging over the head of the claimants, and thus constituting or posing a real and imminent threat or danger to the security of the tenure they enjoyed by the fact of the mandate they, each, received from the electorates in consequence of the democratic elections.

The respondents' counsel seemed to have spinelessly shifted their position. Their clients, the defendants counseled by them, had in their counter-affidavit averted that they knew "as of fact that the Local Government Law of Oyo State empowers the (Governor) to dissolve the executive of the Local Government Councils" and that they know, also us of fact, that "the Supreme Court has in its recent decision against the Government of Ekiti State down a similar provision as the ones being challenged in this suit as unconstitutional". From this point thenceforth, the thing the defence counsel had to do was to sum up his professional courage and submit to judgment, the issues to *Governor of Ekiti State v Olubunmo* (supra) and the instant case substantially the same, on the basis of stare decisis in the principle of precedence. The defence counsel (particularly at the low and here), however, persisted in spite of the admissions in counter-affidavit above referred. By so doing they, as officers of the 1 court, enjoined by Rule 30. of the Rules of Professional Conduct Legal Practitioners, 2007, "not to do any act or conduct any manner that may-delay or adversely affect the administrating of justice, had buckled under.

A counsel, when he appears in court in a matter professional capacity, shall not deal with the court otherwise than candidly or fairly. In presenting a matter to the court in the capacity, he "shall disclose any legal authority in the jurisdiction known to him to be directly adverse to the position of his client" In that capacity, also, counsel before the court in a matter the "promote a case which to his knowledge is false". See Rule 32(1), (2)(a) & 3(j) of the same 2007 Rules of Professional Conduct. The counter-affidavit has seriously indicted the defence counsel in this regard.

Consistency is the rule of the game. A party is not allowed to approbate and reprobate on one issue: *Comptroller General of Customs & Ors. v. Gusau* (2017) 4 SC (Pt. II) 128; (2017) 18NWLR (Pt. 1598) 353 (SC). No matter how powerful the client is or viable the brief, a counsel should always be worth his professional honour and pride to speak the truth and conduct the matter professionally. It is always right to follow the scripture and the teaching: what does it profit a man to gain the whole world and lose his soul?

The lower court's distinction of *Governor of Ekiti State Olubunmo & Ors* (supra) from the instant case is just distinction without a difference. The issues in both cases are whether the Governor of a State can dissolve a democratically elected Local Government Council and appoint his handpicked lackeys, constituting them as Caretaker or Transition Committee, to administer and manage the affairs of the Local Government in an uncouth and unbridled impudence to Section 7 of the Constitution, providing that "the system of Local Government Council is under this Constitution guaranteed". It was held in *Governor of Ekiti State Olubunmo* (supra) that Section 23B of the Local Government Administration of Ekiti State (similar in all intents and purpose to Sections 11 and 21 of the Oyo State Local Government Law) was not intended to ensure the existence of a system of democratically elected Local Government Council, but merely to snap their continued existence by their substitution with Caretaker Committee; that the provision was acted in clear breach of section 7(1) of the Constitution and other that to that extent, it (section 23B, supra) cannot co-habit with sections 7(1) and 1(3) of the Constitution read together. Several other previous decisions of this court on the same point were cited with approval. They include *Eze & Ors Governor, Abia State & Ors.* (2014) 14 NWLR (Pt. 1462) 192 (SC) *Attorney-General, Plateau State v. Gayol* (2007) 16 NWLR (Pt. 1059) 94 (SC); *Attorney-General, Benue State v. Umar* (2008) 1 NLWR (Pt. 1068) 311(CA). The laws on this point or issue is now well established and is no longer a scholarly secret that a democratically elected Local Government Council does not exist at the pleasure, whims and caprice of either the Governor or the House of Assembly.

The misconception by the State authorities that the Constitution does not intend to grant and guarantee autonomy to the Local Government is only a brain wave nurtured by sheer aggrandisement and meglomaniac instinct to conquer and make the Local Government mere parastatals of the State. That is the very mischief section 7(1) of the Constitution has set out to address, and must be so read and construed purposefully. The Constitution and is provisions are to be read and construed broadly and liberally to promote their purpose*: Nafiu Rabiu v. The State* (1980) 8-11 SC 130; (1981) 2 NCLR 293; *Onyemaa v. Oputa* (1987) 6 SC 362 at 371: (1987) 3 NWLR (Pt. 60) 259, Thus, as Nweze, JSC, had put in *Governor of Ekiti State v Olubunmo* (supra), the intendment of the Constitution is to vouchsafe the inviolability of the

sacred mandate which the electorate, at that level, democratically donated to the Local Government Chairman and Councillors *Eze & Ors. v. Governor, Abia State* (supra).

Finally, I agree with the appellants, the claimants at trial, at the lower court was wrong not to follow and be bound by the authoritative pronouncements of this court in Governor of v Olubunmo (supra) on the core issue before it. That is whether the Governor of Oyo State can dissolve democratically elected Local Government Councils and replace them with unelected Caretaker Committees; which question this court had previously and negatively, and firmly too.

I will not conclude this appeal without commenting on the disturbing ugly face of impunity displayed by the Governor of Oyo State, 1st respondent herein, on 29th May, 2019, tantamounting to executive lawlessness, outrightly and vehemently condemned by this Court in The Military Governor of Lagos State v. Ojukwu (supra). This court has always insisted that the Nigerian Constitution is founded on rule of law, the primary meaning of which is that everything must be done according to law.

The trial court 6th May, 2019 issued its judgment in the suit of the appellant, as claimants; and granted to them the declaratory reliefs and the injunctive orders sought in their originating summons. In exercise of their inalienable constitutional right of appeal, assured also by sections 241 and 242 of the Constitution the defendants, the respondents herein which included the Governor of Oyo State filed their joint notice of appeal on 21st June, 2019 to express their dissatisfaction with the decision of the trial court to the Court of Appeal. But before the particularly on 29th May 2019, the Governor of Oyo State, herein the 1st respondent, had issued imperial directives dissolving all democratically elected Local Government Councils in Oyo State in spite of the subsisting judgement of Oyo State High Court in the suit No. 1/347/2017.

I repeat the Governor of Oyo State was the 1st defendant in that suit. Series of applications were filed by the judgement creditors, the present appellants, to restrain, particularly the 1st respondent (the Governor), from embarking on the self-help designed to contemptuously frustrate the judgment of the High Court. He was not dissuaded. He proceeded in his imperial omnipotency to continue in his untrammelled, albeit invidious contemptuous, disregard of subsisting judgment of the High Court. It is unthinkable that a democratically elected Governor would embark on these unwholesome undemocratic tendencies. These tendencies no doubt endanger democracy and the rule of law.

It is almost becoming universal phenomena that the democratically elected Governors have constituted themselves a species most dangerous to democracy in this country. They disdainfully disregard and disrupt democratically elected Local Government Councils and appoint their lackeys as caretaker committees to run affairs of the Local Governments It should be reiterated as Abdullahi, PCA and

Ndukwe-Anyanwu, JCA did say respectively in Abubakar v. A-G., Federation (2007) 3 NWLR (Pt. 1022) 601 (CA) at 619 and *A-G Benue State v. Umar (CA)* (supra) at 363, that an elected person is not an employee of anybody except the electorate that voted him in. It is only the electorate that can fire him. Democratic elections should always be sacrosanct in this Country, like in any other country, for democracy to thrive. Local Government Chairman and Councillors, being persons duly elected by the people cannot be removed and their councils dissolved whimsically and arbitrarily by any other elected persons in clear abuse of their office and powers. It is not right in law and under the Constitution to do that.

This is a proper case for invocation of section 22 of the Supreme Court Act. 2004. The claimants/appellants were elected and were to hold their respective offices for 3 years commencing from 12th May, 2018-the tenure which has since elapsed. Their tenure was summarily, *albeit* illegally and unconstitutionally, truncated on 29th May, 2019 upon the Governor's directive. They had, each, at least 23 months to run out their term of 3 years. Since they can no longer be reinstated to complete their respective terms; the appellants, on the basis of *ubi jus ibi remedium* cannot go without any remedy. On the authority of A-G, *Benue State v. Umar* (SC.199/2007 of 15th April, 2008), (reported in (2008)) 1 NWLR (Pt. 1068) 311); Governor of Ekiti State v. Olubunmo & Ors. (supra) together with section 22 of the Supreme Court Act, it is hereby ordered that the claimants appellants be each paid the salaries and allowances they mere each entitled to be paid for the balance of the period from 29th May 2019 ending on 11th May, 2021 when the respective tenures they were elected for would end. The 1st defendant/respondent, Government of Ovo State, shall forthwith pay the said salaries and allowances of the claimants as ordered.

The Attorney-General of Oyo State, the 2nd respondent herein (being also an authority or person charged mandatorily or obligated by section 287 of the Constitution to enforce decisions and orders of courts), shall cause to be filed, on or before 7th August, 2021 an affidavit (under the hand of the incumbent of that office) attesting to the payment of the salaries and allowances hereby ordered to be paid to the claimants/appellants in compliance with this the orders

Cost at N20,000,000.00 shall be paid to the appellant by the 1st respondent,

Appeal allowed.

KEKERE-EKUN, J.S.C.: I have read in draft, the judgment of my learned brother, Ejembi Eko, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal has merit and should be allowed.

The facts of the case have been adequately summarized in the lead judgment. I adopt the summary His Lordship has also dealt most

comprehensively with the issues in contention in this appeal. I can hardly improve on the exercise. I shall however make some brief.comments for emphases and to show my support.

In setting aside, the judgment of the Oyo State High Court delivered on 6/5/2019 and striking out the appellants' amended originating summons filed on 8/4 2019, the count below held, inter alia, per Tsammani, JCA:

> "On that note, I have come to the conclusion that the respondents claim in the originating summon is premised on mere speculation, conjecture and suspicion thereby not disclosing any reasonable cause of action
>
> … In the instant case, the affidavit in support of the originating summons does not disclose the existence of any legal controversy between the respondents and the appellants… without a reasonable cause of action/the court cannot exercise jurisdiction over the matter.
>
> … The suit not having disclosed a reasonable cause of action is incompetent and liable to be struck out"

What is a reasonable cause of action? In the case of *Thomas v. & Olufosoye* (1986) 1 NWLR (Pt. 18) 669 @ 682, His Lordship, Obaseki, JSC stated thus:

> "Lord Pearson in Drummond – Jackson v. British Medical Associated (1970) 1 WLR. 688 (1970) 1 All ER 1094 CA defined *"a reasonable cause of action as meaning a cause of action with some chance of success when only the allegations in the pleading are considered."* The practice is clear. So long as the statement of claim or the particulars disclose some question fit to be decided by a judge or jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out ... where no question as to the civil rights and obligations of the plaintiff is raised in the statement of claim for determination the statement of claim will be struck out and the action dismissed."

A cause of action has also been defined as:

> "Every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the court It does not comprise every piece of evidence which is necessary to be proved." See S.P.D.C. (Nig.) Ltd. & Anor v. X.M. Fed. Ltd. and Anor (2006) LPELR-3047 (SC) 11-14 E-G; (2006) 16 NWLR (Pt. 1004) 189,"

See also: Lasisi Fadare & Ors v. A.-G., Oyo State (1982) 1 ALL NLR (Pt. 1) 4 @ 41; Rinco Construction Co. Ltd. v. Veepee Industries Ltd & Anor (2005) LPER - 2949 (SC) @ 14 E-G: (2005) 9 NWLR (PT. 929) 85.

Both parties in this appeal are ad idem as to the fact that, by their amended originating summons, the appellants were seeking a determination as to the validity of sections 11 and 21 of the Local Government Law of Oyo State, 2001 (as amended) vis-à-vis section 7 of the 1999 Constitution, as amended.

Section 7(1) of the 1999 Constitution, as amended provides:

> "The system of Local Government by democratically elected Local Government Councils *is under this Constitution guaranteed*; and accordingly, the Government of every state shall, subject to Section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and function of such councils." (Italics mine)

Section 1(1) and (3) of the Constitution provides:

> "1 (1) This Constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
>
> (3) If any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void."

Now, section 11 of the Local Government Law of Oyo State empowers the 1st respondent to set up a 7-member Transitional Committee, one of whom shall be the chairman to run the affairs of the Local Government Council where its tenure has expired and no election has been held to reconstitute it or where it has become "impractical to immediately conduct elections" to fill the vacancies thereby created Section 21 further empowers the 1st respondent to suspend or remove from office any democratically elected Chairman of Vice-Chairman.

The appellants herein were democratically elected chairmen and councillors and represent all other democratically elected chairmen and councillors of Government Areas and Local Government Development Areas of Oyo State, who had been sworn into office and, at the time of the suit, were already discharging the functions of their office. By their averments in the affidavit in support of their amended originating summons, there was an imminent threat of the dissolution of the Local Government Councils and the imposition of a hand-picked Transition Committee to run the affairs of the council for an unspecified period. It was the contention of the respondents that the allegation was speculative and unfounded and therefore could not found a cause of action. The lower court, as observed earlier, agreed with them.

With the greatest respect to the court below, this cannot be correct. In determining whether the suit discloses a reasonable cause of action, the court must have recourse to the originating processes alone i.e. the writ of summons and statement of claim or the originating

summons and support affidavit. What the originating process must show is that there is a question fit to be decided by the court and that the applicants have a legal right to be protected

In the circumstances of this case, I am of the considered view, that the mere existence of sections 11 and 21 of the Local Government Law of Ovo State, as amended, is like the sword of Damocles hanging over the appellants' heads, waiting to be wielded at the whims and caprices of the 1st respondent.

Section 6(6)(b) of the 1999 Constitution, as amended, Provides:

"6. The judicial powers vested in accordance with the foregoing provisions of this section

(b) shall extend to all matters between persons, or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

The Constitution of the Federal Republic of Nigeria, 1999, as amended, is the grundnorm. It is the fountain from which all other laws derive their legitimacy. It admits of no rivals, as shown in section 1(1) and (3) thereof. A determination by the court as to whether sections 11 and 21 of the Local Government Law of Oyo State are in violation of section 7 of the Constitution, is a live issue and certainly constitutes a reasonable cause of action.

As I have observed, the mere existence of those provisions and their potential invocation by any governor at any time, to truncate their tenure as democratically elected chairmen and councillors, constitutes a cause of action. Their tenure of office is a right they can protect.

I agree entirely with my learned brother, Ejembi Eko, JSC, that sections 11 and 21 of the Local Government Law of Oyo State 2001, as amended, are in clear violation of section 7 of the 1999 Constitution, as amended. Pursuant to section 1(3) of the Constitution, the said provisions are null and void to the extent of their inconsistency with Section 7 thereof.

For these and the more detailed reasoning in the lead judgment. I find merit in this appeal. It is accordingly allowed by me. I adopt all the consequential orders made including the order on costs.

Appeal allowed.

OKORO, J.S.C.: My learned brother, Ejembi Eko, JSC afforded me the opportunity of reading before now the lead judgment just delivered and I entirely agree with his reasons and conclusion. shall make a few comments of my own in support of the lead judgment.

The main issue in this appeal is whether in the light of section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Executive Governor of Oyo State can rely on sections 11 and 21 of the Local Government Law of Oyo State, 2001 (as amended)

to dissolve a democratically elected Local Government Council and replace them with unelected Caretaker or Transitional Committee.

The Supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is provided in section 1 (1) and (3) thereof to the effect that if any other law is inconsistent with the provisions of the Constitution, such law shall to the extent of the inconsistency be void. See the case of *Akpambo-Okadigbo v. Chidi (No.1)* (2013) 10 NWLR (Pt. 1466) 171 as 200; *Cocacola (Nig) Ltd v Akinsanya* (2017) 17 NWER (Pt. 1593) 74 at 117-118, Kayili v. Yilbuk (2015) 7 NWLR (Pt. 1457) page 26 at 55-56.

The existence and administration of Local Government Councils in Nigeria are guaranteed by section 7 of the Constitution and their functions enumerated in the Fourth Schedule thereto and such other functions as may be conferred on the council by the House of Assembly of a State

Any law therefore which seeks to limit the full exercise of powers provided under section 7 of the 1999 Constitution is in contravention of the Constitution and is to the extent of such contravention, void.

`In this appeal, sections II and 21 of the Local Government Council Law of Oyo State purports to empower both the Oyo State House of Assembly and the Executive Governor of Oyo State to truncate the tenure of democratically elected Local Government officials for no reason whatsoever.

They are inconsistent with the provision of section 7(1) of the Constitution and therefore void to the extent of such inconsistency.

Consequently, the act or contemplated act of the Governor relying on these void provisions to dissolve the democratically elected Local Government Councils before the expiration of their tenure is a nullity. This court cannot allow it to stand.

This appeal succeeds and is hereby allowed by me. I abide by the consequential orders made by my learned brother in the lead judgment

Appeal Allowed.

SAULAWA, J.S.C.: The present appeal is against the Judgment of the Court of Appeal, Ibadan Judicial Division, delivered on July 15 2020 in appeal No. CA/B/300/2019. By the judgment in-question, the court below, Coram J. O. Bada H. S. Tsammani and F. A. Ojo JJCA, set aside the judgment of the trial High Court of Oyo State, delivered on and struck out the originating summons filed by the appellant.

Background Facts

The appellants had been duly elected as Chairmen and Councillors of Local Government Councils and Local Council Development Areas in Oyo State. The election was duly conducted on May 12, 2018 by the Oyo State Independent Electoral Commission (the 7th respondent herein). However, in March, 2019 the 1st respondent summaries dissolved the said Oyo State Local Government Councils and

the Local Council Development Areas and replaced them with appointed Caretaker/Transition Committees pursuant to sections 11 and 21 of the Local Government Law of Oyo State, 2001, as amended.

Not unnaturally, the appellants were utterly aggrieved, thus filed the suit vide an originating summons, there seeking against the respondents the following declaratory and injunctive reliefs:

The parties having settled their respective pleadings, the suit proceeded to trial, at the close of which, the trial court delivered the vexed judgment to the conclusive effect. In line with the above.

Not unexpectedly, the respondents did not take kindly to the vexed judgment of the trial High Court, thus appealed to the court of Appeal, Ibadan Judicial Division. On the said July 15, 2020, the court below delivered the vexed judgment thereof to the conclusive effect:

> Having resolved that the respondents' claim did not disclose any reasonable cause of action, I am of the view that, it is of no use I delving in to issue three (3) distilled for determination by the appellants (sic). In any case, I had in the course of resolving issues I and 2, considered the case of the Governor of Ekiti State Olubunmo (supra) upon which the learned the case before him. I had pointed out the distinction between that case and the case under consideration. I therefore do not see the need in repeating myself there. In any case, having resolved that, the case did not disclose any reasonable cause of action, the court below had cost the jurisdiction to hear and determine same. I would therefore be a matter of academic exercise proceed further on the point.
>
> Having thus considered, it is my view that this appeal has merit. It is accordingly allowed. I therefore set aside the judgment of the Oyo State High Court of justice sitting in Ibadan delivered on the 6th day of May, 2019 in suit No. 1134712019. Consequently, the amended originating summons filed on the 8th day of April, 2019 is hereby struck out. I make no order as to cost.

The instant appeal, as alluded to above, is against the sail judgment of the court below.

On April 10, when the appeal ultimately. carne up for hearing, the learned counsel on both sides of the divide were accorded the opportunity to address the court and accordingly adopt the articulated argument contained in the respective briefs thereof.

Most particularly, the appellants brief of argument settled by Yusuf Ali, SAN on September 24, 2020, spans a total of 34 pages. At page 7 thereof three issues have been couched:

On the part thereof, the 1st – 7th respondent's unpaginated brief, settled by Samuel Oyadoyin Esq. on November 4, 2020 actually spans a total of 46 pages.

At pages 4 to 15 (paragraphs 3.0 to 3.28) of the brief in question, deal with the respondents notice of preliminary objection to the, competence of the appeal.

Pages 15 to 46 of the said brief, deal with the 3 issues on the merits.

De*termination of the 1st – 6th Respondents' Preliminary Objection*

Undoubtedly, the pith of the 1st - 6th respondents' grouse vide the preliminary objection in-question is strictly in regards to on grounds 2, 3, 4, 5 and 7 of the appellants' notice of appeal, thereby challenging the competence of the appeal curiously enough grounds 1 and 6 of the notice of appeal have not been objected to. Yet the law is well settled par adventure, that the essence of preliminary objective on is to challenge the competence of an appeal in in entirety, Thus, once a preliminary objection is upheld, the appeal is liable to be truncated and struck out in *limine*, Contrariwise, however, once there are other grounds that can conveniently sustain the appeal, a preliminary objection ought not be filed. Instead, a notice of motion seeking to strike out the apparently defective grounds need to be filed.

See S.P.D.C. *v. Amadi* (2011) 6 SCNJ 183; (2011) 14 NWLR (Pt. 1266) 157 per Rhodes-Vivour, JSC @ 196.

In *Dada v Dosunmu* (2006) 18 NWLR (Pt. 1010) 134; (2006) LPELR 909 (SC), this court aptly reiterated the trite fundamental doctrine:

> *[F]ailure to file a motion on notice as required by the rules of court affects the competence, of the objection as raised in the respondent's brief and as such counsel to the appellant had no obligation to file: a reply thereto - the said objection being incompetent. Rules of court are meant to be obeyed so as to ensure that justice is done to the parties and the court is saddled with the responsibility of administering same.*

Per Onnoghen, JSC (as he then was @ 17 paragraphs E-F.

In the circumstance, the 1st – 6th respondents' preliminary objection being adjudged to be grossly incompetent, same is hereby summarily struck by me.

Determination of the Appeal on the Merits

Of the three issues in question, the third issue is most instructive viz:

> 3. Whether the court below reached a proper decision by not allowing the decision of the Supreme Court in the case of *Governor Ekiti State v Olubunmo* (2017) 3 NWLR (Pt. 1551) 1 whose facts were on all fours with the facts of the present case and there were no valid legal grounds to distinguish the case from the present case.

A critical, albeit dispassionate, consideration of the circumstances surrounding the case of *Governor Ekiti State v Olubunmo* (supra) and the instant case, has made me appreciate that the two cases are arguably on all fours with one another. Fundamentally, the issues in both cases are whether or not the Governor, as Chief Executive of the State thereof has the power dissolve, truncate or suspend a democratically elected Local Government Council and unilaterally appoint his cronies, thereby constituting and investing them as Care Taker Committee to administer the affairs of the Local Government Councils.

Not unexpectedly, this court aptly held in *Governor, Ekiti State v Olubunmo* (supra), that the system of Local Government Council has been duly guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 as amended:

> In other words, section 23B (supra) is violative of and in conflict with, section 7(1) of the Constitution in (supra). Hence, it is bound to suffer the fate of all laws which are in conflict with the Constitution Section 1(3) thereof. *Nigerian Army v Yakubu* (supra).

Per Nweze, JSC @ 34-35 paragraphs E-C.

In the instant case, it is obvious, that the controversial sections 11 and 21 of the Oyo State Local Government Law (supra) were purportedly designed to sabotage and truncate the democratically elected Local Government System in the state. Undoubtedly sections 11 and 21 of the Oyo State Local Government Law (supra) are violently in conflict with the fundamental provisions of sections 7(1) and 1(3) of the 1999 Constitution (supra).

It is trite, that every arm of Government, be it the Legislature, the Executive, or the Judiciary, has the onerous duty to accord unreserved deference to, comply with, protect, preserve, and defend the grundnorm - the Constitution. As aptly reiterated by this court:

> "To act contrary to the provisions of the Constitution will not, if properly brought to the notice of this court be condoned but such an act ill invite the proper sanctions and reliefs."

See *Igbey Governor of Bendel State* (1983) LPELR-1443; (1983) SCNLR 73. Per Obaseki, JSC @ 31 paragraphs C-E.

In the circumstances, the third issue ought to be, and same hereby resolved in favour of the appellants, against the respondents.

Hence, against the backdrop of the foregoing postulation, and the well-detailed reasoning and conclusion reached in the lead judgment, I too hereby allow the appeal, set aside the vexed judgment of the court below. I abide the consequential inclusive of the N10,000,000.00 costs, justifiably awarded in favour of the appellants against the 1st respondent.

JAURO, J.S.C.: I have had the advantage of reading in draft the lead judgment just delivered by my learned brother, Ejembi Eko, JSC. I am

in complete agreement with the reasoning and conclusion contained therein to the effect that the appeal is meritorious.

The appellants by their originating summons and accompanying affidavit challenged the provisions of sections 11 and 21 of the Amended Local Government Law of Oyo State in the light of section 7(1) of the 1999 Constitution (as amended) and the planned removal from their positions as elected Chairmen and Councillors of Local Government Councils and Local Council Development Areas in Oyo State by the 1st and 6th respondents. The lower court held that the case of the appellants was futuristic and speculative and thus disclosed no reasonable cause of action. I humbly disagree with their Lordships.

The appellants were not only challenging the legality or validity of the provisions of sections 11 and 21 of the Amended Local Government Law of Oyo State, but the mere enactment of the said provisions of the said provisions of the Local Government Law constituted an imminent threat to their tenure to guaranteed by section 7 (1) of the Constitution. Hence, I do not see how such an action can be said to be speculative or futuristic. What is more? The respondents averred in their counter-affidavit that they are aware that this court had in a recent decision struck down similar provisions to those being challenged as unconstitutional, ostensibly admitting that the sections 11 and 21 of the Amended Local Government Law are unconstitutional.

The recent decision referred to is the decision of this court in Governor of *Ekiti State v Olubunmo* (2017) 13 NWER (Pt. 1551) 1. In that case, this court declared section 23B of the Local Government Administration Law of Ekiti State unconstitutional for empowering the Governor to truncate the existence of elected Local Government Councils. In line with the aforesaid decision of this court and similar cases such as *Eze & Ors v. Governor of Abia State & Ors*, (2014) LPELR-23276 (SC); (2014) 14 NWLR (Pt. 1462) 192, I have no hesitation in holding that sections 11 and 21 of the Amended Local Government Law of Oyo State are *ultra vires*, illegal, unconstitutional, null and void.

The Constitution is the organic law of the land and by operation of section 1(3) of the Constitution, any law that constitutes an affront to it is dead on arrival.

For the above reasons and of course the fuller ones adumbrated in the lead judgment, I too allow this appeal. I abide by all the consequential orders made in the lead judgment, including the order as to costs.

Appeal allowed.

Appeal allowed.