IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 20TH DAY OF MAY, 2014
BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE
JUDGE

SUIT NO. FHC/ABJ/CS/139/2014

BETWEEN:

MALLAM SANUSI LAMIDO SANUSI ::::::::: PLAINTIFF

A N D

1. **THE PRESIDENT FED. REPUBLIC OF NIG.**
2. **ATTORNEY-GEN. OF THE FEDERATION** } **DEFENDANTS**
3. **INSPECTOR-GENERAL OF POLICE**

JUDGMENT

By an "Originating Summons" dated and filed on 24/2/14, the Plaintiff commenced the instant action against the Defendants and set down three (3) questions for determination. These are:

(a) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act, 2007, especially sections 1(3), 8(1) and 11(2) thereof, the 1st Defendant has any power whatsoever to suspend the Plaintiff from office as the Governor of Central Bank of Nigeria."*

(b) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act, 2007 especially sections 1(3), 8(1) and 11(2) thereof, the 1st*

Defendant has any power whatsoever to suspend the Plaintiff from office as the Governor of Central Bank of Nigeria without the support of 2/3 majority of the Senate praying that he be so suspended."

(c) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act 2007 especially sections 1(3), 7, 8(1) and 11(2) thereof, the purported suspension of the Plaintiff from office as Governor of the Central Bank of Nigeria does not amount to an unlawful interference by the 1st Defendant in the administration and/or the management and control of the Central Bank of Nigeria."*

In the event that each of these questions is answered in the way and manner which the Plaintiff expects to be favourable to his cause, the Plaintiff seeks six (6) main reliefs and a seventh (7th) ancillary relief. The reliefs as pleaded in the "Originating Summons" are:

1. *"A **DECLARATION** that the 1st Defendant has no statutory or any power whatsoever to suspend the Plaintiff from Office as Governor of the Central Bank of Nigeria."*

2. *"A **DECLARATION** that the purported suspension of the Plaintiff from office as Governor of the Central Bank of Nigeria as conveyed by the letter dated 19th February, 2014 is illegal, invalid, null and void and of no effect, whatsoever."*

3. *"**FURTHER AND/OR IN THE ALTERNATIVE TO DECLARATION 1 ABOVE, A DECLARATION** that the purported suspension of the Plaintiff from office as the Governor of Central Bank of Nigeria without the support of 2/3 majority of the Senate is invalid, illegal, null and void."*

4. *"**AN ORDER** setting aside the purported suspension of the Plaintiff from office as Governor of the Central Bank of Nigeria as conveyed by the letter dated 19th February."*

5. *"**AN ORDER** restraining the Defendants whether by themselves, their agents, servants and/or privies and/or all officers, servants and functionaries of the Federal Republic of Nigeria or any other public officer whatsoever or otherwise howsoever from giving or continuing to give in any manner whatsoever any effect or further effect whatsoever to the purported suspension of the Plaintiff from office as Governor of the Central Bank of Nigeria."*

6. *"**AN ORDER** restraining the Defendants whether by themselves, their servants, agents or privies or otherwise howsoever from obstructing, disturbing, interfering, stopping, or preventing the Plaintiff in any manner whatsoever from performing the functions of his office as the Governor of Central Bank of Nigeria."*

7. *"**AND FOR SUCH OTHER OR FURTHER RELIEFS** as the Plaintiff may be found to be entitled to by this Honourable Court.*

The "Originating Summons" which has two (2) exhibits attached to it and marked as "KA1" and "KA2" respectively, was supported by a nine (9) paragraphed Affidavit deposed to by Chima Okereke who in paragraph 1 of the Affidavit, describes himself as "a co-Counsel to Kola Awodein, SAN". Its' paragraph 7 has 20 sub-paragraphs listed (a) – (t), with sub-paragraph (e) also having two (2) sub-sub-paragraphs listed as (i) and (ii).

The Plaintiff's Counsel filed their "Written Address in Support of Originating Summons" and in paragraph 2.1, set down three (3) issues for determination. These are:

(a) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act, 2007, especially sections 1(3), 8(1) and 11(2) thereof, 1st Defendant has any power whatsoever to suspend the Plaintiff from office as the Governor of Central Bank of Nigeria."*

(b) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act 2007 especially sections 1(3), 8(1) and 11(2) thereof, the 1st Defendant has any power whatsoever to suspend the Plaintiff from office as the Governor of Central Bank of Nigeria without the support of 2/3 majority of the Senate praying that he be so suspended."*

(c) *"Whether, having regard to the provisions of the Central Bank of Nigeria Act 2007 especially sections 1(3), 7, 8(1) and 11(2) thereof, the purported suspension of the Plaintiff from office as Governor of the Central Bank of Nigeria does not amount to an unlawful interference by the 1st Defendant in the administration and/or the management and control of the Central Bank of Nigeria."*

These issues are exactly similar to the three (3) questions which the Plaintiff seeks their resolution in order to be entitled to the seven (7) reliefs pleaded in the "Originating Summons".

I will return to review the submissions of the Plaintiff's Counsel as per the issues set down for determination when I conduct the review of the adoption of the addresses filed by each Counsel in relation to each of the parties they represent.

The 1st Defendant, when served with the Plaintiff's aforementioned processes, reacted to same by filing a "Conditional Memorandum of Appearance" on 11/3/14 and a "Preliminary Objection" also dated and filed on 11/3/14. The Objection seeks for:

1. *"**AN ORDER** striking out the Plaintiff's suit in limine";*
2. *"**AND** for such further order(s) as the Honourable Court may deem fit to make in the circumstances."*

These prayers are predicated on five (5) grounds which were highlighted on the face of the "Preliminary Objection". These are:

(a) *"That the Plaintiff's claim essentially relates to, arises from, and is connected with his employment as the Central Bank of Nigeria Governor."*

(b) *"That the dispute between the Plaintiff and the 1st Defendant relates to/connected with labour, employment, industrial relations and matters incidental thereto or connected therewith."*

(c) *"That this Honourable Court, (the Federal High Court) does not have the jurisdiction to entertain this matter as the National Industrial Court has and exercises exclusive jurisdiction to the exclusion of any other Court in Nigeria."*

(d) *"That the reliefs of the Plaintiff in his Originating Summons are indeterminable by this Court as this Court lacks the jurisdictional vires to entertain the suit."*

(e) *"That there is no cause of action against the 1st Defendant in this case as he has at all times and in relation to the subject matter of this suit acted in accordance with the Constitution of the Federal Republic of Nigeria 1999 (as amended) and extant laws of the Federal Republic of Nigeria in relations to matters connected with the employment of the Plaintiff."*

The "Preliminary Objection", curiously was supported by a seven (7) paragraphed Affidavit which was deposed to by one Nnamdi Ekwem who in paragraph 1 describes himself as "a Legal

Practitioner in the Firm of Kenna Partners". I have said that the Affidavit in Support was curiously filed because, except where an objection is not based on grounds of law alone in the context of the provisions of Order 29 Rule 4(b) of the **Federal High Court (Civil Procedure) Rules, 2009**, it is almost a procedural anomaly for "Preliminary Objections" to be supported and argued with depositions of facts in an Affidavit. The *rationale* for this general principle is simple: A Preliminary Objection to the jurisdiction of the Court to entertain the Plaintiff's case is predicated on an assumption in law, that the Defendant/Objector such as the 1st Defendant in this case, accepts the facts upon which the Plaintiff's case is based in the Affidavit filed which in suits commenced by "Originating Summons", is deemed as being in the same position, as a "Statement of Claim" filed in an action begun by a "Writ of Summons".

Secondly, the objection is to be argued on the accepted facts of the Plaintiff because, by Section 115(2) of the **Evidence Act, 2011**, a deponent in an "Affidavit filed to Support a Preliminary Objection" shall not depose to facts which the **Evidence Act** describes as "*extraneous matter, by way of objection, prayer or legal argument or conclusion*". Such objections are required to be argued on the basis of the facts as laid out by the Plaintiff and based on relevant provisions of extant laws or the Constitution which *ex facie*, makes the Plaintiff's suit *demurrable* on strict issues or points of law. The moment an objection requires facts in an Affidavit to be filed to support and sustain it, which invariably no longer makes the Defendant/Objector to accept the truth of the facts of the Plaintiff's case as presented in the originating processes, such incident in my view, betrays the status of such objections as indeed *preliminary*. I refer to the judicial

statements of His Lordship, the Hon. Justice Niki Tobi, JSC (Rtd.) in the often cited Supreme Court's decision in **A.G. OF FEDERATION v. ANPP & ORS. (2003) 18 NWLR (pt.851) S.C. 182 @ 207** which is in line with the earlier decision of the Court of Appeal in **AKINBI v. MIL. GOVERNOR OF ONDO STATE (1990) 3 NWLR (pt.140) 525 @ 531.**

I really do not think that the Plaintiff's Counsel raised any objection to the said Affidavit but also filed his Counter-Affidavit to it. This makes it such process as the Court will have to consider in the resolution of the 1st Defendant's "Preliminary Objection".

The 1st Defendant's "Preliminary Objection" was argued in a "written address" dated and filed on 11/3/14. In paragraph 3.1 of the said "written address", the 1st Defendant's learned Counsel set down two (2) issues for determination. These are:

(a) *"Whether in the light of Section 254c(1) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, this Honourable has the jurisdiction to entertain this suit."*

(b) *"Whether in the circumstances of this case, there exists a cause of action against the 1st Defendant."*

The 1st Defendant, through the same deponent, also filed the "1st Defendant's Counter-Affidavit to Plaintiff's Originating Summons dated February 24, 2014". It's a 7 paragraphed Counter-Affidavit with its paragraph 4 broken up into sub-paragraphs numbered as 4.1 – 4.32.

The depositions in the 1st Defendant's afore-mentioned Counter-Affidavit together with the bulky documentary exhibits attached thereto and marked Exhibits "1" – "6" were argued by the "1st

Defendant's Written Address in Support of the Counter-Affidavit in Opposition to the Plaintiff's Originating Summons dated 24th February 2014". The said address is dated and was filed on 11/3/14.

In paragraph 3.1.1 of the written address, the 1st Defendant's Counsel formulated only one issue for determination. It is: "*Whether in the circumstances of this case, the Plaintiff is entitled to his reliefs as contained in the "Originating Summons" dated February 24, 2014.*" This issue, in my view is broad and seem to encapsulate the provisions of Sections 131(1); 132; 133(1) and (2) and 134 of the **Evidence Act, 2011**. But, reading the questions which the Plaintiff's Counsel have set down for determination vis-a-vis the reliefs being sought, it would appear that the thrust of the Plaintiff's case is that the 1st Defendant, having regard to the provisions of the **Central Bank of Nigeria Act, 2007** lacks the power to make the decision conveyed in Exhibit "KA2" by suspending the Plaintiff from Office as the Governor of the Central Bank of Nigeria "*till the conclusion of the investigation into these far reaching breaches*". Perhaps, having regard to the austerely narrow issue which the Plaintiff seeks to pursue in relation to the alleged lack of statutory power conferred by the **Central Bank of Nigeria Act** on the 1st Defendant to take the decision in Exhibit "KA2" attached to the "Affidavit of Chima Okereke in Support of the Originating Summons", the Plaintiff's Counsel, whether deliberately or inadvertently, did not include Exhibits "3"; "4" and "6" attached to the 1st Defendant's Counter-Affidavit which relate to the alleged "*far reaching breaches*" mentioned in Exhibit "KA2" attached to the "Affidavit in Support of the Originating Summons". These issues will be further considered and discussed in the course of this Judgment when the

submissions of Counsel to all the parties when the addresses filed were adopted are being reviewed. It suffices, as far as the Plaintiff's Counsel is concerned, that it does not matter the gravity of the allegations in Exhibit "KA2" attached to the "Originating Summons" or the more detailed issues of infractions of financial management of the Central Bank of Nigeria alleged against the Plaintiff in Exhibit "6" attached to 1st Defendant's Counter-Affidavit, except the 1st Defendant is able to show the provisions of the law pursuant to which he exercised the powers to suspend the Plaintiff from Office as the Governor of the Central Bank of Nigeria, that it is of no moment, the veracity or weighty nature of the allegations. The 1st Defendant, is by the Plaintiff's contention, required in accordance with the *proviso* to Section 11(2)(f) of the **Central Bank of Nigeria Act, No.7 of 2007** to seek for and obtain the support of 2/3 majority of the Senate *before* the decision in Exhibit "KA2" which although, is about "*suspension*" rather than "*removal*" of the Plaintiff from Office as the Governor of the Central Bank of Nigeria can be taken. I hope that the summary of the Plaintiff's case vis-a-vis the detailed issues of facts and documentary exhibits produced by the 1st Defendant, so far reasonably captures the contending issues between both parties.

When the 2nd Defendant was served with the Plaintiff's originating processes, it entered a "Conditional Appearance" by its Counsel's "Memorandum of Conditional Appearance" dated and filed on 12/3/14.

The 2nd Defendant followed this with a "2nd Defendant/ Applicant's Notice of Preliminary Objection" also dated and filed on 12/3/14. The 2nd Defendant in the said "Notice of Preliminary Objection", seeks for: "*AN ORDER of this Honourable Court striking out and/or dismissing this suit for want of competency*

as this Honourable Court lacks the requisite jurisdiction to entertain same."

This prayer is predicated on three (3) grounds which were highlighted on the face of the "Notice of Preliminary Objection". The grounds are:

1. *"This matter is related to or connected with labour, employment, and matters arising from work place, the conditions of service, and matters incidental thereto, or connected therewith, over which only the National Industrial Court has exclusive jurisdiction by virtue of Section 254c(1) of the Constitution of the Federal Republic of Nigeria, 1999 As Amended";*

2. *"The claims of the Plaintiff/Respondent are caught by the exclusivity of the jurisdiction of the National Industrial Court conferred by Section 254(c)(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, as same amount to claims over the suspension of the Plaintiff/Respondent from his work place by the President, Federal Republic of Nigeria. Consequently the Federal High Court no longer has jurisdiction to entertain this matter."*

3. *"The facts of this case are highly contentious and adversarial in nature and hence is not one to be commenced by way of an originating summons."*

Just as the 1st Defendant has done in relation to its "Notice of Preliminary Objection" which was supported by an Affidavit, the

2nd Defendant also filed a 33 odd paragraphs "Affidavit in Support of its Notice of Preliminary Objection". Its' paragraph 5 alone has 22 sub-paragraphs listed as (i) – (xxii)! It was deposed to by one Dominic Ezerioha, who in paragraph 1 of the said Affidavit, describes himself as a "Legal Practitioner in the Law Firm of Mike Ozekhome's Chambers". The Affidavit, perhaps was deliberately made as lengthy, in order to justify the third ground of the "Notice of Preliminary Objection". I have expressed this view, because by grounds 1 and 2 of the "Notice of Preliminary Objection, what this Court is called is called upon to decide, is to assess the reliefs being sought by the Plaintiff in the "Originating Summons" and to use the provisions of Section 251(1) and Section 254(c)(1)(a) of the **CFRN, 1999 As Amended** to decide whether the Plaintiff's case ought to be tried and determined in the Federal High Court or in the National Industrial Court as contended by the 2nd Defendant. I really do not think that this needs such voluminous factual evidence from Affidavit filed to be resolved.

Again, when I mentioned the 1st Defendant's address filed to argue the issues of facts in its Counter-Affidavit, I expressed the view that the Plaintiff's attitude to this matter, is that, it really does not matter the gravity of allegations which the 1st Defendant has made in its Counter-Affidavit buttressed by bulky documentary exhibits which the Plaintiff did not produce, that the *bottom line* of his case is whether the 1st Defendant has the *vires* to take and convey the decision in Exhibit "KA2" by which the Plaintiff was suspended from Office as the Governor of the Central Bank of Nigeria pending the investigation of allegations which the said Exhibit "KA2" describes as "*far reaching breaches*". I do not expect the Defendants to "buy" into the Plaintiff's strategy in terms of taking such a narrow view of the whole case, but at the

same time, I am wondering if it turns out that the 1st Defendant lacks the statutory or constitutional power to take the decision conveyed in Exhibit "KA2" by which the Plaintiff was suspended from Office as the Governor of the Central Bank of Nigeria, whether the weighty nature of the allegations which informed the decision in Exhibit "KA2" will avail to *legalize* the said decision. When the Plaintiff's case is considered from this perspective, it is legitimate to express the views I had expressed as to whether or not it was necessary for the 2nd Defendant to descend into the arena of lengthy Affidavit such as was filed to argue a "Notice of Preliminary Objection" brought by the 2nd Defendant. This is because, when the provision of Order 29 Rule 4(b) of the **Federal High Court (Civil Procedure) Rules, 2009** are read against extant judicial decisions, the established principle of law is that a Defendant/Objector who has filed a "Notice of Preliminary Objection" is deemed to have accepted the truth of the facts alleged by the Plaintiff but contends that the Court nevertheless would lack jurisdiction to entertain the case because, on the Supreme Court's decision in **ADEYEMI v. OPEYORI (1976) 9-10 S.C. 31** and a hosts of other such cases, an objection on jurisdiction must be determined on the basis of the Plaintiff's case as presented in the originating processes filed. A "Notice of Preliminary Objection" which requires Affidavit to support and sustain its viability as a Court's process, is gradually slipping out of the legal arena of a "*preliminary*" objection but is assuming a status of a *defence* on the merit by joining issues on the facts with the Plaintiff. In that event, the Defendant may proceed with filing a Motion on Notice by way of Preliminary Objection and would by the provision of Order 26 Rule 3 of the **Federal High Court (Civil Procedure) Rules, 2009**, be entitled to file Affidavit in Support of such a Motion on Notice. These analysis, I need not

warn, are not intended to prejudicially affect the consideration of the 2nd Defendant's "Notice of Preliminary Objection". They are rather my modest understanding of the jurisprudence in civil litigations when a Defendant to a suit, is "*disputing the Court's jurisdiction*".

When I read through the 33 paragraphed "Affidavit filed in Support of the 2nd Defendant's Notice of Preliminary Objection", much of the facts deposed to in the said Affidavit appear as facts which the 2nd Defendant could have deposed to as a Counter-Affidavit to the Plaintiff's "Affidavit in Support of his Originating Summons" because, the facts barely relate to the three (3) grounds highlighted on the face of the "Notice of Preliminary Objection" upon which the 2nd Defendant seeks that the Plaintiff's suit be dismissed on the ground that this Court lacks jurisdiction to entertain the said suit by the provision of Section 254c(1)(a) of the **CFRN, 1999 As Amended**.

The 2nd Defendant through its Counsel, filed a written address to argue the said "Notice of Preliminary Objection". The written address is dated and was filed on 12/3/14 and as would have been expected, it runs into 27 odd pages! In paragraph 2.0, the 2nd Defendant's Counsel set down two (2) issues for determination. These are:

1. *"Whether this Honourable Court has the requisite jurisdiction to determine the claims of the Plaintiff/Respondent having regards to the provisions of Section 254c(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended."*

2. *"Whether from the facts of this case, which are highly contentious and adversarial this is a matter that ought to have been commenced by way of an Originating Summons."*

The 2nd Defendant also filed its Counter-Affidavit in Opposition to the Plaintiff's substantive suit. It was deposed to by the same deponent, Dominic Ezerioha, a legal practitioner who deposed to the "Affidavit filed in Support of the 2nd Defendant's Notice of Preliminary Objection". The Counter-Affidavit runs into 32 paragraphs, while its paragraph 5 has 22 sub-paragraphs numbered (i)-(xxii). It is substantially similar to the "Affidavit filed in Support of the Notice of Preliminary Objection" which I had earlier observed, appear to be a Counter-Affidavit to the Plaintiff's "Originating Summons".

The said Counter-Affidavit was supported with and argued by a 21 paged written address dated and filed on 18/3/14. In paragraph 2.1 of the address, the 2nd Defendant's Counsel, Chief Mike Ozekhome, SAN set down only one issue for determination. It is: "*Whether in the circumstances of this case, the 1st Defendant acted ultra-vires when he suspended the Plaintiff from office such as will entitle the Plaintiff to the reliefs he seeks as contained in the Originating Summons.*" This issue was argued at great length by the 2nd Defendant's Counsel as if he was also acting for the 1st Defendant. Except that the 2nd Defendant is also, by the sheer force of the provision of Section 150(1) of the **CFRN, 1999 As Amended**, recognized as the "Chief Law Officer of the Federation", the 2nd Defendant's written address which was wholly meant to argue the cause of the 1st Defendant would have qualified as an abuse of the Court's process because, the 1st Defendant's Counsel has already filed and argued their written

address to express the 1st Defendant's case from their own perspective. But no objection was taken to the address of the 2nd Defendant's Counsel on this plane, and it will be reckoned with in the assessment of the whole case as contested by both parties.

The 3rd Defendant on its part, also filed a "Preliminary Objection" dated 11/3/14 and filed on 12/3/14. In the objection, the 3rd Defendant prays for:

1. *"**AN ORDER** striking out the Plaintiff suit", **ALTERNATIVELY,***
2. *"**AN ORDER** striking out the name of the 3rd Defendant in this suit";*
3. *"**AND** for such further order(s) as the Honourable Court may deem fit to make in the circumstances."*

The prayers being sought in the "Preliminary Objection" are predicated on six (6) grounds which are:

(a) *"The Plaintiff's claim relates to and or is connected with his employment as Central Bank of Nigeria Governor";*

(b) *"The Plaintiff suit particularly, the reliefs sought therein condescend on employer employee relationship";*

(c) *"This Honourable Court, (the Federal High Court) does not have the jurisdiction to entertain this matter as the National Industrial Court by virtue of Section 254 of 1999 Constitution (as amended) donates exclusive jurisdiction on matters relating*

to or connecting with employer employee relationship to the National Industrial Court";

(d) *"The 3rd Defendant is not the Plaintiff employer";*

(e) *"The Plaintiff has not sought any relief as apparent in his claim against the 3rd Defendant";*

(f) *"The Plaintiff claim does not disclose any reasonable cause of action against the 3rd Defendant."*

As with the 1st and 2nd Defendants' respective "Notices of Preliminary Objection, the 3rd Defendant's "Preliminary Objection" also has a five (5) paragraph Affidavit deposed to by U.L. Abonyi, a Legal Practitioner filed to support it.

The 3rd Defendant's Counsel, S.E. Umoh, Esq. SAN also filed a written address dated 11/3/14 which was filed on 12/3/14.

In paragraph 1.6 of the address, the 3rd Defendant's Counsel set down three (3) issues for determination on the "Preliminary Objection" filed. The issues are:

(a) *"Whether having regard to the effectual provision of Section 254(c) of the 1999 Constitution of Federal Republic of Nigeria as amended as well as Section 7 of the National Industrial Court Act, 2006, the Federal High Court lacks the requisite jurisdiction to entertain this matter as it had been divested of such authority and jurisdiction by operation of the Acts of the National Assembly of Nigeria that effectively conferred exclusive*

jurisdiction on matters of employment on the National Industrial Court of Nigeria";

(b) *"Whether in the circumstances of this case, there exists a cause of action against the 3rd Defendant"; and*

(c) *"Whether this Honourable Court has the powers to grant a relief seeking to restrain the performance of a completed action."*

These issues were argued in the said address by the 3rd Defendant's Counsel.

The 3rd Defendant also filed a "Counter-Affidavit in Opposition to the Plaintiff's Originating Summons". The Counter-Affidavit was deposed to by one P. Ali-Bozi, a legal practitioner and was filed on 27/3/14. It runs into 35 odd paragraphs! When I read through the said Counter-Affidavit, there is barely any substantial difference from its contents from that of the 1st and 2nd Defendants. The documentary exhibits are virtually the same as they seem to have emanated from the same source(s).

The 3rd Defendant's Counter-Affidavit was argued in a 14 paged "written address filed in Support of the Counter-Affidavit of the 3rd Defendant to the Originating Summons". It's dated and filed on 27/3/14. In its paragraph 1.4, the 3rd Defendant's Counsel, S.E. Umoh, Esq. SAN set down only one issue for determination. It is:

"Whether the suspension of the Plaintiff as the Governor the (sic) Central Bank of Nigeria and the appointment of the most senior Deputy Governor as the acting Governor of the Central Bank of Nigeria by the 1st Defendant (the

President of the Federal Republic of Nigeria) pending the conclusion of investigation against the Plaintiff is valid."

The 3rd Defendant's Counsel also used the address to argue "*some preliminary points of law challenging the jurisdiction of the Court to entertain the case of the Plaintiff against the 3rd Defendant*". The thrust of the objection is that the *Plaintiff's suit does not disclose any cause of action and or a reasonable cause of action against the 3rd Defendant.* This issue was argued in paragraphs 1.5 – 2.5 of the 3rd Defendant's Counsel's written address and the case on it merit was dealt with by the submissions made in paragraphs 2.6 – 4.4 of the written address filed.

When the Plaintiff's Counsel received these processes from each of the Defendants' respective Counsel, the Plaintiff reacted to each of the processes, beginning with the 1st Defendant's "Notice of Preliminary Objection". On 18/2/14, the Plaintiff, through Chima Okereke deposed to a seven (7) paragraph "Counter-Affidavit in Opposition To The 1st Defendant Notice of Preliminary Objection dated 11th March 2014".

In support of the Counter-Affidavit, the Plaintiff's Counsel filed a 22 paged written address.

In the said address, the Plaintiff's Counsel set down two (2) issues for determination. These are:

(a) *"Whether upon a proper construction of Sections 251(1) and 254c(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), this Honourable Court has jurisdiction to entertain this suit."*

Secondly, which was argued in paragraph 95 of the address, is "Whether the Plaintiff's suit discloses a cause of action against the 1st Defendant".

The Plaintiff's Counsel urged considerable argument in relation to the interpretation which the Court should make of the provisions of Section 251(1) and 254(c)(1) of the **CFRN, 1999 As Amended** in being able to decide whether or not, the Plaintiff *cause of action,* having regard to the questions set down for determination and the reliefs being sought, is such that is cognizable in the Federal High Court in the exercise of its exclusive jurisdiction pursuant to Section 251(1)(q) and (r) of the Constitution.

The Plaintiff's Counsel also reacted to the 2nd Defendant's "Notice of Preliminary Objection" by filing a five (5) paragraph "Counter-Affidavit in Opposition to 2nd Defendant/Applicant's Affidavit in Support of Preliminary Objection". It was deposed to by the same Chima Okereke and was filed on 18/3/14. As it is required by the Rules, the Plaintiff's Counsel filed an 18 paged address to argue the five (5) paragraphed Counter-Affidavit in which all the Plaintiff did through the deponent in paragraph 4 was to deny "paragraph 5-33" of the 2nd Defendant/Applicant's Affidavit and to say that *the Plaintiff is not an employee of the 1st Defendant and that the 1st Defendant, whilst suspending the Plaintiff did not act in accordance with the* ***Central Bank of Nigeria Act***, supra. In the said written address, two (2) issues were set down for determination. They are:

(a) *"Whether this Honourable Court has jurisdiction to entertain the suit of the Plaintiff" and*

(b) *"Whether the Plaintiff properly commenced this action."*

The address is dated 18/3/14 and was filed on the same date. The first issue was argued in substantially the same manner and style as the Plaintiff's Counsel has done in respect of the Plaintiff's Opposition to the 1st Defendant's "Notice of Preliminary Objection" which is based on the same provisions of the **CFRN, 1999 As Amended** i.e. Section 251(1)(p) and (r) and Section 254c(1).

The Plaintiff's Counsel when served with the 3rd Defendant's "Notice of Preliminary Objection", adopted the same style in relation to their reaction to the 1st and 2nd Defendants' respective "Notices of Preliminary Objection" by filing a six (6) paragraphed "Counter-Affidavit to the 3rd Defendant/ Applicant's Affidavit in Support of Preliminary Objection dated 11th March 2014". The said "Counter-Affidavit" was deposed to by the same deponent, Chima Okereke. It was filed on 26/3/14. As it was with the 1st and 2nd Defendants' "Notices of Preliminary Objection", the Plaintiff's "Counter-Affidavit deposed in Opposition to the 3rd Defendant's Affidavit in Support of its Preliminary Objection" has six (6) paragraphs and in paragraph 4, the deponent, Chima Okereke denied the depositions in paragraph 3 of the "Affidavit of U.L. Abonyi filed in support of the 3rd Defendant's Preliminary Objection". A 26 paged written address dated and filed on 26/3/14 was filed to argue the six (6) paragraphed "Counter-Affidavit" of Chima Okereke. In the address filed, the Plaintiff's Counsel set down three (3) issues for determination. These issues are:

(a) *"Whether this Honourable Court has jurisdiction to entertain the suit of the Plaintiff";*

(b) *"Whether there is a cause of action against the 3rd Defendant";*

(c) *"Whether this Honourable Court has the powers to grant the reliefs sought."*

The submissions canvassed in respect of issue (a) are substantially the same as the submissions made to oppose the 1st and 2nd Defendants' respective "Notices of Preliminary Objection" by which the jurisdiction of the Federal High Court was challenged to entertain the Plaintiff's suit as depitched in his "Originating Summons".

In response to the "Counter-Affidavit" filed by the Defendants to oppose the Plaintiff's "Originating Summons", the Plaintiff on 19/3/14, filed a seven (7) paragraphed "Further Affidavit in Support of the Originating Summons". It was deposed to by the same deponent, Chima Okereke, a legal practitioner. The said "Further Affidavit" was deposed to in order to join issues on facts with the 1st Defendant's Counter-Affidavit deposed to by Nnamdi Ekwem. The Plaintiff's deponent in paragraph 5 of the said "Further Affidavit", denied substantial paragraphs of the "Counter-Affidavit" of Nnamdi Ekwem. The Plaintiff's Counsel also filed a 10 paged written address to argue the issues in the 7 paragraphed "Further-Affidavit". It was titled, "Plaintiff's Reply To 1st Defendant's Response to the Originating Summons".

The Plaintiff, through Chima Okereke also filed a "Further Affidavit in Support of the Originating Summons in Response to the 2nd Defendant's Counter-Affidavit in Opposition to the

Originating Summons". It was filed on 26/3/14. It is an 8 paragraphed "Plaintiff's Further Affidavit" and was deposed to join issues with the Counter-Affidavit of Dominic U. Ezerioha filed to oppose the Plaintiff's "Originating Summons". As with the previous "Further Affidavit", the Plaintiff used the occasion of the "Further Affidavit" to deny the "2nd Defendant's Counter-Affidavit to his Originating Summons". The Plaintiff's Counsel also filed a 16 paged written address in its support. It was titled: "Plaintiff's Reply on Points of Law to the 2nd Defendant's Written Address in Opposition to the Originating Summons".

The 1st Defendant, on 25/3/14, through his Counsel, filed the "1st Defendant's Reply on Points of Law To Plaintiff's Written Address in Opposition to 1st Defendant's Preliminary Objection dated March 11, 2014". It's a 10 paged address dated 24/3/14 but filed on 25/3/14. In its paragraph 1.1, the 1st Defendant's Counsel states that: "*This address is filed by the 1st Defendant in Reply on Points of Law to the Plaintiff's Counter-Affidavit and Written Address dated March 18, 2014 filed by the Plaintiff in Opposition to the 1st Defendant's Preliminary Objection dated March 11, 2014 seeking the order of this Honourable Court striking out the Plaintiff's suit in limine amongst other reliefs.*"

In paragraph 3.1, the 1st Defendant's Counsel set down two (2) issues for determination. These are:

(a) "*Whether in the light of Sections 86 and 89 of the **Labour Act**, Cap L1 LFN 2004, the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other extant laws, the Plaintiff is not an employee of the Federal Government of Nigeria?*"

(b) *"Whether the Board of the Central Bank of Nigeria, not being a juristic person can be said to be an Employer of the Plaintiff?"*

The major issues argued in this address, is that the Plaintiff is an employee of the Federal Government of Nigeria headed by the 1st Defendant and that the Board of the Central Bank of Nigeria which the Plaintiff acts as its Chairman, not being a juristic body, lacks the power to employ the Plaintiff.

The 2nd Defendant, when served with the "Plaintiff's Counter-Affidavit in response to the 2nd Defendant's Affidavit in Support of its Notice of Preliminary Objection", filed through Dominic U. Ezerioha, a "2nd Defendant/Applicant's Further-Affidavit in Opposition to the Plaintiff/Respondent's Counter-Affidavit dated 18th March 2014". It was filed on 28/3/14 and runs into 5 paragraphs. The said 2nd Defendant's "Further Affidavit" was filed essentially, to *rebut* the Plaintiff's position *that he is not an employee of the Federal Government of Nigeria or of the 1st Defendant.* The 2nd Defendant's Counsel filed a 15 paged written address in support of the 2nd Defendant's "Further Affidavit". In the said written address, the 2nd Defendant's Counsel states, in its opening paragraph, that *it is basically a reply on points of law to the Plaintiff/Respondent's Counter-Affidavit dated and filed 18th March, 2014.*

The Plaintiff also, through the same deponent, Chima Okereke, filed a "Further Affidavit in Support of the Originating Summons" in response to the 3rd Defendant Counter-Affidavit in Opposition to the Originating Summons". It was filed on 11/4/14 and has eight (8) paragraphs. By its paragraph 5, it was deposed to deny the "3rd Defendant's Counter-Affidavit to the Originating

Summons". In paragraph 6(b) of the said "Further Affidavit", the Plaintiff once again, states that: "*The Plaintiff is not an employee of the 1st Defendant.*"

A written address of 21 pages was filed to argue the issues raised by the depositions in the said "Further Affidavit".

The 3rd Defendant's Counsel filed the "3rd Defendant's Reply on Points of Law to the Plaintiff's Argument in Opposition to the 3rd Defendant's Notice of Preliminary Objection". It's dated and was filed on 28/3/14. The said address was used to reply the Plaintiff's Counsel, based on the issue that the Federal High Court lacks jurisdiction to entertain the Plaintiff's suit, the arguments and submissions canvassed in relation to the provisions of Section 251(1) and 254(c)(1) of the **CFRN, 199 As Amended**.

These are the processes filed and exchanged by both parties. They are no doubt numerous and atimes, *prolix*. Some of them are repetitive of earlier issues raised and argued, and it is in this instance, that one really see the "*downside*" of the provisions of Order 22 of the new Rules by which written addresses are required to be filed. Almost all the Counsel had their fill and filed such lengthy and tedious addresses that make the case docket to become somewhat *unwieldy*. Even though I enjoyed reading the addresses, but from the perspective of judicial determination, some of them become too academic and needlessly *prolix*. I have no doubt, that if I was to listen to oral submissions of Counsel without written addresses filed, the Court's notes will not be as much as half of what I have to read through in the case file. The occasion to file a written address should not be taken or misused to prepare legal treatises in the form of inaugural lectures. A written address should be concise, succinct and direct to the

issues being argued without the need for "*flowery embellishment*". Such is acceptable for treatises to be published as articles in law journals but not for judicial determination of real cases.

On 8/4/14, I listened to the oral submissions of the Counsel to all the parties in respect of these bulky and long winding Court's processes I have just highlighted. In view of the radical nature of the issues of jurisdiction, I began with the Defendants' Counsel who each filed a "Notice of Preliminary Objection" on behalf of his clients.

The 1st Defendant's Counsel, Dr. F. Ajogu, SAN was heard first in respect of the 1st Defendant's "Notice of Preliminary Objection" dated 11/3/14.

The 1st Defendant's learned Counsel, having adverted the Court's attention to the relevant Court's processes in relation to the "Notice of Preliminary Objection" dated 11/3/14 and the written address filed together with the Reply on points of law, began his submissions by making a remark that "*the Central Bank of Nigeria whose independence is in issue from the Plaintiff's argument, was not made a party*". He went on to argue that *there is no cause of action against the 1st Defendant.* This submission was made in furtherance of the bundle of documentary exhibits produced by the 1st Defendant to prove that there was a good reason for the 1st Defendant to take the decision conveyed in Exhibit "KA2" being the letter by which the Plaintiff was suspended from Office as the Governor of the Central Bank of Nigeria pending the investigation of the several allegations made concerning the Plaintiff's Management of the Central Bank of Nigeria as its Governor. The 1st Defendant's Counsel referred to

the Query which the 1st Defendant issued to the Plaintiff based on the Financial Report of the Central Bank of Nigeria for the year ended in 2012. It was the 1st Defendant's contention that the allegations which informed the suspension of the Plaintiff had been in issue "*four (4) months prior to the alleged whistle blowing in September, 2013 of missing monies*". The 1st Defendant's Counsel asked a rhetorical question to the effect: "*Can the Plaintiff be investigated by the Board of the Central Bank of Nigeria which he chairs?*" He submitted that there is no *cause of action* on the issue of the Plaintiff's suspension based on these facts.

The 1st Defendant's Counsel then took on the issue of the jurisdiction of this Court vis-a-vis the provision of Section 254c(1) of the **CFRN, 1999 As Amended** and submitted that "*this Court cannot determine the issues of employment or suspension from employment by reason of the said provision*". He urged that the Plaintiff's suit be struckout *in limine* as it was not to be heard by the Federal High Court.

I thereafter listened to the 2nd Defendant's learned Counsel, Chief Mike Ozekhome, SAN. I need not recopy the long professional titles and academic laurels which Chief Ozekhome, SAN parades as that may likely take half of the page of this Judgment! I want to focus on the substance of his arguments so that I can reach a decision which, by my understanding of the case of all the parties, is just and fair.

The 2nd Defendant's Counsel also drew the Court's attention to the 2nd Defendant's "Notice of Preliminary Objection" dated and filed on 13/3/14. The 2nd Defendant, by the said "Notice of Preliminary Objection", seeks for the "*striking out/dismissing of the Plaintiff's*

suit for want of competency". Learned silk adverted to the processes filed in furtherance of the said "Notice of Preliminary Objection" which I had earlier, in this Judgment, highlighted. He adopted the 15 paged address filed to argue the said "Notice of Preliminary Objection" and also adverted the Court's attention to the five (5) paragraphed Counter-Affidavit filed on 18/3/14 to oppose the 2nd Defendant's "Notice of Preliminary Objection" and the "Further Affidavit" which the 2nd Defendant filed to the Plaintiff's Counter-Affidavit. The 2nd Defendant's learned Counsel relied on all these processes and the addresses filed in support of the 2nd Defendant's "Notice of Preliminary Objection". The 2nd Defendant's Counsel submitted that the Plaintiff's suit should be struckout as it is not a matter that is within the purview of a case which can be heard by the Federal High Court but a "*matter reserved exclusively for the National Industrial Court*". Just as the 1st Defendant's Counsel, Dr. F. Ajogu, SAN, the 2nd Defendant's Counsel also placed reliance on Section 254c(1) of the **Constitution (As Amended).** The learned silk drew the Court's attention to Exhibits "KA1" and "KA2" – being the Plaintiff's letters of appointment as the Governor of the Central Bank of Nigeria and of his suspension from Office and referred to the provisions of Sections 8(3); 11(2); 19 and 20(3) of the **Central Bank of Nigeria Act**. The 2nd Defendant's Counsel submitted that by these provisions, the Plaintiff is "*a mere employee of the Federal Government of Nigeria represented by the 1st Defendant*". He further submitted that "*where an employee has been suspended by his employers, it is already a case of Master/Servant relationship notwithstanding if the employment has statutory flavour*". When I read and reflected on this submissions, I asked myself whether an employment with "*statutory flavour*" on extant judicial authorities, can be

described as one of master/servant relationship? Perhaps, in the course of reviewing the Judgment of all Counsel, this issue may be clearer because, the Plaintiff's Counsel in the addresses filed to join issues with the Defendants on their respective "Counter-Affidavits to the Originating Summons" and to the "Notices of Preliminary Objection", spent considerable "man hour" and resources to argue that the Plaintiff is not an employee of either the Federal Government of Nigeria or the 1st Defendant but of the Board of the Central Bank of Nigeria which the Plaintiff also chairs! It was in relation to this argument that the legal doctrine that "*no man can be a Judge in his own case*" came about in the submissions of the Defendants' Counsel. So, whose employee is the Plaintiff, because part of the submissions made, was that the Board of the Central Bank of Nigeria was not by the **Central Bank of Nigeria Act**, made a *juristic person* that has the *capacity* for an *independent legal personality* which can recruit or employ the Plaintiff, and in any event, the Plaintiff as the Governor of the Central Bank of Nigeria, was the Chairman of the Board of the Central Bank of Nigeria! All of these are issues which will be resolved in the substantive Judgment on the merit once the issue of "Preliminary Objections" filed by the Defendant are resolved. The digression I have just made, was to enable both parties know the issues which agitated my attention when I read through all the written addresses filed and exchanged by both parties.

The 2nd Defendant's Counsel further argued that the Plaintiff is a "*public servant*" and that the Court, in the event that it upholds the 2nd Defendant's "Notice of Preliminary Objection", "*should not transfer the case to the National Industrial Court, but should strike out the matter*".

The 2nd Defendant's Counsel then took on the other ground of the objection and submitted that the Plaintiff's case "*is highly contentious and adversarial*" and that it "*should not have been brought by way of Originating Summons*". In this regard, the Court's attention was invited to paragraph 7(i); (j) and (f) of the "Affidavit of Chima Okereke filed in Support of the Originating Summons". It was argued that the 2nd Defendant also controverted these facts by its Counter-Affidavit and that the Plaintiff filed a Reply to the 2nd Defendant's Counter-Affidavit and that these make the issues of facts even more contentious and submitted that "*the Plaintiff's case should not have been brought by way of Originating Summons*". In rounding up his submissions, Chief Ozekhome, SAN adverted briefly to Section 11(2)(b) of the **Interpretation Act** in relation to the 1st Defendant's power to suspend the Plaintiff as the Governor of Central Bank of Nigeria which he urged be read to fill the *lacunae* in Section 11(2)(f) of the **Central Bank of Nigeria Act, 2007**. He concluded his submission by arguing that the 2nd Defendant has not done anything that "*is unconstitutional or illegal to suspend the Plaintiff to have the squandered money to be investigated*". He urged that the Plaintiff's suit be struckout.

The 3rd Defendant, represented by S.E. Umoh, Esq. SAN began his submissions by drawing the Court's attention to the "Notice of Preliminary Objection" dated 12/3/14, filed on behalf of the 3rd Defendant. He also drew the Court's attention to the processes including written address filed in support of the said "Notice of Preliminary Objection" as well as the Reply on Points of law. These were adopted by the 3rd Defendant's Counsel as his oral submissions in furtherance of the "Notice of Preliminary Objection" filed on behalf of the 3rd Defendant.

In his further submissions, the 3rd Defendant's learned Counsel allied himself with the arguments of the 1st and 2nd Defendants' Counsel on their respective "Notices of Preliminary Objection" which have a common issue in relation to the jurisdiction of this Court vis-a-vis Section 251(1) when read with the provision of Section 254c(1) of the **CFRN, 1999 As Amended**. It was argued that it is the Plaintiff's claims that determine the issue of jurisdiction, and that if the Plaintiff's claims are read, the word "suspend" or "suspension" appear in every paragraph of the reliefs sought. It was argued that the Plaintiff's grievance is about his suspension from Office as the Governor of the Central Bank of Nigeria. It was submitted that "*matters on employment are now within the domain of National Industrial Court*". The 3rd Defendant's Counsel, whilst referring to Section 54 of the **National Industrial Court Act, 2006** argues that the Plaintiff is "*an employee of the Federal Government of Nigeria*". He further submitted that "*the Plaintiff ran into the Labour Act in order to escape from the web of* ***National Industrial Court Act***", and then cited the provision of Section 91 of the **Labour Act**, Cap.L1, LFN 2004.

It was contended that the **National Industrial Court Act** "*is a later enactment to the* ***Labour Act***" and it was submitted, that where the Labour Act, supra. is inconsistent with Section 254c(1) of the **Constitution**, it is obvious that the provision of the **Labour Act** will be voided on *inconsistency principle*. It was further argued that "*suspension*" is connected with "*employment*", and it was submitted that the "*Plaintiff is not a parallel government*". This was argued on the submission that the Plaintiff "*comes under the powers of the President as is provided for by Section 5 of the Constitution*". It was submitted

that "*it is the same power that appointed the Plaintiff*". It was argued that the word "*removal*" as used in Section 11(2)(f) of the **Central Bank of Nigeria Act**, supra, is "*not a magic word*" but that "*it is a process. It is an act that follows procedure*". It was argued that the 1st Defendant must "*initiate the removal of the Plaintiff by an act that follows a laid down procedure*". It was concluded that the "*Plaintiff was suspended to enable the 1st Defendant to investigate him on certain allegations concerning his official conduct*". In conclusion, the 3rd Defendant's Counsel urged that the name of the 3rd Defendant be struckout of the suit as "*there is no cause of action disclosed against it*".

Reading through the respective "Notices of Preliminary Objections" filed by the Defendants, the only common "thread" that runs through them is in relation to the *jurisdiction* of the Federal High Court to hear and determine the Plaintiff's suit (the *cause of action* of which is founded on the contents of Exhibit "KA2" by which the 1st Defendant purportedly suspended the Plaintiff from office as the Governor of the Central Bank of Nigeria) which was an issue based on the respective Counsel's interpretation of Section 251(1) and Section 254(c)(1) of the **CFRN, 1999 As Amended.**

In relation to the 1st Defendant, the other leg of his objection based on the near iron cast "defence" of his Counsel, Dr. Fabian Ajogu, SAN, is that the 1st Defendant had the power to suspend the Plaintiff in the wake of serious allegations of financial recklessness levied against him as contained in Exhibit "KA2", and by this fact, that there is no *cause of action* against the 1st Defendant who has exercised his powers as the President of the Federal Republic of Nigeria and in accordance with the **Central Bank of Nigeria Act.**

As for the 2nd Defendant, the other aspect of its objection apart from the common "thread", is that the Plaintiff's action, being one in which the facts are in contention, it is ill suited to be tried by way of "Originating Summons" as facts in dispute are adversarial and contentious.

In relation to the 3rd Defendant, it is that the Plaintiff's "Originating Summons" does not disclose any *cause of action* against it. These are the slight differences in each of the "Notices of Preliminary Objection" filed and argued by each of the Defendants through their respective Counsel. It is to these issues, which the Plaintiff's Counsel, Kola Awodein, Esq. SAN is required to reply to on the applications filed to challenge the jurisdiction of the Federal High Court.

In his response, the Plaintiff's learned Counsel, Kola Awodein, Esq. SAN began with the 1st Defendant's "Notice of Preliminary Objection". He drew the Court's attention to the Plaintiff's Counter-Affidavit deposed on 18/3/14 by Chima Okereke (his passport photographs are several in the Court's file, that I feel tempted to describe him as the (official deponent to the Plaintiff). It's a 7 paragraphed Counter-Affidavit. The said Counter-Affidavit and the written address filed in its support were adopted in urging the Court to dismiss the 1st Defendant's "Notice of Preliminary Objection". It was the Plaintiff's Counsel's submissions, that it is the Plaintiff's Claims that will "determine the Court's jurisdiction. It was the learned silk's submissions that "*it is clear that the nature of the Plaintiff's case invites this Court in its interpretative duty to declare what the law is within the purview of Section 251(1)(p) and (r) of the* ***CFRN, 1999 As Amended***".

It was argued that the Plaintiff's case is to *declare* the law and to make a corollary order of injunction, *"and that it was not about "employment"*.

Let me reason out aloud in relation to this submission and I asked: the declaration sought and the corollary order of injunction, if made, will eventually lead to what result? Is it not to restore the Plaintiff back to Office as the Governor of the Central Bank of Nigeria? The "end result" of the Plaintiff's suit, if not intended to be an arid academic exercise, certainly must lead to a result that will benefit him in terms of the alleged wrong done to him by the 1st Defendant's letter produced as Exhibit "KA2" and attached to the "Originating Summons". This letter, is in my view, the *gravamen* of the Plaintiff's *cause of action* which if it had not been issued and addressed to the Plaintiff, all the issues that were raised therein as allegations, may never have been known to the general public. To narrowly, as it were, confine the Plaintiff's case to mere interpretation of the law in seeking to have it declared without adverting to the end result, in the event that the Plaintiff's action succeeds, will be akin to the proverbial ostrich that buries its head in the sands. It may smack of a scenario almost similar in the case of **TUKUR v. GOVT. OF GONGOLA STATE (1989) 4 NWLR (pt.117) 517 S.C.** where the appellant who was removed as Emir of Muri instituted an action for fundamental enforcement of his right to fair hearing in the Federal High Court on the ground that he was not given a hearing before he was removed. It was held that the substance of his case was about the Emirship, and the issue of fair hearing, by which he sought to make the Federal High Court to exercise its jurisdiction pursuant to **Chapter IV of the Constitution** was an ancillary, perhaps a secondary issue. I am only reasoning aloud so that both parties

can appreciate where I was coming from when I eventually reach a final decision on both the "Notices of Preliminary Objection" and on the substantive suit on its merit in the event that the objections failed.

The Plaintiff's Counsel further argued that the "*Plaintiff's suit is not about employment. A suit about employment must necessarily involve an employer and employee*". The Plaintiff, it was argued, "*is not an employee of the 1st Defendant notwithstanding that the appointment was made by the President*". The Court's attention was drawn to Section 14(6) of the **Central Bank of Nigeria Act**. This was the provision where the "*salaries, fees, wages or other remuneration payable to or in respect of employees of the Bank, other than the Governor or Deputy Governors, shall be as stipulated, from time to time, by the Board*". It was argued, perhaps in relation to the opening remarks by the 1st Defendant's Counsel that the Central Bank of Nigeria whose independence is in issue, was not joined as a party, that "*the Plaintiff has no quarrel with the Central Bank of Nigeria and has no problem with any employee and has not raised any issue*". It was argued that the **Blacks Law Dictionary**, 9th Edition and the **Labour Act** did not put the Plaintiff in a position of an "employee" with the 1st Defendant by definition. It was argued, that the Plaintiff is an "*employee of the Central Bank of Nigeria*" and the Plaintiff's Counsel submitted, with reference to Section 54 of the **National Industrial Court Act**, that it is inapplicable to the instant case because, it is a definition section. It was argued that the **National Industrial Court Act** was made to establish the National Industrial Court as a Court.

In the event that this submission was not accepted as correct, the Plaintiff's Counsel argued as an alternative issue, that if this case is construed as one about "employment", it was submitted that Section 254c(1)(a) of the **Constitution** "*does not apply so as to oust the jurisdiction of the Federal High Court*". It was submitted that the word "employment" in Section 254c(1) of the Constitution should take its meaning from Section 91 of the **Labour Act** which according to the Plaintiff's learned Counsel, defines "*contract of employment*" and "*worker*". It was argued, that the Plaintiff does not fall under the definition of "employee" in the said Section 91 of the **Labour Act.** The Plaintiff's Counsel argued, that "*the effect of this is that the Federal High Court retains its jurisdiction to entertain cases involving those categories of people*". What "category of people" does the Plaintiff belong? Is the Plaintiff's Counsel saying, that although, the Plaintiff is an "*employee of the Central Bank of Nigeria*" and not an employee of either the 1st Defendant or the Federal Government of Nigeria belongs to a "category of people" whose *contract of appointment* is not cognizable by the National Industrial Court pursuant to Section 254c(1)(a) of the **Constitution**? I asked this question when I reflected on the issue whether the Central Bank of Nigeria is not an "Agency of the Federal Government of Nigeria"? I need to know the legal issues which make the Plaintiff, as an employee of the Central Bank of Nigeria whose matter is such that cannot be heard by the National Industrial Court? The Plaintiff must, in my view, have a very *special status* as a Central Bank of Nigeria's employee who is thereby, not an employee of the Federal Government of Nigeria. I have made this remark because, when Section 318 of the **CFRN, 1999 As Amended** is read where it defines "*public service of the federation*", the Central Bank of Nigeria being a creation of an Act of the National

Assembly readily falls within such "statutory bodies" that have been adjudged as one of the "Agencies of the Federal Government of Nigeria". I am yet to be clear on this issue, because, considerable efforts were expended by both parties in situating where the Plaintiff belongs in terms of his *contract of appointment* as shown in Exhibit "KA1" attached to the "Originating Summons".

Whilst arguing this issue further, the Plaintiff's Counsel submitted that "*it is not the intention that these categories of persons such as the Plaintiff will go before the National Industrial Court*". I ask: Why not? I need to have a specific provision of the law, either the **Central Bank of Nigeria Act** or the Constitution that "categorized" the Plaintiff as one of the persons whose *contract of appointment* when violated as it is alleged, based on Exhibit "KA2" by the 1st Defendant who directed the Plaintiff to proceed on suspension pending the outcome of audit investigation ordered into these "*far reaching breaches*" cannot be heard by the National Industrial Court. This is because, the thrust of the questions set down for determination in the "Originating Summons" vis-a-vis the reliefs being sought, is that the 1st Defendant lacked the power to take the decision conveyed in Exhibit "KA2". I need to know why the said decision which has affected the Plaintiff's ability to oversee the day to day operation of the Central Bank of Nigeria is such that, even in the exercise of the Court's *interpretative jurisdiction* as conferred on it by Section 251(1)(q) of the Constitution, it is a matter which can only be enquired into by the Federal High Court owing to the "category" of person to which the Plaintiff belongs. I hope that the Plaintiff's Counsel, accepts these remarks and observation in good faith because, when I read through the addresses filed by

both parties, these are some of the issues that agitated my attention. They are openly expressed herein, to disabuse any notion that the Court appears to have taken a position. But until I am able to know why (outside the interpretation which I am urged to give to the provisions of Section 251(1) (p) and (r) and Section 254(c)(1)(a) of the **CFRN, 1999 As Amended** the Plaintiff falls into a rather special and peculiar "category" of persons, (even as an employee of the Central Bank of Nigeria which as I had remarked, has been adjudged as an "Agency of the Federal Government of Nigeria") whose *contract of appointment* evidenced by Exhibit "KA1" and the provisions of the **Central Bank of Nigeria Act**, supra. cannot be entertained by the National Industrial Court. These remarks are made in full consciousness of the judicial principle, that the jurisdiction of every superior Court of record, is presumed. I need to know the facts and the law, by which the National Industrial Court is *disabled* from *taking cognizance* of the Plaintiff's suit as constituted in the "Originating Summons" filed.

In his further submissions on the issue of the "category of persons" to which the Plaintiff belongs, the Plaintiff Counsel cited the decision in **EASTBONE v. FOREST ICE CREAM PARLOUR (1959) 2 QB 107.**

The Plaintiff's Counsel further argued that "Section 251 of the Constitution deals with issues involving "*public officers*" and "*Directors of Companies*" and submitted that "*these are specific and not general in terms of employment*". The Plaintiff, is not a "*Director of Company*" but as an employee of the Central Bank of Nigeria, he is a "public officer". I will return to this issue later in the context of the provision of Section 251 of the **Constitution** relied up by the Plaintiff's Counsel.

The Plaintiff's Counsel then took on the submissions in relation to the 1st and 3rd Defendants' that there is no cause of action against the 1st and 3rd Defendants by submitting that "*there is a cause of action against all the Defendants*" and submitted that: "*the crux of the Plaintiff's case is about suspension*".

In relation to the provision of Section 5(1)(b) of the **Constitution**, it was argued by the Plaintiff's Counsel that "*the exercise of the powers in Section 5(1) of the Constitution is subject to an Act of the National Assembly. The 1st Defendant is obliged to comply with the Central Bank of Nigeria Act by constitutional imperative*".

In relation to the issue of "*Central Bank of Nigeria's independence*", it was argued that this was in relation to "*operational independence*".

In replying to the case of **COCOA COLA (NIG.) LTD. v. AKINSANYA (2013) 18 NWLR (pt.1386) 255 CA**, the Plaintiff's Counsel submitted that the facts of this case are different from the facts of the instant suit and that the Court will not apply it to the determination of the Plaintiff's suit. The Plaintiff's Counsel then cited the Supreme Court's decision in **OBIUEWUBI v. C.B.N. (2011) 7 NWLR (pt.1247) 465 @ 497** and **AGBAEZE v. CUSTOMARY COURT ITEM DISTRICT & 5 ORS. (2007) 7 NWLR (pt.1032) 196 @ 206**. It was to argue the fact that the Plaintiff's case is not about *private employment*. The Plaintiff's Counsel further submitted, that "*all the references by the Defendants to Section 86 of the **Labour Act** which says that the Section applies to all public authorities*" and also, "*with reference to Section 318 of the **Constitution**, do not meet the Plaintiff's case which is that, the Plaintiff, though a*

public officer is not in the "category" to which the definition of "employee" in ***Labour Act*** *applies*". The Plaintiff's Counsel concluded by submitting that the "*Plaintiff is not an employee of the Central Bank of Nigeria Board*". So, whose employee is he? The limited role of the Senate, by virtue of Section 8(1) of the **Central Bank of Nigeria Act** when the appointment of the Plaintiff by the 1st Defendant which is required to be "*confirmed*" by Senate cannot, in my view, make the Senate as a legislative body, the Plaintiff's employer. The legislative role of the Senate in relation to the provisions of Section 8(1) and 11(2)(f) of the **Central Bank of Nigeria Act** in relation to the *appointment* and *removal* of the Governor of the Central Bank of Nigeria is in my view, part of the oversight legislative duties prescribed by the National Assembly in furtherance of the doctrine of *separation of powers* and its corollary principle of *checks* and *balances*, to ensure that no arm of government operates autocratically or assume the status and image of an Hobbesian's "*Leviathan*" in the democratic structure of governance of the Federal Republic of Nigeria. That limited role cannot make the Plaintiff's employer to be located in the Senate.

When the Plaintiff's Counsel concludes his submissions, the 1st Defendant's Counsel, Dr. F. Ajogu, SAN was heard in his reply on points of law. He adverted to the Reply on points of law dated 24/3/14 which he adopted as his submissions.

In his submission, the 1st Defendant's Counsel, whilst reiterating the relevance of the decision in **AGBAEZE's** case, urged the Court to see the substance of the Plaintiff's case as one "*about the suspension of a public servant*".

The 1st Defendant's Counsel argued that it is the nature of the Plaintiff's claims that will determine, in the exercise of the Court's interpretative jurisdiction, which of the Federal High Court or National Industrial Court has jurisdiction to interpret the laws and make the *declaration* and *injunction* sought. It was Dr. Ajogu, SAN's contention that the case of **OLORUNTOBA-UJU v. DAPEMU**, supra. was decided in 2008 before the **3rd Alteration to the Constitution, 2010** came into being. The 1st Defendant's Counsel, whilst referring to the arguments canvassed on pages 8-9 of the Plaintiff's address to oppose the 1st Defendant's "Notice of Preliminary Objection", submitted that "*a non-juristic person such as the Board of the Central Bank of Nigeria cannot be an employer*" ... and submitted that, "*the Federal Government is the Plaintiff's employer which is represented by the 1st Defendant*". The 1st Defendant's Counsel argued that who is the Plaintiff's employer "*is one of the questions which is to be answered by the National Industrial Court*". He then concluded by referring to the provisions of Sections 86 and 91 of the **Labour Act** which according to Dr. Ajogu, SAN define "*public authority*" and "*public officer*". He urged that the Plaintiff's suit be dismissed.

The 2nd Defendant's Counsel, Chief Mike Ozekhome, SAN was heard next on his Reply on points of law.

The 2nd Defendant's Counsel began by submitting that all the cases cited by the Plaintiff's Counsel are pre-Section 254(c)(1) of the **Constitution (As Amended).** The said Section, learned Counsel submitted, came into existence on 4/3/11.

The 2nd Defendant's Counsel adverted the Court's attention to the Reply address filed by the 2nd Defendant to the Plaintiff's Counter-

Affidavit dated 28/3/14. In the address, the 2nd Defendant's Counsel drew the attention of the Plaintiff's Counsel to Section 318(1)(c) of the **Constitution** which defines "*public service of the federation*" and submitted the **Central Bank of Nigeria Act** is one of the "*Acts of the National Assembly*". Again, the 2nd Defendant's Counsel referred to the **Blacks' Law Dictionary**, 8th Ed. Pg.1268 which according to him, defines "*Public Service*". Having referred the Court's attention to specific paragraphs of the 2nd Defendant's Reply address as well as the provision of Section 11(1)(c) of the **Interpretation Act** which the 2nd Defendant's Counsel argued is to be used in interpreting Section 11(2) of the **Central Bank of Nigeria Act**, supra, concluded that the Plaintiff has no case and that the suit be struck out *in limine*.

The 3rd Defendant's Counsel, S.E. Umoh, Esq. SAN began by allying himself with the submissions of the 1st and 2nd Defendants' Counsel and then drew the Court's attention to the "Reply on Points of Law" dated 28/3/14 filed on behalf of the 3rd Defendant. The said Reply on Points of Law was adopted as the submissions urged on behalf of the 3rd Defendant to have the Plaintiff's suit struckout.

It was argued that the Central Bank of Nigeria where the Plaintiff was serving before his suspension, "*constitutes part of the Executive Arm of Government*". The sovereign, it was argued by the 3rd Defendant's Counsel, is represented "*by the 1st Defendant and by the 2nd Defendant as the Chief Law Officer of the Government*".

The 3rd Defendant's Counsel further argued, that the **COCOA COLA's** case cited to the Court, was the only case that has come post the **National Industrial Court Act, 2006**. The decision

in the said case, learned Counsel submitted, was against the Plaintiff. It was further argued that the Plaintiff cannot pick the **Labour Act** as the applicable law and reject the **National Industrial Court Act** and submitted that both of them are Acts of the National Assembly. He submitted that the **National Industrial Court Act** prevails over the **Labour Act**. This submission seems to ignore the fact, that in terms of jurisdiction of superior Courts of record, it is the provisions of the Constitution that should count and not the Acts being in contention. It really would not matter what the National Assembly may have put in either the **Labour Act** or the **National Industrial Court Act**, the issue of jurisdiction as is being contested by the Defendants is to be determined based on the Plaintiff's claims when read vis-a-vis the provisions of Sections 251(1) and 254c(1) of the **CFRN, 1999 As Amended**. This is because, it remains the "*grundnorm*" of the corporate entity which the provision of Section 2(1) of the **CFRN, 1999 As Amended** describes as the "*Federal Republic of Nigeria*".

When all Counsel have been heard on the Defendants' respective "Notices of Preliminary Objection", I deferred my Ruling till when the "Originating Summons" is argued because, I had earlier taken a decision that both the objection and the substantive suit, pursuant to the provision of Order 29 Rule 1(b) of the **Federal High Court (Civil Procedure) Rules, 2009** shall be heard together. Although, when writing the Judgment, the Ruling on the "Notices of Preliminary Objection" is to be dealt with first and be incorporated in the Judgment. I then proceeded to listening to the submissions of Counsel for the parties on the substantive "Originating Summons". I began with the Plaintiff's Counsel, Kola Awodein, Esq. SAN.

In his oral submissions, the Plaintiff's Counsel, Kola Awodein, Esq. SAN began by adverting the Court's attention to the "Originating Summons" dated 24/2/14 and the Affidavit of Chima Okereke filed in its support as well as the written address filed which he adopted as his oral submissions.

In his further adumberation of the said address, the Plaintiff's Counsel argued that the 1st Defendant "*has no power under the Central Bank of Nigeria Act to suspend the Plaintiff*" and submitted that "*any such power to suspend the Plaintiff must be nullified*". It was submitted, that the "*exercise of executive powers of the 1st Defendant is subject to the Acts of National Assembly, and in this case, the* ***Central Bank of Nigeria Act***". The Plaintiff's Counsel argued that the Central Bank of Nigeria Act has provided "*for when somebody can act as Governor of the Central Bank of Nigeria*" and submitted further that "*the express mention of one thing is the exclusion of another*". In this connection, the Plaintiff's Counsel argued that "*if it was the intention of the Act to give the 1st Defendant the power to suspend the Plaintiff, there will be no difficulty in providing for it as the power to remove was given*". It was argued with considerable force, that the "***Central Bank of Nigeria Act*** *has prohibited the 1st Defendant from suspending the Plaintiff*". Although, when I read the **Central Bank of Nigeria Act**, I was unable to lay my eyes on any specific provision by which this submission can be sustained, but I agree that it will be a legitimate argument to say that by the provision of Section 11(2)(f) of the **Central Bank of Nigeria Act**, it may be *implied* that the National Assembly never have *intended* to confer the power to suspend the Governor of the Central Bank of Nigeria on the 1st Defendant. This will depend on the interpretation which the Court

will eventually give to the said provisions in Section 11 of the **Central Bank of Nigeria Act** using the recognized judicial *canons of statutory interpretation.* But to express the view in such positive and strong way as was done by the Plaintiff's Counsel is to urged the Court, to read *express words* not stated in Section 11 of the **Central Bank of Nigeria Act** into it. I hope that the point being made is clear to the Plaintiff's Counsel.

In arguing this issue further, the Plaintiff's Counsel drew the Court's attention to the provision of Section 1(3) of the **Central Bank of Nigeria Act** and that it was to make the Central Bank of Nigeria an "*independent body*". The Plaintiff's Counsel submitted that the intention of the Act is "*to make the Central Bank of Nigeria operationally independent so that there will not be any interference with the operational independence except as is permitted by the Act*". It was further argued, that "*by the purported suspension of the Plaintiff, the 1st Defendant has unlawfully interfered with that operational independence manifested in the administration and management of the Central Bank of Nigeria*". It was contended that the 1st Defendant's interference with the operational independence of the 1st Defendant "*has grave consequences for monetary policies*" and that the 1st Defendant in the exercise of his constitutional executive powers, "*can only do that which is permitted by law*". *It was argued that the 1st Defendant "cannot and has no power to suspend the Plaintiff*".

The Plaintiff's Counsel, as a senior advocate, strategically shifted to an alternative position in the event that the "*hard line*" submissions canvassed that there is no power vested in the 1st Defendant by which he could suspend the Plaintiff as Governor of Central Bank of Nigeria by arguing that, "*assuming there is any*

such power (which is wholly denied) we submit that that power given the provisions of the ***Central Bank of Nigeria Act****, can only be exercised subject to 2/3 majority of the Senate. Otherwise, the power cannot be exercised*".

The Plaintiff's Counsel, with regard to this alternative submission, urged this Court "*to construe the provisions of Sections 7, 8 and 11 of the* ***Central Bank of Nigeria Act***".

It was further argued, that the **Central Bank of Nigeria Act** has made provisions "*for when someone can act in place of the Governor of the Central Bank of Nigeria*". It was contended that by the provision of Section 7(1) of the **Central Bank of Nigeria Act**, it is only the Governor of the Central Bank of Nigeria that "*can put someone in the Office of the Governor to act*". It was argued that by the provision of Section 11 of the Act, "*the appointment of anybody else has to receive the confirmation of the Senate*".

The Plaintiff's Counsel concluded by submitting that the Plaintiff "*has made his case that the purported suspension of the Plaintiff is illegal*". This Court was urged to nullify it. The question which I intend to ask once again is: If the suspension advised in Exhibit "KA2" is nullified, what happens to the Plaintiff? The simple implication is that it will deem the suspension as a nullity, i.e. as if it never existed and the Plaintiff will be automatically restored to Office as Governor of the Central Bank of Nigeria because, the ancillary *injunctive* reliefs claimed will almost invariably be granted. This was the issue which I raised earlier in the context of the narrow path being charted by the Plaintiff's Counsel when he argued that the Plaintiff's case is not about employment but simply, to construe the relevant provisions of the **Central Bank**

of Nigeria Act and to declare the law as it is and grant the ancillary *injunctive* reliefs! I asked: What is the end result? Or, as my former principal, the Late Chief G.O.K. Ajayi, SAN (1931 – 2014) now of blessed memory, – arguably, one of Nigeria's finest, amongst the foremost and erudite legal icons the Federal Republic of Nigeria has produced quite often asked: *What is the bottom line?*

The 1st Defendant's Counsel, Dr. F. Ajogu, SAN was heard next on the substantive "Originating Summons".

In his submissions, the 1st Defendant's Counsel drew the Court's attention to the 1st Defendant's Counter-Affidavit deposed on its behalf by one Nnamdi Ekwem. It was filed on 11/3/14. He also adverted to the written address filed in its support which he adopted as his oral submissions.

In relation to the Plaintiff's processes, the 1st Defendant's Counsel observed that although, the Plaintiff has produced Exhibit "KA2" – i.e. the letter of his suspension by the 1st Defendant but that he has not produced the annextures to it. The 1st Defendant's Counsel adverted the Court's attention to the annextures which the 1st Defendant has produced as Exhibits and marked as Exhibits "1" – "6" respectively. These are documentary exhibits in relation to the Query issued to the Plaintiff on certain allegations of financial recklessness amongst others. I quite understand why the Plaintiff's Counsel did not bother themselves with all of these exhibits, because in the course of Mr. Kola Awodein, SAN's submissions, I remarked that the position which the Plaintiff has taken, is that regardless of the gravity or seriousness of the allegations contained in all of the 1st Defendant's exhibits, once the 1st Defendant had no power to suspend the Plaintiff,

producing and relying on all these exhibits which formed the background facts that led to the letter of suspension produced by the Plaintiff as Exhibit "KA2" will be of no moment. These exhibits and the allegations contained in them would, by the Plaintiff's assessment of his case, be relevant and useful were the 1st Defendant granted the power by the **Central Bank of Nigeria Act** to place him on suspension pending the investigation of the allegations which I found rather *weighty*.

Having gone through each of the Exhibits produced by the 1st Defendant's deponent, the 1st Defendant's Counsel argued that "*the Plaintiff's suspension was not a removal of the Plaintiff*". He cited Section 11(2) of the **Central Bank of Nigeria Act** as a provision which "*deal with cessation of employment not with suspension*". The 1st Defendant's Counsel further referred to Section 11(1)(c) of the **Interpretation Act.**

Whilst citing Section 1(3) of the **Central Bank of Nigeria Act**, the 1st Defendant's Counsel argued that the said provision "*talks about the independence of the Central Bank of Nigeria*" ... and that "*it is not made a party in this action*". The Plaintiff's Counsel had in the course of his submissions whilst opposing the 1st Defendant's "Notice of Preliminary Objection" argued that the Plaintiff had no quarrel with the Central Bank of Nigeria or with any of its employees. But frankly speaking, when I read some of the Plaintiff's submissions concerning the appointment of one Dr. Sarah Alade as the Acting Governor of the Central Bank of Nigeria by the 1st Defendant, I really was of the view, that the Central Bank of Nigeria or the said Dr. Sarah Alade whose appointment as the Acting Governor of the Central Bank of Nigeria which the Plaintiff expressed reservations that it was not in accordance with Section 7(1) or Section 8(1) of the **Central Bank of Nigeria Act**

supra. should have been made a party. Although, no relief was sought against the said Dr. Sarah Alade or the Central Bank of Nigeria, but the Plaintiff's Counsel canvassed legal submissions intended to impugn the said appointment made by the 1st Defendant. In the absence of the Central Bank of Nigeria as a party who may have had an Acting Governor whose appointment the Plaintiff's Counsel argued that it was legally flawed or the concerned officer, Dr. Sarah Alade, this Court has no jurisdiction to make any pronouncement in relation to the said appointment of an Acting Governor by the 1st Defendant because, neither the Central Bank of Nigeria or the said Dr. Sarah Alade were made parties to the Plaintiff's suit to be heard. See: Supreme Court's decision in **KOKORO-OWO v. LAGOS STATE GOVT. [2001] 11 NWLR (pt.728) 240.**

The 1st Defendant's Counsel concluded his argument by submitting that the Plaintiff's case lacks merit and ought to be dismissed in its entirety.

The 2nd Defendant's Counsel, Chief Mike Ozekhome, SAN was heard next. The 2nd Defendant's written address more or less took up the "battle" on behalf of the 1st Defendant. I seem to overlook this, because the 2nd Defendant, by the provision of Section 150(1) of the **CFRN, 1999 As Amended**, is described as the *Chief Law Officer of the Federation.* He is also, by virtue of the Office and the Constitution, the *Chief Legal Adviser of the Government of the Federation.*

In his oral adumbration, the 2nd Defendant's Counsel adverted to the 32 paragraphed "Counter-Affidavit filed on 18/3/14 in Opposition to the Plaintiff's Originating Summons" as well as the

written address filed to argue the said "Counter-Affidavit". The learned silk adopted the addresses filed.

The 2nd Defendant's Counsel drew the Court's attention to paragraph 8 of the "Further Affidavit" filed by the Plaintiff as a Reply to the 2nd Defendant's "Counter-Affidavit" and submitted, that "*all the Plaintiff says in paragraph 6 is to rehash all the depositions in our Counter-Affidavit and say that the Counter-Affidavit does not relate to the Plaintiff's "Originating Summons*". It was argued, that "*the Plaintiff did not traverse any of the issues which we raised that justify his suspension from office*". I had earlier dealt with this issue in order to express an opinion why the Plaintiff's Counsel, either *deliberately, inadvertently or strategically*, did not bother themselves to reproduce the documentary exhibits which the 1st Defendant has produced and which contains facts about serious allegations of financial recklessness made concerning the Plaintiff's conduct in the running of the Central Bank of Nigeria's operations on a day to day basis as its Governor. In so far as the 1st Defendant lacks the power, in the context of the **Central Bank of Nigeria Act**, to suspend the Plaintiff from Office as the Governor of the Central Bank of Nigeria, it is of no moment for the Plaintiff, as far as his Counsel is concerned, to join issues with the Defendants on the allegations contained in the annextures to Exhibit "KA2" which the Plaintiff did not or failed to produce as part of his own processes.

The 2nd Defendant's Counsel, having drawn the Court's attention to paragraph 7(f) of the Plaintiff's "Affidavit in Support of the Originating Summons", argued that the Plaintiff "*has admitted that he has been duly suspended as the Governor of the Central Bank of Nigeria*". He further argued that "the Central Bank of

Nigeria Act did not specifically address the issue of suspension of the Plaintiff but it is taken for granted, that he who can appoint can also suspend or remove". This is an issue on which considerable submissions were made by both the Plaintiff and the Defendants' Counsel. Whilst the Defendants' Counsel held on to the catch legal phrase that he who has the power to appoint, also has the power to *suspend* or *remove*, the Plaintiff's Counsel on their part, argued that in relation to public authorities, what is not "*prohibited in law, is not allowed*". Whichever way it goes, the Plaintiff's position is that it was never the intention of the National Assembly when it provided in Section 11(2)(f) of the **Central Bank of Nigeria Act** for the removal of the Governor of the Central Bank of Nigeria subject to the 2/3 majority of the Senate, and that even where the 1st Defendant intends to exercise the power to suspend, he should still seek the same Senate confirmation. By this, it was argued, by the Plaintiff's Counsel, was in furtherance of the provision of Section 1(3) of the **Central Bank of Nigeria Act** to make the Central Bank of Nigeria "*an independent body in the discharge of its functions*". Whilst the Defendants' Counsel urged the Court to call in aid, the provision of Section 11(2)(c) of the **Interpretation Act**, supra. to fill in the *lacunae* in the **Central Bank of Nigeria Act** which made no provision for *suspension* of the Governor of the Central Bank of Nigeria, the Plaintiff's Counsel, on their part, argued that there was no *lacunae* and it was a deliberate action on the part of the National Assembly in furtherance of the provisions of Section 1(3) of the **Central Bank of Nigeria Act**, supra. not to have made any provision for *suspension* of the Governor of the Central Bank of Nigeria. These issues, if anything, clearly confirms that the Legislature, no matter how much efforts it may exert, cannot foresee all the circumstances that may arise in the future. This,

perhaps to the best of my knowledge as a Nigerian, is the first incident where a sitting Governor of the Central Bank of Nigeria was suspended by the President. It is in this regard, that the National Assembly may deem it necessary, to have a second look at the **Central Bank of Nigeria Act** and do the needful in order to state what happens when a sitting Governor of the Central Bank of Nigeria is faced with serious allegations of impropriety, misconduct and financial recklessness as levied in the Exhibits attached to the "1st Defendant's Counter-Affidavit filed in Opposition to the Originating Summons" against a sitting Governor. Although, when a Court is faced with such situation, it has the *instruments*, otherwise called *canons of statutory interpretation* to "navigate" within the provisions of the Act by which the intention of the Legislature can reasonably be ascertained. But the question is: Would the National Assembly, for instance, have taken a position, that regardless of allegations of financial recklessness that may be proven against a sitting Governor of the Central Bank of Nigeria, that once he has assumed office as such, he must be allowed to complete his tenure in order to preserve the "independence" of the Central Bank of Nigeria or that, when there are genuine and valid reasons to suspend a sitting Governor of the Central Bank of Nigeria on allegations of financial impropriety, and which need to be properly investigated on the larger principle of good corporate governance, such Governor can be placed on suspension pending such investigation and the decision to do so is to be taken by who? Is it by the President acting alone as in this instance; or with reference to the Senate for its approval or by the Board of the Central Bank of Nigeria which is chaired by the same Governor? All of these, in the light of these developments certainly may be a clarion call for legislative intervention to effect a review of the

Central Bank of Nigeria Act so that what is to be done when faced with a similar scenario, is not left to mere *conjectures* and or to the *judicial canons of statutory interpretation,* the opposing principles and rule, which both parties have urged in this case. It is to be understood, that the primary constitutional role of the judiciary is to interpret the Laws of the land and not to make laws. Whilst it is desirable that the Courts should be encouraged by the Constitution to have and exercise liberal and a robust interpretative jurisdiction of enactments, it should not be opened to too much of having to re-write Acts of the National Assembly through its interpretative jurisdiction on such a substantial issue as the one which the Plaintiff's suit has thrown up. The Judgment that will be delivered, will take a stand between applying the provision of Section 11(1)(b) and (2) of the **Interpretation Act** to fill in the *lacunae* (if it indeed it does exist) which the Defendants' Counsel, argued was created by the **Central Bank of Nigeria Act** because it made no specific provision for the suspension of a serving Governor of the Central Bank of Nigeria; and the Plaintiff's Counsel's argument, that once the Court reads the **Central Bank of Nigeria Act** as a whole, and in particular, in relation to Section 1(3) of the Act, that it was deliberate on the part of the National Assembly not to state specifically that the Governor of the Central Bank of Nigeria can be placed on suspension – by whoever!

Whilst concluding his submissions on the phrase, that "*what is not prohibited or not outlawed or forbidden by a Statute is definitely allowed*", the 2nd Defendant's Counsel cited the Supreme Court's decision in **A.G. ONDO STATE v. A.G. EKITI (2001) 17 NWLR (pt.743) 706.** The 2nd Defendant's Counsel

also cited the Supreme Court's decision in **OKOMU PALM OIL (NIG.) LTD. v. ISERHIENRHIEN**, supra.

It was argued that the **Interpretation Act** which the Defendants' Counsel relied upon "*is meant to be used as a tool to interpret enactments where there is a lacunae*".

In rounding up his submissions, Chief Ozekhome, SAN referred to the decision in **LONGE v. F.B.N.** and **INEC v. OKONKWO** which were cited in the written address filed.

The 2nd Defendant's Counsel referred to Section 2 of the **Central Bank of Nigeria Act** which states the "principal objects" of the Central Bank of Nigeria and that having regard to the allegations made against the Plaintiff, it was "*a proper case for the suspension of the Plaintiff by the 1st Defendant and the 2nd Defendant has not done anything wrong in the process*". He urged that the Plaintiff's case be dismissed.

The 3rd Defendant's Counsel was heard next. Mr. S.E. Umoh, SAN began his submissions by adverting the Court's attention to the 35 paragraphed Counter-Affidavit deposed on 27/3/14 by P. Ali-Bozi and the written address filed in its support. The 3rd Defendant's Counsel adopted the said address as his oral submissions. The 3rd Defendant's Counsel began by referring to the provisions of Section 5 of the Constitution and argued that the Central Bank of Nigeria "*falls within the executive arm of government*" and submitted that the "*Plaintiff's suspension by the 1st Defendant is valid*".

In relation to the Supreme Court's decision in **A.G. v. ABUBAKAR** cited by the Plaintiff's Counsel, it was submitted that it is inapplicable. It was contended that the 3rd Defendant

has shown serial breaches of the **Central Bank of Nigeria Act**, in particular, its Section 2 which deals with the "*principal objects*" of the Central Bank of Nigeria. It was argued that the allegations against the Plaintiff were raised by another institution of government, and that it will be "*incongruous to argue that by the independence of the Central Bank of Nigeria, such allegations should not be investigated by the 1st Defendant*". The 3rd Defendant's Counsel argued that it was a fatal omission that the Plaintiff did not join the Central Bank of Nigeria as a party to this case. I had made certain remarks in this regard when I reviewed the submissions of the Plaintiff's Counsel and the 2nd Defendant.

The 3rd Defendant's Counsel argued that what the 1st Defendant has done concerns his powers to regulate the affairs of the executive arm of government and whilst referring to paragraph 7(q) and (r) of the "Plaintiff's Affidavit in Support of the Originating Summons", the 3rd Defendant's Counsel argued that copious references were made concerning the appointment of Dr. Sarah Alade as Acting Governor of the Central Bank of Nigeria. I had already dealt with this issue earlier and took the position that since no specific relief(s) are sought against the said Dr. Sarah Alade, this Court cannot make any finding or pronouncement on the legality or otherwise of her appointment as the Acting Governor of the Central Bank of Nigeria since she was not made a party to the suit so as to be heard.

When all the Defendants' Counsel have respectively replied to the submissions of the Plaintiff's Counsel, I thereafter listened to the Plaintiff's Counsel's Reply on Points of Law in respect of the substantive "Originating Summons".

The Plaintiff's learned Counsel, Kola Awodein, Esq. SAN began by taking the respective "Counter-Affidavits filed by the Defendants one after the other. In relation to the 1st Defendant's "Counter-Affidavit", the Plaintiff's Counsel drew the Court's attention to the "Further Affidavit" of Chima Okereke deposed on 19/3/14 to which the Plaintiff filed a Reply address on 19/3/14.

As to the 2nd Defendant's "Counter-Affidavit", the Plaintiff filed a "Further Affidavit" by the same deponent on 26/3/14 as well as a written address. While in respect of the 3rd Defendant's "Counter-Affidavit", the Plaintiff also filed a "Further-Affidavit" on 1/4/14. It was deposed to by the same deponent and the Plaintiff filed a written Reply address to argue the said "Further Affidavit".

It was the Plaintiff's Counsel's submissions that the depositions in the respective "Counter-Affidavits" of the Defendants are irrelevant to the Plaintiff's case. Mr. Awodein, SAN argued that the Plaintiff's case is that *"the 1st Defendant has no power to suspend the Plaintiff regardless of any reason he may have"*. He further argued that *"if the 1st Defendant has any reason to remove the Plaintiff, he should do it properly"*. The Plaintiff's Counsel argued that Exhibit "KA2" was produced only "to show the fact of suspension" and submitted that the decision in **ATIKU ABUBAKAR v. A.G. OF THE FEDERATION** which he had cited, is very relevant to the Plaintiff's case. The Plaintiff's Counsel submitted, whilst referring to an Article written by one of the Justices of the Court of Appeal of England, that in relation to public authorities, *"whatever is not prohibited is not allowed by public authorities"*. He also referred to the Supreme Court's decision in **A.G. ONDO v. A.G. EKITI** which deals with the role of the Court in ascertaining the intention of the Legislature when construing enactments passed by the National Assembly. The

learned silk argued, and I think that I had made certain remarks on this that "*the Central Bank of Nigeria Act has prohibited the suspension of the Plaintiff by the 1st Defendant*". I asked: Where?

The Plaintiff's Counsel further argued that the **Interpretation Act** which the Defendants' Counsel urged the Court to apply in order to fill the *lacunae* in the **Central Bank of Nigeria Act** in relation to issue of suspension, does not apply because, there are provisions within the **Central Bank of Nigeria Act** that are contrary to the provision of Section 11(1)(b) and (2) of the **Interpretation Act** which the Defendants' Counsel have urged this Court to apply in order to infer that "*he who has the power to remove also has the power to suspend*". It was the Plaintiff's Counsel argument that by Section 1(3) of the **Central Bank of Nigeria Act**, the National Assembly intended to create the Central Bank of Nigeria as an *independent body* in the discharge of its functions and to allow the 1st Defendant to have or exercise the power to suspend the Governor of the Central Bank of Nigeria will work contrary to the letters and spirit of the said provision. Whilst arguing that Section 1 of the **Interpretation Act** is "*an exclusionary clause*", my attention was invited to the Supreme Court's decision in **OSAFILE v. ODI (NO.1) (1990) 3 NWLR (pt.136) 155.**

On the submission that the 1st Defendant is entitled as the President, to exercise constitutional executive powers over the Central Bank of Nigeria which is one of the Agencies of the Federal Government of Nigeria and an arm of the Executive organ of government, it was submitted that the exercise of such powers "*is subject to Acts of the National Assembly*". The **Central Bank of Nigeria Act** is one of such.

On the submission made by the Defendants' Counsel who respectively made recourse to the **Interpretation Act**, the Plaintiff's Counsel argued that once the Defendants realized that they have no power to suspend the Plaintiff, by making a recourse to the **Interpretation Act** makes the Defendants to be *approbating* and *reprobating* and that the Court should not allow them. The Court's attention was drawn to the decision in **KAYODE v. ODUTOLA (2001) 11 NWLR (pt.725) 659 @ 675.** It was argued that the **Interpretation Act** is "*a tool for interpretation of Acts*" and does not "*grant power*".

In relation to the submissions of the Defendants' Counsel, that the independence of the Central Bank of Nigeria was taken as if it can be a "sovereign" within the Nigerian State, the Plaintiff's Counsel argued that the independence relates to "*operational independence*" and urged that the Court do hold that the Plaintiff "*has made his case and he is entitled to the intervention of this Court in his favour*". The submission was concluded by the Plaintiff's Counsel by arguing that once the 1st Defendant has failed to comply with the **Central Bank of Nigeria Act** in his decision to suspend the Plaintiff, he has run foul of the provisions of Section 5(1) of the Constitution and which also affected the appointment of an Acting Governor.

The above exercise, represent my modest understanding of the submissions made for and against the Plaintiff's suit both in relation to the "Notices of Preliminary Objection" argued and the substantive "Originating Summons". The exercise has been fairly detailed. It is in recognition of the several processes filed by both parties. One would have expected that the Plaintiff's case, having regard to the narrow issues which the Plaintiff advisedly wanted to argue, is such that can be heard and determined on as few

processes as may be filed, but I guess for each of the Counsel, the stake is much higher than I had assumed when the file was assigned to this Court by the Chief Judge.

As I had observed, the liberty created by the new Rules, i.e. Order 22 of the **Federal High Court (Civil Procedure) Rules, 2009** which require that written addresses be filed in respect of all civil cases, whether *Ex parte,* interlocutory applications or Originating Summons, is being used and exploited by Counsel to indulge in the filing of needlessly long winding addresses which have all the attributes of academic dissertations. Even though, speaking for myself, it is a great delight reading these long addresses, but when one considers the volume of cases the Court has to deal with on each day of its sitting, doing so may become an expensive judicial indulgence which this Court can ill afford.

The other side of the new Rules on filing of addresses is that it is gradually making many lawyers, in particular the new lawyers to become professionally lazy. They don't bother to read such addresses, believing that once they get up and announce to the Court that they are adopting their addresses, the matter ends there. It is for the Judge to go and read the addresses and make up his mind. On few occasions, I have had cause to ask a few of such Counsel to address me in concrete terms, what are the core issues which he/she will want the Court to consider in coming to a determination favourable to his/her client's case, and it is in such situation that the Court will see that the Counsel who has adopted his/her address, probably has no knowledge what the case is all about. These observations are not intended to deprecate the novel provision on filing of written addresses, it is to draw attention of Counsel, both senior and not so senior, to the fact that there is need to ensure that addresses filed are not made needlessly prolix.

It is to be assumed by Counsel, that the addresses are being filed for the consideration of judicial officers who are also reasonably knowledgeable in law and not for a student just learning the law as a course in the College.

Secondly, the exercise when Counsel is required to adopt their written addresses should not be converted and taken as an *alibi* for laziness. It is an occasion when a good Counsel, within the 20 minutes prescribed by the Rules, should be able to put across to the Court, the substance of his/her case so that when the Judge retires to write his decision, the substance of the submissions made will serve as guiding beacons in being able to come to a fair decision within a reasonable time. The processes filed in this case, are in my view *repetitive* and *needlessly prolix* but I nevertheless enjoyed the high grade legal submissions which were argued by both parties. It was indeed, as much of a tedious exercise wading through the maze of the legal submissions as it was equally a great delight in terms of my being better educated.

In the course of highlighting the processes filed and reviewing the submissions made, I had made certain remarks and in some cases, some findings. A few of the remarks are nothing, but *obiter dicta* or to demonstrate openly, the thoughts I pondered upon whilst reading the processes and addresses filed. The findings made, in some instances may have a telling effect on the decision which this Court will eventually reach.

In view of the radical nature of issues of jurisdiction raised by each of the Defendants, it is expedient that I begin this Judgment by a consideration of the "Notices of Preliminary Objection". In the course of reviewing the submissions urged by both the Defendants' Counsel and the Plaintiff's Counsel, I had drawn a

"judicial graph" to indicate that the issue of what interpretation the Court should adopt in construing the provisions of Sections 251(1) and 254c(1) of the **CFRN, 1999 As Amended**, was a common legal "thread" that runs through the Defendants' respective "Preliminary Objections". The only differences relate in my view, to what one can describe as part "B" of the objections.

For instance, with regard to the 1st Defendant, it was argued that in so far as the 1st Defendant, in his capacity as the President of the Federal Republic of Nigeria, he has validly exercised his power under Section 5(1)(b) of the Constitution by the decision he took via Exhibit "KA2" to suspend the Plaintiff in the wake of grievous allegations of financial recklessness levied against the Plaintiff and for which the Plaintiff was issued a query, Exhibit "3" attached to the 1st Defendant's Counter-Affidavit. It was based on the reply of the Plaintiff to the said Query that the Plaintiff was advised by Exhibit "KA2" attached to the Plaintiff's "Originating Summons" to proceed on "suspension till the conclusion of the investigation into these far reaching breaches". As far as the 1st Defendant's Counsel was concerned, the 1st Defendant had legitimately exercised the executive powers conferred on him by Section 5(1)(b) of the Constitution as the Central Bank of Nigeria is one of the arms of the Executive bodies of government. It was in this regard, that the 1st Defendant's Counsel argued that there is *no cause of action* against the 1st Defendant.

This submission was countered by the Plaintiff's Counsel in arguing that there is no power in the **Central Bank of Nigeria Act** by which the 1st Defendant is empowered to suspend the Plaintiff as the Governor of the Central Bank of Nigeria and that even in relation to Section 5(1)(b) of the Constitution, the exercise of the 1st Defendant's executive powers as the President, can only

be exercised in accordance with the provisions in Acts of the National Assembly.

In so far as the suspension of the Plaintiff was not provided for by the **Central Bank of Nigeria Act**, the 1st Defendant has acted illegally. In resolving the issue of jurisdiction, it is an elementary principle of law, that it is to be determined in relation to the Plaintiff's suit. I had at the outset of this Judgment, set down the three (3) questions which the Plaintiff, who has invoked the judicial powers of this Court to determine by his "Originating Summons". These questions must be read vis-à-vis the reliefs being sought. When this exercise is carried out, I am of the view, that between the Plaintiff and the 1st Defendant on this ground of the objection, there is a proper cause of action fit for judicial determination. Exhibit "KA2" constitutes the fulcrum of the Plaintiff's cause of grievance against the 1st Defendant. It is appropriate to hold that the decision conveyed in Exhibit "KA2" attached to the Plaintiff's "Affidavit in Support of his Originating Summons", when assessed vis-à-vis the questions set down for determination, the reliefs being sought in the light of the ratio of the Supreme Court's decision in **GABARI OGBIMI v. BEAUTY OLOLO & ORS. (1993) S.C. 447** and in **CHIEF ETUEDOR UTIH & 6 ORS v. JACOB U. ONOYIVWE & 5 ORS. (1991) 1 S.C. (pt.1) 61**, I am of the view, that there is a *cause of action* disclosed against the 1st Defendant. It is not to say that the said cause of action will succeed, as the Court cannot at the stage of this Judgment, consider the *defence* which the 1st Defendant may raise to the Plaintiff's case. That is an issue to be considered when the Plaintiff's case is being dealt with on its merit. So, in relation to the *declaratory* reliefs being sought by the Plaintiff, makes the 1st Defendant a *proper contradictor* to the said reliefs which if

they succeed, may invariably lead to the granting of the *injunctive* as *ancillary reliefs* claimed by the Plaintiff. Both the Plaintiff and the Defendants have taken hold of two different extreme ends of the same "legislative pole", i.e. the extent or lack of it, of the 1st Defendant's powers pursuant to the provisions of the **Central Bank of Nigeria Act**, in relation to the continuance in office of the Plaintiff as the Governor of the Central Bank of Nigeria. This is a proper and legitimate *cause of action* which requires to be determined between both parties. So, this ground of the 1st Defendant's objection fails and it is dismissed because, the 1st Defendant is a *proper contradictor* to the *declaratory reliefs sought* by the Plaintiff. See: **RUSSIAN COMMERCIAL & INDSUTRIAL BANK v. BRITISH BANK FOR FOREIGN TRADE (1921) 2 A.C. 438** and the Supreme Court's decision in **OLANIYI v. AROYEHUN (1991) 5 NWLR (pt.194) 652 @ 692.**

In relation to the 2nd Defendant, the second arm of its objection is that the Plaintiff's case is such that is factually contestious and should not have been brought by way of "Originating Summons" but a "Writ of Summons" in which case, the parties will be obliged to call *viva voce* evidence. The question is: Is the Plaintiff's case as couched in his "Affidavit in Support of the Originating Summons", such as would necessitate the calling of oral evidence? As I had observed in the course of reviewing the submissions of the 2nd Defendant's Counsel, the Affidavit which the 2nd Defendant filed to support its "Notice of Preliminary Objection" was deliberately made "*combustible*" perhaps as a ploy to drag the Plaintiff into the "arena" where Affidavits, Counter-Affidavits and Further Affidavits will be freely filed and exchanged and thereby justify the issue that the Plaintiff's case ought not to have been

commenced by way of "Originating Summons" which by the provision of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009**, is for matters in which the Plaintiff is "*claiming any legal or equitable right in a case where the determination of the question whether such person is entitled to the right depends upon a question of construction of an enactment*" and or where the person is "*claiming to be interested under a deed, will, enactment or other written instrument*" and the "Originating Summons" is filed for "*the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested*". By these provisions, "Originating Summons" is designed as one of the expeditious modes of commencement of civil actions in which the Court's judicial powers, in the exercise of its interpretative jurisdiction, are invoked to construe certain provisions of enactments, such as the **Central Bank of Nigeria Act, 2007** which by the questions set down in the "Originating Summons" filed, are the fulcrum of the Plaintiff's suit. I refer to the Court of Appeal's decision in **NYA v. EDEM (2000) 8 NWLR (pt.669) 349**, per Adekeye, JCA (as he then was) now JSC Rtd.

When I read the Plaintiff's response to the 2nd Defendant's lengthy "Affidavit in Support of the Notice of Preliminary Objection" filed, the 2nd Defendant to some extent, succeeded in dragging the Plaintiff out into the "free arena" of disputed facts but later in the course of the proceedings, the Plaintiff's Counsel realized the error and began to take a stand, that the depositions filed by the Defendants in their respective Counter-Affidavits are irrelevant to the Plaintiff's case. This was because, the Plaintiff choose to be focused on only one issue: the lack of any constitutional or statutory powers in the 1st Defendant to issue Exhibit "KA2" by

which the Plaintiff was suspended from Office as the Governor of the Central Bank of Nigeria. The question is: Will the fact of the Plaintiff filing Counter-Affidavit to the 2nd Defendant's "Notice of Preliminary Objection", work out to disqualify the Plaintiff's case from being heard on "Originating Summons" filed? I really do not think so, even though, the 2nd Defendant's Counsel endeavoured to highlight a few of the depositions in the Plaintiff's "Affidavit in support of his Originating Summons" which the 2nd Defendant has challenged, this fact will, not by itself, make the Plaintiff's case to be such that the Court cannot deal with under the provisions of Order 3 Rules 6 and 7 of the **Federal High Court (Civil Procedure) Rules, 2009** because, at the end of the day, the Court must consider and evaluate the "end result" or the "bottom line" of the Plaintiff's suit in the context of its interpretation of the provisions of the **Central Bank of Nigeria Act, 2007**. In so far as the Plaintiff's case, having regard to the questions set down for determination vis-à-vis the reliefs being sought, is about the fact that the 1st Defendant lacked constitutional powers pursuant to Section 5(1)(b) of the **CFRN, 1999 As Amended** and statutory powers, pursuant to the **Central Bank of Nigeria Act**, supra. to suspend him from Office of the Governor of the Central Bank of Nigeria, it really does not matter, the "viscousity" of the allegations which are made by the Defendants in relation to the Plaintiff's alleged financial recklessness as the Governor of the Central Bank of Nigeria, it is a case which the Court must determine on this narrow *strait* of the *vires* in relation to the 1st Defendant's decision that was conveyed by Exhibit "KA2". Reading these processes and pondering over the legal submissions made on them by both sides, my view is that the Plaintiff's case was properly instituted by way of "Originating Summons". In this regard, the arm of the 2nd Defendant's "Notice of Preliminary

Objection" fails. It is not sustainable because, a Defendant who intends to challenge the Court's jurisdiction is presumed to accept the facts of the case as presented by the Plaintiff, and cannot use *ingenious legal decoy*, by filing lengthy and "combustible" Affidavit in order to justify the issues raised that the Plaintiff's action is not suited to be heard via "Originating Summons" because, the facts (which the Defendant/Objector) deliberately set out to make contentious, are not such as can be resolved by the civil procedure for the commencement of action adopted by the Plaintiff. The Plaintiff in this case, was not concerned about the allegations made which informed the decision in Exhibit "KA2" conveyed by the 1st Defendant to suspend him from Office as the Governor of the Central Bank of Nigeria. The Plaintiff's narrow grievance is that, regardless of the nature or how weighty the allegations may be, the 1st Defendant is not empowered to direct the Plaintiff to proceed on suspension until "*investigation of this far reaching breaches are concluded*". This, in a nutshell is the Plaintiff's case, and this was why I was unable, (since the issue of jurisdiction must be resolved on the basis of the Plaintiff's case) to accept the 2nd Defendant's "combustible" lengthy "Affidavit in Support of its Notice of Preliminary Objection" that the Plaintiff's case, having regard to the questions set down for determination and the reliefs sought, is such that cannot be heard and determined via "Originating Summons" as a Court's process.

Before I signed off on this issue, let me say by way of *obiter* remark, that even if the 2nd Defendant's objection on this issue is upheld, it is not such a fundamental defect (being merely procedural in nature) that can lead to the Plaintiff's suit being struckout. On the authorities, even where the Court finds that the facts are genuinely in dispute and that the Plaintiff's case cannot

be resolved by way of an "Originating Summons", the appropriate order any *Court of law* and *of justice* will make, is not to strike out the Plaintiff's case, but to order that it be converted as one that is commenced by a "Writ of Summons" and the Court will order both parties to file their pleadings. See the Supreme Court's decision in **ANATOGU v. ANATOGU (1997) 9 NWLR (pt.519) 49** and more recently, in **FAMFA OIL LTD. v. A.G. FED. (2003) 18 NWLR (pt.852) S.C. 453.** The said ground of objection raised by the 2nd Defendant is not well founded and it is accordingly refused.

In relation to the 3rd Defendant's objection, the second arm of its objection is that the Plaintiff's suit does not disclose a *cause of action* against it, and if any *cause of action* was disclosed, it was contended that it's not a "*reasonable cause of action*" because, based on the reliefs which concern or pertain to the 3rd Defendant, the *cause of action* was based on *mere speculations*.

The Plaintiff's Counsel did not put up any strong arguments on this issue but merely adverted the Court's attention to the reliefs being sought and argued that there is a *cause of action* against all the Defendants.

I had at the outset of this Judgment, reproduced the reliefs being sought by the Plaintiff in his "Originating Summons". The Plaintiff's "Originating Summons" pleaded six (6) substantive reliefs and a 7th ancillary or consequential relief. Out of the seven (7) reliefs, three (3) are *declaratory* reliefs and two (2) are *injunctive* reliefs. Relief 4 in the "Originating Summons" is a *necessary adjunct* that ought to follow the success of reliefs 1, 2 and 3, while reliefs 5 and 6 being *injunctive* reliefs, are *ancillary* reliefs that may be granted if reliefs 1, 2, 3 and 4 succeed. Let me

reproduce reliefs 5 and 6 which appear to relate and concern all the Defendants.

> *Relief 5 states: "AN ORDER restraining the Defendants whether by themselves, their agents, servants and/or privies and/or all officers, servants and functionaries of the Federal Republic of Nigeria or any other public officer whatsoever or otherwise howsoever from giving or continuing to give in any manner whatsoever any effect or further effect whatsoever to the purported suspension of the Plaintiff from Office as Governor of Central Bank of Nigeria."*
>
> 6. *"AN ORDER restraining the Defendants whether by themselves, their servants, agents or privies or otherwise howsoever from obstructing, disturbing, interfering, stopping, or preventing the Plaintiff in any manner whatsoever from performing the functions of his office as the Governor of Central Bank of Nigeria."*

When I read these reliefs, the question once again agitated my mind why the Plaintiff failed to join the Central Bank of Nigeria as a Defendant in this suit because, the 1st Defendant had already, whether legally or otherwise, appointed one Dr. Sarah Alade as the acting Governor of the Central Bank of Nigeria and my view is that, since the said Dr. Sarah Alade was not appointed by the Plaintiff in furtherance of the provision of Section 7(1) of the **Central Bank of Nigeria Act** by the 1st Defendant, even if the Plaintiff's suit succeeds, the Plaintiff may be faced with a recalcitrant Acting Governor, acting and relying on the authority

of the 1st Defendant, to refuse to vacate the seat of the Governor of the Central Bank of Nigeria for the Plaintiff. This is just one aspect of the issue, the other is in relation to the 3rd Defendant. Is there a *cause of action* disclosed against it or a reasonable cause of action on the strength of reliefs 5 and 6 which I have reproduced. The apposite question to ask is: What are the allegations made and established by depositions evidence against the 3rd Defendant if reliefs 5 and 6 are to be construed as affecting it?

In paragraph 7(s) and (t) of the Affidavit of Chima Okereke, the Plaintiff deposed thus:

> *"The Plaintiff believes that the Defendants intends to continue to give effect to the purported suspension without any regard to the interests of the Plaintiff especially in his statutory role and functions as the person charged with day to day administration of the Central Bank of Nigeria."*

Paragraph 7(t) avers:

> *"Unless the Defendants are restrained by this Honourable Court, they intend to continue to give effect to the purported suspension which is being challenged by this action."*

When these depositions are read, it is difficult, even if one accepts that they are sufficient to constitute a cause of action, that they are also adequate to constitute and found a "reasonable cause of action" against the 3rd Defendant. Although, the 3rd Defendant's Counsel did not advert his attention to the principle established in judicial decisions of the appellate Courts, that injunction

simpliciter, cannot constitute a cognizable cause of action against a Defendant. See: **WESTERN STEEL WORKS v. IRON & STEEL WORKERS UNION OF NIG. & ORS. (1987) 1 NWLR (pt.49) 284 @ 296H** and the old English decision in **SISKINA (OWNERS OF CARGO LATELY LADEN ON BOARD v. DISTOS COMPANIA NAVIERA SA (1979) A.C. 210 @ 233.** Since this was not argued by the 3rd Defendant's Counsel, I have advisedly restrained myself only to the finding which I have made, that the depositions in paragraph 7(s) and (t) of the Affidavit of Chima Okereke are insufficient to ground a cause of action against the 3rd Defendant. In order to buttress the remarks I had made in the course of this Judgment about the *needless prolix* processes filed and exchanged by both parties, is it not a surprise that the 3rd Defendant against whom the Plaintiff has been adjudged not to have a *cause of action*, filed a 35 odd paragraphs "Counter-Affidavit in Opposition to the Plaintiff's Originating Summons"? I resolve the first leg of the 3rd Defendant's objection in its favour and the only appropriate order this Court should make is one striking out the name of the 3rd Defendant as a party against whom no cause of action avails.

This now brings me to the first arm of the Defendants' "Notices of Preliminary Objection" which borders on the interpretation which this Court is called up to give to the provisions of Section 251(1) and 254c(1) of the **CFRN, 1999 As Amended**. These provisions relate to the respective jurisdiction of the Federal High Court and the National Industrial Court. Whilst the Defendants' Counsel argued that by the operation of the **3rd Alteration Act to the CFRN, 1999 As Amended** which was an amendment the National Assembly specially, for reasons which many legal pundits are yet to ascertain, packaged as if it was an issue that

borders on national emergency, for the National Industrial Court which hitherto was unrecognized (I refer to the Supreme Court's decision in **NATIONAL UNION OF ELECTRICITY EMPLOYEES OF NIGERIA v. B.P.E. (2010) 7 NWLR (pt.1194) 538** as one of the superior Courts of record created and established pursuant to Section 6(5)(a) – (k) of the **CFRN, 1999)** is now declared to be one of such superior Courts of record. The matter did not end there, but the National Assembly, in an exercise which most legal practitioners and judicial officers see and assess as a rather untidy legislative exercise, wherein it conferred on the National Industrial Court, exclusive jurisdiction in labour and employment related matters without due attention or regard to the existing state of the law in relation to the Federal High Court, FCT High Court and the States High Court on the same matter because, when the legislative history of the said Court, beginning with the defunct Industrial Arbitration Panel and the defunct Industrial Court are considered in respect of labour and employment matters, it is generally in relation to Labour Law concepts of collective bargaining and or agreement matters which affect and concern organized Labour Unions in Nigeria. This view is buttressed when the provisions of Section 254c(1)(b); (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of the **CFRN, 1999 As Amended** by the **3rd Alteration Act, 2010** are read communally. Section 254c(1) of the said **3rd Alteration Act, 2010** which came into effect on 4/3/11 is one of the issues in contention in this case. If the Defendant's objection on the interpretation urged on this Court in respect of the said provision scales through, it will be that the Federal High Court lacks jurisdiction to entertain the Plaintiff's suit and it should have been filed in the National Industrial Court. It was in this regard, that the Plaintiff's Counsel, Kola Awodein, Esq. SAN vehemently

refused to accept that the Plaintiff's case is about his "employment" as Governor of Central Bank of Nigeria but that he was suspended from Office by the decision conveyed in Exhibit "KA2" by the 1st Defendant on 20/2/14. On the flip side, if the arguments of the Plaintiff's Counsel were accepted in relation to the interpretation given to Section 251(1) of the Constitution, then it follows that the Plaintiff has instituted his case in the proper Court. In relation to the Plaintiff's Counsel's submissions, much attention was focused on Section 251(1)(p) and (r) of the **CFRN, 1999 As Amended.**

Before I proceed further in my consideration of the two (2) provisions, it is judicially expedient, that the said provisions be reproduced for ease of understanding.

I begin with Section 251(1)(p); (q) and (r). I have deliberately included (q) which the Plaintiff's Counsel, for reasons best known to them, skipped. This is because, paragraphs (p); (q) and (r) of the **CFRN, 1999 As Amended** seem, when communally read, to be related to the "Federal Government of Nigeria or any of its Agencies". It is Section 251(1)(q) of the CFRN As Amended, that clothes the Federal High Court with the interpretative jurisdiction even in relation to Section 251(1)(p) and (r) of the Constitution as regards issues pertaining to the "Federal Government or any of its Agencies". The Central Bank of Nigeria, as I had earlier remarked, is one of the "Agencies" of the Federal Government of Nigeria. I refer to the decision in **C.B.N. v. AMAO (2007) All FWLR (pt.351) 1490 @ 1517.**

Section 251(1)(p) of **CFRN, 1999 (As Amended)** provides:

> *"Notwithstanding anything to the contrary contained in this Constitution and in addition to*

such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters – (Underline mine for emphasis)

(p) *"the administration or management and control of the Federal Government or any of its agencies";*

(q) *"subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies"; and*

(r) *"any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and ... (Underline is mine for emphasis)*

The Defendants' own provision is Section 254c(1) of the 3rd alteration to the **CFRN, 1999 (As Amended)** and it provides thus:

"Notwithstanding the provisions of Sections 251, 257 and 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly, the National Industrial Court shall have an exercise jurisdiction to the exclusion of any other Court in civil cases and matters – (Underline is mine for emphasis)

(a) *relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from work place, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith."*
(Underline is mine for emphasis)

Whilst the Defendants' Counsel argued that the Plaintiff's cause of action is founded in employment matter which is covered by this provision, the Plaintiff's Counsel disagreed by calling on the Court to construe the opening words of both Section 251(1) and 254c(1) of the **Constitution** to argue, that when the amendment was made, the National Assembly deliberately, whilst framing Section 254c(1) of the **3rd Alteration Act, 2010**, avoided using a similar phrase as was in Section 251(1), i.e. "*notwithstanding anything to the contrary contained in this Constitution*". It was Mr. Awodein, SAN's contention that this phrase had in a subtle way, accorded the Federal High Court a *primacy* of power and jurisdiction in relation to causes of action that can be *pigeon holed* in paragraphs (p) and (r) of the **CFRN, 1999 As Amended.** It was his argument, that the Federal High Court still retains jurisdiction to entertain *causes of action* in relation to "category of persons" such as the Plaintiff whom he argued, cannot be described as an *employee.* Beside this, it was his argument, that the Plaintiff's case is not about *employment* but about the *interpretation of certain provisions of the* ***Central Bank of Nigeria Act.*** The Plaintiff's Counsel argued that the Plaintiff is neither the *employee* of the 1st Defendant nor that of the Federal Government of Nigeria. It was his contention that the Plaintiff is an *employee* of the Central Bank of Nigeria and by this, the Plaintiff's action, in

so far as it relates to the interpretation of relevant provisions of the **Central Bank of Nigeria Act**, supra. is one that is competently commenced in the Federal High Court. The Defendants' Counsel on the other hand, argued that by reason of Section 254c(1) of the **3rd Alteration Act, 2010** that amend the **CFRN, 1999 As Amended**, the National Assembly has conferred *exclusive jurisdiction* to *hear* and *determine causes of action* relating to or connected to any labour or employment which also includes the Plaintiff's case. When the Plaintiff's Counsel argued, within the narrow perspectives of the questions set down for determination and of the reliefs being sought which he submitted, was not about employment of the Plaintiff, I have asked this question before, I will still ask it again: In the event that the Plaintiff's suit succeeds, what is the "end result", i.e. its "bottom line"? It's "bottom line" can be ascertained when reliefs 4, 5 and 6 are read together because, it was intended to restore the Plaintiff back to Office as Governor of the Central Bank of Nigeria from where he was "suspended" on 20/2/14 by the 1st Defendant via Exhibit "KA2". The Plaintiff's *cause of action*, is based on the 1st Defendant's letter produced as Exhibit "KA2" by which the Plaintiff was advised of his "suspension" from Office as the Governor of Central Bank of Nigeria. The question which both parties, through their Counsel argued considerably on is the legal implication of "suspension" and whether it is not a term that pertains to *labour* and *employment* matters. It was the Defendant's Counsel's argument, that Section 254c(1) of the **3rd Alteration Act, 2010** by which the **CFRN, 1999 (As Amended)** was amended, *causes of action* which relate to labour and employment has now been reserved for the National Industrial Court to adjudicate upon.

When I reflected on these submissions, my view is that neither the Plaintiff's Counsel nor the Defendant's Counsel is entirely right or wrong in their respective positions. The mere fact that I expressed this opinion may likely be an indication that the legislative exercise that mid-wifed the **3rd Alteration Act, 2010** may not have been wholly thorough. If it were, both parties cannot be urging two (2) parallel arguments and submissions on the two (2) provisions which I have just reproduced, and both sides will be adjudged, by my assessment, as not wholly right and not wholly wrong.

Let me briefly expatiate on this issue by beginning with Section 251(1)(p), (q) and (r) of the **CFRN, 1999 As Amended** which as I had earlier remarked, should be read communally as provisions that relate to the '*Federal Government or any of its Agencies*".

The Central Bank of Nigeria being a creation of an Act of the National Assembly, readily qualifies as one of the "Agencies" of the Federal Government of Nigeria. This has been judicially established by the Court of Appeal's decision in **C.B.N. v. AMAO (2007) All FWLR (pt.351) 1490.**

The Plaintiff claims to be an employee, not of the 1st Defendant or the Federal Government of Nigeria but of the Central Bank of Nigeria. Once it is established that the Central Bank of Nigeria is an "Agency" of the Federal Government of Nigeria, it goes without saying, that the Plaintiff is by extension, an employee of the Federal Government of Nigeria.

The Defendants' Counsel have in their submissions, drawn my attention to the provisions of Section 318(1)(c) of the **CFRN, 1999 As Amended** which defines "*public service of the federation*" to include "*members or staff of any commission or*

authority established for the federation by this Constitution or by an Act of the National Assembly". The Central Bank of Nigeria whom the Plaintiff's Counsel admitted as the employer of the Plaintiff was established pursuant to Section 1(1) of the **Central Bank of Nigeria Act, No.7 of 2007**. By this, the Plaintiff qualifies as a "*public officer of the federation*".

The Central Bank of Nigeria was not created pursuant to the Constitution. It was not mentioned, even as a "juristic person" in the whole of the Constitution. The Central Bank of Nigeria's name only featured in Section 251(1)(d) of **CFRN, 1999 As Amended**. Likewise, although, the Plaintiff is a "public officer" in the public service of the federation, the Office of Governor of the Central Bank of Nigeria was neither created nor established or even recognized by the **CFRN, 1999 As Amended**. It is to this extent, that the Central Bank of Nigeria is a product of an event that can be described as a "*delegated legislation*" because, the **Central Bank of Nigeria Act No.7 of 2007** by which the Central Bank of Nigeria was created, was a law made by the National Assembly in the exercise of its legislative powers conferred by Section 4(2) of the **CFRN, 1999 As Amended**. It provides:

> 4(2) *"The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution."*

It is my view, therefore that this legal instrument merely made the Central Bank of Nigeria a "statutory body" and does not have any

"constitutional status" and neither is the Office of the Governor of the Central Bank of Nigeria accorded any "constitutional recognition" because, it never surfaced in the whole of the **CFRN, 1999 As Amended**.

When the provisions of Section 254c(1)(a) are carefully read, the National Assembly who chose to vary the opening phrase in order to differentiate it from opening phrase in Section 251(1) of the same Constitution did not, whether *expressly* or *impliedly*, *abrogate, repeal* or *modify* the provision of Section 251(1)(p); (q) and (r) of the **CFRN, 1999 As Amended**.

The Plaintiff's Counsel in his submission, discussed the legislative history of the National Industrial Court. I agree with his analysis, that until the **3rd Alteration Act, 2010** which amended the **CFRN, 1999 (As Amended)** came into being, the Federal High Court hitherto exercised *exclusive jurisdiction* in relation to labour and employment of such officers of the status of the Plaintiff and even below once, it is established that their employer is either the Federal Government of Nigeria or any of its Agencies.

But when the **3rd Alteration Act, 2010** came into effect from 4/3/11, the position of the law, in my view when I read both Sections closely, changed. Although, the "exclusivity" of Section 254c(1) of the **3rd Alteration Act, 2010** by which the **CFRN, 1999 As Amended** was amended and which now makes the National Industrial Court one of the superior Courts of record created and established pursuant to Section 6(5)(a) – (k) of the **CFRN, 1999 As Amended** but the said "exclusivity" which Chief Mike Ozekhome, SAN dwelt upon considerably, is not as *sacrosanct*, perhaps as exclusive as he had argued. I say this in relation to such persons whose appointments or as elected public

office holders, are *tenured* by the provisions of the Constitution in terms of mode of appointment or election, remuneration and of the procedure for their removal from such appointments or elected public offices. It is these categories of persons, in my respectful view, who by reason of Section 251(1)(q) of the **CFRN, 1999 (As Amended)** that can challenge their *removal or suspension* from such *constitutionally tenured offices* in the Federal High Court and not in the National Industrial Court. This is because, the jurisdiction of the Federal High Court in relation to such causes of action, by reason of Section 251(1)(q) of the **CFRN, 1999 (As Amended)** has neither been expressly nor impliedly *abrogated* or *repealed* by the provisions of Section 254c(1) of the Constitution which I read in subjection to Section 251(1)(p) and (r) of the same **CFRN, 1999 As Amended**. These are the "categories" of public officers or public office holders which include judicial officers of all the superior Courts of record, whose *contracts of appointments* are such that have "constitutional flavour", perhaps, a constitutional "aroma". Where such public office holders whether elected or appointed, are "unconstitutionally removed" or "suspended" from offices, it is the Federal High Court that in my view, has the "exclusive" jurisdiction strictly in the exercise of its unqualified *interpretative* jurisdiction, pursuant to Section 251(1)(q) of the **CFRN, 1999 As Amended** to hear and entertain such civil causes. But where an appointment, such as the Plaintiff's as shown in Exhibit "KA1" that was made pursuant to the **Central Bank of Nigeria Act** or in respect of any Acts of the National Assembly, because, such appointments are not strictly or even generally speaking, "*tenured*" or *embedded* in any provisions of the **CFRN, 1999 As Amended**, they are the ones in which the National Industrial Court is empowered to exercise exclusive jurisdiction within the

context of the submissions of the Defendants' Counsel. Whilst I seem to share and agree with the fine submissions of Mr. Kola Awodein, SAN on his legal submission of the interpretation of Section 251(1)(p) and (r) of the **CFRN, 1999 (As Amended)**, in particular, on the opening phrase "*notwithstanding anything to the contrary*", he fell short of my own understanding of the said phrase by saying that the Federal High Court still has jurisdiction to entertain *causes of action* for that "categories of persons" such as the Plaintiff who by his Originating Summons, calls for the interpretation and construction of certain relevant provisions of the **Central Bank of Nigeria Act**, supra. in relation to his *contract of appointment*. To the extent that the Plaintiff's appointment is *regulated*, perhaps *tenured* by the **Central Bank of Nigeria Act** and not, as I had said, by the Constitution, it is to that extent, that his case ought to have been filed in the National Industrial Court.

It is my view, that all the legal submissions made as regards the definition of "employee" and "employer" under Section 54 of the **National Industrial Court Act, 2006** cannot be applicable to public officers or elected public office holders whose appointments or election to public offices are done in furtherance of specific provisions of the Constitution, and whose *terms and conditions of service, including their remuneration, tenure and cessation or removal from office are regulated and defined by specific provisions of the **1999 Constitution***. It is in this context that I understand the decisions of the Supreme Court in **LADOJA v. INEC (2007) 13 NWLR (pt.1047) 119** and **A.G. FED. v. ABUBAKAR (2007) 10 NWLR (pt.1041)** cited by the Plaintiff's Counsel. These are elected public officers whose public offices they occupy have "*constitutional status*" and the

Offices are clearly *tenured* and *embedded* in the Constitution. It is my view, based on this analysis, that where any of such persons was unconstitutionally removed or suspended from office, the only Court that can entertain such *causes of action* is the Federal High Court and not the National Industrial Court. The same reasoning, I dare venture to say, will apply to judicial officers whose *conditions, terms of service, remuneration, cessation and procedure for their removal* have been *embedded* in the Constitution. Likewise, a company Director who is removed without due compliance with the provisions of **Companies and Allied Matters Act (CAMA)** is a matter which by virtue of Section 251(1)(e) of the **CFRN, 1999 As Amended**, is to be heard by the Federal High Court in the exercise of its exclusive interpretative jurisdiction.

In the light of these analysis, my decision is that in relation to persons such as the Plaintiff whose appointment (by Exhibit "KA1" attached to the "Originating Summons") is made in furtherance to an Act of the National Assembly, i.e. the **Central Bank of Nigeria Act**, and being an employee of a statutory body, though his appointment can be described as one with "*statutory flavour*", but in so far as it lacks "*constitutional status*" or "*flavour*", it is to be taken as one of master/servant which is still cognizable by the National Industrial Court who has not been expressly or impliedly barred from entertaining cases involving the Federal Government or any of its Agencies. The Central Bank of Nigeria is an "Agency" of the Federal Government of Nigeria and all its employees, including the Plaintiff can only litigate issues in relation to their *contract of appointments or employment* at the National Industrial Court which from 4/3/11 upon the commencement of the **3rd Alteration Act, 2010** as an

amendment to the **CFRN, 1999 As Amended.** Whilst I share the submissions of the Plaintiff's Counsel, I am unable to agree with him that the Federal High Court should ignore Section 254c(1)(a) of the **3rd Alteration Act, 2010** and open its "judicial gates" to employees of "statutory bodies" such as the Plaintiff. The Federal High Court will only have and exercise jurisdiction in such causes or matters if it is shown that the contract of appointment or employment is one that is *embedded* in specific provisions of the **CFRN, 1999 As Amended** and is clearly *tenured* in terms of *remuneration, tenure and cessation or removal* from office in the Constitution. This is when the provisions of Section 251(1) (q) of the **CFRN, 1999 As Amended** will be called in to exercise the jurisdiction conferred by Section 251(1)(p) and (r) of the **Constitution.** The Plaintiff's case as shown even by the questions set down in the "Originating Summons", is not about the interpretation or construction of any provision of the Constitution in relation to his appointment as the Governor of Central Bank of Nigeria. It is in this regard that the Plaintiff's case is such as should be heard and determined by the National Industrial Court because, at the end of the day, and when the "die is cast", it is one of the *causes of action* captured by Section 254c(1)(a) of the **3rd Alteration Act, 2010** which amended the **CFRN, 1999 As Amended.** With effect from 4/3/11 when the said **3rd Alteration Act, 2010** took effect, the Federal High Court has effectively been divested of its hitherto jurisdiction, ably espoused by the Supreme Court in its decision in **NEPA v. EDEGBERO (2002) 18 NWLR (pt.798) 79 S.C.**

All *contract of appointments or employment* whether statutory or common law, now have to be heard and determined by the National Industrial Court. The jurisdiction of the Federal High

Court is limited only to such employment that has "constitutional status" in respect of public officers or elected public office holders whose appointment, or assumption of office by electoral process is *tenured*, *regulated* and *defined* by the **CFRN, 1999 As Amended.**

The 2nd Defendant's learned Counsel, Chief Mike Ozekhome, SAN in page 11, paragraph 6.0 – 6.2 of his "written address filed in Opposition to the Plaintiff's Originating Summons", made these submissions which I accept as a tangential consideration of the proposition which I had endeavoured to make in my interpretation of the provisions of Sections 251(1)(p), (q) and (r) and 254c(1)(a) of the **CFRN, 1999 As Amended.** It was argued that in relation to the Supreme Court's decision in **A.G. FEDERATION v. ABUBAKAR** supra, that:

> *"What the Court was called upon to decide in **A.G. FEDERATION v. ABUBAKAR** (supra.) was the purported removal of a duly elected political office holder who merely cross-carpeted to another political party and is afforded the protection of his office by the Constitution of the Federal Republic of Nigeria and who had no allegation of any financial impropriety hanging on his head."*

The 2nd Defendant's Counsel went further to argue that:

> *"The relationship as it exists between the parties in the case of **A.G. FEDERATION v. ABUBAKAR**, was not that of an employer/ employee that carries with it the power both to*

suspend and to remove as with the Plaintiff in the instant case."

In paragraph 6.3 of the address, it was submitted that:

> *"Whereas the election into Office as well as the subsequent removal from office of the Respondent in the* ***A.G. FEDERATION v. ABUBAKAR*** *case were constitutionally guaranteed, same cannot be said of the Plaintiff in the instant case whose office and establishment are not direct creation of the Constitution. We therefore urge my Lord to discountenance the learned Counsel to the Plaintiff's submission on this issue as what the Court is called upon here to decide on is the issue of the suspension and not the removal from office of the Plaintiff."*

When I read these submissions, I again went back to re-read the Plaintiff's Counsel's submissions which touched, somehow on the same line of argument but with a different slant that did not acknowledge the issue and fact that the Plaintiff's contract of appointment as an employee of the Central Bank of Nigeria, was not embedded in the Constitution but in the **Central Bank of Nigeria Act**, supra.

In an address dated 26/3/14 filed by the Plaintiff's Counsel as a "Reply on Points of Law to the 2nd Defendant's written address in Opposition to the Originating Summons", at page 8 in paragraph 16 – 17 the Plaintiff's Counsel made submission in these terms:

> *"Similarly in* ***A.G. FED. v. ABUBAKAR*** *(supra.) where the President purportedly*

removed the Vice President from Office for "cross carpeting". The Supreme Court held there was no such power under the Constitution. Again in ***ACTION CONGRESS v. INEC (2007) 12 NWLR (pt.1048) 222*** *where INEC purportedly exercised power to exclude a candidate from contesting the 2007 presidential election, the Supreme Court reviewed the Constitution and the* ***Electoral Act 2007*** *and held that there was no such power under the law, and INEC's purported exclusion of the candidate was nullified."*

In paragraph 16 of the same address, the Plaintiff's learned Counsel further argued that:

"To apply this principle of what is not prohibited is allowed otherwise (which we have said in the circumstances of this case is not applicable), is to accept, for example, that the President can unilaterally suspend the Chief Justice of Nigeria and other Justices of Supreme Court, Justices of the Court of Appeal, Judges of the Federal High Courts, since he appoints them (all) on the basis of the argument (now made by the 2nd Defendant) that there is no provision in the Constitution expressly prohibiting him from so suspending any or all of them."

When I put both submissions together, I asked myself: What provisions of the Constitution in relation to the Plaintiff's appointment as the Governor of the Central Bank of Nigeria are being set down for determination in order to grant the reliefs

sought? There is none. Again, the Plaintiff's contract of appointment, as evidenced in Exhibit "KA1" attached to the "Originating Summons" is made in furtherance to the **Central Bank of Nigeria Act, 2007**. The Central Bank of Nigeria is a "statutory body" and appointments made in furtherance of its enabling Act cannot be equated with the categories of public/ judicial officers which the Plaintiff's Counsel had sought to use as examples in terms of the interpretation being urged in respect of the provisions of Section 251(1)(p); (q) and (r) vis-à-vis Section 254c(1)(a) of the **CFRN, 1999 As Amended**.

Let me dwell a little on the officers in my own constituency, i.e. the Judiciary which the Plaintiff's Counsel picked on as one of his "examples".

The Offices of the Chief Justice of Nigeria, President Court of Appeal; Justices of the Court of Appeal, Judges of the Federal High Court, FCT High Court and States High Courts including the National Industrial Court are created and defined by the Constitution, so also are the "contracts of appointments" of these judicial officers which for convenience, I want to describe as "constitutional contract of appointments" because, the terms and conditions of service are spelt out in the Constitution, so also is the remuneration and conditions under which such appointees will cease to hold office including the procedure for removal from office where the need arises. Where the President, for instance, wakes up and, as was stated by the Plaintiff's Counsel, to announce that he has suspended any of the judicial officers serving in any of the superior Courts of record created pursuant to Section 6(5)(a) – (k) of the **CFRN, 1999 As Amended**, the President would not have been in breach of any statutory provisions, but would have flagrantly contravened specific

provisions of the Constitution in relation to how and when such judicial officers can be removed from office. When this occur, the judicial powers of the Federal High Court, pursuant to its interpretative jurisdiction donated pursuant to Section 251(1)(q) of the **CFRN, 1999 As Amended** will be invoked to determine questions in relation to whether such order of suspension was constitutional as the **CFRN, 1999 As Amended** has made or prescribe elaborate procedure to be followed for the removal or suspension of such judicial officers from office. In such a proceeding, I dare venture to say that the National Judicial Council which of course is also an "Agency of the Federal Government" within the contemplation of Section 251(1)(p), (q) and (r) of the **CFRN, 1999 As Amended** will be a "*necessary*" Defendant. See: **GREEN v. GREEN (1987) 3 NWLR (pt.61) 480**. These scenario is not the same with the instant case because, the Plaintiff's contract of appointment by Exhibit "KA1" was sequel to the **Central Bank of Nigeria Act, 2007**. The three (3) questions which the Plaintiff has set down for resolution in his "Originating Summons" are based, not on the provisions the Constitution in relation to his *contract of appointment* as the Governor of the Central Bank of Nigeria but on the provisions of the **Central Bank of Nigeria Act, No.7 of 2007**. In the event that the said questions are resolved in ways and manner favourable to the Plaintiff, the effect of this will ordinarily make the Plaintiff's to be entitled to the seven (7) reliefs being claimed against the Defendants and be restored to Office as Governor of Central Bank of Nigeria. As I had asked time and again, in the event that the Plaintiff's suit succeeds, the implication is to restore the Plaintiff back to Office as the Governor of Central Bank of Nigeria. The Plaintiff's Counsel have insisted that the Plaintiff's suit is not about employment but about interpretation of relevant

provisions of the **Central Bank of Nigeria Act.** The interpretation when made as to favour the answers which the Plaintiff desires, will lead to what result? This is because, the *fulcrum* of the Plaintiff's *cause of action* is to challenge the decision of the 1st Defendant conveyed by Exhibit "KA1" suspending him as the Governor of the Central Bank of Nigeria pending the conclusion of investigation into these "*far reaching breaches*".

In so far as the Plaintiff's contract of appointment was not made pursuant to any provision of the Constitution in a way as to accord the appointment a "constitutional status" or "flavour", the Plaintiff can hardly seek to invoke the judicial powers of the Federal High Court in the exercise of its interpretative jurisdiction as prescribed in Section 251(1)(q) of the **CFRN, 1999 As Amended.** The Plaintiff says that he is employed by the Central Bank of Nigeria. The Central Bank of Nigeria is an Agency of the Federal Government and it was created pursuant to an Act of the National Assembly, i.e. the **Central Bank of Nigeria Act, No.7 of 2007.** To extend the jurisdiction of the Federal High Court to the "categories" of employees of "statutory bodies" such as the Central Bank of Nigeria will invariably open a "flood gate" of cases involving employees of the "Federal Government and any of its Agencies" which includes Federal Ministries, Departments and Agencies whose *contract of service* are not *embedded or tenured* in the Constitution. This will ultimately return the Federal High Court to the position it hitherto was prior to the enactment of the **3rd Alteration Act, 2010** by which the **CFRN, 1999 (As Amended)** was further amended and which took effect from 4/3/11. It was this **3rd Alteration Act, 2010** that has conferred exclusive jurisdiction on National Industrial Court for such

"categories" of employees such as the Plaintiff herein whose "contract of appointment" or "employment" was not *embedded* and or *tenured* in any specific provision of the Constitution but founded on States' Laws, Acts of the National Assembly or even in common law in relation to relationships of master/servant. To accord the Plaintiff a hearing in this Court on the "Originating Summons" for the reasons and analysis I have made, will be subversive of the provision of Section 254c(1)(a) of the **CFRN, 1999 (As Amended)** which has conferred *exclusive* jurisdiction in respect of categories of employees such as the Plaintiff in the National Industrial Court. It will also defeat the primary aim of establishing the National Industrial Court as a "superior Court of record" as was clearly stated in the opening long title to its establishment Act. This Court cannot exercise its *interpretative* jurisdiction in a way and manner that will return the Federal High Court back to where it was when such cases like **NEPA v. EDEGBERO**, supra. were decided. The Plaintiff's appointment is rooted in the **Central Bank of Nigeria Act, 2007** and not in the Constitution as to make it cognizable in the Federal High Court pursuant to Section 251(1) (q) of the **CFRN, 1999 (As Amended)**.

In view of the conclusion which I have inevitably reached, the Federal High Court has no jurisdiction to entertain the Plaintiff's cause of action as an employee of a "statutory body", i.e. the Central Bank of Nigeria. The question that I need to address now, is what orders do I make? Secondly, is it appropriate to proceed with the Plaintiff's suit on its merit?

When the Defendants' Objections were being argued, all the Defendants' Counsel insisted and applied that the Plaintiff's suit, once it is found that the Federal High Court lacks jurisdiction to

entertain it, that it should be struckout. The 2nd Defendant's Counsel, Chief Mike Ozekhome, SAN even went for the "jugular" by applying that it be dismissed. Regrettably, the Plaintiff's Counsel did not urge on the Court, any alternative "judicial route" in the event that the objections of the Defendants are upheld. I ponder over the matter and in view of the decision I have also reached in relation to the 3rd Defendant's objection that there is no *cause of action* disclosed against it, the said 3rd Defendant is accordingly struckout as a party. The Plaintiff is left with only the 1st and 2nd Defendants. In the light of these developments, I make a recourse to the provision of Order 56 Rule 1 of the **Federal High Court (Civil Procedure) Rules, 2009** in order to see what can still be salvaged from the Plaintiff's suit. The said provision of Order 56 Rule 1 of the **Federal High Court (Civil Procedure) Rules, 2009** states:

> *"Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not." (Underline is mine for emphasis)*

I then apply the provision of Section 24(3) of the **National Industrial Court Act, 2006** which also provides thus:

> *"Notwithstanding anything to the contrary in any enactment or law, no cause or matter shall be struck out by the Federal High Court or the High Court of a State or of the Federal Capital Territory, Abuja on the ground that such cause or matter was not brought in the appropriate Court in which it ought to have been brought, and the Court before whom such cause or matter is brought may cause such cause or matter to*

*be transferred to the appropriate Judicial Division of the Court in accordance with such rules of court as may be in force in that High Court or made under any enactment or law empowering the making of rules of Court generally which enactment or law shall by virtue of this subsection be deemed also to include the power to make rules of Court for the purposes of this subsection" (Underline is mine)*by ordering that the Plaintiff's suit be *transferred* to the National Industrial Court so that it can be dealt with under the direction of its President in accordance with the extant provisions of the **CFRN, 1999 (As Amended)**, the **Central Bank of Nigeria Act, No.7 of 2007**, the **National Industrial Court Act, 2006** and such relevant extant Laws of the country. This is to ensure that the fundamental issues which the Plaintiff's case has thrown up can be resolved by the National Industrial Court. All the issues which I had earlier penciled down that I will have to resolve when the case is being considered on its merit will have to be shifted to the National Industrial Court for resolution.

In the light of this decision, it is my view that it will be inappropriate for me to delve into the Plaintiff's case on its merit and to deliver a Judgment either affirming the Plaintiff's claims or dismissing same as it will be prejudicial, not only to the parties and their Counsel, it will be unfair on the National Industrial Court which as far as the **3rd Alteration Act, 2010** which amended the **CFRN, 1999 (As Amended)** has not only made the said Court, one of the superior Courts of record, but has become as it were, a Court of coordinate jurisdiction with the Federal High Court. It would have been a different matter entirely if I dismissed the Defendants' objections and proceeded

to determining the case on its merit as one that is cognizable by the Federal High Court pursuant to Section 251(1)(p), (q) and (r) of the **CFRN, 1999 As Amended**. My Judgment will then be reviewed by the Court of Appeal as a higher Court. I cannot do the same with National Industrial Court whose Judge is entitled to consider the issues on the "Originating Summons" afresh and come to a decision as a Court of first instance.

In conclusion, the Plaintiff's case is hereby *transferred* to the National Industrial Court pursuant to Section 24(3) of the **National Industrial Court Act, 2006** and it shall be heard and determined on the direction of its President in accordance with the **CFRN, 1999 (As Amended)** and all other relevant and enabling Acts as a matter of utmost urgency.

There shall be no order as to costs. This shall be the Judgment of the Federal High Court in respect of the Plaintiff's suit commenced by an "Originating Summons" dated and filed on 24/2/14.

HON. JUSTICE G.O. KOLÁWOLE
JUDGE
20/5/2014

COUNSEL'S REPRESENTATION:

1. **KOLA AWODEIN, ESQ. SAN; A.B. MAHMOUD, ESQ. SAN and MS. FUNKE ABOYADE, SAN with them are SAM KARGBO, ESQ.; O. OGBUAGU, ESQ.; AMINU SADAUKI, ESQ.; ABIOLA OLAWOLE, ESQ.; NDUKA OKOTTA, ESQ.; GODSWILL IWUAJAOKU, ESQ.; MS. A. OSUAGWU; MS. FRANCES MONAGO; MS.**

ZUBAIDA MAHMOUD; MOHAMMED MALABU, ESQ. and O. AKINBODE, ESQ. for the PLAINTIFF.

2. **DR. FABIAN AJOGU, SAN with him are MRS. JUSTINA FAKULINDE and N. EKWEM, ESQ. for the 1ST DEFENDANT.**

3. **CHIEF MIKE OZEKHOME, SAN with him are GODWIN IYINBOR, ESQ.; D. EZERIOHA, ESQ. and MACMILLAN IGBO, ESQ. for the 2ND DEFENDANT.**

4. **SOLOMON UMOH, ESQ. SAN with him are E.E. GERALD, ESQ.; C.B. ONUORAH, ESQ.; P. ALIBOSIE, MS.; MRS. U.O. DAVIDS and M.N. UMOHA, ESQ. for the 3RD DEFENDANT.**