

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 28TH DAY OF FEBRUARY, 2025

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI
IBRAHIM MOHAMMED MUSA SAULAWA
EMMANUEL AKOMAYE AGIM
CHIOMA EGONDU NWOSU-IHEME
JAMILU YAMMAMA TUKUR

JUSTICE, SUPREME COURT
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JUSTICE, SUPREME COURT
SC/CV/1105/2024
SC/CV/1106/2024

BETWEEN:

ALL PROGRESSIVE CONGRESS (APC) -----APPELLANT

AND

1. RIVERS STATE INDEPENDENT
ELECTORAL COMMISSION
2. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
3. ATTORNEY GENERAL OF RIVERS STATE
4. INSPECTOR GENERAL OF POLICE
5. STATE SECURITY SERVICE (DSS)

-----RESPONDENTS

JUDGMENT

(DELIVERED BY JAMILU TUKUR YAMMAMA, JSC)

The appeal is against the judgment of the Court of Appeal Abuja Division delivered on 21st November 2024, in appeal No. CA/ABJ/CV/1152/2024

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wherein the lower court held that the Trial Federal High Court lacked the jurisdiction to hear and determined the Suit, which Suit seeks for a consideration and interpretation of the Provisions of Sections 9(1)(3) and 6 of the Electoral Act 2022, Items 11 and 12 on the Concurrent Legislative List and whether the 2nd Respondent has the power to release the part of the Register of Voters containing the Register of Voters in Rivers State to the 1st Respondent herein for the purposes of conducting Local Government Elections in Rivers State in breach of the Provisions of Sections 28, 29, and 103(3) of the Electoral Act.

The other question before the Trial Federal High Court relates to the contention whether the 4th and 5th Respondents can participate in the conduct of the Local Government Election by providing security cover to the 1st and 3rd Respondents herein during the conduct of the said Local Government Election in clear violation of the Provisions of the Constitution and Electoral Act earlier enumerated and finally whether the 2nd, 4th and 5th Respondents herein who are Agencies/Agents of the Federal Government can in concert with the 1st and 3rd Respondents participate in the conduct of

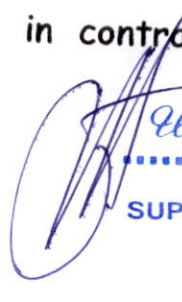
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the said election.

The Appellant as Plaintiff before the Federal High Court seeks the following reliefs:

- "1. A DECLARATION that the 1st Defendant is duty bound to manage the updating and revising of the Register of voters in such a manner as to ensure that continuing registration and update of the Register stops not later than 90 days before the date scheduled for the conduct of Local Government Elections in Rivers State and to release that part of the Register of Voters for Rivers State to the 2nd Defendant for use of the conduct of local government Elections in strict conformity and compliance with mandatory provisions of the 1999 Constitution, as amended and the Electoral Act, 2022.
2. A DECLARATION that the 1st Defendant is not entitled to release that part of the National Register of Voters containing a register of voters in Rivers State to the 2nd Defendant to be used for the conduct of Local Government Election that, by virtue of Section 13 and 20 of the Rivers State Independent Electoral Commission Law of No. 1 of 2018, in contravention, breach or

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violation of items 11 and 12 on the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and Section 28, 29 and 103(3) of the Electoral Act, 2022.

3. A DECLARATION that the 4th and 5th Defendants are not entitled to participate in the conduct of illegal and unlawful Local Government Elections in Rivers State or to provide the 2nd and 3rd Defendants with security protection to conduct the proposed Local Government Elections in Rivers State that are, by virtue of Sections 13 and 20 of the Rivers State Independent Electoral Commission Law of No.2 of 2018, in contravention, breach or violation of items 11 and 12 on the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and Section 28, 29 and 103(3) of the Electoral Act 2022.
4. AN ORDER restraining the 1st Defendant whether by itself, its servants, agents or privies from releasing to the 2nd and 3rd Defendants that part of the National Register of Voters containing a register of voters in Rivers State, namely the official register of voters

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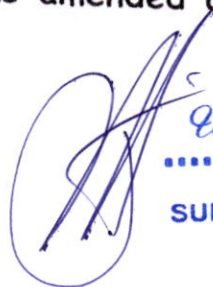
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certified by the 1st Defendant, for use by the 2nd and 3rd Defendants for the conduct of Local Government Elections in Rivers State until the 2nd and 3rd Defendants publish the requisite Notice of Election in conformity with the provisions of items 11 and 12 on the Concurrent Legislative List Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and comply with Section 28, 29 and 103 of the Electoral Act, 2022.

5. AN ORDER restraining the 2nd and 3rd Defendants whether by themselves, their servants agents or privies from receiving from the 1st Defendant and or using that part of National Register of Voters containing a register of voters in Rivers State namely the official register of voters certified by the 1st Defendant, to conduct Local Government Elections in Rivers State until the 2nd and 3rd Defendants publish the requisite Notice of Election in conformity with the provisions of items 11 and 12 on the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and comply with Sections 28, 29 and 103(3) of the Electoral Act, 2022.

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6. AN ORDER restraining the 4th and 5th Defendants, their servants, agents or privies from providing the 2nd and 3rd Defendants with security protection to conduct the proposed Local Government Elections in Rivers State that are, by virtues of Sections 13 and 20 of the Rivers State Independent Electoral Commission Law of No. 2 of 2018, in contravention, breach or violation of items 11 and 12 of the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and Section 28, 29 and 103(3) of the Electoral Act, 2022.
7. AN ORDER setting aside all proceedings, acts or things done or purported to have been done by the 1st to 5th Defendants in furtherance of the conduct of the purported Local Government Elections in Rivers State that are, by virtue of Sections 13 and 20 of the Rivers State Independent Electoral Commission Law of No.2 of 2018; in contravention, breach or violation of items 11 and 12 of the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and Sections 28,



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29 and 103(3) of the Electoral Act, 2022.

8. A CONSEQUENTIAL ORDER setting aside Sections 13 and 20 of Rivers State Independent Electoral Commission Law No.2 of 2018 as null and void to the extension of their inconsistency with the provisions of Sections 28, 29 and 103(3) of the Electoral Act, 2022."

The 1st Respondent by a motion on notice filed on 16th January 2025 seeks for orders of this Court striking out ground 3 of the Appellant's notice of appeal filed on 6th December 2024 as well as issue 2 of the Appellant's brief of argument on 20th December 2024 for being incompetent and incurably defective.

The pivotal ground for seeking the order is that the ground is of mixed Law and facts and that leave of the Court was not sought and obtained before filing same.

The Appellant filed a five-paragraph counter affidavit on 7th February 2025 opposing the application.

I have read the addresses of learned counsel on both sides on the question whether the said ground is of mixed law and facts requiring leave and I would like to say that the point made by learned senior counsel for the Appellant that the entire appeal is rooted in the pursuit of an answer to the question of the jurisdiction of the Federal High Court in entertaining the suit subject of the appeal before the lower

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Court is not in doubt.

In countless decisions of this Court some of which have been cited by learned senior counsel for the Appellant such as **OLAYEMI V. FHA** 2023 3 NWLR (PT 1872) 445 at 474; **IKPEKPE V. W.R & PC CO LTD** (2018) 17 NWLR (PT 16 48) 280 at 291 issues that touches on the jurisdiction of the Court are matters of law, requiring no leave. Looking at the trajectory of the instant appeal it is clear to all discerning mind that same is firmly rooted on issues questioning the jurisdiction of the Trial Federal High Court in entertaining the suit leading to the appeal before the Court of Appeal and now before this Court.

Under the circumstances learned senior counsel for the Appellant require no leave to file the said ground. The ground is competent and also issue 2 derived from it.

The Application lacks merit and same is hereby dismissed.

The same fate must be visited on the application filed by the 1st Respondent on 16th January 2025 urging the Court to strike out grounds 3, 9 and 15 of the Appellant's Notice of Appeal as well as strike out issues 1 and 3 of the Appellant's brief of argument for been incompetent and without jurisdiction.

The ground upon which the application rested is that the grounds are of mix law and facts and no leave of Court was obtained. The arguments

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of learned senior counsels for and against the grant of the application follows the same pattern with the application I just dismissed.

It is also for the same reason and which is that the Appellant do not require leave when the issue is jurisdictional in nature that I also find this application lacking in merit and I dismissed same.

It is also dismissed.

Dissatisfied with the decision of the Lower Court, the Appellant appealed to this Court vide the extant notice of appeal filed on 6th December 2024.

Learned senior counsel for the Appellants in their brief of argument filed on 20/12/2024 nominated the following issues for determination viz;

- A. Whether the Court of Appeal was correct and/or not in error when it held that the Federal High Court lacked jurisdiction to adjudicate on the reliefs sought by the Plaintiff as those reliefs arose or took its root from the proposed Local Government Elections in Rivers State which essentially were matters within the scope, purview and jurisdiction of the State High Court? (Grounds 1,2,3,6 and 8)
- B. Whether contrary to the decision of the Court of Appeal, the provisions of the Electoral Act 2022 apply to all levels of elections

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in the 36 States of the Federation of Nigeria including Local Government Elections, especially in the light of the provisions of Sections 150 - (1) - (4) of the Electoral Act 2022 and when juxtaposed with the decision of this Honourable Court in O.S.I.E.C. v. A.C. (2010) 19 NWLR Pt. 1226 Pg 392? (Grounds 5,7 and 10)

- C. Whether contrary to the decision of the Court of Appeal, the provisions of Sections 13 and 20 of the Rivers State Independent Electoral Commission Law, 2018 are not inconsistent with items 11 and 12 of Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria (1999) as amended? (Grounds 9, 12 and 15)
- D. Where in the event of a violation of the provisions of the Electoral Act 2022 and items 11 and 12 of Part 2 of the Second Schedule of the 1999 Constitution (as amended) whether the Court of Appeal did not fundamentally err in law when it failed to affirm the decision of the Federal High Court on this point as it relates to

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the 4th and 5th Respondents? (Ground 13).

- E. Whether the Court of Appeal was not in error when it held that the federal High Court acted without jurisdiction and/or just cause when the latter struck down the provisions of Section 60-(2) of the Rivers State Independent Electoral Commission Law No 18 of 2018 on grounds of inconsistency with the Electoral Act and the 1999 Constitution (as amended)? (Ground 14).

Learned senior counsel for the 1st respondent in the 1st Respondent's brief of argument filed on 16th January 2025 crafted the following issues for determination viz;

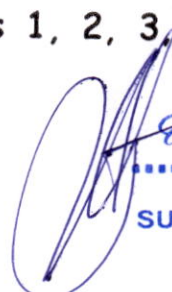
- (a) Whether the learned Justices of the Court of Appeal were not right in holding that the trial court lacked jurisdiction over the subject matter of the Originating Summons and in striking out the suit? Grounds 1, 2, 3, 5, 6, 7, 8, 9, 10, 12 and 14 of the Notice of Appeal.
- (b) Whether the Court of Appeal was not correct in holding that the

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trial court erroneously granted reliefs not claimed; that the Appellant did not prove its case as required by law to be entitled to the reliefs granted it by the trial court, and that the 4th and 5th Respondents cannot be restrained from performing their lawful constitutional/statutory duties and in dismissing the suit? Grounds 13 and 15 of the Notice of Appeal.

The 2nd Respondent's brief of argument was filed on 22nd January 2025 wherein the following issues are distilled for determination viz:

- (1). Whether the lower court was correct in holding that Sections 9(1), (3), and (6), 28, 29, and 103 of the Electoral Act 2022 do not apply to Local Government Elections conducted by the State Electoral Commission (SIEC). As a result, it cannot be argued that Sections 13 and 20 of the River State Independent Electoral Commission (RSIEC) Law 2018 violated Paragraphs 11 and 12 of Part II of the Second Schedule of the Constitution 1999 (and amended). Distil from grounds 1, 2, 3, 4 and 12 of Notice of Appeal.


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- (2). Whether the lower Court was right in holding that the trial Court lacked the authority to suo moto invalidate Section 60(2) of the Rivers State Independent Electoral Commission (RSIEC) Law 2018 without according parties the opportunity to address it on same. Distill from grounds 9 and 14 of Notice of Appeal.
- (3). Whether the lower court was right in holding that by virtue of Section 251 of the Federal Republic of Nigeria 1999 (as amended) Constitution, the trial court lacked subject matter jurisdiction to consider the Appellant suit. Distill from Grounds 6 and 8 of the Notice of Appeal.
- (4). Whether the lower Court was right when it held that by virtue of Section 150 of the Electoral Act 2022, Local Government Elections cannot be construed to be covered by the Electoral Act 2022. Distill from Grounds 7 and 10 of Notice of Appeal.

The 3rd Respondent's brief of argument was filed on 16th January 2025 wherein the following issues were nominated by learned senior counsel for determination thus;

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1. Whether the Court of Appeal was right when it held that the Trial Federal High Court had no jurisdiction and wrongly assumed jurisdiction to determine the Appellant's suit relating to the conduct of Local Government Election in Rivers State by the 1st Respondent. (Distilled from grounds 1, 2, 3, 6 and 8 of the Notice of Appeal).
2. Whether all the provisions of the Electoral Act 2022 apply to Local Government Elections in Nigeria. (Distilled from grounds 5, 7 and 10 of the Notice of Appeal).
3. Whether the Court of Appeal was right in holding that Sections 13 and 20 of the Rivers State Independent Electoral Commission Law are not inconsistent with items 11 and 12 of Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (As amended). (Distilled from grounds 9, 12, 13 and 15 of the Notice of Appeal).
4. Whether the Court of Appeal was right in holding that the trial Court acted without jurisdiction in striking down Section 60(2) of

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the Rivers State Independent Electoral Commission Law as inconsistent with the Electoral Act and the 1999 Constitution (As amended). (Distilled from ground 14).

The 4th Respondent's brief of argument was filed on 24th January 2025, wherein the following issues were nominated for determination viz;

1. Whether having regard to the fact that the Court of Appeal is a penultimate court, the Court of Appeal was wrong not to have considered the Cross Appeal on the merit? (Distilled from Grounds 1 and 2).
2. Whether having regard to the affidavit evidence before the trial Court, the trial Court was right in holding that the Plaintiff/Appellant failed to avail the Court the date of the Notice of Election? (Distilled from Ground 3).

The 5th respondent's brief of argument was filed on 22nd January 2025 wherein a sole issue was nominated to determination thus;

Whether the Trial Court was right when it restrains the 5th Respondent from discharging its statutory responsibility.

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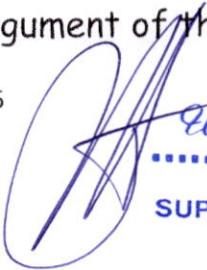
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I have read the briefs and the judgment of the two lower courts. The major area of contention between the Appellant and the Respondents revolve around the question whether the Federal High Court has jurisdiction to entertain the action which in the arguments of the Respondents borders on the conduct of the Local Government Election that took place in Rivers State. Both sides argued vehemently on the applicability or otherwise of the provisions of the Electoral Act 2022 in the conduct of the Local Government Election that took place in Rivers State on 5th October 2024.

The Appellant contended that by the Provisions of Sections 9(1)(3) and (6) of the Electoral Act 2022 and items 11 and 12 on the Concurrent Legislative List Part II of the 2nd Schedule to the Constitution and by the Provisions of Sections 28, 29 and 103(3) of the Electoral Act 2022, the Election that took place in Rivers State which was not in conformity with the provisions of the aforementioned provisions of both the Electoral Act and the Constitution is invalid and ought to be set aside.

The Respondents in their various submissions before us contended the contrary. A general overview of the argument of the Respondents herein as

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disclosed in their various briefs of argument is the contention that the principal issue in controversy between the parties as captured in the affidavit in support of the originating summons is the conduct of the Local Government Elections in Rivers State.

It was argued by the Respondents that for the jurisdiction of the Federal High Court to be activated the subject matter of the cause must involve an administrative action of an agency of the Federal Government, and that merely having an agency listed as a party is not by itself enough to cloth the Federal High Court with jurisdiction to entertain the suit as it did.

In its judgment the Lower Court held that from the Affidavit evidence before it and the reliefs sought that the core issue in controversy before the Trial Court was the proposed conduct of the Local Government Election in Rivers State.

References were made in the judgment to relevant portion of the supporting Affidavit which in the opinion of the Lower Court showed that the principal issue in controversy between the parties is the conduct of the Local Government Elections in Rivers State.

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For ease of reference the said paragraphs highlighted by the Lower Court are set out thus;

- "12. That on the 1st day of July, 2024 the 2nd Defendant belatedly organized a Stake Holders Meeting in its office at No. 239 to 243 Aba Road, Port Harcourt whereat its' Chairman, Hon. Justice Adolphus Enebeli (Rtd) informed us that the 2nd Defendant was ready to conduct Local Government Elections in Rivers State on Saturday the 5th day of October, 2024 and that he was unveiling the timetable and guidelines for the conduct of the 2024 Local Government Elections and asking for the support and co-operation of all the stake holders. The copies of media reports of the said meeting is tendered herewith and marked Exhibit A.
13. That subsequent to the holding of the said stake holders meeting, the 2nd Defendant published what it purports to be a Notice of Election, pursuant to the provisions of the Rivers State Electoral Commission Law No.2 of 2018, wherein it purported to give 90 days' notice of intention to conduct the 2024 Local Government Elections in Rivers State scheduled to hold on Saturday 5th October 2024.

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16. That notwithstanding that the 2nd Defendant did not give the requisite notices, the 2nd Defendant proceeded to apply to the 1st Defendant, who has been undertaking the continuous registration and update of the National Register of Voters including the Register of Voters for Rivers State, to certify and release to her the copy of the Register of Voters for Rivers State for the purpose of using same to conduct the proposed Local Government Election in Rivers State.
17. That on Monday the 8th day of July, 2024 I went to the office of the 1st Defendant to make inquiries and lodge our complaint about the proposed Local Government Elections in Rivers State only to discover that the 1st Defendant had directed its officials who were seen compiling and certifying the Register of Voters for Rivers State preparatory to releasing same to the 2nd Defendant to be used for the conduct of the Local Government Election in Rivers State notwithstanding that then 1st Defendant did not stop continuous registration and update of the register 90 days before the proposed election and did not receive the requisite 360 days' notice of election from the 2nd Defendant."

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I do not share the views of the learned Justices of the lower Court that the references made in the said paragraphs to the conduct of the Local Government Election in Rivers State by themselves connotes that the principal issue in controversy between the parties is the conduct of the Local Government Elections in Rivers State. A holistic consideration of the affidavit in support of the Originating summons clearly show the major grievances of the Appellants herein as Plaintiffs before the Trial Court revolves around the 2nd Respondent's mandate in respect of its constitutional and statutory powers in managing the voters register and updating same for the purpose of elections covered under the Act, which by the provisions of Section 150 (1) of the Electoral Act cover both the Area Councils under the FCT and Local Governments in the States.

For ease of reference Section 150 of the Electoral Act states

150. (1) in furtherance of the provision of Paragraph II of Part II of the Second Schedule to the Constitution, the procedure regulating elections conducted by the Commission of Area Councils in the Federal Capital Territory under this Act shall be the same and apply with equal force as the procedure regulating elections conducted to Local Government Areas by any State Commission.

(2) For the purpose of subsection (1), a State Commission shall be deemed to have and exercise the powers of the

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Commission in respect of the procedure regulating elections to Area Councils under this Act. (Cap. C23, LFN, 2004).

(3) Any election to a Local Government Area that is conducted by a State Commission in violation of subsection (1) shall be invalid.

(4) Any official of a State Commission who contravenes the provision of subsection (1) commits an offence and shall be subject to prosecution as if he were an official of the Commission who committed the same offence under this Act.

The said provision and other relevant provisions of the Electoral Act such as Sections (9) (1) (3) and (6) 28, 29, 30, and 103 outlines Election Processes Regulated by the 2nd Respondent pursuant to the powers of the National Assembly vide paragraph II part II of the 2nd schedule to the Constitution, under the concurrent list.

The principal reliefs which question the release of that part of the voters register for Rivers State to the 1st Respondent is targeted against the 2nd Respondent an agency of the Federal Government. Reliefs one and two in the Originating Summons filed on 15th day of July 2024 reads;

1. A DECLARATION that the 1st Defendant is duty bound to manage the updating and revising of the Register of Voters in such a manner as to ensure that continuous registration and update of the

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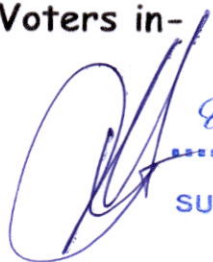
Register stops not later than 90 days before the date scheduled for the conduct of Local Government Elections in Rivers State, and to only release that part of the Register of Voters for Rivers State to the 2nd Defendant for use in the conduct of Local Government Elections in strict conformity and compliance with the mandatory provisions of the 1999 Constitution, as amended and the Electoral Act 2022.

2. A DECLARATION that the 1st Defendant is not entitled to release that part of the National Register of Voters containing a register of voters in Rivers State to the 2nd Defendant to be used for the conduct of Local Government Elections that are, by virtue of Sections 13 and 20 of the Rivers State Independent Electoral Commission Law of No. 2 of 2018, in contravention, breach or violation of items 11 and 12 on the Concurrent Legislative List, Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended and Sections 28, 29 and 103(3) of the Electoral Act 2022.

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It is thus clear to me from the principal reliefs sought and the affidavit in support of the Originating Summons that the claims are principally anchored on the statutory functions of the 2nd Respondent herein in the management of the National Register of Voters, which by the Provisions of Section 9(1) of the Electoral Act the 2nd Respondent is mandated to compile, maintain and update on a continuous basis in respect of persons entitled to vote in any Federal, State, Local Government or Federal Capital Territory Area Council Election. For ease of reference Section 9 of the Electoral Act is reproduced hereunder thus;

9. (1) The Commission shall compile, maintain, and update, on a continuous basis, a National Register of Voters (in this Act referred to as "the Register of Voters") which shall include the names of all persons-
- (a) entitled to vote in any Federal, State, Local Government or Federal Capital Territory Area Council election; and
 - (b) with disability status disaggregated by type of disability.
- (2) The Commission shall keep the Register of Voters in its National Headquarters and other locations as the Commission may determine: Provided that the Commission shall keep the Register of Voters in-

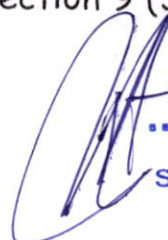


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- (a) electronic format in its central database; and
- (b) manual, printer, paper-based record or hard copy format.
- (3) The Commission shall maintain as part of the Register of Voters, a register of voters for each State of the Federation and for Federal Capital Territory.
- (4) The Commission shall maintain as part of the Register of Voters for each State and the Federal Capital Territory, a Register of Voters for each Local Government or Area Council within the State and the Federal Capital Territory.
- (5) The Register of Voters shall contain, in respect of each person, the particulars required in the Form prescribed by the Commission.
- (6) The registration of voters, updating and revision of the Register of Voters under this section shall stop not later than 90 days before any election covered by this Act.
- (7) The registration of voters shall be at the registration centers designated for that purpose by the Commission and notified to the public.

Now a major aspect of the complaint of the Appellant as Plaintiff before the Trial Federal High Court was the alledge failure of the 2nd Respondent to comply with the provision of the said Section 9 (3) of the Electoral Act

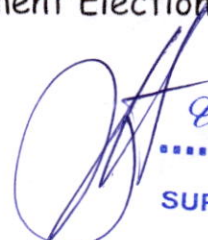

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before releasing the voters register to the 1st Respondent for the purposes of the said election.

I agree with learned senior counsel for the Appellant that a dispassionate consideration of the reliefs and orders sought in the instant case shows that the case is one that borders on the interpretation of the Constitution viz a viz the powers of the 2nd Respondent in the management of the National Voters Register in Nigeria. There is no doubt that the 2nd Respondent is an agency of the Federal Government within the contemplation of the provisions of Section 251 (1) of the 1999 Constitution (As Altered).

That being the case the Federal High Court is in my view clothed with jurisdiction vide Section 251 of the 1999 Constitution. The other reliefs against the 1st Respondent herein and the 3rd Respondent are merely incidental to the determination of the 1st relief. The Law is trite that subject matter jurisdiction is determined by the principal reliefs and not by the incidental or ancillary reliefs claimed. See **NPA V. AMINU IBRAHIM & CO & ANOR (2018) LPELR - 44464 (SC); CGG (NIG) LTD V. AMINU (2015) LPELR; EKAGBARA & ANOR V. IKPEAZU & ORS (2016) LPELR - 26052 (SC).**

I note the reliance of the 1st Respondent to the decision of this Court in **ALIYU V. ALL PROGRESSIVE CONGRESS & ORS**, by which the 1st Respondent contended before us that by that decision the Electoral Act has no applicability in respect of Local Government Elections.

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With due respect to learned counsel the issue before us has to do with whether the 2nd Respondent can release that part of the National Register of voters for Rivers State to the 1st Respondent in breach of the Provisions of Sections (9) 28, 29 and 103 (3) of the Electoral Act.

The matter before the Trial Federal High Court has nothing to do with contestation into any of the offices set out for elections, and it needs to be emphasized that the decision in **ALIYU V. ALL PROGRESSIVE CONGRESS & ORS.** was decided based on the Electoral Act, 2010 which had been repealed upon the coming into force of the Electoral Act 2022. The facts and the issues in **ALIYU V. APC & ORS** are therefore not on all fours with the facts and issues in the instant case.

I agree with learned senior counsel for the Appellant that the Electoral Act 2010 under which **ALIYU VS APC** (supra) was decided do not have an identical provision to Section 150 of the Electoral Act by which the 2nd Respondent has the power to among other things, appoint time lines for the publication of notices of election, to keep and maintain a National Register of voters nationwide.

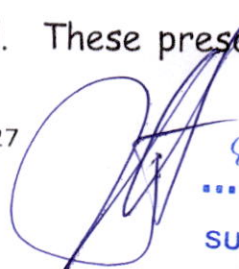
The 3rd and 4th Respondents herein are also agent and agency of the Federal Government which further reinforces the vires of the Federal High Court to entertain the suit notwithstanding the presence of the 1st Respondent.

The Federal High Court contrary to the holding of the lower Court is eminently qualified to hear the matter. It has jurisdiction to do so.

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In respect of the merit of the appeal I observed that the 2nd Respondent who is the main subject of the claims has no defence against the Originating Summons, thus leaving the affidavit in support of the Originating summons unchallenged. In effect the 2nd Respondent admitted all the averments in support of the Originating process. Evidence abounds in the record which was not challenged that shows non compliance with the provisions of the Electoral Act 2022 in the conduct of the said Local Government Area Election that took place in Rivers State on 5th October 2024. There were clear breaches to timeliness for updating and revision of the voters register before the elections and the issuance of notices for the election which all fell short of the requirement of the aforementioned Sections of the Electoral Act 2022 guiding the procedure in the conduct of elections into Local Government Areas within the contemplation of the mandatory provisions of Section 150 of the Electoral Act 2022 which in effect stipulates that the procedure regulating elections conducted by the Commission of Area Councils in the Federal Capital Territory under the Act shall be the same and apply with equal force as the procedure regulating elections conducted to Local Government Areas by any State Commission. The powers of the Rivers State Independent Electoral Commission in respect of the procedure regulating the election must be in concord with the powers of the 2nd Respondent herein in respect of the procedure regulating elections, to Area Council. These prescriptions and the other

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relevant provisions of the Electoral Act 2022 highlighted in this judgment as rightly pointed out by learned senior counsel for the Appellant are statutory preconditions and the failure to satisfy them by the 1st and 2nd Respondents herein will necessarily invalidate the election by the force of the mandatory provision of Section 150 (3) of the Electoral Act 2022 which reads;

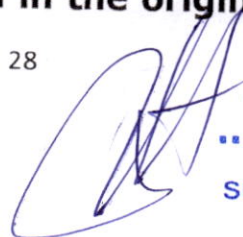
“Any election to a Local Government Area that is conducted by a State Commission in violation of subsection (1) shall be invalid.”

In finding for the Appellant's herein as plaintiff before the trial court, the learned Judge of the Trial Federal High Court held;

“Election begins with voters registration. This case is on voters register and the condition precedent before the subsequent to polling may begin.

The case of Osiec V Samuel (2023) LPELR 59933 (CA) is not about voters register as in this instant case but on nomination of candidate for the Osun State Local Government council election. The case of ACN V Rivers State Independent Electoral Commission & Ors (supra) did not deal with the release of voters register to state electoral bodies for the conduct of local government election. The above two cited cases by the learned senior counsel for the 2nd Defendant has no relevance to the question for determination in the originating summons.

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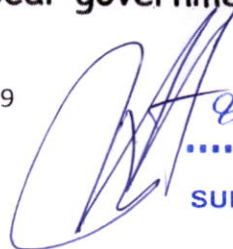
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The issue in this case is on the performance of public duty by INEC, the IGP and the DSS and not on how the local government election in River State is to be conducted. This court agrees completely with the position of the learned senior counsel for the plaintiff on this issue. The law indeed has vested INEC with powers over voters register that covers local government council elections.

It is quite clear that the issue of updating and revision of voters register must be concluded not less than 90 days before the 2nd Defendant can conduct an election. There is also the undisputable fact that the 2nd Defendant that is the state electoral commission shall not less than 90 days before the date fixed for an election publish a notice stating the date of the said election. There is no exhibit before the Court that this mandatory stipulated period has been complied by the 1st Defendant in respect of continuous voters update and registration and the giving of notice by the 2nd Respondent or Defendant. Rule of law entails compliance with mandatory provision of the law. Every case is determined on its own merit. The requirements of voters update and revision contain in INEC register preparatory to a local government election is a

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condition precedent. Giving of notice 2nd Defendant as provided by section 20 of its law is also a condition precedent. There is no evidence provided by the Defendants as to the notice issued by the 2nd Defendant for the election under reference and under consideration. The Plaintiff attached Exhibit "A" Which is a Punch Newspaper report on the intended local government but that in all circumstances cannot replace a notice duly served on the relevant parties, stakeholders including the Plaintiff for the election. None of the parties in this case avail the Court the date of the notice of the election, where it was served and whom it was served".

The Court of Appeal in my view was wrong in setting aside the judgment of the Trial Federal High Court when viewed against the evidence on record that showed clear breaches to the extant provisions of both the Electoral Act and the Constitution in the processes leading to the said Local Government Election.

In summation I find the appeal meritorious and same is allowed by me. The judgment of the lower Court delivered on 21st November 2024 in Appeal No. CA/ABJ/CV/1152/2024 is hereby set aside and in its stead all the reliefs granted in the judgment of the Trial Federal High Court delivered on 30th September 2024 in suit No. FHC/ABJ/CS/987/2024 are restored.

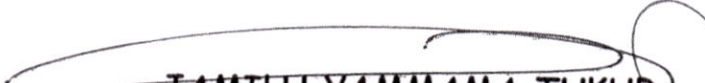
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In consequence of the failure to abide by the extant provisions of the Electoral Act Regulating the conduct of the election to the Local Government Areas in Rivers State on 5th October 2024 the said election is hereby declared invalid pursuant to the Provision of Section 150 (3) of Electoral Act 2022. The decision in SC/CV/1105/2024 will bind Appeal No. SC/CV/1106/2024.

Parties to bear their costs.

The Cross Appeal filed by the Appellant herein vide Notice of Cross Appeal filed on 6th December 2024 containing three grounds of appeal (see pages 1790 - 1795 vol 3 of the record) under the circumstance has no utilitarian value, lacks merit and is hereby dismissed.

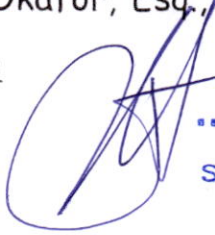

JAMILU YAMMAMA TUKUR,
JUSTICE SUPREME COURT.

Appearances:-

DR. OGWU JAMES ONOJA, SAN, M. A. EBUTE, SAN, ADEDAYO ADEDEJI, SAN, CHIEF KINGSLEY CHUKU, SAN for the Appellant
Appearing wit them Daniel A. Ane, Esq., Innocent L. Adoo, Esq., E. A. Oni, Esq., M. F. Afowowe, Esq., Olumide Igbayilola, Esq., and Shalom Emmanuel, Esq.

CHIEF CHRIS UCHE, SAN Appear for the 3rd Respondent in SC/CV/1105/2024 and 1st Respondent in SC/CV/1106/2024 with GORDY UCHE, SAN Appearing with Kanayo Okafor, Esq., Chukwudi Maduka, Esq.,

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Olakunle Lawal, Esq., Abduljalil Musa, Esq., and Mike Uche, Esq.

BASHIR M. ABUBAKAR, ESQ., Appearing as 2nd Respondent in the two Appeals.

MIMI AYUA, ESQ., Appear for the 4th Respondent in both Appeals.

Y.I. UMAR, ESQ., Appear for the 5th Respondent in both Appeals.

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