

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE AWKA JUDICIAL DIVISION

HOLDEN AT AWKA

ON WEDNESDAY THE 21ST DAY OF JUNE, 2023

BEFORE HIS LORDSHIP, HON. JUSTICE NNAMDI O. DIMGBA

JUDGE

SUIT NO: FHC/AWK/CS/24/2023

BETWEEN:

ATTORNEY GENERAL OF ANAMBRA STATE _____ PLAINTIFF

AND

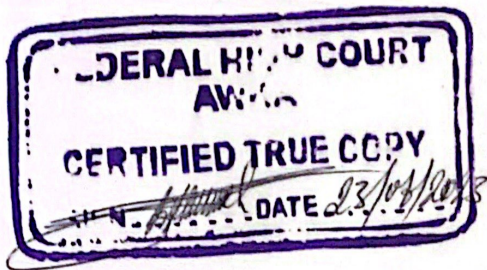
- 1. HON. MINISTER FOR FINANCE,
BUDGET & NATIONAL PLANNING**
- 2. ATTORNEY GENERAL OF THE FEDERATION**



JUDGMENT

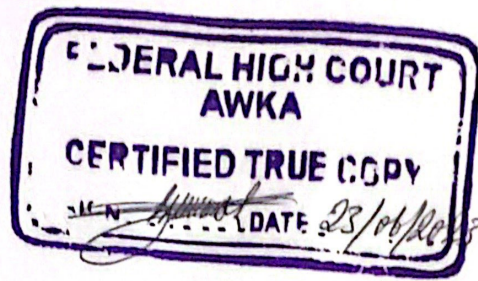
By an Originating Summons dated 15/02/2023 and filed 16/02/2023, the Plaintiff seeks the determination of the following questions:

- 1) *Whether having regard to the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution, the 1st Defendant can appropriate any money standing to the credit of the Federation for any purpose, other than, for the purpose of distribution to the three tiers of*



government, namely; the federal government, state governments and local governments.

- 2) Whether having regard to the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue (Federation Account, Etc) Act, 1982, the 1st Defendant can appropriate or make deductions from the statutory allocation to which the Plaintiff is entitled from the Federation Account for the purpose of crediting the Local Governments of the Plaintiff through the State Joint Local Government Account.*
- 3) Whether having regard to the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue (Federation Account, Etc) Act, 1982, the Defendants can, on behalf of the federal government, can authorize the direct remittance of any funds to the Local Governments of the Plaintiff from the Federation Account.*
- 4) Whether from a proper reading and correct interpretation of the provisions of Section 162 (5), (6), (7), & (8) of the 1999 constitution, as amended, the Defendants are entitled to demand from Anambra State Government evidence of the manner of the distribution of funds credited to the Local*

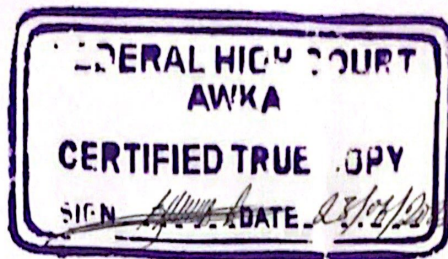


Government Councils in the State as prescribed by the House of Assembly of the State in the absence of any complaint/petition from the House of Assembly of the State.

- 5) *Whether by the federal structure of the Government of the Federation, the Defendants have any supervisory role over the Anambra State Government in the distribution and management of funds credited to the State Joint Local Government Account being the statutory share of the Local Government Councils in the State.*

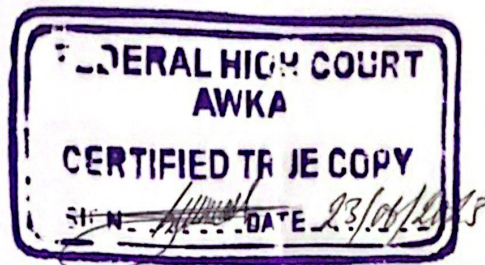
In anticipation of a favourable disposition of the above questions, the Plaintiff asked for the following reliefs:

1. *A DECLARATION that upon a proper construction of the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution, the 1st Defendant cannot appropriate any money standing to the credit of the Federation for any purpose, other than, for the purpose of distribution to the three tiers of government, namely; the federal government, state governments and local governments.*
2. *A DECLARATION that by virtue of the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue*



(Federation Account, Etc) Act, 1982, the 1st Defendant cannot make deductions from the statutory allocation to which the Plaintiff is entitled from the Federation Account for the purpose of crediting the Local Governments of Anambra State through the State Joint Local Government Account.

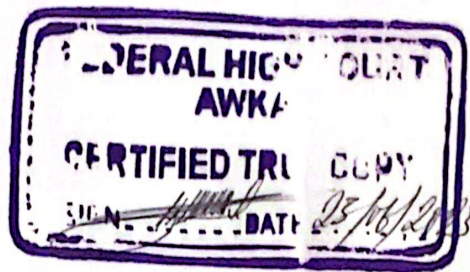
3. *A DECLARATION that having regard to the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue (Federation Account, Etc.) Act, 1982, the Defendants cannot, on behalf of the federal government, authorize the direct remittance of any funds to the Local Governments of the Plaintiff from the Federation Account.*
4. *A DECLARATION that from a proper reading and correct interpretation of the provisions of Section 162 (5), (6), (7), & (8) of the 1999 Constitution, as amended, the Defendants are entitled to demand from Anambra State Government evidence of the manner of the distribution of funds credited to the Local Government Councils in the State as prescribed by the House of Assembly of the State in the absence of any complaint/petition from the House of Assembly of the State.*
5. *A DECLARATION that under the Federal structure of the Government of the Federation, the Defendants have any*



supervisory role over the Anambra State Government in the distribution and management of funds credited to the State Joint Local Government Account being the statutory share of the Local Government Councils in the State.

6. *AN ORDER OF PERPETUAL INJUNCTION* restraining the Defendants from making or authorizing any deductions from the Plaintiff's share of the statutory allocation from the Federation Account or remitting any funds directly to the Local Governments of the Plaintiff from the Federation Account.
7. *AN INJUNCTION* restraining the Defendant by themselves their officers, their agents or through any agency or otherwise howsoever from deducting and or withholding any outstanding amount of the refunds from the Paris Club Debt over deduction due to Anambra State Local Government Councils in the sum of N16,422,695,111.20 from the Anambra State share of statutory allocation from the Federation Account and or making any deduction whatsoever from any statutory share of funds due to Anambra State from the Federation Account.

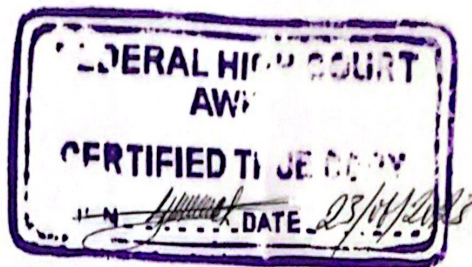
In support of the Originating Summons was a 14 paragraph affidavit deposed to by one Obiekie Obumname Michael. Annexed to it was a letter from the 1st Defendant addressed to the Governor of Anambra State informing him of intent to commence deductions



from Anambra State's allocations in the Federation Account **(Exhibit 1)**.

In response, the 1st Defendant filed a 5 paragraph affidavit deposed to Mr. Olaoluwa Ajoni on 07/03/2023 annexing a) a letter from the Executive Governor of Anambra State to the 1st Defendant dated 28th November, 2016 **(Exhibit A)**; b) another letter from the Executive Governor of Anambra State to the 1st Defendant dated 9th November, 2016 **(Exhibit B)**; c) a letter dated 16th March, 2020 from the Permanent Secretary, Federal Ministry of Finance to the Executive Governor of Anambra State **(Exhibit C)**; d) another letter from the Minister of Finance to the State Governors including the Governor Anambra State dated 16th November, 2020 **(Exhibit D)**; and e) another letter from the Minister of Finance to State Governors dated 24th May, 2021 addressed to the Governor of Zamfara State **(Exhibit E)**.

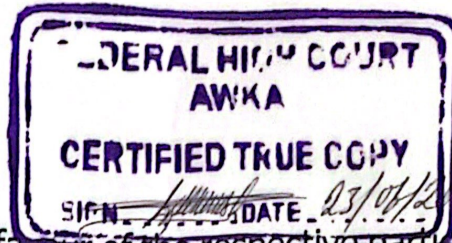
In response to the processes of the Defendants, the Plaintiff filed: (x) a 5 paragraph further affidavit deposed to by one Oscar Okuma on 04/05/2023 with additional written submissions; and (y) a 7 paragraph further affidavit deposed to by Celestine Ezeokeke on 10/05/23. For completeness of record, the Plaintiff also filed an additional list of authorities dated 09/05/2023 and filed 10/05/2023.



Upon service with the Plaintiff's processes, the 1st Defendant filed: (x) a 6 paragraph Counter Affidavit deposed to by Olaoluwa Ajani on 27/3/23 to which were attached 5 exhibits marked as Exhibits A to E, with written submissions; and (y) a 5 paragraph further affidavit deposed to by Andenum A. Shamaki on 10/05/23 to which 2 exhibits were attached and marked as Exhibits A and B, being a) a letter for reconciliation of Paris Club Refunds to Local Government Councils from ALGON (**Exhibit A**); b) a letter from the law firm of Falana & Falana Chambers requesting payment of Paris Club Loan Refund to Local Governments (**Exhibit B**).

For the 2nd Defendant, the following were filed; a 6 paragraph counter affidavit and counterclaim deposed to by Barnabas Onoja on 14/04/23, with 2 exhibits marked as Exhibits PCD1 and PCD2, and also written submissions. The exhibits were: (a) a letter from the Executive Governor of Anambra State to the 1st Defendant dated 9th November, 2016 (**Exhibit PCD 1**); and (b) a letter from the Ministry of Finance to the Governor of Anambra State requesting documentary evidence of transfer of funds to the Local Government account (**Exhibit PCD 2**).

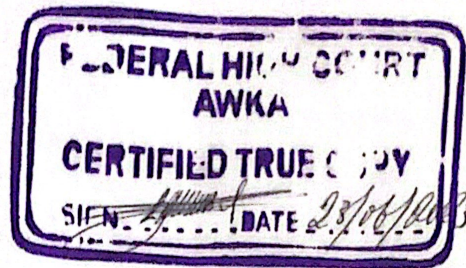
When the matter came up for hearing on 12/05/2023, **P.I.N Ikwueto SAN** for the Plaintiff, **Andenum A. Shamaki** for the 1st Defendant, and **Ekene V. Elodimuo** for the 2nd Defendant, adopted their processes, adumbrated on same, and urged the



Court to resolve the dispute in favour of the respective parties that they represent.

BACKGROUND FACTS

The facts giving rise to this case arose from a correspondence of 20th December, 2022, wherein the 1st Defendant, the Federal Minister of Finance, wrote to the Governor of Anambra State indicating that the Ministry had decided to deduct the sum of N16, 422, 695, 111.20 (Sixteen Billion, Four Hundred and Twenty Two Million, Six Hundred and Ninety Five Thousand, One Hundred and Eleven Naira, Twenty Kobo), from the "***State Government's share of Statutory Allocation from the Federation Account in 36 equal instalment of N456, 185, 975.31 with effect from January 2023***" and remit same into the State Joint Local Government Account for the benefit of the local governments of Anambra State. The said money is a refund due to the Local Government Councils from the Paris Club Debt Refund. The Defendants argued that the deduction became necessary after 3 letters were written to the Plaintiff requesting documentary evidence of remittance of the Local Governments' share of the Paris Club refunds into the State Joint Local Government account as required by law, and which request was purportedly ignored. The Plaintiff's position is that the 1st Defendant has no constitutional or legal right to deduct from its statutory allocation, under any circumstance, and certainly cannot remit directly to the



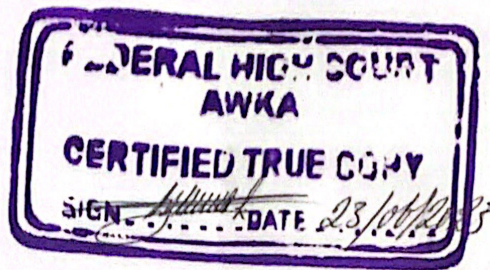
Local Governments in Anambra State moneys due to them from the Federation Account.

DETERMINATION OF SUIT

In arguing that it is entitled to the resolution of the questions posed in its favour and the grant of the consequent reliefs, the Plaintiff's counsel formulated and argued a sole issue, namely:

Whether in the light of Sections 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue (Federation Account, Etc) Act, 1982, the Defendants can either make deductions from the statutory allocations payable to the Plaintiff from the Federation Account or make remittances from the Federation Account directly to the Local Governments of the Plaintiff?

On his part, the learned counsel for the 1st Defendant formulated and argued a sole issue, namely:



Whether in the circumstances of this case, the Plaintiff can succeed on its claims?

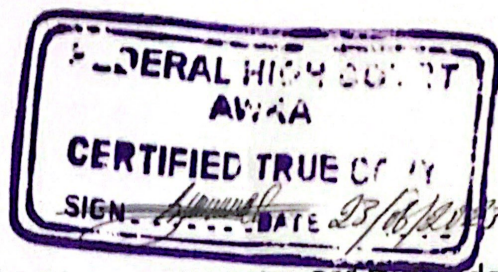
On his part, the 2nd Defendant's counsel first formulated and argued 2 (two) preliminary issues, namely:

- 1) Whether this Honourable Court has the jurisdiction to entertain a suit that borders on dispute between the Federation and the State?***
- 2) Whether by the facts of the Plaintiff's case as conceived and constituted, there exists any reasonable cause of action against the 2nd Defendant?***

On the substantive matter, the 2nd Defendant's counsel submitted a sole issue which in substance is the same as that formulated by the 1st Defendant. It is:

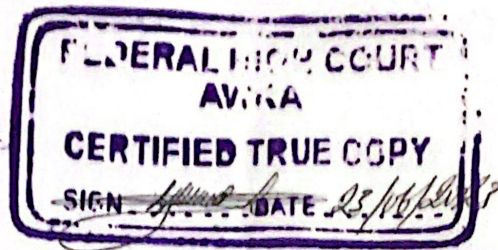
Whether by the state of facts as disclosed by the Plaintiff, he is entitled to the reliefs sought in this suit against the Defendants?

Before proceeding with the substantive issues, let me consider and determine the preliminary issues raised by the 2nd Defendant's counsel, consisting of a challenge to the Court's jurisdiction and



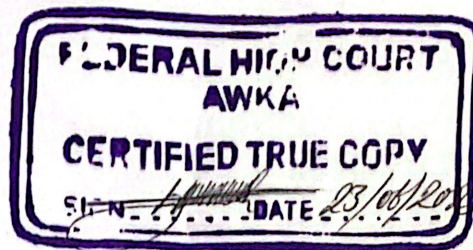
the existence of a cause of action against the 2nd Derendant, which were it to be found not to exist, will also invariably mean that the Court lacks the *vires* to entertain the matter.

On the direct challenge to jurisdiction, the contention is that the suit constitutes a dispute between the Federation and a State (Anambra) of which the Supreme Court has exclusive original jurisdiction by virtue of Section 232(1) of the Constitution. It was argued that the cause of action in this suit relates to the questions as to actual allocation of accrued revenue from the Federation Account to component units, and does not fall within the purview of Section 251(1)(a) of the Constitution in which the Federal High Court has jurisdiction. It was submitted that it is the claim of the Plaintiff that the court uses to ascertain whether it has the jurisdiction to hear a matter. It was also contended that the reliefs are indicative of a dispute concerning the constitutionality of trustee powers over the Federation Account. Reliance was placed on: **Section 5(1), 148(1), 232(1), 251(1-3), Hon. Chris Azubuogu v. Hon. (DR) Harry N. Oranezi & ors (2017) LPELR-4669 (SC) p. 13 paras. B - D; Ibori Agbi (2004) 6 NWLR (pt. 868) 78; Vivian Clems Akpamgbo-Okadigbe & ors v. Egbe Theo Chidi & ors (2015) LPELR-24565 (SC); AG Kano State v. AG Federation (2007) LPELR-618 (SC) p. 29 - 30 paras. F - D; AG Cross River State v. AG Federation & anor (2005) LPELR-3159 (SC) p. 40 -41 paras. A -A; Dara**



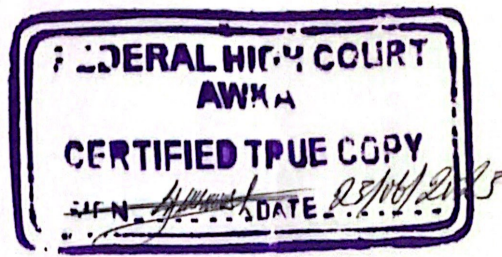
& anor v. Alagboso & ors (2015) LPELR-25872 (CA); Mbadinuju v. Ezuka (1994) 8 NWLR (pt. 364) 535; Duke v. Akpabuyo L.G (2005) 19 NWLR (pt. 959) 130; Isah v. INEC (2016) 18 NWLR (pt. 1544) 175 S.C.

Having reflected on this very carefully, I am of the view that this challenge merits a summary dismissal as I do not see the dispute as that falling under the purview of Section 232(1) of the Constitution. By virtue of Section 251(1)(r) of the Constitution, the Federal Government or any of its agencies can be sued in this Court 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 in this case, the Plaintiff is challenging the administrative action or decision of the 1st Defendant (a Minister of the Federal Government in charge of Finance) to deduct from its monthly statutory allocation and either withhold or directly remit same to the Local Government Councils (LGCs) as their share of the Paris Club Refund. The Plaintiff is challenging the manner of the exercise of the 1st Defendant's power and the discharge of its constitutional responsibility under Section 162 of the Constitution which affects the Plaintiff negatively. And the Plaintiff is seeking declarative and injunctive reliefs to arrest and reverse this exercise of power. There is nothing in the exercise of the powers of the 1st Defendant in the



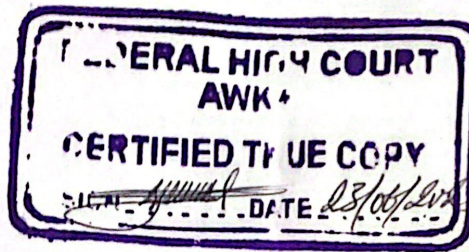
circumstances of the case, and the challenge to same by the Plaintiff, that raises any issue of a dispute between a State and the Federal Government in the manner contemplated by Section 232(1) of the Constitution. Looking at the originating processes and also the defences filed by the Defendants, there was no where it was suggested that the step taken by the 1st Defendant which aggrieved the Plaintiff was pursuant to a directive from the President of the Federal Republic of Nigeria or pursuant to an Executive Order of the President as was the case in disputes such as **Attorney-General Abia State & Ors v. Attorney-General of the Federation (SC/CV/655/2020) delivered on 11/02/23; Attorney-General of Lagos State v. Attorney General of the Federation S.C. 70/2004 delivered on the 10th day of December 2004; Attorney-General of Ogun State & Ors v Attorney-General of the Federation (SC 137 of 2001) [2002] NGSC 3 (13 December 2002); A-G, Federation v A-G, Abia State & 35 others (No 2) (2002) 6 NWLR (Part 764) 542 SC.** And there was also nowhere in the correspondences issued to the Plaintiff where the 1st Defendant indicated that it was acting pursuant to presidential mandate to do what it was doing. So I see no merit at all in this stance.

Moreover, there is need for caution in the manner in which the spectre of 'original dispute' between the States and the Federal



Government in which only the Supreme Court has original jurisdiction should be raised. This is not a claim to be made whimsically or in an unbridled manner. An unbridled raising and upholding of such spectres would inevitably inundate the Supreme Court with all sorts of matters and render courts such as this Court redundant. It certainly cannot be that whenever a State has concerns in relation to the manner in which a federal official such as a minister or a federal agency such as the Economic and Financial Crimes Commission (EFCC) exercises its responsibility that affects that State adversely, then that activates a dispute between the federal government and the state in which only the Supreme Court will have original jurisdiction. May that day never come in which the apex court gets reduced to a magistrate court entertaining all sorts of sundry original matters simply because a state and federal officials are involved!

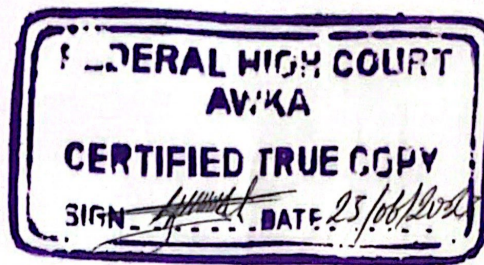
The second ground of challenge is that the Plaintiff's case does not disclose a reasonable cause of action against the 2nd Defendant. Now, the law is trite that to decide whether a cause of action exists, the only thing to look at is the claim in the originating process. See **Ajayi V. Military Admin. Ondo State (1997)5 N.W.L.R (pt.504)237; 7UP Bottling CO. Ltd V. Abiola (2001)29 W.R.N 98 at 116**. Looking at the supporting affidavit, what exactly did the Plaintiff say about the 2nd



Defendant? Paragraph 5 of the said affidavit describes the 2nd Defendant as the Chief Law Officer of the Federation. And after laying out his complaint regarding the deductions being made allegedly unlawfully from its allocation by the 1st Defendant, the Plaintiff then deposed in paragraph 10 that:

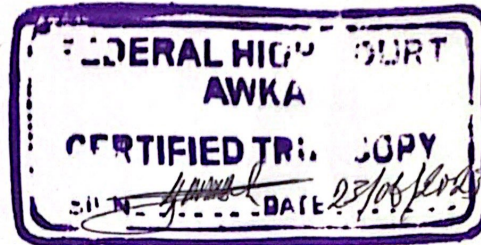
"I verily believe that the aforesaid decision was made, under the ostensible advice or instruction of the 2nd Defendant whose duty it is to guide the ministries and agencies of the Federal Government on matters of compliance with the Constitution and the laws of the National Assembly".

I accept that a party is entitled in some circumstances to bring a suit against an authority such as the Attorney General as a nominal party given the responsibility of the Attorney General to ensure legal compliance by agencies of the Government. However, in those circumstances, the party suing will simply indicate so, and not go ahead to make direct accusations against the Attorney General. Looking at the above deposition, the Plaintiff makes a very direct and positive accusation against the Attorney General of the Federation but without indicating the basis for coming to this view. None of the letters written was said to have emanated from the Attorney General. Nor was there anywhere in the said



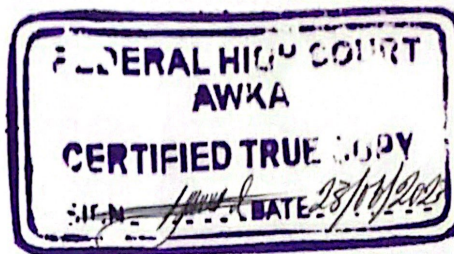
letters where the 1st Defendant alleged that he or she was acting on the instruction or advice of the Attorney General. But for the fact that the 2nd Defendant had actively joined the fray, as they say, by filing a counter-claim and also presented defences to the suit in its counter affidavit in a manner which suggests privity in relation to the claims being made by the Plaintiff, I will have been inclined to uphold his contention and to strike out the name of the 2nd Defendant. Although as said, considering the existence of a cause of action mandates me to focus only on the originating process, the peculiar circumstances of this case, and acting on the abundance of caution, compelled me to investigate the Plaintiff's belief of the active involvement of the 2nd Defendant in the matter that generating its angst by looking at the defence the 2nd Defendant had filed. That defence by itself validates the suspicion and accusation against the 2nd Defendant as contained in the Plaintiff's originating affidavit. In the event, I hold that the action against the 2nd Defendant is justified and I accordingly dismiss every challenge mounted by it against the competence of this suit.

Now, on the substantive suit, I believe that the issue as formulated and argued by the Plaintiff's counsel is apt, and I shall adopt it for the resolution of this dispute because among other reasons, all the arguments made by the respective parties can be accommodated within it. That issue is:



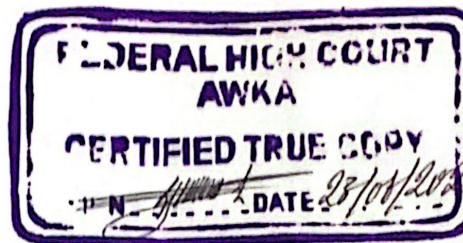
Whether in the light of Sections 162 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read along with Sections 2 (2) and 3 (1) of the said Constitution and Sections 1 & 3 of the Allocation of Revenue (Federation Account, Etc) Act, 1982, the Defendants can either make deductions from the statutory allocations payable to the Plaintiff from the Federation Account or make remittances from the Federation Account directly to the Local Governments of the Plaintiff?

Different contentions were made for the Plaintiff by learned counsel in arguing this issue. First, it was argued that any funds standing to the credit of the local governments from the federation account are paid to the State, whose prerogative it is to apply same for the benefit of the local government. This was on the basis of Section 162 of the Constitution which established the Federation Account into which all revenues collected by the Government of the Federation are paid, except for proceeds from personal income taxes of the category of persons listed therein, and thereafter distributed among the three tiers of government in the formula prescribed by the Allocation of Revenue (Federation Account, etc) Act. It was argued that the 1st Defendant lacks the



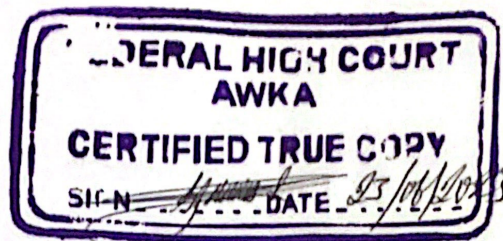
power to deduct from the Plaintiff's statutory allocation, its task being limited only to the distribution of money in the Federation Account to the different tiers of Government. It was also argued that the 1st Defendant has no power to directly remit money to the LGCs, but that where a State fails to remit to the LGCs their share of revenue, the LGCs are at liberty to file an action in court to compel the State Government to do so. Reliance was placed on: **Section 1 of the Allocation of Revenue (Federation Account, Etc) Act, 1982; Section 2 (2), 3 (1), 4(6), 5 (2), 7 (1), 162(3)(4)(5) 1999 Constitution; Attorney General Bendel State v. Attorney General Federation & Ors (1983) NSCC 181 at 192; Attorney General of Abia State & ors v. Attorney General of the Federation: SC/CV/655/2020.**

For the 1st Defendant, its contention is simply that the Plaintiff is not entitled to any of the reliefs he is seeking. The reason for this is that Anambra State Government, having collected the share of revenue in the Paris Club Refund, for itself and for the LGCs in Anambra State, had failed to pay the share of the LGCs into the State Joint Local Government Account as required by the Constitution in Section 162(6), and that the 1st Defendant, as the supervising minister under Section 162 of the Constitution, is entitled to deduct same from the State's allocation under the federation account and remit same to the LGCs. It was argued



that the 1st Defendant's power to make these deductions is based not only on the law but also on the letters of indemnity, **Exhibits A and B** which were issued to the 1st Defendant by the former Governor of Anambra State, Chief Willie Obiano, to make these deductions from the State's allocation from the federation account whenever the state receives overpayments in its allocations from the federation account. It was argued for good measure that the Plaintiff did not even meet any of the conditions for the grant of any injunctive reliefs. Reliance was placed on: **Section 162(1)&(2) 1999 Constitution; R. Benkay Nig Ltd v. Cadbury Nigeria PLC (2012) LPELR SC-29/2006; Ogunsola v. Usman (2002) 14 NWLR (part 788) 636 at 655 - 656; Adigwe v. FRN (2015) LPELR-2694 (SC); Bello v. AG Lagos State (2007) 2 NWLR pt 1017 p. 115 @ p. 126; Akapo v. Hakeem Habeeb (1992) 6 NWLR pt 247 @ p. 302 para D-E; Bottling Co. Ltd v. Abiola (1995) 4 NWLR pt 389 p. 287 @ p. 301 - 302 para F-A; Kotoye v. Saraki (1990) 4 NWLR pt 143 p. 144 @ 187; Attorney General of Abia State & 2 ors v. Attorney General of the Federation & 33 ors SC 121/2005.**

The 2nd Defendant supports the 1st Defendant and makes similar arguments as those summarized above. In addition, the 2nd Defendant asked the Court to grant him his counterclaim. On the

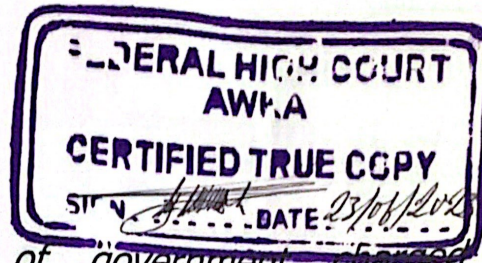


counterclaim, it was argued that facts admitted need no further proof, and that since the Plaintiff admits that it has not remitted to the LGCs their own share of the Paris Club Refund, the Court should then order the State Government to transfer the funds meant for the LGCs to them. Reliance was placed on: **Abubakar v. Ibrahim & Ors (2022) LPELR 58303 (CA) p. 25 -25); Katto v. CBN (1991) 9 NWLR (pt. 214); Adeosun v. Govt. Of Ekiti State & ors (supra); Buhari v. Obasanjo (2005) 13 NWLR (pt. 941) 1; Anyafulu & ors v. Meka & ors (2014) LPELR-22336 (SC); Section 162(1-6), 6(6)(c) 1999 Constitution.**

I have considered all the contentions made by the parties' counsel. Sunlight, as they say, is the best form of disinfectant. As such, I think it is only fitting to set out the different provisions of law implicated in this suit.

Now, Section 162 of the 1999 Constitution at the centre of this litigation provides as follows:

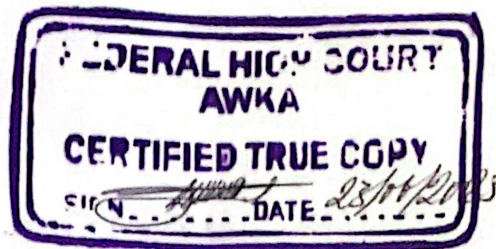
(1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry



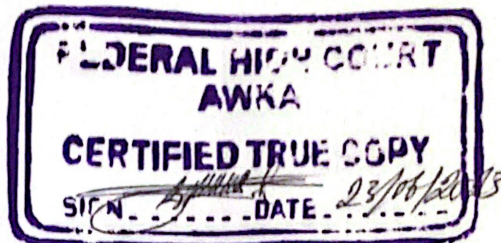
or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

(2) The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density: Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.



- (4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.*
- (5) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.*
- (6) Each State shall maintain a special account to be called "the State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.*
- (7) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.*
- (8) The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.*

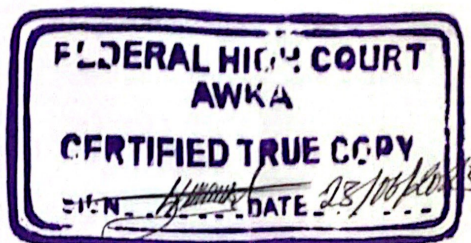


And Section 1 & 3 of the Allocation Of Revenue (Federation Account, Etc.) Act, 1982 provides:

1-The amount standing to the credit of the Federation Account, less the sum equivalent to 13 per cent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge for distribution to the beneficiaries of the derivation funds in accordance with the Constitution shall, be distributed among the Federal and State Governments and the Local Government Councils in each State of the Federation on the following basis, that is to say-

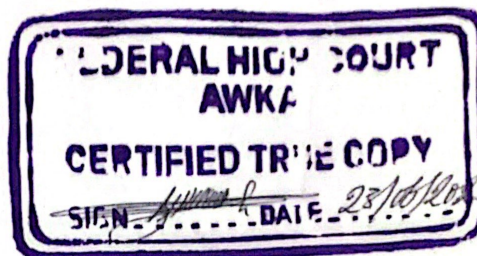
- (a) the Federal Government 56.00 per cent;*
- (b) the State Governments 24.00 per cent;*
- (c) the Local Government Councils 20.00 per cent.*

3-Subject to the provisions of this Act, the amount standing to the credit of local government councils in the Federation Account shall be distributed among the States of the Federation for the benefit of their local government councils using the same factors specified in this Act.



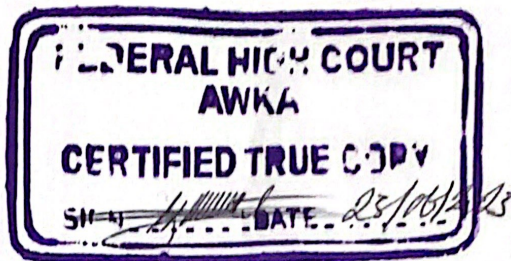
What the above legal provisions show, when read in a community manner, is that States are to receive every amount standing to the credit of LGCs under the States, which sums must thereafter be paid by the State Government into the States Joint Local Government Account. This is by a combined reading of Sections 162(5)&(6) of the Constitution.

In this case, the 1st Defendant rightly paid to the Anambra State Government all amount standing to its credit and to the credit of the LGCs in the State from the Paris Club Refund. But as required by Section 162(6) of the Constitution, there is no evidence that the State Government then paid over into the State Joint Local Government Account the LGCs share of the funds collected by it. As a matter of fact, acting on a tip from the Association of Local Governments of Nigeria (ALGON) and of their counsel, Falana & Falana Chambers (Exhibits **B**), the 1st Defendant had sent correspondences (Exhibits **C**, **D**, & **E**) to the Plaintiff requesting documentary evidence of payment of LGCs share of the Refund to the State Joint Local Government Account. It is not being disputed that the State Government did not honour nor act on these letters, prompting the 1st Defendant to take the steps which gave rise to this suit, namely the deductions at source from the allocation of Anambra State Government of its entitlement from the federation account.



The overarching and overriding question is that granted that the Anambra State Government might have done wrong by not paying into the State Joint Local Government Account monies it had collected on behalf of the LGCs in Anambra State as mandated by Sections 162(6)&(7) of the Constitution, was the 1st Defendant entitled under the Constitution and under the Allocation Of Revenue (Federation Account, Etc.) Act, 1982, to make the deductions from the allocations of Anambra State under the federation account at source, and either keep them in escrow or remit them directly to the LGCs in Anambra State? I have very carefully appraised the various provisions of the Constitution excerpted above, as well as of the Allocation of Revenue (Federation Account, Etc.) Act. And I come to the view, as rightly argued by the Plaintiff's counsel, **Chief Ikwueto SAN**, that I see no legal or constitutional basis for the 1st Defendant to have acted the way it did. As the law is couched, there is no doubt that the only duty which the 1st Defendant has by virtue of a community reading of Section 162(5 - 8) of the Constitution, is merely the distributing of money from the Federation Account to the States. In respect of LGCs, Section 162 (5) thereof states that:

The amount standing to the credit of local government councils in the Federation

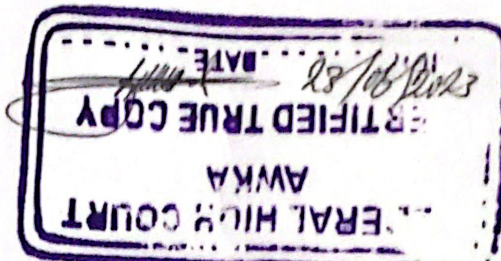


Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

There is no doubt that the intention of the draftsman is that any amount standing to the credit of LGCs must be first paid to the State Government. This is further buttressed by Section 3 of the Allocation of Revenue (Federation Account, Etc.) Act, 1982 which provides that:

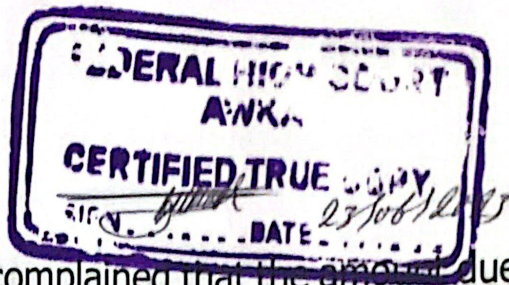
Subject to the provisions of this Act, the amount standing to the credit of local government councils in the Federation Account shall be distributed among the States of the Federation for the benefit of their local government councils using the same factors specified in this Act.

None of the relevant provisions empowers the 1st Defendant to make deductions from the statutory allocation due to a State from the Federation Account on the basis that the State has failed to transfer the LGCs share into the State Joint Local Government Account. Where a State has failed to make this payment, the State clearly has fallen foul of its constitutional obligation. But a breach



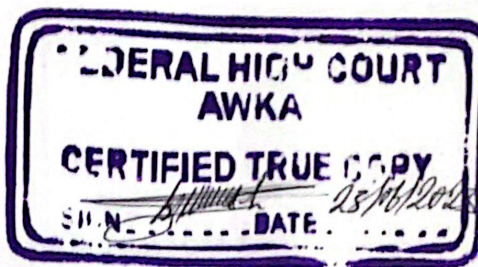
of the Constitution by a State does not justify another breach of the Constitution by an organ or agency of the federal government such as the 1st Defendant. A breach of the Constitution cannot be cured by another breach of the Constitution by another party, no matter how well motivated.

Moreover, even the basis of action or suspicion of the 1st Defendant appears quite speculative. Granted that upon several demands, Anambra State Government did not furnish any evidence of its compliance with the constitutional requirement that it pays all monies due to its LGCs into the State Joint Local Government Account as required by Section 162(6) of the Constitution. But then, it also appears that the basis of the suspicion of the 1st Defendant that Anambra State Government had not done so appears very dubious and speculative. The 1st Defendant claims it is acting on the basis of the complaint received from local governments through Exhibits A and B attached to the further affidavit of Andenum Shamaki of 10/03/23. These exhibits are firstly a letter dated July 1, 2019 to the 1st Defendant by the ALGON, and a letter dated 29/09/19 to the 1st Defendant by ALGON's retained counsel, Falana & Falana Chambers. I have perused the Exhibits A and B and can see that the said correspondences have not made any direct accusation against Anambra State Government in the manner complained of by the



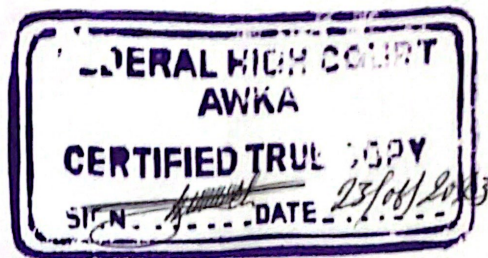
1st Defendant. The letter complained that the amount due to local governments on the Paris Debt Refund "***were lumped together and paid into a single State account for respective States***". The same complaint was repeated in the letter from counsel who insisted and threatened legal action if the local governments' share of the money was not then paid to the different States Joint Local Government Account by the States.

My view is that the first complaint is one directed actually against the Constitution. The "***lumping of***" States' entitlements with that of LGCs under the States' jurisdiction is actually what the Constitution authorizes or mandates by virtue of Section 162(5) of the Constitution. Secondly, the fact of the States not then paying over the local governments share into the State Joint Local Government Account is clearly a constitutional breach, but it is not one in which the remediation of can be by the 1st Defendant exercising unconstitutional powers of deducting at source monies due to the States, and in this case Anambra State, from the federation account. Absent a court action and judicial authorization, this is the exercise of police or law enforcement powers by the 1st Defendant that have not been granted it by the Constitution, or by the governing statute, the Allocation of Revenue (Federation Account Etc) Act.



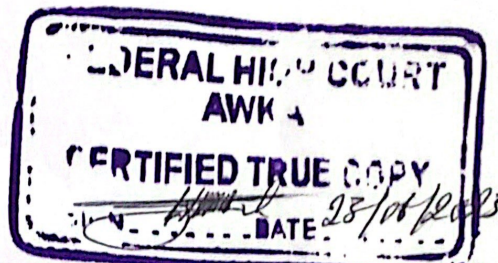
In any event, as stated, the said letters on the basis of which the 1st Defendant said it was acting, namely, the letters from ALGON and Falana & Falana Chambers, did not in any place expressly mention Anambra State as one of the states which are delinquent of their responsibility or obligation under the Constitution. There is also no direct or specific complaint from any of the LGCs in Anambra State or even Anambra State's own chapter of ALGON complaining that the State is in breach of its obligations to local governments under Section 162 of the Constitution and under the provisions of the Allocation of Revenue (Federation Account Etc) Act. Indeed, I note that by Section 162(8) of the Constitution, the amount standing to the credit of LGCs of a state shall be distributed among the LGCs of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State. But there is no evidence before the Court that any of the LGCs in Anambra State have complained that the monies which are due to them have not been distributed to them by the Anambra State Government or that they have been shortchanged. In the absence of that, it probably then becomes that the intervention of the 1st Defendant represents a case where an outsider is wailing more than the bereaved.

Regarding the monies which have already been deducted, during hearings, this Court sought to know what had become of them, and if they had been paid into the Anambra State's State Joint



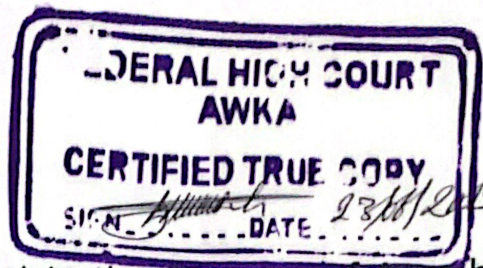
Local Government Account by the 1st Defendant, given that the failure to do so was what the 1st Defendant cited as the basis for its intervention. The Court received no confirmation that this was done by the 1st Defendant. Rather, it appears that the 1st Defendant made the deductions and retained same, purportedly in "escrow". In my view, there is no basis for the 1st Defendant to deduct the funds and retain them transitorily; that is, in escrow. There is even no basis even to remit same directly to the local governments. Doing so, as I have hinted earlier, would be in clear breach both of the Constitution and of the Allocation of Revenue (Federation Account Etc) Act, none of which made any provision for a direct transfer from the 1st Defendant to local governments of their entitlements from the federation account. Section 162 of the Constitution and the Allocation of Revenue (Federation Account, Etc.) Act, 1982 does not permit any bilateral interaction between the Federal Government represented by the 1st Defendant and LGCs under a State.

Section 162(5)(6)(7)(8) of the Constitution make it clear that any amount standing to the credit of LGCs must be allocated to the States who will in turn remit it to the State Joint Local Government Account and thereafter distribute them to the LGCs in the terms and manner approved by the National Assembly and State Houses of Assembly. In the event, any direct distribution of funds,



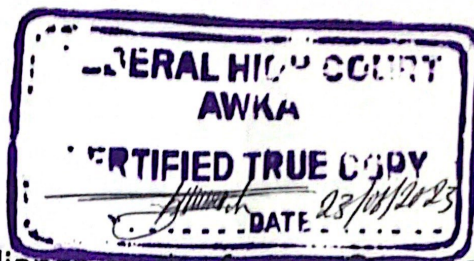
including refunds from the Federation Account, to the LGCs, in my view will be an infraction of the Constitution. And as I have held earlier, violation of law by a party is not one that is solved by resort to self-help by another party, or by a countervailing breach of the law by the activist party in a knock-for-knock or tit-for-tat formula. Violation of law by a party, where police powers have not been provided or granted to another seeking a remediation, can only be solved through judicial intervention initiated by the activist innocent party.

Another defence offered by the Defendants is that the deductions were justified by the indemnity from the former Executive Governor of Anambra State, Chief Willie Obiano to the effect that any over-payments to Anambra State should be deducted from source. I have appraised these indemnity letters. The first letter is one of 9 November, 2016 attached as Exhibit B in the Counter Affidavit of the 1st Defendant. This "indemnity" letter authorized ***"The Federal Ministry of Finance to deduct the payment of 5% Consultants' fees at source from my State's entitlements and paid directly into the Nigeria Governors' Forum Secretariat Account provided below to defray related consulting and incidental expenses:..."***. This particular indemnity letter does not avail nor protect the 1st Defendant because, looking at the letter dated 20th December,



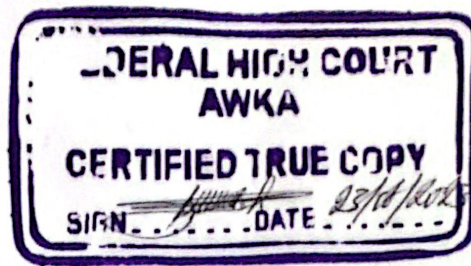
2022 from the 1st Defendant to the Governor of Anambra State where the 1st Defendant laid out their complaint and communicated the decision to start making deductions at source from the entitlement of Anambra State Government from the federation account allocation, there was nowhere it was indicated that the deduction was to represent the 5% authorized to be done by the former Governor via its letter of 9th November, 2016 to the Nigerian Governors' Forum account to defray consultants and related expenses. Unless this was the real reason but then which was concealed, there is no way that the letter of 9 November, 2016 offers any protection for the action the 1st Defendant took forewarned by its letter of 20th December, 2022.

The second letter is one dated 28 November, 2016 and attached as Exhibit A. In it, the former Governor Chief Obiano indicated that the State's entitlement from the Paris and London Club Refunds be remitted subject to some conditions, namely: (a) 50% will be used to pay salaries and pensions; (b) if discovered that the amount paid/disbursed is higher than the amount due, refund/deductions should be made directly from the Federation Account; and (c) share of legal fees be deducted and paid over to the Nigerian Governors Forum Account. Again, looking at the letter of 20th December, 2022 to Anambra State Government that activated this legal action, it is obvious that the 1st Defendant



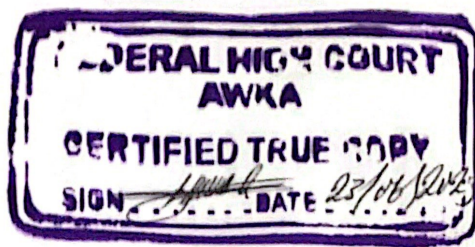
cannot place effective reliance on the former Governor's letter of 28 November, 2016 as a basis for their action. First, the letter of 20th December, 2022 did not pretend that it was making any deductions for the purposes of settling legal or consultants' fees, unless of course that was the real motive but which then was concealed for whatever reasons. Secondly, the letter says Anambra State Government "***received N38,192,314,212.10 which going by the existing revenue allocation formula, the State Government was supposed to get 57% of the amount in the sum of N21,769,619,100.90 while the LGCs were to get 43% in the sum of N16,422,695,111.20. However, the FMFBNP did not receive any evidence from your State to show that the portion of LGCs from the refund was remitted into the State Joint Local Government Account.***"

It is almost becoming like a chicken and egg kind of situation where you cannot really tell which comes first. The question is really, in the context of Chief Obiano's letter of 28 November 2016, foreshadowed by the provisions of the Constitution, did Anambra State Government really receive any overpayments? The answer is a resounding and clear No! It would be recalled, repeatedly emphasized, that the Constitution by Section 162(5) and also the Allocation of Revenue (Federation Account Etc) Act clearly



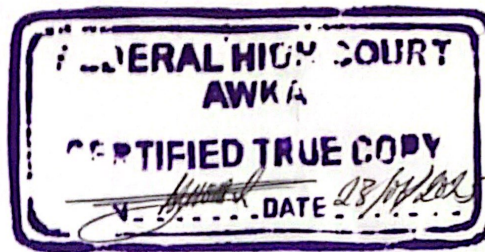
stipulates that the portion of funds from the federation account due to States and Local Governments shall be collectively paid to the State who should then manage same for the benefit of their local governments subject to laws made by the State House of Assembly and National Assembly as the case may be. The 1st Defendant themselves in the letter said they paid the sum of N38,192,314,212.10 to Anambra State consisting of N21,769,619,100.90 for the State itself and N16,422,695,111.20 for the LGCs under the State. In effect, the 1st Defendant did not really overpay Anambra State within the context of the indemnity letter of 28 November, 2016 but merely did what the Constitution allows or mandates them to do under Section 162(5) of the Constitution. If the 1st Defendant had paid to the Anambra State a sum higher than the N38,192,314,212.10 which by the letter the 1st Defendant accepted was the joint entitlement of both the State and its LGCs, then the issue of overpayment would have arisen.

Saying the above, I accept, as already noted, that the State is under a countervailing duty to pay the share of the LGCs into the State Joint Local Government Account and then to make disbursements to the LGCs as is required to be done following Sections 162(6) to (162(8) of the Constitution. There is no evidence that this was in fact done. The Defendants believe that the State did not. It is very possible and I accept that the State



might not have done so, since it did not provide any evidence that it has in fact done so. But then, as I have already held, it is not for the 1st Defendant to take the laws into its hands and start trying to enforce such an obligation of the State paying over to the LGCs their shares since the Constitution has not given it such powers. It requires judicial mediation through a court action for it to be able to intervene in the manner it has sought to do. In any event, as I have already found, the basis of the 1st Defendant's belief that Anambra State Government has not fulfilled its obligations to the LGCs under its care is very dubious and unlikely to generate much traction. Among other reasons, the letters from ALGON and Falana & Falana Chambers made no reference or accusation anywhere that Anambra State Government was running afoul of its obligations. There was no complaint from any LGCs in Anambra State to the 1st Defendant or to any other body. No petition emanated from Anambra State from any None Governmental Organisation (NGO), Civil Society Organisation (CSO) or any other concerned individual. So, where exactly did the 1st Defendant get its suspicions from? As stated earlier, the whole action is one analogous to a passerby wailing more than the bereaved.

It is on the strength of the above analysis that I answer all the questions posed by the Plaintiff positively in its favour and resolve



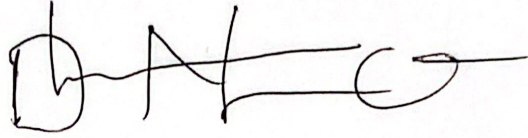
the sole issue formulated by its counsel in its favour. I enter judgment for the Plaintiff and consequently grant all the reliefs sought.

Counterclaim

In the counter-claim, the 2nd Defendant prays the Court to order Anambra State Government to transfer the funds meant for the LGCs from the Paris Club Refund to them. Summarily, I do not believe that the 2nd Defendant is competent to bring this counterclaim and I accordingly refuse it. But for the fact that the 2nd Defendant joined the fray by the nature of its deposition, the 2nd Defendant is merely a nominal party in this suit. Neither the Constitution in its Section 162 nor the Allocation of Revenue (Federation Account Etc) Act gave the 2nd Defendant any role in the allocation or sharing of revenues accruable to any of the tiers of Government in the federation account. I see no reason therefore why the 2nd Defendant should pick up the cudgel and start fighting for local governments in Anambra State when none of them has invited it to do so, and also when neither the relevant statute nor the Constitution has given it any role in the relevant legal field.

In the event, I find no merit in the counter-claim and accordingly dismiss same.

I make no order as to costs.



HON. JUSTICE NNAMDI O. DIMGBA

JUDGE

21/06/2023

PARTIES: Absent.

APPEARANCES: P.I.N. Ikwueto SAN with C.C. Emeka Ekwe, Celestine Ezeokeke, Oscar I. Okuma for the Plaintiff; A. A. Shamaki for the 1st Defendant; Ekene V. Elodimuo for the 2nd Defendant.

