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IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

BEFORE HIS LORDSHIP,

HON. JUSTICE A. LEWIS-ALLAGOA

J. Allagoa

SUIT NO. FHC/L/CS/887/2024

BETWEEN:

1. AUGUSTINE OYAREKHUA ALEGEH, SAN== PLAINTIFF/RESPONDENT

AND

- | | | |
|--|---|---------------------|
| 1. CHIEF ADEBOYEGA SOLOMON
AWOMOLO, SAN | } | DEFENDANT/APPLICANT |
| 2. THE BODY OF BENCHERS | | DEFENDANT |

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER, ORDERS 26 RULES 1 & (2); 29 RULES 1 AND 2 OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES, 2019; SECTION 6(6)(A) AND (B) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court shall be moved on 8th the 7th day of _____ 2024 at the hour of 9 o'clock in the forenoon or so soon thereafter as the business of this Honourable Court may permit the 1st Defendant/Applicant or Counsel on his behalf to be heard praying this Honourable Court as follows:-

1. AN ORDER striking out this case/proceeding for want of jurisdiction in that:
 - (i) Plaintiff has no right of action/cause of action.
 - (ii) The suit is an abuse of process of this Court.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

ALEGEH & CO.
RECEIVED
 NAME: Javair Okon
 DATE: 7/06/2024
 SIGN: [Signature]

GROUNDS FOR THE APPLICATION

- (i) The Plaintiff's alleged cause of action is not justiciable, being a matters within the internal affairs of the 2nd Defendant.
- (ii) The Plaintiff has no legal right to protect over the affairs of the 2nd Defendant as projected, being a matter of privilege conferred on selected members of legal profession.
- (iii) Plaintiff has no right of action/cause of action.
- (iv) The suit is an abuse of process of this Court.

Dated this 5th day of June, 2024

DR. ONYECHI IKPEAZU OON, SAN.
TOBECHUKWU NWEKE ESQ.,
DR. OBINNA ONYA ESQ.,
JULIUS MBA ESQ.,
A. A. AKAAHS ESQ.,
IKPEAZU CHAMBERS
Counsel to the 1st Defendant/Applicant
Dr. Onyechi Ikpeazu SAN & Co
Ikpeazu Chambers.
Plot 10, Block IX, David Dodo
Street, Gwarinpa, F.C.T. Abuja.

SERVICE ON:

1. PLAINTIFF/RESPONDENT

Augustine O. Alegeh, SAN, FCI Arb (UK) CON
A.O. Alegeh & Co
Legal Practitioners & Notries Public
35 Cameroun Road, Ikoyi,
Lagos.

2. THE BODY OF BENCHERS

Plot 688, Institution and Research District
FCC Phase III, Abuja.



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AFFIDAVIT IN SUPPORT OF MOTION

I, **ASIWAJU ADEBOYEGA SOLOMON AWOMOLO, SAN**, Male, Adult, Christian, Legal Practitioner and Nigeria citizen of Plot 182, 444 Crescent, Citec Villas Estate, Gwarinpa, Abuja, Federal Capital Territory doth make oath and say as follows:-

1. I am the 1st Defendant/Applicant herein and I have carefully read the Originating Summons and the accompanying processes filed in this case.
2. I have also read the Ex-Parte Order of this Honourable Court made on the 27th day of May, 2024 as contained in the enrolled Order of the Court. By virtue of my position, I am familiar with the facts hereinafter deposed to
3. I make this Oath based on my personal knowledge, except where stated otherwise.
4. I was duly served the Originating Summons together with other processes filed in this case in Abuja, at the address disclosed on the Originating Summons which is my residence and office in Abuja where I reside and also practice.
5. The facts which gave rise to this suit arose from the internal affairs of the 2nd Defendant.

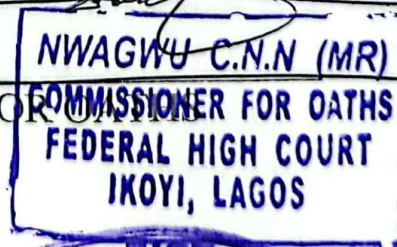
6. No member of the 2nd Defendant serves in a standing Committee of the 2nd Defendant as of right. It is a mere matter of privilege conferred on members without remuneration.
7. Reliance shall be placed in the Body of Benchers Regulations delivered by the Plaintiff as **Exhibit P8**, the contents of which are hereby incorporated by reference.
8. As presently informed by my Counsel, Dr. Onyechi Ikpeazu, OON, SAN at his office at Plot 10 Block IX, David Dodo Street, Gwarimpa FCT Abuja on the 4th June, 2024 at about 1:30pm and I verily believe him, the Plaintiff has no right of action and cause of action against the Defendants.
9. It will be in the interest of justice to strike out this Suit.
10. I, the said **ASIWAJU ADEBOYEGA SOLOMON AWOMOLO, SAN**, do solemnly and sincerely swear that I make this Oath conscientiously believing the contents to be true and correct to the best of my knowledge and information and in accordance with the Oaths Act.

~~_____~~
DEPONENT

Sworn to at the Federal High Court Registry,
Lagos, this 7th day of June 2024.

Before me:

COMMISSIONER FOR OATHS



Aloby



EXHIBIT 1

Hon. Justice Mary U. Peter-Odili, CFR, JSC (Rtd).

RETIRED JUSTICE OF THE SUPREME COURT
HOUSE 7 IMO RIVER STREET, MAITAMA
ABUJA. F.C.T NIGERIA.

3RD June, 2024

Chief Adegboyega Awomolo SAN
Chairman Body of Benchers

Learned Silk & Chairman,

RE: APPOINTMENT TO SERVE AS CHAIRMAN OF THE BODY OF
BENCHERS APPOINTMENT COMMITTEE

I have just got a copy of the letter signed by Daniel M. Tela Esq, Secretary Body of Benchers on the above titled subject dated 28th March, 2024.

It is with great shock to read the contents of the letter which in effect means that I, as outgoing chairman of the Body of Benchers, authorized the said appointment.

I could not have embarked on such an appointment of Augustine Alegeh SAN as Chairman of Appointment Committee for the following reasons:

1. I had made it known to the administration that I had no interest in reconfiguring the Appointment Committee during my tenure.
2. I could not have embarked on such a process on the day I chaired the last meeting of my tenure, which meant that the appointment would not be presented to the House for approval before the letter to the candidate.
3. I would not have entered into the restructuring of the Appointments Committee without reference to the vice-chairman with whom I worked as a team.

I am placing the above views on record to clarify the situation which is clearly an embarrassment to me and yourself, Chairman of the Body of Benchers. Therefore, I urge that the anomaly should be rectified and my person removed from being part of the said appointment of Augustine Alegeh SAN as Chairman of the Appointments Committee.

I want to therefore categorically state that I did not make that appointment.

Yours Sincerely,

Mary Ukaego Peter-Odili
Rtd Justice of Supreme Court
And Former Chairman Body of Benchers.

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**WRITTEN ADDRESS IN SUPPORT OF MOTION TO STRIKE OUT THE
ORIGINATING SUMMONS**

1.00 Introduction and Facts

1.01 This action was incepted by the Plaintiff/Respondent by an Originating Summons, dated 21st May, 2024 and filed on the 22nd May, 2024 seeking response to six (6) Questions and Nine (9) Reliefs as shown in the Originating Summons. The gravamen of the Plaintiffs' complaint is that he is a Bencher who was appointed to an ad-hoc Committee of the 2nd Defendant known as Benchers Appointment Committee on the 28/3/2024, during the tenure of the immediate past Chairman of the 2nd Defendant, Hon. Justice Mary Peter- Odili J.S.C (retired). He claimed that he had a tenure of three (3) years on the Committee. However, that the 1st Defendant upon resumption of office as the Chairman of the 2nd Defendant, disregarded the appointment previously made, and made a fresh appointment. That in the fresh appointment to the ad-hoc Committee, the 1st Defendant removed and replaced him with Professor Yusuf Ali S.A.N.

1.02 The Plaintiff Claimed a right to remain in the ad-hoc Committee for which reason he incepted thus suit.

2.00 Sole Issue for Determination

The 1st Defendant contends that the sole issue which is called for the determination of this Court in this application is, **whether the Plaintiff has disclosed a cause of action worthy of judicial intervention**

3.00 **Argument on the Sole Issue**

3.01 It is submitted that having regard to the facts disclosed in the Originating Summons, the Plaintiff has not disclosed a cognizable cause of action known to law. Section 6(6) Constitution of the Federal Republic of Nigeria 1999 (as amended) stipulates thus:

- (6) The judicial powers vested in accordance with the foregoing provisions of this section-
 - (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law;
 - (b) shall extend to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person;

3.02 The Plaintiff has not contended that he was removed from the Body of Benchers as a life Bencher. His grouse is essentially that he was appointed to an ad-hoc Committee, but was removed. He has not even asserted that the purported appointment had been presented to the 2nd Defendant, which had not met his purported appointment to a mere ad-hoc Committee.

3.03 Examination of Regulation 11(10) and (11) of the Body of Benchers Regulations, pursuant to the LPACT 2014 will disclose as follows:

- 10) Membership of all the Committee, of the Body shall be based on recommendation by the Secretariat of the Body of Benchers, Provided that the Chairman, Body of Benchers shall have the powers to appoint Committee members.
- 11) Each Committee shall hold its meetings and carry out its functions at such times and place (physical or virtual) to be determined by the Chairman of the Committee.

3.04 The foregoing cannot represent a right or obligation giving rise to a right of action. Membership of such ad-hoc Committee can be best be described as mere privilege which does not attract civil right or obligation. It is not earned, nor are there remuneration attached to it. It is a position which rests at the pleasure of the Chairman of the 2nd Defendant. To clearly ascertain that no right of action accrues therefrom, the question may be asked, what

injury would a person suffer by not being allowed to serve in an ad-hoc Committee such as the one, the subject matter of this suit? The response is, or should be, none.

- 3.05 Even where there is a cause of action, that is only the commencement point. A right of action proceeds beyond a cause of action and without a right of action, no cause of action may even be maintained. In the case of **Hassan v. Aliyu (2010) LPELR- 1357**, the Court held thus:

"It should be noted that there is clear distinction between a cause of action and a right of action to enforce the cause of action or the right of judicial relief in the plaintiff. The distinction must be constantly kept in view to avoid confusion. There is no doubt that the appellant in this case has a cause of action. The cause of action is founded on the fact that appellant, who alleged that he was the duly nominated candidate of the 2nd respondent for election into the office of Governor of Niger State scheduled for 14th April, 2007, was by a letter of 5th and 13th February, 2007 substituted by the 1st respondent as the sponsored candidate for that election contrary to the provisions of Sections 34(2) and 36(1) & (2) of the Electoral Act, 2006. The above cause of action accrued on the 13th day of February, 2007 when the substitution was affected. It is the accrual of the cause of action that confers on the appellant the right to institute an action to enforce the cause of action or right to a judicial relief. Now the effect of a statute of limitation, such as the provisions of Section 2(a) of the Public Officers Protection Act, supra, on both cause of action and right of action is that it bars the right of action and not the cause of action. The cause of action refers to the facts or combination of facts which the plaintiff must adduce to entitle him to the relief(s) claimed while action or right to institute the action remains the means or medium affording the plaintiff the opportunity to ventilate his grievances - cause of action or bundle of facts, as variously described by the Courts over the years. The effect of a statute of limitation on the action of a plaintiff therefore is that it takes away the right of the plaintiff to institute the action but leaves him with his cause of action intact, though, without the right to enforce same or right to judicial relief."

Per ONNOGHEN, JSC (Pp. 24-25, paras. A-E)

(Emphasis supplied)

3.06 On the peculiar facts of this case, there is in addition no cause of action which enures to the Plaintiff, liable to be enforced against the Defendants. On the issue of cause of action, the Court in **Atiba Iyalamu Savings & Loan Ltd v. Suberu (2018) LPELR- 44069(SC)** held thus:

"In Bello Vs A.G. Oyo State (1986) 5 NWLR (pt.45) 828 @ 876 A - B this Court considered what constitutes a reasonable cause of action. His Lordship Karibi-Whyte, JSC opined thus: "I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognise as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other words, the factual situation relied upon must constitute the essential ingredients of an enforceable right or claim." This definition was adopted by Obaseki, JSC in Afolayan Vs Ogunrinde (1990) 1 NWLR (pt.127) 269 @ 382 F - H. His Lordship stated: "In its simplest terms, I would say that a cause of action means: (1) a cause of complaint; (2) a civil right or obligation fit for determination by a Court of law; (3) a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine. It consists of every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment." See also: Thomas Vs Olufosoye (1986) 1 NWLR (pt.18) 669; Adimora vs. Ajufo (1988) NSCC Vol. 19 (Part) 1003 @ 1005; (1988) 3 NWLR (Pt. 80) 1; P.N Udoh Trading Co. Ltd vs. Abere (2001) 11 NWLR (Pt. 723) 114 @ 129 B - C; Mobil Producing Nig. Unltd vs. LASEPA & Ors. (2002) 18 NWLR (Pt. 798) 1 @ 30 E - G."

Per KEKERE-EKUN, JSC (Pp. 43-45, paras. F-B)

See also **Yare v. NSWIC (2013) LPELR-20520(SC)** where the Court held thus:

"The Supreme Court in the case of SAVAGE V. UWAECHIA (1972) All NLR 255 at 211 espoused the law on the issue of the term "cause of action" as follows: "A cause of action is defined in Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim to our mind, it is, in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements - the wrongful act of the defendant which gives to plaintiff his cause of action of complaint and the consequent damage." (underlining for emphasis). See also the cases of ADESOKAN V. ADEGOROLU (1997) 3 NWLR (PT.493); EMIATOR V. NIGERIA ARMY (1999) 12

NWLR (Pt. 631) 362. ODUNTAN V. AKIBU (2000) 13 NWLR (Pt.685) 446: SULGRAVE HOLDINGS INC. V. FGN (2012) 17 NWLR (Pt.1329) 309 at 338 and PEACE GATE OIL & GAS LTD. V. HYDRIVE (NIG) LTD. (2000) 17 NWLR (Pt.1329) 391 at 403. In my humble view and my understanding of the foregoing judicial authorities, the simplest and ordinary meaning of cause of action means: (a) a cause of complaint; (b) a civil right or obligation fit for determination by a court of law; and (c) a dispute in respect of which a court of law is entitled to invoke its judicial powers. See sections 6(1), (2), (3) and 4 (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)."

Per GALADIMA, JSC (Pp. 11-12, paras. D-C)

3.04 The Court is urged to resolve this issue in favour of the 1st Defendant and strike out the suit.

4.00 Conclusion

4.01 The Court is respectfully urged to strike out this suit on the premise that the Plaintiff has no right of action and an enforceable cause of action against the Defendants.

Dated this 5th day of June, 2024



DR. ONYECHI IKPEAZU OON, SAN.
TOBECHUKWU NWEKE ESQ.,
DR. OBINNA ONYA ESQ.,
JULIUS MBA ESQ.,
B. A. AKAAHS ESQ.,
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Counsel to the 1st Defendant/Applicant
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SERVICE ON:

1. PLAINTIFF/RESPONDENT

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