

IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA
ON MONDAY THE 15TH DAY OF DECEMBER, 2025
BEFORE THEIR LORDSHIPS:

<u>JOHN INYANG OKORO</u>	<u>JUSTICE, SUPREME COURT</u>
<u>CHIOMA E. NWOSU-IHEME</u>	<u>JUSTICE, SUPREME COURT</u>
<u>HARUNA SIMON TSAMMANI</u>	<u>JUSTICE, SUPREME COURT</u>
<u>OBANDE FESTUS OGBUINYA</u>	<u>JUSTICE, SUPREME COURT</u>
<u>STEPHEN JONAH ADAH</u>	<u>JUSTICE, SUPREME COURT</u>
<u>HABEEB ADEWALE O. ABIRU</u>	<u>JUSTICE, SUPREME COURT</u>
<u>MOHAMMED BABA IDRIS</u>	<u>JUSTICE, SUPREME COURT</u>

SC/CV/329/2025

BETWEEN:

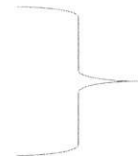
1. **ATTORNEY GENERAL OF
ADAMAWA STATE**
2. **ATTORNEY GENERAL OF AKWA
IBOM STATE**
3. **ATTORNEY GENERAL OF
BAUCHI STATE**
4. **ATTORNEY GENERAL OF
BAYELSA STATE**
5. **ATTORNEY GENERAL OF
ENUGU STATE**
6. **ATTORNEY GENERAL OF**

PLAINTIFFS

- OSUN STATE**
- 8. ATTORNEY GENERAL OF OYO STATE**
 - 9. ATTORNEY GENERAL OF PLATEAU STATE**
 - 10. ATTORNEY GENERAL OF TARABA STATE**
 - 11. ATTORNEY GENERAL OF ZAMFARA STATE**

AND

- 1. ATTORNEY GENERAL OF THE FEDERATION**
- 2. THE NATIONAL ASSEMBLY**



DEFENDANTS

SUMMARY OF THE MAJORITY JUDGMENT
DELIVERED BY MOHAMMED BABA IDRIS, JSC

This suit was commenced by the Attorneys-General of Adamawa State and ten other States, invoking the original jurisdiction of this Court under Section 232 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Plaintiffs challenged the constitutional validity of the declaration of a state of emergency in Rivers State, the suspension of the Governor, Deputy Governor and House of Assembly of

Rivers State, the appointment of a Sole Administrator, and the approval of the proclamation by the National Assembly. The plaintiffs further sought for declaratory and injunctive reliefs to prevent similar actions from being taken against their respective States. The Defendants opposed the suit on the merits and also raised preliminary objections challenging the jurisdiction of this Court, the Plaintiffs' locus standi, and the competence of the action.

RESOLUTION OF THE PRELIMINARY OBJECTIONS

Jurisdiction is the life-blood of adjudication. It is the authority conferred on a court to hear and determine a matter, and without it, any proceedings conducted or judgment delivered are a nullity, no matter how well reasoned. In determining whether it has jurisdiction, the Court is guided strictly by the Plaintiffs' originating processes, particularly the originating summons and supporting affidavits, since it is the Plaintiffs' claim that defines the scope of the Court's jurisdiction.

Section 232(1) of the Constitution confers original jurisdiction on this Court in disputes between the

Federation and a State or between States, provided the dispute involves a question on which the existence or extent of a legal right depends. From settled authority, 3 (three) conditions must co-exist before this jurisdiction can be validly invoked:

1. There must be a dispute between the Federation and a State or States, or between States;
2. The dispute must involve a question of law or fact; and
3. The dispute must concern the existence or extent of a legal right.

Upon a careful examination of the Plaintiffs' questions and reliefs, it is clear that their grievance arose principally from the declaration of a state of emergency in Rivers State, the suspension of the Governor, Deputy Governor and House of Assembly of that State, and the appointment of a Sole Administrator. However, none of the Plaintiffs represents Rivers State, and neither did they establish any authority to litigate on its behalf was

there any deposition showing that a state of emergency had been declared in any of the Plaintiffs' States.

The Plaintiffs also relied on an alleged statement made by the Attorney-General of the Federation during a media briefing, which they construed as a threat to their respective States. Such a statement, standing alone, cannot constitute an actionable conduct of the Federation itself for the purpose of invoking Section 232(1). Complaints directed against individual officials or functionaries of the Federal Government, even when acting in their official capacities, do not amount to disputes between the Federation and a State within the contemplation of the Constitution.

In the circumstances, the Plaintiffs failed to disclose any reasonable or justiciable dispute between them and the Federation capable of invoking the original jurisdiction of this Court. The absence of a competent cause of action is fatal and deprives this Court of jurisdiction. Consequently, the suit is incompetent and must be struck out

However, in view of the significance of Section 305 of the Constitution of the Federal Republic of Nigeria (as amended) in our legal framework and jurisprudence, it is imperative to undertake a considered discussion on the scope and exercise of the powers conferred thereby as such an examination will serve to elucidate its application and enhance our understanding of its role within the broader constitutional and legal system.

Nigeria operates a federal system of government founded on constitutional supremacy, separation of powers, and checks and balances. By virtue of Sections 4 – 7 of the Constitution, governmental powers are divided among the Executive, Legislature, and Judiciary, and distributed across the Federal, State, and Local Government tiers. No arm or tier of government is constitutionally superior to another, and none may lawfully usurp the powers expressly vested in another. The Constitution, as the grund norm, defines the structure of governance, allocates authority, and prescribes the limits within which all governmental powers must be exercised. Consequently, no part of the

Federation may be governed, and no person or authority may exercise governmental power, except as authorized by the Constitution.

At the same time, the Constitution recognizes that extraordinary situations may arise in which the normal machinery of governance is imperilled. In such circumstances, the Constitution permits a temporary expansion of federal powers for the sole purpose of preserving public order, safeguarding constitutional governance, and protecting the unity and security of the Federation. It is within this narrow context that Section 305 provides for the declaration of a state of emergency.

A state of emergency, in constitutional theory and comparative practice, is a temporary legal regime designed to enable the State to respond effectively to grave threats such as war, internal unrest, natural disasters, or threats to national security. Even so, emergency powers are never absolute. Across constitutional democracies, they (emergency powers) remain subject to legal limits, legislative oversight, and judicial scrutiny.

Comparative constitutional experience is instructive. In India, Sections 352 – 360 of the Constitution expressly empower the President, upon satisfaction that constitutional governance in a State has failed, to assume executive powers of the State and authorise Parliament to exercise State legislative powers. Similarly, in Pakistan, Article 234 of the Constitution authorises the President, in clearly defined circumstances, to assume Provincial executive functions, with legislative powers exercised by Parliament, subject to time limits, parliamentary approval, and judicial oversight.

The Nigerian Constitution adopts a markedly different approach. Section 305 authorises the President to proclaim a state of emergency under specific conditions, including war, imminent danger of invasion, actual or threatened breakdown of public order and safety, or other public danger threatening the existence of the Federation. However, unlike the Constitutions of India and Pakistan, Section 305 of the Nigerian Constitution does not expressly confer power on the

President to assume or temporarily displace the executive or legislative institutions of a State. This omission is deliberate and reflects Nigeria's constitutional commitment to federalism and the autonomy of State governments.

In interpreting Section 305, this Court is guided by settled principles of constitutional interpretation as restated in the cases of **SKYE BANK PLC VS. IWU (2017) LPELR – 42595 (SC); NAFIU RABIU VS. STATE (1980) 8 – 9 SC 130; A. G. FEDERATION VS. ABUBAKAR (2007) 10 NWLR (PT. 1041) 1** and **SARAKI VS. F. R. N. (2016) 3 NWLR (PT. 1500) 531.**

Applying these principles, Section 305 of the Nigerian Constitution is clear in its grant of power to proclaim a state of emergency but silent on the precise content of the “extraordinary measures” that may follow. This silence is intentional. Emergencies are inherently situational, varying in scope, intensity, and threat. The Constitution therefore entrusts the President with discretion to determine the measures required to restore peace and security, subject always to constitutional

limits, proportionality, legislative oversight, and judicial review.

Historical practice in Nigeria illustrates this flexibility. During the 2004 and 2006 emergencies in Plateau and Ekiti States respectively, the executive and legislative institutions of the States were suspended. By contrast, during the 2013 emergency in Borno, Adamawa, and Yobe States, State institutions continued to function. These contrasting responses underscore that emergency powers are not governed by a rigid formula. The constitutionally permissible response depends on the magnitude of the threat, the functionality of State institutions, and the necessity of intervention to restore constitutional order.

Nevertheless, the President's discretion under Section 305 is not unfettered. Emergency measures must be temporary, corrective, and proportionate. They must be directed towards restoring constitutional governance, not extinguishing it. Any permanent displacement or abrogation of democratically elected institutions would constitute a constitutional aberration.

Outside a validly declared state of emergency, the President possesses no power whatsoever to interfere with State executive or legislative institutions.

Crucially, the Constitution subjects the proclamation of a state of emergency to strict legislative control. By virtue of Section 305(2) and (6)(b) of the 1999 Constitution, a proclamation ceases to have effect unless approved by a resolution supported by not less than two-thirds of all the members of each House of the National Assembly within the stipulated time. This requirement ensures that emergency powers command broad national consensus and are not the product of unilateral executive action.

The Constitution does not prescribe the voting procedure for securing this two-thirds majority. Consequently, by virtue of Section 60 of the Constitution, each House of the National Assembly regulates its procedure through its Standing Orders. These Standing Orders possess constitutional force in determining how approval is granted.

In the Senate, the relevant procedure is governed by Orders 133 – 136 of the Senate Standing Orders, 2023 (as amended) and voting is conducted in accordance with Chapter X thereof, particularly Orders 70 – 72 and 71, which recognise voice vote, division by signing a register, or electronic voting. A formal numerical division is required where the opinion of the presiding officer is challenged. What remains constitutionally imperative is that the process adopted renders the attainment of the two-thirds majority clearly ascertainable.

In the House of Representatives, Order 16 of the Standing Orders (11th Edition) governs the consideration of a proclamation of emergency. Voting modes are provided under Order 11. Significantly, Order 11 Rule 6 empowers the Speaker, where a matter is of national concern, to order a division, with votes recorded by name, constituency, and choice, and published accordingly. A proclamation of a state of emergency is unquestionably a matter of national concern, and the Standing Orders accordingly provide a mechanism for

transparent and verifiable determination of the required supermajority.

On the whole, a proclamation of a state of emergency is constitutionally valid where it is issued under Section 305 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), approved by not less than two-thirds majority of all the members of each House of the National Assembly in accordance with their Standing Orders, and implemented through measures that are temporary, proportionate, and directed at restoring constitutional order. The exercise of such powers remains subject to judicial review to prevent arbitrariness or abuse.

Having clarified these constitutional principles, I reiterate that the instant suit failed to disclose any reasonable cause of action capable of invoking the original jurisdiction of this Court under Section 232 of the 1999 Constitution as amended. No justiciable dispute between the Federation and any or all of the Plaintiffs' States has been established.

Consequently, I hold that this Court lacks the jurisdiction to entertain the instant suit and thus, the Plaintiffs' suit is therefore hereby struck out.

I make no order as to costs.