

1. **ENG. RAPHEAL JIMOH (VICE CHAIRMAN IFELODUN L.G.A. COUNCIL OF KWARA STATE)**
2. **HON. ALHAJI LATEEF A. QUADRI**
3. **FASEYI O. OLUYEMI**

v

CHIEF REX KOLA OLAWOYE
(CHAIRMAN IFELODUN L.G.A. COUNCIL OF KWARA STATE)
COURT OF APPEAL
(ILORIN DIVISION)

CA/IL/59/2001

MURITALA AREMU OKUNOLA, J.C.A. (*Presided*)

WALTER SAMUEL NKANU ONNOGHEN, J.C.A. (*Read the Leading Judgment*) **JA'AFARU MIKAILU, J.C.A.**

TUESDAY, 10TH DECEMBER, 2002

ACTION - Commencement of actions - Originating summons - When appropriate to use - When inappropriate - Action commenced thereby where dispute of facts exists - Propriety of ACTION - Parties to an action - Desirable and necessary party - Action challenging suspension of a person from office of Chairman of Local Government - Whether Local Government is a desirable and necessary party - Non-joinder of- Effect

ADMINISTRATIVE LAW - Statutory powers and duties – How

APPEAL - Issues for determination - Formulation of- Need to arise from grounds of appeal - Need for arguments to be related thereto.

APPEAL - Preliminary objection to an appeal - Argument thereon -Need to be based on grounds of Objection.

APPEAL - Record of appeal - Bindingness of on Court of Appeal.

CONSTITUTIONAL LAW - Constitution of the Federal Republic of Nigeria, 1999 - Superiority of over Acts of National Assembly.

CONSTITUTIONAL LAW - Legislature - Intra-legislative dispute -Meaning of.

CONSTITUTIONAL LAW - Impeachment - Meaning of.

COURT - Jurisdiction of court - Statute ousting same - How construed.

COURT - Jurisdiction of court - Whether court has jurisdiction -Issue of- Jurisdiction of court to determine.

INTERPRETATION OF STATUTES - Constitution of the Federal Republic of Nigeria - Superiority of over Acts of National Assembly.

INTERPRETATION OF STATUTES - Local Government Law of Kwara State 1999, Section 26 - Power of impeachment thereunder - Scope of- Whether includes power of suspension.

JURISDICTION - Jurisdiction of court - Statute ousting same - How construed.

JURISDICTION - Jurisdiction of court - Whether court has jurisdiction - Issue of- Jurisdiction of court to determine.

LOCAL GOVERNMENT - Local Government Law of Kwara State 1999, Section 26 - Power of impeachment thereunder - Scope of- Whether includes power of suspension.

APOLITICAL PARTY - Intra-party dispute - Meaning of.

PRACTICE AND PROCEDURE-Appeal - Issues for determination - Formulation of- Need to arise from grounds of appeal – Need for arguments to be related thereto.

PRACTICE AND PROCEDURE - Appeal - Record of appeal - Bindingness of on Court of Appeal.

PRACTICE AND PROCEDURE - Commencement of actions - Originating summons - When appropriate to use – When inappropriate - Action commenced thereby where dispute of facts exists - Propriety of.

PRACTICE AND PROCEDURE - Jurisdiction of court – Ouster clause in a statute - Whether court has jurisdiction to examine same.

PRACTICE AND PROCEDURE - Parties to an action – Desirable and necessary party - Action challenging suspension of a person from office of Chairman of Local Government - Whether Local Government is a desirable and necessary party - Non-joinder of-Effect.

PRACTICE AND PROCEDURE - Preliminary objection to an appeal - Argument on objection - Need to be based on grounds of objection.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes - Section of a statute having subsections - Interpretation of - Principles guiding.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes - Statute ousting jurisdiction of court - How construed – Relevant consideration.

PRINCIPLES OF INTERPRETATION - Interpretation of statutes - Words contained in an enactment - Whether used in broad or restrictive sense - How determined as such.

STATUTE - Local Government Law of Kwara State, 1999, 26 - Application of- Power of impeachment thereunder - Scope of- Whether includes power of suspension.

STATUTE - Statutory' powers and duties - How exercised.

STATUTE - Constitution of the Federal Republic of Nigeria - Superiority of over Acts of National Assembly.

WORDS AND PHRASES - "Impeachment" - "Suspension" Meanings of and distinction between.

WORDS AND PHRASES - Intra legislative dispute - Meaning of. WORDS AND PHRASES - Intra party dispute - Meaning of.

Issues:

1. Whether the jurisdiction of the High Court over the respondent's suit was not ousted by section 26(10) of the Local Government Law of Kwara State, 1999 notwithstanding the provision of section 272 of the 1999 Constitution.
2. Whether the High Court had the jurisdiction to hear and determine the respondent's suit which was based on an intra party dispute.
3. Whether the respondent's suit was properly commenced by originating summons.
4. Whether the non-joinder of Ifelodun Local Government; of Kwara State was not fatal to the respondent's suit.
5. Whether the trial court did not decide the substantive- suit when it made a finding that the suspension of the respondent from the office of Chairman of Ifelodun Local Government of Kwara State is not supported by the Constitution or any other statute in force.

Facts:

The respondent was the Chairman of Ifelodun Local Government in Kwara State. He was served with a letter dated 24th April, 2001 signed by the 2nd and 3rd appellants, in their respective capacities of Honorable Speaker and Council Clerk of Ifelodun Local Government of Kwara State, by which the respondent was notified of his suspension from the office of Chairman of Ifelodun Local Government, and of the appointment of the 1st appellant, his See Chairman, as acting Chairman of the Local Government.

The respondent, together with three other persons as plaintiffs, then caused an originating summons to be issued against the appellants in the High Court of Kwara State, Omu-Aran, seeking in the main, a declaration that his suspension as Chairman of Ifelodun Government of Kwara State by the 2nd and 3rd appellants and members of the Legislative Council of the Ifelodun Local Government is wrongful, unlawful, illegal, unconstitutional, *ultra* null and void. The main plank for the suit was that the legislative Council of the Local Government had no powers under the provisions of the Local Government Law of Kwara State, 1999 under which it purported to act, to suspend the respondent from office Chairman of Ifelodun Local Government.

The appellants on their part did not file a counter-affidavit to originating summons. Instead, they filed a notice of preliminary objection supported by a 22-paragraph affidavit together with exhibits. They prayed for the suit to be struck out *in limine* on the grounds that the respondent and the three other persons who filed the suit lacked the requisite *locus standi* to do so; that the subject-matter of the case is an intra party or intra legislative council dispute which is not justiciable; that the trial court lacked jurisdiction to hear and determine the suit by virtue of section 26(10) of the Local Government Law of Kwara State, 1999.

The appellants also contended that the suit was badly constituted and not maintainable on the ground of non-joinder of the Ifelodun Local Government and or its Legislative Council and that the P procedure adopted in the initiation of the suit was defective.

In its ruling on the preliminary objection, the trial court held that there is no provision under the Constitution or any law whatsoever in support of the suspension of the respondent from office of Chairman of Ifelodun Local Government by the appellants. Consequently, the trial court overruled the appellants' preliminary objection.

The appellants were dissatisfied and they appealed to the Court of Appeal. The respondent, on his part, caused a preliminary - objection to the appeal to be raised in the brief of argument filed on behalf. The respondent complained that the appeal had been overtaken by his subsequent impeachment from office by the appellants, thereby rendering the appeal academic; and that two issues in the appellants' brief of argument were incompetent because they were fresh and being raised without leave of court.

In response, the appellants caused a reply brief of argument to be filed in which they contended that the contention of the respondents that the appeal had been overtaken by the event of his impeachment from office is not borne out by the record of appeal; and that the arguments of the respondent on the competence of two issues in the appellants' brief of argument are unrelated to the respondents objection.

In determining the appeal the Court of Appeal considered several constitutional and statutory provisions, to wit:

Sections 1(3), 4(5), 4(8) and 272(1) of the Constitution of Federal Republic of Nigeria, 1999 which read as follows:

"1(3) If any other Law is inconsistent with the provisions this Constitution, this Constitution shall prevail and that other Law shall to the extent of the inconsistency be void

"4(5) If any law enacted by the House of Assembly of a state. is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void."

"4(8) Save as otherwise provided by this Constitution, the exercise of legislative power of the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law and accordingly, the National Assembly or a House of Assembly shall not enact any law,

that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law."

"272(1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty forfeiture, punishment or other liability in respect of an offence committed by any person."

Section 26(10) of the Local Government Law No. 6 of Kwara State, 1999 which provides thus:
"26(10) No proceedings or determination of the panel or the legislative council or any matter relating thereto shall be determined or questioned in any court."

Held (*Unanimously allowing the appeal in part*):

1. *On Meaning of "impeachment" -*

The word "impeachment" means the act by a legislature of calling for the removal from office of a public official accomplished by presenting a written charge of the official's alleged misconduct. (*P. 336, para.B*)

2. *On Meaning of "suspension" -*

The word "suspension" means the act of temporarily delaying, interrupting, or terminating something. (*P. 336, para. C*)

3. *On Distinction between "impeachment" and "suspension" —*

The term "impeachment" connotes permanent removal from office, while the term "suspension" connotes temporary removal from office. (*P. 336, para.D*)

4. *On Exercise of statutory powers and duties -*

By virtue of section 10(1) and (2) of the Interpretation Act, where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires, and such enactment shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it. (*P. 336, paras. D-F*)

5. *On Extent of power of impeachment by Legislative Council -*

Section 26 of the Local Government Law No. 6 of Kwara State, 1999 which confers powers on the Legislative Council of a local government to impeach or remove the Chairman or Vice Chairman of the Local Government also confers on the Legislative Council the incidental power to suspend the Chairman or Vice Chairman. In the instant case, the Legislative Council of Ifelodun Local Government of Kwara State which had the power to impeach the respondent from his office as Chairman of the Local Government, also had the incidental power to suspend the respondent from office. (*Pp. 339, paras M F-G; 342, paras. C-D*)

Per ONNOGHEN, J.C.A. at pages 336-337, para F-A:

"As found earlier in this judgment, section of Law No.6 1999 confers powers on the Legislative Council of Ifelodun Local Government to impeach or remove the chairman or vice chairman of the Local Government as the case may be. It is also my view that the power to remove from office conferred also has the incidental power to suspend from office as is generally the law and as envisaged by section 10(2) of the Interpretation Act reproduced *supra* I hold the view that the incidental power to

suspend from office is a reasonably necessary power to enable, the Legislative Council to carry out the mail power to remove/impeach the chairman vice chairman from office, particularly as the intention is to temporarily remove him from the scene pending the final investigation and determination of the impeachment charge against him.

To that extent I agree with the submission of learned counsel for the appellants that the power to suspend is incidental to that of impeachment

6. *On Principles guiding interpretation of statutes –*

Where the question is whether a statute has used an expression in a wider or in the narrower sense, the court should, wherever possible, and in response to the demand of justice, lean to the broader interpretation unless there is something in the text or the rest of the statute to indicate that the narrower interpretation will best carry out the objects and purposes of the statute. [*Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517; *Aqii Ltd. v. Ondo State Sports Council* (1985) 4 NWLR (Pt. 91) 622; *Rabiu v. Kano State* (1982) 2 NCLR 119; A-G., *Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 referred to,] 337, paras. C-E

7. *On Principles guiding interpretation of subsection of a statute which ousts jurisdiction of court*

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In interpreting the provision of a subsection of a statute which ousts the jurisdiction of a court is being interpreted, the whole section must be taken into account so as to identify the circumstances in which the ouster comes into play. This is because it is presumed in law that the jurisdiction of the court is not meant to be ousted in any event simply because the provision of a statute says so. In effect, before the subsection would be upheld by the court, the implementation of the other provisions of the section must be in accordance with the section and must not suffer a fundamental vice. In the instant case, section 26(10) of the Local Government Law of Kwara State, 1999 ousts the jurisdiction of the High Court, and it would only be upheld by the Court of Appeal if other subsections of the section were strictly complied with by the appellants who seek to rely on the ouster provision in the section. [*Ekpo v. Calabar Local Government Council* (1993) 3 NWLR (Pt. 281) 324 referred to.](P. 337, paras. E-G)

8. *On Principles guiding interpretation of a section statute having subsections —*

When a section of a statute having subsections being interpreted, the whole section must be read as whole since it is usual for a sub-section to have a connecting relationship with other subsections. In the instant case, in order to determine whether or not section 26(10) of the Local Government Law Kwara State, 1999 ousts the jurisdiction of the try court the court must be convinced that the conditions prescribed in section 26(1) - (9) of the Law were complied with. [*Ekpo v. Calabar Local Government, Council* (1993) 3 NWLR (Pt. 281) 324 referred to.](Pp. 337-338, paras. H-B)

9. *On Principles guiding interpretation of a statute ousting jurisdiction of court —*

Where a statute, as the Local Government Law Kwara State, 1999 in the instant case, seeks to deprive the court of the power to exercise its jurisdiction in a matter, such statute must be strictly and scrupulously construed. And the court would

only give effect to the ouster provisions in the statute where it is clearly shown from the facts and circumstances of the particular case that an interpretation taking away the jurisdiction of the court is justified. [*Military Governor of Ondo State v. Adewunmi* (1988) 3 NWLR (Pt. 82) 280; *A.-G., Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500; *Nwosu v. I.S.E.S.A.* (1990) 2 NWLR (Pt. 135) 688 referred to.](P. 338, paras. B-D)

10. *On Jurisdiction of court to determine whether it has jurisdiction over a matter -*
Where the jurisdiction of the court is challenged on the ground that it has been statutorily ousted, the court has the jurisdiction to inquire into the issue whether its jurisdiction has actually been ousted. In other words, the court has jurisdiction to determine whether it has jurisdiction in any situation where its jurisdiction is challenged. In the instant case, the trial court has jurisdiction to inquire into whether the steps or procedure provided for in section 26(1) - (9) of the Local Government Law of Kwara State, 1999 had been complied with before section 26(10) of the Law could operate to oust its jurisdiction to hear the respondent's suit; particularly when the issue concerned is that of suspension of the respondent from the office of Chairman of a Local Government Council and not the removal or impeachment of the respondent from the office of Chairman of a Local Government Council. (Pp. 338-339, paras. F-A)
11. *On Condition precedent to application of section 26(10) of the Local Government Law of Kwara State, 1999 —*

Section 26(10) of the Local Government Law of Kwara State, 1999 which provides that "no proceedings or determination of the panel or the Legislative Council or any matter relating thereto shall be determined or questioned in any court", clearly shows that there must be proceedings or determination of a panel or the Legislative Council before the ouster clause will become operational. In other words, the proceedings or determination must be in accordance with the procedure stated in section 26(1) - (9) of the Law before section 26(10) can be invoked. In the instant case, the trial court has the power, and is entitled, to look into the matter and it is only where it comes to the conclusion that there was compliance with the provisions of section 26(1) - (9) of the Law that the jurisdiction of the trial court would be ousted. Where there is non-compliance with the provisions of the law, the trial court has the jurisdiction to hold that the provisions of section 26(10) which oust its jurisdiction does not apply. (P 339, paras. B-E)

12. *On Condition precedent to application of section 26(10) of Local Government Law of Kwara State, 1999 —*

Since the power to remove the Chairman of a Local Government Council from office by impeachment under section 26(1) - (9) of the Local Government Law of Kwara State, 1999 includes the incidental power to suspend the Chairman from office, it follows that if all the requisite statutory steps in sub-sections 26(1) - (9) of the section are complied with in a case of suspension of a Chairman from office, as is in the instant case, then sub-section (10) of the section will come into play.(P. 339, paras.F-G)

13. *On Supremacy of the Nigerian Constitution over Act of National Assembly —*

The Constitution of the Federal Republic of Nigeria 1999 is supreme. And, by virtue of sections 1(3) and 4(8) thereof, any law that is in conflict with its provisions is void to the extent of that inconsistency. In the instant case, section 26(10) of the Local Government Law of Kwara State, 1999 which seeks to oust the jurisdiction of the courts in matters relating to the removal from office of a Local Government Council Chairman is inconsistent with the provisions of section 4(8) of the 1999 Constitution which provides that the National Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court established by law; and section 272(1) of the 1999 Constitution which vests the High Court of a State with jurisdiction to hear and determine civil proceedings involving the existence or extent of the rights and duty of any person. Consequently, section 26(10) of the Local Government Law of Kwara State, 1999 is unconstitutional. [Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 referred to.] (Pp. 341-342, paras. F-C)

Per ONNOGHEN, J.C.A. at page 341, paras. F-H:

"Looking closely at the Constitution provisions, particularly sections 4(8) and 272(1) of the 1999 Constitution it is clear that section 26(10) of Law No. 6 of 1999 seeks to oust the jurisdiction of the law courts in relation to the removal or impeachment of a chairman of a local government and is to that extent unconstitutional. The provisions of section 26(10) of that law may be desirable or necessary to insulate the courts from the muddy waters of the politics of the removal of the chairman of a Local Government but the issue is whether the State House of Assembly has the *vires* or competence to pass it having regard to the combined effects of sections 4(8) and 272(1) of the 1999 Constitution."

14. *On Meaning of "intraparty dispute" –*

An "intra party dispute" is a dispute between members of a political party within the said party. In the instant case, none of the parties before the trial court is a political party and the relief sought by the respondent does not show that the matter is an intra party dispute. (Pp. 343-343, paras. A-B)

15. *On Meaning of "intra legislative Council dispute" –*

An "intra legislative Council dispute" is a dispute within the Local Government Council members. In the instant case, the Ifelodun Local Government Council is not a party to the suit and the respondent's claims at the trial court does not show that the matter is an intra legislative council dispute. (Pp. 343-344, paras. A-B)

16. *On Need for joinder of Local Government in suit challenging validity of suspension of Local Government Chairman –*

A Local Government is a necessary and desirable party in an action filed by its Chairman to challenge, in the main, his suspension from office by members of the local government legislative council. And a failure to so join the local government in a suit against the members of the Legislative Council is fatal to the competence of the suit. In the instant case, the Ifelodun Local Government ought to have been joined in the respondent's suit as a necessary and desirable party, particularly as the 2nd and 3rd appellants did not act in their personal capacities when they signed the letter by which the respondent was notified of his suspension from the office of Chairman of

the Local Government; and of the appointment of his Vice Chairman as acting Chairman of the Local Government. The respondent's reliefs are against the Local Government and not the individuals who clearly acted on its behalf. In the circumstance, the non-joinder of Ifelodun Local Government is fatal to the case of the respondent and it ought to have been struck out by the trial court. (Pp. 349, paras. B-G; 351, paras. B-D)

17. *On When action can be commenced by originating summons —*
By virtue of Order 1 rule 2(2) and Order 38 rule 2 of the High Court of Kwara State (Civil Procedure) Rules, 1989, proceedings may be begun by originating summons where:
 - (a) **the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or any deed, will, contract or other document or some other question of law; or**
 - (b) **there is unlikely to be any substantial dispute of fact.****In the instant case, the respondent's claims relate to the interpretation of a statute and there is no substantial dispute of fact between the parties. In the circumstance, the respondent's suit was properly commenced by originating summons. [N.B.N. v. Alakija (1978) 2 LRN 79; Oloyo v. Alegbe (1983) 7 SC 85; Din v. A.-G., Federation (1986) 1 NWLR (Pt. 17) 471 referred to.] (Pp. 346, paras. A-F; 348, paras. E-F)**
18. *On When action can be commenced by originating summons —*
The originating summons procedure is appropriate where there is no substantial dispute of facts between the parties. In effect, the procedure does not envisage a situation where there is no dispute at all on fact between the parties. Rather, it envisages a situation where there is no substantial dispute of facts. In other words, there can be disputed facts but such dispute must not be substantial. Where the disputed facts are substantial, then originating summons procedure is inappropriate. The proper mode of commencing such an action is by writ of summons so that pleadings can be filed and exchanged to determine the issues in controversy between the parties. In the instant case, there is no substantial dispute of facts between the parties. In the circumstance, the suit was properly commenced by an originating summons. (Pp. 346-348, paras. F-E)
19. *On Duty on court not to determine substantive issue while deciding interlocutory matters-*
A trial court must be cautious in deciding interlocutory issues raised in a suit in order to avoid passing a decision on the substantive issue in the suit, an act which is frowned at by the law. In the instant case, the trial court in the course of delivering its ruling on the appellants' objection held that there is no provision under the Constitution or any law whatsoever in support of the suspension of the respondent by the appellants. By that particular finding, the trial court in effect decided the substantive reliefs sought by the respondent contrary to the rule that a court should not decide a substantive issue in a case whilst delivering its ruling on an interlocutory issue. (Pp. 350-351, paras. F-B)
20. *On Formulation of issues for determination and binding effect thereof-*
A party is not allowed to formulate issues for determination which are at variance with his grounds of appeal; neither can a party present an argument

totally unrelated to the issues formulated from his grounds of appeal. [*C.C.B. Ltd. v. Nwokocha* (1998) 9NWLR(Pt 564)98 referred to.](P.331,paras.G-H)

21. *On Need to base argument on preliminary objection on grounds of objection -*
A party who files a preliminary objection to an appeal would not be allowed to canvass arguments which are clearly at variance with the grounds of objection he filed. In the instant case, the arguments of the respondent which are unrelated to his grounds of objection go to no issue and would be discountenanced by the court.(Pp. 331-332, paras. H-B)
22. *On Bindingness of record of appeal on Court of Appeal -*
The Court of Appeal is bound by the record of proceedings and cannot, in law, go outside it. In the instant case, the record of proceedings does not contain facts which show, as alleged by the respondent in his preliminary objection, that the substratum of the appeal has been taken away thereby making its hearing an academic exercise. [*Sommer v. F.H.A.* (1992) 1 NWLR (Ft. 219) 548 referred to.](P. 332, paras. B-D)

Nigerian Cases Referred to in the Judgment:

- A.-G., *Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264
- A.-G., *Bendel State v. A.-G., Federation* (1982) 3 NCLR 1
- A.-G., *Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500
- Adefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377
- Adewunmi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751) 474
- Agbaka v. Amadi* (1998) 11 NWLR (Pt. 572) 16
- Amuda v. Ajobo* (1995) 7 NWLR (Pt. 406) 170
- Aqua Ltd. v. Ondo State Sports Council* (1985) 4 NWLR (Ft- 91)622
- Bronik Motors Ltd, v. Wema Bank Ltd.* (1983) 1 SCNLR 296
- C.C.B. Ltd. v. Nwokocha* (1998) 9 NWLR (Pt. 564) 98
- Chiga v. Umaru* (1986) 3 NWLR (Pt. 29) 460
- Din v. A.-G., Federation* (1986) 1 NWLR (Pt. 17) 471
- Doherty v. Doherty* (1968) NMLR 241
- Edewor v. Uwegba* (1987) 1 NWLR (Pt. 50) 313
- Ejnkorlem v. Ejukorlem* (1994) 8 NWLR (Pt. 365) 552
- Ekekeugbo v. Fiberesima* (1994) 3 NWLR (Pt. 335) 707
- Ekpo v. Calabar Local Government* (1993) 3 NWLR (Pt.281) 324
- Govt. of Ondo State v. Adewunmi* (1985) 3 NWLR (Pt. 13) 280
- Green v. Green* (1987) 3 NWLR (Pt. 61) 480
- Ibodo v. Enarofia* (1980) 5 - 7 SC 42
- J.C. Ltd. v. Ezenwa* (1996) 4 NWLR (Pt. 443) 391
- Jadesimi v. Okotie - Eboh, in re Lessey* (1989) 4 NWLR (Pt.113) 126
- Leventis Tech, Ltd. v. Petrojessica Ent. Ltd.* (1999) 6 NWLR (Pt. 605) 45
- Maigoro v. Garba* (1999) 10 NWLR (Pt. 624) 555
- Mil. Administrator, Benue State v. Abayilo* (2001) 5 NWLR (Pt. 705) 19
- Mil. Gov., Ondo State v. Adewunmi* (1988) 3 NWLR (Pt. 82) 280
- Mobil Oil (Nig.) Ltd. v. FB/fl* (1977) 3 SC 53
- Musa v. Hamza* (1982) 3 NCLR 229
- Musa v. Speaker, Kaduna House of Assembly* (1982) 3 NCLR 450
- N.B.N. v. Alakija* (1978) 9 - 10 SC 59

Ngwu v. Onuigbo (1999) 13 NWLR (Pt. 636) 512
Nwosu v. I.S.E.S.A. (1990) 2 NWLR (Pt. 135) 688
Ogidi v. Egba (1999) 10 NWLR (Pt. 621) 42
Ogigie v. Obiyan (1997) 10 NWLR (Pt. 524) 179
Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530
Oloyo v. Alegbe (1983) 2 SCNLR 35
Olunmide v. Ajayi (1997) 8 NWLR (Pt. 517) 433
Omo v. Judicial Service Commission (2000) 12 NWLR (Pt. 682) 444
Onuoha v. Okafor (1983) 2 SCNLR 244
Oshatoba v. Olujitan (2000) 5 NWLR (Pt. 655) 159
Oshevire v. British Caledonian Airways Ltd. (1990) 7 NWLR (Pt. 163) 489
Osuagwu v. Emezi (1998) 12 NWLR (Pt. 579) 640
Phoenix Motors v. N.P.F.M.B. (1993) 1 NWLR (Pt. 272) 718
Rabiu v. Kano State (1982) 2 NCLR 119

Sommer v. F.H.A.(1992) 1 NWLR (Pt. 219) 548
Thor Ltd. v. I-irst (Y/v Merchant Bank (2002) 4 NWLR (Pt.757) 427
Tsokwa Motors (Nig.) Ltd. v. U.B.N. Ltd. (1996) 9 NWLR (Pt.471) 129
Tukitr v. Government of (iongola State (1989) 4 NWLR (Pt.117)517
Tukur v. Government of Taraha State (1997) 6 NWLR (Pt. 5 10)549
West African Shipping Agency v. Kalla (1978) 3 SC 21

Foreign Case Referred to in the Judgment:

Taylor v. National Assistance Board (1975) All ER 1 8

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigerian, 1999, Ss. 1(3),
4(5), 4(8), 7, 143(10), 188(10), 241(1)(b), 242(1) and 272
Court of Appeal Act, S. 25(2)(a) & (c)
Interpretation Act, Cap. 192, Laws of the Federation of Nigeria,
1990, S. 10(1) and (2)
Local Government Law, Kwara State, No. 6 of 1999, Ss. 18(2), 26

Nigerian Rules of Court Referred to in the Judgment:

High Court of Kwara State (Civil Procedure) Rules, 1989, O.I, r.2(2); O.38, r.2

Book Referred to in the Judgment:

Black's Law Dictionary, 7th Ed., p.755, 460

Appeal:

This was an appeal against the ruling of the High Court which dismissed the appellants' preliminary objection to the respondent's action commenced by originating summons. The Court of Appeal, in a unanimous decision, allowed the appeal in part and struck out the suit.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal,
Ilorin

Names of Justices that sat on me appeal: Muritala Aremu Okunola, J.C.A. (*Presided*):

Walter Samuel Nkanu Onnoghen, J.C.A. (*Read the Leading Judgment*): Ja'afaru Mikailu,
J.C.A.

Appeal No.: CA/IL/59/2001

Date of Judgment: Tuesday, 10th December, 2002 *Names of Counsel:* Y.O. Alli, SAN
(with him, R. O. Balogun, Esq.) -for the Appellants

A. S. Oyinloye, Esq. (with him, Muazu Abdullahi, Esq.) -for the Respondent

High Court:

Name of the High Court: High Court of Kwara State, Omu-Aran

Name of the Judge: Akoja, J.

Date of Ruling: Tuesday, 18th September, 2001

Counsel:

Y.O. Alii, SAN (with him, R. O. Balogun, Esq.) -for the Appellants

A. S. Oyinloye, Esq. (with him, Muazu Abdullahi, Esq.) -for the Respondent

ONNOGHEN, J.C.A. (Delivering the Leading Judgment): This is an appeal against the ruling of the High Court of Justice of Kwara State sitting at OMU-ARAN in suit No. KWS/OM/11/2001 delivered on the 18th day of September, 2001 by Hon. JUSTICE M.A. AKOJA in which he overruled the preliminary objection of the appellants as to the jurisdiction of that court to hear and determine the matter before it.

The facts of the case include the following: On the 4th day of May, 2001 the respondent together with three others, as plaintiffs caused an originating summons to be issued against the appellants for the determination of the following questions.

- “1 Whether the 2nd and 3rd defendants and/or the members of Ifelodun Local Government Legislative Council have the powers to suspend the 1st plaintiff from office as the Chairman of Ifelodun Local Government Area of Kwara State pursuant to section 26(4) of the Kwara State Local Government Law, 1999 or any of its provisions thereof.
- 2 Whether the 2nd and 3rd defendants and/or members of the Ifelodun Legislative Council possess the powers to appoint 1st defendant as the "Acting Chairman" of Ifelodun Local Government Area of Kwara State under and by virtue of any of the provisions of the said Kwara State Local Government Law of 1999.
- 3 Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Area Legislative Council have not violated the provisions of section 26(4) of the Kwara State Local Government Law of Kwara State by purporting to investigate the tenure of office of the 1st plaintiff without first giving him the opportunity of being heard on the grave allegations of misadministration, gross misconduct and abuse of office, made against him by the defendants.
- 4 Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Legislative Council are not in breach of the provisions of the Constitution of the Federal Republic of Nigeria 1999, by pronouncing the 1st plaintiff guilty even before investigating the said allegations.”

The appellant together with the other plaintiffs then claimed the following reliefs, vide the said originating summons:

- "1. A declaration that the purported suspension of the 1st plaintiff as chairman of Ifelodun Local Government Area of Kwara State by the 2nd and 3rd defendants and/ or members of the Legislative Council of the said Local Government Area is wrongful, unlawful, illegal, unconstitutional, ultra vires, null and void and of no effect whatsoever.
2. A declaration that the purported appointment of the 1st plaintiff (*sic*) as the "Acting Chairman" of Ifelodun Local Government Area of Kwara State is

wrongful; unlawful, illegal, unconstitutional, ultra vires, null and void and of no effect whatsoever.

3. An order setting aside and quashing the purported suspension of the 1st plaintiff as chairman of Ifelodun Local Government Council of Kwara State.
4. An order setting aside and nullifying the purported appointment of the 1st defendant as the Acting Chairman of Ifelodun Local Government Area of Kwara State.
5. An order of perpetual injunction restraining the defendants from disturbing or in any way preventing the 1st plaintiff from performing his duties as the Executive Chairman of Ifelodun Local Government Area.
6. A declaration that the purported reference to the Chief Judge of Kwara State by the defendants of allegations of misconduct and misadministration made by them against the plaintiff is illegal, unlawful, wrongful, unconstitutional, ultra vires, null and void and of no effect whatsoever.
7. A declaration that the 1st plaintiff is at all material times the Chairman of Ifelodun Local Government Area.
8. An order directing and compelling the defendants to pay the plaintiff all his accumulated salaries, allowances and other entitlement from 24/4/2001 to the determination of this case and thereafter."

The originating summons is supported by an affidavit of 26 paragraphs to which exhibits A - D were attached and on which the respondent relied.

However, on the 3rd day of July, 2001, the appellants filed a notice of preliminary objection through their counsel in which they prayed the court to strike out the suit in limine on the grounds that:

1. The plaintiffs in the case lack the requisite *locus standi* to institute and maintain the action.
2. The subject matter of the case is an intra party issue/ intra legislative council affair and therefore not justifiable.
3. The Honourable court lacks the jurisdiction to hear and determine the case by virtue of the provisions of the Kwara State Local Government Law, 1999.

The action is badly constituted and incompetent as the principal Parties, Ifelodun Local Government and/or Ifelodun Local Government Legislative Council are/is not a party/parties to the case.

The action as presently constituted is not maintainable against the defendants. Non-issuance nor service of the requisite pre-action Notice on the Ifelodun Local Government is very fatal to the survival of the case having regard to the facts and circumstances of the case.

The case is a gross abuse of the process of the Honourable court. The procedure adopted in the initiation of the case is very defective." The said notice of preliminary objection is supported by an affidavit of 22 paragraphs to which exhibits Q - 4 are attached and appellants relied in moving the court.

However in a considered ruling delivered by the learned trial Judge on the 18th day of September, 2001 the trial court overruled the preliminary objections thus giving rise to the present appeal. Appellants filed a total of eight grounds of appeal out of which four issues have been formulated for determination by the learned counsel for the appellants K.K. Eleja, Esq. vide the appellants' brief of argument filed on 9th April, 2002. The issues are as follows:

1. Whether the learned trial Judge having regard to the provisions of section 26(10) of the Kwara State Local Government Law No. 6 of 1999 has jurisdiction to entertain the case of the respondent notwithstanding the provisions of section 272 of the Constitution of the Federal Republic of Nigeria 1999 or any other provisions of that constitution.
2. Whether having regard to the nature of the complaints of respondent which bordered on intra party dispute, the learned trial Judge had the *vires* to try the matter or whether the complaint of the respondent was justifiable.
3. Whether the procedure by originating summons having regard to the contentious nature of the respondent's claim was a proper process with which to initiate the process and whether the non joinder of Ifelodun Local Government was not fatal to the respondent's claim.
4. Whether it was right for the learned trial Judge to have delved into the substantive matter at the interlocutory stage when the substantive matter was not yet ripe for hearing."

I hasten to add that the issues reproduced above were adopted by learned counsel for the respondent A.S. Oyinloye, Esq. in the respondents brief of argument filed on 25th April, 2002 - see paragraph 1.2 at page 10 thereof.

However, before proceeding to consider the arguments of both counsel on the issues for determination, it is necessary at this stage, to consider first and foremost the notice of preliminary objection contained in the respondent's brief of argument as to the competence of the appeal - see page 1 thereof.

The grounds of the objection are stated as follows:

1. Issue No .4 formulated by the appellants and as argued at pages 12 - 14 of their brief of argument is grossly incompetent as it was raised without leave.
2. Issue 3 is incompetent as same is not an issue of law and it is raised without leave also.
3. The whole appeal is incompetent same having being (*sic*) overtaken by an event created deliberately by the appellants which event made the questions submitted for resolution in this appeal now mere hypothetical and academic exercise in the extreme."

In arguing ground 1 learned counsel for the respondent submitted that the sole additional ground of appeal and issue No.4 formulated therefrom are incompetent in that the additional ground of appeal was filed outside the 14 days allowed by law and without leave of court first had and obtained, the appeal being an interlocutory one. Learned counsel then relied on section 25(2) (a) (3), the Court of Appeal Act; *Ibodo v. Enarofia* (1980) 5 - 7 SC 42, 58 - 59; *Oshatoba v. Olujitan* (2000) 5 NWLR (Pt.655) 159, (2000) i"6 2 SCNJ 159,172 - 173; *Omo v. Judicial Service Commission* (2000) 12 NWLR (Pt.682) 444, (2000) 7 SCNJ 17, 27.

Turning to issue 2 learned counsel submitted that it is incompetent because it relates to grounds of facts or mixed law and facts which cannot be canvassed without leave of court. Relying on *Thor Ltd. v. First City Merchant Bank* (2002) 4 NWLR (Pt. 757) 427, (2002) 2 SCNJ 85, 98; *Maigoro v. Garba* (1999) 10 NWLR (Pt.624) 555, (1999) 7 SCNJ 270,282; *J.C. Ltd. v. Ezenwa* (1996) 4 NWLR (Pt.443) 391, (1996) 4 SCNJ 24; *Ogidi v. Egba* (1999) 10 " NWLR (Pt. 621) 42, (1999) 6 SCNJ 107; *Ogigie v Obiyan* (1997) 10 NWLR (Pt.524) 179, (1997) 10 SCNJ 15; *Tsokwa Motors (Nig.) Ltd. v. U.B.N. Ltd.* (1996) 9 NWLR (Pt.471) 129, (1996) 9 - 10 SCNJ 294; 374 and *Agbaka v. Amadi* (1998) 11 NWLR (Pt.572) 16, (1998) 7 SCNJ 367,374 learned counsel urged the court to strike out issues 2

and 4 and grounds 5, 6 and 7 of the grounds of appeal as well as the sole additional ground of appeal for the reasons afore-mentioned.

On ground 2 of the objection learned counsel for the respondent submitted that since the appellants did impeach the respondent during the pendency of this appeal that singular act has rendered this appeal a hypothetical or academic one not deserving of any consideration by the court and urged the court to either dismiss or strike out the appeal.

In his reaction, learned counsel for the appellants, in the reply brief filed on 25/6/02, referred the court to the proceedings of this court on the 28th day of May, 2002 when the court upon application by the appellants granted the requisite leave to the appellants vide a motion filed on 9th April, 2002. Learned counsel then submitted that the additional ground of appeal and issue No.4 formulated therefrom are therefore competent and urged the court to consider same. Learned counsel then relied on sections 241(1)(b) and 242(1) of the 1999 Constitution of the Federal Republic of Nigeria and the case *oiAdefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377 at 417 -418; *Oshatoba v. Olujitan* (2000) 5 NWLR (Pt. 655) 159 at 172 for his earlier submission.

Turning to ground 2 of the grounds of objection, learned counsel stated that while the said objection is an attack on issue No. 3, the substratum of which is that it is not an issue of law which requires no leave but of facts or mixed law and fact, the arguments proffered 1 at pages 8 -10 of the respondent's brief turns to show that the appeal is a hypothetical or academic one, the substratum of which had been taken away. Learned counsel then submitted that there is no nexus between the ground of objection and the argument proffered and urged the court to discountenance same - relying on *C.C.B. Ltd. Nwokocha* (1998) 9 NWLR (Pt. 564) 98 at 124.

Learned counsel further submitted that the argument that' substratum of the appeal had been taken away is not borne out I the facts as contained in the record of appeal which is what court must look at in dealing with this appeal and nothing extraneous. In conclusion learned counsel urged the court to dismiss the in respect of their contending positions vis-a-vis the record of proceedings in this court particularly the proceedings of 28th May, 2002 and the record of appeal in this matter made up of 123 pages as well as pages 124 - 144 of the supplementary record filed with the leave of this court granted also on 28th May, 2002 and I state without fear of contradiction that this court duly granted leave to the appellants on the 28th day of May, 2002 as prayed in their motion filed on 9th April, 2002 for the following reliefs:

- i. LEAVE of the Honourable court *extending the time within which the applicants may apply for leave to appeal against the interlocutory ruling of Omu-Aran High Court delivered on 18th September, 2001.*
- ii. LEAVE of the Honourable court to appeal against the said ruling *on grounds of mixed law and fact.*
- iii. AN ORDER of the Honourable court for extension of time to appeal against the said ruling of the Omu-Aran High Court.
- iv. AN ORDER of the Honourable Court deeming both the notice of appeal filed on 28th September, 200 1 and the additional ground of appeal filed on 24th October, 2001 as properly filed and served the correct filing fees having been paid." (Italics supplied by me).

The above being the true state of facts, it is my considered at grounds 1 and 2 of the grounds of the preliminary objection of the respondent are not worth the paper on which they are written are therefore discountenanced for being an exercise in futility. It is very disappointing to note that learned counsel for the respondent present in court when the application was granted without Ejection and the respondent was awarded N 1,000. 00 cost.

Turning now to the argument of learned counsel for the respondent in relation to ground 2 of the grounds of objection which argument is clearly at variance with the complaint in that ground 1 hold the view that it is trite law that a party is not allowed to formulate which are at variance with his grounds of appeal as filed neither can he present an argument totally unrelated to the issues as formulated from the grounds of appeal. However see *C. C.B. Ltd. v. -Nwokocha* (1998) 9 NWLR (Pt. 564) 98 at 124 objection and the purported argument thereon. In the present objection the argument of counsel for the respondent is clearly variance with the grounds of objection. That being the case it is my view that the said argument which has no nexus with the relevant ground of objection clearly goes to no issue and is accordingly discountenanced.

That apart, it is trite law that this court, being the Court Appeal is bound by the record of proceedings and cannot in law, outside it. The record of proceedings in this appeal both the original and supplementary running from pages 1 - 144 does act contain facts from which it can either be seen or inferred that the substratum of the appeal has been taken away thereby making it necessary for one to conclude that the appeal is thereby rendered hypothetical academic as contended by learned counsel for the respondent. *Sommer v. F.H.A.* (1992) 1 NWLR (Pt. 219) 548 at 557 - 558.

In conclusion I find no merit whatsoever in the preliminary objection which is accordingly dismissed.

Turning now to the merit of the substantive appeal, learned counsel for the appellants in arguing issue No. 1 submitted that in view of the provisions of section 26(10) of the Kwara State Local Government Law No. 6 of 1999, the trial court lacks jurisdiction to entertain the complaints of the respondent in the originating summons since the respondent was challenging the exercise of the power of the Ifelodun Local Government Legislative Council as provided for in section 18(2) of Law No.6 of 1999, read in conjunction with the provisions of section 26(1 - 9) of the said that:

That section 26(10) of Law No.6 of 1999 is clear and unambiguous and it says that:
"a court of law will have no competence to look into any of the acts set out in subsections 1 - 9 of section 26 of the law."

Counsel then cited and relied on *Mobil Oil (Nig.) Ltd. v. FBIR* (1977) 3 SC 53; *Adewumi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751) 474 at 511-512, 532.

Learned counsel then submitted that section 26(10) of Law No.6 of 1999, *pari materia* with section 143(10) dealing with the removal of the President and section 188(10) dealing with the removal of the Governor, both of the 1999 Constitution of the Federal Republic of Nigeria and submitted further that the said section 26(10) of the Law is not in any way inconsistent with any of the provisions of the said 1999 Constitution but rather complementary to the provisions of the said sections 143(10) and 188(10) of the said institution. That the trial Judge came to a wrong decision in not plying the cases of *Balarabe Musa v. Speaker, Kaduna House of Assembly* (1981) 3 NCLR450; *Musa v. Hamza* (1982) 3 NCLR 229 §243, which counsel submitted are relevant and binding on the High court.

Learned counsel finally submitted that having regards to the provisions of sections 143(10) and 188(10) of the 1999 Constitution the Federal Republic of Nigeria thereafter referred to as the 99 Constitution) the provisions of section 26(10) of Law No. 6 of 1999 cannot be said to run foul of the provisions of section 4(8) the 1999 Constitution. Learned counsel then urged the court to Sid that the lower court has no jurisdiction to entertain the respondent's case relying on *Tukur v. Government of Gongola State* 989) 4 NWLR (Pt. 117) 517 at 549; *Tukur v. Government of Taraba toe* (1997) 6 NWLR (Pt. 510) 549 at 582 - 583.

On his part, learned counsel for the respondent submitted that 5 trial court has jurisdiction to hear and determine the matter. While learned counsel concedes that the States of the Federation have the over to legislate for the Local Government Council within their State by virtue of the provisions of section 7 of the 1999 Constitution, though the State House of Assembly, such a legislation by the Assembly must not be in conflict with the clear provisions of the Constitution being the Supreme Law.

That notwithstanding the provisions of section 26(10) of Law 0.6 of 1999, the trial court has jurisdiction because the said section provides for the procedure for the removal of the Chairman/Vice II Chairman of a Local Government by way of impeachment and not by way of suspension from office which is the bone of contention between the parties. That suspension is not the same thing as impeachment and therefore urged the court to hold that section 26(10) of the said law is inapplicable and therefore the trial court has jurisdiction.

Secondly counsel submitted that since the said section 26(10) of Law No.6 of 1999 is an ouster provision it cannot exist in isolation. That for the appellants to take the benefit of section 26(10) they must establish the fact that they duly complied with the provisions of sub-sections 1 - 9 of section 26. For this counsel cited and relied on *Ekpo v. Calabar Local Government* (1993) 3 NWLR (Pt. 281) 324 at 337; *Taylor v. National Assistance Board* (1975) All ERH| That the appellants have failed to satisfy this requirement since they filed no counter affidavit to the affidavit in support of the originating summons which would have stated the steps they followed in, suspending the respondent so as to call to play the provisions of section 26(10) of Law.No. 6 of 1999.

Thirdly, learned counsel submitted that though by virtue of section 7 of the 1999 Constitution, the State Assembly is empowered to make laws as a result of which Law No. 6 of 1999 was made particularly section 26(10) thereof, the combined effect of sections 1(3); 4(5); 4(8) and 272 of the 1999 Constitution is clear on the point that no State Law shall be in conflict with the Laws made by the National Assembly or the Constitution. That since the effect of section 26(10) of Law No. 6 of 1999 is to oust the jurisdiction of the courts in matters relating to removal/impeachment of Chairman it cannot stand *vis-a-vis* the Constitution which guarantees access to court and urged the court to resist the attempt to encroach on its judging powers citing and relying on *Okulate v. Awosanya* (2000) 2 NWLR (Pt.646) 530, (2000) 1 SCNJ 75; *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296, (1983) 6 SC 158; *Oshevire v. British Caledonian Airways Ltd.* (1990) 7 NWLR (Pt. 163) 489 at 519 - 520. *Phoenix Motors v. N.P.F.M.B.* (1993) 1 NWLR (Pt. 272) 718 at 730; *A.-G., Bendel State v. A.-G., Federation* (1982) 3 NCLR 1 at 31; *Military Administrator, Benue State v. Capt. Clement Abayilo* (2001) 5 NWLR (Pt.705) 19, (2001) FWLR (Pt. 45) 602 at 618; *Ekekeugbo v. Fiberesima* (1994) 3 NWLR (Pt. 335) 707 at 776; *Edewor v. Uwegba* (1987) 1 NWLR (Pt. 50) 313; *Ekpo v. Calabar Local Government (supra)*, *Government of Ondo State v. Adewunmi* (1985) 3 NWLR (Pt. 13)493.

That the argument of counsel for the appellants that section 26(10) of the Kwara State Law No. 6 of 1999 compliments sections 143(10) and 188(10) of the 1999 Constitution is untenable and legally absurd. That the said Constitutional provisions are not relevant since they deal with the removal/impeachment of the President/Governor and not their suspension as is the case at hand. That the constitutional provisions limit the powers conferred by the courts by the same constitution "not a state, inferior and sectional enactment like the Kwara State Law No. 6 of 1999 which cannot oust the jurisdiction of courts validly conferred by the Constitution," Learned counsel further submitted. Counsel then concluded by submitting that all the cases cited by his learned

friend on issue friend on issue No. 1 are irrelevant and urged the court to resolve the issue in favour of the respondent.

In his reply brief filed on 25/6/02 learned counsel submitted that in law "suspension" is incidental to "removal" and it is subsumed *in* the latter.

That that being the case, since the legislative arm of the Local Government has the *vires* to remove the respondent from office it has the incidental right or power to suspend. For this learned counsel cited and relied on sections 10(1) and (2) of the Interpretation Act, Cap. 192 of the Laws of the Federation, 1990 and concluded that all the authorities cited by his learned friend particularly at page 17 of the respondent's brief are inapplicable to this case.

I have carefully gone through the arguments of both counsel and the authorities cited in support of their positions as regards issue No.1 in this appeal and I am of the view that two primary issues call for determination in the issue under consideration. These are:

- a) whether the facts of the case fall within the provisions of section 26 of Kwara State Law No.6 of 1999 as contended by learned counsel for the appellants so as to oust the jurisdiction of the trial court to entertain the matter, and
- b) whether section 26(10) of Law No.6 of 1999 is Constitutional.

When we consider sub-issue (a) it is clear that the gravamen of the argument of learned counsel for the appellants on the matter is that section 26(10) of the law in question applies to the facts of this case so as to oust the jurisdiction of the lower court because though the contention between the parties is the suspension from office of the respondent as the chairman of Ifelodun Local Government Area of Kwara State by the Legislative Arm of that Local Government which the respondent's counsel argues is not covered by the provisions of the said section 26 of the said law, the power of that council to suspend the respondent is incidental to and subsumed in the power to remove or impeach him from office which power is clearly provided by section 26 of the said law, it cannot be said that the council has no power to suspend the respondent or that section 26 of Law No. 6 of 1999 is inapplicable to the case.

Now both parties and the lower court agree that the word "suspension" is not expressly mentioned in section 26 of the law under consideration. That the said section 26 deals with the power and procedure for removal from office or impeachment of the Chairman/Vice Chairman. The term "impeachment" is defined in Black's Law Dictionary, 7th Ed, page 755 to mean, *inter alia*:

"The act (by a legislature) of calling for the removal from office of a public official accomplished by presenting a written charge of the official's alleged misconduct..."

On the other hand, the word "suspension" is defined by the said Dictionary at page 1460 *inter alia* as follows:

"The act of temporarily delaying, interrupting, or terminating something".

It is therefore clear from the two definitions that whereas the term "impeachment" connotes permanent removal from office "suspension" means temporary removal.

Section 10(1) and (2) of the Interpretation Act, Cap. 192, Laws of the Federation, 1990 provide as follows:

- "10(1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.
- (2) An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it."

As found earlier in this judgment, section 26 of Law No.6 1999 confers powers on the Legislative Council of Ifelodun Local Government to impeach or remove the chairman or vice chairman of the Local Government as the case may be. It is also my view that the power to remove from office so conferred also has the incidental power to suspend from office as is generally the law and as envisaged by section 10(2) of the Interpretation Act reproduced *supra* the view that the incidental power to suspend from office is reasonably necessary power to enable the legislative council to carry out the main power to remove/impeach the chairman/vice chairman from office, particularly as the intention is to temporarily remove him from the scene pending the final investigation and determination of the impeachment charges against him. To that extent I agree with the submission of learned counts for the appellants that the power to suspend is incidental to that of impeachment.

However, that is not the end of the matter since it is still necessary to determine whether section 26 of law No.6 of 1999 which deals expressly with impeachment equally applies to suspension with particular reference to sub-section 10 of the said section 26 so as to oust the jurisdiction of the lower court. This is the crux of the matter. In other words should the word "impeachment/removal" in sub-section 10 of section 26 be interpreted to include "suspension" so as to oust the jurisdiction of the lower court?

It is the law that where the question is whether the statute has used an expression in the wider or in the narrower sense, the court should, where ever possible, and in response to the demand of justice, lean to the broader interpretation unless there is something in the text or the rest of the statute to indicate that the narrower interpretation will best carry out the objects and purposes of the statute - See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517; *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506; *Aqua Ltd. v. Ondo State Sports Council* (1985) 4 NWLR (Pt. 91) 622; *Rabiu v. Kano State* (1982) 2 NCLR 294; *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 at 486.

It is not in doubt that sub-section 10 of section 26 ousts the jurisdiction of the lower court and it is the law that in interpreting such a sub-section, the whole section must be taken into account so as to assist in understanding the circumstances in which the ouster es into play for it is believed that the jurisdiction of the court is meant to be ousted in any event simply because the provision so. It has been held that for the sub-section to enjoy the protection envisaged, the implementation of the other provisions of the section must be in accordance with the section and must not suffer a fundamental vice - See *Ekpo v. Calabar Local Government Council* (1993) 3 NWLR (Pt. 281) 324 at 337.

The above position of the law advised the principle of law to effect that in interpreting a section of a statute having sections, the whole sections must be read as a whole since it is for a sub-section to have a connecting relationship with other sections.

It therefore follows that if the material aspects of the conditions scribed in sub-sections (1) to (9) of section 26 are not complied with, sub-section (10) which deals with ouster of jurisdiction cannot have that effect without rendering the entire section 26 self-defeating or the procedure laid down in sub-sections (1) to (9) very irrelevant - see pages 337 - 338 of *Ekpo's case supra* per Uwaifo, JCA (as he then was) when considering a very similar provision of a law to the one under consideration.

So, it is a well established principle of interpretation of statutes that where a statute as in this case, seeks to deprive the court of the power to exercise its jurisdiction in a matter, such statute must be strictly and scrupulously construed. That to give effect to such a clause, it must be clear from the facts and circumstances of the particular case that an interpretation taking away the jurisdiction of the court is justified - see *Military Governor of Ondo State v. Adewunmi* (1988)

3-NWLR (Pt. 82) 280 at 294 - 295; A.-G., *Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500 at 537; *Nwosu v.. Imo State E.S.A.* (1990) 2 NWLR (Pt. 135) 688 at 715.

Learned counsel for the appellants has submitted at page 6 of the appellant's brief, *inter alia* as follows:

"The provisions of section 26(10) of Law No.6 1999 says exactly what it means, that is, a court of law will have no competence to look into any of the acts set out in sub-sections 1 - 9 of section 26 of the law. See the cases of *Mobil Oil (Nig.) Ltd. v. FBIR* (1977) 3 SC 53, *Adewunmi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751)47431511-512,532."

I am of the view that this is a very simplistic approach to the issue particularly having regards to the earlier authorities cited *in* relation to interpretation of ouster clauses by the courts. In fact it is trite law that where the jurisdiction of the court is ousted as in section 26(10) under consideration, the court has the jurisdiction to inquire into the issue whether its jurisdiction has actually been ousted. In other words the court has jurisdiction to determine whether it has jurisdiction in any situation where its jurisdiction is challenged.

It is therefore my view that the court has the jurisdiction to inquire into whether the steps or procedure provided for in sub-sections 1 - 9 of section 26 has been complied with before sub-section 10 of the said section 26 can operate to oust its jurisdiction particularly where the issue concerned is that of suspension and not removal/impeachment. I have gone through the two legal authorities cited in the above submission and have not found them in support of the proposition that since the provisions of section 26(10) is clear and unambiguous a court of law will have no competence to look into any of the acts set out in sub-section 1 -9 of the said section 26 of the law as canvassed by learned counsel.

It is important to note that learned counsel for the appellants has not told us that the provisions of sub-sections 1 - 9 of section 26 were ever complied with. All he is interested in is sub-section (10) of section 26 which ousts the jurisdiction of the court. The said sub-section states thus:

"(10) No proceedings or determination of the panel or the legislative council or any matter relating thereto shall be determined or questioned in any court."

The sub-section clearly shows that there must be proceedings or determination of a panel or the legislative council before the ouster clause will become operational. In other words the proceeding, or determination must be in accordance with the procedure stated in sub-sections 1 - 9 of the said section 26 before sub-section 10 can be invoked. The question is whether the suspension of the respondent complied with sub-sections 1 - 9 of section 26 so as to invoke subsection 10 thereof. It is my view that the lower court can look into the matter and where it comes to the conclusion that there was compliance, then the jurisdiction of the court would be ousted, if not the court has jurisdiction to say that the section does not apply.

Since I had earlier in this judgment found that by the operation 'of the Interpretation Act the power to remove from office by way of impeachment includes the incidental power to suspend from the said office it follows that if sub-sections 1 - 9 of section 26 are Complied with in case of suspension from office, as in this case on Appeal, then sub-section 10 of section 26 will come into play. Turning to the other issue as to whether section 26(10) is Institutional the argument of the respondent which was accepted the lower court is that since section 272 of the 1999 Constitution confers what may be termed unlimited jurisdiction on the High Court a State section 26(10) of law No.6 of 1999 which ousts the jurisdiction of the court is unconstitutional particularly since it is a law made by a State House of Assembly. That the combined effect of sections 1(3); 4(5); 4(8) and 272 of the 1999 Constitution makes a state law that conflicts with these provisions unconstitutional. Section 1(3) of the 1999 Constitution provides as follows:

"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void."

On the other hand, section 4(5) of the said Constitution states:

"If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void."

Section 4(8) of the 1999 Constitution also relied upon states thus:

"Save as otherwise provided by this Constitution, the exercise of legislative powers of the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law."

Finally section 272(1) of the 1999 Constitution provides as follows:

"272(1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

On the other hand, the argument of learned counsel for the appellants is to the effect that section 26(10) is not in conflict with any of the said provisions of the 1999 Constitution but is rather complementary to sections 143(10) and 188(10) of the 1999 Constitution which deal with the removal of the President and the Governor respectively. These sections provide as follows:

"143(10) No proceedings or determination of the Panel or the National Assembly or any matter relating there shall be entertained in any court." "188(10) No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court."

It is clear that the 1999 Constitution created an exception to the generally accepted principle of constitutional law that no law shall be passed to oust the jurisdiction of the courts of law or tribunal established by law. These exceptions are in respect of the proceedings etc. for the removal or impeachment of the President of the Federal Republic of Nigeria and a Governor of a State of the Federation.

It is also not in doubt whatsoever that by a constitutional arrangement the Federal Republic of Nigeria operates a three tier system of government viz:

- (a) Federal
- (b) State, and
- (c) Local Government.

Whereas sections 143(10) and 188(10) of the 1999 Constitution have taken care of impeachment/removal proceedings of the President and Governor, there is no similar constitutional provision regarding the office of the chairman of a local government who is its Chief Executive as the President and Governor are in the Federal and State Governments. I think that is why learned counsel for the appellants argues that section 26(10) of the law complements the provisions of the 1999 Constitution.

Looking closely at the Constitutional provisions, particularly, sections 4(8) and 272(1) of the 1999 Constitution it is clear that section 26(10) of Law No. 6 of 1999 seeks to oust the

jurisdiction of the law courts in relation to the removal or impeachment of a chairman of a local government and is to that extent unconstitutional. The provisions of section 26(10) of that law may be desirable or necessary to insulate the courts from the muddy waters of the politics of the removal of the chairman of a Local Government but the issue is whether the State House of Assembly has the *vires* or competence to pass it having regards to the combined effects of sections 4(8) and 272(1) of the 1999 Constitution. It is trite law that the Constitution is Supreme and any law that is in conflict with its provisions is void to the extent of that inconsistency - see sections (3) and 4(8) of the 1999 Constitution. I am not unmindful of the submission of learned counsel for the appellants that the said section(10) is not in conflict with the 1999 Constitution but compliments **Government Council from office by impeachment under section 26(1) - (9) of the Local Government] Law of Kwara State, 1999 includes the incidental power to suspend the Chairman from office, it follows that if all the requisite statutory steps in sub- sections 26(1) - (9) of the section are complied with in a case of suspension of a Chairman from office, as is in the instant case, then sub-section (10) of the section will come into play.**(P. 339, paras.F-G)

13. *On Supremacy of the Nigerian Constitution over Act of National Assembly – The Constitution of the Federal Republic of Nigeria 1999 is supreme. And, by virtue of sections 1(3) and 4(8) thereof, any law that is in conflict with it provisions is void to the extent of that inconsistency In the instant case, section 26(10) of the Local Government Law of Kwara State, 1999 which seek to oust the jurisdiction of the courts in matter relating to the removal from office of a Local Government Council Chairman is inconsistent with the provisions of section 4(8) of the 1999 Constitution which provides that the National Assembly shall not enact any law that ousts or purport to oust the jurisdiction of a court established by law; and section 272(1) of the 1999 Constitution which vests the High Court of a State with jurisdiction to hear and determine civil proceedings involving the existence or extent of the rights and duty of any person Consequently, section 26(10) of the Local Government Law of Kwara State, 1999 is unconstitutional. [Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 referred to.](Pp. 341-342, paras. F-C)*

Per ONNOGHEN, J.C.A. at page 341, paras. F-H:

*"Looking closely at the Constitution provisions, particularly sections 4(8) and 272(1) of the 1999 Constitution it is clear that section 26(10) of Law No. 6 of 1999 seeks to oust the jurisdiction of the law courts in relation to the removal or impeachment of a chairman of a local government and is to that extent unconstitutional. The provisions of section 26(10) of that law may be desirable or necessary to insulate the courts from the muddy waters of the politics of the removal of the chairman of a Local Government but the issue is whether the State House of Assembly has the *vires* or competence to pass it having regards to the combined effects of sections 4(8) and 272(1) of the 1999 Constitution."*

14. *On Meaning of "intraparty dispute" –*

An "intra party dispute" is a dispute between members of a political party within the said party. In the instant case, none of the parties before the trial court is

- a political party and the relief sought by the respondent does not show that the matter is an intra party dispute. (Pp. 343-343, paras. A-B)**
15. *On Meaning of "intra legislative Council dispute" –*
An "intra legislative Council dispute" is a dispute within the Local Government Council members. In the instant case, the Ifelodun Local Government Council is not a party to the suit and the respondent's claims at the trial court does not show that the matter is an intra legislative council dispute.(Pp. 343-344, paras. A-B)
16. *On Need for joinder of Local Government in suit challenging validity of suspension of Local Government Chairman –*
A Local Government is a necessary and desirable party in an action filed by its Chairman to challenge, in the main, his suspension from office by members of the local government legislative council. And a failure to so join the local government in a suit against the members of the Legislative Council is fatal to the competence of the suit. In the instant case, the Ifelodun Local Government ought to have been joined in the respondent's suit as a necessary and desirable party, particularly as the 2nd and 3rd appellants did not act in their personal capacities when they signed the letter by which the respondent was notified of his suspension from the office of Chairman of the Local Government; and of the appointment of his Vice Chairman as acting Chairman of the Local Government. The respondent's reliefs are against the Local Government and not the individuals who clearly acted on its behalf. In the circumstance, the non-joinder of Ifelodun Local Government is fatal to the case of the respondent and it ought to have been struck out by the trial court.(Pp. 349,paras.B-G;351,paras.B-D)
17. *On When action can be commenced by originating summons –*
By virtue of Order 1 rule 2(2) and Order 38 rule 2 of the High Court of Kwara State (Civil Procedure) Rules, 1989, proceedings may be begun by originating summons where:
- (c) **the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or any deed, will, contract or other document or some other question of law; or**
 - (d) **there is unlikely to be any substantial dispute of fact.**
- In the instant case, the respondent's claims relate to the interpretation of a statute and there is no substantial dispute of fact between the parties. In the circumstance, the respondent's suit was properly commenced by originating summons. [N.B.N. v. Alakija (1978) 2 LRN 79; Oloyo v. Alegbe (1983) 7 SC 85; Din v. A.-G., Federation (1986) 1 NWLR (Pt. 17) 471 referred to.](Pp. 346, paras. A-F;348, paras.E-F)**
18. *On When action can be commenced by originating summons –*
The originating summons procedure is appropriate where there is no substantial dispute of facts between the parties. In effect, the procedure does not envisage a situation where there is no dispute at all on fact between the parties. Rather, it envisages a situation where there is no substantial dispute of facts. In other words, there can be disputed facts but such dispute must not be substantial. Where the disputed facts are substantial, then originating summons procedure is inappropriate. The proper mode of commencing such an action is by writ of summons so that pleadings can be

- filed and exchanged to determine the issues in controversy between the parties. In the instant case, there is no substantial dispute of facts between the parties. In the circumstance, the suit was properly commenced by an originating summons.(Pp. 346-348, paras .F-E)
19. *On Duty on court not to determine substantive issue while deciding interlocutory matters-*
A trial court must be cautious in deciding interlocutory issues raised in a suit in order to avoid passing a decision on the substantive issue in the suit, an act which is frowned at by the law. In the instant case, the trial court in the course of delivering its ruling on the appellants' objection held that there is no provision under the Constitution or any law whatsoever in support of the suspension of the respondent by the appellants. By that particular finding, the trial court in effect decided the substantive reliefs sought by the respondent contrary to the rule that a court should not decide a substantive issue in a case whilst delivering its ruling on an interlocutory issue.(Pp.350-351, paras. F-B)
 20. *On Formulation of issues for determination and binding effect thereof-*
A party is not allowed to formulate issues for determination which are at variance with his grounds of appeal; neither can a party present an argument totally unrelated to the issues formulated from his grounds of appeal. [C.C.B. Ltd. v. Nwokocha (1998) 9NWLR(Pt 564)98 referred to.](P.331,paras.G-H)
 21. *On Need to base argument on preliminary objection on grounds of objection -*
A party who files a preliminary objection to an appeal would not be allowed to canvass arguments which are clearly at variance with the grounds of objection he filed. In the instant case, the arguments of the respondent which are unrelated to his grounds of objection go to no issue and would be discountenanced by the court.(Pp. 331-332, paras. H-B)
 22. *On Bindingness of record of appeal on Court of Appeal -*
The Court of Appeal is bound by the record of proceedings and cannot, in law, go outside it. In the instant case, the record of proceedings does not contain facts which show, as alleged by the respondent in his preliminary objection, that the substratum of the appeal has been taken away thereby making its hearing an academic exercise. [Sommer v. F.H.A. (1992) 1 NWLR (Ft. 219) 548 referred to.](P. 332, paras. B-D)

Nigerian Cases Referred to in the Judgment:

- A.-G., *Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264
- A.-G., *Bendel State v. A.-G., Federation* (1982) 3 NCLR 1
- A.-G., *Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500
- Adefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377
- Adewunmi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751) 474
- Agbaka v. Amadi* (1998) 11 NWLR (Pt. 572) 16
- Amuda v. Ajobo* (1995) 7 NWLR (Pt. 406) 170
- Aqua Ltd. v. Ondo State Sports Council* (1985) 4 NWLR (Ft- 91)622
- Bronik Motors Ltd, v. Wema Bank Ltd.* (1983) 1 SCNLR 296
- C.C.B. Ltd. v. Nwokocha* (1998) 9 NWLR (Pt. 564) 98
- Chiga v. Umaru* (1986) 3 NWLR (Pt. 29) 460
- Din v. A.-G., Federation* (1986) 1 NWLR (Pt. 17) 471
- Doherty v. Doherty* (1968) NMLR 241

Edewor v. Uwegba (1987) 1 NWLR (Pt. 50) 313
Ejnkorlem v. Ejukorlem (1994) 8 NWLR (Pt. 365) 552
Ekekeugbo v. Fiberesima (1994) 3 NWLR (Pt. 335) 707
Ekpo v. Calabar Local Government (1993) 3 NWLR (Pt.281) 324
Govt. of Ondo State v. Adewunmi (1985) 3 NWLR (Pt. 13) 280
Green v. Green (1987) 3 NWLR (Pt. 61) 480
Ibodo v. Enarofia (1980) 5 - 7 SC 42
J.C. Ltd. v. Ezenwa (1996) 4 NWLR (Pt. 443) 391
Jadesimi v. Okotie - Eboh, in re Lessey (1989) 4 NWLR (Pt.113) 126
Leventis Tech, Ltd. v. Petrojessica Ent. Ltd. (1999) 6 NWLR (Pt. 605) 45
Maigoro v. Garba (1999) 10 NWLR (Pt. 624) 555
Mil. Administrator, Benue State v. Abayilo (2001) 5 NWLR (Pt. 705) 19
Mil. Gov., Ondo State v. Adewunmi (1988) 3 NWLR (Pt. 82) 280
Mobil Oil (Nig.) Ltd. v. FB/fl (1977) 3 SC 53
Musa v. Hamza (1982) 3 NCLR 229
Musa v. Speaker, Kaduna House of Assembly (1982) 3 NCLR 450
N.B.N. v. Alakija (1978) 9 - 10 SC 59
Ngwu v. Onuigbo (1999) 13 NWLR (Pt. 636) 512
Nwosu v. I.S.E.S.A. (1990) 2 NWLR (Pt. 135) 688
Ogidi v. Egba (1999) 10 NWLR (Pt. 621) 42
Ogigie v. Obiyan (1997) 10 NWLR (Pt. 524) 179
Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530
Oloyo v. Alegbe (1983) 2 SCNLR 35
Olunmide v. Ajayi (1997) 8 NWLR (Pt. 517) 433
Omo v. Judicial Service Commission (2000) 12 NWLR (Pt. 682)444
Onuoha v. Okafor (1983) 2 SCNLR 244
Oshatoba v. Olujitan (2000) 5 NWLR (Pt. 655) 159
Oshevire v. British Caledonian Airways Ltd. (1990) 7 NWLR (Pt. 163) 489
Osuagwu v. Emezi (1998) 12 NWLR (Pt. 579) 640
Phoenix Motors v. N.P.F.M.B. (1993) 1 NWLR (Pt. 272) 718
Rabiu v. Kano State (1982) 2 NCLR 119

Sommer v. F.H.A.(1992) 1 NWLR (Pt. 219) 548
Thor Ltd. v. l-irst (Y/v Merchant Bank (2002) 4 NWLR (Pt.757) 427
Tsokwa Motors (Nig.) Lid. v. U.B.N. Ltd. (1996) 9 NWLR (Pt.471) 129
Tukitr v. Government of (iongola State (1989) 4 NWLR (Pt.117)517
Tukur v. Government of Taraha State (1997) 6 NWLR (Pt. 5 10)549
West African Shipping Agency v. Kalla (1978) 3 SC 21

Foreign Case Referred to in the Judgment:

Taylor v. National Assistance Board (1975) All ER 1 8

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigerian, 1999, Ss. 1(3),
4(5), 4(8), 7, 143(10), 188(10), 241(1)(b), 242(1) and 272
Court of Appeal Act, S. 25(2)(a) & (c)
Interpretation Act, Cap. 192, Laws of the Federation of Nigeria,
1990, S. 10(1) and (2)

Local Government Law, Kwara State, No. 6 of 1999, Ss. 18(2), 26

Nigerian Rules of Court Referred to in the Judgment:

High Court of Kwara State (Civil Procedure) Rules, 1989, O.I, r.2(2); O.38, r.2

Book Referred to in the Judgment:

Black's Law Dictionary, 7th Ed., p.755, 460

Appeal:

This was an appeal against the ruling of the High Court which dismissed the appellants' preliminary objection to the respondent's action commenced by originating summons. The Court of Appeal, in a unanimous decision, allowed the appeal in part and struck out the suit.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin

Names of Justices that sat on me appeal: Muritala Aremu Okunola, J.C.A. (*Presided*):

Walter Samuel Nkanu Onnoghen, J.C.A. (*Read the Leading Judgment*): Ja'afaru Mikailu, J.C.A.

Appeal No.: CA/IL/59/2001

Date of Judgment: Tuesday, 10th December, 2002 *Names of Counsel:* Y.O. Alli, SAN (*with him*, R. O. Balogun, Esq.) *-for the Appellants*

A. S. Oyinloye, Esq. (*with him*, Muazu Abdullahi, Esq.) *-for the Respondent*

High Court:

Name of the High Court: High Court of Kwara State, Omu-Aran

Name of the Judge: Akoja, J.

Date of Ruling: Tuesday, 18th September, 2001

Counsel:

Y.O. Alii, SAN (*with him*, R. O. Balogun, Esq.) *-for the Appellants*

A. S. Oyinloye, Esq. (*with him*, Muazu Abdullahi, Esq.) *-for the Respondent*

ONNOGHEN, J.C.A. (Delivering the Leading Judgment): This is an appeal against the ruling of the High Court of Justice of Kwara State sitting at Omu-Aran in suit No. KWS/OM/11/2001 delivered on the 18th day of September, 2001 by Hon. JUSTICE M.A. AKOJA in which he overruled the preliminary objection of the appellants as to the jurisdiction of that court to hear and determine the matter before it.

The facts of the case include the following: On the 4th day of May, 2001 the respondent together with three others, as plaintiffs caused an originating summons to be issued against the appellants for the determination of the following questions.

“1 Whether the 2nd and 3rd defendants and/or the members of Ifelodun Local Government Legislative Council have the powers to suspend the 1st plaintiff from office as the Chairman of Ifelodun Local Government Area of Kwara State pursuant to section 26(4) of the Kwara State Local Government Law, 1999 or any of its provisions thereof.

5 Whether the 2nd and 3rd defendants and/or members of the Ifelodun Legislative Council possess the powers to appoint 1st defendant as the "Acting Chairman" of Ifelodun Local Government Area of Kwara State under and by virtue of any of the provisions of the said Kwara State Local Government Law of 1999.

6 Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Area Legislative Council have not violated the provisions of section 26(4) of the Kwara State Local Government Law of Kwara State by purporting to investigate the tenure of office of the 1st

plaintiff without first giving him the opportunity of being heard on the grave allegations of misadministration, gross misconduct and abuse of office, made against him by the defendants.

- 7 Whether the 2nd and 3rd defendants and/or members of Ifelodun Local Government Legislative Council are not in breach of the provisions of the Constitution of the Federal Republic of Nigeria 1999, by pronouncing the 1st plaintiff guilty even before investigating the said allegations."

The appellant together with the other plaintiffs then claimed the following reliefs, vide the said originating summons:

- "1. A declaration that the purported suspension of the 1st plaintiff as chairman of Ifelodun Local Government Area of Kwara State by the 2nd and 3rd defendants and/ or members of the Legislative Council of the said Local Government Area is wrongful, unlawful, illegal, unconstitutional, ultra vires, null and void and of no effect whatsoever.
2. A declaration that the purported appointment of the 1st plaintiff (*sic*) as the "Acting Chairman" of Ifelodun Local Government Area of Kwara State is wrongful; unlawful, illegal, unconstitutional, ultra vires, null and void and of no effect whatsoever.
3. An order setting aside and quashing the purported suspension of the 1st plaintiff as chairman of Ifelodun Local Government Council of Kwara State.
4. An order setting aside and nullifying the purported appointment of the 1st defendant as the Acting Chairman of Ifelodun Local Government Area of Kwara State.
5. An order of perpetual injunction restraining the defendants from disturbing or in any way preventing the 1st plaintiff from performing his duties as the Executive Chairman of Ifelodun Local Government Area.
6. A declaration that the purported reference to the Chief Judge of Kwara State by the defendants of allegations of misconduct and misadministration made by them against the plaintiff is illegal, unlawful, wrongful, unconstitutional, ultra vires, null and void and of no effect whatsoever.
7. A declaration that the 1st plaintiff is at all material times the Chairman of Ifelodun Local Government Area.
8. An order directing and compelling the defendants to pay the plaintiff all his accumulated salaries, allowances and other entitlement from 24/4/2001 to the determination of this case and thereafter."

The originating summons is supported by an affidavit of 26 paragraphs to which exhibits A - D were attached and on which the respondent relied.

However, on the 3rd day of July, 2001, the appellants filed a notice of preliminary objection through their counsel in which they prayed the court to strike out the suit in limine on the grounds that:

4. The plaintiffs in the case lack the requisite *locus standi* to institute and maintain the action.
5. The subject matter of the case is an intra party issue/ intra legislative council affair and therefore not justifiable.
6. The Honourable court lacks the jurisdiction to hear and determine the case by virtue of the provisions of the Kwara State Local Government Law, 1999.

The action is badly constituted and incompetent as the principal Parties, Ifelodun Local Government and/or Ifelodun Local Government Legislative Council are/is not a party/parties to the case.

The action as presently constituted is not maintainable against the defendants. Non-issuance nor service of the requisite pre-action Notice on the Ifelodun Local Government is very fatal to the survival of the case having regard to the facts and circumstances of the case.

The case is a gross abuse of the process of the Honourable court. The procedure adopted in the initiation of the case is very defective." The said notice of preliminary objection is supported by an affidavit of 22 paragraphs to which exhibits Q - 4 are attached and appellants relied in moving the court.

However in a considered ruling delivered by the learned trial Judge on the 18th day of September, 2001 the trial court overruled the preliminary objections thus giving rise to the present appeal. Appellants filed a total of eight grounds of appeal out of which four issues have been formulated for determination by the learned counsel for the appellants K.K. Eleja, Esq. vide the appellants' brief of argument filed on 9th April, 2002. The issues are as follows:

1. Whether the learned trial Judge having regard to the provisions of section 26(10) of the Kwara State Local Government Law No. 6 of 1999 has jurisdiction to entertain the case of the respondent notwithstanding the provisions of section 272 of the Constitution of the Federal Republic of Nigeria 1999 or any other provisions of that constitution.
2. Whether having regard to the nature of the complaints of respondent which bordered on intra party dispute, the learned trial Judge had the *vires* to try the matter or whether the complaint of the respondent was justifiable.
3. Whether the procedure by originating summons having regard to the contentious nature of the respondent's claim was a proper process with which to initiate the process and whether the non joinder of Ifelodun Local Government was not fatal to the respondent's claim.
4. Whether it was right for the learned trial Judge to have delved into the substantive matter at the interlocutory stage when the substantive matter was not yet ripe for hearing."

I hasten to add that the issues reproduced above were adopted by learned counsel for the respondent A.S. Oyinloye, Esq. in the respondents brief of argument filed on 25th April, 2002 - see paragraph 1.2 at page 10 thereof.

However, before proceeding to consider the arguments of both counsel on the issues for determination, it is necessary at this stage, to consider first and foremost the notice of preliminary objection contained in the respondent's brief of argument as to the competence of the appeal - see page 1 thereof.

The grounds of the objection are stated as follows:

4. Issue No. 4 formulated by the appellants and as argued at pages 12 - 14 of their brief of argument is grossly incompetent as it was raised without leave.
5. Issue 3 is incompetent as same is not an issue of law and it is raised without leave also.
6. The whole appeal is incompetent same having being (*sic*) overtaken by an event created deliberately by the appellants which event made the questions submitted for resolution in this appeal now mere hypothetical and academic exercise in the extreme."

In arguing ground 1 learned counsel for the respondent submitted that the sole additional ground of appeal and issue No.4 formulated therefrom are incompetent in that the additional ground of appeal was filed outside the 14 days allowed by law and without leave of court first had and obtained, the appeal being an interlocutory one. Learned counsel then relied on section 25(2) (a) (3), the Court of Appeal Act; *Ibodo v. Enarofia* (1980) 5 - 7 SC 42, 58 - 59; *Oshatoba v. Olujitan* (2000) 5 NWLR (Pt.655) 159, (2000) i"6 2 SCNJ 159,172 - 173; *Omo v. Judicial Service Commission* (2000) 12 NWLR (Pt.682) 444, (2000) 7 SCNJ 17, 27.

Turning to issue 2 learned counsel submitted that it is incompetent because it relates to grounds of facts or mixed law and facts which cannot be canvassed without leave of court. Relying on *Thor Ltd. v. First City Merchant Bank* (2002) 4 NWLR (Pt. 757) 427, (2002) 2 SCNJ 85, 98; *Maigoro v. Garba* (1999) 10 NWLR (Pt.624) 555, (1999) 7 SCNJ 270,282; *J.C. Ltd. v. Ezenwa* (1996) 4 NWLR (Pt.443) 391, (1996) 4 SCNJ 24; *Ogidi v. Egba* (1999) 10 " NWLR (Pt. 621) 42, (1999) 6 SCNJ 107; *Ogigie v Obiyan* (1997) 10 NWLR (Pt.524) 179, (1997) 10 SCNJ 15; *Tsokwa Motors (Nig.) Ltd. v. U.B.N. Ltd.* (1996) 9 NWLR (Pt.471) 129, (1996) 9 - 10 SCNJ 294; 374 and *Agbaka v. Amadi* (1998) 11 NWLR (Pt.572) 16, (1998) 7 SCNJ 367,374 learned counsel urged the court to strike out issues 2 and 4 and grounds 5, 6 and 7 of the grounds of appeal as well as the sole additional ground of appeal for the reasons afore-mentioned.

On ground 2 of the objection learned counsel for the respondent submitted that since the appellants did impeach the respondent during the pendency of this appeal that singular act has rendered this appeal a hypothetical or academic one not deserving of any consideration by the court and urged the court to either dismiss or strike out the appeal.

In his reaction, learned counsel for the appellants, in the reply brief filed on 25/6/02, referred the court to the proceedings of this court on the 28th day of May, 2002 when the court upon application by the appellants granted the requisite leave to the appellants vide a motion filed on 9th April, 2002. Learned counsel then submitted that the additional ground of appeal and issue No.4 formulated therefrom are therefore competent and urged the court to consider same. Learned counsel then relied on sections 241(1)(b) and 242(1) of the 1999 Constitution of the Federal Republic of Nigeria and the case *oiAdefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377 at 417 -418; *Oshatoba v. Olujitan* (2000) 5 NWLR (Pt. 655) 159 at 172 for his earlier submission.

Turning to ground 2 of the grounds of objection, learned counsel stated that while the said objection is an attack on issue No. 3, the substratum of which is that it is not an issue of law which requires no leave but of facts or mixed law and fact, the arguments proffered 1 at pages 8 -10 of the respondent's brief turns to show that the appeal is a hypothetical or academic one, the substratum of which had been taken away. Learned counsel then submitted that there is no nexus between the ground of objection and the argument proffered and urged the court to discountenance same - relying on *C.C.B. Ltd. Nwokocha* (1998) 9 NWLR (Pt. 564) 98 at 124.

Learned counsel further submitted that the argument that' substratum of the appeal had been taken away is not borne out I the facts as contained in the record of appeal which is what court must look at in dealing with this appeal and nothing extraneous. In conclusion learned counsel urged the court to dismiss the in respect of their contending positions vis-a-vis the record of proceedings in this court particularly the proceedings of 28th May, 2002 and the record of appeal in this matter made up of 123 pages as well as pages 124 - 144 of the supplementary record filed with the leave of this court granted also on 28th May, 2002 and I state without fear of contradiction that this court duly granted leave to the appellants on the 28th day of May, 2002 as prayed in their motion filed on 9th April, 2002 for the following reliefs:

v. LEAVE of the Honourable court *extending the time within which the applicants may*

apply for leave to appeal against the interlocutory ruling of Omu-Aran High Court delivered on 18th September, 2001.

- vi. *LEAVE* of the Honourable court to appeal against the said ruling *on grounds of mixed law and fact.*
- vii. AN ORDER of the Honourable court for extension of time to appeal against the said ruling of the Omu-Aran High Court.
- viii. AN ORDER of the Honourable Court deeming both the notice of appeal filed on 28th September, 2001 and the additional ground of appeal filed on 24th October, 2001 as properly filed and served the correct filing fees having been paid." (Italics supplied by me).

The above being the true state of facts, it is my considered at grounds 1 and 2 of the grounds of the preliminary objection of the respondent are not worth the paper on which they are written are therefore discountenanced for being an exercise in futility. It is very disappointing to note that learned counsel for the respondent present in court when the application was granted without Ejection and the respondent was awarded N 1,000. 00 cost.

Turning now to the argument of learned counsel for the respondent in relation to ground 2 of the grounds of objection which argument is clearly at variance with the complaint in that ground 1 hold the view that it is trite law that a party is not allowed to formulate which are at variance with his grounds of appeal as filed neither can he present an argument totally unrelated to the issues as formulated from the grounds of appeal. However see *C. C.B. Ltd. v. -Nwokocha* (1998) 9 NWLR (Pt. 564) 98 at 124 objection and the purported argument thereon. In the present objection the argument of counsel for the respondent is clearly variance with the grounds of objection. That being the case it is my view that the said argument which has no nexus with the relevant ground of objection clearly goes to no issue and is accordingly discountenanced.

That apart, it is trite law that this court, being the Court Appeal is bound by the record of proceedings and cannot in law, outside it. The record of proceedings in this appeal both the original and supplementary running from pages 1 - 144 does act contain facts from which it can either be seen or inferred that the substratum of the appeal has been taken away thereby making it necessary for one to conclude that the appeal is thereby rendered hypothetical academic as contended by learned counsel for the respondent. *Sommer v. F.H.A.* (1992) 1 NWLR (Pt. 219) 548 at 557 - 558.

In conclusion I find no merit whatsoever in the preliminary objection which is accordingly dismissed.

Turning now to the merit of the substantive appeal, learned counsel for the appellants in arguing issue No. 1 submitted that in view of the provisions of section 26(10) of the Kwara State Local Government Law No. 6 of 1999, the trial court lacks jurisdiction to entertain the complaints of the respondent in the originating summons since the respondent was challenging the exercise of the power of the Ifelodun Local Government Legislative Council as provided for in section 18(2) of Law No.6 of 1999, read in conjunction with the provisions of section 26(1 - 9) of the said that:

That section 26(10) of Law No.6 of 1999 is clear and unambiguous and it says that:
"a court of law will have no competence to look into any of the acts set out in subsections 1 - 9 of section 26 of the law."

Counsel then cited and relied on *Mobil Oil (Nig.) Ltd. v. FBIR* (1977) 3 SC 53; *Adewumi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751) 474 at 511-512, 532.

Learned counsel then submitted that section 26(10) of Law No.6 of 1999, *pari materia* with section 143(10) dealing with the removal of the President and section 188(10) dealing with the removal of the Governor, both of the 1999 Constitution of the Federal Republic of Nigeria and

submitted further that the said section 26(10) of the Law is not in any way inconsistent with any of the provisions of the said 1999 Constitution but rather complementary to the provisions of the said sections 143(10) and 188(10) of the said institution. That the trial Judge came to a wrong decision in not plying the cases of *Balarabe Musa v. Speaker, Kaduna House of Assembly* (1981) 3 NCLR450; *Musa v. Hamza* (1982) 3 NCLR 229 §243, which counsel submitted are relevant and binding on the High court.

Learned counsel finally submitted that having regards to the provisions of sections 143(10) and 188(10) of the 1999 Constitution the Federal Republic of Nigeria thereafter referred to as the 99 Constitution) the provisions of section 26(10) of Law No. 6 of 1999 cannot be said to run foul of the provisions of section 4(8) the 1999 Constitution. Learned counsel then urged the court to Sid that the lower court has no jurisdiction to entertain the respondent's case relying on *Tukur v. Government of Gongola State* 989) 4 NWLR (Pt. 117) 517 at 549; *Tukur v. Government of Taraba toe* (1997) 6 NWLR (Pt. 510) 549 at 582 - 583.

On his part, learned counsel for the respondent submitted that 5 trial court has jurisdiction to hear and determine the matter. While learned counsel concedes that the States of the Federation have the over to legislate for the Local Government Council within their State by virtue of the provisions of section 7 of the 1999 Constitution, tough the State House of Assembly, such a legislation by the Assembly must not be in conflict with the clear provisions of the Constitution being the Supreme Law.

That notwithstanding the provisions of section 26(10) of Law 0.6 of 1999, the trial court has jurisdiction because the said section provides for the procedure for the removal of the Chairman/Vice II Chairman of a Local Government by way of impeachment and not by way of suspension from office which is the bone of contention between the parties. That suspension is not the same thing as impeachment and therefore urged the court to hold that section 26(10) of the said law is inapplicable and therefore the trial court has jurisdiction.

Secondly counsel submitted that since the said section 26(10) of Law No.6 of 1999 is an ouster provision it cannot exist in isolation. That for the appellants to take the benefit of section 26(10) they must establish the fact that they duly complied with the provisions of sub-sections 1 - 9 of section 26. For this counsel cited and relied on *Ekpo v. Calabar Local Government* (1993) 3 NWLR (Pt. 281) 324 at 337; *Taylor v. National Assistance Board* (1975) All ERH| That the appellants have failed to satisfy this requirement since they filed no counter affidavit to the affidavit in support of the originating summons which would have stated the steps they followed in, suspending the respondent so as to call to play the provisions of section 26(10) of Law.No. 6 of 1999.

Thirdly, learned counsel submitted that though by virtue of section 7 of the 1999 Constitution, the State Assembly is empowered to make laws as a result of which Law No. 6 of 1999 was made particularly section 26(10) thereof, the combined effect of sections 1(3); 4(5); 4(8) and 272 of the 1999 Constitution is clear on the point that no State Law shall be in conflict with the Laws made by the National Assembly or the Constitution. That since the effect of section 26(10) of Law No. 6 of 1999 is to oust the jurisdiction of the courts in matters relating to removal/impeachment of Chairman it cannot stand *vis-a-vis* the Constitution which guarantees access to court and urged the court to resist the attempt to encroach on its judging powers citing and relying on *Okulate v. Awosanya* (2000) 2 NWLR (Pt.646) 530, (2000) 1 SCNJ 75; *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296, (1983) 6 SC 158; *Oshevire v. British Caledonian Airways Ltd.* (1990) 7 NWLR (Pt. 163) 489 at 519 - 520. *Phoenix Motors v. N.P.F.M.B.* (1993) 1 NWLR (Pt. 272) 718 at 730; *A.-G., Bendel State v. A.-G., Federation* (1982) 3 NCLR 1 at

31; *Military Administrator, Benue State v. Capt. Clement Abayilo* (2001) 5 NWLR (Pt.705) 19, (2001) FWLR (Pt. 45) 602 at 618; *Ekekeugbo v. Fiberesima* (1994) 3 NWLR (Pt. 335) 707 at 776; *Edewor v. Uwegba* (1987) 1 NWLR (Pt. 50) 313; *Ekpo v. Calabar Local Government (supra)*, *Government of Ondo State v. Adewunmi* (1985) 3 NWLR (Pt. 13)493.

That the argument of counsel for the appellants that section 26(10) of the Kwara State Law No. 6 of 1999 compliments sections 143(10) and 188(10) of the 1999 Constitution is untenable and legally absurd. That the said Constitutional provisions are not relevant since they deal with the removal/impeachment of the President/Governor and not their suspension as is the case at hand. That the constitutional provisions limit the powers conferred by the courts by the same constitution "not a state, inferior and sectional enactment like the Kwara State Law No. 6 of 1999 which cannot oust the jurisdiction of courts validly conferred by the Constitution," Learned counsel further submitted. Counsel then concluded by submitting that all the cases cited by his learned friend on issue friend on issue No. 1 are irrelevant and urged the court to resolve the issue in favour of the respondent.

In his reply brief filed on 25/6/02 learned counsel submitted that in law "suspension" is incidental to "removal" and it is subsumed *in* the latter.

That that being the case, since the legislative arm of the Local Government has the *vires* to remove the respondent from office it has the incidental right or power to suspend. For this learned counsel cited and relied on sections 10(1) and (2) of the Interpretation Act, Cap. 192 of the Laws of the Federation, 1990 and concluded that all the authorities cited by his learned friend particularly at page 17 of the respondent's brief are inapplicable to this case.

I have carefully gone through the arguments of both counsel and the authorities cited in support of their positions as regards issue No.1 in this appeal and I am of the view that two primary issues call for determination in the issue under consideration. These are:

- c) whether the facts of the case fall within the provisions of section 26 of Kwara State Law No.6 of 1999 as contended by learned counsel for the appellants so as to oust the jurisdiction of the trial court to entertain the matter, and
- d) whether section 26(10) of Law No.6 of 1999 is Constitutional.

When we consider sub-issue (a) it is clear that the gravamen of the argument of learned counsel for the appellants on the matter is that section 26(10) of the law in question applies to the facts of this case so as to oust the jurisdiction of the lower court because though the contention between the parties is the suspension from office of the respondent as the chairman of Ifelodun Local Government Area of Kwara State by the Legislative Arm of that Local Government which the respondent's counsel argues is not covered by the provisions of the said section 26 of the said law, the power of that council to suspend the respondent is incidental to and subsumed in the power to remove or impeach him from office which power is clearly provided by section 26 of the said law, it cannot be said that the council has no power to suspend the respondent or that section 26 of Law No. 6 of 1999 is inapplicable to the case.

Now both parties and the lower court agree that the word "suspension" is not expressly mentioned in section 26 of the law under consideration. That the said section 26 deals with the power and procedure for removal from office or impeachment of the Chairman/Vice Chairman. The term "impeachment" is defined in Black's Law Dictionary, 7th Ed, page 755 to mean, *inter alia*:

"The act (by a legislature) of calling for the removal from office of a public official accomplished by presenting a written charge of the official's alleged misconduct..."

On the other hand, the word "suspension" is defined by the said Dictionary at page 1460 *inter alia* as follows:

"The act of temporarily delaying, interrupting, or terminating something".

It is therefore clear from the two definitions that whereas the term "impeachment" connotes permanent removal from office "suspension" means temporary removal.

Section 10(1) and (2) of the Interpretation Act, Cap. 192, Laws of the Federation, 1990 provide as follows:

"10(1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it."

As found earlier in this judgment, section 26 of Law No.6 1999 confers powers on the Legislative Council of Ifelodun Local Government to impeach or remove the chairman or vice chairman of the Local Government as the case may be. It is also my view that the power to remove from office so conferred also has the incidental power to suspend from office as is generally the law and as envisaged by section 10(2) of the Interpretation Act reproduced *supra* the view that the incidental power to suspend from office is reasonably necessary power to enable the legislative council to carry out the main power to remove/impeach the chairman/vice chairman from office, particularly as the intention is to temporarily remove him from the scene pending the final investigation and determination of the impeachment charges against him.

To that extent I agree with the submission of learned counts for the appellants that the power to suspend is incidental to that of impeachment.

However, that is not the end of the matter since it is still necessary to determine whether section 26 of law No.6 of 1999 which deals expressly with impeachment equally applies to suspension with particular reference to sub-section 10 of the said section 26 so as to oust the jurisdiction of the lower court. This is the crux of the matter. In other words should the word "impeachment/removal" in sub-section 10 of section 26 be interpreted to include "suspension" so as to oust the jurisdiction of the lower court?

It is the law that where the question is whether the statute has used an expression in the wider or in the narrower sense, the court should, where ever possible, and in response to the demand of justice, lean to the broader interpretation unless there is something in the text or the rest of the statute to indicate that the narrower interpretation will best carry out the objects and purposes of the statute - See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517; *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506; *Aqua Ltd. v. Ondo State Sports Council* (1985) 4 NWLR (Pt. 91) 622; *Rabiu v. Kano State* (1982) 2 NCLR 294; *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) 264 at 486.

It is not in doubt that sub-section 10 of section 26 ousts the jurisdiction of the lower court and it is the law that in interpreting such a sub-section, the whole section must be taken into account so as to assist in understanding the circumstances in which the ouster es into play for it is believed that the jurisdiction of the court is meant to be ousted in any event simply because the provision so. It has been held that for the sub-section to enjoy the protection envisaged, the implementation of the other provisions of the section must be in accordance with the section and must not suffer a fundamental vice - See *Ekpo v. Calabar Local Government Council* (1993) 3 NWLR (Pt. 281) 324 at 337.

The above position of the law advised the principle of law to effect that in interpreting a section of a statute having sections, the whole sections must be read as a whole since it is for a sub-section to have a connecting relationship with other sections.

It therefore follows that if the material aspects of the conditions scribed in sub-sections (1) to (9) of section 26 are not complied with, sub-section (10) which deals with ouster of jurisdiction cannot have that effect without rendering the entire section 26 self-defeating or the procedure laid down in sub-sections (1) to (9) very irrelevant - see pages 337 - 338 of *Ekpo's case supra* per Uwaifo, JCA (as he then was) when considering a very similar provision of a law to the one under consideration.

So, it is a well established principle of interpretation of statutes that where a statute as in this case, seeks to deprive the court of the power to exercise its jurisdiction in a matter, such statute must be strictly and scrupulously construed. That to give effect to such a clause, it must be clear from the facts and circumstances of the particular case that an interpretation taking away the jurisdiction of the court is justified - see *Military Governor of Ondo State v. Adewunmi* (1988) 3-NWLR (Pt. 82) 280 at 294 - 295; *A.-G., Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500 at 537; *Nwosu v.. Imo State E.S.A.* (1990) 2 NWLR (Pt. 135) 688 at 715.

Learned counsel for the appellants has submitted at page 6 of the appellant's brief, *inter alia* as follows:

"The provisions of section 26(10) of Law No.6 1999 says exactly what it means, that is, a court of law will have no competence to look into any of the acts set out in sub-sections 1 - 9 of section 26 of the law. See the cases of *Mobil Oil (Nig.) Ltd. v. FBIR* (1977) 3 SC 53, *Adewunmi v. A.-G., Ekiti State* (2002) 2 NWLR (Pt. 751)47431511-512,532."

I am of the view that this is a very simplistic approach to the issue particularly having regards to the earlier authorities cited *in* relation to interpretation of ouster clauses by the courts. In fact it is trite law that where the jurisdiction of the court is ousted as in section 26(10) under consideration, the court has the jurisdiction to inquire into the issue whether its jurisdiction has actually been ousted. In other words the court has jurisdiction to determine whether it has-jurisdiction in any situation where its jurisdiction is challenged.

It is therefore my view that the court has the jurisdiction to inquire into whether the steps or procedure provided for in sub-sections 1 - 9 of section 26 has been complied with before sub-section 10 of the said section 26 can operate to oust its jurisdiction particularly where the issue concerned is that of suspension and not removal/impeachment. I have gone through the two legal authorities cited in the above submission and have not found them in support of the proposition that since the provisions of section 26(10) is clear and unambiguous a court of law will have no competence to look into any of the acts set out in sub-section 1 -9 of the said section 26 of the law as canvassed by learned counsel.

It is important to note that learned counsel for the appellants has not told us that the provisions of sub-sections 1 - 9 of section 26 were ever complied with. All he is interested in is sub-section (10) of section 26 which ousts the jurisdiction of the court. The said sub-section states thus:

"(10) No proceedings or determination of the panel or the legislative council or any matter relating thereto shall be determined or questioned in any court."

The sub-section clearly shows that there must be proceedings or determination of a panel or the legislative council before the ouster clause will become operational. In other words the proceeding, or determination must be in accordance with the procedure stated in sub-sections 1 - 9 of the said section 26 before sub-section 10 can be invoked. The question is whether the suspension of the respondent complied with sub-sections 1 - 9 of section 26 so as to invoke subsection 10 thereof. It is my view that the lower court can look into the matter and where

it comes to the conclusion that there was compliance, then the jurisdiction of the court would be ousted, if not the court has jurisdiction to say that the section does not apply.

Since I had earlier in this judgment found that by the operation 'of the Interpretation Act the power to remove from office by way of impeachment includes the incidental power to suspend from the said office it follows that if sub-sections 1 - 9 of section 26 are Complied with in case of suspension from office, as in this case on Appeal, then sub-section 10 of section 26 will come into play. Turning to the other issue as to whether section 26(10) is Institutional the argument of the respondent which was accepted the lower court is that since section 272 of the 1999 Constitution confers what may be termed unlimited jurisdiction on the High Court a State section 26(10) of law No.6 of 1999 which ousts the jurisdiction of the court is unconstitutional particularly since it is a law made by a State House of Assembly. That the combined effect ^sections 1(3); 4(5); 4(8) and 272 of the 1999 Constitution makes a state law that conflicts with these provisions unconstitutional. Section 1(3) of the 1999 Constitution provides as follows:

"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void."

On the other hand, section 4(5) of the said Constitution states:

"If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void."

Section 4(8) of the 1999 Constitution also relied upon states thus:

"Save as otherwise provided by this Constitution, the exercise of legislative powers of the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law."

Finally section 272(1) of the 1999 Constitution provides as follows:

"272(1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

On the other hand, the argument of learned counsel for the appellants is to the effect that section 26(10) is not in conflict with any of the said provisions of the 1999 Constitution but is rather complementary to sections 143(10) and 188(10) of the 1999 Constitution which deal with the removal of the President and the Governor respectively These sections provide as follows:

"143(10)No proceedings or determination of the Panel or the National Assembly or any matter relating there shall be entertained in any court." "188(10)No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court."

It is clear that the 1999 Constitution created an exception to the generally accepted principle of constitutional law that no law shall be passed to oust the jurisdiction of the courts of law or tribunal established by law. These exceptions are in respect of the proceedings etc. for the removal or impeachment of the President of the Federal Republic of Nigeria and a Governor of a State of the Federation.

It is also not in doubt whatsoever that by a constitutional arrangement the Federal Republic of Nigeria operates a three tier system of government viz:

- (d) Federal
- (e) State, and
- (f) Local Government.

Whereas sections 143(10) and 188(10) of the 1999 Constitution have taken care of impeachment/removal proceedings of the President and Governor, there is no similar constitutional provision regarding the office of the chairman of a local government who is its Chief Executive as the President and Governor are in the Federal and State Governments. I think that is why learned counsel for the appellants argues that section 26(10) of the law complements the provisions of the 1999 Constitution.

Looking closely at the Constitutional provisions, particularly, sections 4(8) and 272(1) of the 1999 Constitution it is clear that section 26(10) of Law No. 6 of 1999 seeks to oust the jurisdiction of the law courts in relation to the removal or impeachment of a chairman of a local government and is to that extent unconstitutional. The provisions of section 26(10) of that law may be desirable or necessary to insulate the courts from the muddy waters of the politics of the removal of the chairman of a Local Government but the issue is whether the State House of Assembly has the *vires* or competence to pass it having regards to the combined effects of sections 4(8) and 272(1) of the 1999 Constitution. It is trite law that the Constitution is Supreme and any law that is in conflict with its provisions is void to the extent of that inconsistency - see sections (3) and 4(8) of the 1999 Constitution. I am not unmindful of the submission of learned counsel for the appellants that the said section(10) is not in conflict with the 1999 Constitution but compliment same but that argument does not carry any weight because the words of sections 4(8) and 272(1) of the 1999 Constitution are very clear and there is no lacuna in the said 1999 Constitution which the said section 26(10) of that law is meant to fill granted that the House of Assembly has the *vires* to fill same. Even if the House of Assembly has the power to make a law filling any lacuna in the Constitution, it is my considered view that that power does not extend to making an unconstitutional provision which section 26(10) has turned out to be. See *Okulate v. Awosanya* (2000) 2 NWLR (Pt.646) 530, (2000) 1 SC 107 at 115 - 116.

It is therefore my view that even though the power of removal/ impeachment of a Local Government Chairman has in it the incidental power to suspend him from the office the Local Government Council cannot take the full benefit of section 26(10) of law No.6 of 1999 unless it can satisfy the court that the procedures in sub-sections 1-9 of section 26 have been complied with and, secondly the said section 26(10) of the said law is unconstitutional. That being the case it is my view that issue No.1 be and is hereby resolved against the appellants.

On issue No.2 learned counsel for the appellants submitted that a court of law is not the proper venue to ventilate any controversy that borders on intra party or intra legislative squabbles. Counsel cited and relied on *Onuoha v. Okafor* (1983) 2 SCNLR 244 at 254, 263. The facts in support of the submissions are said to be as contained in paragraphs 4 - 8, 12-17 of the affidavit in support of the originating summons and exhibits B, C, C1 and C2 attached thereto. Learned counsel also referred to paragraphs 4, 5, 7, 10-13' and 17 of the affidavit in support of the preliminary objection.

On the other hand, learned counsel for the respondent has submitted that the deposition of the respondent in the paragraphs referred to as well as the exhibits do not constitute intra party/intra legislative controversies. That even going by the reliefs sought it is clear that the matter is not intra party dispute. That the respondent is not a member of the Legislative Council

so he cannot be involved? j in intra legislative council dispute. Counsel then submitted that case of Onuoha v. Okafor (supra) cited by his learned friend is no? Relevant to the case on appeal and urged the court to resolve the issue in favour of the respondent.

I have gone through the record of proceedings including documents filed in the lower court and the submission of both counsel on this issue carefully.

My understanding of intra party dispute or controversy is a dispute between members of a political party within the said party. By the same token when we talk of intra legislative council dispute I understand same to mean a dispute within the Local Government Council members. However, when you look at the parties to this appeal there is no political party as a party to the action neither is the Ifelodun Local Government Council a party. Apart from that when you look at the questions for determination and the reliefs sought which had earlier been reproduced in this judgement there is nothing to show that the matter is an intra party or intra legislative Council dispute.

There is no evidence that Ifelodun Local Government Council is in factions resulting in the action now on appeal.

In dealing with this matter the learned trial Judge had this to say at page 100 of the record:

"On the submission that the issue before the court is intra party or intra legislative council affair and therefore not justifiable, I have gone through the originating summons with the supporting affidavits and other documents filed before me and it appears from the reliefs sought that the issue is more of law than politics. This is so because the 1st plaintiff is challenging as it were, the jurisdiction of the defendants particularly 2 and 3 with other members to pronounce a suspension Order on him.

This I believe is an issue which falls squarely under the general jurisdiction of courts which is provided for under section 272 of the Constitution of the Federal Republic of Nigeria, 1999. The purport of section 272(1) of the Constitution is that the court shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

It is instructive to note that in the papers filed by both parties in this suit, no political party or other person, not belonging to the Ifelodun Local Government Council has been mentioned as having any interest in the matter and the issue before the court is to the best of my knowledge, not that the 1st plaintiff cannot be removed as the Chairman of Ifelodun Local Government but that he has a legal right which has been infringed upon because the suspension was not done according to the law. This calls for determination by the law court. ..."

I agree with the learned trial Judge on this issue particularly as there is no evidence to the contrary on record. That being the case issue No. 2 is resolved against the appellants.

On issue No.3 learned counsel for the appellants referred to Order 38 rule 2 of the Kwara State High Court (Civil Procedure) Rules and submitted that the procedure of originating summons is limited to non contentious construction of an enactment or contract document.

That in the present case the facts deposed to in paragraphs 4,6, 7, 8 ,9, 12, 15, 16, 17 and 22 of the supporting affidavit are contentious because they raise issues of lack of fair hearing, improper constitution of the legislative council etc. That the appellants do -not need to file a counter affidavit to make the matters more; contentious as contended by the lower court since the paragraphs j referred to "are self evident controversial". Learned counsel then referred to Din v. A.-G., Federation (1986) 1 NWLR (Pt. 17) 471 at 486; Doherty v. Doherty (1968) NMLR 241 at 242; Olumide v. Ajayi (1997)8 NWLR (Pt. 517) 433 at 442 - 443; Osuagwu v. Emezi (1998)

12 NWLR (Pt. 579) 640 at 649.

That the respondent is fighting over the chairmanship of Ifelodun Local Government and the acts complained of also has to do with that Local Government. That if the reliefs sought are granted they will affect and bind the Local Government. Those from the facts all the appellants are officials and or agents of Ifelodun Local Government. That Ifelodun Local Government is a necessary, desirable and important party in the controversy. That the non-joinder of that Local Government is fatal to the case of the respondent since where a necessary and desirable party is not joined in an action the action remains incompetent and liable to be struck out. For I learned counsel cites and relies on *Chiga v. Umaru* (1986) 3 NWI (Pt. 29) 460 at 469; *Green v. Green* (1987) 3 NWLR (Pt. 61) 480-493; *Jadesimi v. Okotie - Eboh, in re: Lessey* (1989) 4 NWLR 113-113; *Ngwu v. Onuigbo* (1999) 13 NWLR (Pt. 636) 512 at 512; *Amuda v. Ajobo* (1995) 7 NWLR (Pt. 406) 170 at 182.

Learned counsel then referred the court to exhibits 1, 2, 3, and 4 attached to the notice of preliminary objection. That the exhibits show clearly that the acts complained of were earned out on behalf of Ifelodun Local Government which is a disclosed principal and that an agent cannot be sued when the identity of the principal is known relying on *West African Shipping Agency v. Kalla* (1978) 3 SC 21 at 28; *Leventis Tech, Ltd. v. Petrojessica Ent. Ltd.* (1999) 6 NWLR (Pt. 605) 45 at 56. Learned counsel then urged the court to resolve the issue in favour of the appellants and strike out the case. On his part, learned counsel for the respondent submitted that this case is a proper one for originating summons procedure because it is for the interpretation of Kwara State Local Government Law No.6 of 1999 and that it does not involve substantial dispute of contentious facts, relying on Order 1 rule 2(2) of the Kwara State High Court Procedure Rules, 1989. That from the facts, the questions and reliefs put before the court, originating summons is the applicable procedure and urged the court to so hold.

On the non-joinder of Ifelodun Local Government council learned counsel submitted that a litigant joins a party from whom reliefs are claimed or the party who wronged the litigant concerned. At the respondent was the Chairman of the Executive Arm of Ifelodun Local Government he has no grievance against the Local Government and as such he cannot join it.

That the Local Government can only be sued if under the law under consideration the Local Government was empowered to take responsibility for the acts of the appellants and the case cannot be effectively determined without its presence.

That it is absurd to say that the appellants are agents of the Local Government because the Kwara State Local Government Law No.6 1999 and the 1999 Constitution do not make the legislative council of a Local Government an agent of the Local Government.

By way of an alternative submission learned counsel submitted that non-joinder of the Local Government is not fatal to the case of the respondent and urged the court to resolve the issue in favour of the respondent.

I have carefully gone through the processes filed in the lower and referred to in argument of both counsel on this issue. Order 38 Rule 2 of the Kwara State High Court (Civil Procedure) 1989 relied upon by learned counsel for the appellants provides as follows:

"2. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed."

On the other hand, learned counsel for the respondent cited and relied on Order 1 rule 2(2) of the same Rules of court which provides as follows:

- (2) Proceedings may be begun by originating summons where;
- (a) The sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or any deed, will, contract or other document or some other question of law, or
- (b) There is unlikely to be any substantial dispute of fact."
(Italics supplied by me)

It is trite law that the originating summons procedure is adopted in circumstances stated in the rules of court reproduced above. See *National Bank of Nigeria v. Alakija* (1978) 9 - 10 SC 59, (1978) 2 LRN 79; *Oloyo v. Alegbe* (1983) 2 SCNLR 35, (1983) 7 SC 85 at 215 - 216; *Din v. A.-G., Federation* (1986) 1 NWLR (Pt. 17) 471 at 485 -486.

It is however very important to note that the law does not envisage a situation "Of no dispute at all in a proceeding commenced with originating summons but that of absence of substantial dispute. In other words, there can be disputed facts but such dispute must not be substantial. Where the disputed facts are substantial then originating summons procedure is inappropriate; the proper mode of commencing such an action is by writ of summons so that pleadings can be filed and exchanged to determine the issues in controversy between the parties.

However, going through the questions for determination and the reliefs claimed in this action as well as the facts disclosed in the supporting affidavit, I agree with the learned trial Judge when he said at page 103 of the record that:

"When reference is made to the four questions for seen that the 1st plaintiff is challenging the powers of the 2nd and 3rd defendants with other members of the council to suspend him from office and that they could not have appointed his vice as the Acting Chairman in view of the provisions of the Local Government Law, No.6 of 1999."

This is the true position. When you look at the facts, it is very clear that the facts as presented by the respondent in the supporting affidavit; there was no counter affidavit by the appellants, cannot be said to be in substantial dispute since it is agreed that the respondent was at the material time the Chairman of Ifelodun Local Government and was suspended from the office vide exhibit A which states thus:

"IFELODUN LEGISLATIVE COUNCIL P.M.B. 1 SHARE

TEL: 031-223287

OURREF YOURREF DATE. 24/4/01

The Chairman

Ifelodun Local Government

Share

Dear Sir

SUSPENSION FROM OFFICE

This is to bring to your notice sir that at the Council sitting of Ifelodun Local Government Legislative council held on 24th April, 2001, it was unanimously resolved that you have been suspended indefinitely because of your maladministration, gross misconduct, and abuse of office which has been inimical to the progress of the Local Government. This action is backed up with the power conferred on us by section 26 subsection 4 of the Kwara State Local Government Law 1999.

Attached with this letter is the signatures of the Legislators that affect this suspension. Meanwhile the Vice Chairman has been mandated by the council to take up the running of the affairs of the Local Government pending the outcome of investigation to be carried out by an investigation panel to be set up in due course by the Chief Judge of the State.

As a result of this development you are advised to surrender all the council properties in your possession with immediate effect. Such properties should include vehicles, offices, official quarters and other relevant documents.

We sincerely hope you will comply with this directive.

Thanks.

Yours faithfully,

Sgd.

Hon. Alh. Lateef A. Quadri

Hon. Speaker

sgd.

Faseyi O. Oluyemi Council clerk

CC: The Commissioner of Police Kwara State Command."

That the suspension is said to be grounded on the powers? derived from Law 6 of 1999 which the respondent wants interpreted" by the court. I can go on and on but it is demonstrably clear i this is a proper case for the originating summons proceedings "there is unlikely to be any substantial dispute of fact."

Turning now to the issue as to whether Ifelodun Government is a necessary and desirable party to the action and that its non-joinder is fatal to the case of the respondent, I have reproduced in extensor exhibit A which is the gravamen of the ca of the respondent - the cause of action so to say. From exhibit i certain facts emerge which includes the following:

- (a) It was the Legislative Council of Ifelodun Local Government that suspended the respondent from office as Chairman of the Local Government, and
- (b) The 2nd and 3rd appellants who signed the exhibit < not do so in their personal capacities but as designate officers of that council. When you look at the defendants on the originating summons at page 39 of the record you find the following:

- “1. ENGINEER RAPHAEL JIMOH
(Vice Chairman Ifelodun Local Government Council of Kwara State).
- 2. HON. ALHAJ1 LATEEF A. QUADRI
- 3. FASEYI O. OLUYEMI."

Apart from the 1st defendant who is described as the Vice Chairman, the 2nd and 3rd defendants are not described. In short, even though they signed exhibit A in a designated capacity, that was not reflected on the summons so it is clear that the defendants were sued in their personal capacities. This is also reflected in the affidavit in support of the originating summons. In fact the respondent has not pretended to have sued them as representing either the council or members of that council or the local government itself.

I am of the considered view that in view of the facts of this case, Ifelodun Local Government ought to have been joined in the proceedings as a necessary and desirable party particularly as the 2nd and 3rd appellants did not act in their personal capacities when they signed exhibit A but on behalf of an arm of the Local Government. In fact the Ifelodun Local Government is the main party to the action. It does not matter that the respondent still considered himself to be the Chairman of that Local Government despite exhibit A but that does not change the legal position Introduced by exhibit A. His reliefs are against that government Hot the individuals who clearly acted on its behalf and it is my considered view that the non-joinder Local Government is fatal to We case of the respondent. I am therefore of the view that the learned trial Judge erred in holding otherwise in view of the facts on record. Learned counsel for

the respondent knows that what I have said is correct because that is what explains his inability to get the Ifelodun Local Government to obey the court Order granted in favour of his client in the case.

On the fourth and final issue for consideration learned counsel for the appellants submitted that the issue whether the suspension of the respondent was justifiable under the Constitution or any other law is a live issue in the substantive suit which ought not to have been determined by the trial court during the consideration of the preliminary objection. Learned counsel cited and relied on *Ejukurlem v. Ejukurlem* (1994) 8 NWLR (PT.365)552 at 663 and 664, and urged the court to resolve the issue in favour of the appellants.

On his part, learned counsel for the respondent submitted that the lower court did not decide the merit of the case at the interlocutory stage as canvassed by his learned friend in that the appellants can still present to the lower court any law that empowered them to suspend the respondent. He then urged the court to resolve the issue against the appellants.

The complaint of the appellants giving rise to the issue under consideration is to be found at pages 99 - 100 of the record where the trial court while distinguishing this case from the case of *Balarabe Musa v. Kaduna State House of Assembly* (supra) stated thus:

"Furthermore, the case of *Balarabe Musa*, the appellant in the case, who was then Governor of Kaduna State, was fundamentally different from the instant case before the court. While the case of *Balarabe Musa* was on issue of impeachment or removal which was covered by section 170(10) of the 1979 Constitution, the present case is that of suspension of the 1st plaintiff/respondent by the defendants/applicants for which there is no provision under the Constitution or any law whatsoever." (Italics supplied)

I agree with the learned counsel for the appellants that the gravamen of the case of the respondent as contained in the reliefs in the originating summons is the challenge of his suspension by the appellants as the Chairman of Ifelodun Local Government which suspension is said to be grounded on law No. 6 of 1999 of the Kwara State.

See the questions for determination and the reliefs claimed earlier reproduced in this judgment.

Having regards to the questions submitted to the lower court for determination and the reliefs claimed, it is my considered view that the lower court decided the merit of the case when it stated that "there is no provision under the Constitution or any law whatsoever" in support of the suspension of the respondent by the appellants. That error has in effect disposed of the substantive case at the interlocutory stage which is a method frowned upon by the law; the submission of learned counsel for the respondent to the effect, - that the appellants can later submit to the trial Judge any law that authorises the suspension of the respondent is misconceived, a kind of medicine after death apart from confirming the fact that for now the trial court had decided the matter in that the suspension is not covered by the Constitution or any other law whatsoever. It is therefore my view that this issue be and is hereby resolved in favour of the appellants.

The effect of the resolution of issue No.4 in favour of the appellants would have been to remit the case to the lower court for hearing de novo before another Judge but for the fact that the Ifelodun Local Government which ought to have been sued but not joined has rendered the suit fundamentally defective. Accordingly, it is my considered view that the proper Order to be made under the circumstance is that of allowing the appeal in part and striking out the case of the respondent for non-joinder of Ifelodun Local Government.

Appeal allowed in part and suit No. KWS/OM/11/2001 is hereby struck out with no order as to cost.

OKUNOLA, J.C.A.: I have had the privilege of a preview of the leading judgment just read and delivered by my learned brother, Onnoghen, JCA.

The appeal is meritorious and deserves to be allowed in part. It is in this vein that I am in total agreement with the reasoning and conclusion reached in the leading judgment that the appeal should be allowed in part. I also allow the appeal in part, since the Local Government to be joined is not joined. I also abide by the consequential orders made in the leading judgment including the order made as to costs.

MIKA'ILU J- J.C.A.: I agree with the judgment of Justice W. S. N. Onnoghen that the appeal shall be allowed in part. I will comment on the forth issue raised by the learned counsel for the appellants. By the writ of summons the first issue for determination before the trial court is as follows:

“1. Whether the 2nd and 3rd defendants and/or the members of Ifelodun Local Government Legislative Council have the power to suspend the 1st plaintiff from office as the chairman of Ifelodun Local Government Area of Kwara State pursuant to sections 26(4) of the Kwara State Local Government Law or nay of its provisions therof.”

When passing the decision on preliminary objection as to the jurisdiction of the trail court to try the case, and in distinguishing the case of Balarabe Musa v. Speaker, Kaduna House or Assembly (182) 3 NCLR 450 with the present case the trial Judge has this to say:

“... the present case is that of suspension of the 1st plaintiff/respondents by the defendants/applicants for which there is no provision under the constitution or any law whatsoever.”

By the above the trial judge has passed a decision on the issue in the main case. Thus he decided the merit of the case in interlocutory matter. This type of practise is wrong and the trial courts should always be cautious in passing a decision on an interlocutory matter not to pass decision on the case to be tried.

Appeal allowed in part.

Appeal allowed in part.