IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 11TH APRIL, 2025
BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA	**JUSTICE, SUPREME COURT**
ADAMU JAURO	**JUSTICE, SUPREME COURT**
JUMMAI HANNATU SANKEY	**JUSTICE, SUPREME COURT**
OBANDE FESTUS OGBUINYA	**JUSTICE, SUPREME COURT**
ABUBAKAR SADIQ UMAR	**JUSTICE, SUPREME COURT**

SC/614/2018

BETWEEN:

1. **COMRADE AUSTIN OSAKWE**
2. **DR. ESTHER AIRIA**
3. **BARR. GREG AGHO**
4. **COMRADE OMOHUDE AGHO**
5. **FOUNDATION FOR GOOD GOVERNANCE AND SOCIAL RIGHTS ACTION (FGGSC)**
6. **GENDER RIGHTS ACTION (GRA)**
7. **HEALTH AND ENVIRONMENTAL CONCERNS (HEC)**
8. **ANTI CORRUPTION REVOLUTION (ACR)**
9. **MEDIA AWARENESS GROUP (MAG)**
   (For and on behalf of Civil Society Groups in Edo State).

APPELLANTS

AND

EDO STATE AGENCY FOR THE CONTROL OF AIDS (EDOSACA) ..... **RESPONDENT**

JUDGMENT
(Delivered by MOHAMMED LAWAL GARBA, JSC)

By way of originating summons filed on the 4th of February, 2014, the Appellants instituted the suit No. B/17 M/2014 before the High Court of Edo State, Benin, (trial court) against the Respondent in which they sought for the determination of the following question:-

> ***"Whether the information sought after by the Applicant (sic) ought to be granted under the Freedom of Information Act, 2011."***

The summons was brought pursuant to Section 20 of the Freedom of Information Act, 2011 (FIA), chapter IV of the Constitution of Federal Republic of Nigeria, 1999 (as amended), Article 9 of African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap 10, LFN1990 (ACHPR) and Section 6 (6)(b) of the 1999 Constitution (as amended) and sought for reliefs as follows:-

A. **"DECLARATION that compulsory disclosure of information by agency of government is governed by the provisions of the Freedom of Information Act 2011.**

B. **DECLARATION that the Respondent must release information relating to details of the revenue**

expenditure of its agency between the periods of 2011-2013 to the applicants.

C. DECLARATION that the respondent must release information relating to details of the subventions of the Edo State Government to its agency between the periods of 2011-2013 to the applicants.

D. DECLARATION that the respondent must disclose information relating to details of the grant-aid from corporate and private donors to its between the periods of 2011-2013 to the applicants.

E. DECLARATION that the details of the contracting firms that handled the contract of printing and supplies for the agency and the amount the contract was awarded must be disclose to the applicant.

F. DECLARATION that the details of the documents detailing the criteria used to place an individual organization in the selection list for grants and the criteria used to remove an individual organization from the selection list for must be disclose to the applicants.

G. DECLARATION that the details of the current number of civil society groups on the selection list for grants and current number of civil society groups in Edo State on the list for grant must be disclose to the applicant.

H. DECLARATION that the details of the individual organization on the list and documents showing that same have been forwarded to the donor be disclose to the applicants.

I. DECLARATION that the details of the local and international donors from the year 2011 till date and

the program and financial report sent to the donors must be disclose to the applicant.

J. DECLARATION that the failure of Respondent to disclose information requested by the applicants is illegal, oppressive, and vexatious.

K. AN AWARD OF N500,000.00 (FIVE HUNDRED THOUNSAND NAIRA) against the Respondent as general and/or exemplary damages/compensation for the unlawful denial of information requested for by the Applicants from the date of judgment and interest therein at 10% per annum until judgment sum is fully liquidated against the Respondent.

L. The costs of instituting and prosecuting this action, as assessed by the applicant in the sum of N10,000,000.00 (Ten Million Naira) against the respondent.

M. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honaurable Court may deem fit to make in the circumstances."

After considering the Affidavit evidence and addresses from the parties to the summons, the trial court, in a judgment delivered on the 29th of April, 2014, answered the question in favour of the Appellants and granted the reliefs A – J above.

Dissatisfied and aggrieved by the judgment of the trial court, the Respondent appealed against it before the Court of Appeal, Benin

Division (court below) which allowed the appeal by a majority of 2:1, on the ground that Edo State has not enacted a law similar to Freedom of Information Act, 2011 and so the Respondent was not bound to comply with provisions of the Act which is only applicable to public records and archives of the Federation and not of States.

Expectedly, the Appellants were not pleased with the majority decision of the court below and brought this appeal vide the Notice of appeal filed on the 18th of May, 2018 on eight (8) grounds from which two (2) issues are said to arise for decision by the court, in the Appellants' Brief filed on 25th October, 2018. The issues are:-

> *"1) Whether the Court of Appeal was right in law when it held that the Freedom of Information Act enacted by the National Assembly pursuant to section 4(1)(2)(3) and (4)(a) and (b) of the Constitution of Federal Republic of Nigeria 1999 (as amended) is not binding and applicable in Edo State under the doctrine of covering the field (grounds 1, 2, 3 & 4 of the Notice of Appeal).*
>
> *2) Whether the Court of Appeal was right in law when it held despite the provisions of item 4 in part 2 of the 2nd Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Freedom of Information Act enacted by the National Assembly as*

> ***it relates to Public Records and Archives is not applicable to the Public Records and Archives of Edo State. (Grounds 5, 6, 7 and 8 of the Notice of Appeal).***"

In the Respondent's Brief filed on the 16th October, 2023, deemed at the hearing of the appeal on the 21st January, 2025, in addition to the appellants' issues which were adopted in slightly different form, an issue is submitted for determination of the preliminary objection, notice of which was filed on the 12th October, 2023 by the Respondent. The issue questions:-

> ***"Whether the trial court had the requisite jurisdiction to entertain the suit the Appellant (sic) in the first instance."***

Being an issue, which challenges the jurisdiction of the trial court to adjudicate over the suit or action from which this appeal emanates, due to its intrinsic nature and in line with trite position of the law thereon as stated and re-stated by this court in countless cases, it is prudent to determine it first before a consideration of the other issues on the merit of the appeal. See Onyema v. Oputa (1987) 6 SCNJ, 176, Okesoju v. Lawal (1991) 1 NWLR (pt. 170) 661 (SC), Tiza v. Begha (2005) 5 SC (pt. II) 1, Cotecna International Ltd. v. Ivory Merchant Bank Ltd. (2006) All FWLR

(pt. 315) 26 (SC), Nwankwo v. Yar'adua (2010) 12 NWLR (pt. 1209) 518 (SC).

The Respondent's argument on the objection, relying on Madukolu v. Nkemdilim (1962) 2 SCNL, 341 and Emeka v. Okadigbo (2012) 18 NWLR (pt. 1331) 55 (SC), is to the effect that for a court to have the requisite jurisdiction to adjudicate over a matter, there must be no feature in the case which prevents it from exercising the jurisdiction and that the matter must have been instituted by due process of the law. On the authority of Moses v. NBA (2019) 8 NWLR (pt. 1673) 59 at 70 – 71, Socio-Political Research Dev. V. Minister FCT (2019) 1 NWLR (pt. 1653) 313 at 345, it is submitted that a feature that robs a court of jurisdiction to hear a matter is where one of the parties lacks the capacity to sue or be sued. In further submission, learned counsel said the law is settled that there are two categories of persons who can sue or be sued in a legal action, i.e natural persons and artificial persons with juristic personality, relying on A. G. Federation v. ANPP (2003) 18 NWLR (pt.

851) 182 at 208 and Eneyo v. Ngere (2022) 10 NWLR (pt. 1838) 263 at 294 – 295.

He then refereed to paragraph 4 of the Originating Summons and argued that the Appellant did not state that the Respondent is a body corporate capable of suing or being sued in its name or deposed to the fact that the Respondent is a juristic entity capable of being sued. According to counsel, the Respondent was not established by any law of Edo State, an Act of the National Assembly or incorporated under the Companies and Allied Matters Act and so "the Appellant" is not a juristic entity capable of being sued.

The court is urged, in conclusion, to hold that the trial court lacked jurisdiction to hear the suit as constituted as the Respondent is not a juristic entity and to strike out the suit.

In the Appellants' Reply Brief filed on the 18th of September, 2023, deemed at the hearing of the appeal, pages 75 – 76 of the Record of appeal are cited and it is submitted that the objection was raised before the trial court and was determined by that court. Learned Counsel said there was

no appeal against that decision and so it cannot be raised without leave of court and that the issue of an entity's juristic personality is not typically considered a locus standi one; citing Bank of Baroda v. Iyalabani (2002) 13 NWLR (pt. 785) 551 (SC) at 578, C.G.F. Ltd. v. Aminu (2015) 7 NWLR (pt. 1459) 7 (SC) 577 at 591 – 592 and Gbadomosi v. Dairo (2007) 3 NWNR (pt. 1021) 282 at 302 (SC). It is also the case of the Appellants' Counsel that the Respondent was established by the Edo State Agency for the |Control of Aids (Establishment Etc) Law, 2009, as a body of corporate with juristic capacity to sue or be sued in its corporate name, under Section 1(1).

A copy of the Law is attached to the Reply Brief which, on the authority of Finih v. Imade (1992) 1 NWLR (pt. 219) 511 at 542, the court has a duty to take judicial notice of.

Finally, it is submitted that the Respondent is a juristic person capable of suing and be sued and so the objection is misconceived.

The court is urged to strike it out.

Resolution:

Learned Counsel for the Respondent is right that the law is settled that for a legal action in a court of law to be properly constituted as to parties in order to be competent and valid to properly invoke the requisite jurisdiction of a court to adjudicate over it, there must at least be a competent claimant/plaintiff and a competent defendant, each with the necessary legal capacity or standing in law, to sue or be sued in such a case or legal action. The law is also trite that, broadly, there are two (2) classes of persons who possess the legal capacity to sue or be sued in a legal action before the courts in Nigeria, as follows:-

(a) Natural and living persons, or

(b) Artificial persons created by statutes and specifically conferred with the juristic personality and capacity to sue or be sued in its name as a body corporate or entity. An artificial person is a body, institution, agency, corporation, etc, by whatever name called, which is invisible; intangible being and only existing in the bosom of law. It may be aggregate or sole.

No legal action can therefore be brought by or against any person/party another than a natural person/s, unless such a party has been given by statute or law, expressly or impliedly, either a legal person under the name by which it sues or is sued or to be sued in its given name. See, among battalions of authorities on the law, Ndoma-Egba v. Govt., Cross River State (1991) 4 NWLR (pt. 188) 773, Abu v. Ogli (1995) 8 NWLR (pt. 413) 352, Fawehinmi v. UBA (No.2) (1992) 2 NWLR (pt. 105) 558, Maerskline v. Addide (2001) 1 NWLR (pt. 694) 405, ANPP v. A.G. Federation (supra), Ataguba, & Co. Ltd. v. Gura Nigeria Ltd. (2005) All FWLR (pt. 256) 1219, (2005) 2 SCNJ, 139, Gov. Kwara State v. Lawal (2007) 11 NWLR (pt. 1057) 347, Adm./Executor, Abacha Estate v. Eke-Spiff (2009) 7 NWLR (pt. 1139) 97 at 126, F.U.T., Minna v. Dr. Adaeze (2011) LPELR-9053.

On the facts of the case before the trial court, the issue of the locus standi of the Respondent as the sole and only party sued as a Defendant in the

Appellants' suit, goes directly to question the competence of the suit and in consequence, the jurisdiction of the trial court to adjudicate over the suit. This is because, as stated above, for there to be a valid and competent legal action before a court of law, there must be at least be a competent claimant/plaintiff with the requisite legal capacity or standing to sue and a competent Defendant, also with the necessary legal capacity or standing in the eyes of the law, to be sued in the action. In the absence of competent claimant/plaintiff and/or a competent Defendant there cannot, in law, be a competent legal action or suit before a court of law over which its jurisdiction could properly be invoked.

Although, strictly speaking, locus standi might be different from juristic personality of an artificial person/party, in the sense that the latter relates to the legal existence of the party and not only the legal standing or right to sue or be sued, the two (2) are invariably such that the absence one renders the other ineffective. The legal effect and consequence of the absence of both the juristic personality and the locus standi to sue or be sued, is to render a legal action incompetent in law, thereby depriving a

court of law, the requisite jurisdiction to adjudicate over it. Both therefore go to the jurisdiction of the court where an action is constituted by single parties as claimant/plaintiff and Defendant.

Where a suit or action is constituted with multiple parties as plaintiffs/claimants and Defendants, the absence of either juristic personality or locus standi will only affect the particular party in question, but not the competence of the suit/action or the jurisdiction of the court to adjudicate over it. The affected party, if successfully challenged, would be struck out of the suit/action, as the inclusion of an incompetent party along with competent parties to an action only amounts or improper constitution of the suit or action as to the parties which does not affect the competence of the suit or action. See L.S.B.P.C. v. Purification Tech. Nig. Ltd. (2013) 7 NWLR (pt. 1352) 82 (SC), F.M.C., Ado- Ekiti v. Alabi (2012) 2 NWLR (pt. 1285) 411.

In the action of the Appellants at the trial court which was brought against a sole Defendant (Respondent herein), the absence of juristic personality or/and locus standi to sue or be sued on its part, will render the action

incompetent and deprive that court of the jurisdiction to adjudicate over same.

It may be recalled that the fulcrum of the counsel for Respondent's objection is that the Respondent was not established by any law of Edo State, Act of the National Assembly or incorporated under the companies and Allied Matters Act and so is not a juristic entity capable of being sued.

There is no record in the Record of Appeal that the objection was specifically raised in the proceedings before the trial court. Rather it was the Defendant (Respondent) who raised objection on the status of the Appellants, as Applicants, which the trial court at pages 75 – 76 of the Record of appeal, referred to in the Appellants' Reply Brief, declared to be of no consequence. That objection is different from the objection raised by the same Respondent here challenging its own juristic personality and locus standi to be sued in the Appellants' action before trial court. The general position of the law, which is trite, is that a genuine issue of substantive jurisdiction of a court to adjudicate over a case or matter, as different from the procedural jurisdiction, can be raised at any or all stages

of the proceedings in the case or matter from the trial court to this court as the final court in the judicial hierarchy, either by any of the parties or the court on its own motion. This position of the law is predicated on the fundamental and crucial nature of the issue of substantive jurisdiction and the courts being creatures of statutes, including the constitution, derive their judicial power and authority to take cognizance and properly adjudicate over causes of action/matters and parties specifically provided for in the relevant statutes or laws. No court has the vires to assume and purport to exercise substantive jurisdiction over a case or matter in the absence of requisite statutory provisions specifically vesting it or conferring such jurisdiction on it. The parties too, cannot by agreement or acquiescence, confer or vest a court with valid jurisdiction to entertain and adjudicate over a case or matter where it was not statutorily conferred or vested. See Odom v. PDP (2015) 6 NWLR (pt. 1456) 527 (SC), Oni v. Cadbury Nig. Ltd. (2016) 9 NWLR (pt. 1516) 80 (SC), Mainstreet Bank Capital Ltd. v. Nig. RE (2018) 14 NWLR (pt. 1640) 423 (SC).

In the premises of the above sacrosanct position of the law, it is never too early or too late for the genuine issue of the substantive jurisdiction of a court to adjudicate over a case or matter to be raised in the proceedings of the case or matter.

This court, in the case of Mil. Gov., Ondo State v. Kolawole (2008) 5 SCNJ, 37 had stated that the issue of jurisdiction, by whatever name or under any shade, can be raised at any stage, viva voce by any of the parties or the court suo motu, being one of hard law, vested by statute. See also NDIC v. NBC (2002) 7 NWLR (pt. 766) 272 at 292, Nuhu v. Ogele (2003) 12 SC (pt. 1) 32, (2003) 18 NWLR (pt. 852) 251 (SC), Agbiti v. Nig. Navy (2011) 4 NWLR (pt. 1236) 175 (SC), Manoma v. Dakat (2022) LPELR – 57834 (SC), Boko v. Nungwa (2019) 1 NWLR (pt. 1654) 395, Ngere v. Okumket XIV (2014) 11 NWLR (pt. 1417) 147 at 180. Lakanmi v. Adene (2003) FWLR (pt. 163) 24 (SC), Nwankwo v. Yar'Adua (supra), SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (pt. 1252) 317 (SC). The law therefore permits and supports raising the issue of jurisdiction of a court; trial or appellate, by either any of the parties or the court suo motu, in this

court, without the need to seek for and obtain prior leave of court to do so. See A. G. Kwara State v. Adeyemo (2017) 1 NWLR (pt. 1546) 210 (SC), Ikpekpe v. W.R. & P. Co. Ltd. (2018) 17 NWLR (pt. 1648) 280 (SC), Onemu v. Comm., Agric. & Natural Resources, Asaba (2019) 11 NWLR (pt. 1682) 1 (SC), Sulaiman v. FRN (2020) 18 NWLR (pt. 1755) 180 (SC). The issue of jurisdiction is not considered as and does not, in law, constitute a fresh issue on the authority of Anyanwu v. Ogunewe (2014) 8 NWLR (pt. 1410) 437, R. A. Oliyide & Sons Ltd. v. O. A. U. Ile Ife (2018) 8 (pt. 1622) 564 (SC), Osude v. Azodo (2017) 15 NWLR (pt. 1588) 293 (SC), Agbiti v. Nig. Navy (supra).

The issue raised by the Respondent's counsel on the juristic personality of the Respondent to be sued is proper and competent for determination by the court in the appeal.

Without the need to waste verbiage on the issue, I just need to point out that the "wind has been taken out of the sail" of the objection by the provisions of the Edo State Agency for the Control of Aids (Establishment)

Law No. 3, 2009 (2009 Law), cited and relied on by the Appellants in the Appellants' Reply Brief. Section 1 (1) of the 2009 Law provides thus:-

> ***"(1) there is hereby established an Agency to be known as the Edo State Agency for the Control of Aids for the management and control of HIV and AIDs (in this Law referred to as "the Agency") which shall under the Law be a body corporate with perpetual succession and common seal, and may sue or be sued in its corporate name."***

These simple, concise and straight forward words and language of the provisions have put the juristic personality/legal capacity of the Respondent to sue or be sued in a legal action before a court of law, in its corporate name, beyond argument for being specific. The only duty of the court in the circumstances, is not to embark on unnecessary task of interpretation or construction of the plain and unambiguous provisions, but to accord them their ordinary grammatical meanings and apply them to the facts and circumstances of this appeal. After all, the words, best express the real intention of the Edo State House of Assembly; the Legislature, in providing the 2009 Law for Edo State. See Ifezue v. Mbadugha (1984) SCNLR, 427 at 447, (1984) 5 SC, 1, (1984) All NLR, 256, Kotoye v. Saraki (1994) 7 NWLR (pt. 357) 414 (SC), Dyktrade Ltd.

v. Ominia Nig. Ltd. (2000) 12 NWLR (pt. 680) 1 (SC), Adewunmi v. A. G., Ekiti State (2002) 2 NWLR (pt. 751) 474 at 512, Idika v. Uzonkwu (2008) 9 NWLR (pt. 1091) 34, PDP v. CPC (2011) 17 NWLR (pt. 1277) 522 (SC), Uwazurike v. A. G., Federation (2007) 8 NWLR (pt. 1035) 1, (2007) 2 SC, 169. With the express provisions in Section 1 (1) of the 2009 Law, the Respondent has been conferred and vested with requisite juristic personality and legal capacity to undertake a legal action before a court of law against other persons and also be proceeded against by other persons or sued in such legal action in its corporate name; "*Edo State Agency for the Control of Aids*". Since the Respondent was sued by the Appellants in the action or suit before the trial court in its corporate name, it was a competent party to be sued as a Dependent and the action or suit was properly constituted as to the parties to vest in and confer the requisite jurisdiction on that court to entertain and adjudicate over it.

In the result, for lacking in merit, the objection raised by the Respondent's counsel is dismissed.

I now deal with the issues formulated by the Appellant's counsel for decision by the court on the merit of the appeal. The two (2) issues simply question the majority decision of the court below that the provisions of the FIA, 2011 apply in and to all states of the Federation being an Act enacted by the National Assembly pursuant to the provisions of section 4 (1), (2), (3), (4) and (5) of the Constitution, relying on A. G., Ogun State v. A. G. Federation (1982) 13 NSCC, 11 and A. G., Abia State v. A. G., Federation (2000) 6 NWLR (pt. 763) 264 at 328.

It is submitted that the majority decision of the court below was wrong on the application of FIA, 2011 and the doctrine of covering the field which applies to laws enacted by both National Assembly and the States' Assemblies on the same subject matter. Further, that the doctrine applies in such cases as the Appellants' and not only where there is in consistency between the laws enacted by the National and States' Assemblies. It is the case of the Appellants that the application of the doctrine of covering the field to states laws does not erode the power and right of States Assemblies to legislate on subject matters of an Act enacted by the

National Assembly, citing the cases of A. G., Federation v. A. G., Lagos State (2013 6 NWLR (pt. 1380) 249 and INEC v. Musa (2003) 3 NWLR (pt. 806) 72.

The Appellants maintain that the provisions of FIA, 2011 apply to all public records and archives of Government in all states of the Federation and not only to those of the Government of the Federation in line with item 4, part 2 of the second schedule to the Constitution to which items 5 in part 2, of the schedule, are subjected. Ebhoata v. P.I. & P. D. Co. Ltd. (2005) 15 NWLR (pt. 948) 260 at 283, A. G., Anambra State v. A. G. Federation (1993) 6 NWLR (pt. 302) 692 at 708 and Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 517 at 580 are referred to on the import of the words "subject to" when used in statutes. Reference is also made to the earlier decision of the court below in Appeal No. CA/AK/4/2017 delivered on the 27th of March, 2018 which held that the provisions are applicable to public records in all states in Nigeria on the doctrine of covering the field.

On the authority of Egbo v. Laguma (1988) 3 NWLR (pt. 80) 109 at 122 and Onagoruwa v. State (1992) 5 NWLR (pt. 244) 713 at 730 and 733, the court below is said to be bound by its earlier decision and so was wrong in the majority decision appealed against.

In conclusion, the court is urged to allow the appeal and set aside the said decision.

The arguments of the Respondent on the issues are that the majority decision of the court below is right that the doctrine of covering the field is not applicable to the case of the Appellants and that the provisions of FIA, 2011 are not applicable to public records of Edo State Government but only to those of the government of the Federation.

A. G. Lagos State v. A. G. Federation (supra) and Section 29 of FIA, 2011 are cited for the argument that if the provisions of the Act are to be binding on the states, the offices of the Attorney-General of States would be by-passed contrary to the principle of Federalism providing for smooth running of government. The case of Amalgamated Trustees Ltd. v. Assoc. Discount House Ltd. (2007) 15 NWLR (pt. 1056) 118 at 167 is also

referred on the construction of statutes or constitution and in conclusion, the court is called upon on, to dismiss the appeal.

The arguments contained in the Appellants' Reply Brief on the above submissions are mere further arguments of the issue and not replies that are necessary from the Appellants in answer to the Respondent's arguments.

Resolution:

The decision in the lead majority judgment of the court below on the issue is premised on the following reasoning; at pages 230 – 231 of the Record of appeal.

> **"Flowing from the above cited authorities, my humble stance is that under the concurrent legislative list, both the National Assembly and the House of Assembly of a state have concurrent powers to legislate on matters listed within their respective purview but by virtue of Section (5) of the 1999 constitution, where there is inconsistency between such similar enactments, that of the National Assembly shall prevail to the extent of the inconsistency in the enactment by the State House of Assembly.**

> **In the instance case, the Edo State House of Assembly is yet to make any law pertaining to or similar to the Freedom of Information Act 2011 in which case the issue of inconsistency does not rise and until such law is enacted in Edo State the Appellant is not obliged to comply with the Respondents request to supply them with records and other details as listed in the Originating Summons."**

Earlier on, at page 227 of the Record of Appeal, the majority judgment had held, inter alia, that:-

> **"I therefore agree with the submission of the learned counsel for the appellant that the law made by the National Assembly in respect of archives and public records is only applicable to the public records and archives of the federation whilst any law made by the House of Assembly of a state will apply only to public records and archives in that state."**

As can be discerned from the above position by the court below, even though it concedes that archives and public records are on the concurrent Legislative List as items over which both the National and State Assemblies are vested with the requisite legislative power and authority to legislate under the provisions of Section 4 (4)(a) and 4 (7) (b) of the Constitution, it insists that the FIA, 2011; an Act enacted by the National Assembly on the subject of public records, does not apply and is not

applicable to public records in Edo State, on the ground only that no law was enacted by the House of Assembly of that State on the subject. In addition, that the FIA, 2011 does not provide for application to the state, but only to public records of the Federal Government in line with the principle of federalism, relying on the opinion of the renowned Prof. of Constitutional Law and Author; Nwabueze, SAN that each of the National and State Assemblies has "*exclusive power*" to legislative on public records for the "Federation" and "State Government"; respectively.

The provisions of Section 4 (1), (4) (a) and (4) (7) (b) of the Constitution around which the arguments revolve are in the following terms:-

> ""**4.- (1) The legislative powers of the federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.**
>
> **(4) (a) any matter in the Concurrent Legislative List set out in the first column of part II of the Second Schedule to this constitution to the extent prescribed in the second column opposite thereto;**
>
> **(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say -**

> **(b) any matter includes in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto;"**

Clearly, these provisions are un ambiguous, simple and plain in both tenor and language to be accorded their ordinary and grammatical meanings without the need for interpretation or construction, being of the grund norm and fountain of all laws in Nigeria vide authorities like A. G., Bendel State v. A. G. Federation (1981) 10 SC, 1, (1981) 1 FNLR, 179, Ishola v. Ajiboye (1994) 6 NWLR (pt. 352) 506 (SC), Marwa v. Nyako (2012) 6 NWLR (pt. 1296) 199 (SC), Basinco Motors Ltd. v. Woermann (2010) 10 WRN, 1 at 29 (SC), Coca-Cola Nig. Ltd. v. Akinsanya (2017) 17 NWLR (pt. 1593) 74 (SC), Nwazurike v. A. G. Federation (2007) 8 NWLR (pt. 1035) 1, (2007) 2 SC 169, PDP v. INEC (2011) 17 NWLR (pt. 1277) 522 (SC).

The provisions in section 4 (1) vest the legislative powers of the "*Federation*" in the National Assembly to make or enact laws, as provided for in the Constitution.

This is beyond argument.

The Constitution, for the purpose of its provisions, has precisely defined the phrase "Federation" used therein, in Section 318 thus:-

> ***""Federation" means the Federal Republic of Nigeria."***

Section 2 – (1) of the same Constitution provides that:-

> ***"Nigeria shall be one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria."***

By these provisions and the definition in Section 318, the National Assembly is vested with the authority and empowered, by dint of the provisions in Section 4(1), to legislate or enact laws for the "Federation" or "the Federal Republic of Nigeria" as provided therein.

The same definition of "Federation" was adopted by this court in the case of A. G., Rivers State v. A. G., Federation (2019) 12 NWLR (pt. 1652) 53 at 71 and 85 where, Okoro, JSC in the Lead Judgment, stated that:-

> ***"May lords, by Section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the word "Federation," means the Federal Republic of Nigeria."***

It follows therefore, that the National Assembly is clothed with the requisite legislative power and authority to enact laws as provided for in the Constitution for, to apply to and applicable in the whole of the Federation or Federal Republic of Nigeria, in respect of all the items or subject matters listed under the concurrent legislative list set out in part II of the Second Schedule to the Constitution. Item C-Archives paragraph 4 provides that:-

> ***"The National Assembly may make laws for the Federation or any part thereof, with respect to the archives and public records of the Federation."***

By the combined provisions in Section 4 (1), (4) (a) and items C-Archives of part II of the Second Schedule to the Constitution, the National Assembly is conferred with the legislative power and authority to enact or make laws on public records for the whole of the Federation or Federal Republic of Nigeria.

By the provisions in Section 2 (2) of the Constitution, the Federation of Nigeria consists of the States and the Federal Capital Territory (FCT), Abuja and so logically, the laws enacted or made by the National

Assembly on public records of the Federation or Federal Republic of Nigeria are for, are applicable and apply to all public records in the states and the FCT, Abuja, as constituents of the Federation or Federal Republic of Nigeria.

Perhaps, it should be pointed out that the provisions in Section 4(1), 4 (a) and part II of the Secord Schedule to the Constitution, deliberately chose to specifically use and employ the phrase "Federation" and NOT and instead of the "Federal Government" or "Government of the Federation". The public records provided for in the provisions therefore are not limited, restricted or confined to public records of the Government or Government of the Federation, as wrongly stated or held by the court below in the majority judgment appealed against. Since the Constitution itself has defined the particular and specific phrase "Federation" used and employed in its provisions, the law requires that in the application of the relevant provisions of the Constitution, the said definition, and no other, shall be adopted.

That is the law stated by this court in Anyah v. Iyayi (1993) 9 SCNJ, 53, (1993) 7 NWLR (pt. 365) 290 where it stated that:-

> ***"It is settled law that where a word phrase has been defined in an enactment, that meaning must be restricted to the words so defined in the statute, the definition governs."***

In the later case of Dipialong v. Dariye (2007) 8 NWLR (pt. 1036) 332, the court stated the law that:-

> ***"Where words or expressions in the provisions of a statute have been legally and judicially defined or determined, their ordinary meanings will definitely give way to their legally and judicially defined meanings. See also ACME Builders v. K. S.W.B. (1992) 2 NWLR (pt. 590) 288."***

In addition, the position was affirmed and restated in CIL Risk and Asset Management Ltd. v. Ekiti State Government (2020) 12 NWLR (pt. 1738) 203 at 276 (SC), Ifeanyi v. FRN (2018) 12 NWLR (pt. 1632) 164 (SC), APC v. Moses (2021) 14 NWLR (pt. 1796) 278 at 324 (SC).

In this appeal, there is no dispute that the FIA, 2011 was enacted and made by the National Assembly in exercise of its legislative power and authority under Section 4(1) and (4)(a) of the Constitution to legislate on public

records of the Federation or Federal Republic of Nigeria, as an item on the concurrent legislative list as set out in Part II of the Second Schedule to the Constitution. Section 318(1) of the Constitution describes what "concurrent legislative list" provided for therein, means, as follows:-

> ***""Concurrent legislative list" means the list of matters set out in the first column in part II of the Second Schedule to this constitution with respect to which the National Assembly and a House of Assembly may make laws to the extent prescribed, respectively, opposite thereto in the second thereof."***

In simple terms, the concurrent list provided for in the Constitution contains items specifically identified and set out in the schedule to the Constitution over which or in respect of which both the National and respective States Houses of Assembly are vested or conferred with the requisite legislative authority and power to make laws to the extent provided in the Constitution. The legislative authority and power conferred or vested on both the National Assembly and the State Houses of Assembly on the items listed and set out in concurrent list, is discretionary and exercisable at the instance of each of the Assemblies, subject only to the extent provided for in the Constitution; the provider

and giver of the discretion. Since the discretion provided for the Assemblies is concurrent on the items specified and set out in the part II of the Second Schedule to the Constitution, both the National and State Houses of Assemblies enjoy the competence, freedom and liberty to enact or make laws on the items (any one and all) at the same time; concurrently or at different times, as the case may be. See Reptico S. A. Geneva v. Afribank Nig. Plc (2013) 14 NWLR (pt. 1373) 172 (SC), Donald v. Saleh (2015) 2 NWLR (pt. 1444) 529, Dairo v. Reg. Trustees, T. A.D., Lagos (2018) 1 NWLR (pt. 1599) 62 (SC).

That being the Constitutional position, the likely hood that the concurrent laws enacted or made by the National Assembly and the respective States Assemblies on any of the items over which they are competent to legislate may be divergent, inconsistent with each other and even conflicting, was envisaged by the Constitution itself.

In that regard, Section 4(5) provides that:-

> *"(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."

These concise and precise provisions clearly intend to take care of and resolve any inconsistency or conflict that may arise between the laws enacted or made by the National Assembly, on the one hand, and the laws enacted or made by any of the State Houses of Assembly on the other hand, on the items set out in the concurrent legislative list over which each of them enjoys the authority and power to legislate.

In the event of such inconsistency or conflict between the laws made or enacted by the National Assembly on any of the items set out in the concurrent legislative list over which it shares the power and authority to legislate, the above provisions stipulate and prescribe that the laws made or enacted by the National Assembly shall prevail and supercede the laws made or enacted by the State Houses of Assembly, which shall be void, null and of no legal effect, to the extent of the inconsistency or conflict with the laws made or enacted by the National Assembly. This is the position expounded by this court in legion of cases, including A. G. Federation v. A. G., Lagos State (supra), A. G., Lagos State v. Eko Hotels

Ltd. (2018) 7 NWLR (pt. 1619) 578 (SC), Shema v. FRN (2018) 9 NWLR (pt. 1624) 337 (SC).

The doctrine of "covering the field", evolved and enunciated by the Nigerian courts in several of the decisions referred to by the learned counsel for the parties in this appeal, has its roots and foundation in the provisions of Section 4 (5) of the Constitution with origin from the pronouncements by foreign courts, such as in Davies v. Beason 133U. S. 333 (1889), Exparte Maclean (1930) 434 CLR, 472 and State of Victoria & Ors. V. Commonwealth of Australia & Ors. (1937) 5 CLR 618, cited in the Appellants' Brief.

As shown in A. G., Ogun State v. A. G., Federation (supra) which was followed in A. G., Abia State v. A. G., Federation (supra) where this court said:-

> **"Where identical legislations on the same subject matter are vitally passed by virtue of their constitutional powers to make laws by the National Assembly and a state House of Assembly, it would be more appropriate to invalidate the identical law passed by the state House of Assembly on the ground that the law passed by the National Assembly has**

covered the whole field of that particular subject matter"

"The doctrine of "covering the field" is usually applied between a law enacted by the Federal Legislative and that enacted by a state legislative on the subject. Thus, where identical legislations on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly, it would be appropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter."

(OGUNDARE JSC at page 435, paras D-F states thus:)

"In my respectful view where the doctrine of covering the field applies there is no inconsistency in the strict sense of that word. To be inconsistent, the two legislations, that is the Federal Legislation and that of the state must be mutually repugnant or contradictory of each other so that both cannot stand. The acceptance of establishment of the one implies the abrogation or abandonment of the other. See Black Law Dictionary, 6th Edition. The doctrine however, renders the paramount legislation predominant and the subordinate legislation goes into abeyance and remains inoperative so long as the paramount legislation remains operative. Where of course there is obvious inconsistency the subordinate legislation is void".

(Per)OGWUEGBU JSC at page 463-4665 paras R – H held thus:

"The doctrine of covering the arise where the issue is whether a state law on a concurrent subject matter can co-exist with a federal law on the same subject matter where the latter expressly impliedly evidence an intention to cover the whole field, or to provide a complete statement of the law governing the matter. In such a situation, can the state law co-exist with the Federal one in those circumstances? If the state law was enacted before the Federal Law was enacted first, does it existence be inconsistence with the Federal law was enacted first, does in existence preclude O prohibit the enactment of a further state law on the subject through the sanction of invalidity of inconsistency? Various criteria had been employed for determining inconsistency between Federal and State Legislation the question arose as far back as (1820) in the case of HOUSTON V. MOORE, 5 Wheat (1820) before the United Stated States Supreme Court. In that case, the court rejected the contention that after congress had legislated on a concurrent matter in a manner that evinced an intention to cover the entire ground, a state legislature could still legislate on it as its legislation was not in direct contradiction to that of congress. Mr. Justice Washington delivering the opinion of the court said:

"I am altogether incapable of comprehending how two distinct wills can, at the same time, be exercised in relation to the same subject, to be effectual, and at the same time compatible with each other. If they correspond in every respect, then the latter is idle and inoperative; if they differ, they must, in the nature of things, opposed each other, so far as they do differ..... This course of reasoning is intended

> **as an answer to what I consider a novel and unconstitutional doctrine, that in cases where the state government have a concurrent power of legislation with the national government, they may legislate upon any subject on which congress has acted, provided the two laws are not in terms or in their operation contradictory and repugnant to each other"**
>
> **The above decision was unequivocally affirmed twenty years after in the case of Prings v. Pennsyvania 16 Pet (1842) at 617-618 where Story, J, held as follow:**
>
> **"If congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislate have a right to interfere and as it where, by way of complement to the legislation of congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do as expressive of what its intention is as the direct provisions made by it"**

This exposition of the doctrine of covering the field in the event of concurrent laws validly enacted by the National Assembly and the States Houses of Assembly on any of the items on the concurrent legislative list provided for in the constitution, being inconsistent or in conflict with each

other such that it is practically not possible for the two (2) sets of laws to operate side by side at the same time, the law made or enacted by the National Assembly is taken and deemed to have fully and completely covered the particular item such that there is no material and relevant part or portion left out for the State Assemblies to exercise their discretionary and concurrent legislate authority and power to legislate. In such a situation, if a State House of Assembly makes or enacts a law, anyhow, such a law is rendered, putting it mildly, inoperative or ineffective, under the doctrine of covering the field by the law made or enacted by the National Assembly on the item in question, thereby rendering the State House of Assembly law, unnecessary. However, by the prescription in Section 4 (5), such a State House of Assembly law is unequivocally, declared void to the extent of its inconsistency with the law made by the National Assembly. Judicially, when a law or portion thereof is declared or pronounced to be "void," not by an ordinary statute, but by the constitution; the Father of all Statutes or Laws, it means that law or portion is null, of no legal effect and as if it was never made or enacted ab initio, to the extent of its inconsistency or conflict with the superior law made by

the National Assembly. It means that, it is the inconsistent part, portion or sections of the said law that is declared void by the provisions of Section 4(5) of the Constitution, and not the entire law; if there were other portions, parts or sections which are not inconsistent or in conflict with the law made by the National Assembly, though on the same item in the concurrent legislative list.

All the same, even where a part, portion or some sections of a law made by a State House of Assembly on an item in the concurrent legislative list is/are not inconsistent or in conflict with the law made by the National Assembly and so not void under Section 4(5), if the latter law has fully and completely provided for the subject matter of the item, then the doctrine of covering the field will become applicable and apply to render the law by the State House of Assembly inoperative and subjected to the superceding and over-riding provisions of law of the National Assembly. Generally, the doctrine of covering the filed in the construction/interpretation and application of laws made by both the National Assembly and the State Houses of Assembly on items set out in

the concurrent legislative list of the Constitution, only applies when the two (2) sets of laws were validly made or enacted in exercise of their respective legislative discretionary authority and power as provided for in the Constitution.

This was the position stated by this court; per Fatayi-Williams, CJN in A. G., Ogun State v. A. G., Federation (supra) wherein it was held that:-

> **"Where identical legislations on the same subject matter are vitally passed by virtue of their constitutional powers to make laws by the National Assembly and a state House of Assembly, it would be more appropriate to invalidate the identical law passed by the state House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter"**

It was the same position that was enunciated in the later case of A. G., Abia State v. A. G., Federation (supra) as set out earlier on. Where, as in the case of the Appellants, the Edo State House of Assembly did not exercise its concurrent legislative authority and power to legislate on public records in Edo State, the law enacted or made by the National Assembly on the public records for the Federation or Federal Republic of

Nigeria; ie. the FIA, 2011 applies to public records of Edo State, as a constituent of the Federation or Federal Republic of Nigeria. In that regard, the court below is right that the doctrine of covering the field did not arise in the case, but was completely in error of law, that FIA, 2011 is not applicable to the public records in Edo State on the ground that the Edo State House of Assembly has not enacted or made a law on the subject matter in order to apply to public records in that State since even if such a law was enacted or made and it conflicts or is inconsistent with the provisions of FIA, 2011, it becomes void to the extent of the inconsistency.

The FIA, 2011 remains the extant law applicable to the public records in Edo State in particular and also to all public records of/in other states being the law enacted or made by the National Assembly for the Federation or the Federal Republic of Nigeria of which all the states are constituents. In that context, the pronouncements by this court in the A.G., Ondo State v. A. G., Federation (supra) per Uwais, CJN at page 30 and Ugwuegbu, JSC at page 62, provide complete and all-round answer

to the argument that the doctrine of covering the field does not conform to the principle of Federalism. The Law Lords had stated that:-

> **"It has been pointed out that the provisions of Act infringe on the cardinal principles of federalism, namely the requirement of equality and autonomy of the state government and non interference with the functions of State Government. This true, but as seen above, both the power to legislate in order to abolish competition and abuse of office. If this is a breach of the principles of federalism, that I am afraid it is the constitution that makes provisions that have facilitated breach of the principles. As far as the aberration is supported by the provisions of the constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the constitution to adhere to the cardinal principles which are best ideals to follow or guidance for an ideal situation" – Per Uwais, CJN, at page 30."**
>
> **"A constitution is an instrument of government under which laws are made and not mere Acts, or law and the construction which the court will give to a constitutional provision must be such that will secure the interest of the constitution and best carry out the subject and purpose and give effect to the intention of the framers. See Kalu v. Odili v. State (1997) 5 NWLR (pt. 240) 130 at 156 and Kalu v. State (1988) 3 NWLR (pt. 583) 531 at 575. See also Attorney General of New SAOUTH Wales v. Brewery Employees Union of South Wales (1908) 6 CLR 496 at 612 and Ekeocha v. Civil Service Commission, Imo State & or (1981) NCLR 54 at 65 where OPUTA j (as he then was) held that in all case of interpretation of**

> **the constitution, the court should adopt such construction as will promote the general legislative purpose underlying the constitution which to put the Federal Legislature in such a position that it can legislate for the general interest of the whole country." Per Ugwuegbu, JSC at page 62."**

See, in addition, Olafisoye v. FRN (2004) 4 NWLR (t. 864) 580 (SC), OSIEC v. A. C. (2010) 19 NWLR (pt. 1226) 273 (SC), Saraki v. FRN (2016) 3 NWLR (pt. 1560) 531 (SC), N. I. W. A. v. L.S. W. A. (2024) 14 NWLR (pt. 1959) 435 (SC).

Learned Counsel for the Respondent has referred to Section 29 of FIA, 2011 to argue that the reference to the A. G. of the Federation therein shows that it was meant to apply to public records of the Federal Government and Agencies and not of States since the A. G. of States were not mentioned.

As far as Edo State is concerned, it has no law on public records of the State to be enacted pursuant to the provisions of Section 4(7)(b) and Part II, item (5) of the Second Schedule to the Constitution conferring the Edo State House of Assembly the concurrent legislative power and authority to make or enact. It must be realized and carefully understood that even

when such a law was enacted by the Edo State House of Assembly for public records of the Edo State Government public records, it is still "*subject to*" the concurrent legislative power and authority of the National Assembly to make or enact laws on the same public records in Edo State, as a constituent and component of the Federation or Federal Republic of Nigeria. As eloquently pointed out by Uwais, CJN in the A. G., Ondo State v. A. G. Federation (supra), it is the same Constitution that granted States Houses of Assembly the legislative power and authority to make or enact laws on public records of Edo State Government that expressly, unequivocally and clearly makes the said state law subject to the laws made or enacted by the National Assembly on public records, in item 5. The provisions of items 4 and 5 of Part II of the Second Schedule to the Constitution are in the following terms:-

> **"4. The National Assembly may makes laws for the Federation or any part thereof with respect to the archives and public records of the Federation.**
>
> **5. A House of Assembly may, subject to paragraph 4 hereof, make laws for the State or any part thereof with respect to archives and public records of the Government of the State."**

It is beyond reasonable argument that the legislative power and authority conferred on a State House of Assembly to make or enact laws on or with respect to public records of the Government of a State is, made "subject to" the legislative power and authority of the National Assembly to make or enact laws on the or with respect to public records of the Federation provided for in item 4.

In judicial parlance of interpretation of Statutes/Constitution, the expression "subject to" is used to subordinate the provision of the section in question, to the provision of the section referred to therein which is not intended to be affected by the later provisions. The expression is employed by the legislature to restrict or limit; as a condition precedent or provisio to the application of provisions of a later section, to those of an earlier or other provision of the same or other laws/statutes. See Tukur v. Government of Gongola (supra), A. G., Anambra State v. A. G., Federation (1993) 6 NWLR (pt. 302) 692 at 708, Ebhoata v. P. I. & P. D. Co. Ltd. (supra), N. A. O. C. Ltd. v. Nkweke (2016) 7 NWLR (pt. 1512) 588 (SC), Ezenwa v. K. S. H. S. M. B. (2011) 9 NWLR (pt. 1251) 89,

FRN v. Osahon (2006) 5 NWLR (pt. 973) 361 (SC). The provisions in item 5 of Part II of the Second Schedule on the Constitution on legislative power and authority of a State House of Assembly to make laws with respect to archives and public record of a State Government is, by the use of expression "subject to" at the beginning thereof, made subordinate and inferior to the law made or enacted by the National Assembly with respect to the archives and public records for the Federation such that the later law always prevails, overrides, supercedes and applies where the laws made by a State Assembly exist and/or are in conflict or inconsistent with the laws made by the National Assembly.

The learned counsel for the Appellants is right, and I agree with him when he submitted at paragraph 3.6 on page 21 of the Appellants' Brief that the combined effect of the provisions in items 4 and 5 of Part II of the Second Schedule to the Constitution is that any law enacted by the National Assembly on public records and archives shall be applicable to and binding on the states' public records.

In fact, that was the unanimous decision and position of the court below (Akure Division) in the earlier Appeal No. CA/AK/4/2017; Martins Alu v. Speaker, Ondo State House of Assembly & Anr., delivered on 27th March, 2018 (unreported) which was cited at paragraph 3.17 on page 27 of the Appellants' Brief.

Once more, I agree with the learned counsel for the Appellants, because he is right in law, when he said that the earlier unreported decision of the court below is binding on it in the subsequent decision from which this appeal emanated, on the authority of a host of decisions including Egbo v. Laguma (supra) and Onagoruwa v. State (supra). See alsoBiawal Shipping Nig. Ltd. v. F.I. Onwadike Co. Ltd. (2000) 11 NWLR (pt. 678) 381, Oyeyemi v. Orewola L. C. (1993) 1 NWLR (pt. 270) 462 (SC), Maitumbi v. Baraya (2017) 2 NWLR (pt. 1550) 347, FRN v. Maishanu (2019) 7 (pt. 1671) 203 (SC), Honeywell Flour Mills, Plc v. Ecobank Nig. Ltd. (2019) 2 NWLR (pt. 1655) 35 (SC), Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227 (SC). For being bound by its earlier or previous decision on the application of the FIA, 2011 to all public records of the

States in Nigeria, the majority members of the panel of the court below had no option, no discretion and no liberty to either disregard or ignore the said decision, neither does it possess the requisite judicial authority and power, or jurisdiction to sit to over-rule same. The only limited situations when the court below can in law, refuse or decline to follow its previous or earlier decisions in subsequent appeals include:-

(a) Where the previous/earlier decision was arrived at per incuriam;

(b) Where the previous/earlier decision was set aside on appeal by the Supreme Court;

(c) Where the previous/earlier decision, though not expressly by set aside by a decision of the Supreme Court, the court below is of strong opinion or view that such a decision will not stand with an extant decision of the Supreme Court.

See Braithwaite v. Maintima Spain Africa Lines SC (1993) 13 NWLR (pt. 636) 611, Ekpenyong v. Duke (2009) All FWLR (pt. 470), INEC v. AC (2009) 2 NWLR (pt. 1126) 524.

In line with principle of judicial precedence or doctrine of res judicata, the minority opinion in the judgment of the court below, though not directly stated, is right to have towed after the earlier decision of the court below that the FIA, 2011 is applicable and applied to the public records in Edo State, including those of the Respondent to this appeal.

I should say that because the court below lacks the requisite authority to sit on appeal over its own earlier or previous decisions and over-rule or set aside same, even where there are conflicting decisions delivered by it, it has no option but to abide by and apply the earlier decision which binds the later decision in order to given true meaning and effect to the principle or doctrine of judicial precedence that ensures certainty in the law. In such a situation, the court below has no discretion to choose which of its conflicting decisions to follow as that will lead to confusion and uncertainty in law since it is said that "discretion knows no bounds".

In the final result, for the aforenamed reasons, I find merit in this appeal and allow it.

Consequently, the majority decision of the court below delivered on the 28th of March, 2018, setting aside the decision of the trial court is hereby set aside and the decision of the trial court delivered on the 29th of April, 2004, restored accordingly.

The Appellants are entitled to costs for the successful prosecution of this appeal which are assessed, (taking into account the age of the appeal) at Two Million Naira (₦2,000,000.00) only.

MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

APPERENCES:

President Aigbokhan, Esq. for the Appellants.

N. Iyamu, Esq. for the Respondent.

Certified True Copy
ONCHE. Samuel Itodo 6/5/2025
REGISTRAR
SUPREME COURT OF NIGERIA