

IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
SUIT NO. NICN/LA/430/2020

BEFORE HIS LORDSHIP, HON. JUSTICE (DR.) 1. J. ESSIEN

DATE: 18TH June 2025

**IN THE DETERMINATION OF THE TRADE UNION ACT: IN THE MATTER OF THE
INTERPRETATION OF TRADE UNION CONSTITUTION: AND IN THE MATTER OF
NATIONAL UNION OF FOOD BEVERAGE AND TOBACCO EMPLOYEES UNION.**

BETWEEN

1. COMRADE ABIODUN PHILIP
(State Chairman Ogun State)
2. COMRADE RILWAN OPALEYE
(Branch Chairman, Nestle Nig. Plc)
3. COMRADE ADEBAYO CLEMENT
(Branch Secretary, Nestle Nig. Plc)
4. COMRADE ABADOM AMECHI
5. COMRADE OLAWUWO ABIODUN
6. COMRADE OSAGU VINCENT.

CLAIMANTS

AND

1. COMRADE LATEEF IDOWU OYELEKAN
(National President – NUFBTE)
2. COMRADE IBRAHEEM GARBA
(Deputy National President – NUFBTE)
3. COMRADE VIRGINUS NWOBODO
(National Vice President – NUFBTE)
4. COMRADE CHRISTOPHER NWOSU
(National Vice President – NUFBTE)
5. COMRADE GBENGA ISHOLA
(National Vice President – NUFBTE)
6. COMRADE SYLVESTER ETERIGHO
(National Vice President – NUFBTE)
7. COMRADE AHMED YAHAYA
(National Treasurer)

DEFENDANTS



8. COMRADE TONY ANYASI
(National Trustee)

9. COMRADE DANIEL BENSON
(National Trustee)

10. COMRADE KATE CHARLES
(Internal Auditor)

11. COMRADE MIKE OLANREWaju
(Dgs/Hod Education & Gender)

12. COMRADE SUNDAY ILESANMI
(Ags/Hod Admin & Personnel)

13. SAMSON AYENI
(Ags/Hod Food & Confectionaries)

(1st to 13th Defendants are sued for themselves and as members Administrative Committee of NATIONAL UNION FOOD, BEVERAGE AND TOBACCO EMPLOYEES (NUFBTE).

14. UNION OF FOOD, BEVERAGE AND
TOBACCO EMPLOYEES (NUFBTE)

DEFENDANTS

JUDGMENT.

By an amended Originating summons dated and filed on the 26/3/2024, the claimants in this action sought the determination of the following questions.

1. Whether by the interpretation of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(I)(d) of the Constitution of the 14th Defendant, the Claimants have the rights and indeed duty as members of the 14th Defendant to take steps towards the protection of the 14th Defendant's constitution including the rights to institute action relating to breach of the 14th Defendant's constitution.
2. Whether by the construction of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(I)(d) of the Constitution of the 14th Defendant, the purported suspension of the Claimants as members of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 and their subsequent expulsions from the 14th Defendant aimed at punishing the Claimants for exercising the rights to protect the Constitution of the 14th Defendants is unconstitutional and also amounts to self-help, extra-judicial



and aimed at overreaching the claimants' claims in Suit No. NICN/LA/189/2020.

3. Whether a party who has turned his dispute over to the courts for determination is not precluded from doing acts or making omissions which over-reach the interest of the other party during the pendency of the suit; and whether a court of law has the power to set aside such act which tends to ridicule the sanctity of the court.

If the answers to the questions 1, 2 and 3 are in affirmative, then whether the Claimant is entitled to the following reliefs from this Honourable Court;

1. A DECLARATION that the purported suspension and expulsion of the Claimants as members of the 14th Defendant by the 1st to 13th Defendant is unconstitutional and a violation of the provisions of Rule 3 (iv), Rule 5(vii.) and Appendix 11 4(l)(d) of the 14th Defendant's constitution.
2. AN ORDER setting aside the purported expulsions of the Claimants as members of the 14th Defendant contained in the purported letters of expulsions dated 21st October 2020 signed by the 11th Defendant with intent to punish the Claimants for exercising their rights under the 14th Defendant's constitution and for being self-help, extra-judicial and aimed at overreaching the claimant's position in Suit No. NHCN/LA/189/2020.
3. AN ORDER setting aside the purported expulsions of the Claimants as members of the 14th Defendant contained in the purported internal/external resolution dated 18th August 2020 signed by the 1st to 13th Defendants with intent to punish the Claimants for exercising their rights under the 14th Defendant's constitution and for being self-help, extra-judicial and aimed at overreaching the claimant's position in Suit No. NICN/LA/189/2020.
4. AN ORDER setting aside the purported suspension and/or replacement of the 1st Claimant as Chairman, Ogun State Council of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
5. AN ORDER setting aside the purported suspension and/or replacement of the 2nd Claimant as Chairman, Lagos State Council II of the 14th Defendant



as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.

6. AN ORDER setting aside the purported suspension and/or replacement of the 3rd Clamant as Branch Chairman, Nestle Nig. Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
7. AN ORDER setting aside the purported suspension and/or replacement of the 4th Clamant as Branch Secretary, Nestle Nig. Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in Suit No. NICN/LA/189/2020.
8. An order setting aside the purported suspension and/or replacement of the 5th Clamant as Branch Chairman of 7up Bottling Co. Ltd. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
9. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants from restricting, restraining, limiting or hindering the 1st to 5th Claimants in performing the functions and role constitutionally reserved for their respective office as officers of the 14th Defendant.

10. FOR SUCH FURTHER ORDER OR ORDER(S) as this Honourable Court may be deemed fit to make in the circumstance.

The originating summons is supported by a 37th paragraph affidavit. Attached to the affidavit are Exhibits A to Exhibit M. Also in support of the originating summons is the written address of the claimant counsel. Upon being served with the Originating Summons, the defendants filed a joint counter affidavit of 32 paragraphs on the 22/4/2024. Attached to the affidavit are Exhibits NUP-1 to NUP-7. The defendants Counsel also filed a written address in support of the counter affidavit to the originating summons. In response to the counter



Affidavit, the claimants also filled a further and better affidavit along with an address on point of law on the 30th April, 2024.

The defendants also filed a Notice of Preliminary Objection on the 22/4/2024. The objection is brought pursuant to Section 3 and 4 of the Trade Dispute Act (As Amended) and also Rule 17 and 18 of the NICN Civil Procedure Rules 2017. In the Preliminary Objection, the defendants seek an order striking out the originating summons and also Striking out this suit.

The grounds of the objections are:

1. The subject matter of dispute in this case is an intra-union dispute which is amenable to the mandatory provisions Sections in Part 1 of the Trade Disputes Act Cap. T8, Laws of the Federation of Nigeria, 2004 and falls under the appellate jurisdiction of this Honourable Court.
2. The Claimants/Respondents have not disclosed reasonable cause of action against the Defendants/Applicants having not sued the proper party in the proper capacity in this suit.

The objection is supported by a 6 paragraphs affidavit deposed to by one Sesan Adebayo who describes himself as the litigation clerk in the defendant's solicitor's office. Attached to the Affidavit are Exhibit N1 and N2. Also in support is the written address of the applicant counsel. The Claimant/Respondent to the preliminary objection filed a 4 paragraph counter affidavit along with a written address on the 30/4/2024.

When this matter came up for hearing on the 26/3/2025, the originating summons was heard along with the preliminary objection. This court would consider the objection first and the outcome of the objection would determine whether this court would go ahead to consider the originating summons on the merit.

RULING ON THE PRELIMINARY OBJECTION.

3. In the preliminary objection, the Defendant/Applicant seeks an order of this court striking out this suit. The first ground of the objection is that the subject matter of this case is an intra-union dispute which is amenable to the



mandatory provisions in Part I of the Trade Disputes Act Cap. T8, Laws of the Federation of Nigeria, 2004 and falls under the appellate jurisdiction of this Honourable Court. In their written submission the applicant, it is the contention of the applicant counsel that Section 2 (1) of the Trade Dispute Act provides:

(1) Subject to the provisions of subsection (3) of section 21 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly, any action which, prior to the commencement of this section is pending in any court shall abate and be null and void.

That the subject of this suit is an intra union dispute. Thus the dispute ought to have been subjected to the comprehensive grievance resolution procedure ranging from conciliation to industrial arbitration panel as provided in sections 4 to 17 of the trade dispute Act. Counsel cited the case of *Muyiwa Daniel & Ors V. Mrs. Olufunke Fadugba & Anor* [1998] 13 NWLR (pt. 582) 482, which defined intra union dispute as dispute arising from the organisation and running of a trade union as laid down in the union constitution. Counsel also relied on the case of *Uzoaru & Anor V. Dangote Cement Plc. & Anor.* (2013) 31 N.L.L.R. (PT. 89) 308 at 323 – 325 paras C-B. Counsel argued that in the face of the Originating Summons wherein nine (9) substantive reliefs are claimed, the respondents are contesting their suspension, expulsion and replacement in the 14th Applicant. The affidavit in support is replete with facts disclosing an internal dispute between the respondents and the Principal Officers of the 14th Applicant and the 14th Applicant itself. There is therefore no doubt that the dispute is an intra-union dispute. He argued further that the grievances of the Respondents as disclosed on the Originating Summons and the affidavit in support are anchored on suspension, expulsion and their replacement based on alleged infractions of the Union's Constitution. He stated that the dispute raised in the originating summons reveal that the facts of the Respondents' suit is founded on internal disputes among members of the Union over which the mandatory provisions of Part I of the TDA should apply. Counsel relied on the case of *Com. Anthony & Anor V Com. Iioduba & Ors* [2010] 18 N.L.L.R ('Pt. 50) 229, 240- 241 paras H- A



In response to the above position of the applicant counsel, the respondent counsel in his written address has argued that the National Industrial Court is vested with the jurisdiction to entertain all intra union disputes. Counsel relied on the *Eze&Ors V. Ude&Ors* [2017] LPELR-42716 (CA) and the case of *Gerewa Oil Mills Ltd, V, Babura* [2028] LPELR-44720 (CA). The respondent counsel also submitted that Part 1 of the Trade Dispute Act has been altered by the provisions of Section 7(5) of the National Industrial Court Act 2006. That under this section the parties has the right to apply directly to the court particularly as the question submitted herein relates to the interpretation of the 14th defendant constitution. Counsel relied on the case of *IHKPESSI V. CRUTECH & ORS* (2017) LPELR-42631(CA). Counsel argued that so long as the dispute in this matter concerns the breach of the provisions of the constitution of the 14th defendant, Part 1 of the Trade Dispute Act has no application. Counsel placed reliance on some of the decisions of this court in the case of *Comrade Okandeji Fidelis V. Comrade IgweAchuzie&Anor*. SUIT NO. NICN/LA/153/2010 delivered on the 18th April 2012. See also *John B. Gberesuu V. National Union Of Petroleum &Anor* suit no. NICN/ABJ/188/2012. See further *First Marine Engineering Services Ltd. Vs National Union of Petroleum & Natural Gas Workers* (2011] NWLR (Pt 65) 283. Per Abiru, J.C.A.(Pp. 28-32, Paras. A-B) Counsel urged the court to dismiss this preliminary objection.

I have carefully considered the argument made by counsels in their written submission. I have read the authorities cited by counsel in their written submission. I will start by reproducing the provision of Section 2 (1) of the Trade Dispute Act which provides:

(2)Subject to the provisions of subsection (3) of section 21 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly, any action which, prior to the commencement of this section is pending in any court shall abate and be null and void.

The question is what is a trade dispute?. Section 57 of the Trade Union Act defines a trade dispute in the following words:



'Trade Dispute' means any dispute between employers and workers, or between workers and workers, which is connected with the employment or non-employment, or the terms of employment or conditions or work of any person;(underlining for emphasis)

The community reading of the above quoted provisions of the law shows that for intra-union dispute to qualify as a trade dispute for which the provisions of Section 2(1) of the Trade Dispute Act will apply the dispute must be between workers and workers which is connected with the employment or non-employment or the terms of employment or work of any person. Therefore any dispute between members of a trade union that is not connected with the employment relationship, the term/conditions of employment or work of any person cannot qualify as a trade dispute. Bearing this in mind the question is what is the dispute between the parties before this court? I have carefully examined the question put forward for resolution and the reliefs sought by the claimant in this action. The originating summons in a nutshell seeks the interpretation of the Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(I)(d) of the Constitution of the 14th Defendant as it affects the rights of the claimant as members of the 14th defendant as a Trade Union. The defendant to the originating summons admit that the grievances of the respondents as disclosed on the Originating Summons and the affidavit in support are anchored on suspension, expulsion and their replacement based on alleged infractions of the Union's Constitution. Thus the originating summons reveal that the facts of the Respondents' suit is founded on internal disputes among members of the Union over which the mandatory provisions of Part I of the TDA should apply. The defendant counsel in making this argument has glossed over the very vital indices of what qualifies an inter-union dispute as a trade dispute and which is that the dispute must be **connected with the employment or non-employment, or the terms of employment or conditions or work of any person.** The question is does the request for the interpretation of the Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(I)(d) of the Constitution of the 14th Defendant relate to the employment or non-employment or terms of/ condition of employment or work? The answer is in the negative. Also as admitted by the defendant does the grievances of the respondents as disclosed on the Originating Summons and the affidavit in support



which are anchored on suspension, expulsion and their replacement based on alleged infractions of the Union's Constitution in any way related to employment or non-employment or the terms of employment. The answer is also no. Therefore this Court rejects the argument that the mandatory provisions of Part I of the TDA should apply. The authorities cited by the defendant counsel has no application to the facts and circumstances of the present case.

The defendant counsel has argued that this court lacks the original jurisdiction to entertain this action. This position is misconceived. The jurisdiction of this court is prescribed by the Constitution of the Federal Republic of Nigeria 1999 and the National Industrial Court Act 2006. Section 254(C) (1) (h) (vi) vi, of the 1999 Constitution as amended provides:

(1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters—

(j) relating to the determination of any question as to the interpretation and application of any-

(vii) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;

The above extant provision of the constitution vest in this court the original jurisdiction to entertain any suit brought before this court that seeks the interpretation of a trade union constitution as it affects the rights and obligation of any member of the union or others on the breach of the constitution of the trade union. Further to the above position, Section 7(1)(a)(i) & (c) (iv) of the National Industrial Court Act 2006, also vest in this court the original and exclusive jurisdiction in civil matters in relation to the determination of any question as to the interpretation of any Trade Union constitution. Having the above extant provision of the law in mind and having earlier found that this present suit brought by the claimants is for the interpretation of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix II 4(I)(d) of the Constitution of the 14th



Defendant, for the purpose of determining the Claimants rights and indeed duty as members of the 14th Defendant to take steps towards the protection of the 14th Defendant's constitution , This court is vested with the requisite jurisdiction to entertain this action. This court in a number of decision has clarified the jurisdiction of this court. In the case of *Comrade Okandejj Fidelis V. Comrade IgweAchuzie&Anor* Suit No.NICN/LA/153/2011 His Lordship Obaseki-Osaghae, while ruling on exactly similar notice of preliminary objection as the present one held:

A careful look at the complaint and statement of fact reveals that the claimant/respondent is complaining that without being given a fair hearing in breach of the rules of natural justice or the procedure provided in the constitution of NUPENG being followed, he was removed by the National Executive Council (NEC) of NUPENG as the branch chairman of the Shell branch of NUPENG and Zonal Vice Chairman of the Warrizonalcouncil of NUPENG and expelled from the Union. The claimant/ respondent is challenging his expulsion from the union. The processes of Part I of the TDA are in relation to trade disputes and workers who are under a union. The matter is not a trade dispute within the meaning given in the Interpretation section of the TDA. Rather, it is a matter that falls squarely within the purview of section 7(1)(a)(i) & (c) (iv) of the National Industrial Court Act 2006 and as such, the claimant can access this court directly.

Similarly in another decided case of *John Gberesuu V. National Union of Petroleum &Anor* Suit No. NICN/ABJ/188/2012, delivered on the 6th February 2016 *Per Hon. Justice E.N. Agbakoba*, (of blessed memory) where the jurisdiction of the Court to entertain the suit was challenged on the same grounds as in this instant suit, this Court held; after referring to the jurisdiction of this Court as contained in Section 254(C)1 of the 1999 Constitution and section 7(1) of the NICN Act that:

"This means that this court has the exclusive jurisdiction to determine civil causes and matters relating to Trade Unions by Section 254(1) of the 1999 Constitution and Section 7(1) (a) and (c) (iv) of the National



Industrial Court Act 2006. The jurisdiction of this Court is subject matter based. The Defendants have argued that the Claimants are required to go through the procedure of mediation, conciliation and arbitration provided in Part I of the Trade Dispute Act Cap T8 LFN 2004. Section 48 of the Trade Dispute Act 2004 Cap T8 LFN 2004 provides that trade dispute means any dispute between employers and any workers or between workers and workers which is connected with employment or non-employment, or terms of employment and physical condition of work of any person. I find that the claimants are complaining that in breach of the constitution provisions, the procedure provided in the Union Constitution, and the Petrol tankers Drivers Bye Laws that defendant have prevented the claimants from emerging as union heads. The claimants are therefore challenging their exclusion from union leadership by unconstitutional means. I find that this matter is not a trade dispute within the interpretation of the TD, as to require subjecting the matter to Part I. I find, instead that it is a matter squarely within the realm of Section 254(C) (1)(d) of the 1999 CFRN 'as amended and Section 7(1) (a) and (c) (iv) of NICNA 2006 and as such the claimants can access this court directly.

These ever green position constantly affirmed by the this court was further explained in the decision in the case of *Road Transport Employers Association Of Nigeria (RTEAN) & Ors. V. Mr Olufemi Ajewole & Ors.* [2016] LPELR 41271 (CA). Where the court explained that inter union dispute would only be covered by the provisions of Part I of the Trade Disputes Act, if the nature of the dispute comes within the nature of the disputes said to constitute trade dispute under Section 48 of the Act. Once the complaint of a Claimant is not a trade dispute, it cannot be caught by Section 7.(3) of the National Industrial Court Act, 2006.

In the case of *First Marine Engineering Services Ltd V. National Union of Petroleum & Natural Gas Workers* [2011] 23 NWLR (Pt 65) 283. Per Abiru, J, J.C.A. (Pp. 28-32, Paras. A-B) –stated :



The position is that in such instances. Sending such matters to go through the conciliation and arbitration process is a complete waste of time and that it is a matter that the National Industrial Court should take in its original jurisdiction.

Ugwe V. Ogboso [2010] 21 NWLR (Pt. 58) 164 and see also the case of *Aghwefeada V. Asemota* [2011] 22 NWLR (Pt 63) 413.

It is the finding of this court that in the light of the above interpreted statutory provisions in the above cited judicial authorities, the objection on this ground is without any merit, it is accordingly discountenanced and dismissed.

The second ground of the defendant/applicant objection is that the claimant suit does not disclose a reasonable cause of action. The contention of the defendant/applicant is that the 14th defendant as a trade Union has 3 principal organs i.e the National Delegates Conference (NDC), the National Executive Counsel (NEC) and the National Administrative Committee (NAC). He argued that the NAC is vested with the powers of suspension, the NEC is vested with the powers of expulsion. That the NAC exercised its powers of suspension on the 18/August 2020, and the NEC exercised its powers of Expulsion on the 19/10/2020. As per Exhibits N1 and N2. It is their contention that in taking out the action even though they expressed grievance against the actions of the NEC, the claimants/respondents failed to make the NEC a party or indicate that it is being represented in the suit in order to properly interrogate the actions of the NEC. It is their argument that the claimant respondent only disclose that the 1st to 13th defendant are sued for themselves and members of the NAC, whereas it is the action of the NEC that is being complained of. Counsel place reliance on Order 4 Rule 2 of the NICN Civil Procedure Rules 2017. Counsel submitted that the proper parties are not before the court and for that reason the court lacks jurisdiction to entertain this suit because no reasonable cause of action is disclosed against the defendants. Counsel further argued that the respondents are aware that their expulsion was done by the National Executive Council (NEC) which is different from the National Administrative Committee (NAC) which did not exercise any power of expulsion against the respondents. Counsel relied on the case of *EZEANYA & ORS V. OKEKE & ORS* (1995) LPELR-1199 (SC) It is the

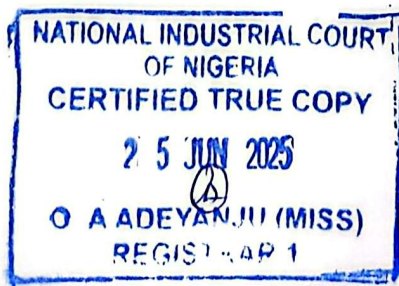


argument of counsel therefore that the suit as it relates to the expulsion of the Respondents from the 14th Applicant is not only misdirected at the wrong party, but a cause of action has not been made against the NAC by the Respondents. He cited the case of *Cotecna Intl' Ltd. V. Churchgate (Nig.) Ltd.* (2010) 18 NWLR (PT. 1225) 346 at 396 paras. E-H to contend that a court has no jurisdiction over a matter when proper parties are not before it.

In response to this issue, the respondent counsel argued that the suit is instituted against the proper parties. He stated that the defendant applicant has admitted in their affidavit in support of this preliminary objection that by the 14th Defendant/Applicant's constitution, there are three administrative organs at the National level, one of which is National Administrative Committee (NAC), which is vested with the power to suspend the claimants and it was the suspension by NAC that led to the subsequent expulsion by the NEC. He stated that it is the 1st to 13th defendants that are described as the National Officers of the 14th defendant. It is counsel submission that it is the suspension by NAC that is the contention in this action. Therefore the proper parties are before this court.

I have carefully considered the argument on this issue. It is trite that in determining whether a suit discloses a reasonable cause of action, it is the statement of claim in an action commenced by a writ that the court has to consider. In an action commenced by originating summons, it is the issue submitted for determination and the affidavit of the claimant that the court has to consider. See the case of *Chevron (Nig.) Ltd. V. L.D.(Nig.) Ltd.* (2007) 16 NWLR (PT.1059) 168 at 179 para. B. See also the case of *Tejuoso V. Asset Mgt Corporation Of Nigeria & Ors* (2015) LPELR-24677(CA) (Pp. 15-16 paras. B) In the amended originating summons, The claimants in question/issue No. 3, seek the determination of the following question:

Whether by the construction of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(l)(d) of the Constitution of the 14th Defendant, the purported suspension of the Claimants as members of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 and



their subsequent expulsions from the 14th Defendant aimed at punishing the Claimants for exercising the rights to protect the Constitution of the 14th Defendants is unconstitutional and also amounts to self-help, extra-judicial and aimed at overreaching the claimants' claims in Suit No. NICN/LA/189/2020.

From this question it is clear that it is the suspension of the claimants by the National Administrative Committee (NAC) of the 14th Defendant that led to their subsequent expulsion of the claimant that the claimants are complaining about in this suit. In filing the suit the claimants complied with the provisions of Order 4 Rule 2 of the NICN Civil Procedure Rules 2017 which provides that '*Where a claimant sues, or a defendant or any of several defendants is sued in a representative capacity, the originating process shall state that the suit is brought in that capacity*'.

The claimant clearly disclosed in the originating process that the 1st to 13 defendants are for themselves and as members of the National Administrative Committee of National Union of Food, Beverage and Tobacco Employees (NUFBTE). It is not in dispute that it was the National Administrative Committee of the 14th defendant that suspended the claimants. Their action triggered the subsequent expulsion of the claimants. Therefore the defendant applicant contention that the NAC is not the proper party in this action is misconceived. It is the finding of this court that the claimant properly joined the necessary party in this action. This court is therefore vested with the jurisdiction to hear and determine this case. The objection of the claimant on this issue is therefore discountenanced and accordingly dismissed. On the whole this preliminary objection fails and it is accordingly dismissed.

ORIGINATING SUMMONS.

In the amended originating summons filed on the 26/3/2024, the claimants seek the determination of the following questions.

1. Whether by the interpretation of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(I)(d) of the Constitution of the 14th Defendant, the Claimants have the rights and indeed duty as members of the 14th Defendant to take steps towards the protection of the 14th Defendant's constitution including



the rights to institute action relating to breach of the 14th Defendant's constitution.

2. Whether by the construction of Rule 3 (iv), Rule 5(iii), 5(iv), 5(vii) and Appendix 11 4(l)(d) of the Constitution of the 14th Defendant, the purported suspension of the Claimants as members of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 and their subsequent expulsions from the 14th Defendant aimed at punishing the Claimants for exercising the rights to protect the Constitution of the 14th Defendants is unconstitutional and also amounts to self-help, extra-judicial and aimed at overreaching the claimants' claims in Suit No. NICN/LA/189/2020.
3. Whether a party who has turned his dispute over to the courts for determination is not preclude from doing acts or making omissions which over-reach the interest of the other party during the pendency of the suit; and whether a court of law has the power to set aside such act which tends to ridicule the sanctity of the court.

Upon the determination of the above questions in the affirmative the claimants seek the following reliefs from this court.

1. A DECLARATION that the purported suspension and expulsion of the Claimants as members of the 14th Defendant by the 1st to 13th Defendant is unconstitutional and a violation of the provisions of Rule 3 (iv), Rule 5(vii) and Appendix 11 4(J)(d) of the 14th Defendant's constitution.
2. AN ORDER setting aside the purported expulsions of the Claimants as members of the 14th Defendant contained in the purported letters of expulsions dated 21st October 2020 signed by the 11th Defendant with intent to punish the Claimants for exercising their rights under the 14^m Defendant's constitution and for being self-help, extra-judicial and aimed at overreaching the claimant's position in Suit No. NJCN/LA/1 89/2020.
3. AN ORDER setting aside the purported suspensions of the Claimants as members of the 14^m Defendant contained in the purported internal/external resolution dated 18th August 2020 signed by the 1st to 13th Defendants with intent to punish the Claimants for exercising their rights under the 14^u



Defendant's constitution and for being self-help, extra-judicial and aimed at overreaching the claimant's position in Suit No. NICN/LA/189/2020.

4. AN ORDER setting aside the purported suspension and/or replacement of the 1st Claimant as Chairman, Ogun State Council of the 14^m Defendant as contained in the purported internal/external resolution dated 18^m August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
5. AN ORDER setting aside the purported suspension and/or replacement of the 2nd Claimant as Chairman, Lagos State Council II of the 14^o Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
6. AN ORDER setting aside the purported suspension and/or replacement of the 3rd Claimant as Branch Chairman, Nestle Nig. Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
7. AN ORDER setting aside the purported suspension and/or replacement of the 4th Claimant as Branch Secretary, Nestle Nig. Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
8. AN ORDER setting aside the purported suspension and/or replacement of the 5th Claimant as Branch Chairman, 7up Bottling Co. Ltd. of the 14th Defendant as contained in the purported internal/external resolution dated 18^m August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
9. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants from restricting, restraining, limiting or hindering the 1st to 5th Claimants in performing the functions and role constitutionally reserved for their respective office as officers of the 14th Defendant. And
10. FOR SUCH FURTHER ORDER OR ORDER(S) as this Honourable Court may be deemed fit to make in the circumstance.



The originating summons is supported by a 37 paragraphs affidavit deposed to by the 1st claimant. Attached to the affidavit are Exhibits A to Exhibit M. Also in support of the originating summons is the written address of the claimant counsel. The claimants also filed a further and better affidavit on the 30/4/2024 Upon being served with the defendants counter affidavit, the claimant filed amended reply on point of law dated the 26/3/2024.

In response to the originating summons the defendants filed a joint counter affidavit of 32 paragraphs on the 22/4/2024. Attached to the affidavit are Exhibits NU-1 to Exhibit NU-7. Also in support of the counter affidavit, the defendants counsel filed a written address.

BRIEF FACTS IN ISSUE.

As stated in the affidavit of the 1st claimant, the dispute in this suit arose when they received a complaint from members, that the 14th defendant had submitted a purported amended constitution to the Registrar of Trade Union for Registration. Upon enquiry, the General Secretary of the 14th defendant informed the 1st claimant that he also heard the said rumour but that he knew nothing about the attempt to register a new constitution. On further enquiry, the Registrar of Trade Union confirmed that an amended constitution of the 14th defendant had been submitted for registration. He informed the 1st claimant that unless a letter protesting against the registration was sent to his office, the registration of the constitution would be effected. The claimants and other 100 members of the 14th defendant acting on this information wrote a protest letter on the 13/5/2020 against the registration of the new constitution. The 1st claimant as a state chairman wrote a letter dated 12/5/2020 to the registrar of Trade Union to formally inform him that the alleged amended constitution sought to be registered is unknown to members of the 14th defendant as it was never passed by the members of the National Delegates Conference. The 1st and 3rd claimants who are the chairman and secretary of Ogun State branch of the 14th defendant also wrote a letter of protest on the 11/6/2020 to the Registrar of Trade Union Protesting against the attempt to register the purported amended constitution of the 14th defendant. The claimant also wrote a letter on the 13/5/2020 to the National



Signing Trustee of the 14th defendant to inquire whether he was aware of the purported amended constitution and he responded that he was not aware of the new constitution. Despite the protest the claimants alleged that when they contacted the Registrar of Trade Union he confirmed that he was going ahead to effect the registration of the said document because the amendment was not much since it only relates to (1) Maximum of 2 terms for all elected officers of the union and (2) The 1st defendant is to be the life chairman of the Board of Trustees of all the 14th defendant investment. The defendant wrote another letter to the Registrar of Trade Union on the 22/6/2020 pointing out the several amended sections of the 14th defendant constitution. On the 1/7/2020, The claimants and other aggrieved member of the union filed SUIT NO NICN/189/2020 against the 13 defendants and the Registrar of Trade Union seeking the interpretation of the constitution of the 14th defendant regarding the constitutionality of the purported amended constitution and the proposed emergency National Delegates Conference to be convened to ratify the proposed amendment to the 14th defendant constitution and the tenure elongation of the national officers of the 14th defendant, particularly, that of the 1st to 13th defendants. The defendants were represented by counsel in that suit. . On the 13th of August 2020, Honourable Justice (Dr.) I.J. Essien of the Lagos Division of this Court sitting as a vacation judge granted an order of interim injunction in suit No. NICN/LA/189/2020 restraining all the Principal National Officers of the 14th Defendant including the 1st to 13th Defendants herein as well as the 14th Defendant Union itself from holding and/or conducting emergency delegates conference which was then scheduled for 21st August 2020. On the 19th of August 2020, Honourable Justice (Dr.) I.J. Essien of the Lagos Division of this Court sitting as a vacation judge after hearing counsel on both sides granted an order of interlocutory injunction in the said suit No. NICN/LN189/2020 restraining all the Principal National officers including the 1st to 13th Defendants in this suit from holding/conducting emergency delegate conference. In violation of the order of the court the defendants went ahead to hold the delegates conference. The claimants in obedience to the order of court stayed away from the conference. Three days after the restrained Emergency Delegates Conference, The claimants were served with letters of suspension on the 18/8/2020. The claimant further states that the 1st to



13th Defendants who ignored the court order and held the emergency delegates conference also on the same 24th August 2020 issued and served the Claimants a purported internal/external resolution of Emergency National Administrative Committee which was backdated to 18th August 2020 signed by the 1st to 13th Defendants suspending the Claimants as members of the 14th Defendant. Thereafter the 1st to 13th defendant has issued letters to the claimants querying them for writing letters to the Registrar of Trade Union to stop the registration of the amended Constitution which is the subject matter in SUIT NO NICN/LA/189/2020. The claimant refused to answer to the queries as the subject was sub-judice by reason of the pendency of Suit No. NICN/LA/189/2020. The 1st to 13th Defendants have also issued letters to the claimants' state councils purportedly reconstituting the officials and executives of the councils and announcing the replacement of the 1st to 13th Claimants as officers of the 14th Defendant because they took out an action to protect the 14th Defendant's constitution. All efforts at demanding compliance with the provisions of the 14th Defendant's Constitution were met with stiff resistance from the 1st Defendant. The Claimants are no longer allowed access into the National Secretariat of the union at Food Labour House, 9 Mortune Avenue, Valley Estate off Lagos-Abeokuta Express Road, Union Bus Stop, Ikeja, Lagos State. The 1st to 5th Claimants are also prevented from accessing the states and branches secretariat of the 14th Defendant and are currently being prevented from performing the functions of our offices as elected officers of the 14th Defendant Union. On the 21st October 2020, the Defendant sent letter of Expulsions to the Claimants, purportedly expelling the claimants from the 14th Defendant, because they seek to protect the 14th Defendant's constitution by approaching this Honourable Court in Suit No. NICN/LA/189/2020. The claimant state that Defendants have resorted to using tugs to prevent the Claimants from gaining access to the state secretariat of the 14th defendant branch.

On the other hand, the Defendants in their joint counter affidavit denied all the allegation and stated by the Claimant in their affidavit in support. The contend that the claimants are no longer elected officers of the 14th Defendants at their respective branches as they have been removed by their branches for anti-Union



activities. They state that upon the failure of the claimants to appear before the disciplinary committee set up by the 14th Defendant to answer to queries issued to them, they were expelled by the National Executive Council of the 14th Defendant at its Extra-Ordinary Meeting held on 19th October, 2020 in Asaba, Delta State. That the claimants ceased to be members of the 14th Defendant on the 19/10/2020. They state that contrary to paragraph 11 to 26 of the claimant affidavit, the amended Constitution of the 14th Defendant went through the procedure outlined in the constitution. That the 14th Defendant constitution was approved by the National Executive Council of the Union at its meeting of Thursday 8/12/2016 by the National Delegates Conference on the 9/12/2016. They contend that contrary to paragraphs 22, 23, 24, 25, and 26, of the affidavit in support of the Originating Summons, the said order of interlocutory injunction in Suit No.NICN/LA/189/2020 was never served on the Defendants until well after the 18th of August, 2020 and the Senior Counsel for the Defendants had already taken leave of court to withdraw from the proceedings in protest of fundamental procedural errors committed by the trial Judge now on review in Appeal Nos.CA/LA/CV/841/2020,CA/LA/CV/342/2020 and CA/LA/PRE/ROA/CV/792M/2020, currently pending before the Lagos Division of the Court of Appeal. That the National Administrative Committee (NAC) meeting and the NEC are held a few days apart before every National Delegates Conference and the interlocutory injunction made in Suit No.NICN/LA/189/2020 did not stop the NAC and the NEC from holding on the 18th of August, 2020 and on the 20th of August, 2020 respectively. They deny that the letters of suspension were backdated. They allege that the claimant along with others constituted an illegal parallel national leadership of the 14th Defendant on the 17th of August, 2020 and purportedly dissolved the elected and legitimate National Leadership of the Union. In a publication dated 17th August, 2020 released by the then General Secretary of the Union who was in cohort with the Claimants and pasted at the Union's notice board, That following the claimants suspension the 14th Defendant constituted a Disciplinary Committee to look into the allegations against the Claimants and render recommendation to the NEC whereupon the Committee issued letters titled 'Request for Explanation' inviting the Claimants to appear before the Committee at a stated date, time and venue to



defend the allegations against them, but was shunned by the Claimants. They contend that the constituting of the allegations against the Claimants did not include the institution of the Suit No. NICN/LA/189/2020 which the Claimants have a right under the constitution to initiate but the deliberate falsehood and polarisation of the Union by mis-informing the Registrar of Trade Union about the outcome of the National Delegates Conference in 2016 which the Claimants attended and consented which act is contrary to the provisions of the constitution. They deny that the claimants were suspended because they were part of the persons who instituted Suit No. NICN/LA/189/2020. They contend that the expulsion of the claimants was a result of their refusal to defend themselves, against a serious allegation infraction of the constitution. The deny using touts to prevent the claimant from visiting the office of the 14th defendant.

ISSUES FOR DETERMINATION.

In the written address filed by the Claimant Counsel they submitted 3 issues for determination in this originating summons to wit:

1. Whether by the interpretation of Rule 3(iv), Rule 5(iii) 5(iv). 5(vii) and Appendix 11 4(I)(d) of the constitution of the 14th Defendant, the Claimants have the rights indeed duty as members of the 14th Defendant to take steps towards the protection the 14th Defendant's constitution including the rights to institute action relating to breach of the 14th Defendant constitution.
2. Whether by construction of Rule 3(iv), Rule 5(iii) 5(iv), 5(vii) and Appendix 11 4(I)(d) of the constitution of the 14th Defendant, the purported suspension of Claimants as members of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 and their subsequent Expulsion from the 14th Defendant aimed at punishing the Claimants for exercising their rights to protect the Constitution of the 14th Defendants is unconstitutional and also amount to self-help, Extra-judicial and aimed at overreaching the claimants' claims in Suit No. NICN/LA/189/2020.
3. Whether a party who has turned his dispute over to the courts for determination is not preclude from doing acts or making omissions which over-reach the interest of other party during the pendency of the suit and



whether a court of law has the power to set aside such act which tends to ridicule the sanctity of the court.

In the defendants written address in support of the counter affidavit in opposition the originating summons, the defendant counsel formulated 2 issues for determination to wit:

1. whether there is anything in Rules 3(iv), 5(iii), (iv) and 5(vii) and appendix 11 4(1)(d) of the constitution of the 14th defendant that precludes the 14th defendant from enforcing the provisions of the constitution? (*questions 1 & 2*)
2. whether the suspension and subsequent expulsion of the claimants are unconstitutional, overreaching and extra-judicial? (*question 3*)

The issues formulated by the parties are similar. The issues are interwoven and result from the same facts which complain is the subject matter of this action. This court would adopt the issues formulated by the claimant as the issue for determination and consider the 3 issues together.

ON ISSUE 1 2 and 3

Arising from the first 2 issues is the right of the claimants to institute an action to Defend the constitution of the 14th defendant. The contention of the Claimants is that in the exercise of their right to defend the constitution of the 14th Defendant, the Claimants instituted No.NICN/LA/189/2020 (Exhibit G) on the 1/7/2020, still pending before this court against the Defendants. In that suit the Claimant is seeking the determination of the constitutionality of the purported amended constitution as well as the proposed Emergency Delegates Conference aimed at ratifying the illegal and unconstitutional extension/elongation of tenure of office of the officers of the 14th Defendant Union. In that case, the defendants were represented by counsel. This court granted 2 orders, an interim injunction in Exhibit G and an Interlocutory Injunction in Exhibit H, restraining the attempted breach of the 14th Defendant constitution pending the determination of the suit. It is on record that the defendants ignored the orders of this court in Exhibit H and went ahead to hold the Emergency Delegates Conference on the 21/8/2020. The right of the claimant to defend the constitution of the claimants is provided in the



constitution of the 14th Defendant in Rule 3(iv), 5(iii), (iv) and 5(vii) and appendix 11 4(1)(d) of the constitution which provides:

Rule 3(iv)- All members of the Union shall undertake to uphold and defend the constitution of the Union at all times, and shall pay the prescribed levies and dues.

Rule 5(iii)- No new rules shall be made or any rules altered, amended or rescinded unless agreed to by majority votes in secret ballot at the National Delegates Conference of the Union.

Rule 5(iv)- Alterations and amendment of the constitution by whatever process shall not be valid until they have been registered by the Registrar of Trade Union in accordance with the law.

Rule 5(vii)-Any member shall have the right to initiate action at his/her own expense in connection with any breach of the provisions of the Constitution of the Union.

Appendix 11(4)(1)(d)

- (i) Each member of the Trade Union shall have the right to full and free participation in the government of the trade union, This should include right:
- (ii) (a) To express his views as to the method in which the Union's affairs be conducted.

The community reading of the above provisions vest in the claimants the right to institute Suit. No. NICN/LA/189/2020 and indeed this present suit. The argument of the defence counsel that the right vested by the above quoted provisions of the 14th defendant constitution must not be read in isolation of other provision of the constitution and in particular Appendix 11- 3, 4 ii, iii and appendix 11-5, Appendix 9 paragraph 2, is misconceived. The right to defendant the Constitution of the 14th defendant by its members cannot be limited by the provisions of the same constitution relating to the code of conduct of members of the union. This is more so that the institution of a suit to defend the constitution of the Union by its members does not in any way amount to the breach of the code of conduct. The implication is that the rights of members to institute an action to defend the



constitution of the 14th Defendant Constitution and to fully and freely participate in the governance of the union as well as to express their views as to the method in which the union affairs is conducted cannot be taken away or limited by any other provisions of the constitution.

The 3rd issue questions the propriety of the various action taken by the Defendants during the pendency of Suit. No. NICN/LA/189/2020. On the 24/8/2020 the Claimants received 5 different letters of suspension in Exhibit J (series) dated the 18/8/2020, purportedly suspending the claimants as members of the 14th Defendants. The letter stated that the claimant were suspended pending the decision of the National Executive Council NEC of the 14th defendant. Further to the above state of facts, the Secretary of the Defendants on the 31st August wrote to the 1st Claimants requesting thus:

Further to your suspension from the Union as well as the branch Chairman, Nestle Nig. Plc. Contained in your suspension letter dated 18th August, 2020, in order to further accord you the opportunity of fair- hearing, as enunciated in our Union's Constitution, You are therefore requested to provide cogent explanations for your alleged act of misconduct and deliberate desecration of the norms, ethics, image and integrity of our Union through your unwarranted letter to the Registrar of Trade Union (RTU) dated 11th June, 2020 (copy attached) instructing the Registrar of Trade Union to discontinue and disapprove the legitimate process of processing the ratification and approval of our amended Constitution dully approved by the National Delegates Conference (NDC) of 9th December, 2016.

The exact content of this letter is repeated in the letters or queries served on all the other Claimants tendered as Exhibit L (series), Except the 6th claimant who was queried over an allegation that his name was included among those that tried to change the leadership in a letter attached to the counter affidavit as Exhibit NU-6 By the content of this letters the Defendants had made the issue of the letters of protest written by the claimants to the Registrar of Trade Union to stop the registration of an alleged amended Constitution of the Union as a reason for the



suspension of the Claimants. The Claimants in paragraph 28 of the affidavit in support of this originating summons has stated that the issue of the letters of protest to the Registrar of Trade Union over the attempt to register the alleged amended constitution and the legality of the purported amendment of the constitution of the 14th defendant is one of the issues in Suit No LA/189/2020 which is still pending before this court. I have examined the originating summons process filed in Suit No LA/189/2020 annexed to the affidavit in support of this originating summons as Exhibit G. One of question submitted for consideration therein is;

Whether the Registrar of Trade Unions as a statutory regulatory entity, does not have a statutory duty to refuse registration of Amendment of Rules/Constitution of a Trade Union where such amendments failed to comply with the provisions of the Union's Constitution for amendment of its rules/constitution.

The claimant upon the consideration of this question sought the following relief:

A DECLARATION that the purported amended constitution forwarded to the 19th Defendant (Registrar of Trade Unions) by the 1st Defendant, the content thereof being unknown to members of the Union and not approved by the Union at a National Delegate Conference and having particularly failed to comply with Rule 5(iii), of the Constitution of the Union, is null and void.

From the above it is very clear that the issue of the alleged amendment of the constitution and the legality of the purported amendment is a subject which is still pending before this court in Suit No. Suit No LA/189/2020 and which has not been decided by this court. This being the case this issue became sub-judice and until this court gives its decision on the issue, the Defendants cannot found a disciplinary proceedings against the Claimants on the protest by the Claimants to the registration of the alleged amended constitution as they did in Exhibit L, which subject is still pending before this court. The claimants have stated in their affidavit and rightly so that they refused to respond to letters or queries served on all the Claimants tendered as Exhibit L (series) because the issues raise in the letter were issues which this court was already considering in Suit No



LA/189/2020. The Defendants were not by any stretch of imagination allowed to use this issue as the basis to found a query issued to the claimants in Exhibit L. The argument of the defendant counsel in their written address that by Exhibit NU3 and NU4, the amendment was approved at the 2016 Quadrennial Delegates Conference of the Union held on the 9th December, 2016 cannot be justified in the face of the fact that a dispute about the alleged amended constitution and the legality of the alleged amendment had been submitted to the court. The action of the Defendant action was calculated to overreach whatever decision this court would make in the pending suit. The action of the Claimants have variously been frowned at by the courts in this Jurisdiction in a plethora of cases. In *Regd. Trustee Apostolic Church V. Olowoleni* (1990) 6 NWLR (Pt.158) 514 at 537 – 538, The Supreme Court per Nnaemeka Agu JSC had this to say:

...Once parties have turned their dispute over to the courts for determination, the right to resort to self-help ends. So, it is not permissible for any of the parties to take any step during the pendency of the suit which may have the effect of foisting upon the court a situation of complete helplessness, or may give the impression that the court is being used as a mere subterfuge, to tie the hands of one party while the party helps himself extra-judicially. Both parties are expected to await the result of the litigation and the appropriate order of court before acting further.

Also in the case of *Ezegbu V. First African Trust Bank Ltd* . [1992] 1 NWLR (Pt. 220) 699 at 724, the Supreme Court held thus:

None of the parties in litigation before a Court of law is allowed to take the law into his own hand and foist upon the Court a 'fait accompli' thereby rendering it impossible for the Court to arrive at a decision one way or the other on the merits of the issue before it or render any decision it may take nugatory or futile. In the instant case, by holding the meeting, they had pre-empted any decision which could be made by the trial Court thereby frustrating or stultifying the exercise by the Court of its jurisdiction to determine the application one way or the other. Therefore, the Court of Appeal can properly set aside the whole proceedings of the meeting of 9th November, 1991 including all the decision reached thereat



See also the case of *Iwuji Ors V. Governor of Imo State & Ors.* (2014) tPELR-22824(CA). See also *Oyeyemi & Ors V. Owoeye & Anor.* (2012)LPELR-19695 (CA)

One very important act of the defendants, which is a complete affront to the powers of this court is the defiance to the authority of this court exhibited by the Defendants Emergency Delegates Conference held on the 24th August 2020. I recall very vividly that following the complaint in Suit No LA/189/2020, That in an attempt to convene the conference the Defendants were in breach of certain provisions of the constitution, This court granted an Interlocutory Injunction restraining the convening of the conference. The defendants in the above mentioned some suit, some of whom are also defendants in this present case in violent disobedience of the order and directive of this court contained in the order of interlocutory injunction in Exhibit H attached to the affidavit in support of this originating summons went ahead to convene the Emergency Delegates Conference on the 24th August 2020. After the Conference, the 14th Defendant Union convened an Extra- Ordinary National Executive Council NEC meeting on the 19/10/2020 and purported to approve the expulsion of the Claimants from membership of the 14th Defendant Union. It is absurd that the 14th Defendant NEC allegedly expelled the claimant over an issue which was sub-judice and was still pending before this court in No Suit No LA/189/2020. The action of the Defendants being self-help is not without remedy. In the case of *Oyeyemi & Ors V. Owoeye & Anor.* (2012)LPELR-19695 (CA) The Court Appeal provided the cause open to the court under the circumstances. When the Court held *inter alia*

Above all, it has long been settled on the authorities that a court would not hesitate to invoke its disciplinary powers to prevent its processes from being used as a mere subterfuge. Thus, once parties have turned their dispute over to courts for determination, the resort to self-help must end. Thenceforth, it would not be permissible for one of the parties to take step during the pendency of the suit which may have the effect of foisting upon the court a situation of complete helplessness. Indeed, a court would always look with askance at any disingenuous approach which may give the impression that it is being used as a mere subterfuge to tie the hands of one party while the other party helps himself extra-judicially. Both parties are



expected to await the result of the litigation and the appropriate order of court before acting further. As such, it is a reprehensible conduct for any party to on action or appeal, pending in court, to proceed to take the law into his hands without any specific order of the court and to do any act which would pre-empt the result of the action'' The courts frown against such conduct and would always invoke their disciplinary powers to restore the status quo.

In a very decisive move in the case of **Chief Emeka Odumegwu Ojukwu V. Military Governor of Lagos State & Ors.** (No,1) [1985] 2 NWLR (Pt. 10) 806 at pp. 821- 827. The court of Appeal invoked its disciplinary Power in ordering a mandatory injunction to restore the applicant back to passion which was wrestled from him during the pendency of the litigation.

In this action the Defendants are liable to be subjected to the disciplinary powers of this court. The actions of the Defendants was an affront and a challenge on the judicial powers vested in this court to resolved the issued brought before this court in Suit No LA/189/2020. The purported suspension of the Claimants cannot stand. Accordingly the letters of suspension in Exhibits J series are hereby set aside. The Letters of expulsion in Exhibit M as well as the decision contained in the internal and external resolution of the NAC of the 14th Defendant date 18/8/2020 tendered as Exhibit NU-5 are hereby declared null and void and are therefore set aside.

Regarding the suspension and expulsion of the 6th claimant who was queried for attempting to unconstitutionally change the leadership of the 14th Defendant Union, The defendants in their final written address has contended that that the Claimants in an attempt to blur out their illegal action bordering on gross misconduct, the Claimants deliberately withheld the fact that they perpetrated an unsuccessful coup d'etat against the legitimate and elected leadership of the Union by purportedly dissolving the NAC of the Union and installing themselves as the acting NAC conveyed in a letter and notice titled "Leadership Re-Organisation in NUBTE dated 17th August, 2020 (Exhibit NU6) and circulated to employers' associations, the press and banks where the Defendant maintains accounts. It is their position that this disruptive action was carried out on the 17th



August, 2020, one month after some of the Claimants instituted Suit No LA/189/2020 on the 1st July 2020, and had procured an interim injunction on the 13th August 2020. In response to the above analogy the Defendant counsel has tried to put forward in his address, the Claimants in paragraph 9 of their further and better affidavit has maintained the position that the letter of suspension of 18th August 2020 was backdated to appear that it was issued before the Order of Interlocutory Injunction was made on the 19th August 2020. The Claimants position is that as at when the letter of suspension of 18th August 2020 was issued there was already an Order of Interim Injunction made on the 13th August 2020 which was still in in force and the Defendants and their Counsel were aware of and having been present when the order was made. It appears very unlikely that the 6th claimant in this action in the face of the existence of the order of interim injunction made on the 13/8/2020 would be complicit in the issuance of Exhibit NU-6. which was not authored by the 6th claimant. The justification for the suspension of the claimants anchored on Exhibit NU-6 is unfounded. This document which the Claimants have denied complicity with cannot provide justification for the action of the Defendants so long as it was made during the pendency of a valid order of this court made on the 13th August 2020.

On the whole this originating summons succeeds. The 3 questions submitted for determination in this originating summons are resolved in favour of the Claimants. Accordingly the following declarations are hereby made.

1. A DECLARATION that the purported suspension and expulsion of the Claimants as members of the 14th Defendant by the 1st to 13th Defendant is unconstitutional and a violation of the provisions of Rule 3 (iv), Rule 5(vii) and Appendix 11 4(1)(d) of the 14th Defendant's constitution.
2. AN ORDER setting aside the purported expulsions of the Claimants as members of the 14th Defendant contained in the purported letters of expulsions dated 21st October 2020 signed by the 11th Defendant with intent to punish the Claimants for exercising their rights under the 14th Defendant's constitution and for being self-help, extra-judicial and aimed at



overreaching the claimant's position in Suit No. NJCN/LA/189/2020 is hereby made.

3. AN ORDER setting aside the purported suspensions of the Claimants as members of the 14th Defendant contained in the purported internal/external resolution dated 18th August 2020 signed by the 1st to 13th Defendants with intent to punish the Claimants for exercising their rights under the 14th Defendant's constitution and for being self-help, extra-judicial and aimed at overreaching the claimant's position in Suit No. NICN/LA/189/2020.
4. AN ORDER setting aside the purported suspension and/or replacement of the 1st Claimant as Chairman, Ogun State Council of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
5. AN ORDER setting aside the purported suspension and/or replacement of the 2nd Claimant as Chairman, Lagos State Council II of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
6. AN ORDER setting aside the purported suspension and/or replacement of the 3rd Claimant as Branch Chairman, Nestle Nig. Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
7. AN ORDER setting aside the purported suspension and/or replacement of the 4th Claimant as Branch Secretary, Nestle Nigeria Plc. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.
8. AN ORDER setting aside the purported suspension and/or replacement of the 5th Claimant as Branch Chairman, 7up Bottling Co. Ltd. of the 14th Defendant as contained in the purported internal/external resolution dated 18th August 2020 for being self-help, extra-judicial and overreaching the claimant's position in suit No. NICN/LA/189/2020.



9. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants from restricting, restraining, limiting or hindering the 1st to 5th Claimants in performing the functions and role constitutionally reserved for their respective office as officers of the 14th Defendant.

10. The Defendants shall pay a cost of N2,000,000 (Two million Naira) to the claimants

Judgment is hereby entered.


Hon. Justice (Dr.) I. J. Essien
(Presiding Judge)

REPRESENTATION.

O. A. Afolabi Esq. for Claimants.

A. A. Adeniran Esq. with K. O. Yakubu Esq. And O. Awonugah Esq. for the Defendants.

