**IN THE SUPREME COURT OF NIGERIA**

**HOLDEN AT ABUJA**

**SC NO.: ………………. 2023**

**BETWEEN**

1. **ATTORNEY GENERAL OF ADAMAWA STATE**
2. **ATTORNEY GENERAL OF AKWA IBOM STATE**
3. **ATTORNEY GENERAL OF BAYELSA STATE**
4. **ATTORNEY GENERAL OF DELTA STATE ………….......PLAINTIFFS /**
5. **ATTORNEY GENERAL OF EDO STATE APPLICANTS**
6. **ATTORNEY GENERAL OF SOKOTO STATE**

**V**

**ATTORNEY GENERAL OF THE FEDERATION ...........................DEFENDANT/**

**RESPONDENT**

**MOTION EX-PARTE**

**BROUGHT PURSUANT TO:**

1. **SECTIONS 6 (6) (a), 153 (1) (F) AND 232 (1) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED);**
2. **SECTIONS 17 (D) AND 22 OF THE SUPREME COURT ACT;**
3. **SECTIONS 25; 47(2); 60 (1), (2), (4) & (5); 62; 64(4)(a) & (b); 70; AND 148 OF THE ELECTORAL ACT; AND**
4. **UNDER THE INHERENT POWERS AND JURISDICTION OF THIS HONOURABLE COURT**

**TAKE NOTICE** that the Honourable Court shall be moved on the ….. day of …… 2023 at the hour of 9 O’clock in the forenoon or so soon thereafter as the Applicants or Counsel on their behalf shall be heard praying this Honourable Court for the following reliefs:

1. **AN ORDER OF INTERIM INJUNCTION** restraining the Federation of Nigeria, whether by herself through the Attorney General of the Federation or acting through any of its Executive bodies, especially the Independent National Electoral Commission (INEC), its Officers or through any person or persons (natural and artificial) of the Independent National Electoral Commission howsoever from continuing with the fundamentally flawed electoral process by announcing results of the Presidential election conducted on the 25th of February, 2023,without uploading of the results of each of the 176,974 Polling Units nationwide, as prescribed by sections 25; 47(2); 60 (1), (2), (4) & (5); 62; 64(4)(a) & (b); 70; and 148 of the Electoral Act, 2022; paragraph 38 of the INEC Regulations and Guidelines for the Conduct of Elections, 2022; and paragraphs 2.8.4; 2.9.0; and 2.9.1 of the INEC Manual for Election Officials, 2023, pending the hearing and final determination of the Motion on Notice.
2. **AN ORDER OF INTERIM MANDATORY INJUNCTION** directing the Federation of Nigeria, whether acting through the Independent National Electoral Commission (INEC) or its Officers to review all the results of the Presidential and National Assembly Elections already conducted and collated thus far, in line with the statutory provisions of Section 65 of the Electoral Act 2022, pending the hearing and final determination of the Motion on Notice.
3. **AN INTERIM ORDER** suspending further announcement of the results of the Presidential election conducted on 25th February, 2023, from the thirty-six (36) States of the Federation and the FCT, Abuja, without first uploading the polling units results in compliance with the relevant provisions of the Electoral Act, 2022, the 2023 INEC Manual/Guidelines, and the INEC Manual for Election Officials 2023, pending the hearing and final determination of the Motion on Notice.
4. **AND FOR SUCH FURTHER ORDERS** as this Honourable Court may deem fit to make in the circumstance.

**The Grounds upon which this application is sought are as follows:**

1. The National Elections, comprising the Presidential and National Assembly Elections for the positions of President of the Federal Republic of Nigeria, Members, Federal House of Representatives and Members of the Senate of the Federal Republic of Nigeria, were conducted by the Federal Government of Nigeria nationwide on the 25th of February 2023.
2. The said National Elections are mandatorily required to be conducted in full and substantial compliance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999, as amended; the Electoral Act 2022; the INEC Regulations and Guidelines for the Conduct of Elections 2022; and the INEC Manual for Election Officials 2023, made pursuant to the provisions of Section 148 of the Electoral Act 2022.
3. The Federal Government of Nigeria, through the Independent National Electoral Commission issued and published in the Federal Government Gazette, Guidelines for the elections which makes provisions, among other things, for the step-by-step recording of the poll in the electoral forms as prescribed, beginning from the polling unit to the last collation centre for the ward or constituency where the result of the election is declared.
4. The collation of the national election results from the 36 States of the Federation, and that of the Federal Capital Territory, for the said 2023 Presidential and National Assembly elections have not been carried out in compliance with the mandatory provisions of relevant sections of the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections, 2022, made pursuant to the provisions of the Electoral Act, 2022; and the INEC Manual for Election Officials, 2023.
5. The agents and officials of the Federal Government of Nigeria and the Independent National Electoral Commission failed to transmit the collated result as prescribed by the provisions of the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections 2022; and the INEC Manual for Election Officials requiring transmission of the results by the use of Bimodal Voter Accreditation System (BVAS) in flagrant breach of  the relevant provisions of the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections, 2022; and the INEC Manual for Election Officials, 2023.
6. The Non-Compliance with the due process of law has led to a widespread agitation, violent protests, displeasure, and disapproval from a wide spectrum of the Nigerian populace, including International Observers, Political parties, well-meaning Nigerians and former Head of States of the Federal Republic of Nigeria. The widespread violent protests, demonstrations and rallies have endangered the peace, order, good governance, security and safety of the Plaintiffs.
7. The Federal Government of Nigeria through the Independent National Electoral Commission (INEC) is empowered by law to correct its elections due to technical glitches and errors arising from the conduct of the elections with substantial effect on the electoral process in line with the provisions of Section 47 (3) of the Electoral Act, 2022; and other relevant sections thereof.
8. The Federal Government of Nigeria has nonetheless continued to collate results for the Presidential and National Assembly elections, against the provisions of estant Electoral laws and Guidelines, notwithstanding the fundamental flaws identified in the process of the collation of results and the public outcry that has greeted the entire electoral process.
9. Whilst queries were being raised as to the failure or deliberate refusal of INEC to transmit the results electronically, the INEC suddenly pulled down its portal harbouring the Regulations and Guidelines, thus leaving the Plaintiffs in the dark.
10. Most Nigerians, including the Governments and peoples of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State, are entitled to a proper and electoral lawful process and procedure that guarantees a free, fair, transparent and credible election.
11. There is no justifiable basis for the ongoing collation of results without compliance with the mandatory provisions of the law that mandatorily require the use of BVAs, electronic transmission to the IRev Portal.
12. Unless this Honourable Court intervenes, the Governments and peoples of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State, who have suffered and will continue to suffer irreparable hardship and damage of unquantifiable proportions by being denied the opportunity to participate fairly in a free, transparent, fair and credible election, which can lead to a breakdown of law and order and thus endanger the public peace, security, safety, order and good governance, consequent upon the violent demonstrations and protests that have already started to take place in different parts of the country, including the Plaintiff States, as a result of the fundamentally flawed electoral process, which does not represent the wishes of Nigerians and of the Plaintiff States.

1. It is in the best interest of Justice for this Honourable Court to grant this application.

Dated this ………….. Day of …………………….. 2023

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**Prof. Mike A. A. Ozekhome, SAN, CON, OFR, FCIArb, Ph.D, LL.D, D.Litt.**

**Chief Abeni Mohammed, SAN**

**Chief Yusuf Asamah Kadiri SAN, FCIArb**

**Chief Emeka Okpoko, SAN**

**Chief Clement Onwuenwunor, SAN**

**Benson Igbanoi, Esq.**

**Lady Josephine Mike Ozekhome, LL.M**

**Abubakar Sani, Esq**

**Richard Ebie, Esq**

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**Osilama Mike Ozekhome, Esq., LL.M, MBA**

**Ngozi Osilama-Ozekhome (Miss), LL.M, MsC**

**Oshomha Mike Ozekhome, Esq, MBA**

**A. O. Mohammad, Esq.**

**Legal Practitioners for the Applicant**

**C/o: Mike Ozekhome’s Chambers**

**Ukwe Court, Plot 2215 Cadastral Zone**

**Nile Street, Maitama, Abuja, FCT**

**Email: ……………………………………**

**Phone: ........................................................**

**FOR SERVICE ON:**

**THE RESPONDENT**

**ATTORNEY GENERAL OF THE FEDERATION**

Attorney General’s Chambers

The Federal Ministry of Justice,

Central Business District

FCT, Abuja.

**IN THE SUPREME COURT OF NIGERIA**

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**ATTORNEY GENERAL OF THE FEDERATION ...........................DEFENDANT/**

**RESPONDENT**

**AFFIDAVIT IN SUPPORT OF MOTION EX-PARTE**

I, Isaiah Bozimo, Male, Adult, Christian, Nigerian Citizen, Honourable Attorney General and Commissioner for Justice, Delta State of Ministry of Justice, Prof. Chike Edozien Secretariat, Maryam Babangida Way, Asaba, Delta State, do hereby make oath and state as follows:

1. That I am Honourable Attorney General and Commissioner for Justice of the 4th Plaintiff.

1. That by virtue of my position as aforesaid, I am very conversant with the facts and circumstances of this case.
2. That I have carefully read the provisions of the Electoral Act, the INEC Regulations and Guidelines for the Conduct of Elections, 2022, and the INEC Manual for Election Officials, 2023, and I verily understand the contents therein.
3. That I depose to facts within my personal knowledge and upon information received from the Attorneys General of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State on the 28th day of February, 2023, at about 9:30 am during a conference call and I verily believed them to be true and correct.
4. That the 1st Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and the said office is the Chief Law Officer of Adamawa State of Nigeria.
5. That the 2nd Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and is the Chief Law Officer of Akwa Ibom State of Nigeria.
6. That the 3rd Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and is the Chief Law Officer of Bayelsa State of Nigeria.
7. That the 4th Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and is the Chief Law Officer of Delta State of Nigeria.
8. That the 5th Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and is the Chief Law Officer of Edo State of Nigeria.
9. That the 6th Plaintiff is an office created under the Constitution of the Federal Republic of Nigeria and is the Chief Law Officer of Sokoto State of Nigeria.
10. That I have the consent and authority of the Governments of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State to depose to this Affidavit for and on their behalf.
11. That the Defendant is an office created under the Constitution of the Federal Republic of Nigeria which, inter alia, serves as the Chief Law Officer of the Federation.
12. That the National elections, comprising the Presidential and National Assembly Elections for the positions of President of the Federal Republic of Nigeria, Members, Federal House of Representatives and Members of the Senate of the Federal Republic of Nigeria, were conducted by the Federal Government of Nigeria, through the Independent National Electoral Commission (INEC) nationwide on the 25th February 2023.
13. That the said National Elections were meant to be conducted in full and substantial compliance with the provisions of the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections, 2022, made pursuant to the provisions of the Electoral Act, 2022; and the INEC Manual for Election Officials, 2023.
14. That I am also a registered voter in the course of the election and I participated in the electoral process at my polling unit, where I exercised my right to vote.
15. That the Federation of Nigeria, through the Independent National Electoral Commission issued and published in the Federal Government Gazette, the Guidelines for the elections and the INEC Manual for Election Officials, 2023, all of which make provisions, among other things, for the step-by-step recording of the poll in the electoral forms as prescribed, beginning from the polling unit to the last collation Centre for the ward or constituency where the result of the election is declared. A copy of the said Guidelines for Elections is herewith attached to this Affidavit as **Exhibit A1**; while a copy of the INEC Manual for Election Officials, 2023, is attached herewith as **Exhibit A2.**
16. That the collation of the National election results from the 36 States of the Federation, and that of the Federal Capital Territory, for the said 2023 Presidential and National Assembly elections are not being carried out in accordance with the mandatory provisions of the Electoral Act, 2022, the INEC Regulations and Guidelines for the Conduct of Elections, 2022, and the INEC Manual for Election Officials, 2023.
17. That the agents and officials of the Federal Government of Nigeria and that of the Independent National Electoral Commission failed to transmit the collated result to the poling and other wards, LGs and State units in the Plaintiff States as prescribed by the provisions of the INEC Regulations and Guidelines for the Conduct of Elections 2022, requiring transmission of the results by the use of Bimodal Voter Accreditation System (BVAS); and the INEC Manual for Election Officials, 2023, contrary to the provisions of the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections, 2022; and, the INEC Manual for Election Officials, 2023.
18. That the Federal Government of Nigeria adopted the use of the Bimodal Voter Accreditation System (BVAS) during the conduct of the 2023 General elections, including the Presidential and National Assembly Elections mentioned above.

1. That the agents and officials of the Government of the Federation of Nigeria and that of Independent National Electoral Commission failed and/or refused to transmit the collated results to the Plaintiff States as prescribed by the provisions the Electoral Act, 2022; the INEC Regulations and Guidelines for the Conduct of Elections, 2022 **(Exhibit A1)**; and the INEC Manual for Election Officials, 2023 (**Exhibit A2**); which require transmission by Bimodal Voter Accreditation System (BVAS).

1. That the Independent National Electoral Commission (INEC) and its officials have also failed and/or refused to electronically transmit the results from all the 176,974 polling units nationwide, including those of the Plaintiff States, as well as failing to use the Bimodal Voter Accreditation System (BVAS) to upload scanned copies of the Forms EC8A into the Independent National Electoral Commission (INEC) Result Viewing Portal (IReV) immediately after Polling Unit voting and result procedures as prescribed by the Electoral Act, 2022; the Regulations and Guidelines for the Conduct of Elections, 2022, made pursuant to the Electoral Act 2022; and the INEC Manual for Election Officials, 2023.

1. That the Non-Compliance with the due process of law had led to widespread violent protests, demonstrations, rallies, displeasure and disapproval from a wide spectrum of the Nigerian populace, including the Plaintiff States, political parties, well-meaning Nigerians and former Heads of State of the Federal Republic of Nigeria, and international Observers. Attached to this Affidavit as **Exhibit A3** is the press statement of the Former President Olusegun Obasanjo made on the same 27th day of February 2023**.**

1. That I state further that the fundamental flaws which challenged the integrity, fairness, transparency and credibility of the electoral process were occasioned during the conduct of the election were also captured by the European Union Election Observation Mission to Nigeria for the General Elections commencing on the 25th February and 11th March, 2023. A copy of the First Preliminary Statement of the European Union Election Observation Mission to Nigeria is herewith attached **Exhibit A4**; and a. copy of its Final Report is herewith marked **Exhibit A5**. A copy of the Joint Observation Mission (JEOM) of the Coalition of International Election Observers is herewith attached as **Exhibit A6**.

1. That at page 11 of the Report in Exhibit A3, the European Union Election Observation Mission to Nigeria reported that while the collation was ongoing, the Presidential result forms from polling units were not on the IReV portal. It further stated that Presidential election result forms only started to be uploaded after 10:00pm on the election day raising concerns, with the total number of forms reaching only 20 per cent by noon of 26th February 2023 and several were illegible. It was concluded that on the same evening, INEC explained the delay with **“technical hitches”**. That INEC later pulled down its portal dealing with electronic transmission. Copies of publications evidencing this are herewith attached and collectively marked **Exhibit A7**.

1. That I state further that the collation of the results by the Government of the Federation of Nigeria were done by live broadcasts on National Television medias, and I witnessed the uproar by agents of some of the Plaintiff States and political parties during the collation at the Federal Level on the 27th day of February 2022.

1. That I state that upon observing some differences in the election results from various States of the Federation for the 2023 Presidential elections, the Plaintiff States through their political parties and other political parties requested that INEC ensures transparency by uploading of the results from the 176,974 polling units from the BVAS, as required by law; but it has blatantly failed to do so.

1. That I state that the numerous requests by the Plaintiff’s agents were repeatedly rejected by the Chairman of INEC, Prof Mahmood Yakubu, over the course of the day. Queries and demands for explanation were rebuffed and side-stepped. After repeated attempts to reconcile the figures announced with those collated from the polling units, the party agents of the political parties from the Plaintiff States refused to participate further in an obviously pre-determined electoral process and staged a walk out from the national collation centre at the ICC, Abuja, along with the party agents from the Labour Party and a coalition of other political parties which participated in the election. Copies of the publications evidencing the protests and walk out are herewith collectively marked **Exhibit A8**.

1. That I know that the Federal Government of Nigeria through the Independent National Electoral Commission (INEC) is empowered by law to correct the elections due to technical glitches and errors arising from the conduct of the elections with substantial effect on the electoral process in line with the provisions of the Electoral Act, 2022.

1. That I state that the Government of the Federation of Nigeria has nonetheless continued to collate results for the Presidential and National Assembly elections, notwithstanding the fundamental flaws identified in the process of the collation of results and the public outcry that have greeted the entire electoral process.

1. That I state that most Nigerians, including the Governments and peoples of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State are entitled to a proper and credible electioneering process and procedure in carrying out the electoral process.
2. That I know that Polling Units results are the primary and authentic results of the elections while the collated results at the Ward, Local Government Areas, State and Federal levels are secondary results computed in the absence of the voters.
3. That INEC constituted a National Collation Centre in the FCT, Abuja to receive results from 36 States and the FCT and some States results of the Presidential elections have been announced at the Collation Centre, without following the laid down process established in the Electoral Act; the Regulations and Guidelines for the Conduct of Elections, 2022; and the INEC Manual for Election Officials, 2023.
4. That the Plaintiffs and voters in the various States have observed several differences in the collated results announced at the Centre and copies of the primary results issued to political parties’ agents and as announced in the various polling units, thus leading to agitations, mass protests, rallies and demonstrations.
5. That tensions have continued to build in our various States and many of the voters are already protesting the announcement of results now still being made at the National Collation Centre without following laid down guidelines. Attached herewith and marked Exhibit A8 are copies of photographs showing protests in the Plaintiff States.
6. That I state that there is no justifiable basis for the ongoing collation of results without compliance with the mandatory provisions of the law and laid down guidelines.
7. That I state that unless this Honourable Court timeously intervenes, the Plaintiff Governments and the people of Adamawa State, Akwa Ibom State, Bayelsa State, Delta State, Edo State, and Sokoto State, have suffered and continued to suffer irreparable hardship and damage of unquantifiable proportions by being denied the opportunity to participate fairly and democratically in a free, fair, transparent and credible election, which can lead to a total breakdown of law and order and thus endanger public peace, security, safety, law, order and good governance in the Plaintiff States, consequent upon the violent demonstrations, rallies and protests that have already started to take place in different parts of the country, including the Plaintiff States as a result of the flawed electoral process, which does not represent the wishes of the people.
8. That on the 26th of February, 2023, the announcement of the results of the Presidential election began at the National Collation Center, Abuja, FCT.
9. That the transmission and transfer of election results from the polling units by the Respondent, vide her agent, the Independent National Electoral Commission (INEC), has been marred with fundamental glitches and refusal to upload the results electronically.
10. That upon the discovery of these fundamental discrepancies, agents of different political parties presented these fact and evidence of same to the Chairman of the Independent National Electoral Commission (INEC), Prof Mahmood Yakubu, with requests that the results from the 176,974 polling units nationwide be uploaded with the use of the BVAS, to confirm the results to be announced at the National Collation Center.
11. That these requests and queries by various party agents were rejected and rebuffed by the Chairman of Independent National Electoral Commission (INEC).
12. That the Independent National Electoral Commission (INEC) has nonetheless continued to collate and announce results for the Presidential and National Assembly elections, notwithstanding the fundamental flaws identified in the process of the collation of results and the public outcry that has greeted the entire electoral process.
13. That the continued collation and announcement of results for the elections conducted on the 25th day of February 2023 has cast a light on the credibility and transparency of the Independent National Electoral Commission (INEC) and could lead to a total breakdown of law and order in our country, including the Plaintiff States.
14. That I know that the Federal Government of Nigeria through the Independent National Electoral Commission (INEC) is empowered by law to correct its elections due to technical glitches and errors arising from the conduct of the elections with substantial effect on the electoral process in line with the provisions of the Electoral Act, 2022, and extant guidelines.
15. That I verily believe that the Respondent is not complying with the stated process of voting in the polling units of the Federation and has not complied with the due process of law and the laid down procedures.
16. That I state that the Respondent did not use the BVAS to upload scanned copies of the EC8A to the INEC result viewing portal (IREV) in many polling units of the Applicants respective states.
17. That in multiple polling units of the 1st, 2nd, 3rd, 4th, 5th and 6th Plaintiffs/Applicants States, it is recorded that BVAS was not working and that after over 48hours from 25th February, 2023, uploading of results has only not been completed, but has been entirely discarded.
18. That I verily believe that the entire process was compromised and lacks transparency.
19. That I state that there is presently restiveness amongst the people in the various States of the Federation on account of the non-compliance with the provisions of the law by the Respondent and the situation may sooner than later degenerate into a total breakdown of law and order.
20. That unless, restrained the actions of the Independent National Electoral Commission (INEC), may lead to a breakdown of law and order, and thus endanger public peace, order, security, safety, law and good governance, consequent upon the violent demonstrations and protests that have already started to take place in different part of the country; and which may persist.
21. That the Plaintiff State Governments cannot stand by as they are duty bound to protect the security and safety of citizens in their States, and prevent the breakdown of law and order, and there is presently very high apprehension and danger of a total breakdown of law and order and breach of public peace and security and safety consequent upon the violent demonstrations and protests that have already started to take place in different part of the country.
22. That I state that there is no justifiable basis for the ongoing collation by the Government of the Federation of Nigeria which did not comply with the provisions of the law.
23. That this application is brought in good faith and it will be in the interest of justice to directing the Federal Government of Nigeria, acting through the Independent National Electoral Commission (INEC) or its Officers to do the needful and review the results of the Presidential and National Assembly Elections already conducted and collated thus far.
24. That the Plaintffs/Applicants undertake to indemnify the Defendant / Respondent if it is later discovered that this application should not have been granted.
25. That I depose to this affidavit in good faith conscientiously believing the contents to be true and correct and in accordance with the Oaths Act.

**---------------------------**

**D E P O N E N T**

**SWORN** to at the Registry of the Supreme Court of Nigeria,

FCT, Abuja, this ……… day of…………………….2023.

**BEFORE ME**

**-----------------------------------------------------**

**COMMISSIONER FOR OATHS**

**IN THE SUPREME COURT OF NIGERIA**

**HOLDEN AT ABUJA**

**SC NO.: ………………. 2023**

**BETWEEN**

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**2. ATTORNEY GENERAL OF AKWA IBOM STATE**

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**V**

**ATTORNEY GENERAL OF THE FEDERATION .....................DEFENDANT/**

**RESPONDENT**

**WRITTEN ADDRESS IN SUPPORT OF MOTION EXPARTE**

* 1. **BACKGROUND FACTS:**
  2. The Federation of Nigeria through the Federal Government of Nigeria created a Federal executive body under the Constitution of the Federal Republic of Nigeria,1999, as amended and vested it with the power of conducting elections in Nigeria. This body is known as Independent National Electoral Commission (INEC).
  3. The said body, Independent National Electoral Commission (INEC) conducted the Presidential elections throughout Nigeria on 25th February, 2023 to elect a President for Nigeria.
  4. Before the conduct of the General Elections, the Independent National Electoral Commission (INEC) published its Electoral Guidelines and Manual for Election Officials prescribing Collation and transmission of election results from the Polling Units in all States of the Federation and the FCT as it is provided in the Electoral Act, 2022.
  5. The Plaintiffs were however shocked that after the elections of 25th February, 2023, the Independent National Electoral Commission (INEC) failed and/or refused to transmit Polling Units results directly from the Polling Units to the National Database as prescribed by relevant laws and guidelines.
  6. Transmission of results from polling units as prescribed by the Electoral Act and the Guidelines were not done in the 36 States of the Federation and FCT, including the Plaintiff States. All protests to the Respondent through the INEC to correct the anomaly were roundly rebuffed.

1. **ISSUE FOR DETERMINATION**

**WHETHER THIS IS NOT AN APPROPRIATE CIRCUMSTANCE TO GRANT AN INTERIM ORDER TO FORESTALL BREAKDOWN OF LAW AND ORDER IN THE PLAINTIFFS’ STATES AND THE ENTIRE COUNTRY.**

1. **TREATMENT OF ISSUE**
   1. We submit that the Applicants are entitled to the grant of this application because of the fragrant violation of the provisions of the Electoral Act, 2022; the 2023 INEC Guidelines for the conduct of the 25th February, 2023 General Elections; and the INEC Manual for Election Officials.
   2. The relevant provision of the extant law in the Country which is the new Electoral Act, 2022 provides in its Section 64 (4) as follows:

“**A Collation officer or returning officer at an election shall collate and announce the result of an election, subject to his or her verification and confirmation that the –**

**number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under Section 47(2) of this Act.**

**The votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units under Section 60(4) of this Act**”.

* 1. We humbly submit that there that Independent National Electoral Commission is under a statutory obligation to transmit election results electronically.
  2. In addition to the provision of the Electoral Act cited above, paragraph 38 of the Independent National Electoral Commission Manual/Guideline made pursuant to Section 149 of the Electoral Act, 2022 and the 1999 Constitution as amended deals with the transmission of result at the Polling Units and imposes a statutory obligation on Independent National Electoral Commission to upload polling units results on its portal.
  3. The said paragraph 38 of Independent National Electoral Commission Manual 2022 made pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended and section 149 of the Electoral Act 2022 provides as follows:
  4. “On completion of all the Polling Unit voting and results procedures, the Presiding Officer shall:

(i) Electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission.

(ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission.

(iii) Take the BVAS and the original copy of each of the forms in tamper evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre”.

* 1. It is remarkable to note that the word used in paragraph 38 of the Manual made pursuant to the Electoral Act 2022 is “**SHALL**” which implies “**compulsion**”. Independent National Election Commission has no discretion in this issue.
  2. We therefore, humbly submit that the failure to upload the Polling Units results and follow the procedures set out in paragraph 38 of the manual made pursuant to the Electoral Act 2022, was a fundamental breach of the Electoral Act and the Manual/Guidelines for the said Election.
  3. The law is that where a procedure has been prescribed for doing a thing, that procedure and no other must be followed.
  4. There are several decisions on this point by this honourable Court.
  5. In **DR. NWANKWO & ORS VS. YAR'ADUA & ORS** (2010) LPELR-2109(SC) at P. 42, paras. B-E, this Court held as follows:

"**It is now firmly established that where a statute lays down a procedure for doing a thing, there should be no other method of doing it. See the cases of CCB PLC V. THE ATTORNEY-GENERAL OF ANAMBRA STATE (1992) 10 SCNJ 37 AT 163; BUHARI V. YUSUF (2003) 6 S.C. (PT.II) 156; (2003) 4 NWLR (Pt.841) 446 @ 492**”.

* 1. We further submit that Independent National Electoral Commission guideline has force of law.
  2. The law has firmly been settled that guidelines issued by Independent National Electoral Commission are subsidiary legislation made pursuant to Section 153 of the principal Act, Electoral Act, 2010 (as amended) and therefore have the force of law and binding.
  3. In **NDP V. INEC** NWLR (PT 1319) 176 at 196, it was held as follows:

“**The time table is a guideline with the force of law. This is because any action taken outside the published time table is fatal to the Political party involved. The activities and the time schedule set out in the time table are not directory." "See also FALEKE VS. INEC (2016) 18 NWLR (Pt. 1543) 61 at 157; SHINKAFI VS. YARI (2016) 7 NWLR (part 1511) 340; CPC V INEC (2011) 18 NWLR (part 1279) 493 AT 542; AGBALLAH V. CHIME (2009) 1 NWLR (part 1122) 373 at 459; KUBOR VS DICKSON (2013) 4 NWLR (part 1345) AT pp 574- 575 and P.P.A VS INEC (2010) 12 NWLR (part 1207) 70 at pp 105-107**”.

* 1. It is in the entire circumstances of this case that we submit that this application is justified by law and should be granted.
  2. My Lords, in **KOTOYE V. CBN** (1989) 1 NWLR (Pt. 98) 419 it was held:

“**An ex parte application is a child of circumstances designed to protect the sanctity of a suit before the res is destroyed**”

* 1. The exparte order sought in this case is premised on the violation of various sections of the Electoral Act, 2022 and 2023 Independent National Electoral Commission Guidelines and Manual for Election Officials.
  2. It is respectfully submitted that temporary injunction whether ex parte or on notice are constitutional and the Courts have consistently held that there is nothing unconstitutional about them. Your Lordships are referred to the case of **7-UP BOTTLING CO. LTD V. ABILA & SONS LTD** (1995) 3 NWLR (Pt. 383) 257, 277 and 280 where the Court held thus:

“**If, as it was argued in the case, the learned trial judge could not properly determine any contentions issues when the Motion ex parte for an order of interim injunction came before him, the question of giving an opportunity for being heard to the appellants before determining the application could not have arisen and the provisions of Section 33(1) of the Constitution (now Section 36(1) of the Constitution of the Federal Republic of Nigeria, 2019 (as amended) were not applicable and were not violated**” (per Adio J.S.C.)

1. **CONCLUSION**
   1. We humbly urge your Lordships to grant this application as prayed.

**Dated this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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