

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER, 2023**  
**BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE I. E. EKWO**  
**JUDGE**

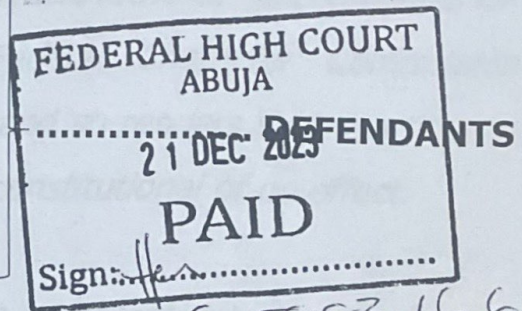
**SUIT NO: FHC/ABJ/CS/709/2021**

**BETWEEN:**

**FESTUS OLUWASANMI ONIFADE ..... PLAINTIFF**

**AND**

- 1. PRESIDENT OF FEDERAL REPUBLIC OF NIGERIA**
- 2. THE ATTORNEY GENERAL OF THE FEDERATION**
- 3. FEDERAL CHARACTER COMMISSION**
- 4. MUEEBA FARIDA DANKAKA**
- 5. BARR. MOHAMMED BELLO TUKUR**



**JUDGEMENT**

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In the Amended Originating Summons issued on the application of the Plaintiff on 17<sup>th</sup> June, 2022, the following questions are formulated for determination to wit:

1. *Whether by the combined provisions of Sections 7 and 8 (1) and (2) (a), (b), and (c) of the third Schedule, Part 1 of Constitution of Federal Republic of Nigeria 1999 (as amended) and Section 4 (1) of the Subsidiary Legislation (GUIDING PRINCIPLES AND FORMULAE FOR THE DISTRIBUTION OF ALL CADRES OF POSTS) 1997 of the Federal Character Commission (Establishment) Act 1995, the appointment of 4<sup>th</sup> and 5<sup>th</sup> Respondents by the 1<sup>st</sup> Respondent and the confirmation of the said appointment by the NATIONAL ASSEMBLY as Chairman and Secretary of*

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*the Federal Character Commission is not a violation of the Constitution and therefore unlawful, unconstitutional, null and void ab initio.*

2. *Whether by such Appointment and continuous holding of office of 4<sup>th</sup> and 5<sup>th</sup> Respondent is not inconsistent with the provisions of Section 7 and 8 (1) and (2) (a), (b), and (c) of the third Schedule, Part 1 of 1999 Constitution of Federal Republic of Nigeria (as amended), Section 4 (1) of the Subsidiary Legislation (GUIDING PRINCIPLES AND FORMULAE FOR THE DISTRIBUTION OF ALL CADRES OF POSTS) 1997 of the Federal Character Commission (Establishment) Act 1995 and so renders their continuous stay in office unlawful, unconstitutional of no effect.*

The reliefs thereof sought are:

1. A DECLARATION that 1<sup>st</sup> Respondent is bound to observe and comply with the provision of the sections 7 and 8 (1), (2) (a) (b) (c) of the Third Schedule, part 1 of the Constitution of Federal Republic of Nigeria 1999 (As Amended) in the appointment of persons to the office of the Chairman and Secretary of Federal Character Commission.
2. A DECLARATION that the Appointment by 1<sup>st</sup> Respondent and the Confirmation of same by National Assembly of the 4<sup>th</sup> and 5<sup>th</sup> Respondents is unlawful, unconstitutional, null and void *ab initio* for non-compliance with Section 7 and 8 (1) and (2) (a), (b), and (c) of the third Schedule, Part 1 of 1999 Constitution of Federal Republic of Nigeria (as amended), Section 4 (1) of the Subsidiary Legislation (GUIDING PRINCIPLES AND FORMULAE FOR THE

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DISTRIBUTION OF ALL CADRES OF POSTS) 1997 of the Federal Character Commission (Establishment) Act 1995.

3. AN ORDER directing the 1<sup>st</sup> Respondent to immediately dissolve and reconstitute the board of the 3<sup>rd</sup> Respondent to reflect Sections 4 (1) of the Subsidiary Legislation (GUIDING PRINCIPLES AND FORMULAE FOR THE DISTRIBUTION OF ALL CADRES OF POSTS) 1997 of the Federal Character Commission (Establishment) Act 1995 forthwith.
4. AN ORDER directing the 1<sup>st</sup> Respondent to immediately appoint other persons into these positions in compliance with the provisions of the Constitution and the Act of National Assembly.
5. SUCH FURTHER ORDERS as this Honourable Court may deem to make in the circumstances of this case.

The case of the Plaintiff is that the 1<sup>st</sup> Defendant is the President of the Federal Republic of Nigeria and is constitutionally responsible for the appointment of persons as the Chairman and Secretary and other members of the board and management of the 3<sup>rd</sup> Defendant. The 2<sup>nd</sup> Defendant is the appointee of the Federal Government of Nigeria as the Minister of Justice and Attorney General of the Federation and the Chief Law Officer of the Federation. The 3<sup>rd</sup> Defendant is the agency of Federal of Government of Nigeria charged with responsibility to promote, monitor and enforce compliance with the principles of the proportional sharing of all bureaucratic, economic, media and political posts at all levels of government. The 4<sup>th</sup> Defendant was the person appointed by the 1<sup>st</sup> Defendant to the National Assembly for confirmation as the Chairman of the 3<sup>rd</sup> Defendant and was subsequently confirmed (Exhs. A and B). After the appointment and confirmation, the 4<sup>th</sup> Defendant assumed office as the Executive Chairman

and has the statutory responsibilities of superintending over the 3<sup>rd</sup> Defendant Commission. The 5<sup>th</sup> Defendant was appointed as the Secretary of the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Defendant for an initial period of four (4) years term in office which expired since 7<sup>th</sup> April, 2021 with the responsibilities of keeping proper records of the proceedings of the 3<sup>rd</sup> Defendant and acts as the Head of the Commission's Secretariat and responsible for the administration thereof as well as the direction and control of all other employees of the 3<sup>rd</sup> Defendant. The Third Schedule of the 1999 Constitution (as amended) provides for proportional sharing of all bureaucratic, economic, media and political posts at all levels of Government of the Federation and the States to reflect the diversity of the country. The Subsidiary Legislation of the 3<sup>rd</sup> Defendant also provides for guidelines for equal and proportional distribution of post government Agencies and parastatals between 36 States of the Federation and FCT and where only two positions exist, it shall be shared between Northern and Southern part of the country. The 4<sup>th</sup> Defendant hails from Kwara State, North-Central and 5<sup>th</sup> Defendant is from Taraba State, North-East both coming from the same Northern part of the country. Since the expiration of the tenure of the 5<sup>th</sup> Defendant on 7<sup>th</sup> of April, 2021, he still continues to occupy and acts in the office as the Secretary of the 3<sup>rd</sup> Defendant simultaneously with the 4<sup>th</sup> Defendant in violation of the 1999 Constitution (as amended) and the Act of National Assembly. The appointment by the 1<sup>st</sup> Defendant of the 4<sup>th</sup> and 5<sup>th</sup> Defendants and confirmation by the National Assembly as the Chairman and Secretary of the 3<sup>rd</sup> Defendant as principal officers is not in line with the principles of Federal Character. The appointment and confirmation of the 4<sup>th</sup> and 5<sup>th</sup> Defendants as the Chairman and Secretary of the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Defendant and National Assembly has generated complaints and ill feeling from persons and interest groups from the Southern parts of the country. Interest groups from the South-East and South-West Nigeria protested and called on the National

Assembly to refuse the confirmation of the 4<sup>th</sup> Defendant as the Chairman of the 3<sup>rd</sup> Defendant in view of the fact that the 5<sup>th</sup> Defendant is also from the Northern part of the country, yet the National Assembly ignored the Complaints and proceeded to confirm the nomination of appointment of the 5<sup>th</sup> Defendant as the Chairman of the 3<sup>rd</sup> Defendant. It is in the interest of justice to grant the reliefs sought by this Originating Summons. The grant of this Originating Summons will not prejudice the Respondents herein.

The case of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is that the 1<sup>st</sup> Defendant has the constitutional powers to appoint individuals he deems qualified into extra-ministerial bodies like the 3<sup>rd</sup> Defendant. The simultaneous occupation of the position of Chairman and Secretary by the 4<sup>th</sup> and 5<sup>th</sup> Defendants in the 3<sup>rd</sup> Defendant is not in violation of the 1999 Constitution (as amended). It is not true that the appointments of the 4<sup>th</sup> and 5<sup>th</sup> Defendants are not in conformity with the provisions of the 1999 Constitution (as amended). The Federal Character Commission Establishment Act (hereinafter referred to as FCCE Act, 2004) is an enactment of the National Assembly and the Guiding Principles and Formulae for the Distribution of All Cadres of Posts, 1997 is a subsidiary legislation. The 1<sup>st</sup> Defendant in making appointment is only bound by the provisions of the 1999 Constitution (as amended) and the said appointment of the 4<sup>th</sup> and 5<sup>th</sup> Defendants is lawful and in compliance with the provisions thereof. There is a Commissioner representing all the thirty-six States of the Federation in the 3<sup>rd</sup> Defendant. The primary purpose of the Federal Character principle is to ensure that there is no predominance of persons from few States or ethnic or other sectional groups in any agency of the Federal Government and there is no predominance of persons from few States or ethnic or other sectional groups in the composition of offices in the 3<sup>rd</sup> Defendant.

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The case of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is that on 24<sup>th</sup> March, 2020 the Office of the President of the Senate received a request from the 1<sup>st</sup>

Defendant for confirmation of the appointment of Executive Chairman and members of the 3<sup>rd</sup> Defendant and the 4<sup>th</sup> Defendant was nominated as the Executive Chairman of the 3<sup>rd</sup> Respondent. She appeared before the Senate committee on Federal Character for screening and was confirmed by the Senate as the Executive Chairman of the 3<sup>rd</sup> Defendant on 2<sup>nd</sup> June, 2020. The 1<sup>st</sup> Defendant also nominated thirty-seven (37) other persons as Commissioners to represent the 36 States and the Federal Capital Territory respectively and they were validly appointed by the 1<sup>st</sup> Defendant after confirmation by the Senate. The 1999 Constitution (as amended) is silent as to the mode of appointment of the Secretary of the 3<sup>rd</sup> Defendant whose appointment is not subject to confirmation by the Senate. Contrary to para. 14, the subsidiary legislation (Guiding Principles and Formulae for the Distribution of All Cadres of Posts) of the FCCE Act 2004 for the purpose of equitable appointments, states that the Country is divided into six (6) geo-political zones from which Kwara State which the 4<sup>th</sup> Defendant hails from is under the North-Central while Taraba State which the 5<sup>th</sup> Defendant hails from is under the North-East. Contrary to para. 15, the 5<sup>th</sup> Defendant's appointment as Secretary of the 3<sup>rd</sup> Defendant preceded that of the 4<sup>th</sup> Defendant as the Executive Chairman of the 3<sup>rd</sup> Defendant. The 5<sup>th</sup> Defendant's tenure was renewed by the 1<sup>st</sup> Defendant on 10<sup>th</sup> April, 2021 and as such he is validly serving as the Secretary of the 3<sup>rd</sup> Defendant. The consideration for the appointment of the office of the Chairman and Secretary of the Federal Character Commission are not the same. While the appointment of the Chairman is prescribed by the Constitution vesting the powers on the 1<sup>st</sup> Defendant, that of the Secretary is not. There is nowhere in the law that states that the position of the Chairman and that of the Secretary shall be rotated between the North and the South. Contrary to paras. 16, 17, 18, 19, 20 and 21 of the Affidavit in support of the Claimant's Originating Summons, only the 4<sup>th</sup> Defendant's appointment is subject to

confirmation by the Senate and the 1<sup>st</sup> Defendant acted within his powers vested by the 1999 Constitution (as amended) and the FCCE Act 2004 making the appointments of the 4<sup>th</sup> and 5<sup>th</sup> Defendants valid. This suit is solely borne out of malice as the Senate Committee on Federal Character screened the 4<sup>th</sup> Defendant and other Commissioners before their appointments. If there was any *lacuna* in the said appointments, the Senate which represents the mouth piece of all the Nigerian citizens would not have approved the appointments. The Plaintiff has approached this Court, asking for reliefs against the Chairman and Commissioners of the 3<sup>rd</sup> Defendant who are not even parties to this suit. The board of the 3<sup>rd</sup> Defendant has been validly constituted with every State validly represented by one Commissioner and as such the appointment of the 5<sup>th</sup> Defendant as the Secretary does not in any way violate the provisions of the extant laws. It is in the interest of justice that this suit be dismissed and struck out as it is lacking in merit and a waste of precious judicial time.

The case of the 5<sup>th</sup> Defendant is that contrary to para. 9 he was initially appointed by the 1<sup>st</sup> Defendant as the Secretary of the 3<sup>rd</sup> Defendant (Exh. A). After the expiration of his initial term of four (4) years, he was re-appointed by the 1<sup>st</sup> Defendant for another term of 4 years as the Secretary of the 3<sup>rd</sup> Defendant (Exh. B). On 24<sup>th</sup> March, 2020, the Office of the President of the Senate received a request from the 1<sup>st</sup> Defendant for confirmation of the appointment of the Executive Chairman and members of the 3<sup>rd</sup> Defendant, which the 4<sup>th</sup> Defendant was nominated as the Executive Chairman of the 3<sup>rd</sup> Defendant. The 4<sup>th</sup> Defendant appeared before the Senate Committee on Federal Character for screening and after all background checks, she was successfully screened leading to her confirmation by the Senate as the Executive Chairman of the 3<sup>rd</sup> Defendant on 2<sup>nd</sup> June, 2020. The 1<sup>st</sup> Defendant also nominated thirty-seven (37) other persons as Commissioners to represent the 36 States and the Federal Capital

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Territory respectively and they were validly appointed by the 1<sup>st</sup> Defendant after confirmation by the Senate. Contrary to paras. 12 and 13, the 1999 Constitution (as amended) is silent as to the mode of appointment of the Secretary of the 3<sup>rd</sup> Defendant and as such, the appointment to the office of Secretary of the 3<sup>rd</sup> Defendant is not subject to confirmation or screening by the Senate as it is an exclusive prerogative of the President. Contrary to para. 14, the Subsidiary Legislation (Guiding Principles and Formulae for the Distribution of all Cadres of Posts) of the FCCE Act 2004 for the purpose of equitable appointments, states that the Country is divided into six (6) geo-political zones from which Taraba State where the 5<sup>th</sup> Defendant hails from is under the North-East while Kwara State which the 4<sup>th</sup> Defendant hails from is under the North-Central geo-political zone. Contrary to para. 15, his appointment as Secretary of the 3<sup>rd</sup> Defendant was renewed by the 1<sup>st</sup> Defendant on 10<sup>th</sup> April, 2021 and he is validly serving as the Secretary of the 3<sup>rd</sup> Defendant. Contrary to paras. 16, 17, 18, 19, 20 and 21 only the 4<sup>th</sup> Defendant's appointment is subject to confirmation by the Senate and the 1<sup>st</sup> Defendant acted within his powers vested by the 1999 Constitution (as amended) and the FCCE Act 2004 making the appointments of the 4<sup>th</sup> and 5<sup>th</sup> Defendant's valid. The 1<sup>st</sup> Defendant reserves the right to appoint any Nigerian citizen with the requisite qualification as the Secretary of the 3<sup>rd</sup> Defendant with his functions specifically stated in S. 9 of the FCCE Act 2004. The 3<sup>rd</sup> Defendant has been validly constituted with every State validly represented by one Commissioner and as such, the appointment of the 5<sup>th</sup> Defendant as the Secretary does not in any way violate the provisions of the extant laws. The Plaintiff has misconstrued the provision of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, a subsidiary legislation of the FCCE Act 2004. The provisions of the subsidiary legislation do not cover the office of the Secretary of the 3<sup>rd</sup> Defendant as the posts in the 3<sup>rd</sup> Defendant are distributed within all the States and geo-

political zones equally as provided by the Constitution and this distribution also reflects gender equality. The Plaintiff approached this Court, asking for reliefs against the Chairman and Commissioners of the 3<sup>rd</sup> Defendant who are not even parties to this suit. It is in the interest of justice that this suit be dismissed and struck out as it is lacking in merit and a waste of precious judicial time. This suit is instituted out of malice and a calculated attempt to mislead this Court and as such is liable for dismissal on terms.

The submission of the Plaintiff is predicated on 2 questions formulated for determination in the originating process.

The submission thereof is that the 3<sup>rd</sup> Defendant is an institution created to achieve fairness, balanced representation, equal social and political power sharing in Nigeria. It is the custodian of Federal Character principles and mandated to ensure compliance with the principles by all other Federal agencies, departments and parastatals in Nigeria in recruitment process; reference is made to S. 14 (3) and (4) of the 1999 Constitution (amended). The said provisions are meant to guide against any ethnic domination or exclusion of any section of the country and to promote National unity and cohesion in a multi-lingual and multi-ethnic country like Nigeria. The 3<sup>rd</sup> Defendant is one of the fourteen (14) Independent Federal Executive Bodies created by S. 153 (1) of 1999 Constitution (amended) and its functions specifically provided in Ss. 7, 8 (1) and (2) (a), (b), (c) and 9 of the Third Schedule, Part 1 of the 1999 Constitution (as amended), S. 4 of Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997. The appointment and continual holding and occupation of the office by the 4<sup>th</sup> and 5<sup>th</sup> Defendants is a complete negation of the Act establishing the 3<sup>rd</sup> Defendant and the letter and spirit of the Constitution. The appointment of both the 4<sup>th</sup> and 5<sup>th</sup> Defendants into the office of Chairman and Secretary at the same time is in flagrant violation of the law and the 3<sup>rd</sup> Defendant is bound by both the clear provisions of the enabling law which establishes it

and the 1999 Constitution (as amended). Where legislation laid down the procedure for doing a thing, such thing cannot be done by any means; reliance is placed on *Chief Obafemi Awolowo v. Alhaji Shehu Shagari & Ors* (1979) 6-9 S.C, *Onyali & Anor v. Okpala & Ors.* (2000) LPELR-6829 (CA), *Okereke v. Yar'adua* (2008) 12 NWLR (Pt. 1100) 95, and *Ibanga & Anor. v. INEC & Ors.* (2011) LPELR-8799 (CA). The 4<sup>th</sup> and 5<sup>th</sup> Defendants cannot validly continue to occupy the position of Chairman and Secretary of the 3<sup>rd</sup> Defendant when the 1<sup>st</sup> Defendant did not comply with the laid down principle and procedures guiding their appointment. The non-compliance goes to the root of their appointment; reliance is placed on *University of Calabar Teaching Hospital & Anor. v. Bassey* (2008) LPELR-8553 (CA), *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227, *INEC v. Action Congress* (2009) 2 NWLR (Pt. 1126) 524, *NSTFMB V. Kilco* (2010) 13 NWLR (Pt. 1211) 307, and *FRN v. Zebra Energy Ltd.* (2002) 18 NWLR (Pt. 798) 16.

The submission of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is predicated on a sole question for determination to wit:

*Whether in the appointment of the 4<sup>th</sup> and 5<sup>th</sup> Defendants the President of the Federal Republic of Nigeria acted ultra vires its executive powers of appointment pursuant to the 1999 Constitution?*

The submission thereon is that the power of the Court to make the declaration sought by the Plaintiff is discretionary in nature and the reliefs are not granted as of course but on the strength of the case of the Plaintiff; reliance is placed on *Nabore Properties Limited v. Peace-Cover Nigeria Limited & Ors* (2014) LPELR-22586 (CA), *Tari Vandighi v. Sebastine Hale* (2014) LPELR-24196 (CA), *A. – G., Rivers State v. A. – G., Bayelsa State* (2013) 3 NWLR (Pt. 1340) at 123, and *CBN v. Jacob Oladele Amao & 2 Ors.* (2011) Vol. 201 LRCN. The 1<sup>st</sup> Defendant is vested with the executive powers to make the said appointment; reference is made to Ss. 5 (1) and 171 (1) of

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the 1999 Constitution (as amended). It is also submitted that the provision of S. 14 (3) of the 1999 Constitution (as amended) has not been breached by the appointment of the 4<sup>th</sup> and 5<sup>th</sup> Defendants by the 1<sup>st</sup> Defendant. It is the clear intention of the drafters of the Constitution that it is the general staff composition of an agency of the Federal Government that is to be considered for a proper assessment of the application of the Federal Character principle in the said appointment. Ss. 14 (3) and 171 (5) of the 1999 Constitution (as amended) is the substantive provision as it relates to the application of Federal Character principle to executive appointment as both the FCCE Act 2004, an enactment of the National Assembly and the Guiding Principles and Formulae for the Distribution of all Cadres of Posts 1997, a subsidiary legislation, both derive their validity from the S. 14 (3) of the 1999 Constitution (as amended) which is supreme; reliance is placed on *Marwa & Ors. v. Nyako & Ors.* (2012) LPELR-7837 (SC), and *FRN v. Osahon* (2006) 5 NWLR (Pt. 973) 361. The provisions of S. 4 of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 relied upon by the Plaintiff will not apply to the facts of this case as it is not only two positions that are available for appointment into the 3<sup>rd</sup> Defendant for issue of individuals from the South and North to apply. Secondly, the Constitution has covered the field as it relates to the application of Federal Character Principle and the provisions of the FCCE Act, 2004 and S. 4 of Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 to be invoked.

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I have noted the averments in the 5-paragraphed Plaintiff's Further and Better Affidavit and Reply on Points of Law to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' 5-paragraphed Counter Affidavit deposed to and filed on 15<sup>th</sup> September, 2022

The preliminary submission of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is that all the parties to be affected by the decision of the Court such as the Commissioners of the 3<sup>rd</sup> Defendant are not joined and this robs this Court of its jurisdiction

to competently entertain this suit and constitutes a breach of fair hearing; reference is made to S. 7 (1) (a) (b) and (2) of the Third Schedule, Part 1 of the 1999 Constitution (as amended) and reliance is placed on *Lufthansa Airlines v. Odiese* (2010) 7 NWLR (Pt. 978) 39, *Madukolu v. Nkedilim* (1962) 2 SCNLR 341, *Goldmark Nigeria Limited & Others v. Ibafon Company Limited & Others* (2012) LPELR 9349, *Dr. Taiwo Oloruntoba-Oju & Ors. v. Professor Shuaib O. Abdulraheen & Ors.* (2009) 13 NWLR (Pt. 1157) 83. It will amount to the Court giving Orders or Judgement affecting persons who are not joined in the suit and who are proper persons to be joined; reliance is placed on *African Democratic Congress v. Yahaya Bello* (2017) 1 NWLR (Pt. 1545) 112 at 138, and *Chief Simeon Olayiola & 3 Ors. v. H.R.H. Oba Abdulrafiu Olaniyi Aiboye Oyelaran & Anor.* (2019) 4 NWLR (Pt. 1662) 351 at 359.

The submission of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the substantive matter is predicated in the 2 questions formulated by the Plaintiff for determination.

It is submitted on issue 1 that the 4<sup>th</sup> Defendant and the Commissioners representing each State of the Federation and the Federal Capital Territory are the only members which form the board of the 3<sup>rd</sup> Defendant and their appointment was made pursuant to the 1999 Constitution (as amended) and the enabling Act of the 3<sup>rd</sup> Defendant; reference is made to S. 7 (1) (a) (b) and (2) of the Third Schedule, Part 1 of the 1999 Constitution (as amended), and S. 9 (1) (a) and (b), and (2) (a) of the FCCE Act, 2004 and reliance is placed on *Elelu-Habeeb v. A. – G., Fed.* (2012) 13 NWLR (Pt. 1318) 423. The 5<sup>th</sup> Defendant is not a member of the 3<sup>rd</sup> Defendant and his appointment is not made pursuant to the provision of the said Constitution and not also subjected to the confirmation by the Senate like the appointment of the 4<sup>th</sup> Defendant and the Commissioners. The 1<sup>st</sup> Defendant could not have violated any Constitutional provision or acted contrary to the Federal Character principle.

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It is submitted on issue 2 that that the appointments of the 4<sup>th</sup> and 5<sup>th</sup> Defendants complied with the Federal Character principle enshrined in S. 14 (3) and (4), Item 8 (1) (a), (b), (c) and (d) of the Third Schedule, Part 1 of the 1999 Constitution (as amended) and S. 4 (1) of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 of the FCCE Act 2004. The Plaintiff's argument to the contrary is misconceived. Only the President shall have the power to appoint the Chairman and members of the 3<sup>rd</sup> Defendant, subject to confirmation by the Senate, by virtue of Ss. 57 (1) and (2), 153 (1), and 154 (1) of the 1999 Constitution (as amended). Also, only the President acting on the confirmation/recommendation of the Senate can appoint and/or remove the 4<sup>th</sup> Defendant and members of the Commission from office. Thus, reliefs 2, 3 and 4 sought by the Plaintiff are not substantiated in law. The Court is urged to dismiss this suit for lacking in merit.

The submission of the 5<sup>th</sup> Defendant on issue 1 is that the office of the Secretary of the 3<sup>rd</sup> Defendant is provided for in S. 9 of the FCCE Act 2004 and there is nothing in the Act that specifically provides for rotation of the positions of Chairman and Secretary between the Northern and Southern part of the Country; reference is made to Ss. 7 (1) (a) (b) and (2) and 8 (2) of the Third Schedule, Part 1 of the 1999 Constitution (as amended) and reliance is placed on *Elelu-Habeeb v. A-G., Fed.* (2012) 13 NWLR (Pt. 1318) 423. The 3<sup>rd</sup> Defendant is fully constituted as each State in the 3<sup>rd</sup> Defendant including the Federal Capital Territory, is represented by a member (normally called Commissioner), with the Executive Chairman as the Thirty-eight (38<sup>th</sup>) member as provided for in the 1999 Constitution (as amended) and subject to the confirmation by the Senate. By S. 9 (1) (a) and (b), and (2) (a) of the FCCE Act 2004, the Secretary is not a member of the 3<sup>rd</sup> Defendant and his appointment is not made pursuant to the provision of the Constitution and not also subject to the confirmation by the Senate like the appointment of

the 4<sup>th</sup> Defendant and the Commissioners. Therefore, the 1<sup>st</sup> Defendant could not have violated any Constitutional provision or acted contrary to the Federal Character principle as he has done what is required of him by the Constitution and the establishment Act of the 3<sup>rd</sup> Defendant in the appointment of the members of the 3<sup>rd</sup> Defendant.

The submission on issue 2 is that the appointments of the 4<sup>th</sup> and 5<sup>th</sup> Defendants by the 1<sup>st</sup> Defendant is not unlawful, unconstitutional and does not violate the provisions of Items 7 and 8 of the Third Schedule, Part 1 of the 1999 Constitution (as amended) and S. 4 (1) of the Guiding Principles and Formulae for Distribution of all Cadres of Posts, 1997 of the FCCE Act 2004 and therefore not null and void. The 1<sup>st</sup> Defendant exercised his powers of appointment as pursuant to the law and the 3<sup>rd</sup> Defendant is the one mandated to give effect to the provisions to ensure compliance with the Federal Character principle which cannot be said to include the appointment of the 4<sup>th</sup> and 5<sup>th</sup> Defendants. The 3<sup>rd</sup> Defendant is well constituted and the Secretary is only the administrative head of the 3<sup>rd</sup> Defendant subject to the general directions of the Chairman. There is no evidence before the Court that the persons that make up the composition, membership and management of the 3<sup>rd</sup> Defendant are majorly from a particular geo-political zone as the 3<sup>rd</sup> Defendant has a strict mode of employment that reflects absolute representation from the 36 States of the Federation, including the Federal Capital Territory. The provision of S. 4 (1) of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 of the FCCE Act 2004 cannot be said to have been violated in this instance as there was no vacancy of the two positions in the Commission at any point in time that required the application of the federal character principle. The Court is urged to dismiss the Applicant's suit.

The provisions of the law brought to bear in this case are Ss. 5 (1), 14 (3) and (4), 153 (1), 154 (1), and 171 (1) of the 1999 Constitution (as

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amended) and Items 7 and 8 (1) and (2), Part I of the Third Schedule thereto, and Ss. 4 (1) (a) – (c) and 9 of the FCCE Act 2004 and S. 4 (1) of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts 1997, thereto which are reproduced hereunder as follows:

S. 5 (1) Subject to the provisions of this Constitution, the executive powers of the Federation –

- a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President or Ministers of the Government of the Federation or other officers in the public service of the Federation; and
- b) Shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.

S. 14 (3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies.

The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of

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the Government or council such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.

S. 153 (1) There shall be established for the Federation the following bodies, namely:

- (a) Code of Conduct Bureau;
- (b) Council of State;
- (c) Federal Character Commission;
- (d) Federal Civil Service Commission;
- (e) Federal Judicial Service Commission;
- (f) Independent National Electoral Commission;
- (g) National Defence Council;
- (h) National Economic Council;
- (i) National Judicial Council;
- (i) National Population Commission;
- (k) National Security Council;
- (l) Nigeria Police Council;
- (m) Police Service Commission; and

(n) Revenue Mobilisation Allocation and Fiscal Commission.

(2) The composition and powers of each body established by subsection (1) of this section are as contained in Part I of the Third Schedule to this Constitution.

S.154 (1) Except in the case of ex officio members or where other provisions are made in this Constitution, the Chairman and members of any of the bodies so established shall, subject to the provisions of this Constitution, be appointed by the

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President and the appointment shall be subject to confirmation by the Senate.

S. 171 (1) Power to appoint persons to hold or act in the offices to which this section applies and to remove persons so appointed from any such office shall vest in the President.

- (2) The offices to which this section applies are, namely-
- (a) Secretary to the Government of the Federation;
  - (b) Head of Civil Service of the Federation;
  - (c) Ambassador, High Commissioner or other Principal Representatives of Nigeria abroad;
  - (d) Permanent Secretary in any Ministry or Head of any Extra-Ministerial Department of Government of the Federation, howsoever designated; and
  - (e) any office on the personal staff of the President.

Items 7 and 8 (1) and (2) of Part 1 of the 3<sup>rd</sup> Schedule

7 (1) The Federal Character Commission shall comprise the following members -

- (a) a Chairman; and
- (b) one person to represent each of the States of the federation and the Federal Capital Territory, Abuja.

(2) The Chairman and members to be appointed by the President, subject to confirmation by the Senate.

8 (1) In giving effect to the provisions of section 14 (3) and (4) of this Constitution, the Commission shall have the power to -

- (a) work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation,

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the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the States;

- (b) promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;
- (c) take such legal measures, including the prosecution of the head or staff or any Ministry or government body or agency which fails to comply with any federal character principle. or formula prescribed or adopted by the Commission; and
- (d) carry out such other functions as may be conferred upon it by an Act of the National Assembly.

- (2) The posts mentioned in sub-paragraph (1) (a) and (b) of this paragraph shall include those of the Permanent Secretaries, Directors-General in Extra-Ministerial Departments and parastatals, Directors in Ministries and Extra-Ministerial Departments, senior military officers, senior diplomatic posts and managerial cadres in the Federal and State parastatals, bodies, agencies and institutions.

S. 4 (1) (a) – (c) of the FCCE Act 2004

- (1) The functions of the Commission shall be:
  - (a) to work out an equitable formula, subject to the approval of the President, for the distribution of all cadres of posts in the civil and the public services of the Federation and of the States, the armed forces, the Nigeria Police Force and other security agencies,

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bodies corporate owned by the Federal or a State Government and Extra-Ministerial Departments and parastatals of the Federation and States;

(b) to promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;

(c) to take such legal measures including the prosecution of the heads or staff of any Ministry, Extra-Ministerial Department or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission.

#### S. 9 of the FCCE Act 2004

(1) There shall be a secretary to the Commission who shall –

(a) have such qualifications and experience as are appropriate for a person required to perform the functions of his office under this Act; and

(b) be appointed by the President.

(2) Subject to the general direction of the chairman, the secretary shall –

(a) be responsible for keeping proper records of the proceedings of the Commission; and

(b) be the head of the Commission's secretariat and be responsible for the administration thereof and the direction and control of all other employees of the Commission with the approval of the chairman.

(3) The chairman shall have power to appoint either directly or on secondment from any public service in the Federation, such number of employees as may, in the opinion of the

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chairman, be required to assist the Commission in the discharge of any of its functions under this Act and shall have power to pay persons so employed such remuneration (including allowances) as the chairman may, after consultation with the Federal Ministry or Department of Establishment, determine.

S. 4 Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997

The leadership of Federal Ministries shall comprise the Permanent Secretary, Directors, Deputy Directors and Assistant Directors, and equivalent positions in other relevant agencies and shall be such that they do not come from the same zone. At the level of Director down to Assistant Director, there shall be an equitable and proportional representation of both the zones and the States of the Federation within each zone. In the case of the Ministry of Foreign Affairs, the federal character principles shall also apply to the postings of heads of diplomatic missions.

Before I proceed, I need to address the preliminary issue canvassed by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that all the parties to be affected by the decision of this Court such as the Commissioners of the 3<sup>rd</sup> Defendant are not joined and this robs this Court of its jurisdiction to competently entertain this suit and constitutes a breach of fair hearing. This submission appears to me to challenge the competence of this case and ought to be determined forthwith. However, I do not think that this submission is emanating from the proper position of the law on joinder of parties. It is the provision of Order 9 Rule 5 of the Federal High Court (Civil Procedure) Rules, 2019 (hereinafter referred to as FHCCPR, 2019) that states the essence of joinder in a suit thus:

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Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly or severally or in the alternative and Judgement may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

If there is any contention as to non-joinder or misjoinder, such is resolved by the provisions of Order 9 (14) (1) of the FHCCPR, 2019 which provides that:

- (1) A proceeding shall not be defeated by reason of misjoinder or non-joinder of a party, and a Judge may deal with the matter in controversy so far as regards the right and interest of the parties actually before him.

I must then be quick to say that misjoinder or non-joinder is not a ground for striking out or dismissing a case in the Federal High Court. Where it becomes imperative that any person be joined in any suit, discretion is given to the Judge in Order 9 (14) (2) (b) of the FHCCPR, 2019 to Order that the name of any party who ought to have been joined or whose presence before the Court is necessary to completely adjudicate upon and settle the question involved in the proceedings to be added. By Order 9 (14) (2) (a) of the FHCCPR, 2019 this Order can be made either upon or without the application of either party. Therefore, where any party is of the opinion that a person who ought to be a party in a suit has not been joined, such party simply brings an application for joinder. This means it no longer avails any party to seek to have a matter struck out on the ground of non-joinder. As it is, I find that going by Order 9 (14) (1) of the FHCCPR, 2019 this matter cannot be defeated by reason of non-joinder as stated by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as this can deal with the matter in controversy in this case so far as regards the right and interest of the parties actually before the Court, and I so hold.

After studying the processes and the issues canvassed by the parties, I am of the opinion that the gravamen in this case is:

*Whether going by the Federal Character principle intended in the 1999 Constitution (as amended), the Federal Character Commission (Establishment, etc.) Act 2004 and the Guiding Principles and Formulae for the Distribution of all Cadres of Posts 1997, the Secretary (5<sup>th</sup> Defendant) and the Executive Chairman (4<sup>th</sup> Defendant) of the Federal Character Commission (3<sup>rd</sup> Defendant) should come from the Northern part of Nigeria at the same time as presently constituted in the Federal Character Commission?*

The entire suit is about the application of federal character principles within the Federal Character Commission (3<sup>rd</sup> Defendant) in this suit. The submission of the Plaintiff is that the Secretary (5<sup>th</sup> Defendant) and the Executive Chairman (4<sup>th</sup> Defendant) ought not to come from the same region in the country which in this case is the Northern Region. The position of the Plaintiff is that the posts ought to be respectively shared between the Northern and the Southern Regions. In the reaction of the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants, they have admitted that the 4<sup>th</sup> Defendant is from Kwara State and the 5<sup>th</sup> Defendant is from Adamawa State both of which is in the Northern Region. In further reaction, the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants have posited that the position of the 5<sup>th</sup> Defendant is by appointment directly by the President (1<sup>st</sup> Defendant) while the appointment of the 4<sup>th</sup> Defendant is by appointment of the President but subject to confirmation by the Senate. It is their submission that the President complied with the extant law when making the appointment of the 5<sup>th</sup> Defendant and also complied with the extant constitutional and statutory provisions when making the appointment of the 4<sup>th</sup> Defendant. Additionally, the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants posit that the Senate which confirmed the

appointment of the 4<sup>th</sup> Defendant did not see anything unconstitutional and therefore confirmed same.

The federal character policy or principle for which responsibility of Federal Character Commission (3<sup>rd</sup> Defendant) is established, is aimed at providing equality of access in public service representation to curb dominance by one or a few sections of the country. It was first introduced into the 1979 Constitution and is presently captured in S. 14 (3) of the 1999 Constitution (as amended) which thus provides:

S. 14 (3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies.

The provision of S. 14 (3) above in my opinion captures the essential philosophy of federal character in such terms that make its interpretation, application and enforcement founded on the equitable consideration of all component parts of the country in the distribution of posts. Where the law unfolds itself in such nature, it is the duty of the Court to construe same purposively in order to ensure that the intention of the legislature is properly captured. The Court must interpret the law correctly irrespective of any perceived hardship which the outcome might portend; see *Abacha v. FRN* (2014) LPELR-22014 (SC) P. 48 (paras. A-D) where it was stated thus:

"In the interpretation of Statutes, the cardinal rule is that where the provisions of a Statute is clear and unambiguous, the duty of the Court is to simply interpret the clear provision by giving the plain wordings their

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ordinary interpretation without more. It is not the function of a Court of law to bend backwards to sympathize with a party in a case in the interpretation of a Statute merely for the reason, that the language of the law seems harsh or is likely to cause hardship. See: *Kraus Thompson Organisation v. National Institute for Policy and Strategic Studies (NIPSS)* (2004) 9 - 12 SCM (Pt. 2) 53; (2004) 17 NWLR (Pt. 901) 44."

The 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants seem to evade the question whether the Secretary and the Executive Chairman can come from the same region by saying that the 3<sup>rd</sup> Defendant is well constituted and the Secretary is only the administrative head of the 3<sup>rd</sup> Defendant subject to the general directions of the Chairman. It is also their argument that the 3<sup>rd</sup> Defendant is fully constituted as each State in the 3<sup>rd</sup> Defendant including the Federal Capital Territory, is represented by a member (normally called Commissioner), with the Executive Chairman as the thirty-eighth (38<sup>th</sup>) member as provided for in the 1999 Constitution (as amended) and subject to the confirmation by the Senate. It is also argued that the Office of the Secretary of the 3<sup>rd</sup> Defendant is provided for in S. 9 of the FCCE Act 2004 and there is nothing in the Act that specifically provides for rotation of the positions of Chairman and Secretary between the Northern and Southern parts of the country and reference is made to Items 7 (1) (a) and (b), and (2), and 8 (2) of the Third Schedule, Part 1 of the 1999 Constitution (as amended).

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In order to address this issue in the manner that does not ridicule the provision of the law, there is need to consider the powers given by the law to the two offices. That being the case, it is imperative to note that the Office of the Secretary and Chairman are the only two offices specifically mentioned in the FCCE Act 2004. The position of the Chairman is to be found in S. 2 (1)

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and is stated therein as the Chief Executive of the 3<sup>rd</sup> Defendant and by S. 9 (3) has the power to make appointments of employees. The office of the Secretary is captured in S. 9 and his powers are stated in S. 9 (2) thus:

- S. 9 (2) Subject to the general direction of the chairman, the secretary shall –
- (a) be responsible for keeping proper records of the proceedings of the commission, and
  - (b) be the head of the Commission's secretariat and be responsible for the administration thereof and the direction and control of all other employees of the Commission with the approval of the chairman.

The above means that the Secretary constitutes the Secretariat of the 3<sup>rd</sup> Defendant and by that virtue, attends the meeting of both the management and the members of the 3<sup>rd</sup> Defendant, simply put, the 5<sup>th</sup> Defendant is the administrative head of the 3<sup>rd</sup> Defendant. By giving both the administrative power to the 5<sup>th</sup> Defendant from the North and executive power to the 4<sup>th</sup> Defendant from the North too, it means the federal character policy in the 3<sup>rd</sup> Defendant is lopsided and tilted in favour of one region in the country, and therefore, inequitable. With this in mind, it must be said that the argument of the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants is not tenable.

It is also the argument of the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants that there is nothing in the FCCE Act, 2004 that specifically provides for rotation of the positions of Chairman and Secretary between the Northern and Southern parts of the Country which is to me, not a correct representation of the provision of S. 14 (3) of the 1999 Constitution (as amended). The construction of the provision begins with the phrase "the composition of the Government of the Federation or any of its agencies and

the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria." This is instructive, as the provision exposes the intention by the draftsman to have the law implemented in its most equitable sense. It cannot then be said that the Northern and Southern parts of the country do not exist physically, in the consciousness of Nigerians, and in the mind of those who formulate, implement and regulate policies, and exercise the duty of governance. With the broad craftsmanship of the provision, the issues of North and South can be said to be parts of the federal character formation of the country and cannot be ignored in the scheme that ensures that there be no predominance of persons from a particular section of the country be it North or South. It is of factual notoriety that the principle of federal character of North and South has been embedded in the formal polity of governance in the country such that the Court is duty bound to take judicial notice of its existence. The predominance of persons from a particular section of the country will certainly defeat the essence of federal character as provided in the Constitution which is the need to promote national unity. With this construction, it means that the 3<sup>rd</sup> Defendant has failed in the implementation of the provisions of S. 4 (1) (a) of the FCCE Act, 2004 concerning itself; in the truest sense of legislative intention. The 3<sup>rd</sup> Defendant is also in breach of S. 4 of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts 1997, which is a statutory instrument made pursuant to S. 4 (1) (a) of the FCCE Act 2004 concerning itself; in the truest sense of legislative intention too. The 3<sup>rd</sup> Defendant therefore needs to be told of these breaches and the consequences thereof. The law has always been that where the law makes provision on how a thing must be done, such must be accordingly done as there are consequences for default in compliance; see *Ojukwu v. Kaine & Ors.* (2000) 15 NWLR (Pt. 691) 516 at 523 where it was stated that:

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"An act which is provided for in legislation must be done only in the way specified by the legislation. Any manner other than that provided by the law would be adjudged spurious and will be discountenanced. An act done pursuant to but not in keeping with the intent, tenor and format of a given statute is not only irregular, it is also false. The act must be invariably discountenanced".

See also *Ibrahim v. Independent National Electoral Commission* (1999) 8 NWLR (Pt. 614) 334.

I need to address this other argument of the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants that the membership of the 3<sup>rd</sup> Defendant is made up of the representatives of each State including the Federal Capital Territory, with the Executive Chairman as the thirty-eighth (38<sup>th</sup>) member as provided for in the 1999 Constitution (as amended), therefore, the issue of federal character in the 3<sup>rd</sup> Defendant does not arise. This argument in my opinion is bereft of even the minutest tissue of reasonableness. It is insensitive and an unconscionable trend of thought which must be struck down forthwith. The 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, and 5<sup>th</sup> Defendants cannot say that they do not know that it is not the members that are in charge of the day-to-day administration and management of the 3<sup>rd</sup> Defendant but the 4<sup>th</sup> and 5<sup>th</sup> Defendants. The 4<sup>th</sup> and 5<sup>th</sup> Defendants coming from the same part of the country is not a representation of federal character as required by law in the Federal Character Commission. The whole essence of federal character principle is for posts distribution among the component parts, sections, regions, states, or tribes of the country in the government, its agencies and parastatals, and not a concentration of such posts in just one of such component part, section, region, state, or tribe. The fact that the Senate confirmed the appointment of the 4<sup>th</sup> Defendant during the pendency of the office of the 5<sup>th</sup> Defendant from the same part of the country does not by any stretch imply that the

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confirmation has overruled the application of the federal character principle in the distribution of the two posts in the 3<sup>rd</sup> Defendant as constitutionally and statutorily required.

Now, being that the posts of Secretary to the 3<sup>rd</sup> Defendant and that of the Executive Chairman are the two most important positions recognized and given not just statutory functions but powers in Ss. 2 (1) (a) and 9 (2) and (3) of the FCCE Act 2004, there ought to be equitable distribution in the appointments to the two posts between the Northern and the Southern parts of the country. The provisions of S. 14 (3) of the 1999 Constitution (as amended), S. 4 (1) (a) of the FCCE Act, 2004 and S. 4 of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 made pursuant to S. 4 (1) (a) of the FCCE Act, 2004 envisage this and that has to be. Therefore, I find that there has been failure of the 1<sup>st</sup> Defendant to comply with the provision of S. 14 (3) of the 1999 Constitution (as amended), S. 4 (1) (a) of the FCCE Act, 2004 and S. 4 of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 made pursuant to S. 4 (1) (a) of the FCCE Act, 2004.

I therefore answer the question of the Plaintiff as follows:

- i. Question 1 in the positive, and
- ii. Question 2 partially in the positive.

The Plaintiff's case succeeds on the merit and judgement is entered as follows:

1. A Declaration is hereby made that the 1<sup>st</sup> Defendant is bound to observe and comply with the provision of Items 7 and 8 (1) and (2), Part I of the Third Schedule to the 1999 Constitution (as amended) in the appointment of persons to the office of the Chairman and Secretary of the Federal Character Commission.

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2. A Declaration is hereby made that the appointment by the 1<sup>st</sup> Defendant and the confirmation of same by the National Assembly of the 4<sup>th</sup> and 5<sup>th</sup> Defendants is unlawful, unconstitutional, null and void *ab initio* for non-compliance with Items 7 and 8 (1) and (2), Part I of the Third Schedule to the 1999 Constitution (as amended), S. 4 (1) of the Guiding Principles and Formulae for the Distribution of all Cadres of Posts, 1997 of the Federal Character Commission (Establishment, etc.) Act, 1995.

This Court will not grant the orders in prayers 3 and 4 of the Originating Summons for the following reasons:

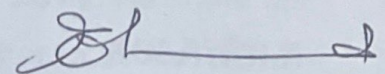
1. The 4<sup>th</sup> Defendant's appointment was confirmed by the Senate on 2<sup>nd</sup> June, 2020 for a term of five (5) years.
2. The 5<sup>th</sup> Defendant was reappointed on 12<sup>th</sup> March, 2021 for a term of four (4) years therefore not eligible for another term at the expiration of the said term.

I will therefore allow their respective tenures to run to an end. This will allow the 1<sup>st</sup> Defendant sufficient time to comply with the provisions of the Constitution, Statute and Statutory Instrument concerning equitable distribution of the appointment into the office of the Secretary and Executive Chairman of the 3<sup>rd</sup> Defendant.

This is the judgement of this Court.

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I. E. Ekwo  
Judge  
22/11/2023

Adeboro Adamson, SAN, (with Oliver Eya, Esq.) for the Plaintiff.

B. A. Lawal-Rabana, Esq., for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

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