

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

FHC/ABJ/CS/1973/2016.
SUIT NO _____

BETWEEN

1. THE REGISTERED TRUSTEES OF
NIGERIAN MEDICAL ASSOCIATION
2. CENTRE FOR SOCIAL JUSTICE (LTD/GTE) PLAINTIFFS

AND

1. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA
 2. THE SENATE OF THE FEDERAL REPUBLIC OF NIGERIA
 3. THE HOUSE OF REPRESENTATIVES OF THE FEDERAL
REPUBLIC OF NIGERIA
 4. THE MINISTER OF FINANCE
 5. THE ATTORNEY-GENERAL OF THE FEDERATION
& MINISTER OF JUSTICE
- } DEFENDANTS

ORIGINATING SUMMONS

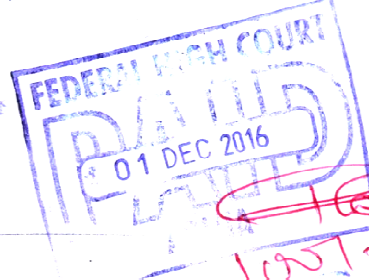
LET

- i. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA
- ii. THE SENATE OF THE FEDERAL REPUBLIC OF NIGERIA
- iii. THE HOUSE OF REPRESENTATIVES OF THE FEDERAL
REPUBLIC OF NIGERIA
- iv. THE MINISTER OF FINANCE
- v. THE ATTORNEY-GENERAL OF THE FEDERATION
& MINISTER OF JUSTICE

Within thirty days of the service of this summons on them, inclusive of the day of such service, cause an appearance to be entered for them to this summons which is issued upon the application of THE PLAINTIFFS, seeking the following reliefs:

- a) A Declaration that the Defendants are under a statutory duty to jointly and severally give effect to Section 11(2) (a) of the National Health Act of 2014.

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- a) A Declaration that the 1st Defendant's continued refusal to execute , implement, and give effect to Section 11 (2) (a) of the National Health Act of 2014 constitutes a flagrant violation of Section 5 (1) (b) of the Constitution of the Federal Republic of Nigeria.
- b) A Declaration that the 4th Defendant is under a public duty to ensure that provisions are made in the Annual Federal Budgets for the Federal Government's annual statutory grant of not less than one percent (1%) of its Consolidated Revenue Fund to the Basic Health Care Provision Fund established by the National Health Act of 2014.
- c) A Declaration that the 5th Defendant as the Chief Law Officer of the Federation is under a public duty to advise the 1st – 4th Defendants to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof, being a legislation duly passed by the 2nd and 3rd Defendants and assented to by the 1st Defendant.
- d) An Order directing the 4th Defendant to include a grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund as part of the estimates of expenditure of the Federation for 2017 financial year which will be presented to the 1st Defendant for approval and which will subsequently be laid before the 2nd and 3rd Defendants by the 1st Defendant.
- e) An Order directing the 1st Defendant to include a grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation which is to be transferred to the Basic Health Care Provision Fund in the 2017 Annual Budget or Estimates of Revenues and Expenditure of the Federation to be laid before the 2nd and 3rd Defendants.
- f) An Order of this Honourable Court mandating the 2nd and 3rd Defendants to appropriate not less than one percent (1%) of the Consolidated Revenue Fund of the Federation and transfer the same to the Basic Health Care Provision Fund in the 2017 Appropriation Act.

- g) An Order of this Honourable Court mandating the 2nd and 3rd Defendants to ensure that not less than one percent (1%) of the Consolidated Revenue Fund of the Federation is appropriated and transferred to the Basic Health Care Provision Fund in the Appropriation Act of every financial year.
- h) An Order directing the Defendants jointly and severally to ensure that under the 2017 Annual Budgeting Process of the Federal Government of Nigeria and in subsequent Annual Budgeting Processes provisions are made for grant and transfer of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation to the Basic Health Care Provision Fund established by the National Health Act of 2014.
- i) Such further or other consequential order (s) as the Honourable Court may deem fit to make in the circumstances of this action.

FOR THE DETERMINATION OF THE FOLLOWING ISSUES:

- a. Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 1st and 4th Defendants to include an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) as part of the Estimates of Revenues and Expenditure of the Federation to be laid before the 2nd and 3rd Defendant in every Financial Year?
- b. Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 2nd and 3rd Defendants to appropriate an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) via the Appropriation Act for every Financial Year and thereafter to exercise their oversight functions over the disbursement and administration of the Grant?
- c. Whether the 1st , 4th and 5th Defendants have constitutional and statutory obligations to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.

- d. Whether this Honourable Court can compel the Defendants jointly and severally to give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.

Dated this day of 2016

THIS SUMMONS was taken out by Kalu Onuoha, Esq., of 17 Yaoundé Street, Wuse Zone 6, Abuja, acting as Legal Practitioner to the above named Plaintiff whose address for service is 17 Yaoundé Street, Wuse Zone 6, Abuja.

THE DEFENDANTS may appear hereunto by entering appearance personally or by a Legal Practitioner by filing the appropriate processes (as in Order 7) in response at the Registry of the Federal High Court, Abuja or by sending them to that office by any of the methods allowed by the Rules of the Court.

TAKE NOTICE THAT: if the Defendants do not respond within the time and at the above mentioned place, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

.....
Signed:

FOR SERVICE ON

1. The 1st Defendant

Aso Rock Villa

Abuja.

C/o The 5th Defendant

The Hon. Attorney General's Chambers

Federal Ministry of Justice,

Shehu Shagari Way,

Maitama, Abuja.

2. The 2nd Defendant

The Senate of the Federal Republic of Nigeria

National Assembly

Three Arms Zone, Abuja

3. The 3rd Defendant,

The House of Representatives of the Federal Republic of Nigeria

National Assembly

Three Arms Zone, Abuja

- 4. The 4th Defendant**
Federal Ministry of Finance
Central Business District
Abuja

- 5. The 5th Defendant**
The Hon. Attorney General's Chambers
Federal Ministry of Justice,
Shehu Shagari Way,
Maitama, Abuja.

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AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

I, **Omachi Samuel Omale**, Male, Adult, Christian, and a Nigerian citizen resident at 17 Yaoundé Street, Wuse Zone 6, Abuja, do hereby make oath and state as follows:

1. That I am a civil society activist and the 2nd Plaintiff's Administrative Secretary in charge of Public Expenditure Management and by virtue of my position, I am very conversant with the facts deposed herein and the circumstances necessitating this suit.
2. That I have the consent and authority of the Plaintiffs to depose to this affidavit for them and on their behalf.
3. That I am a citizen of the Federal Republic of Nigeria by birth and a stakeholder in her good governance and the issues being canvassed by Plaintiffs in this suit.
4. That the 1st Plaintiff is an Association registered under the Laws of Federal Republic of Nigeria which serves as an umbrella organisation for all medical practitioners in Nigeria working for improved healthcare and wellbeing of Nigerians.

5. That the 2nd Plaintiff is a civil society organization registered under the Laws of the Federal Republic of Nigeria and works to promote and instill the culture of due process, popular participation, transparency and accountability, value for money, probity and good governance in public life and in the area of Public Expenditure Management by insisting on full execution and implementation of all fiscal governance, anti-corruption or 'sunshine laws' including the Fiscal Responsibility Act, Public Procurement Act and the National Health Act
6. That the 2nd Plaintiff has organized several workshops and conferences on the Fiscal Responsibility and Public Procurement Acts and issued many communiqués public expenditure management in Nigeria.
7. That the 2nd Plaintiff has published several works in the area of health-sector financing. Two of the recent publications are MATERNAL, NEW BORN AND CHILD HEALTH STANDARDS 2010 – 2015 and HEALTH SECTOR MEDIUM TERM SECTOR STRATEGIES (MTSS) 2017 – 2019, copies of which are herewith attached and marked **Exhibits A** and **B** respectively.
- 10 That the 1st Defendant is the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria and bears the constitutional responsibilities of causing to be prepared and laid before the 2nd and 3rd Defendants in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.
- 11 That I know of a fact that the 1st Defendant swore to an oath of allegiance and oath of office to uphold the Constitution of the Federal Republic of Nigeria, 1999 and to execute and implement all Acts of the National Assembly.
- 12 That I know as a fact that the National Health Act (the Act) is a federal legislation duly passed by the 2nd and 3rd Defendants and assented to by the 1st Defendant.
- 13 The 2nd Defendant is the Senate of the Federal Republic of Nigeria.
- 14 The 3rd Defendant is the House of Representatives of the Federal Republic of Nigeria.

- 15 That I know that the legislative powers of the Federation, including the power to appropriate funds from the Consolidated Revenue Fund of the Federation, are vested in the 2nd and 3rd Defendants.
- 16 That the 4th Defendant is the Minister responsible for preparation and subsequent presentation of the annual estimates or revenues and expenditure of the Federation for approval of the 1st Defendant in the first instance, before the 1st Defendant will in turn proceed to lay the said estimates before the National Assembly comprising the 2nd and 3rd Defendants.
- 17 That the 5th Defendant is the Chief Law Officer of the Federation, and the 1st and 4th Defendants' principal legal adviser.
- 18 That I know as a fact that the National Health Act which came into effect on the 31st day of October 2014 was duly passed by the 2nd and 3rd Defendants and assented to by the 1st Defendant, establishes the Basic Health Care Provision Fund to ensure sustainable funding for improved healthcare and well-being of Nigerians..
- 19 That I know that the National Health Act mandates the Federal Government make an annual grant of not less than one percent (1%) of its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund.
- 20 That I know that although the National Health Act came into force on the 31st day of October 2014, no provision was made in the 2015 Budget of the Federal Government / Appropriation Act the Annual Grant of not less than one percent (1%) of its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund.
- 21 That I know that even in the 2016 Budget of the Federal Government / Appropriation Act no provision whatsoever was made for the Annual Grant of not less than one percent (1%) of its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund.

22 That I know that the 1st and 4th Defendants are in the process of preparing the 2017 Budget of the Federal Government / Appropriation Bill and again no effort whatsoever is being made to provide for the annual grant of not less than one percent (1%) of its Consolidated Revenue Fund of the Federal Government for financing of the Basic Health Care Provision Fund.

23 That the National Health Act of 2014 was passed to guarantee the good life for all Nigerians including myself and other members of the Plaintiffs' organisations.

24 That the Act Basic Health Care Provision Fund guarantees financing for health insurance , essential drugs and vaccines as well as acquisition and maintenance of modern medical facilities and equipment.

25 That I verily believe that the Defendants are violating the provisions of the National Health Act by their continued failure, neglect or refusal to set aside not less than one percent (1%) of its Consolidated Revenue Fund of the Federal Government for financing of the Basic Health Care Provision Fund.

26 That I verily believe that unless the reliefs sought by the Plaintiff are granted, the Defendants will continue to frustrate every effort to guarantee financing for health insurance , essential drugs and vaccines as well as acquisition and maintenance of modern medical facilities and equipment through the Basic Health Care Provision Fund.

27 That I make these depositions conscientiously and in good faith and in accordance with the Oaths Act.

DEPONENT

SWORN TO AT the Registry of the Federal
High Court, Abuja, this day
of 2016

BEFORE ME

COMMISSIONER FOR OATHS.

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IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

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 5. THE ATTORNEY-GENERAL OF THE FEDERATION
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- } DEFENDANTS

PLAINTIFFS' WRITTEN ADDRESS

1.0. INTRODUCTION:

Sustained agitations by civil society organisations working the health sector led to the passage of the National Health Act by the National Assembly. The Act enjoins the Government of Federation to make an annual grant of not less than one per cent (1%) of its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund. It is envisaged that the Act will help guarantee good healthcare for all Nigerians through provision of assured financing for health insurance, essential drugs and vaccines as well as acquisition and maintenance of modern medical facilities and equipment.

1.1. The Act has been in force since the 31st October 2014, yet the Annual Grant and Transfer on one per cent (1%) of Consolidated Revenue Fund for the Basic Health Care Provision Fund were not made in 2015 and 2016 Federal Budgets/ Appropriation Acts.

1.2. Now, the 1st and 4th Defendants are in the process preparing the 2017 Annual Federal Budget for consideration by the 2nd and 3rd Defendants, but no discussions

are going regarding dedicating any portion of the Consolidated Revenue Fund of the Federation to financing the Basic Health Care Provision Fund.

1.3. The Plaintiffs are seeking judicial intervention in the budgeting process to ensure implementation of the health financing provisions of the National Health Fund. This suit seeks interpretation and enforcement of the provisions of the Act. The questions framed by the Plaintiffs for judicial opinion of this Honourable Court are:

- a. Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 1st and 4th Defendants to include an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) as part of the Estimates of Revenues and Expenditure of the Federation to be laid before the 2nd and 3rd Defendant in every Financial Year?
- b. Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 2nd and 3rd Defendants to appropriate an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) via the Appropriation Act for every Financial Year and thereafter to exercise their oversight functions over the disbursement and administration of the Grant?
- c. Whether the 1st , 4th and 5th Defendants have constitutional and statutory obligations to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.
- d. Whether this Honourable Court can compel the Defendants jointly and severally to give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.

1.4. The reliefs sought by the Plaintiff are as follows:

- i. A Declaration that the Defendants are under a statutory duty to jointly and severally give effect to Section 11(2) (a) of the National Health Act of 2014.

- ii. A Declaration that the 1st Defendant's continued refusal to execute , implement, and give effect to Section 11 (2) (a) of the National Health Act of 2014 constitutes a flagrant violation of Section 5 (1) (b) of the Constitution of the Federal Republic of Nigeria.
- iii. A Declaration that the 4th Defendant is under a public duty to ensure that provisions are made in the Annual Federal Budgets for the Federal Government's annual statutory grant of not less than one percent (1%) of its Consolidated Revenue Fund to the Basic Health Care Provision Fund established by the National Health Act of 2014.
- iv. A Declaration that the 5th Defendant as the Chief Law Officer of the Federation is under a public duty to advise the 1st – 4th Defendants to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof, being a legislation duly passed by the 2nd and 3rd Defendants and assented to by the 1st Defendant.
- v. An Order directing the 4th Defendant to include a grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund as part of the estimates of expenditure of the Federation for 2007 financial year which will be presented to the 1st Defendant for approval and which will subsequently be laid before the 2nd and 3rd Defendants by the 1st Defendant.
- vi. An Order directing the 1st Defendant to include a grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation which is to be transferred to the Basic Health Care Provision Fund in the 2017 Annual Budget or Estimates of Revenues and Expenditure of the Federation to be laid before the 2nd and 3rd Defendants.
- vii. An Order of this Honourable Court mandating the 2nd and 3rd Defendants to appropriate not less than one percent (1%) of the Consolidated Revenue Fund of the Federation and transfer the same

to the Basic Health Care Provision Fund in the 2017 Appropriation Act.

- viii. An Order of this Honourable Court mandating the 2nd and 3rd Defendants to ensure that not less than one percent (1%) of the Consolidated Revenue Fund of the Federation is appropriated and transferred to the Basic Health Care Provision Fund in the Appropriation Act of every financial year.
- ix. An Order directing the Defendants jointly and severally to ensure that under the 2017 Annual Budgeting Process of the Federal Government of Nigeria and in subsequent Annual Budgeting Processes provisions are made for grant and transfer of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation to the Basic Health Care Provision Fund established by the National Health Act of 2014.
- x. Such further or other consequential order (s) as the Honourable Court may deem fit to make in the circumstances of this action.

2.0. **BRIEF RESTATEMENT OF MATERIAL FACTS:**

- 2.1. The background facts leading this suit are as set out in the affidavit – in - support of this Originating Summons , are briefly recapitulated , there are:
 - 2.1.1. The National Health Act which was passed into law by the 2nd and 3rd Defendants and assented to by the 1st Defendant in 2014 establishes the Basic Health Care Provision Fund.
 - 2.1.2. The National Health Act which came into effect on the 31st day of October 2014 mandates the Federal Government make an annual grant of not less than one percent (1%) of its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund.
 - 2.1.3. In the 2015 and 2016 Annual Budgets of the Federal Government / Appropriation Act no provision whatsoever were made for the annual grant of not less than one percent (1%) of

its Consolidated Revenue Fund for financing of the Basic Health Care Provision Fund.

2.1.4. The 1st and 4th Defendants are in the process of preparing the 2017 Budget of the Federal Government / Appropriation Bill and again no effort whatsoever is being made to provide for the annual grant of not less than one percent (1%) of its Consolidated Revenue Fund of the Federal Government for financing of the Basic Health Care Provision Fund.

2.1.5. The Basic Health Care Provision Fund was established so as to guarantee ready financing for health insurance, essential drugs and vaccines as well as acquisition and maintenance of modern medical facilities and equipment.

2.1.6. The Defendants are violating the provisions of the National Health Act by their continued failure or refusal to set aside not less than one percent (1%) of its Consolidated Revenue Fund of the Federal Government for financing of the Basic Health Care Provision Fund.

2.2. We humbly adopt and rely on all the paragraphs of the affidavit –in-support of the Originating Summons as well as the exhibits attached thereto.

3.0. **ISSUES FOR DETERMINATION**

Subject to the overriding powers of this Honourable, the Plaintiffs have formulated the following issues for determination:

- i. **Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 1st and 4th Defendants to include an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) as part of the Estimates of Revenues and Expenditure of the Federation to be laid before the 2nd and 3rd Defendant in every Financial Year?**

- ii. **Whether Section 11(2) (a) of the National Health Act of 2014 imposes a duty on the 2nd and 3rd Defendants to appropriate an Annual Grant of not less than one percent (1%) of the Consolidated Revenue Fund of the Federation for transfer to the Basic Health Care Provision Fund (BHCPF) via the Appropriation Act for every Financial Year and thereafter to exercise their oversight functions over the disbursement and administration of the Grant?**
- iii. **Whether the 1st , 4th and 5th Defendants have constitutional and statutory obligations to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.**
- iv. **Whether this Honourable Court can compel the Defendants jointly and severally to give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof.**

4.0. SUBMISSIONS:

4.1. Issues 1, 2 and 3 argued together:

4.1.1. We crave the indulgence of this Honourable Court to argue Issues 1, 2 and 3 together as they appear inextricably interrelated and interwoven.

4.1.2. The National Health Act is a law made by the National Assembly pursuant to its legislative powers under Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution). The Bill for the Act was passed by the 2nd and 3rd Defendants and assented to by the 1st Defendant. The Act came into effect on the 31st day of October 2014.

4.1.3. Section 5(1) of the 1999 Constitution provides:

“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 and Ministers of Government of the Federation or 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 all matters with respect to which the National Assembly has, for the time being, power to make laws.”**

4.1.4. The National Health Act is a law made by the National Assembly; therefore, by Section 5(1) of the Constitution the 1st, 4th and 5th Defendants are constitutionally bound to execute and enforce the legislation. We humbly refer the Honourable Court to **Kagoma v. Governor of Kaduna State** where it was held:

“ No doubt the provisions of the constitution are supreme but subject to this a law made by the House of Assembly may provide other executive functions, not otherwise provided for by the Constitution , *which the Governor must execute.* “

4.1.5. **By** Section 5 (1) of the Constitution an onerous duty is cast on the shoulders of the executive arm of Government of the Federation: the duty to execute and enforce all laws made by the National Assembly.

4.1.6. The executive powers of the Federation necessarily extend implementation of all the provisions of every Act passed by the National Assembly, no matter how unpalatable they may appear. The Constitution does not accord the executive the luxury of selecting whimsically and capriciously the legislations it will execute; particularly, where, as in the instant case, the provisions of the legislation are mandatory.

4.1.7. The duty to execute duly passed legislations is sacrosanct. We refer the Honourable Court to Black’s Law Dictionary (Sixth Edition at page 505) defines ‘duty’, *inter alia*, to mean legal or moral obligation; mandatory obligation to perform; those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity. It goes further (at

page 1376) to state that the word “shall “ as used in statutes , contracts or the like ,is generally imperative or mandatory and ” has the invariable significance of excluding the idea of discretion and operating to impose a duty which may be enforced , particularly if public policy is in favour of this meaning, or *when addressed to public officials* , or when public interest is involved , or where the public or persons have rights which ought to be exercised or enforced unless a contrary intent appears.

4.1.8. We urge this Honourable Court to hold that the provisions of the Section 5(1) (b) of the 1999 Constitution are quite clear and unambiguous. And that the Constitution imposes a public duty on the 1st and 4th Defendants to implement and enforce the National Health Act, which is a legislation duly passed by the National Assembly. We refer the Honourable Court to **Awolowo v. Shagari (1979) 6-9 SC 51**, where the Supreme Court held that the rule of law upon construction of all statutes, whether they be penal or remedial, is to construe them according to the plain literal or grammatical meaning of the words in which they are expressed unless the construction leads to a plain and clear contradiction of the apparent purpose of the Act or to some palpable and evident absurdity.

4.2. Issue 2: Whether this Honourable Court can compel the Defendants to implement, execute and give effect to the National Health Act of 2014, particularly Section 11(2) (a) thereof ?

4.2.1. Section 11 (1) of the National Health Act provides:

“There is established the Basic Health Care Provision Fund (in this Act referred to as ‘the Fund’).

4.2.2. Section 11 (2) provides:

“The Basic Health Care Provision Fund shall be financed from –

- (a) Federal Government annual grant of not less than one per cent of its Consolidated Revenue Fund;
- (b) grants by international donor partners; and
- (c) funds from any other source.”

4.2.3. In the above subsection the word ‘shall’ was used by Parliament to specify the mandatory nature of the obligation imposed on the Federal

Government. We refer the Honourable Court to **Tamti v. NCSB [2009] 7 NWLR (Part 1141)631 at 654** where it was held that where the word “shall” is used in a statute, it requires that the said obligation is mandatory. In **Oju Local Government v. INEC [2007] 38 WRN 32 at 48** the Court of Appeal held:

“It is trite that where an Act makes a mandatory stipulation, the operators of the Act must comply strictly with such provisions.”

4.2.4. We further refer the Honourable Court to **Agusiobo v. Onyekwulu (2003) 14 NWLR (PT.839) 34 at 47; Kato v. C.B.N. [1991] 9 NWLR (Part 214)126; Ifezue v. Mbadugha (1984) 1 SCNLR 437; Amadi v. NNPC [2000] 10 NWLR (Part674) 76.**

4.2.5. The National Health Act came into force on the 31st day of October 2014 to provide a framework for development and management of the national health system. Establishment of the Basic Health Care Provision Fund is one of the innovations introduced by the Act ensure steady and adequate funding of health services through the National Health Insurance Scheme.

4.2.6. We submit with respect that the role of the courts is to intervene whenever the need arises to ensure execution and enforcement of duly passed legislations like the National Health Act of 2014. We refer this Honourable Court to **Co-operative & Commerce Bank (Nigeria) PLC v. Attorney General of Anambra State (1992) 10 SCNJ 137 at 163.**

4.2.7. In the circumstances we submit with respect that this Honourable Court can compel the Defendants to execute and implement Section 11 (2) (a) of the National Health Act. We respectfully refer the Honourable Court to **Sharp v. Wakefield (1891) AC 173 at 179**, where it was held that executive powers must be exercised according to rules of reason and justice, not arbitrarily according to private opinion but according to law.

- 4.2.8. It is our contention that, even in matters admitting of discretion, it has been held that discretionary powers are not at large. We humbly refer the Honourable Court to **Stitch v. Attorney General of the Federation [1986] 17 NSCC (Part 2) 1389.**
- 4.2.9. We also refer the Honourable Court to **Usman v. Garke [2003] 14 NWLR (Part 846) 261** or (2003) LPELR 17 paragraphs D-E where the Supreme Court held that it is a cardinal principle of construction of statutes that legislations which confer powers on statutory bodies are construed such as to prevent abuse of power. We also the Honourable Court to **Wilson v. Attorney General of Bendel State [1985] 1 NWLR (Part 4) 572 at 591;** and **Amasike v. Registrar General, Corporate Affairs Commission [2010] 13 NWLR (Part 13) 337 at 399.**
- 4.2.10. There is no justification whatsoever for the refusal to comply with the provisions of Section 11 (2) (a) of the National Health Act since 2012 with respect to Appropriation Acts of 2015 and 2016. We submit with respect that the burden is on Defendants to proffer reasons for the failure or refusal to discharge the duty imposed on them by the National Health Act. We humbly refer the Honourable Court to **Psychiatric Hospital Management Board v. Ejitagha [2005] 6 SCNJ 263;** **Merchant Bank Ltd v. Federal Ministry of Finance [1961] 2 NSCC 264;** and **Iwuji v. Federal Commissioner for Establishment [1986] 1 NWLR (Part 3) 497.**
- 4.2.11. It is submitted that, compliance with the provisions of the National Health Act should not be reduced to a matter of discretion. We refer this Honourable Court to **Zango v. The Military Governor of Kano State (1986) 2 NWLR (Part 22) 409,** where it was held that unfettered discretion cannot co-exist with the Rule of Law. In the recent case of **Chidolue v. E.F.C.C. [2012] 5 NWLR (Part 1292) 160 at 180** Bada, J.C.A., insisted that:
- “This country is now under a democratic government, we are no more under a military regime where an institution or person can act unlawfully and get away with it.”**

4.2.12. It is further submitted that, this Honourable Court in exercising the judicial powers vested in it by Section 6(6) (b) of the 1999 Constitution can intervene in this matter in order to uphold the sanctity of the Constitution. We refer the Honourable Court to **Adediran v. Interland Transport Ltd** [1991] 9 NWLR (Part 214) 155 at 180-181, the Supreme Court, per Karibi-Whyte JSC, held:

“The Constitution has vested the Courts with powers for the determination of any question as to the civil rights and obligations between government or authority and any person in Nigeria –see s.6(6)(b)...”

5.0. CONCLUSION

Having regard to foregoing, we respectfully urge this Honourable Court, in the interest of justice, to resolve all the issues in favour of the Plaintiff and to grant all the reliefs sought in this Originating Summons.

Dated this day of 2016

**Kalu Onuoha, Esq.,
Kingsley Nnajiaka, Esq.,
Plaintiff's Counsel
Centre for Social Justice
Plaintiff's Counsel
17, Yaoundé Street
Wuse Zone 6
Abuja**

LIST OF CASES CITED BY THE PLAINTIFFS

1. Awolowo v. Shagari (1979) 6-9 SC 51
2. Obayuwana v. Governor of Bendel State (1982) 12 SC 147
3. A.G. Bendel State v. A.G. Federation (1982) 3 NCLR 1
4. Eleso v. Govt. of Ogun State [1990] 2 NWLR (Part 133) 420 at 443
5. Ifezue v. Mbadugha (1984) 1 SCNLR 437
6. Amadi v. NNPC [2000] 10 NWLR (Part 674) 76.
7. Sharp v. Wakefield (1891) AC 173 at 179
8. Stitch v. A.G. Federation [1986] 17 NSCC (Part 2) 1389
9. Usman v. Garke [2003] 14 NWLR (Part 846) 261 or (2003) LPELR
10. Wilson v. A.G. Bendel State [1985] 1 NWLR (Part 4) 572 at 591
11. Amasike v. Registrar General, CAC [2010] 13 NWLR (Part 13) 337 at 399
12. Tamti v. NCSB [2009] 7 NWLR (Part 1141) 631 at 654
13. Oju Local Government v. INEC [2007] 38 WRN 32 at 48
14. Agusiobo v. Onyekwulu (2003) 14 NWLR (Part.839) 34 at 47
15. Kato v. C.B.N. [1991] 9 NWLR (Part 214) 126
16. Psychiatric Hospital Management Board v. Ejitagha [2005] 6 SCNJ 263;
17. Merchant Bank Ltd v. Federal Ministry of Finance [1961] 2 NSCC 264
18. Iwuji v. Federal Commissioner for Establishment [1986] 1 NWLR (Part 3) 497.
19. Zango v. The Military Governor of Kano State (1986) 2 NWLR (Part 22) 409
20. Chidolue v. E.F.C.C. [2012] 5 NWLR (Part 1292) 160 at 180
21. Adediran v. Interland Transport Ltd [1991] 9 NWLR (Part 214) 155 at 180-181

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO _____

BETWEEN

1. THE REGISTERED TRUSTEES OF
NIGERIAN MEDICAL ASSOCIATION
2. CENTRE FOR SOCIAL JUSTICE (LTD/GTE) PLAINTIFFS

AND

1. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA
 2. THE SENATE OF THE FEDERAL REPUBLIC OF NIGERIA
 3. THE HOUSE OF REPRESENTATIVES OF THE FEDERAL
REPUBLIC OF NIGERIA
 4. THE MINISTER OF FINANCE
 5. THE ATTORNEY-GENERAL OF THE FEDERATION
& MINISTER OF JUSTICE
- } DEFENDANTS

AFFIDAVIT URGENCY IN SUPPORT OF ORIGINATING SUMMONS

I, **Omachi Samuel Omale**, Male, Adult, Christian, and a Nigerian citizen resident at 17 Yaoundé Street, Wuse Zone 6, Abuja, do hereby make oath and state as follows:

1. That I am a civil society activist and the 2nd Plaintiff's Administrative Secretary in charge of Public Expenditure Management and by virtue of my position, I am very conversant with the facts deposed herein and the circumstances necessitating this suit.
2. That I have the consent and authority of the Plaintiffs to depose to this affidavit of urgency..
3. That I know that the 1st Defendant is in the process of causing the 2017 Estimates of Revenues and Expenditure of the Federation to be prepared and laid before the 2nd and 3rd Defendants.

4. That I verily believe that the 1st and 4th Defendants are neglecting the statutory grant of not less than one percent (1%) of its Consolidated Revenue Fund of the Federal Government for financing of the Basic Health Care Provision Fund.

5. That I verily believe that unless this suit is heard expeditiously the Defendants will not make any provision the annual statutory grant and transfer of not less than one percent (1%) of its Consolidated Revenue Fund of the Federation for financing of the Basic Health Care Provision Fund 2017 Budget which is about to be laid before the National Assembly in a matter of days.

6. That I make these depositions conscientiously and in good faith and in accordance with the Oaths Act.

DEPONENT

SWORN TO AT the Registry of the Federal
High Court, Abuja, this day
of 2016

BEFORE ME

COMMISSIONER FOR OATHS.