THE CASE OF *RIVERS STATE HOUSE OF ASSEMBLY & ANOR V. THE GOVERNMENT OF RIVERS STATE & 9 ORS*: SUPREME COURT'S ALARMING DEPARTURE FROM ESTABLISHED JURISPRUDENCE.

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Abstract

The unfolding political turmoil in Rivers State, following the defection of Martin Amaewhule and 24 other lawmakers from the Peoples Democratic Party (PDP) to the All Progressives Congress (APC), has precipitated a constitutional crisis. The fundamental question remains whether these defected lawmakers are entitled to retain their seats or if, pursuant to constitutional positions and established legal precedents, they forfeited their mandates. The Supreme Court's recent pronouncement, which effectively conferred legitimacy upon the defectors by directing the Governor to re-present the 2025 budget to them, has left many Nigerians bewildered, given the clear-cut constitutional position on defection. This article seeks to analyse the rationale behind the Supreme Court's decision, which is away from its previous position on the matter of defection. A doctrinal research approach was adopted, which placed much reliance on judicial precedents. The Paper found that the Supreme Court's recent departure from its earlier position on defection[1]has created two different legal positions on defection.

Keywords: Supreme Court, Departure, Establishment, Jurisprudence, defection.

1. Introduction

No doubt, the Supreme Court is the Apex Court in Nigeria. The finality of its decision cannot be questioned.[2] No wonder Hon. Chukwudifu Oputa once said: we are final not because we are infallible, but we are infallible because we are final.[3]

Notwithstanding the finality of its decisions, the Supreme Court shall be bound by its previous decisions, especially when it concerns the interpretation of a Constitutional provision. It is worrisome that the decisions of the Supreme Court in recent years cannot be predicted even when it relates to Constitutional interpretation.

Oliver Wendell Holmes of the Realist School of Law insists that nothing pretentious is law than the prophecy of what the Court would do to a set of facts placed before them.[4] Judges over the years have played significant roles in institutionalizing order and progressive development in every commonwealth society, including Nigeria, via judicial precedent. It is the application of judicial precedent that instills public confidence over judicial pronouncements.

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1 *Ifedayo Abegunde v Ondo State House of Assembly*

2. Section 235 of the Constitution of the Federal Republic of Nigeria,1999 as amended provides that no appeal shall lie to any other body or person from any determination of the Supreme Court.

3 . Hon. Justice Chukwudifu Oputa now late was a retired Justice of the Supreme Court. The remark was made in the case of *Adegoke Motors Limited v Adesanya* (1989) 3 NWLR, (Pt. 109),P.275

4. OW Holmes, *The Path of Law* cited in D.I.Njoku and P. Nwodeh, *'An Expository Dialysis of the Basis of African Customary Law in the Jurisprudence of Law'*.IDOSR Journal of Banking, Economics and Social *Sciences* vol. 7 iss.1 (2022) pp 83-100 at p.85.

This work is a critique of the Supreme Court's decision in *Rivers State House of Assembly & anor v The Government of Rivers State & 9 ors.*[5] Courts all over the world including the Supreme Court of Nigeria have the duty to interpret provisions of a piece of legislation[6]. Even though the Supreme Court's decision is final, its decision should be consistent with reason and common sense.

2. Crux and Facts of *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors*.

Sometime in 2023, months after election of the Governor of Rivers State, His Excellency, Sir Siminalayi Fubara, 27 members of the Rivers State House of Assembly defected to the All Progressives Congress (APC) and left the Peoples Democratic Party which sponsored their election into the Rivers State House of Assembly thereby violating *Section 109 (1)(g)* of the Constitution of the Federal Republic of Nigeria.

The 27 lawmakers having defected to the All Progressives Congress, the remaining four members constituted the Rivers State House of Assembly and started sitting as such. The Governor of Rivers State, Sir Siminalayi Fubara presented the 2024 budget to the 4- member House of Assembly which was later passed as the Appropriation Law.

Dissatisfied with the action of the Governor of Rivers State, the defected 27 lawmakers instituted a suit against the Governor of Rivers State via Originating Summons at the Federal High Court Abuja arguing that the Central Bank of Nigeria and the Accountant General of the Federation ought not to release funds belonging to Rivers State until an Appropriation Law has been duly made by the House of Assembly of Rivers State.

After hearing both sides on their respective affidavit and addresses, the trial Court on 30/10/24 delivered Judgment in favour of the defected lawmakers, granting them the reliefs claimed for. Dissatisfied with the judgment, the Governor of Rivers State appealed to the Court of Appeal which the Court of Appeal on 13/12/24 delivered judgment allowing the appeal on the ground that the trial Federal High Court lacked the jurisdiction to entertain and determine the said suit and consequently struck it out, but on the merit, dismissed the appeal. The defected lawmakers then appealed to the Supreme Court.[7]

3. Constitutional Provision on the Issue of Defection.

Political defection seems to be a recurring feature in Nigerian politics. It is a custom that predates our independence as a country. As far back as 1957, members of the pre-independence political party defected to rival political parties in a bid to secure their interest.[8] While it is true that politicians have the freedom of association, it is still pertinent to note that certain rights come with limitations.

Defection has been defined as the abandonment of allegiance or duty; the forsaking of a person or cause; desertion.[9]In other words, defection is the act of abandoning one's allegiance for another. In political terms, it can mean the forsaking of one's political party for the

5. Unreported Suit no: SC/CV/1174/2025 delivered on the 28th day of February 2025
6. *Eze v Gov. Abia State* (2010) 15 NWLR (Pt 1216) p.324
7. Unreported Suit no: SC/CV/1174/2024 between *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors*, *Supra*
8. Suit No SC/CV/1174/2024 between *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 ors*, *Supra*
9. *Eze v Governor of Abia State* (2010) 15 NWLR (pt 1216)p.324

opposition. The Constitution forbids a member of a State House of Assembly elected on the platform of a political party when it provides thus:

> A member of a House of Assembly shall vacate his seat in the House if
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> (a) being a person whose election to the House of Assembly was sponsored by a political party; he becomes a member of another political Party before the expiration of the period for which that House was elected.
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> Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.[10]

From the above provision, it is crystal clear that a politician who is a member of a House of Assembly can only defect under exceptional circumstances. One of them is a division in the political party that the intending defector belongs to. This position has been elucidated in *Abegunde v O.S.H.A*[11] as follows:

> …It is to the effect that only such factionalization, fragmentation, splintering or "division" that makes it impossible or impracticable for a political party to function as such will by virtue of the provision to section 68(i)(g) of the 1999 Constitution, justify a person's defection to another party and the retention of his seat for the unexpired term in the House in spite of the defection. The division must affect the entire structure of the political party at the Centre, that is its national leadership. Otherwise as rightly held by the trial Court and the Court of Appeal, in this case the defector automatically loses his seat.

The other condition is that a member of a House of Assembly can only defect when a faction of a political party that he previously belonged to merges with another. The purport of the above provision[12] is that political defections in Legislative Houses are only in limited situations.

Ordinarily, it is the duty of the Speaker of a State House of Assembly to declare the seat of such defectors vacant and the Independent Electoral Commission ought to act immediately upon being notified by the Speaker by conducting a fresh election into the seat. However, it takes a lot of political will for such to happen in Nigeria, particularly when the defector is joining the Speaker or Senate President in his political party.

It is imperative to State that the Constitution only prohibits legislators from cross-carpeting to another political party, as it does not include the President and Governors. The Legislators, in amending the Constitution were also careless (whether deliberately or not) in limiting the provision of the Constitution to Legislators. The provisions should have also included the President, his Vice- President, the Governors and their Deputies, because all these are also elected on the platform of political parties.

It is to be noted that the jurisprudence behind limiting the principle of defection to only legislators by the Constitution is not reasonable. Both the Chief Executives and the Legislators are politicians and therefore, for the Constitution to only prohibit the defection of the

10. Section 109 (1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Similar provision is provided in Section 68(1)(g) of the Constitution against members of the National Assembly.
11. (2015) 8 NWLR (pt1461) 314 at 368-370.
12. *Section 109(2)* of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Legislators without doing so to the President, Vice-President, Governors and their Deputies is constitutional segregation which is not only condemnable but illogical.

4. Supreme Court Departure from Established Jurisprudence.

Judicial pronouncements ought to be consistent and predictable, especially in the interpretation of the Constitution. The reason is simple: The Constitution is the *font est origo* of our jurisprudence. In the case of *Rivers State House of Assembly & Anor v The Governor of Rivers State & 9 ors*,[13] the Supreme Court unequivocally held:

> It is reasonable to conclude that the cross appellant's reliance on sections 102 and 109 of the Constitution and the doctrine of necessity is to continue his brazen subversion of the Rivers State House of Assembly, the 1999 constitution and legitimate government in River State having by his own admission engaged in a series of illegal activities just to prevent the other 27 members of the River State House of Assembly from participating in the proceedings of the House to carry out their legitimate legislative duties which they were elected to do, his resort to sections 102 and 109 of the 1999 Constitution and the doctrine of necessity on the basis of his allegation that they have defected is a red herring to perpetuate his subversion of the Rivers State House of Assembly for any Constitutional processes such as declaration of a seat vacant for defection therein to take place. Only the House can declare a seat vacant for defection and not the Governor of a State. Not even the Court can do so.

The Supreme Court subverted the provision of the Constitution in their interpretations of *sections 102 and 109* of the Constitution. For clarity and completeness, a reproduction of *section 102* of the Constitution will suffice:

> A house of assembly may act notwithstanding any vacancy in its membership and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House of the House shall not invalidate such proceedings.

Section 102 of the Constitution recognizes any vacancy in the membership of the House which may occur due to defection of a member to another political party, death or resignation of a member of the House. In other words, *section 102* of the Constitution validates or gives effect to section 109 of the Constitution where a member vacates his legislative seat. Where any of the eight conditions for a member to vacate his seat occurs under *section 109* of the Constitution, the House of Assembly shall continue to exist and carry on its legitimate legislative duties. Where there is vacancy in the membership of a House of Assembly, the Speaker of the House of Assembly will officially declare the seat of such member vacant in a plenary session and then notifies the Independent Electoral Commission to conduct a fresh election to fill the vacancy.[14]

In the case of *River State House of Assembly and Anor v the Government of Rivers State & 9 ors*,[15] the Supreme Court never believed there was vacancy in the Membership of the House of Assembly even when the 27 lawmakers defected to the All Progressives Congress displaying the flag of their new party. It is imperative to state that on the defection of the 27 lawmakers to the All Progressives Congress, the factional speaker; Jumbo Oko declared their seats vacant

13. Unreported Suit No: SC/CV/1174/2024 delivered on the 28th day of February 2025, *Supra*
14. *Section 109(I)(9)* of the Constitution of the Federal Republic of Nigeria,1999 (as amended). See also *section 68(I)(g)* of the Constitution against members of the National Assembly.
15. *Supra*

in accordance with *section 109(2)* of the Constitution. The Constitution envisaged a situation where few members of a House of Assembly may seat hence its provision for *section 102* using the words "any vacancy in its membership". Where 27 members of the House of Assembly defected to another political party and the remaining 4 of the members continue to carry on legislative business it is in line with the Constitution and the doctrine of necessity.

The Supreme Court further held that:

> Section 102 of the Constitution cannot be relied on to validate the proceedings of a House of Assembly in the absence of over 90% of the members or to justify a vacancy created by the illegal exclusion of a member of the House or to justify the contrived illegal exclusion of 27 members and officials from the House and illegal shutting down of the House by destroying the Legislative building and House of Assembly Complex and blocking access to the place by legislators and officials of the House.[16]

The Supreme Court somersaulted in their interpretation of section 109 of the Constitution when it held that a vacancy was created in the membership of the Rivers State House of Assembly as a result of the illegal exclusion of the 27 members of the House and destruction of the Legislative building including blocking access to the place by legislators and officials of the House of Assembly. There are only eight conditions in which a vacancy can be created in the membership of a State House of Assembly under section 109 of the Constitution. The Constitution never envisaged that a vacancy can be created by illegal exclusion of the members, destruction of legislative building or blocking access of the legislators.

The law is trite that it is the duty of the Court to interpret the provisions of the Constitution and other enacted statutes for the proper conduct of affairs, so that democratic governance will be predicated and sustained on the rule of law and not law of the jungle. When the Constitution is clear as to its intendment on any subject, the Courts in giving construction thereto are not at liberty to search its meaning beyond it.[17]

In *INEC v Balarabe Musa*,[18] the Supreme Court emphasized thus: "Liberal approach to the interpretation of the Constitution is good in relevant situations, but this Court cannot do so excessively to the extent that it destroys the fabrics of Constitutionalism and Constitutionality. All interpretation of the Constitution must bow or tow to these twin principles or pillars of Constitutional Law in our democracy in which the rule of law, democracy's life blood triumphs to the egalitarian advantage of Nigeria and its people". In the case of *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 ors*,"[19]. The Supreme Court while interpreting the 1999 Constitution expanded the Law instead of expounding it.[20]

The Supreme Court in the Case under review,[21] erred when it decided that the vacancy in the membership of the Rivers State House of Assembly was created as a result of the illegal exclusion of the 27 members of the House including destruction of the legislative building. What constitutes a House of Assembly is not the legislative building where the House conducts its legislative business. A House of Assembly including any legislative House is composed of its members who can sit anywhere to conduct its legislative business. Therefore,

16. Unreported Suit No: SC/CV/1174/2024 delivered on the 28th day of February 2025, *Supra*
17. *Eze v Governor of Abia State (*2010) 15 NWLR (pt 1216)p.324
18. (2003) 3 NWLR (pt 806) 72.
19. *Supra*
20. *Sylvester v Ohiakwu* (2014) 5 NWLR (Pt 1401) p. 467
21. *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors, Supra*

whenever the membership is depleted in accordance with the constitutional provision,[22] a vacancy is created and the law ought to take its course.

There was no evidence adduced whatsoever that it is the Governor of Rivers State that caused the destruction of the legislative House of the Rivers State House of Assembly neither was it in evidence that the Governor illegally excluded the 27 members from being members of Rivers State House of Assembly. One then wonders what informed the Supreme Court's *ratio decidendi* in that judgment[23].

Whenever any of the eight conditions listed under section 109 of the constitution occurs, and the Speaker of the House of Assembly declares the seat of such a member vacant in its plenary a vacancy has occurred and the remaining members of the House can continue to carry out their legislative business notwithstanding the depletion in its membership in accordance with section 102 of the Constitution. It is not the business of a Court to be sympathetic of the depletion of the membership of the House.

The Supreme Court was sympathetic of the situation when it considered that the seats of over 90% of the members of the Rivers State House of Assembly were vacant and therefore such a vacancy cannot be validated by section 102 of the Constitution. There is no sentiment in law,[24] as the law rules and not the whims and caprices of individuals. The 27 members of the Rivers State House of Assembly unilaterally, individually and collectively defected to the All Progressives Congress in violation of the Constitution and in loyalty to the former Governor of Rivers State; Nyesom Wike. Whatever they sowed should be reaped by them.

It is also the decision of the Supreme Court in the considered case,[25] that membership register and membership card constitute the only proof of membership of a political party. The 27 members of Rivers State House of Assembly in their defection to the All Progressives Congress (APC) exhibited the APC flag individually while holding same in their hands. The defection pictures went viral which was in evidence that they actually defected from the Peoples Democratic Party to the All Progressives Congress.

It is contended that Legislators who usually defect to opposition political parties only announce it in the plenary session of the legislative House as they do not display their membership card. The head of the Legislative House also does not confirm from a political party's membership Register to ascertain whether the legislator has actually defected to another party. It is gainsaying the fact that a legislator can orally and unilaterally make his membership of an opposition party known to the Head of the Legislative House in a plenary without necessarily displaying his membership card and membership Register. It is therefore submitted that the Supreme Court's decision of restoring the 27 members of the Rivers State House of Assembly to their already declared vacant seats with an order for them to resume sitting immediately is not only a violent violation of the Constitution, it is an aberration and one borne out of sentiment with a view to pacify known political godfathers.

The 27 members of the Rivers State House of Assembly having defected to the APC have automatically lost their seats and the doctrine of necessity ought to be applied to salvage the situation pending when the Independent National Electoral Commission will conduct fresh election to fill the vacant seats. The Supreme Court while rejecting the applicability of the doctrine of necessity as argued by the Counsel to the 8th Respondent held that "the doctrine

22. Sections 102 and 109 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
23. *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors, Supra*
24. *Asalu v Dakan* (2006) All FWLR (pt 325) 90 SC
25. *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors, Supra*

will operate in circumstances where the Constitution itself cannot measure up to a situation which has arisen and an organ set up under the Constitution is bereft of its power to function ". At the defection of the 27 members, the House of Assembly was left with the remaining 4 members who started sitting to conduct the legislative business of the House in accordance with section 102 of the Constitution. The doctrine of necessity ought to be applied in that situation as the Constitution never envisaged that a House made up of 31 members will be depleted to only 4 members. Both the Constitution and the 4 members were helpless in that situation hence the need for the application of the doctrine of necessity.

It is important to note that reinstatement of the 27 members of the Rivers State House of Assembly in their already declared vacant seats was not one of their reliefs at the Federal High Court Abuja. At the trial Court, the 27 Members of the House specifically prayed the Court via an Originating Summons for an Order of injunction restraining the Central Bank of Nigeria and the Accountant General of the Federation from releasing any money, fund or revenue standing to the credit of Rivers State in consolidated revenue fund of the Rivers State domiciled at the Central Bank of Nigeria until the fund has been duly charged with the relevant expenditure by and Appropriation law duly made by the House of Assembly of Rivers State.

While the Federal High Court granted their reliefs, the Court of Appeal dismissed their suit and set aside the Orders of the Federal High Court. Surprisingly, the Supreme Court in a judicial summersault not only ordered the Central Bank of Nigeria and the Accountant General of the Federation to stop releasing and paying funds in the consolidated revenue to Rivers State Government but also reinstated the 27 lawmakers who had already lost their seats by reason of their defection to the APC. The Supreme Court further held that until an Appropriation law is made by the Rivers State House of Assembly as prescribed by the Constitution the Central bank will not release funds standing to the credit of Rivers State from the consolidated revenue fund. The law is trite and elementary that an appeal is a continuation of the case at the trial Court[26] and that a Court of law has no jurisdiction to grant reliefs not prayed for by a party in a case as the Court is not a father Christmas.[27]

5. Supreme Controversy and Dangerous Precedent.

It is to be noted that it was a seven- man panel of Justices that decided the case of *Abegunde v .O.S.H.A*[28] in 2015. The case of *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 ors*[29] where the Supreme held otherwise was decided by a five- man panel. In legal jurisprudence, a fundamental principle of judicial precedent is that a smaller panel of Judges cannot overrule a larger panel within the same court hierarchy. This Principle ensures consistency, stability and credibility in legal rulings. As Prof. Chidi Odinkalu has pointed out "a five-person panel of the Supreme Court cannot over rule a seven-person panel." This principle is not only grounded in common legal doctrine but also enshrined in Constitutional practice worldwide"[30]

It is contended that for the five-man panel of the Supreme Court to overrule a seven-man panel of Supreme on the same subject matter is not only an affront to legal jurisprudence but a supreme controversy which only the Supreme Court can resolve in subsequent case of

26. *Ajide v Kelani* (1985) 3 NWLR (Pt 12) 248 SC
27. *Govt of Gongola State v Tukur* (1989) 4NWLR (Pt 117) 592
28. (2015) 8 NWLR (Pt 1461) 314
29. *Supra*
30. Chidi Odinkalu, '*Supreme Controversy* : Can a five –Justice Panel overrule a Seven-Justice Panel' (2025) available at <www.https://chidiodinkalu.com>, accessed on 10/3/25

similar subject matter. The decision of the Supreme Court is therefore a violation of judicial Precedent.

The decision of the Supreme Court has not only set a dangerous precedent, it has been described as a fundamental breach of legal precedent. In the *Rivers State House of Assembly case,*[31] the Supreme Court Ordered the Central Bank of Nigeria to withhold Rivers State's Federal Allocation. This action punishes the people of Rivers State for a political dispute between elites. The Constitution[32] guarantees the financial autonomy of States as federal allocations cannot be arbitrarily withheld. The decision has opened the door for Federal Government's interference in States financial autonomy.

It is contended that the decision is a judicial overreach into political disputes. The Supreme Court should not determine 'political disputes'; its role is to interpret the law impartially. By issuing decisions that favour one political faction over another, the Supreme Court has damaged its credibility and neutrality. The case[33] exemplifies how Nigeria's judiciary is becoming an instrument of political control. The speed at which the case progressed from the Federal High Court to the Supreme Court in record time is suggestive of political influence rather than due process. The decision further suggests that State Governors can be controlled through judicial means. The dangerous precedent that is set by the decision has weakened public trust in the judiciary thereby creating instability in democratic governance.

6. Conclusion/Recommendations

The gravamen of the case between the *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors*[34] is a constitutional issue: whether the Government of Rivers State is entitled to the release and withdrawal of moneys from the consolidated revenue fund without an Appropriation law put in place by the Rivers State House of Assembly. The Supreme Court ought to have concentrated in the interpretation of the issue raised by the Appellant in accordance with the Constitution rather than delving into the issue of reinstating the 27 defected members of the Rivers State House of Assembly which is not an issue before the Court.

When the outcome of Constitutional interpretation before a Court is not certain, it poses a dangerous precedent for the judiciary. It becomes worrisome and more dangerous when the fundamental breach of legal precedent is coming from the Supreme Court which is the Apex Court in Nigeria as there is no other Appeal from the Court. The implication of a decision from the Supreme Court constituting a dangerous precedent is that the whole Courts in Nigeria and Nigerians are bound by the decision; they shall continue to live with it unless and until such a decision is reversed by the Supreme Court which decided it.

The decision of the Supreme Court has not only posed a great danger to the governance of Rivers State, it is a violent violation of the provisions of the Constitution which is the *font est origo* of Nigeria's jurisprudence.

In recommendation, it is suggested that urgent reforms are needed to protect the integrity of the Nigerian judiciary. The National judicial Council (NJC) must ensure that larger Panels are constituted to hear politically sensitive cases to prevent smaller Panels from overturning major precedents.

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31. *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors, Supra*
32. *Sections 120 and 121* of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
33. Rivers *State House of Assembly & Anor v The Government of Rivers State & 9 Ors, Supra*
34. *Supra*

Judicial appointments must be transparent to prevent political influence. A situation where Judges are compromised in their decisions poses a great danger to democratic governance. A saying goes that a bad law is better than a bad Judge. While a bad law can be amended, a bad and corrupt Judge poses a danger to the society.

The National Assembly should enact laws preventing the arbitrary withholding of State funds. Where funds meant for a State allocation is withheld on the Orders of a Court, the immediate sufferers and losers are the people of that State who are paid salaries from the said withheld allocation. The NJC should set up a Judicial Oversight Committee who will review a controversial Supreme Court decision and hold Judges accountable for political bias. The Judicial Oversight Committee is necessary as the Supreme Court is the apex Court in which there is no further appeal from its decisions. Where a Panel of Supreme Court knows that its intended controversial decision would be reviewed, it will not try to give such a decision as it will attract public outcry and chaos.

There is need for Supreme Court to revisit its decision in the case of *Rivers State House of Assembly & Anor v The Government of Rivers State & 9 Ors*[35] as their interpretation of *sections 102 and 109* of the Constitution is not the correct position of the law. Moreover, the Judgment if not reviewed will set a very dangerous precedent that will destroy Nigeria's Judicial system.

It is also recommended that Supreme Court should consider the overall interest of the people of a State before deciding on Constitutional issues rather than doing the bidding of political bigwigs from that State that will in turn endanger the good governance of that particular State.

35. *Supra*