

**SUPREME COURT OF NIGERIA**  
10TH SEPTEMBER, 1993. SC.52/1988  
**CORAM:- A. G. KARIBI-WHTYE, S. M. A. BELGORE,**  
**O. OLATAWURA, I. L. KUTIGI, U. MOHAMMED, JJSC**

HON. JUSTICE KALU ANYAH  
Chairman, The Council, University ..... APPELLANTS  
Of Benin AND OTHERS

AND

DR. FESTUS IYAYI ..... RESPONDENT

*ADMINISTRATIVE - Powers under Decree 17 of 1984 - when validly  
LAW exercised- whether courts' jurisdiction is thereby excluded*

*ADMINISTRATIVE- Exercise of powers under Decree 17 of 1984 -  
LAW whether a person whose appointment is affected must be  
a public officer within S. 277 of the 1979 Constitution*

*JURISDICTION - Whether determined only by the nature of the claim  
before the court - are there other considerations affecting  
the determination of the Court's Jurisdiction*

*PRACTICE AND- Determination of action in limine - whether Defendant  
PROCEDURE who conceives that ex facie he has a good ground of law  
is entitled to raise same*

*CONTRACT OF- Termination of appointment of Respondent by the  
SERVICE University council before recommendation by the visitor-  
whether proper*

*VISITOR TO - Where Visitor to University is also the Head of State-  
UNIVERSITY whether he can, without express provision, exercise the  
powers of the Visitor*

*WORDS AND - "Appropriate authority" - as referred to in s. 4 (2) of  
PHRASES Decree 17 of 1984 what it means*

### **FACTS**

The University of Benin Visitation Panel found the Respondent guilty of a serious breach of his terms of office as a public officer and recommended that he be relieved of his post. But before the Visitor (The President of Nigeria) gave the directive that the Respondent be relieved of his post, the Governing Council of the University of Benin had already independently considered Respondent's case and for the same reasons as those given in the Visitor's recommendation terminated Respondent's appointment giving him three months' salary in lieu of notice. The Visitor endorsed the action.

The Respondent issued a writ of summons claiming from the Appellants inter alia a declaration that the proceedings and decision of the Council of University of Benin was null and void. At the trial the Appellants raised a preliminary objection to the jurisdiction of the Court to hear the action and sued that the case be struck out. The learned trial judge ruled that the Respondent was competent to institute the action. The Appellant's appeal to the Court of Appeal succeeded in part and the appeal on jurisdiction was dismissed.

The Appellant's now further appealed to the Supreme Court challenging the Court of Appeal's Construction of the phrase "*appropriate authority*" in S. 4(2) (ii) of Decree 17 of 1984 and also the holding that the President was acting only as a Visitor and not also as a Head of State when he recommended the termination of the appointment of the Respondent.

### **HELD** (Unanimously dismissing the appeal)

1. It is well settled that the jurisdiction of the Court is determined not only by the nature of the claim before the Court, but also by other considerations in the absence of which there can be no jurisdiction. The determination of the claim as endorsed in the writ of summons is only the first consideration. (p. 133 L39)

2. Where the claim endorsed on the writ of summons and statement of claim disclose a cause of action, and the subject matter of the action is within the jurisdiction of the Court the Plaintiff is competent to bring the action, and the Court is not otherwise disqualified either in its membership or enabling statute to adjudicate, the court has the jurisdiction to hear the action (p.134 L5)

3. A defendant who conceives that ex facie he has a good ground of law

which if raised will determine the action in limine is entitled to raise such ground of law. (p.134 L12)

4. For a valid exercise of powers under the Public Officers (Special Provisions) Decree No. 17 of 1984, it is necessary to ensure that the person whose appointment is affected is a public officer within Section 277 of the 1979 Constitution. Again, the grounds for the exercise of the power must be law within those prescribed in S. 1(i) of the Decree and further, the power must be exercised by the appropriate authority or any person authorised by him. Then and only then can the Jurisdiction of the Court be excluded. (p.138 L5)

5. As at the time the Visitor directed the 4th Appellant (The University of Benin) to terminate the Respondent's appointment and the letter to that effect was received the 4th Appellant had already purported to have terminated the Respondents appointment paying three months' salary in lieu of notice. So although the termination of the Respondent was for the same reason as the recommendation of the Visitor Panel, it was not as a result of the recommendation of the Visitor. (p.138 L32)

6. The Respondent's appointment had earlier been terminated by the Council of University of Benin. The termination was merely endorsed by the Visitor. At the time of the endorsement, there was nothing left for the visitor to terminate. (p.139 L6)

7. On an ordinary construction of Sections 1, 3 and 4 of the Decree No. 17 of 1984, there is no doubt that where a public officer, as defined within Section 277 of the 1979 Constitution, falls within the grounds prescribed in Section 1 of the decree, he can be summarily removed or retired compulsorily from the service, if the appropriate authority considers it necessary in the public interest. The Sections should therefore be given their ordinary meaning. (p. 139 L24)

8. It has always been the law that where statute confers on any person or authority, special or specific powers to do certain acts, it is only that person or authority that is contemplated by the law and no other. In the instant case, it is immaterial that the Visitor is also the Head of State. He cannot without express provision exercise the powers of a Visitor even as Head of State. This is intended to avoid confusion and abuse of powers and also to ensure obedience of the rule of law. (p.140 L38)

9. It is well settled that where a word or phrase has been defined in an enactment, the meaning of that word must be restricted to the words as defined in the statute which the definition governs. Thus, “*appropriate authority*” as referred to in Section 4(2) (ii) of Decree 17 of 1984 is limited to  
 5 the Head of the Federal Military Government, or the Military Governor of a State of any person authorised by them or the Supreme Military Council.  
 (p.142 L10)

10. Unless it can be shown that there has been a delegation to the 3rd  
 10 Appellant, (Council of University of Benin) by the Head of the Federal Military Government, it is not possible to include it in this case (“*appropriate authority*”). The fact that Section 2 of Decree 20 of 1975 vests it with management powers and powers to remove staff of the University of Benin, does not ipso facto bring 3rd appellant within the definition. 3rd Appellant  
 15 is neither any of the persons named, nor is it a person to whom any of the persons named in the definition has delegated the powers. (p.142 L29)

11. The Appellants have not therefore satisfied the preconditions enabling the application of Decree No. 17 of 1984. It is only when this has been  
 20 done that the jurisdiction of the trial judge will be ousted. The facts relied upon do not fall within the purview of Decree No. 17 of 1984, and the Court of Appeal was right in dismissing the appeal of the Appellants.  
 (p. 143 L29)

## 25 **REPRESENTATION**

Dr. Mudiaga Odje, SAN (with him, Carol Ajie (Miss), for the Appellants  
 Femi Falana Esq, for the Respondents

## 30 **CASES REFERRED TO**

1. Wilson v. A. G. Bendel State (1985) 1 NWLR 572
2. Awobutu v. The State (1976) 1 All NLR 242
3. Nwosu v. Imo State F.S.A. (1990) 2 NWLR 668
4. Sken Consult v. Ukey (1981) 1 SC. 6.
- 35 5. Seidu Garba v. Fed. Civil Service Commission (1986) 2 NWLR (pt. 22) 395.
6. Enwezor v. Onyejekwe (1964) 1 All NLR. 14
7. Adejumo v. Military Governor of Lagos State (1972) 1 ANLR 159
8. Ndaeyo v. Ogunnaya (1977) 1 SC. 11

9. Madukoiu v. Nkemdilim (1962) 1 AH NLR 587
10. Martins v. Administrator Gen. of the Federation (1962) 1 AH MLR 120
11. Habib v. Principal in Immigration Officer (1958) in FSC. 75
12. Gold Coast & Ashanti Electric Power Dev. Authority v. ALG (1937) 4 WACA 215
13. Aina v. The Trustees of Railway Pension Fund (1970) 1 All MLR 281 5
14. A.G. Federation v. Sode
15. Mustapha v. Gov. of Lagos State (1987) 5 SCNj 112
16. A-G Lagos State v. Dosumu (1989) 3 NWLR (pt.111) 552
17. Garba v. University of Maiduguri (1986) 1SC. 128
18. Apampa v. State (1982) 6 SC. 47 10
19. Ejoh v. I. G. P (1963) 1 All NLR. 250
20. F.C.A.V. Nbi (1990) 5 SCNj. 186

### **STATUTES REFERRED TO**

1. Public Officers(Special Provisions)Decree No.17of 1984 3.3 (4), 4 (2) (ii) 15
2. University of Benin Edict No,. 3 of 1971 - Section 16 and 13 15
3. University of Benin (Transitional Provisions) Act, No. 3 1975. s.2
4. Constitution of the Federal Republic of Nigeria 1979 - s. 227 (i).
5. Public Officers (Special Provisions) Decree No.10 of 1976 ss. 1, 2 and 7 20
6. University of Benin (Transitional Provisions) Act No. 20 1979. s.2

### **LEAD JUDGMENT BY KARIBI-WHYTE JSC**

This appeal of the appellants has raised again, the now common 25  
issue of the proper application of the provisions of the Public Officers (Spe-  
cial Provisions) Decree No. 17 of 1984, relating to the exclusion of the  
jurisdiction of the courts in respect of acts done pursuant to the Decree.

### **THE FACTS: 30**

The facts of this case material to the action before the court are not  
in dispute. Summarily stated, the 3rd appellant purporting to be acting in  
implementation of the Report of a Visitation Panel into the 4th appellant  
University, and on the directive of 1st and 2nd appellants terminated the  
appointment of the respondent, a member of the academic staff of the 4th 35  
appellant University. When plaintiff brought an action challenging the exer-  
cise by appellants of powers under Section16of the University of Benin  
Edict No.3of1971,the appellants have now invoked the provisions of the  
Public Officers(Special Provisions)Decree No.17of 1984seeking to strike out

the action on the ground that the Court lacked the requisite jurisdiction.

Fully stated the facts are as follows:

By an instrument dated 11th day of July, 1986 under the hand of the President, Commander-in-Chief of the Armed Forces, Federal Republic of Nigeria, and made by virtue of powers conferred by Section 13 of the  
 5 University of Benin Law, 1971 as affected by Section 2 of the University of Benin (Transitional Provisions) Act, 1975, a Visitation Panel was constituted, and the members appointed. The general objective of the Visitation was *"for the purposes of advising on the effective fulfillment of the objects and the due exercise of the functions of the University as prescribed by*  
 10 *law."*

Of the seven terms of reference of the Visitation Panel, it seems to me appears to concern the action instituted by plaintiff. It reads:

*"(c) study the general atmosphere of the University over the period in question and, in particular, comment on the general disciplinary*  
 15 *tone of the University, and the collective conduct and deportment of all the personnel of the University, especially the students, the staff and the Managers, and advise as to whether proper academic traditions and standards obtain and how any necessary or desirable corrections may be made including relationship*  
 20 *between the University, on the one hand, and the host community and the wider society, on the other; over the period the question."*

The Visitation Panel concluded its assignment, and submitted its report of the visitor. The Visitor accepted the Report, expressed his views on the Report and directed the 4th appellant to implement the Report generally in  
 25 the manner directed by him.

The Visitation Panel found the respondent guilty of a serious breach of his terms of office as a public officer and recommended that he be relieved of his post as a public officer. Respondent was at the time, Lecturer Grade 1 in the University of Benin. The Visitor accepted this recommendation,  
 30 and went further to spell out in considerable detail, the breach relied upon.

I think I should add in amplification of the directive of the visitor that the 3rd appellant Governing Council before receiving this directive, and on the 20th May, 1987, had already independently considered respondent's case and on the basis of the facts before them about and for  
 35 the same reasons terminated respondent's appointment forthwith giving him three months' salary in lieu of notice. The visitor endorsed this action.

#### The action in the High Court

On the 21st May, 1987, respondent issued a writ of summons,

claiming from the defendants as follows:

- "(a) A Declaration that the purported termination of the plaintiff's appointment conveyed in the defendant's letter dated 20th May, 1987 is ultra vires the defendants, contrary to the provisions of Section 16 of the University of Benin Edict No.3 of 1975 and the University of Benin (Transitional Provisions) Decree No. 20 of 1975 and contrary to the principles of natural justice, null and void and of no effect whatsoever.* 5
- (b) A Declaration that the proceedings and decision of the Council of the defendants held on the 19th May, 1987 wherein it was decided to terminate the appointment of the plaintiff is null and void and of no effect whatsoever.* 10
- (c) An Injunction restraining the defendants, their servants, agents and/or privies from preventing the plaintiff from performing his functions and duties as Lecturer Grade 1 in the Department of Business Administration, University of Benin or from interfering with the enjoyment of the plaintiff's rights, privileges and benefits attached to his office."* 15

On the 2nd June, 1987, other persons who were also affected by the Report of the Visitation Panel, applied to be joined as co-plaintiffs to the action; and for an order amending the writ of summons to select the joinder. They also sought an interlocutory injunction against the defendants pending the determination of the suit. They are Professor, I. E. Sagay, Dr. B.A. Agbonifoh, Engr. P.A.S. Otaigbe, Prof. J. S. Omene and Prof. L.I. L Ndika. The action was fixed for Monday the 8th June, 1987 for mention. The application to join the others affected by the Report of the Visitation Panel came up for hearing, the same day. The appellants, by their learned counsel, Mr. Mudiaga Odje, S.A.N. raised a preliminary objection to the jurisdiction of the court. He submitted that by virtue of the Public Officers (Special Provisions) Decree No. 17 of 1984, the High Court lacked jurisdiction to hear the action. He asked that the claim be struck out. The joinder of the co-plaintiffs was also objected to. Learned counsel to the respondents opposed the application. 20 25 30

The learned trial Judge overruled the objections. He held that the respondent was competent to institute the action, and that the other co-plaintiffs could be joined in the action. The prayer for interlocutory injunction was refused. 35

In the Court of Appeal

Appellants appeal to the Court of Appeal succeeded in part. On the 13th January, 1988 the Court of Appeal unanimously dismissed the appeal on the issue of jurisdiction. The appeal against joinder of the 2nd-6th plaintiffs was allowed. 2nd-6th plaintiff have not appealed against the decision setting aside their joinder as co-plaintiffs.

The Court of Appeal in considering the question of the jurisdiction of the learned trial Judge to hear the action relied on its construction of the University of Benin (Transitional Provisions) Decree No. 20 of 1975 and the Public Officers (Special Provisions) Decree No. 17 of 1984, to hold as follows:

*"It is my view that while it can be said that sub-section (4) of Section 3 of Decree No. 17 clearly and ambiguously ousted the court's jurisdiction. This is only so in respect of disciplinary decisions taken by the appropriate authority in respect of public officers. It is my view that where such decisions are not taken by some one or body not covered by the definition of 'appropriate' authority in Section 4(2)(ii) of the Decree, such decisions do not come within the ambit of Decree No. 17 so as to render them unchallengeable in court if improperly or invalidly taken."*

In the application of this interpretation to the facts of this case, the court below said:-

*"The 1st respondent's appointment was terminated on 20th May, 1987 by a decision of the 3rd appellant and conveyed to the 1st respondent by a letter of that date. That termination is the subject matter of 1st respondent's claims in these proceedings. The 3rd appellant obviously took the decision to terminate the appointment of the 1st respondent in exercise of the powers vested in it by Section of Law No.3 of 1975, of Mid-Western (now Bendel) State, (hereinafter is referred to as Law No.3) as incorporated into Act No. 20 of 1975 by Section 3(1) thereof. Law No. 3 remains in force subject to repeals in Section 7 and power of amendment in Section 6 of Act No. 20 of 1975. There is nothing to show that in taking that decision the 3rd appellant was acting on the authorisation of the Head of the Federal Military Government as provided for in Section 4(2)(ii) of Decree No. 17."* Quoting paragraph 5 of 2nd appellant's affidavit which deposed in part as follows

*"...The plaintiff was removed from his post by the 3rd defendant on the ground inter alia, of his breach of the code of conduct for Public officers and his said removal from office was subsequently endorsed by the visitor of the 4th defendant, being the Head of State...."*

The Court of Appeal concluded that the above deposition, showed "clearly that the 3rd appellant took the decision to terminate in its best judgment and not as a result of anyone's urging."



The Court of Appeal also agreed with the learned trial Judge in his construction of the provision of Section 4(2)(ii), of Decree No. 17 of 1984, that the visitor is not an "appropriate authority" within the decree. The Court agreed that the President, Commander-in-Chief of the Armed Forces, is also the visitor to the University. It was held that when acting as visitor in accordance with the powers vested in him by the statute creating the University, he cannot exceed those statutory powers. The Court of Appeal then concluded as follows:

*"When acting as a Visitor to a University, the President, Commander-in-Chief of the Armed Forces is not an 'appropriate authority' within the meaning of that expression in Decree No.17 as the Visitor is not covered by the definition of the expression in Section 4(2)(ii) thereof."*

The Court went on to hold relying on paragraph 13 of the 2nd appellant's counter-affidavit, and Exhibits 6, 7 in these proceedings that the President, Commander-in-Chief acted throughout in this matter as visitor to the 4th appellant.

The Court of Appeal having held that the President acted as Visitor and not as Head of State, and that the Visitor is not an "appropriate authority" as defined in Section 4(2)(ii), it came to the conclusion that the provisions of Section 3(3) and (4) of Decree No. 17 of 1984 were not applicable to this case: Wilson v. Attorney General of Bendel State & Ors was relied upon.

In the Supreme Court .

Appellants with leave of the Court below granted on the 26th January, 1988 have appealed against the judgment of the court delivered on the 13th January, 1988. The notice of appeal filed contained four grounds of appeal. Each of the grounds of appeal was directed at the construction of the applicable provisions of the Public Officers (Special Provision) Decree No. 17 of 1984.

These findings have been challenged before us as they were challenged in the Court below. Dr. Odje S.A.N. for the appellants submitted before us that the construction by the Court of Appeal of the provisions of Sections 1, 3 and 4 of the Public Officers (Special Provisions) Decrees No. 17 of 1984, and S. 2 of the University of Benin (Transitional Provisions) Act No. 20 of 1975 in their combined effect to their application to the facts of this case was erroneous. He argued that the claim of the respondent being one based on, or arising from the removal from office, the court lacked jurisdiction to entertain the suit.

Grounds 1 and 3 impugned the holding that neither the Council of the

130 Anyah v. Iyayi (1993) 10 KLR Karibi-Whyte JSC  
University of Benin nor the President, Commander-in-Chief are within the definition of "appropriate authority" in S.4(2)(ii) of the Decree. Ground 2 was a challenge of the view that the President, Commander-in-Chief was acting only as Visitor and not also as Head of State. The fourth ground of appeal is on the weight of evidence. In essence all the grounds of appeal are on the issue of jurisdiction of the learned trial Judge to entertain the action.

5 Learned counsel to the appellants, Dr. Mudiaga Odje, S.A.N. formulated only one issue for determination in this appeal. This is appropriately confined to the lack of jurisdiction in the trial court to entertain the subject matter of the action. The issue as formulated reads:

10 *"Whether the Court of Appeal was right in affirming the decision of the learned trial Judge who held that he had jurisdiction to hear the case."*

On the other hand learned counsel to respondent has formulated three issues out of the composite issue of want of jurisdiction which is the only issue before the Court. I do not consider that the proliferation of the issues in the instant case or of any case, either meets the circumstances of the case or desirable in the determination of the issue. The three issues formulated by learned counsel to the respondent relate to the validity of the exercise of powers either as the Head of State or Visitor to the 4th appellant under the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984. All concern the issue of jurisdiction.

20 The issues as formulated by the respondent are as follows:

*"(a) Can a person who is conferred with different powers of action under two separate and distinct statutes, one of which can lead to the derogation of any of the fundamental rights of an individual, be said to have acted under the two statutory powers when the act complained of was specifically carried out under the statute that is more favourable to the preservation of any of the rights of the individual as enshrined in our Constitution?"*

30 *(b) Can the Head of State, who was said to have acted as visitor to the 4th appellant by virtue of the University of Benin (Transitional Provisions) Decree No. 20 of 1975 in confirming the reports and recommendation of the Justice Onu Visitation Panel be said to have acted as the President, Commander-in-Chief in accordance with the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 so that the respondent can be deprived of his right to successfully challenge the appellant's decision to terminate his employment with the 4th appellant without due process of law?*

*(c) Even if it is held that the statutory powers of the Head of State as Visitor*

*to the 4th appellant under the University of Benin (Transitional Provisions) Decree No. 20 of 1975 are merged with the President's power under the Public Officers (Special Provisions) Decree 17 of 1984 which the respondent vigorously denies-then the question is:*

*CAN the subsequent purported endorsement of the act of the 3rd appellant in dismissing the respondent be said to be within the purport and intentions of Decree 17 of 1984?"*

I prefer the single issue for determination as formulated by learned counsel to the appellants.

The exercise of jurisdiction in this case can only be founded on the applicability vel non of the Public Officers (Special Provisions) Decree No. 17 of 1984. Accordingly, all the issues formulated by learned counsel to the respondent will necessarily be subsidiary to and relevant in the determination of the issue of jurisdiction. If the Decree No. 17 of 1984 is applicable to the facts of the case, then by its express words, the learned trial Judge lacked the requisite jurisdiction. *"Since no civil proceedings shall lie or be instituted in any court for or on account of in respect of any act, matter or thing done or purported to be done by any person under this Decree "* -See *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt. 135) 668.

The construction of this provision is the subject matter of this litigation.

The contention was that both the Head of State and the 3rd appellant fall within the definition of "appropriate authority" in Section 4(2)(ii) of the Public Officers (Special Provisions) Decree No. 17 of 1984. The 3rd appellant it was submitted is included because under Section 2 of the University of Benin (Transitional Provisions) Act No. 20 of 1975, 3rd appellant is empowered to control and manage the affairs of the 4th appellant (University of Benin). This power includes removal of public officers, subject to the general direction of the Head of State.

In the alternative, whilst still maintaining the above position, it was submitted 'that even if 3rd appellant was not an "appropriate authority" for the exercise of powers under Decree No. 17 of 1984, the removal of the respondent from office received the endorsement and adoption of the Head of State and Visitor of the 4th defendant University.

It was finally submitted on this aspect of the contention that in view of Section 2 of Act No. 20 of 1975 no documentary evidence was required to establish the 3rd appellant as "appropriate authority" within the definition of Section 4(2)(ii) of the Public Officers (Special Provisions) Decree No. 17 of 1984.

Learned counsel to the appellants submitted that the provisions of the University of Benin Law, No. 3 of 1975 are inapplicable to this case. It was

argued that Sections 14-16 of the University of Benin Law No.3 of 1975 being inconsistent with Section 2 of the University of Benin (Transitional Provisions) Act No. 20 of 1975 and Sections 1 and 3 of the Public Officers (Special Provisions) Decree, No. 17 of 1984, are void to the extent of such inconsistency.

5 Learned counsel went further to submit that in view of Exhibit 5, namely the statutory instrument No. 19 of 1986, the President and Commander-In-Chief acted both as Head of State and as Visitor in constituting the Justice Onu Visitation Panel. The President, Commander-in-Chief also acted both as Head of State and Visitor in formulating and announcing  
10 the-decisions, views, stand, and directives of the Federal Military Government on the findings and recommendations of the Report of the Visitation Panel, including the removal of the respondent from office.

It was finally submitted that the Public Officers (Special Provision) Decree No. 17 of 1984 applied to the facts of this case, and that the  
15 jurisdiction of the Court was ousted by its provisions.

The respondent has contended before us that the provisions of the Public Officers (Special Provisions) Decree No.17 of 1984 do not apply to the facts of this case. It was submitted that 3rd appellant who purported to have taken the disciplinary action against the respondent did not come  
20 within the definition of "appropriate authority" in Section 4(2)(ii) of Decree No. 17 of 1984, and could not have exercised powers under the Decree.

Learned counsel submitted that Sections 14-16 of the University of Benin Law No.3 of 1975 remain valid, having been saved by the University of Benin (Transitional Provisions) Decree No. 20 of 1975 contrary to  
25 the submission of the appellants that they are void.

Learned counsel to the respondents argued that even if the Decree No. 17 of 1984 were held to be applicable, without conceding that it applied, Exhibit 6 does not disclose the nexus between the writer and the Head of the Federal Military Government. In the absence of such a link, the  
30 writer of Exhibit 6, that is Alhaji Abdulkadir cannot be deemed to be a person authorised by the "*appropriate authority*". Learned counsel replying to the alternative submission that the act even if not done by the "*appropriate authority*" was endorsed by the "*appropriate authority*" submitted that where a statute provides that a particular act shall be done by a particular  
35 person, no other person except a person who has the express authority of the person permitted by law is competent to act.

It was submitted that action authorised by "appropriate authority" cannot be construed to include actions "endorsed by the appropriate authority." It was submitted that the exercise of the power to remove a public

officer from the public service is limited to the President, and the Military Governors Awobutu v. State (1976) 1 All NLR, 242, Wilson v. A-G. Bendel State & Ors. (1985) 1 NWLR (Pt. 4) 572.

Learned counsel made a general attack on the legality of the Visitation Panel and the validity of the proceedings and recommendations. It was submitted that since the University of Benin Law 1971 had been repealed by the University of Benin Law, 1975, and Section 2 of the University of Benin (Transitional Provisions) Act, 1975 did not empower, the Head of State to set up a visitation panel, the appointment of the Justice Onu Visitation Panel was illegal. It was accordingly submitted that the recommendations and decisions based on it are illegal ab initio - Sken Consult Nig. Ltd & Anor v. S. Ukey (1981) 1 S.C. 6 at p. 9 was relied upon.

Learned counsel to the respondent submitted that the decision to terminate respondent's appointment was taken by the 3rd appellant. The Visitor it was contended as admitted by the appellants merely endorsed the termination of the appointment. Appellants were carrying out the directives of the Visitor without due regard to the University of Benin Law 1975.

It was pointed out that whilst in Exhibit 6, the 2nd appellant was directed to fully implement the directives of the Visitor as between 3rd appellant, and the 4th appellant. In Exhibit 8, the 1st appellant directed the Registrar of the 4th appellant to implement the directives without reference to the 3rd appellant.

Learned counsel submitted that Seidu Garba v. Fed Civil Service Commission & Anor (1986) 2 NWLR (Pt. 22) 395, is only authority for the view that the jurisdiction of the Court is only ousted where "the appropriate authority" or any person or body expressly authorised by the "appropriate authority" has removed a public officer, from office, that Decree No. 17 of 1984 can be invoked.

It was therefore submitted that appellant in this case having failed to show that 3rd appellant is an "appropriate authority" under the law, this court should reject appellant's submission. It was submitted that the Visitor is not an appropriate authority under the law. Accordingly, even if President Babangida was a visitor to the 4th defendant, he is still not an "appropriate authority". It was therefore submitted that the contention that the Head of State as visitor is an "appropriate authority" under Decree No. 17 of 1984, clearly misleading.

I have stated the arguments of counsel in this appeal in extenso. It is common ground that the only issue before us is whether the learned trial Judge had the jurisdiction to entertain the claim before him.

It is well settled that the jurisdiction of the court is determined not only by the nature of the claim before the court, but also by other consid-

134 Anyah v. Iyayi (1993) 10 KLR Karibi-Whyte JSC  
erations in the absence of which there can be no jurisdiction. Hence the  
first consideration in its determination is the claim as endorsed on the writ  
of summons, and the statement of claim - See *Enwezor v. Onyejekwe*  
(1964) 1 All NLR 14; see also *Adejumo v. Military Governor, Lagos State*  
(1972) 1 All NLR 159; *Ndaeyo v. Ogunnaya* (1977) 1 S.C.11.

5 Thus where the claim endorsed on the writ of summons and state-  
ment of claim disclose a cause of action, and the subject matter of the  
action is within the jurisdiction of the court, and the plaintiff is competent  
to bring the action, and the court is not otherwise disqualified either in its  
10 membership or enabling statute to adjudicate, the court has the jurisdiction  
to hear the action. See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341;  
(1962) 1 All NLR 587.

However, a defendant who conceives that ex-facie he has a good  
ground of law which if raised will determine, the action in limine, is entitled  
to raise such ground of law - See *Martins v. Administrator-General of the*  
15 *Federation & Anor* (1962) 1 SCNLR 209; (1962) 1 All NLR. 120. In the  
determination of the action before the court, the defendant may, without  
filing a defence, apply to strike out the action as disclosing no cause of  
action on the writ of summons and statement of claim. In this case he  
relies on the writ of summons and statement of claim for his contention.  
20 See *Habib v. Principal Immigration Officer* (1958) SCNLR 219; (1958) 3  
FSC 75. He may also in his statement of defence rely on the ground of law  
he considers a complete answer to the claim of the plaintiff. See *Gold*  
*Coast & Ashanti Electrical Power Dev. Authority v. A-G*, (1937) 4 WACA  
215. This ground of law will then be argued as a preliminary point. If  
25 successful, then the action of the plaintiff ends - See *Aina v. The Trustees*  
*of Nigerian Railway Pensions Fund* (1970) 1 All NLR 281.

In this case only the writ of summons has been filed. Plaintiffs have not  
filed a statement of claim. The objection as to the jurisdiction of the High  
30 Court was raised in an ex parte application for interim injunction restraining  
the defendant from preventing performing his functions and duties as  
Lecturer Grade 1 in the Dept. of Business Administration of the 4th defend-  
ant and a Motion on Notice for the joinder of other plaintiffs to the action.

It is important and pertinent in the interest of clarity even if in  
35 repetition to reproduce the claims as endorsed on the writ of summons  
which are as follows:

*"(a) A declaration that the purported termination of the plaintiff's  
appointment conveyed in the defendant's letter dated 20th May, 1987,  
is ultra vires the defendants, contrary to the provisions of Section 16 of  
the University of Benin Edict No.3 of 1975 and the University of Benin*

*(Transitional Provisions) Decree No. 20 of 1975 and contrary to the principles of natural justice, null and void and of no effect whatsoever.*

*(b) A Declaration that the proceedings and decision of the council of the defendants held on the 19th May 1987, wherein it was decided to terminate the appointment of the plaintiff is null and void and of no effect whatsoever.* 5

*(c) An injunction restraining the defendants, their servants, agents and/or privies from preventing the plaintiff from performing his functions and duties as Lecturer Grade I in the Department of Business Administration, University of Benin or from interfering with the enjoyment of the plaintiff's rights, privileges and benefits attached to his office."* 10

It seems to me clear and the contrary was not argued before us that the claim of the plaintiff was founded on the non-compliance with Section 16 of the University of Benin Law No.3 of 1975, and the University of Benin (Transitional Provisions) Decree No. 20 of 1975. It was not contended before us that these laws do not exist, or do not apply to the plaintiff. The contention of the appellant is that respondent's appointment was terminated under a law which has excluded the jurisdiction of the court in civil proceedings relating thereto. But the contention of the respondent is that his appointment was not terminated by virtue of the exercise of powers under Section 16 of the University of Benin Law No.3 of 1975 and the University of Benin (Transitional Provisions) Decree No. 20 of 1975 which governs his tenure. On the other hand, appellants are relying on Section 4(2)(ii) of the Public Officers (Special Provisions) Decree No. 17 of 1975 for the termination of respondent's appointment. The termination, it is claimed, is therefore not justiciable. 15 20 25

If therefore the claim is properly founded on the University of Benin Law No.3 of 1975 as amended by the University of Benin (Transitional Provisions) Decree No. 20 of 1975, the learned trial Judge would appear to have jurisdiction to determine the claim since by Section 16 of Law No.3 of 1975 the determination of plaintiff's rights and defendant's obligation are involved. See Sections 6(6)(b) 236 Constitution of the Federation 1979. The appellants on their part would if Decree No. 17 of 1984 applied have a complete defence including the exclusion of the jurisdiction of the Court - See *Ainav. Trustees of the Nigerian Railway Pensions Fund* (1970) 1 All NLR 281. 35

The Public Officers (Special Provisions) Decree No. 17 of 1984 relied upon by the appellants provides as follows:

"1(1) Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that'

(a) it is necessary to do so in order to facilitate improvements in the organisation of the department or service to which a public officer belongs; or

5 (b) by reason of age or ill health or due to any other cause a public officer has been inefficient in the performance of his duties; or

(c) the public officer has been engaged in corrupt practices or has in any way corruptly enriched himself or any other person; or

10 (d) the general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest. The appropriate authority may at any time after 31st December, 1983:

(i) dismiss or remove the public officer summarily from his office; or

15 (ii) retire or require the public officer to compulsory retire from the relevant public service.

2. For the avoidance of doubt, it is hereby declared that any act or thing done at any time between 31st December, 1983 and the making of this decree by the appropriate authority in respect of:

20 (a) the dismissal, removal from office or compulsory retirement of any public officer; or

(b) the conduct of any inquiry into any aspect of the exercise by a public officer of his duties;

25 Shall be deemed to have been done pursuant to this Decree.

3 (3) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before, on or after the making of this Decree, the proceedings shall abate, be discharged and made void.

4 (1) In this Decree, 'public officer' means any person who holds or has held any office on or after 31st December, 1983 in-

35 (a) the public service of the Federation or of a State within the meaning assigned thereto by Section 277(1) of the Constitution of the Federal Republic of Nigeria, 1979;

(b) the service of a body whether corporate or unincorporated established under a Federal or State law;

(c) a company in which any of the Governments in the Federation has a



controlling interest

- (2) In the operation of this Decree, the appropriate authority -
  - (i) in respect of any office which was held for the purposes of any State, shall be the Military Governor of that State or any person authorised by him or the Supreme Military Council.
  - (ii) in any other case, shall be the Head of the Federal Military Government or any person authorised by him; and

5

- (3) In this Decree, any reference to the Constitution of the Federal Republic of Nigeria is a reference to that Constitution as affected by the Constitution (Suspension and Modification) Decree 1984." 10

These Sections are in pari materia with Sections 1, 2, 7 of the Public Officers (Special Provisions) Decree No. 10 of 1976. See *A-G Federation v. Sode* (supra) *Mustapha v. Gov. of Lagos State & Ors.* (1987)5 SCNJ 122.

It seems to me that since this decree applies "notwithstanding anything to the contrary in any law," where the "appropriate authority" is satisfied that the conditions prescribed in S. 1(i)(a) - (d) exist it overrides any other law. In such situations the "appropriate authority" may at any time after 31/12/83, summarily or dismiss any public officer from his office in the public interest, retire or require the public officer to compulsorily retire from the relevant public service. - Section 1(d)(i)(ii). Where the appropriate authority exercises the power to dismiss summarily, or re-move from office, or retire any public officer compulsory or where an inquiry into any aspect of the duties of a public officer is conducted it shall be deemed to have been done pursuant to this Decree - See S.1(2). Now, it is well settled that any statute ousting the jurisdiction of the Courts is to be construed very strictly to ensure that the jurisdiction existing is not withdrawn without very clear words to that effect- *A.-G. of Lagos State v. Dosunmu & Ors.* (1989) 3 NWLR (Pt. 111) 552. It is important to observe that the two phrases "public officer" and "appropriate authority" are defined in Section 4(1) and (2) of the Decree. 25 30

A public officer is a person who holds or has held any office on or after 31/12/83 within the definition of that phrase in Section 277(1) of the Constitution 1979. Public service of the Federation means the service of the Federation in any capacity in respect of the Government of the Federation. Under 1(e) "*staff of any educational institution established or financed principally by the Government of the Federation*"; without doubt includes members of staff of Federal Universities. This includes the respondent. "*Appropriate Authority*" in respect of the operation of this Decree is limited to Head of the Federal Military Government or any person authorised by him, or the 35

Supreme Military Council. It does not appear to me to admit of any enlargement by construction. There is a clear intention to restrict the exercise of such wide-ranging powers which interfere with vested rights of the subject. It is the more restrictive when the exercise of these powers cannot be questioned in the Courts.

5        It is necessary therefore for a valid exercise of the powers under the Public Officers (Special Provisions) Decree No. 17 of 1984, to ensure that the person whose appointment is affected is a public officer within section 277 of the Constitution 1979. The grounds for the exercise of the power must be laid within those prescribed in Section 1(i) of the Decree, and the  
10 power must be exercised by the Appropriate Authority or any person authorised by him, - S.4(2). It is only then that the jurisdiction of the court can be said to be excluded. However, it is also pertinent to observe that the Decree excludes the application Chapter IV of the Constitution 1979 which guarantees access to the courts. We can therefore only rely on the Decree  
15 itself for the rights of those affected.

How let us examine the termination of the appointment of the respondent, and consider whether the exercise of the power falls within the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984.

It is common ground that respondent is a public officer. He was  
20 among the many members of staff of the 4th appellant the termination of whose appointment the Visitation Panel recommended. However, the 3rd appellant in the exercise of its disciplinary powers over members of its staff, and independent of the recommendation of the Visitation Panel, decided on the basis of other facts before them over another allegation of misconduct, namely, a contractual transaction as proprietors of the company known  
25 as Management Aids, whilst still in full employment with the 4th appellant, to terminate his appointment with the 4th appellant with three months' salary in lieu of notice on the 20th May, 1987. The Visitor endorsed the action of the 4th appellant. It is quite clear that the Visitor merely approved  
30 the recommendation of the Visitation Panel to terminate the appointment of the respondent. It also endorsed the termination of his appointment by the 4th appellant and directed that his appointment be terminated. It could be seen therefore that when on the 26/5/86 the Visitor directed the 4th appellant to terminate respondent's appointment in the letter NUC/ES/9/  
35 Vol.V/32 dated May 25, 1987 and signed by the Executive Secretary of the National Universities Commission, Idris A. Abdulkadir, was received, the 4th appellant has already on the 20th May 1987 purported to have terminated respondent's appointment paying three months' salary in lieu of notice. Thus the action by 3rd appellant terminating respondent's appoint-

ment had been concluded even before the directive of the Visitor to do so was received. Again, although the termination of the respondent was for the same reasons as the recommendation of the Visitation Panel, it was not as a result of the recommendation of the Visitor. The action against the appellants was founded on the letter of termination dated 20th May, 1987 and not on any directive from the Visitor.

The respondent's appointment having been earlier terminated by the 3rd appellant Council of the 4th appellant on the 20th May, 1987 was merely endorsed by the Visitor. There was nothing left for the Visitor to terminate. The action challenging the termination of 20th May, 1987 was filed on 22nd May, 1987. Hence the letters of termination dated the 29th May, 1987 to Professors Sagay, Omene, Ndika, Dr. Iyayi, Dr. Agbonifo, Dr. Odita, Engr. Otaigbe, Engr. Nwokike and Mr. Emuze, on the directive of the 1st appellant dated 28/5/87 including the respondent is not concerned with the determination of the subject matter of the action before us.

I have already pointed out in this judgment that the issue of jurisdiction lies between the claim of the plaintiff that the action was brought to enforce the contravention of the 3rd and 4th appellants of Section 16 of the University of Benin Law, No 3 of 1975, and of the appellants that since the appointment was terminated under the provisions of the Public Officers (Special Provisions) Decree No 17 of 1984, the Court lacks jurisdiction to adjudicate.

Dr. Odje's submission, relying on the Public Officers (Special Provisions) Decree No. 17 of 1984 seems to me on the facts of this case and analysis of the provisions of Sections 1, 3 and 4 of that Decree difficult to accept.

The words of the applicable sections are clear and unambiguous. They should therefore be given their ordinary meaning. On an ordinary construction of sections 1, 3 and 4 together, and they must be so construed, there is no doubt that where a Public Officer, as defined within Section 277 of the Constitution, 1979, falls within the grounds prescribed in Section 1, he can be summarily removed or retired compulsory from the service, if the appropriate authority considers it necessary in the public interest.

It has not been contended that respondent is not a public officer. As a Lecturer in the 4th appellant University, he is without doubt a public officer within section 277 of the Constitution 1979. The validity of the exercise of the power will depend on its exercise by the "appropriate authority" as provided by Section 1. What is extant to be satisfied is whether respondent was removed by an "appropriate authority" or a person directed by an "appropriate authority."

Dr. Mudiaga Odje has submitted that both the Head of State and

3rd appellant fall within the definition of "appropriate authority" as defined in Section 4(2)(ii). He submitted that the Head of State acted in both capacities. To use his expressions he acted as "two-in-one". Alternatively the 3rd appellant alone who by S. 2 of the University of Benin (Transitional Provisions) Act No. 20 of 1979 is empowered to control and manage the  
5 affairs of the 4th appellant, is therefore an appropriate authority. Learned counsel contended that the Visitor is the Head of State of Nigeria. The Head of State is an appropriate authority as defined. In the exercise of his powers under the Decree No. 17 of 1984, he was acting both as Head of State and Visitor, accordingly, the directive he gave as Visitor was a direc-  
10 tive as "*appropriate authority*."

I do not find the rather imponderable submission of Dr. Odje that the Head of State acting as Visitor was acting in a dual capacity both as Head of State, was an appropriate authority in the exercise of powers under the University of Benin (Transitional Provisions) Act No.3 sufficiently  
15 persuasive. It is clear from S.1 No. 19 of 1986, and the recital therein, the Instrument Constituting the Visitation Panel to the University of Benin 1975-85 that the Panel was constituted by the Head of State as Visitor in exercise of powers conferred upon him by S. 13 of the University of Benin (Transitional Provisions) Act No. 20 of 1975. It can hardly be disputed that the  
20 powers of the Visitor can only be exercised by virtue of and under that law. The enabling section 14(2) of the University of Benin Law provides that,

*"The Visitor shall as often as he may consider necessary, conduct a visitation which shall be conducted by such persons and in respect of any such affairs of the University as the Visitor may specify in the direction."*

25 I agree with Mr. Femi Falana learned counsel to the respondent that even if the Head of State acting also as the Visitor of the 4th appellant, was acting under and by virtue of the University of Benin law he can only exercise powers under Section 14 of that law. He cannot also, as submitted by Dr. Odje, S.A.N. be acting as Head of State. The two powers  
30 and circumstances which are mutually exclusive are not interchangeable. There is no doubt that the powers of Head of State are distinct and separate from those of a Visitor. The powers were intended to be separate from those of a Visitor. The powers were intended to be separate and separable and to be exercised under separate circumstances and conditions. The powers  
35 of the Visitor are expressly conferred by law.

It has always been the law and consistent with common-sense and the intention of the legislation that where statute confers specific or special powers on any person or authority for the performance of certain

acts, it is only that person or authority and no other that is contemplated in the performance of the duties under the law. Accordingly, since the appointment of the Visitation Panel was a creation of the University of Benin Law, and the powers to make the appointment and give directives implementing the Report is vested in the Visitor, it is only the Visitor that was intended. It is immaterial that the Visitor, is also the Head of State. He cannot exercise the powers of a Visitor to the University when acting in that capacity even as Head of State. This clearly is the law. It is intended to avoid confusion, obey the rule of law and abuse of powers.

It would seem to me that Dr. Odje was misled by the fact that the S.1 No. 19 of 1986, the instrument selling up the Visitation Panel was signed by the Head of State, who is also the Visitor to the University. The explanation is that the Head of State signed the instrument in his legislative capacity, which is quite different from the capacity of Visitor vested in him by the University of Benin Law. He was therefore not acting as Head of State when he was acting as Visitor. As I have already stated above, I agree with the Court of Appeal that.

*"Although the President, Commander-in-Chief of the Armed Forces is by law, the Visitor to all Federal Universities in Nigeria, but when he acts as Visitor to a University, he acts in accordance with powers vested in him by the statute creating the University and he cannot exceed those powers - See Garba & Ors v. University of Maiduguri & Ors (1986) 2 S.C. 128. (1986) 1 NWLR (Pt.18) 550."*

I now turn to the submission that the 3rd appellant falls within the definition of the phrase "appropriate authority" in Section 4(2)(ii) of Decree No. 17 of 1984. I have rejected the contention that the Head of State acting as Head of State was also acting as Visitor because he is the Visitor. It is therefore only necessary to consider the contention whether the 3rd appellant, namely, the Provisional Council of the 4th appellant is an "appropriate authority" as defined.

Dr. Odje relied on Section 2 of the University of Benin (Transitional Provisions) Act No. 20 of 1975, which vests in the 3rd appellant the powers to control and manage the affairs of the 4th appellant including the removal of public officers subject to the general direction of the Head of State. Mr. Femi Falana, learned counsel to the respondent submitted that 3rd appellant cannot by any stretch of the construction of the phrase "appropriate authority" as defined under Section 4(2)(ii) of Decree No. 17 of 1984, include the 3rd appellant. He pointed out relying on Exh. 6, that appellant has not shown the nexus between the writer of the letter Alhaji A. Abdulkadir, and the Head of the Federal Military Government. In the ab-

142 Anyah v. Iyayi (1993) 10 KLR Karibi-Whyte JSC  
sence of the link, with the said Alhaji Abdulkadir, 3rd appellant cannot be  
deemed to be an "appropriate authority"-He relied on Wilson v. Attorney-  
General Bendel State & Ors(1985)1 NWLR (Pt. 4) 572 for this submission.

Mr. Falana seems to me to have lost the kernel of the contention.  
Learned counsel to the appellant was not relying on Alhaji A. Abdukadri,  
although Exh. 6 seems to have been relied upon as endorsement of the  
5 action already taken on the 20th May, 1987 independent of the visitor to  
terminate the respondent, 3rd appellant is relying on the provisions of Sec-  
tion 2 of the Decree 20 of 1975 already stated above.

10 It is well settled that where a word or phrase has been defined in an  
enactment that meaning must be restricted to the words so defined in the  
statute, the definition governs, - See Apampa v. State (1982) 6 S.C. 47.  
The phrase "appropriate authority" as defined is limited to (i) the Military  
15 Governor of the relevant State or any person authorised by him, in respect  
of offices held for the purposes of the state; and (ii) in any other case, the  
Head of the Federal Military Government, or any person authorised by him  
or the Supreme Military Council. Thus the "appropriate authority" is limited  
to the Head of the Federal Military Government, or the Military Governor  
20 of a State or any person authorised by them or the Supreme Military Coun-  
cil- See Apampa v. State (1982) 6 S.C. 47. It is conceded that the defini-  
tion provides for delegation of the power, since the "appropriate authority"  
shall be the Head of the Federal Military Government, Supreme Military  
Council, or any other person authorised by them. Since the powers may be  
25 exercised personally or through officials, the method of delegation of the  
exercise of the power is not exhaustive - See Are v. Adisa (1967) 1 All NLR  
148. It may be exercised by a mere directive to the official to exercise the  
power as was in Nwosu v. Imo State Environmental Authority & Ors (1990)  
2 NWLR (Pt. 135) 668. But delegation, there must be.

30 It is therefore not possible to include the 3rd appellant in this case  
unless it can be shown that there has been a delegation to the 3rd appellant  
by the Head of the Federal Military Government. The fact that Section 2 of  
the Decree No. 20 of 1975 vests 3rd appellant with management powers  
and powers to remove staff of the 4th appellant does not ipso facto bring  
35 3rd appellant within the definition. 3rd appellant is neither any of the per-  
sons named, nor is he a person to whom any of the persons named in the  
definition has delegated the powers. - Expressio unius est exclusio alterius.

I do not find the meaning now assigned to the definition excluding  
3rd appellant repugnant to the context in which the definition is used. - See  
Ejoh v. Inspector-General of Police (1963) 2 SCNLR 102; (1963) 1 All NLR

250. It is consistent with the high policy objectives of the legislation which aims at deprivation of the rights of the citizen without a hearing and at the same time ousting the jurisdiction of the courts. Such a decision should be restricted to very superior authority with a presumption of fairness and consideration of public interest involved. I am bound to give the expression its meaning. So construed as I have done, the 3rd appellant is not an "appropriate authority" within the definition of Section 4(2)(ii). The termination of respondent can therefore not be brought within the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984. On a careful examination of the totality of the facts of this case, the following significant facts are distilled. These facts determine whether the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 are applicable.

Firstly, respondent's termination had been concluded on the 20th May, 1987 by the action of the 3rd appellant. Secondly, Exhibit 6 was written thereafter on 25th May, 1987 by Alhaji A. Abdulkadir to the 22nd appellant and merely expressed the Visitor's views on the Report of the Visitation Panel. It was asking for implementation of the Visitor's directive. It was not a directive from the Head of State to 2nd or 3rd appellant. Thirdly, Exhibit 8, a letter dated 28th May, 1987 was a directive from the 1st appellant to the Registrar of the 4th appellant to carry out the decisions of the visitor without reference to the 3rd appellant.

Fourthly; the actions about the Visitation were taken under the University of Benin Law No.3 of 1971 as affected by Decree No. 20 of 1975. It does not appear that any of the actions contemplated reliance on Decree No. 17 of 1984. It is clear from Exhibit 6, that the Head of the Federal Military Government had no intention of exercising powers under Decree No. 17 of 1984. If there was any such intention to rely on the Decree, the Head of the Federal Military Government-would have written the letter of termination, or authorised 3rd appellant to do so.

The conclusion therefore is that appellants have not satisfied the preconditions enabling the application of the Decree No. 17 of 1984. It is only when this has been done will the jurisdiction of the learned trial Judge be ousted. By this I mean that the facts relied upon do not seem to me to fall within the purview of the Decree No. 17 of 1984.

Hence, since 3rd appellant does not fall within the definition of "appropriate authority" in Section 4(2)(ii) of the Decree, appellants are not entitled to the protection of the Decree, even if they had acted in reliance thereof. - See *Garba v. Federal Civil Service Commission & Anors* (1988) 1 NWLR (Pt. 71) 449 - See also *A-G of the Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500; *Federal Capital Development Authority v. Alhaji Musa Noibi* (1990) 3 NWLR (Pt. (38) 270; (1990) 5 SCNJ 186.

For the reasons I have given above, I have no doubt in my mind that the Court of Appeal was right to have dismissed the appeal of the appellants. The learned trial Judge has jurisdiction to hear the case. The appeal of the appellant is accordingly dismissed.

I should observe that all the parties in this case and both courts below appeared to have been oblivious of the fact that they were concerned with the determination of the preliminary objection whether the learned trial Judge had the jurisdiction to hear the case. The issues relating to the merit of the case is still to be heard if and when the objection to the jurisdiction fails, as if has in this case. I think in this case considering the arguments before the learned trial Judge it is only fair that the case be heard before another Judge of the High Court of Edo State.

The respondent shall have N1,000 as costs in this Appeal.

---

15

### ***BELGORE JSC***

I agree entirely with the judgment of my learned brother, Karibi-Whyte, J.S.C. that this appeal must fail. The question of termination of appointment of the respondent is yet to be decided, what is in issue before this Court and in the Courts below is matter of jurisdiction to hear the suit. As at the time the letter was written Decree 17 of 1984 did not apply and the High Court has jurisdiction to hear the suit. I therefore adopt the fuller reasons advanced in my learned brother's judgment aforementioned in dismissing this appeal. I award N1,000 as costs in this appeal against the appellants.

---

30

### ***OLATAWURA JSC***

I had a preview of the judgment of my learned brother Karibi-Whyte, J.S.C. just delivered. I agree with him in toto. I abide by the order for costs.

---

35

### ***KUTIGI JSC***

I read before now the judgment just delivered by my learned brother Karibi-Whyte, J.S.C. I agree with his conclusion that both the trial High



Court and the Court of Appeal were right to have held that the plaintiff/respondent's action is competent and that the trial court has jurisdiction to entertain it because the facts of the case do not appear to fall within the purview of Decree No. 17 of 1984. The appeal is accordingly dismissed with costs of N1,000.00 to the respondent. The case is to be heard by another Judge of the High Court.

5

### MOHAMMED JSC

I entirely agree with the opinion of my Lord, Karibi-Whyte, J.S.C., in the lead judgment, which he permitted me to read in advance before now. The only issue canvassed by the learned counsel for the appellants questioned whether the Court of Appeal was right in affirming the decision of the learned trial Judge in which he held that he had jurisdiction to hear the action filed by the respondent before a Benin High Court.

15

The action filed by the respondent was against the decision of the Governing Council of the University of Benin terminating the respondent's appointment as Lecturer Grade 1, on the 20th May, 1987. The dismissal was sequel to a meeting held by the 3rd appellant on the 19th May, 1987, over the case of the respondent and his breach of the code of conduct for public officers. Thus by the time the letter dated 25/5/87, written by Idris A. Abdulkadir, the Executive Secretary of the National University Commission, reached the 2nd appellant in Benin-City, the termination of the respondent's appointment had been concluded and communicated to him.

In the letter dated 25th May, 1987, the Visitor of the University of Benin endorsed the decision of the 3rd appellant to terminate the appointment of the respondent in the following words:

*"... the Visitor accepts the recommendation and directs that Dr. Festus Iyayi is relieved of his post as Lecturer 1 in the University of Benin with immediate effect. The Visitor understands that the Governing Council of the University of Benin in the exercise of clearing some outstanding disciplinary cases, independently considered the case of Doctors Iyayi and B. A. Agbonifo on the 20th of May, 1987 and decided that, on the basis of the facts before Council over the Management Aids affair, the two lecturers' appointments be terminated forthwith and three months' salary was paid to each of them in lieu of notice. The Visitor endorses the action of Council and thus directs that both Doctors Iyayi and Agbonifo have had their appointments terminated with the University of Benin with immediate effect."*

35

It is crystal clear therefore, that the 3rd appellant acted independently in terminating the appointment of the respondent when it met and cleared some outstanding disciplinary cases. It is that action which the respondent challenged in the Benin High Court and I agree that the action is not caught up by the provisions of Public Officers (Special Provision)  
 5 Decree No. 17 of 1984. The 3rd appellant's action could be questioned in any court of law because the Council did not fall within the definition of "appropriate authority" under the Decree which reads thus:

- "(i) in respect of any office which was held for the purposes of any State,  
 10     shall be the Military Governor of that State or any person authorised by him; and  
 (ii) in any other case, shall be the Head of the Federal Military Government or any person authorised by him or the Supreme Military Council."

15     The letter of the Executive Secretary of the National Universities Commission clearly shows that when the 3rd appellant terminated the appointment of the respondent the Head of the Military Government, who was the Visitor of the University, did not authorise the disciplinary action to be taken against the lecturer. The Council acted independently, under its  
 20 own powers. Although the Visitor later endorsed the action, it still does not bar the respondent from challenging the 3rd appellant in a court of law over the disciplinary action taken against him. The Council's action, being independent of the orders of the Head of the Military Government, did not qualify to exclude the court from exercising jurisdiction over such decision.  
 25 See *Wilson v. Attorney-General Bendel State & Ors* (1985) 1 NWLR (Pt. 4) 572. The Court of Appeal is therefore right to dismiss the appeal of the appellants.

For the above reason and fuller reasons given in the lead judgment this appeal is dismissed. I abide by all the orders made in the lead  
 30 judgment, including the award of costs. Appeal dismissed.