

SUPREME COURT OF NIGERIA
23RD JULY, 1993. SC.289/1990
CORAM:- A. G. KARIBI-WHYTE, S. KAWU, A. B. WALI,
O. OLATAWURA, M. E. OGUNDARE, JJSC

F. C. UDOH & 2 ORS

For themselves and on behalf of the]	
Non-Academic Staff Union]	
of Educational &]	PLAINTIFFS/RESPONDENTS
Associated Institutions)]	/APPLICANTS

AND

1. ORTHOPAEDIC HOSPITALS]	DEFENDANT/
MANAGEMENT BOARD]	APPELLANT/RESPONDENT
2. MEDICAL & HEALTH WORKERS]	
UNION OF NIGERIA]	CO-DEFENDANTS/
]	APPELLANT/RESPONDENT

INTERLOCUTORY - Reliance on the provisions of a Decree in urging that APPLICATIONS a pending appeal be struck out - deprivation of accrued rights threatened thereby - what the court will do

INTERPRETATION - Where words in a statute are clear and unambiguous OF STATUTES -attempt by a party to import retrospectivity - how properly resolved

JURISDICTION - Provisions in a statute suggesting deprivation of court's jurisdiction - how construed

MAXIMS - Expressio Unius est exclusius alterius - its application in the interpretation of statutes

FACTS

The Applicants as Plaintiffs sued the Defendants at the High Court of Enugu seeking various declarations and injunction restraining the Defendants, its agents, privies etc from interfering with certain rights and privileges and powers subsisting between the Non academic Staff Union of Educational and Associated Institutions on the one hand and members of

the union under the employ of the defendant. The Co-Defendant counter claimed for certain other declarations and injunction. Judgment was given in favour of the co-defendant. Being dissatisfied with the judgment of the trial court the Plaintiff appealed unsuccessfully to the Court of Appeal. The two Defendants not being satisfied with part of the Court of Appeal's judgment appealed to the Supreme Court.

The appeal was fixed for hearing when Respondents filed a motion on notice to the Appellant praying the Supreme Court to strike out the appeal on the ground that the judgment of the High Court of Enugu has abated and has ceased to have effect as a result of the promulgation of Decree No. 47 of 1992. The kernel of the motion was on the construction and interpretation of section 2 of the Trade Disputes (Amendment) Decree 1992. It was argued that Section 15 1 (2) of Section 1 A of the Trade Disputes Act as amended did not apply to final judgments and did not cover appeals pending before the courts.

HELD (unanimously dismissing the motion)

1. It is both elementary and also a fundamental principle for the interpretation of statutes that where the words of a statute are clear and not ambiguous, effect should be given to them. (p.72 L31)
2. Although not part of the section, the marginal notes and any explanatory notes give a guide as to the interpretation of the section. But this is not at the expense of the words used in the section which best declare the intention of the law itself. (p.73 L13)
3. Section 1A spelt out the categories of actions in respect of which the court's jurisdiction is ousted or will abate and be null and void on the 1st January, 1992. These are actions commenced and those pending as at that date. No other actions will seem to have been in the contemplation of the Section. (p.74 L12)
4. It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included. (p.74 L17)
5. Reference to orders, judgments or decisions made in the Decree can only be in respect of a pending matter. (p.74 L34)

6. The provision of a statute should not be construed as to result in absurdity. Thus, contrary to Counsel's submission, there is no expression in the Decree suggesting that the section under consideration was intended to be retrospective. And even if there is such an ambiguous expression, a presumption would be invoked to avoid retrospective effect. (p.75 L16)
7. A statute is not to be so construed as to impair an existing right or obligation unless such construction is clear from the words of the section and such effect cannot be avoided without doing violence to the language of the enactment. Hence a statute, should be construed so as not to have a greater retrospective operation than its language renders necessary. (p.75 L24)
8. A final judgment confers rights on the person in whose favour the judgment has been awarded. It will no doubt be an unjustified interference with such vested rights to annul them retrospectively and render them void as such result is without doubt absurd. (p.75 L31)
9. Any provision which suggests a deprivation of the jurisdiction of the courts must be strictly construed. (p.75 L35)
10. The courts lean against the deprivation of accrued or vested rights. (p.75 L37)
11. The Decree does not concern and was not intended to affect final judgments in existence on the 1st day of January, 1992, and appeal against such judgments. (p.76L3)

REPRESENTATION

A. Adeniran, for the Appellants

G. Adetola-Kazeem, for the Respondents

CASES REFERRED TO

1. Ojokolobo v. Alamu (1987) SCNJ 98
2. Salami v. Chairman L.E.D.B. (1989) 12 SCNJ 113
3. Savannah Bank v. Ajilo (1989) 1 SCNJ 169

70 Udoh v. Orthopaedic Mgt. Board (1993) 10 KLR Karibi-Whyte JSC

4. African Newspapers v. Nigeria (1985) 2 NWLR 127
5. Uwaifor v. A.G (1982) 7 SC 124
6. Schroeder & Co. v. Major & Co. (Nig) Ltd (1989) 2 NWLR 1
7. Okumagba v. Egbe (1965) 1 All NLR 62
8. A.G. of Bendel State v. Aideyan (1989) 4 NWLR 646
- 5 9. Ogbuinyinya v. Okudo (1979) 6-9 SC 32
10. Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (p. 82) 280
11. Minister v. Aupagu (1964) 1 All NLR 208
12. Habib v. Principal Immigration Officer (1958) 3 FSC 75
- 10 13. Lauri v. Renad (1892) 3 ch A 20
14. In re Athlumney (1898) AC 475
15. Kanada v. Governor of Kaduna State (1986) 4 NWLR (pt. 35) 361,
16. Garba v. Federal Civil Service Commission (1988) 1 NWLR (pt. 71) 449

15 **STATUTE:**

Decree No. 47 of 1992

LEAD JUDGMENT BY KARIBI- WHYTE JSC

20 I summarily dismissed this motion on the 24th May, 1993 and indicated that I will give my reasons today. This I now proceed to do.

25 The only issue in this ruling is whether the appeal before this court has abated by virtue of section 2 of the Trade Disputes (Amendment) Decree No.47 of 1992.

30 The facts of this case are straightforward and undisputed. On the 11th August, 1986, Hon. Justice A. Iguh (as he then was) of the High Court of Anambra State, sitting at Enugu gave judgment dismissing in its entirety the action brought by the applicants as plaintiffs seeking various declarations and injunction restraining the defendant, its agents and servants from unlawfully interfering with the exercise of the rights and powers and/or enjoyment of privileges and fruits of membership mutually subsisting between the Non-Academic Staff Union of Educational and Associated Institutions on the one hand, and the members of the said Union in the employment of the defendant at the Orthopaedic Hospital Enugu on the other hand.

35 The co-defendant's counter-claim was granted in its entirety. The counter claim was for a declaration that the registration and recognition as the Trade Union representing the interests of all categories of employees in

the Hospitals operated by the defendant, excluding medical doctors, pharmacists, radiographers, medical laboratory technologists, dental technologists, nurses and midwives is valid, continuous and has not been withdrawn, having regard to the provisions of the Trade Unions Acts 1973-79.

There was a claim for a declaration that there was no valid withdrawal by any of the employees of the defendant from the membership of the co-defendant Union having regard to the provision of section 5(3) of the Labour Acts 1974-78. An immediate refund by the plaintiff Union to the co-defendant Union of the sum of N9,908.02 or the total sum unlawfully collected as check-off dues as from 1/12/82 to 31/12/83. An injunction was sought restraining the plaintiff Union from further interfering in the organization of all categories of employees already represented by the co-defendant Union in the Orthopaedic Hospital Enugu or of any other hospital in the control and management of the plaintiff.

Plaintiffs appeal to the Court of Appeal was unsuccessful. The Court of Appeal on 24/5/90 affirmed the judgment of the High Court with N150 costs against the plaintiffs.

The two defendants being dissatisfied with part of the judgment of the Court of Appeal, appealed to this Court on a notice of appeal dated 8th August 1990. Appellants have satisfied the conditions of the appeal. Parties have also filed their briefs of argument. The appeal was fixed for hearing when respondents filed this motion on notice to the appellants on the 12th May, 1993 praying the Court to strike out the appeal on the ground that since Decree No. 47 of 1992 the judgment of the High Court of Enugu State is deemed to have abated and have ceased to have effect since State High Courts no more had jurisdiction over inter and intra union disputes.

In the affidavit in support of the motion it was averred in paragraph 3, that the Federal Government promulgated the Decree No.47 of 1992 after appellants lodged the appeal. That the issue before the Enugu High Court was a dispute which arose from the restructuring of Trade Unions established under the Trade Unions Act.

The motion was argued on the 24th May, 1993. G. Adetola-Kazeem for the respondents, who is also learned Counsel to the appellants in the substantive appeal opposed the motion.

The gravamen of the motion is on the correct interpretation of section 2 of the Trade Disputes (Amendment) Decree 1992 Mr. Adeniran, learned Counsel to the applicants put the case simply as a case of exclusion of the jurisdiction of the courts in respect of inter and intra Union disputes. He submitted that the subject matter of the appeal is an inter

union dispute, and the effective date is 1st January, 1992. Learned Counsel submitted that in view of the provisions of the Decree, the appeal must be struck out, the matter having abated, the court had no jurisdiction. Mr. Adetola-Kazeem, did not agree with this submission. He submitted that a careful interpretation of the provisions of section 1(2) of section 1A of the Trade Disputes Act as amended, suggests that the section did not apply to final judgments. He argued that the Decree No.47 of 1992 did not cover appeals pending before the court or previous decisions.

Learned Counsel approached the interpretation of the provision by construing the meaning of the words "action," "other judgment or decision," "interim or interlocutory" as used in the section. Counsel pointed out that the word "action" was not defined in the Decree. Section 2 of the High Court Law which has defined it did not include an appeal. It was submitted that any other interpretation will have the effect of abrogating vested rights by a retrospective nullification of both previous and subsisting decisions of the courts. This it is submitted will be against established principles of interpretation. Learned Counsel referred to *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377; (1987) SCNJ 98. A decree which tends to deprive the courts of its jurisdiction must be strictly construed. See *Salami v. Chairman L.E.D.B.* (1989) 5 NWLR (Pt.123) 539; (1989) 12 SCNJ 113.

Mr. Adetola-Kazeem, relying on *Savannah Bank Ltd v. Ajilo* (1989) 1 NWLR (Pt.97) 305; (1989) 1 SCNJ 169, submitted that the law should be so construed as to avoid confusion, uncertainty and friction. It was submitted that the consequence attributed to the law could not have been contemplated. It was finally submitted that the Decree did not contemplate appeals pending before the courts or matters already concluded.

The only issue before us is whether by virtue of section 1A of the Trade Disputes Act Cap. 432 as amended by the Trade Disputes (Amendment) Decree No.47 of 1992, the appeal before us has abated. Learned Counsel to the applicant has urged us to hold that the jurisdiction of this Court has been ousted by Decree No. 47 of 1992 and that the action before the Court had abated. Learned Counsel to the respondents submitted to the contrary.

It is both elementary and also a fundamental principle for the interpretation of statutes that where the words of a statute are clear and not ambiguous, effect should be given to them, *African Newspapers v. Federal Republic of Nigeria* (1985) 2 NWLR (Pt.6) 137. The question in this case is whether the provisions of section 1A are clear and unambiguous. I reproduce below the relevant provisions of section 1A of the Trade Disputes

(Amendment) Decree No. 47 of 1992.

"1A. (1) Subject to the provisions of sub-section (3) of section 20 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly any action which prior to the commencement of this section is pending in any court shall abate and be null and void.

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(2) Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979, any interim or interlocutory order, judgment or decision made by any court other than the National Industrial Court established under this Act in respect of any trade dispute, inter or intra union dispute prior to the commencement of this section shall cease to have effect.

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(3) A person who contravenes the provisions of sub-section (1) of this section commits an offence and is liable on conviction to a fine of ten thousand naira or to imprisonment for a term of one year or both."

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As indicated in the marginal notes of the section only this section is concerned with the exclusion of the jurisdiction of the courts. Although not part of the section, the marginal notes and any explanatory notes give a guide as to the interpretation of the section. But this is not at the expense of the words used in the section which best declare the intention of the law itself- see *Uwaifo v. A-G. Bendel* (1983) 4 NCLR 1; (1982) 7 Sc. 124 - See *Schroder & Co. v. Major & Co. (Nig.) Ltd.* (1989) 2 NWLR (Pt.10) 1

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The commencement date of the Decree is the 1st January, 1992.

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The amendment is made subject to section 20 of the Trade Disputes Act, Cap. 432. Sub-section 1A relied upon by the applicant for ousting the courts jurisdiction, states that the section applies to (a) the commencement of actions in a court of law, subject matter of a trade dispute, whether intra, or inter union, (b) abate actions pending at the commencement of this Decree.

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Thus as at 1st January, 1992 no actions relating to trade disputes, whether intra, or inter union, can be commenced. The jurisdiction of the courts in respect thereof, is ousted. Again, actions pending in court as on that date will abate and shall be null and void. It seems to me fairly clear that the section is concerned with the exclusion of the jurisdiction of the court in respect of "commencement of actions" and the "continuance of pending actions" as on the 1st January, 1992. Thus, whilst no civil proceedings, whether intra or inter in respect of trade disputes can be entertained,

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such pending actions will abate and shall be null and void.

I think the words of the section are fairly clear, plain and unambiguous and should be given their ordinary plain meaning. I am therefore obliged to give to the words their natural meaning except where to do so will result in absurdity. See *Okumagba v. Egbe* (1965) 1 All NLR 62. I agree with the
5 submission that the word action has not been defined in the Decree. I think it is appropriate to adopt the definition in the High Court Law which is as follows:

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"action" means a civil proceeding commenced
10 by writ or in such other manner as may be prescribed by Rules of court, but does not include a criminal proceedings;"

15 There is no doubt that intra or inter union trade disputes are not criminal proceedings and therefore fall within the above definition.

It is important to observe that the section clearly spelt out the categories of actions in respect of which the courts jurisdiction is ousted, or
20 will abate and be null and void on the 1st January, 1992. These are actions commenced and those pending as at that date. No other actions will seem to me to have been in the contemplation of the section.

It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the
25 intention is that those not named are not intended to be included. Expressio unius est exclusio alterius. See *A-G. of Bendel State v. Aideyan* (1989) 4 NWLR. (Pt.118) 646. This is that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication, with regard to the same issue - See *Ogbuanyinya*
30 *v. Okuda* (1979) 6-9 SC. 32, *Military Gov. of Ondo State v. Adewunmi* (1988) 3 NWLR. (Pt.82) 280.

In this case the provision has referred to new actions in section 1A(1) and pending actions in 1A(2) The express omission of final decisions and matters on appeal would suggest that they were not contemplated by the section.

35 This construction would seem to me to be borne out by section 1A(2) which affects "any interim or interlocutory order, judgment or decision made by any court other than the National Industrial Court established under this Act, in respect of any trade dispute, inter or intra union dispute prior to the commencement of this section shall cease to have effect."

There is no doubt that section 1A(2) which refers to interim or interlocutory order, judgment or decision can only be referring to such orders, judgments or decisions in a pending matter. Thus like pending proceedings in section 1A(1) which shall abate and be null and void, interlocutory or interim orders, interlocutory judgment or decisions which are necessarily made with respect to pending proceedings shall cease to have effect. Of course, after the proceedings have abated and become null and void on the 1st January, 1992, there is no substantive action on which they depend for their existence.

It seems to me that the mischief aimed at by this amendment is to avoid the proliferation of trade union cases in several High Courts and ensure their litigation in the National Industrial Court only. - See *Savannah Bank (Nig) Ltd. v. Ajilo* (1989) 1 NWLR (Pt.97) 305.

Mr. Adeniran has adopted a simplistic interpretation of the amendment by submitting that the effect of the amendment is that final decisions and matters on appeal abate and become null and void as from the 1st January, 1992. The implication of this view is that final judgments already made and existing before the commencement date will on that date, abate and be void. This will not only constitute a retrospective operation of the provision without express mention and by implication, it also operates by implication to deprive the persons affected of vested rights.

It is hardly disputable that the provision of a statute should not be so construed as to result in an absurdity. See *Minister v. Akpagu* (1964) 1 All NLR 208. The submission of Mr. Adeniran will invariably lead to absurdity. There is no expression in the section suggesting expressly or by necessary implication that the section was intended to be retrospective in its application. See *Habib v. Principal Immigration Officer* (1958) SCNLR 219; (1958) 3 FSC 75. Where even there is such an ambiguous expression, the presumption against retrospectivity would be invoked to avoid a retrospective effect.

It is a well recognised principle of construction of statutes that a statute is not to be so construed as to impair an existing right or obligation, unless such construction is clear from the words of the section and such effect cannot be avoided without doing violence to the language of the enactment. Hence a statute should be construed to as not to have a greater retrospective operation than its language renders necessary - See *Lauri v. Renad* (1892) 3 Ch. 420, *In re Ahlumney* (1998) AC. 475, *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377. A final judgment confers rights on the person in whose favour the judgment has been awarded. It will no doubt be

an unjustified interference with such vested rights to annul them retrospectively and render them void. Such result is without doubt absurd. I am in entire agreement with the submission of Mr. Adetola Kazeem which upholds the sacred principle that any provision which suggests a deprivation of the jurisdiction of the courts must be strictly construed - See *Salami v. Chairman, LEDB* (1989) 5 NWLR (Pt.123) 539. On similar principle the courts lean against the deprivation of accrued or vested rights - See *Kanada v. Governor of Kaduna State* (1986) 4 NWLR (Pt.35) 361; *Garba v. Federal Civil Service Commission* (1988) 1 NWLR (Pt.71) 449. I have come to the conclusion on the above reasons that section 2 of Decree No.47 of 1992 applies only to commencement of actions at first instance and the continuance of pending proceedings. The Decree does not concern and was not intended to affect final judgments in existence on the 1st January, 1992, and appeals against such judgments.

These are my reasons for overruling the preliminary objection.

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KAWU JSC

20 On the 10th day of May, 1993 when the appeal came up for hearing, a preliminary objection was taken and after hearing the learned counsel on the matter, the objection was overruled. I then indicated that I would, today, give reasons for the Ruling.

I have had the advantage of reading, in draft, the Reasons For
25 Ruling just read by my learned brother, Karibi-Whyte; J.S.C. I agree entirely with those reasons and will respectfully adopt them as mine.

WALI JSC

30 On the 10th of May, 1993, after hearing both counsel in respect of the application filed by plaintiffs/respondents/applicants praying:

35 *"That the whole Appeal be Struck out since by Decree No.47 of 1992, the judgment of the High Court of Enugu State is deemed to have abated and has ceased to have effect; since State High Courts no more have jurisdiction over inter and intra union disputes"*

I summarily dismissed the application and reserved my reasons for

doing so to today.

I have had the privilege of reading in advance the lead Reasons for Ruling of my learned brother, Karibi-Whyte, J.S.C. with which I entirely agree and adopt as my own.

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OLATAWURA JSC

On 24th May 1993 after the submissions of learned counsel on both sides, I dismissed the motion and indicated I will give my reasons today. I have seen in draft the reasons given by my learned brother Karibi-Whyte, J.S.C. I will adopt them as mine. I will only add that the interpretation being urged on us by Mr. Adeniran will affect vested rights. On a careful consideration of Decree No.47 of 1992, I have come to the conclusion that it does not affect an appeal pending in this Court as well as decisions already given by the lower court.

OGUNDARE JSC

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I summarily dismissed the plaintiffs' motion argued before us on 24th of May, 1993 and indicated that I would give my reasons today.

I have had the advantage of reading in advance the reasons given by my learned brother Karibi-Whyte, J.S.C. for also dismissing the motion. I entirely agree with the reasons given by him for so doing and I adopt those reasons as mine as well. I have nothing more to add. Application refused.

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