

SUPREME COURT OF NIGERIA
22ND JULY, 1993. SC 140/1993
CORAM: M. BELLO CJN, M.L. UWAI, A.G.
KARIBI-WHYTE, S.M.A. BELGORE, O. OLATAWURA,
M.E. OGUNDARE, E.O. OGWUEGBU, JJSC.

ATTORNEY GENERAL OF
ANAMBRA STATE & ORS PLAINTIFFS
AND
ATTORNEY GENERAL OF
THE FEDERATION & ORS DEFENDANTS

CONSTITUTIONAL LAW - S. 212 of the 1979 constitution modified
by a decree - whether applicable in its modified or original form

CONSTITUTIONAL LAW - Provision making the commencement date
of 1989 constitution to be 1/10/92 - latter amended by a Decree -
whether the 1989 constitution has come into force - in spite of the
amendment

INTERPRETATION OF STATUTES - Modification of s. 212 of the
1979 Constitution by the clear and unambiguous provisions - of a
Decree - legal effect of such modification

JURISDICTION - Supreme Court's original jurisdiction under s.212
of the 1979 Constitution - whether still available in view of modifica-
tion of s. 212 - by Decree No. 1 of 1984

JURISDICTION - Call upon the Court - to suspend the issue of juris-
diction - pending the hearing of the claim - when not to be granted

MOTIONS - Original jurisdiction of the Supreme Court - to strike out
Plaintiffs' claim - for want of jurisdiction - whether sustainable

FACTS

The Plaintiffs by a writ of summons sued the Defendants claim-
ing various reliefs. The action was brought in the Supreme Court
invoking its original jurisdiction to entertain the suit under s. 212 of

the 1979 Constitution. The Defendants filed a preliminary objection to the action contending that the Plaintiffs lack the locus standi to bring this action and further that the Supreme Court lacks the jurisdiction to entertain the suit. Plaintiffs urged the court to suspend the issue of jurisdiction pending the hearing of their claim.

The Supreme Court had to determine among other things whether in the light of the modification of the jurisdiction of the Supreme Court by the Constitution (Suspension and Modification) Decree No. 1 of 1984 Supreme Court has not lost its original jurisdiction under the 1979 Constitution to entertain the suit, and also whether the 1989 constitution has come into force.

HELD (upholding the objection)

1. There is no conflict in section 212 of the 1979 Constitution, as the modified section was substituted for the original and thereby one displaced the other. (p. 165 L 21)
2. The provision of s. 212 of the 1979 Constitution as modified by the Decree is clear and unambiguous that the Supreme Court had no Constitutional original jurisdiction on any matter unless it is conferred upon it by law. And since no law has conferred such jurisdiction to date, the Court lacks original jurisdiction to entertain the suit. (p. 166 L9)
3. By the combine effect of s. 1 (2) and schedule 2 to the constitution (Suspension & Modification) Decree No. 1 of 1984, the original jurisdiction of the Court under s. 212 of the 1979 Constitution was reduced to “such original jurisdiction as may be conferred upon the Supreme Court by law.” (p. 173 L15)
4. The clear and unambiguous intendment of s. 1 (2) of Decree No. 1 of 1984 is that the new s. 212 should replace the old s. 212 as hitherto I contained in the 1979 Constitution. Effect must therefore be given to the new section and if that is done, the original provisions of s. 212 cannot stand side by side with the modified section. (p. 175 L7)

5. The submission that the Supreme Court has the necessary jurisdiction under the 1989 Constitution since s.331 thereof provides that it shall come into force on the 1st day of October 1992, lacks force because that provision has been overtaken by latter enactments (Decrees) that changed the commencement date of the 1989 constitution (p. 175 L26)

6. Learned senior counsel to the Plaintiffs is correct in his submission that there was no intention to abrogate s. 212. But contrary to the said counsel's further submission, although the section was not abrogated, it exists only in its modified form. (p. 183 L2)

7. The expression "subject to" in an enactment implies that the provision is subordinate to the section to which it is subject to. (p. 183 L11)

8. The provisions of the 1979 constitution which are inconsistent with the provisions of a Decree are void to the extent of such inconsistency. (p. 184 L13)

9. If a section of any law is suspended, the rights and privileges under that section can no longer be invoked until the section suspended is restored by a subsequent legislation and until so restored, it has the same effect as if repealed completely. (p. 199 L39)

10. Jurisdiction is the authority a court has to take cognizance of matters presented formally for its decision and where a court exercises a jurisdiction which it does not possess, its decision amounts to nothing. Therefore, Plaintiffs' request that the question of the court's jurisdiction be deferred until their claims have been heard, cannot be acceded to. (p. 205 L4)

11. As the language used in the substituted new s. 212 in the second schedule to Decree No. 1 of 1984 is clear and unambiguous, the Court must apply it as it stands however unreasonable or unjust the consequences and however the Court may suspect that the result is

not the intention of the legislature. (p. 217 L13)

PER OLATAWURA JSC “With this Amendment no section under the 1989 Constitution can be relied upon until the Constitution comes into effect on 27th August 1993. I therefore hold that the effective and only constitution in use is the 1979 Constitution. (p. 198 L15)

PER OGUNDARE JSC “*Considering the true nature, pith and character of Cap 64 the intention is clear that the Military administration, in modifying section 212 of the Constitution in the manner it did, had no intention whatsoever of allowing disputes between the Federation and a State or between States inter se to be subject of litigation in the Supreme Court. And this is understandable. The Military with its command structure would not imagine a situation where a component part would be seen to be quarrelling with the apex or another component in a law court; this is something it would rather settle in its own way*”. (p. 208 L24)

PRESENTATION:

Chief F.R.A. Williams SAN with Chief T.A.B. Oki, SAN;
A. Williams (Miss); Dr. E.O. Awonusi; J.O. Fakayode;
C.G.O. Babatola; Dr. O. Olofilade; L. Williams; E. E. Osifo;
T. Odulaja; A. Odulaja; Chief F.O. Jimilehin; S.O. Ogunnubi; Otunba O.

Durojaiye; O. Adewunmi; James Babatunde;
F.R.A. Williams, (Jnr.); B. Avwenaghagha, Assistant Chief Legal Officer, Delta State; A.G.E. Liam; G.O. Boyo; J.U. Igwe; A.O. Akinyele; B.U.M. Anekwe; L. Fagbohun and O.K. Johnson, for the Plaintiffs.

Chief P.G.E. Umeadi SAN, J.C. Okonkwo SAN,
and A.D. Sodangi, for the 1st Defendant.

2nd Defendant absent and unrepresented.

M. Kaibo, Deputy Director Civil Litigation, for the 3rd Defendant.

4th Defendant absent and unrepresented.

M.A. Abubakar, Attorney-General, Bauchi State with E.I. Lategu, S.S.C.I, M.H. Kwaya, S.S.C.I and A.D. Mohammed, S.C.I, for the 5th Defendant.

6th Defendant absent and unrepresented.

- E.G. Ahanonu, for the 7th Defendant.
8th Defendant absent and unrepresented.
9th Defendant absent and unrepresented.
A.B. Mahmud, Attorney-General, Kano State with M.U. Yusuf, for the 10th Defendant
5 11th Defendant absent and unrepresented.
A. B. Dikko, Attorney-General Kebbi State, for the 12th Defendant.
Dr. S.S. Ameh, S.A.N. A.-G. Kogi State, for the 13th Defendant.
14th Defendant absent and unrepresented.
10 Y. Oshikoya, Attorney-General, Lagos State with O.M. Ayeni, (Mrs.) S.-G.
A.A. Phillips (Mrs.); D.T. Okuwobi (Mrs.) and P. Adeyemi (Mrs.), for the 15th Defendant.
F.D. Lott, Attorney-General, Rivers State, S.R. Dappa-Addo, Deputy
15 Director Legal, for the 16th Defendant.
M.A. Ahmed, Attorney-General, Sokoto State with N. Adamu, P.S.C., for the 17th Defendant.

CASES REFERRED TO

- 20 1. R v. Zik's Press Ltd. 12 WACA 202
2. Deam v. Green (1882) 8 P.D. 79
3. Kalio v. Daniel Kalio (1975) 2 SC 15
4. Edun v. Odan Community (1980) 1LSC. 103
25 5. Adeyemi v. Opeyori (1976) 9-10 SC 31
7. Barclays Bank v. Central Bank (1976) 6 SC 175
8. Stevens v. General Steam Navigation Company (1903) 1 KB 890
9. Ebbs v. Boulnois (1875) 10 ch. Appa 479
10. Mandara v. A-G Fed. (1984) 1 SCNLR 311, (1984) NCSS 221
30 11. A.G. of Lagos State v. Dosunmu (1989) 3 N.W.L.R. (PT 111) 552
12. Onyema v. Oputa (1987) 3 N.W.L.R. (pt. 60) 259
13. I.R.C v. Hinely (1960) A.C 767
14. Madukolu v. Nkemdilim (1962) N.S.C.C. 374
15. Ojo Ajao v. Popoola Alao (1986) N.S.C.C (vol. 17, pt. II) 1327
35 16. A.G. of Lagos State v. A.G of Federation (1983) N.S.C.C 181
17. Obayukwana v. Governor (1982) 12 SC 147
18. Governor of Kaduna State v. Kayoma (1982) 6 SC. 87
19. R v. Bishop of Oxford (1879) 4 QBD 261

STATUTES REFERRED TO

1. Constitution of the Federal Republic of Nigeria (promulgation) Decree
Cap. 63 Laws of the Federal Republic of Nigeria 1990 s. 1
2. Transition to civil Rule (Political Programme) (Amendment) (No. 5
3) Decree No 52 of 1992;
3. Presidential Election (Basic Constitutional and Transitional Provi-
sion) Decree No. 13 of 1993.
4. Constitution of the Federal Republic of Nigeria, 1979 s. 212.
5. Constitution of the Federal Republic of Nigeria (Promulgation) 10
(Amendment) Decrees 1992 Nos. 10 and 56.
6. Constitution of the Federal Republic of Nigeria 1989 s. 331.
7. Revised Edition (Laws of the Federation of Nigeria) (Supplemen-
tary Provisions) Decree, No. 55 of 1992.
8. Decree No. 17 of 1985 15
9. Constitution of the Federation of Nigeria, No. 20 of 1963.
10. The Supreme Court Act ss.19 and 20
11. Decree No. 1 of 1984 ss. 1 (2) and 2(1).

LEAD JUDGMENT BY BELLO CJN 20

In this suit, 14 States of the Federation as the plaintiffs claim against the Federal Military Government and the remaining 16 States of the Federation as follows:

"(1) A declaration that the legislative and executive powers ex- 25
ercisable by the Federal Military Government during the period referred to as 'the transition period' in the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, Cap. 63 Laws of the Federal Republic of Nigeria, 1990 are not capable of over-riding or superceding the express provisions of Section 1 of the aforesaid De- 30
cree or Sections 129(b) and 130 of the Schedule thereto.

(2) A declaration that the repeal of the Transition to Civil Rule (Political Programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13 of 1993 is null and void and of no legal 35
consequence whatsoever.

(3) A declaration that the repeal of the Transition to Civil Rule (political Programme) (Amendment) (No.3) Decree No.52 of 1992 and the Presidential Election (Basic Constitutional and Transitional

Provisions) Decree No. 13 of 1993, if valid, is incapable of invalidating or nullifying the election held on Saturday 12th June, 1993.

(4) An order directing the Federal Military Government by itself or through its appropriate agency to complete the process of the Presidential election by announcing the result thereof and take such
5 further or other steps as may be necessary as laid down by law.

(5) An order of injunction restraining the Federal Military Government or any of its agencies (including the National Electoral Commission) from making arrangements or permitting arrangements to
10 be made for holding or purporting to hold any other election to the offices of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993.

(6) A declaration that the Federal Military Government has no executive or legislative power to dissolve or enact the dissolution of
15 all local governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annul or enact the annulment of the election of Governors to the various States within the Federal Republic of Nigeria.

(7) An order of injunction restraining the Federal Military Government and all its agencies and functionaries from-

(a) dissolving or enacting the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate,
25 the National Republican Convention and the Social Democratic Party; and

(b) annulling or enacting the annulment of the election of Governors to the various States within the Federal Republic of Nigeria.

(8) A declaration that only democratically government consistent with the structure enshrined in the Constitution of the Federal
30 Republic of Nigeria 1989 can lawfully exercise the executive powers of the Federation under the said constitution as from 27th August, 1993.

(9) An order of injunction restraining the Federal Military Government, and all its functionaries and agents from handing over in
35 any manner whatsoever the executive powers of the Federation to any person other than the person duly elected as the President of the Federal Republic of Nigeria in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13.

The suit is purported to have been brought under the original jurisdiction of the Court.

Umeadi, SAN, learned counsel for the Federal Government has taken objection that the Court has no original jurisdiction to entertain the suit. He submitted that the original jurisdiction of the Court was prescribed by section 212 of the 1979 Constitution as modified by the Constitution (Suspension and Modification) Decree No. 1 of 1984 and that by virtue of the modification the Court shall have such original jurisdiction as may be conferred on it by law. Learned counsel further stated that so far no law has been enacted conferring original jurisdiction and, accordingly, the Court has no original jurisdiction on any matter whatsoever. He asked the Court to strike out the suit and motion for interim orders.

The Attorneys-General of Enugu, Kano, Kogi, Lagos, and Sokoto States associated themselves with the submission of Umeadi, SAN.

In his response, Chief Williams, SAN formulated two questions and urged the Court to determine the objection to the original jurisdiction of the Court in the light of the answers to the questions, which are as follows:

(1) *"Is it correct to say that section 212 of the 1979 Constitution ceased to have effect as the result of the provisions contained in the 1979 Constitution as amended by the Decree."*

(2) *"Even if the answer to question 1 is in the affirmative, is it correct to say or assume that the Supreme Court has no original jurisdiction to entertain this action pursuant to its powers to do so under the Constitution of Nigeria".*

As a preamble to his contention, Chief Williams, SAN conceded that on the face of the provisions of section 1 (2) of the Constitution (Suspension and Modification) Act, Cap. 64, Laws of the Federation of Nigeria 1990 and the Second Schedule thereto the submission of Umeadi, SAN seemed to be correct. However, he contended that on thorough perusal of the Act, one might conclude that the Act had not repealed nor abrogated the original section 212 of the 1979 Constitution, which has provided the original jurisdiction of the Court, but only modified the section. Consequently, he argued the original section 212 and its modified version still subsist together. He emphasized that section 212 in its original wordings is still applica-

ble law since it has not been repealed.

Continuing, the learned Senior Advocate of Nigeria upon reading the original section and its modified version, he pointed out that the sections were in conflict. Relying on *Rex v. Zik's Press Ltd.* (1947) 12 WACA 202 and *Eastbourne Corporation* (1959) 2 Q.B. 92 at 5 107, he urged us to resolve the conflict in favour of the original section which he stated to be the governing law while the modified version is subordinate to the original and to hold that the Court has original jurisdiction.

10 The substance of Chief Williams' contention on question 2 is that the 1989 Constitution came into force on 1st October, 1992 and the Constitution being the will of the representatives of the people of Nigeria, the Constituent Assembly. The Federal Military Government has no power to change the date of its commencement. 15 Accordingly, the Constitution of the Federal Republic of Nigeria (promulgation) (Amendment) Decree 1992 Nos. 10 and 56, which changed the dates of its coming into force to 2nd January, 1993 and 27th August, 1993 respectively, are null and void. He urged the Court to apply section 230 of the Constitution which conferred original jurisdiction on the Court. 20

The contention of Chief Williams, SAN, relating to his question No.1 is indeed ingenious but it may lead to absurdity. Its sum total is that the provisions of the original section 212 and of its modified 25 version are twin sisters existing severally together. It is pertinent to set out the two sections. The original reads:

30 *"212(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any*

question (whether of law or fact) on which the existence or extent of a legal right depends.

35 *(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly: Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."*

While the modified section is as follows:

"212. The Supreme Court shall have such original jurisdiction as may be conferred upon it by law:

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."

Chief Williams, SAN, has not referred us to any authority or rule of law to support his proposition relating to independent and simultaneous co-existence of an original provision with its modified version and in the event of conflict between the two, the original should be preferred and the modification to be ignored.

The two cases he cited are not relevant to the issue. *Rex v. Zik's Press* (Supra) dealt with the rule for the interpretation of conflicting sections of a statute which stated that conflicting sections should be construed to see if they were patently susceptible of modification by other sections of the statute and by the obvious intention of the legislature in regard thereto. The other case, *Eastbourne Corporation v. Fortes* (supra) stated the rule for resolving conflict between a former and a latter statute. The rule was stated to be that prima facie the latter should be preferred subject to the first duty of the Court, if the result is fairly possible, to give effect to the whole expression of the parliamentary intention.

In the case before us, for the reasons I have already given, there is no conflict whatever in section 212. The modified section was substituted for the original and thereby one displaced the other.

With all due respect, the proposition is novel and untenable. I am not aware of any authority upon which to endorse it.

The contention of Chief Williams, SAN on question 2 may well be unchallengeable in a situation where the Constitution is the basic law and all other laws are subordinate to it. Under our present condition, Decrees are the supreme laws in Nigeria and all other laws including the current Constitution are inferior to the Decrees: the Federal Military Government (Supremacy and Enforcement of Powers) Decree 1984. It is pertinent to observe that the very 1989 Constitution, which the learned Senior Advocate of Nigeria stated to have been made by the Constituent Assembly, was enacted by the Federal Military Government under the Constitution of the Federal Republic of Nigeria (Promulgation) Act. Cap. 63.

Furthermore, under section 2(1) of the Constitution (Susten-

sion and Modification) Act, the Federal Military Government "have the power to make laws for the peace, order and good government of Nigeria or any part thereof in respect of any matter whatsoever" (Italics mine) It follows therefore that the contention of Chief Williams concerning the invalidity of the Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) (No.2) Decree 1992 was misconceived and is untenable. Consequently, since the 1989 Constitution is not in force, its provision relating to the original jurisdiction of this Court which Chief Williams, SAN relied on in his question No.2, is not relevant to the objection.

In my opinion the provision of section 212 of the 1979 Constitution as modified, which I have earlier in this Ruling set out, is clear and unambiguous that this Court has no constitutional original jurisdiction on any matter unless it is conferred upon it by law. To date, no law has conferred such jurisdiction.

For these reasons, I hold that the Court lacks original jurisdiction to entertain the suit. The preliminary objection succeeds. The Suit and the Motion for interim orders shall be and are hereby struck out.

UWAIS JSC

The plaintiffs brought this action as representatives of the Governments of their respective States, that is the Assemblies and the Executives thereof, against the defendants as the representatives of the Federation and the respective States, which include the National Assembly and the Federal Executive as well as the States' Assemblies and Executives.

In the joint Statement of Claim filed by the plaintiffs together with the writ of summons, the plaintiffs claim as follows -

"(1) A declaration that the legislative and executive powers exercisable by the Federal Military Government during the period referred to as "the transition period" in the Constitution of the Federal Republic of Nigeria (promulgation) Decree, Cap. 63 Laws of the Federal Republic of Nigeria, 1990 are not capable of overriding or superceding the express provisions of Section 1 of the aforesaid Decree or Sections 129 (b) and 130 of the Schedule thereto.

(2) A declaration that the repeal of the Transition to Civil Rule

(political programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13 of 1993 is null and void and of no legal consequence whatsoever.

(3) A declaration that the repeal of the Transition to Civil Rule (political programme) (Amendment) (No.3) Decree No.52 of 1992⁵ and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree NO.13 of 1993, if valid, is incapable of invalidating of nullifying the election held on Saturday 12th June, 1993.

(4) An order directing the Federal Military Government by itself or through its appropriate agency to complete the process of the Presidential election by announcing the result thereof and take such further or other steps as may be necessary to complete the transition programme as laid down by law.¹⁰

(5) An order of injunction restraining the Federal Military Government or any of its agencies (including the National Electoral Commission) from making arrangements of permitting arrangements to be made for holding or purporting to hold any other election to the offices of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993.¹⁵²⁰

(6) A declaration that the Federal Military Government has no executive or legislative power to dissolve or enact the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annul or enact the annulment of the election of Governors to the various States within the Federal Republic of Nigeria.²⁵

(7) An order of injunction restraining the Federal Military Government and all its agencies and functionaries from-³⁰

(a) dissolving or enacting the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention and the Social Democratic Party

(b) annulling or enacting the annulment of the election of Governors to the various States within the Federal Republic of Nigeria³⁵

(8) A declaration that only a democratically (sic) government consistent with the structure enshrined in the Constitution of the Federal Republic of Nigeria 1989 can lawfully exercise the executive powers of the Federation under the said constitution as from 27th Au-

gust, 1993.

(9) An order of injunction restraining the Federal Military Government, and all its functionaries and agents from handing over in any manner whatsoever the executive powers of the Federation to any person other than the person duly elected as the President of the
5 Federal Republic of Nigeria in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13."

Statements of Defence were filed by the 1st and 7th defendants respectively.

10 The 1st defendant resists the plaintiffs' claims in his Statement of Defence and in conclusion avers in paragraph 19 thereof as follows -

"19. The 1st defendant on the above premises contends that the plaintiffs are not entitled to any of the reliefs sought for the reasons
15 adumbrated above and that-

(a) The Court has no jurisdiction to grant reliefs 1, 2 and 3 as the 1989 Constitution is not yet in force and the Court lacks jurisdiction to question the validity of a Decree.

20 (b) Relief No. 3, 4 and 5 are political questions not justiciable as Decree No.39 of 1993 is already in operation and section 5 of Decree No.1 of 1984 is certain in its tenor.

(c) The Court has no jurisdiction to make the order sought in relief Nos.6 and 7 as the law making powers of the Federal Military
25 Government is unlimited and can't be voided or abridged in Court.

(d) Relief Nos. 8 and 9 are outside the jurisdiction of Court for the reasons given supra as the election is inclusive (sic) vide Decree No.39 and nobody duly elected is a party to this proceedings except
30 Attorneys-General of the complaining States who did not contest the aborted election.

Wherefore the 1st defendant would pray Court to strike out the case for the reasons detailed above."

35 The 1st defendant filed a motion on notice together with his Statement of Defence. In the motion he asks "for an order striking out this suit for lack of locus standi on the part of the plaintiffs to institute this action and absence of jurisdiction of this Court to entertain the same and for such further order as the Court may deem fit".

In hearing the motion we decided to deal with the issue of jurisdiction only, it being a fundamental point. For it is only when we

have the original jurisdiction to entertain the action that we can go into the question whether the plaintiffs have standing.

Moving the motion, Chief Umeadi, learned Senior Advocate for the 1st defendant, stated that the Constitution that is presently in force is the 1979 Constitution of the Federal Republic of Nigeria, and not the 1989 Constitution which is yet to come into operation. He referred to section 1 subsection (2) of the Constitution (Suspension and Modification) Decree, No.1 of 1984 (which is also Cap. 64 of the Laws of the Federation of Nigeria, 1990) and Schedule 2 thereto which modified the provisions of section 212 of the Constitution; to submit that we have no jurisdiction to entertain the plaintiffs' claim. He further argued that there has been no law as envisaged by section 212 Of the 1979 Constitution (as modified) which gives the Court the necessary jurisdiction.

All the learned counsel that appeared for the defendants severally associated themselves with the preliminary objection raised by Chief Umeadi.

Replying, Chief Williams learned Senior Advocate for all the plaintiffs, referred to the provisions of section 1 subsection (1) of the Revised Edition (Laws of the Federation of Nigeria) (Supplementary Provisions) Decree, No. 55 of 1992, which provides -

"1(1) Notwithstanding the provisions of the Revised Edition (Laws of the Federation of Nigeria) Decree, 1990 as amended or any Order made thereunder, all laws promulgated by the Federal Military Government on or after 31st December, 1983 shall continue to be known, referred to, cited and have effect as a 'Decree'."

and the Second Schedule to the Constitution (Suspension and Modification) Decree, 1984 which provides the following in respect of section 212 of the 1979 Constitution -

"For subsection (1) and (2) there shall be substituted the following new section, that is - "Original jurisdiction

"212. The Supreme Court shall have such original jurisdiction as may be conferred upon it by law: Provided that no original jurisdiction shall be conferred upon the Supreme Court will respect to any criminal matter."

He submitted that two questions arose from the foregoing provisions. The questions are:-

"1. Is it correct to say that section 212 of the 1979 Constitution

ceased to have effect as a result of the provisions contained in the 1979 Constitution as amended by the Decree?

2. *Even if the answer to question 1 (above) is in the affirmative, is it correct to say or to assume that the Supreme Court has no original jurisdiction to entertain this action pursuant to its powers to do so under the Constitution of Nigeria?"*

Chief Williams pointed out that question 2 hinges on one of the claims in the plaintiffs' action before the Court and submitted that greater justice would be made to the case if a ruling on the question of jurisdiction was deferred until the Court considered the particular claim. He said that question 1 should be answered with the background of the answer to question 2. He argued that the Constitution (Suspension and Modification) Decree, 1984 (Cap. 64 of the Laws of Nigeria, 1990) deals with two separate and distinct provisions of section 212 of the 1979 Constitution. He submitted that it is only when one shuts one's eyes to the provisions of the other parts of the 1984 Decree that one would concede, as submitted by Chief Umeadi, that section 212 of the 1979 Constitution was repealed and re-enacted by the Schedule to the Decree. He stated that in interpreting a law it is necessary to examine the whole statute and not to reduce what is being interpreted to silence. He referred to the provisions of Section 1 of the Constitution (Suspension and Modification) Decree, Cap. 64 which provides -

"1(1) *The provisions of the Constitution of the Federal Republic of Nigeria, 1979 mentioned in the First Schedule to this Decree are hereby suspended.*

(2) *Subject to this and any other Act or Decree, made after the commencement of this Decree, the provisions of the said Constitution which are not suspended by subsection (1) of this section shall have effect subject to the modifications specified in the Second Schedule to this Decree."*

to submit that the phrase "subject to the provisions of this and other Decree" means that there are governing provisions and subordinate provisions. It also means that wherever there is a clash between these two provisions, the governing provisions shall prevail and the subordinate provisions shall be ignored. But, he argued further, it does not mean that the subordinate provisions ignored are

abrogated or repealed. This, he stated, is the view in law and in the Revised Laws of the Federation of Nigeria 1990. In illustration, he referred to the provisions of the Supreme Court Act, 1960 which have been adapted in sections 4, 17, 19 and 20 of Cap. 124 of the Laws of the Federation of Nigeria, 1990.

Learned Senior Advocate then submitted that there is a conflict or contradiction between the provisions of section 1 of Cap. 64, and those of section 212 as contained in the Second Schedule thereof. He canvassed that what the Court should do in that respect is what has been held by the West African Court of Appeal in Rex v. Zik's Press, (1947) 12 WACA 202 at p. 205. That is "A statute ought to be construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

It follows, he argued, that since section 212 of the 1979 Constitution was not repealed, it must, therefore, be construed by giving effect to the governing provisions of Decree No.1 of 1984. He then came to the crux of his argument, which is that section 212 of the 1979 Constitution remains as originally provided in the 1979 Constitution, notwithstanding the modification in Decree No.1 of 1984. Learned Senior Advocate submitted that the provisions of section 212 as originally contained in the 1979 Constitution should be read together with the modified provisions of section 212 as provided by Decree No.1 of 1984. He urged upon us, that what the Court must not do is to say that there is an implied repeal of section 212 because Courts do not deny themselves jurisdiction, and cited in support the case of Eastbourne Corporation v. Fortes Ice Cream Parlour (1955)Ltd. (1959) 2 Q.B. 92 at p. 107.

Learned Senior Advocate argued further that the intention of the Legislator in Decree No.1 of 1984 is not to repeal section 212 of the 1979 Constitution but to modify it. He refers to the meaning of the word "modification" in Black's Law Dictionary in support of the argument, and submitted that where radical change is intended in a legislation one would not talk of modification. He said that the provisions of the Constitution (Suspension and Modification) (Amendment), Decree, 1985 do not make reference to the modification of section 212 of the 1979 Constitution. He concluded his argument in this respect by stressing that section 212 should not be treated as repealed or abrogated and that it should be considered to still be in

force even if the applicable Constitution is the 1979 Constitution and not the 1989 Constitution.

With regard to the second question raised by learned counsel, he referred to claim 1 in the plaintiffs' Statement of Claim which raises the issue whether after the enactment of the Transition to Civil
5 Rule (Political Programme) Decree, Cap. 443 of the Laws of the Federation of Nigeria, 1990, the Federal Military Government retains the power to amend the (1989) Constitution, which was introduced and enacted by the erstwhile Constituent Assembly in accordance
10 with that Decree. He referred to the provisions of section 7 subsection 3 of Cap. 443, which deals with the implementation of political programme, and provides -

*"(3) It shall be the duty and responsibility of all organs of Government, and of all authorities and persons to conform to, observe
15 and ensure the observance of the political programme as set out in the First to Sixth Schedules to this Decree."*

to submit that by virtue of the known position of the Constituent Assembly in law, the source of the jurisdiction of this Court could
20 be the 1989 Constitution as promulgated by the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, Cap. 63 of the Laws of the Federation of Nigeria, 1990, and brought the 1989 Constitution into force with effect from the 1st day of October, 1992.
25 Hence we should not be bound by the enactments relied upon by Chief Umeadi.

In reply, learned Senior Advocate for the 1st defendant, Chief Umeadi, argued that the 1979 Constitution is not a repealed law and
30 that this Country does not operate the 1979 and 1989 Constitutions concurrently. He referred to the provisions of section 1 of the Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) (No.2) Decree, No.56 of 1992, which amended the commencement date of the 1989 Constitution from 2nd January, 1993 to 27th
35 August, 1993.

He then referred to the provisions of section 2 subsection (1) of the Constitution (Suspension and Modification) Decree, No. 1 of 1984 which provides "2 (1) The Federal Military Government shall have powers to make laws for the peace, order and good govern-

ment of Nigeria or any part thereof with respect to any matter whatsoever" and stressing the phrase "any matter whatsoever", submitted that that includes the decision of the Constituent Assembly. He finally referred to the effect of the modification to section 212 of the 1979 Constitution and submitted that the section as modified does not present any difficulty in determining whether this Court has original jurisdiction in the present case. 5

Dr. Ameh, learned Senior Advocate and Attorney-General of Kogi State, associated himself with the submissions made by Chief Umeadi and submitted that the jurisdiction of a court is expressly conferred by a statute and not by implication. Therefore, he argued, it is section 212 of the 1979 Constitution as modified that confers original jurisdiction on this Court. 10

All other counsel for the defendants present in Court associated themselves with and adopted the submissions made by Chief Umeadi. 15

Now, there is no doubt that in the first place section 212 of the 1979 Constitution vested this Court with original jurisdiction to determine any dispute between the Federation and a State or between States, in so far as the dispute involved any question, whether of law or fact, on which the existence or extent of a legal right exists. In addition to this, the Supreme Court could have such original jurisdiction as might be conferred upon it by any Act of the National Assembly. However, that jurisdiction was subsequently curtailed when the Constitution (Suspension and Modification) Decree, No.1 of 1984 (now Cap. 64 of the Laws of the Federation of Nigeria, 1990) came into force on 31st December 1983. By the combined effect of the provisions of section 1 subsection (2) and Schedule 2 to the Decree, the original jurisdiction of the Court was reduced to "such original jurisdiction as may be conferred upon the Supreme Court by law." 20 25 30

The dispute in the present case is in respect of a claim by a group of States against another group made up of the Federation and other States as plaintiffs and defendants respectively. For the action to be entertained, it is elementary that this Court must have the original jurisdiction to do so. This jurisdiction can only come about, if it can be shown that there is an existing law which had been passed on or after the 31st day of December, 1983 which has restored to the Supreme Court the jurisdiction to determine dispute of the, na- 35

ture claimed by the plaintiffs in the present case, between the Federation and a State or between States.

Chief Williams has not directed our attention to any such legislation but endeavored to establish by submission that in fact the modification effected by Decree No.1 of 1984 to section 212 of the 1979
 5 Constitution did not achieve the result intended because the jurisdiction as earlier bestowed on the Court continues to exist. Admittedly, subsection (2) of section 1 of Decree No.1 of 1984 provides that the provisions of the 1979 Constitution which have not been suspended
 10 by the provisions of subsection (1) of the section shall have effect, but that effect is subject to the modification contained in Schedule 2 to the Decree. In the case of section 212 of the 1979 Constitution, it has been modified by the Schedule in such a manner that it is only when a law is enacted giving the Supreme Court original jurisdiction
 15 that we can exercise such jurisdiction.

Although Section 1 subsection (2) of Decree No.1 of 1984 provides that section 212 of the 1979 Constitution is modified, Schedule 2 to the Decree talks of substituting a new section. The question that follows is whether there is a difference between the words "modification" and "substitution", as employed by the section and the Schedule
 20 respectively. If there is, the issue that would arise would be: what interpretation is to be given to the substitution in the Schedule vis-a-vis the modification envisaged by subsection (2) of section 1 of Decree No.1 of 1984? The general principle is that if an enactment in a
 25 schedule contradicts an earlier clause the clause prevails against the schedule-see *Dean v. Green*, (1882) 8P. D. 79 per Lord Penzance and pp. 224 to 225 of *Craies on Statute Law* 17th Edition.

The word "modification" has been defined in *Black's Law Dictionary*, Fifth Edition, to mean a change, an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. The word "substitution" has also been defined in the same dictionary to mean putting in place of another thing, change of
 30 one thing for another, serving in lieu of another, having some of its parts replaced. Similarly, both the words "modification" and "substitution" have been given the meaning "change" in *Rogel's Thesaurus*, 1982 Edition, in Heads 143 and 145 thereof. It seems to me, therefore, that both words have the same meaning and that there is no

contradiction between section 1 subsection (2) and Schedule 2 of Decree No.1 of 1984 to call for the application of the principle of interpretation aforementioned.

Chief Williams has canvassed that section 212 as originally contained in the 1979 Constitution and as modified by Decree No.1 of 1984 should be read together because section 212 as originally 5 contained in the 1979 Constitution had not been repealed or abrogated. With respect, I find it difficult to see how the two sections can be married together without courting absurdity. The intendment of section 1 subsection (2) of Decree No.1 of 1984 is clear and unam- 10 biguous. It is that the new Section 212 should replace the old section 212 as hitherto contained in the 1979 Constitution. Therefore, effect must be given to the new section and if that is done, the provisions of section 212 as originally provided in the 1979 Constitution cannot 15 meaningfully stand side by side with the provisions of the modified section 212. It is pertinent to ask: what is the purpose of modifying or changing the provisions of the section if the intendment was to retain the original provisions of the section intact? Would it not have been 20 stated that the provisions of the modified section simply be added to the original provisions, if the intention were that both the original and the new provisions should co-exist and be read together? In my opinion, it is untenable to read section 212 as originally contained in the 1979 Constitution together with section 212 as modified by De- 25 cree No.1 of 1984 since that will give rise to absurdity. As the provisions of section 1 subsection (2) of Decree No.1 of 1984 are very clear and unambiguous, effect must be given to them.

I now turn to the second arm of the argument by Chief Williams which is that we have the necessary jurisdiction under the 1989 Con- 30 stitution, Cap. 63 to entertain the action in particular claim (1) in the Statement of Claim, since section 331 of that Constitution provides that the provisions of the Constitution shall come into force on the 1st day of October, 1992. With respect, this argument lacks force because the provisions of section 331 have been over taken by later 35 enactments, namely the Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) Decree, No. 10 of 1992 and the Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) (No.2) Decree No.56 of 1992. While the former De- cree changed the commencement date of the 1989 Constitution to

the 2nd day of January, 1993, the latter Decree further altered the commencement date to 27th August, 1993. So that in effect the 1989 Constitution is yet to come into force and as such it cannot and does not at present give any jurisdiction to this Court.

In the result, I agree with the submissions made on behalf of the defendants that in view of the modification to section 212 of the 1979 Constitution by section 1 subsection (2) of Decree No.1 of 1984, this Court lacks the jurisdiction to entertain the plaintiffs' action. As the law now stands, this Court is not vested with the jurisdiction to determine at first instance any dispute either between the Federation and the States or between the States.

Accordingly the preliminary objection succeeds and I uphold it. The plaintiffs' action is hereby struck out with no order as to costs.

15

KARIBI-WHYTE JSC

This ruling is on the preliminary objection of the defendants to this action. Chief P.G. Umeadi, S.A.N. learned Counsel to the 1st defendant in this action, the Attorney-General of the Federation, has in the notice of motion to the plaintiffs dated 14th July, 1993 and filed on the 16th July, 1993 sought "for an Order striking out the suit for lack of locus standi on the part of the plaintiffs to institute this action and absence of jurisdiction of the Court to entertain the same and for such further orders as the Court may deem fit." A detailed list of grounds on which the objection is founded was appended to the notice. The grounds relied, upon range from the ouster of the Court's jurisdiction to the incompetence of the plaintiffs to bring the action.

When on the 19th July, 1993, Chief Umeadi opened his argument, the Court observed that he relied for his preliminary objection on both locus standi on the part of the plaintiffs, and want of jurisdiction in the Court. He was accordingly directed to argue the issue of the jurisdiction of the Court which is fundamental to the hearing of the matter and could, if successful summarily determine the action in limine. Hence this ruling on the question of lack of jurisdiction.

This ruling will not be properly understood, and the issues cannot be appreciated in the absence of some background facts which I shall attempt to give immediately. The remote cause of the action is not relevant to the ruling.

On the 8th July, 1993, plaintiffs issued a writ of summons out of this Court, invoking its original jurisdiction and claiming various reliefs against the defendants. The plaintiffs are the Attorneys-General of their States, and claim to bring the action as representing their States, against the Federal Military Government and the other States named as Defendants. 5

On the same day they filed a motion on notice for an order pending the hearing and determination of the action against the Federal Military Government, whether by itself or any of its agencies, including the National Electoral Commission, restraining it from:- 10

"(i) making arrangements or permitting arrangements to be made for holding or purporting to hold any other election to the office of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993

(ii) dissolving or enacting the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate, the National Republic Convention and the Social Democratic Party. 15

(iii) annulling or enacting the annulment of the election of Governors to the various States within the Federal Republic of Nigeria, and 20

(iv) hand over in any manner whatsoever the executive powers of the Federation to any person or persons other than the person duly elected as the President of the Federal Republic of Nigeria in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13." 25

There was also a second prayer for accelerated hearing of the action.

It is pertinent to refer to the motion on Notice to the defendants brought by the plaintiffs dated the 16th July, 1993 seeking an order directing the trial of the six questions in addition to any other which the court may direct before any evidence is given or any question or issue of fact is tried. Now it is an important consideration in the determination of this preliminary objection to bear in mind that the Supreme Court is an appellate court. Its jurisdiction therefore must be ascertained only in the statute establishing it or any other enabling legislation. Hence, when Chief Umeadi's preliminary objection was founded on want of jurisdiction in the Court, it became necessary to consider the relevant provisions. 35

In his submission, on the 19th July, 1993, Chief Umeadi relied on the provisions of section 212 of the Constitution 1979 as amended by the Constitution (Suspension and Modification) Decree No.1 of 1984. Learned Counsel pointed out that by virtue of the modification of section 212 by the Constitution (Suspension and Modification) Decree No.1 of 1984, the Supreme Court no longer has original jurisdiction in any matter. He read aloud the relevant amendment and submitted that the amendment was in substitution of the original section 212 of the 1979 Constitution. He concluded his argument on this submission.

The Court adjourned to the next morning, i.e. Tuesday the 20th to enable Chief Williams reply to the submission.

Chief Williams S.A.N., opposing the application that this Court no longer had original jurisdiction, in any matter conceded that the argument was plausible and could allure the undiscerning group. This is because, as he conceded, the second schedule to Decree No.1 of 1984 repealed and re-enacted S. 212 of the Constitution 1979 and the express stipulation to substitute another S.212. In his submission which seems to me ingenious, even if not profound, he posed two questions, the in answers to which, he submitted, could be found the resolution of the issues. The questions are

(i) Whether it is correct to say that section 212 of the 1979 Constitution ceased to have effect because of the provision of the Constitution as amended by the Decree

(ii) Even if (i) is in the affirmative, is it correct to say or assume that the Supreme Court has no jurisdiction to entertain the action under the Constitution of Nigeria?

It would appear from the submissions of Chief Williams that the answers to the preliminary objection would be found in answers to the first question, if his submissions are accepted. If the answer to (i) is in the affirmative, the preliminary objection succeeds, and the original jurisdiction of the Court to longer exists. In answering the first question, Chief Williams submitted that the resolution of the issue lies in the proper interpretation of the provisions of section 212 of the Constitution 1979 as amended by the Constitution (Suspension and Modification) Decree No.1 of 1984 now. Cap 64 of Laws of Nigeria and S.1 (1) thereof. He submitted that reading the provision as a whole and not merely the particular sections, the inescapable conclu-

sion is that section 212 is not suspended. It was, as the provision says, modified. He referred to the expression "Subject to the provisions of this Act" and argued that it should be given its proper meaning. In construing the expression, he referred to the Decree No.1 of 1984, as the governing and the Constitution as the subordinate provision and submitted that where there is conflict it does not mean the subordinate provision must in such a circumstance be ignored. The better view, he went on, is so to construe the two provisions as to avoid conflicts.

Chief Williams referred to the Supreme Court Act, Cap.427, sections 17, 19, 20 to illustrate his contention that section 212 (1) and (2) of the Constitution 1979 are still operative in its original unamended state, and exists side by side with the amendment intended to be substituted for it by s.1(1) of Cap. 64.

It was finally submitted relying on *R v. Zik's Press* (1947) 12 WACA 202 and *Eastbourne Corporation v. Fortes Ice Cream Parlour* (1955) Ltd. (1959) 2 QB. 97, 107, that where there is a conflict or contradiction between the modification and the substantive provision, it should be read as if one is a qualification of the other. It was not the intention of the legislature to abrogate section 212. What was intended is its modification. Chief Williams referred to the meaning of modification in *Black's Law Dictionary*. He also referred to Decree No.17 of 1985 which did not include the modification of s.212 in its schedule.

In the alternative, Chief Williams referred to section 7 (3) of the Transition to Civil Rule (political Programme) Act, which enjoins all organs of Government and of all authorities, and persons to conform to and ensure the observance of the Political programme set out in the first to sixth schedules of the Act. It was submitted that the 1989 Constitution is based on the resolution of the Constituent Assembly, and the decision so reached is irreversible and cannot be altered by any Decrees by the Federal Military Government. It was submitted that section 331 of the Constitution of the Federal Republic of Nigeria (Promulgation) Act has provided that the provisions of the Constitution shall come into force on the 1st October, 1992. In accordance with this view this Court has jurisdiction.

In a brief, Chief Umeadi referred to s.2(1) of Decree No.1 of 1984 and submitted that the ultimate legislative and executive power

of the Federal Republic of Nigeria is still vested in the Federal Military Government. The 1979 Constitution was still in force and that this country does not operate two Constitutions. Chief Umeadi referred to Decree No. 56 of 1992 which has named 27th August, 1993 at the commencement date of the 1989 Constitution.

5 Finally, referring to section 212 of the 1979 Constitution as amended, he submitted that the manner or modification was by substitution. There is no ambiguity in the modification.

10 All the Attorneys-General, who are defendants associated themselves with the submissions of Chief Umeadi. The Attorney-General of Kogi State, Dr. S.S. Ameh, added in amplification that the provisions subject matter of construction are not equivocal, and must be given their ordinary plain meaning. He pointed out that the words are clear and express what the provision is all about. Jurisdiction can-
15 not be acquired by implication. Only the provisions of section 212 as modified, stands.

The subject matter of this ruling is a very short and narrow one. It is whether this court can exercise original jurisdiction? The action which is the subject matter of the preliminary objection in this
20 ruling has been brought before us seeking the exercise of the original jurisdiction of this court.

Short chronological background

25 It is helpful to give a short chronological account of the original jurisdiction of this Court. Section 212 of the Constitution 1979 has provided for the exercise of original jurisdiction of the Supreme Court, in respect of matters which come within sub-section (1) of that section. It provides as follows -

30 *"212(1) The Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a State or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence of a legal right depends.*

35 *(2) In addition to the jurisdiction conferred on it by sub-section (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly. Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."*

The recent decision of this Court in Attorney-General of Bendel

State & ors. v. Attorney-General of the Federation & 18 ors. (1983) 1 SCNLR 239 was a matter in respect of the dispute between the Federation and a State. The exercise of original jurisdiction, includes disputes as between States if and in so far as the 724 dispute involves any question whether of law or fact, on which the existence of a legal right depends, as in Attorney-General of Imo State v. Attorney-Gen- 5 eral of Rivers State (1983) 2 SCNLR 108.

Thus exclusive original jurisdiction in disputes between a State and the Federation or as between states involving any question as to the existence of a legal right was by the Constitution of 1979 vested 10 in the Supreme Court. This section is in pari materia with section 114 of the Constitution of the Federation No.2 of 1963.

This was the position until 31st December, 1984, when the Constitution (Suspension and Modification) Decree 1984 came into force. Section 1(1) (2) of this Decree, now Cap. 64 of the Laws of 15 Nigeria, 1990 provide as follows -

"(1) The provision of the Constitution of the Federal Republic of Nigeria 1979 mentioned in the First Schedule to this Act are hereby suspended.

(2) Subject to this and any other Act or Decree, made after the commencement of this Act, the provisions of the said Constitution which are not suspended by sub-section (1) of this section shall have effect subject to the modifications specified in the second Schedule to this Act." 20

The Second schedule dealt with particular modification of specific sections of the Constitution. 25

Section 212 of the Constitution 1979 was modified as follows:"

Section 212: 30

For sub-sections (1) and (2), there shall be substituted the following new section, that is:-

Original jurisdiction 212:-

'The Supreme Court shall have such original jurisdiction as may be conferred upon it by law: 35

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter"

The provision clearly refers to the future with the expression "shall have" and "may be conferred" It is obvious that the new section

has not conferred any original jurisdiction. This was the position when the present Military regime came into power on the 27th August, 1985 with the promulgation of the Constitution (Suspension and Modification) (Amendment) Decree No. 17 of 1985.

It is pertinent and important to mention that section (1) of this
5 Decree refers to the Constitution (Suspension and Modification) Decree No. 1 of 1984 as the principal Decree. By section 6, it further suspended, modified and amended the 1979 Constitution. The two decrees will for this purpose be read together.

10 Thus, although there was no reference to, suspension or modification of section 212 in Decree No.17 of 1985, this has been done in the principal Decree. Thus the modification of section 212 by the principal decree remains for the purpose of the subsidiary decree.

Consideration of the arguments:

15 I have set out the submissions of counsel in this ruling. Chief Umeadi, SAN, has contended that in the light of the Modification of the jurisdiction of the Supreme Court by the Constitution (Suspension and Modification) Act. Cap. 64, second schedule, and since law has subsequent thereto conferred jurisdiction on it, the Court has lost
20 its original jurisdiction under the 1979 Constitution.

Chief Williams holds a contrary view. He has submitted that the modification did not abrogate the existing original jurisdiction, under the Constitution 1979. I think this issue raises a simple question of statutory interpretation. Counsel has not suggested that there
25 are any words of art, or difficult expressions requiring special attention. The words are clear and completely free from ambiguity. They should therefore be accorded their ordinary plain meaning. See *Mobil v. FBIR.* (1977) 3 SC. 53, *Toriola v. Williams* (1982) 7 Sc. 27. I do
30 not think it is necessary to put glosses on them or to read into the words meanings which render them artificial.

Chief Williams is right in his submission that section 212 of the Constitution was not suspended. It is as the section clearly says, modified. The section now exists in its modified form. It is helpful, if not
35 conclusive, to rely on the words of the second schedule which says that for sub-sections (1) and (2), there shall be substituted the new section 212. Thus the new section 212 of the Constitution 1979 comes without sub-sections. Sub-sections (1) and (2) of the original section having yielded place to the new section. It is therefore an

alteration or modification by substitution. The expression "modification" has been defined to include alteration, omission or even repeal-See *Ogun State v. Federation* (1982) 1-2 SC. 13. There is no doubt that the new section 212 which omits sub-sections (1) and (2) is a modification of the original. I agree entirely with the submission of Chief Williams that there was no intention to abrogate the section. I hold that the section was not abrogated and still exists; but as against Chief William's submission it exists only in its modified form.

Chief Williams also submitted that the expression "subject to the provisions of this Act" in the provision should be given its proper meaning. He referred to the question of conflicts between the governing provision and the subordinate; and submitted that it did not mean that in case of conflict the subordinate should prevail. The expression "subject" to in an enactment has acquired a special meaning. The phrase implies that the provision is subordinate to the section to which it is subject to. - See *Obayuwana v. Governor* (1982) 12 SC. 147. With due respect to learned Counsel, the case before us is not one of conflicting provisions requiring interpretation. It is a case of substitution of a new section for the pre-existing section.

The issue of conflict does not arise. Hence the decision of the West African Court of Appeal in *R v. Zik's Press Ltd.* (1947) 12 WACA 202 and *Eastbourne Corporation v. Fartes Ice Cream Parlour Ltd.* (1959) 2 QB. 97, cited are clearly not applicable.

But even in cases of conflict, the governing principle is firmly established. It is that when the later of two general enactments is couched in negative terms, it is difficult to avoid the inference that the earlier is impliedly repealed by it. This is expressed in the Latin maxim of *Leges posteriores priores contrarias abrogant*. If two sections are repugnant, the known rule is that the last must prevail. - See *Governor of Kaduna State v. Kagoma* (1982) 6 SC. 87.

In the instant case even if it is not a case of substitution, the fact that it was expressed in negative terms and not stipulating any express jurisdiction and the fact that it is subsequent to the provision of the Constitution and is the provision of a decree, it clearly supersedes the constitutional provision. The superiority of decrees of the Federal Military Government has been settled by section 2 of the Revised Edition (Laws of the Federation of Nigeria) (Supplementary Provisions) Decree No.55 of 1992 which provides as follows -

"2. For the avoidance of doubt, if any law enacted before 31st December, 1983 including the Constitution of the Federal Republic of Nigeria 1979, is inconsistent with any Decree promulgated by the Federal Military Government, the Decree promulgated by the Federal Military Government shall prevail and that other law shall, to the extent of the inconsistency be void."

The fact that the modification does not prescribe the original jurisdiction of the Supreme Court, makes it inconsistent with that part of section 212(1) of the Constitution 1979 which prescribes such jurisdiction. The provision of the Constitution would have been void to the extent of the inconsistency. As I have pointed out this is a question of substitution thereby avoiding the existence of two inconsistent provisions.

I have not been able to appreciate the very interesting submission by Chief Williams that both the provisions of section 212 of the Constitution 1979, in its original form and its modification by Decree No.1 of 1984 co-exist. He claims to be justified in this construction by the provisions of sections 17, 19 and 20 of the Supreme Court Act.

I need hardly emphasize the fact, which has already been stated in this ruling, that the provisions of the Constitution 1979 which are inconsistent with the provisions of a Decree are void to the extent of such inconsistency - See section 2 Decree No.55 of 1992. There is therefore no juridical basis for the two to co-exist.

I must therefore on the above analysis of the section, subject matter of this ruling, answer the first question posed by Chief Williams in the affirmative. Chief Umeadi was therefore right in his submission that by the modification of section 212 of the Constitution 1979, this Court lost its original jurisdiction in the action filed by the plaintiff until such a time that any such jurisdiction is conferred on it by law.

I now turn to the second question whether it is correct to say or assume that the Supreme Court has no original jurisdiction under the Constitution of Nigeria.

Chief Williams in arguing this question appears to have adopted the unusual stratagem of relying on the 1989 Constitution. The Constitution was indicated to have come into force on the 1st October, 1992. It was therefore submitted, this court derives its jurisdiction under that Constitution. The act of promulgating the 1989 Constitu-

tion in consultation and consent of the Constituent Assembly was contended an irreversible act and therefore that Constitution came into force notwithstanding subsequent contrary Decree of the Federal Military Government. This is a novel and ingenious submission.

Chief Umeadi's reply was crisp, direct and conclusive. He submitted that the 1979 Constitution was still in force. The 1989 Constitution was not yet in force. He referred to Decree No.56 of 1992 which has made the 27th August, 1993, the commencement date of the 1989 Constitution.

I consider the reply of Chief Umeadi clearly conclusive as to whether the 1979 or the 1989 Constitution was applicable. There is hardly any doubt that the current and applicable Constitution is the 1979 Constitution, and the section 212 under consideration is in that Constitution. It is not conceivable, in fact absurd to argue that the 1989 Constitution is in operation despite all evidence to the contrary. The Federal Military Government in who is vested both the Legislative and Executive powers of the Constitution have the powers to promulgate Decree 56 of 1992 prescribing the commencement date of the 1989 Constitution.

The conclusion I have reached in this ruling is that by virtue of the modification of section 212 of the Constitution 1979, this Court no longer has original jurisdiction with respect to any matter whatsoever. Accordingly, this Court has no jurisdiction in respect of any of the claims brought before it by the Plaintiff.

The preliminary objection succeeds. The Plaintiff's action is therefore struck out. There shall be no order as to costs.

BELGORE JSC

This motion by the Attorneys-General of the plaintiffs' states on behalf of their states is against the Attorneys-General of the defendants' states, praying that the Federal Government of Nigeria by itself or by any of its agencies including the (National Electoral Commission) shall be restrained from:

"1(i) making arrangements or permitting arrangements to be made for holding or purporting to hold any other election to the office of the President and Vice President of the Federal Republic of Nigeria for installation as such in 1993;

(ii) *Dissolving or enacting the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention and the Social Democratic Party;*

(iii) *Annulling or enacting the annulment of the election of Governors to the various states within the Federal Republic of Nigeria,*
5 *and*

(iv) *Handing over in any manner whatsoever the executive power of the Federation to any person or persons other than the person duly elected as the President of the Federal Republic of Nigeria, in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13.*
10

2. *Further and in the alternative for an order of accelerated hearing of the action herein.*

3. *For such further and or other orders that this Honourable*
15 *Court may deem fit to make in the circumstances."*

This motion is sequence to the statement of claim whose concluding paragraph 20 avers as follows:

"20. *The Federal Military Government by its acts and declarations claim that it has the power to -*

(i) *...enact a law during the period referred to as 'the transition period Cap. 63 which can override or supersede the express provisions of section 1 of Cap. 63 and sections 129(b) and 130 of the Schedule thereto;*
20

(ii) *dissolve or enact the dissolution of all Local Governments, State Assemblies, the House of Representative, the Senate, the National Republican Convention or the Social Democratic Party; and*
25

(iii) *annul or enact the annulment of the election of Governors to the various states within the Federal Republic of Nigeria."*

30 WHEREUPON the plaintiffs claim as follows:

(1) A declaration that the legislative and executive powers exercisable by the Federal Military Government during the period referred to as 'the transition period' in the Constitution of the Federal Republic of Nigeria, 1990 are not capable of overriding or superseding the express provisions of Section 1 of the aforesaid Decree or
35 sections 129(b) and 130 of the Schedule thereto.

(2) A declaration that the repeal of the Transition to Civil Rule (Political Programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional

Provisions) Decree No. 13 of 1993 is null and void and of no legal consequence whatsoever.

(3) A declaration that the repeal of the Transition to Civil Rule (Political Programme) (Amendment No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13 of 1993, if valid, is incapable of invalidat- 5
ing or nullifying the election held on Saturday, 12th June, 1993.

(4) An order directing the Federal Military Government by itself or through its appropriate agency to complete the process of the Presidential election by announcing the result thereof and take such 10
further or other steps as may be necessary to complete the transition programme as laid down by law.

(5) An order of injunction restraining the Federal Military Government or any of its agencies (including the National Electoral Commission) from making arrangements or permitting arrangements to 15
be made for holding or purporting to hold any election to the office of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993.

(6) A declaration that the Federal Military Government has no executive or legislative power to dissolve or enact the dissolution of 20
all Local Government, State Assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annular enact the annulment of the election of Governors to the various states within the Federal Republic of 25
Nigeria.

(7) An order of injunction restraining the Federal Military Government and all its agencies and functionaries from-

(a) dissolving or enacting the dissolution of all Local Governments, State Assemblies, the House of Representatives, the Senate, 30
the National Republican Convention and the Social Democratic Party.

(b) annulling or enacting the annulment of the election of Governors to the various states within the Federal Republic of Nigeria.

(8) A declaration that only a democratically (sic) government consistent with the structure enshrined in the Constitution of the Federal Republic of Nigeria, 1989 can lawfully exercise the executive 35
powers of the Federation under the said Constitution as from 27th August, 1991.

(9) An order of injunction restraining the Federal Military Gov-

ernment, and all its functionaries and agents from handing over in any manner whatsoever the executive powers of the Federation to any person other than the person duly elected as the President of the Federal Republic of Nigeria in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13."

5 The questions to be answered by the Court were as a result of the above put as an appendix to a separate motion of 16th July, 1992 as follows:

"*SCHEDULE*

10 1. *Whether the legislative and executive powers exercisable by the Federal Military Government during the period referred to as 'the transition period' in the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, Cap.63 Laws of the Federation of Nigeria, 1990, enable it to make laws which are or which may become*
15 *inconsistent with the provisions of section 1 of the aforesaid Decree or sections 129(b) and 130 of the Schedule thereto.*

2. *Whether the repeal by the Federal Military Government of the Transition to Civil Rule (Political Programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provision) Decree No. 13 of 1993 is valid or*
20 *whether it is void and of no legal consequence whatsoever.*

3. *If the answer to Question 2 is in favour of the validity of the repeal of the aforesaid enactments, whether such repeal is capable of*
25 *invalidating or nullifying the Presidential election held on Saturday 12th June, 1993.*

4. *Whether the Presidential election held on 12th June, 1993 can be annulled or invalidated and a fresh presidential election held*
30 *otherwise than by order of the Presidential Election Tribunal established under section 21 of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13 of 1993.*

6. *Whether the Federal Military Government has executive or legislative powers to dissolve or enact the dissolution of all Local Governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annul or enact the annulment of the election of Governors to various states within the Federal Republic of Nigeria."*
35

The plaintiffs' claims were traversed by the first defendant and the other defendants abide by this statement of defence. However

there is a motion on notice filed on 16th July, 1993 by first defendant in the following terms:

".....for an order striking out this suit for lack of locus standi on the part of the part of plaintiffs to institute this -action and absence of jurisdiction of this court to entertain the same....."

At the hearing on 19th day of July, 1993, the court intimated the parties of the essence of considering the issue of jurisdiction first. The parties appeared to be oblivious of the provisions of Constitution (Suspension and Modification) Decree 1984 (No. 1 of 1984) in Section 1 thereof which reads:-

"1(1) The provisions of the Constitution of the Federal Republic of Nigeria, 1979 mentioned in Schedule 1 to this Decree are hereby suspended."

(2) Subject to this and any other Decree, the provisions of the said Constitution which are not suspended by subsection (1) above shall have effect subject to the modifications specified in Schedule 2 to this Decree".

Philip Umeadi, S.A.N. for the 1st Defendant and who obviously represents all other defendants with his stand argued that since the Decree No. 1 of 1984 aforementioned in Schedule 2 thereof modified section 212 of the 1979 Constitution, this Court no more has original jurisdiction in any matter except as provided by any other law and at any rate not in a criminal matter. Section 212 of 1979 Constitution states:

"212(1) The Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly.

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter".

The Decree No.1 of 1984 in the Schedule 2 thereof, part B says of section 212 of 1979 Constitution as quoted above:-

"For subsection (1) and (2) there shall be substituted the fol-

lowing new section:

Original jurisdiction:

'212. The Supreme Court shall have such original Jurisdiction (jurisdiction as may be conferred upon it by law):

*Provided that no original jurisdiction shall be conferred upon
5 the Supreme Court with respect to any criminal matter."*

The argument therefore is that this action cannot be heard by this court as there is no original jurisdiction conferred by any other law since Decree No.1 of 1984 was promulgated.

10 Chief F.R.A. Williams, S.A.N. for the plaintiffs made two propositions, to wit:

1. Is it correct that s.212 of 1979 Constitution is of no more effect as a result of the amendment?

2. Even if the answer to 1 is in the affirmative, is it correct to
15 say or assume that the Supreme Court has no original jurisdiction to entertain this action pursuant to its powers under the Constitution of Nigeria?

As Chief Williams seemed unhappy with the court trying to find an answer to issue of jurisdiction first, he was allowed to proceed
20 as he wished. The learned counsel urged the court not to shut their eyes and minds to the provisions of the Constitution and not to reduce any "portion of it to silence" (inverted comas mine). The Decree No.1 of 1984 in now Chapter 64 in the revised "Laws of the Federation of Nigeria, 1990". The contention is that the Section as con-
25 tained in the 1979 as section 212 was nominally modified and should be read together with the provisions in Cap. 64 second Schedule Part B where the section was modified. He concedes that the Constitution of 1989 is yet to come in force, but urged the court to look at
30 nominal provision and not the subordinate provision because there is no repeal but only modification. He referred to Supreme Court Act Cap. 424 Laws of The federation of Nigeria, 1990 in section 17 whereby the modification of s.212 of Constitution was not taken into
35 account as subsection of 1979 Constitution was referred to whereas that has been modified and that subsection is not current. This to my mind, is a conflict with the provisions of the Constitution and it is void to the extent of the inconsistency. The question to myself is whether there is conflict between the provisions of s.212 in its original form in 1979 Constitution and as it is now in Cap. 64. To my mind, despite

the draftsman's error in section 17 of Supreme Court Act (Cap. 424 Laws of 1990), there is no conflict. The intendment of the modification is clear and it is only when the provision of a statute is ambiguous that aid will be sought to find the correct meaning in interpreting it. There is nothing to save in s.212 (supra) as modified, because its words are clear and unambiguous. The case of *Rex v. Zik Press Ltd.* 5 (1947) 12 WACA 202 at 205 and that of *R. v. Bishop of Oxford* (1879) 4 QBD 261, seem considered in their peculiar background.

The two cases relate to the conflicts in statutory provisions, none of them was a matter of conflicts between an ordinary statute and the Constitution. The Constitution of Nigeria whether under civilian or military must be construed in its normal way i.e. to make it supreme. Whereas the Constitution was modified in respect of section 212 it is, as such binding and it is supreme to any other law except when the Military regime decides to further modify or even 15 suspend it. It is impossible, as Chief Williams proposes, to read s.212 (supra) as it existed in its original form with what it is now as modified. The entire s.212 of the 1979 Constitution was replaced with a new Section doing away with subsections except the proviso. In the light of this no other law in conflict with this section as modified will be valid, Supreme Court Act, section 17 (Cap. 424) does not confer jurisdiction but provides how jurisdiction under s.212 Constitution 1979 could be exercised and it must be remembered that s.212 including subsections thereof, has been modified. I cannot find any 25 way of reading together the section as originally in 1979 with how it is modified in Decree No.1 of 1984 which removed the entire section and replaced it with the new one. The principle of interpreting two sections of a statute which are irreconcilable is that latter section should be preferred as held *Eastbourne Corporation v. Fortes Ice Cream Parlour* (1955) Ltd (1959) 2 QBD 92, 107 cannot apply to this case at hand; the intendment of the Regime on section 212 of 1979 Constitution is clear and that is to modify it so that no original jurisdiction originally provided will exist. There can be a law at any time to confer 35 such jurisdiction but none has been passed.

The Decree No.17 of 1985, i.e. Constitution (Suspension and Modification) (Amendment) Decree was merely to amend the Decree No.1 of 1984 as a new regime took over reign of government. This Decree No.17 is to amend the Decree No.1 of 1984 (supra) and

modify it in some parts, and the modifications and amendments are in schedules 1,2 and 3 thereof. It is significant that section 212 of the Constitution of 1979 as modified in 1984 Decree No.1 has not been affected by any amendment, modification or suspension. The Constitution of the Federal Republic of Nigeria, 1989, unfortunately, has
5 not come into full operation especially s.230 thereof.

It is for the foregoing reasons that this Court lacks original jurisdiction and we cannot entertain this suit which is accordingly dismissed. There will be no order as to costs. The preliminary objection
10 succeeds.

OLATAWURA JSC

The plaintiffs in their statement of claim filed in this court on
15 8th July, 1993 claim as follows:

*"(1) A declaration that the legislative and executive powers exercisable by the Federal Military Government during the period referred to as 'the transition period' in the Constitution of the Federal
20 Republic of Nigeria (Promulgation) Decree, Cap.63 Laws of the Federal Republic of Nigeria, 1990 are riot capable of overriding or superseding the express provisions of section 1 of the aforesaid Decree or sections 129(b) and 130 of the Schedule thereto.*

*(2) A declaration that the repeal of the Transition to Civil Rule (political Programme) (Amendment) (No.3) Decree No.52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13 of 1993 is null and void and of no legal
25 consequence whatsoever.*

*(3) A declaration that the repeal of the Transition to Civil Rule (political Programme) (Amendment) (No.3) Decree No.52 Of 1992 and the Presidential Election (Basic Constitutional and Transitional
35 Provisions) Decree No.13 of 1993, if valid, is incapable of invalidating or nullifying the election held on Saturday 12th June, 1993.*

(4) An order directing the Federal Military Government by itself or through its appropriate agency to complete the process of the

Presidential election by announcing the result thereof and take such further or other steps as may be necessary to complete the transition programme as laid down by law.

(5) An order of injunction restraining the Federal Military Government or any of its agencies (including the National Electoral Commission) from making arrangements or permitting arrangements to be made for holding or purporting to hold any other election to the office of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993.

10

(6) A declaration that the Federal Military Government has no executive or legislative power to dissolve or enact the dissolution of all Local Governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annul or enact the annulment of the election of Governors to the various States within the Federal Republic of Nigeria.

(7) An order of injunction restraining the Federal Military Government and all its agencies and functionaries from-

(a) dissolving or enacting the dissolution of all Local Governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention and the Social Democratic Party; and

(b) annulling or enacting the annulment or the election of Governors to the various states within the Federal Republic of Nigeria.

30

(8) A declaration that only a democratically (supra) Government consistent with the structure enshrined in the Constitution of the Federal Republic of Nigeria, 1989 can lawfully exercise the executive powers of the Federation under the said Constitution as from 27th August, 1993.

35

(9) An order of injunction restraining the Federal Military Government, and all its functionaries and agents from handing over in any manner whatsoever the executive powers of the Federation to

any person other than the person duly elected as the President of the Federal Republic of Nigeria in accordance with the Presidential Election (basic Constitutional and Transitional Provisions) Decree No.13."

5 Filed along with the Statement of Claim is a motion on notice seeking the following orders -

10 *"1. Pending the hearing and determination of the action herein, the Federal Military Government whether by itself or any of its agencies (including the National Electoral Commission) shall be restrained from -*

15 *(i) making arrangements or permitting arrangements to be made for holding or purporting to hold any other election to the office of the President and Vice-President of the Federal Republic of Nigeria for installation as such in 1993.*

20 *(ii) dissolving or enacting the dissolution of all Local Governments, State Assemblies, the House of Representatives, the Senate, the National Republican Convention and the Social Democratic Party;*

(iii) Annulling or enacting the annulment of the election of Governors to the various States within Federal Republic of Nigeria; and

25 *(iv) handing over in any manner whatsoever the executive powers of the Federation to any person or persons other than the person duly elected as the President of the Federal Republic of Nigeria, in accordance with the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.13.*

30

2. Further and in the alternative for an order of accelerated hearing of the action herein.

35 *3. For such further and or other orders that this Honourable Court may deem fit to make in the circumstances."*

The defendants filed a counter-affidavit to the motion the substance of which is that the court "lacks the jurisdiction to grant any of

the reliefs sought". The defendants on their own part filed a motion on notice praying the court for an order: "striking out this suit for lack of locus standi on the part of the plaintiffs to institute this action and absence of jurisdiction of this court to entertain the same....."

The objection is based on certain grounds some of which are not relevant to the determination of this ruling, but suffice it to say that the material ones are (h) and (k) which read as follows:

"(h) The Court has no jurisdiction to question the reasons or motives or the validity of Decrees of the Federal Military Government under Decree No.1 of 1984.

(k) The 1989 Constitution is not operative yet and the plaintiffs cannot claim any security of tenure thereunder, if any".

Since the issue of jurisdiction is crucial and fundamental, we called on Chief Umeadi, S.A.N. to raise his objection. It is when the court has jurisdiction that we can consider any other issue: Onyeama & Ors. v. Oputa & Ors. (1987) 3 NWLR (Pt.60) 259; (1987) 2 N.S.C.C. 900.

In his submission in support of his objection to the issue of jurisdiction, Chief Umeadi, S.A.N. submitted that the Constitution which is in force is the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter referred to as the 1979 Constitution). Learned Senior Advocate referred to section 212 of the 1979 Constitution and section 1 of the Constitution (Suspension and Modification) Decree 1984 and that s.212 of the 1979 Constitution has been modified and consequently no law confers original jurisdiction on this court after the Modification by Decree No.1 of 1984 which is now Cap.64 - Laws of the Federation of Nigeria, 1990.

In his reply to the objection on jurisdiction, Chief F.R.A. Williams, S.A.N. referred to section 212 of the 1979 Constitution, Cap.64 Laws of the Federation of Nigeria which is on Constitution (Suspension and Modification) Act, and Decree 55/1992. After referring to the Second Schedule to Decree No.1 of 1984, learned Senior Advocate posed two questions for determination to wit:

1. Is it correct to say that s.212 of the 1979 Constitution ceased

to have effect as a result of the provision contained in the 1979 Constitution as amended by the decree?

2. Even if the answer to 1 is in the affirmative, is it correct to say or assume that the Supreme Court has no original jurisdiction to entertain this action pursuant to its powers under the Constitution of Nigeria?

On the Constitution (Suspension and Modification) Act Cap.64, learned Senior Advocate referred to two separate and distinct provisions in the Decree.

These are:

Section 212 of the 1979 Constitution shall have effect subject to the modifications specified in the Second Schedule. Supreme Court shall have original jurisdiction as may be conferred on it by law.

Learned Counsel then conceded that there is something to say in favour of the view that the provision contained in the Second Schedule of the repealed and re-enacted s.212 of the 1979 Constitution. It is his further submission that in construing any instrument or document, it is necessary to look at the entire document. Returning to section 1 of Cap.64, it is the submission of Chief Williams, S.A.N. that section 212 of the 1979 Constitution is not suspended; he again asked: What is the meaning of "subject to" in the provision of the Act? According to Chief Williams, S.A.N. this means there is a governing provision and a subordinate provision and that where there is a clash between the two, the governing provision shall prevail and that it does not mean that the subordinate provision is abrogated. It is his further contention that there is no clash between the two, that is, the governing provision and the subordinate provision; section 212 of the 1979 Constitution is neither suspended nor repealed. The word "law" i.e. with letter "l" not in capital means any law whether by Decree or any law. Learned Counsel then referred to Supreme Court Act 1960 Cap. 424, Laws of the Federation 1990 to show that subsections 212(1) and (2) of the 1979 Constitution have not been abrogated or repealed.

Learned Counsel referred to the case of *Rex v. Zik's Press Ltd.* (1947) 12 W.A.C.A. 202 at 205; 206 to illustrate what the court should do where there is conflict or contradiction. Since the court does not favour an implied repeal of a statute the court must not say

there is an implied repeal of the statute: *Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd.* (1959) 2 Q.B. 92/107. He further submitted that it could not have been the intention of the legislature to abrogate section 212 of the 1979 Constitution. Learned Counsel then referred to Decree No.17/1985 - Constitution (Suspension and Modification) Amendment Decree 1985 and its schedule to show that section 212 of the 1979 Constitution is not modified as this regards Decree No.1/1984 as the principal law. 5

With regard to the action instituted by the plaintiffs, Chief Williams, S.A.N. pointed out whether the Federal Military Government still retains the power to amend the Constitution enacted by the Constituent Assembly after the enactment of Transition to Civil Rule Political Programme, Cap.443 Laws of the Federation 1990. He pointed out that the operative date of the 1989 Constitution was 1/10/92. The plaintiffs' case is based on the Decree, and then submitted that if they were right the source of jurisdiction will be based on the 1989 Constitution. 10 15

In his reply Chief Umeadi, S.A.N. disagreed with the submission that the 1979 Constitution is a dead law. The country does not have simultaneously two constitutions: the 1979 Constitution and the 1989 Constitution. As far as the Military regime is concerned no law is irreversible. He referred to Decree No.56/1992 which fixes the commencement date of 1989 Constitution as 27th August, 1993. He referred to s.2(1) of Decree No. 1/1984 and places emphasis on any matter whatsoever. He pointed out that section 212 of the 1979 Constitution has only two sub-sections: (1) and (2) and that it contains no ambiguity. 20 25

The learned Attorney-General of Kogi State pointed out that jurisdiction is expressly conferred and not by implication and that it is only s.212 of the 1979 Constitution as modified that confers original jurisdiction on this court. 30

The above is summary of the submissions made before us.

Where a court has no jurisdiction to entertain any claim, anything done in respect of the claim will be an exercise in futility. In *Madukolu & Ors. v. Nkemdilim* (1962) 2 SCNLR 342; (1962) N.S.C.C. 374, it was held that before a court can claim jurisdiction in respect of any matter it must: 35

(a) be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(b) the subject-matter of the case is within its jurisdiction, and
 5 there is no feature in the case which prevents the court from exercising its jurisdiction; and

(c) the case comes by due process of law, and upon fulfillment
 10 of any condition precedent to the exercise of jurisdiction.

Once there is a defect in competence, it is fatal as the proceedings are a nullity. See also: *Ojo Ajao & Ors. v. Popoola Alao & Ors* (1986) 5 NWLR (Pt.45) 802; (1986) N.S.C.C. (vol.17) (pt.11) 1327.

It is the contention of Chief Williams, S.A.N. that the constitution
 15 tion that confers original jurisdiction on this court is the Constitution of the Federal Republic of Nigeria, 1989 (hereinafter referred to as the 1989 Constitution).

According to Chief Williams, this Constitution came into force on 1st October, 1992. This in my view overlooks the Amendment in
 20 the Constitution of the Federal Republic of Nigeria (promulgation) (Amendment) No.2, Decree No.56 of 1992 which has amended the former commencement date of 2nd January, 1993. With this Amendment no section under the 1989 Constitution can be relied upon
 25 until the Constitution comes into effect on 27th August, 1993. I therefore hold that the effective and only Constitution in force is the 1979 Constitution. This takes me to the original provision of section 212 of the 1979 Constitution. I say original provision in view of Decree No.1 of 1984 now Cap.64 Laws of the Federation of Nigeria, section 212
 30 of the 1979 Constitution provides:

*"212(1) The Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence
 35 or extent of a legal right depends.*

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly: Provided that no original jurisdiction shall be conferred

upon the Supreme Court with respect to any criminal matter."

Before the amendment or suspension of this section, the original jurisdiction of the Supreme Court was invoked in the case of Attorney-General Of Bendel State v. Attorney-General of the Federation And 18 Ors. (1983) N.S.C.C. 181. Judgment of this court⁵ was delivered on 3rd June, 1983.

This provision of section 212 of the 1979 Constitution and in fact all the entire provisions of the 1979 Constitution were in force until the Army took over the administration of the country on 31st December, 1983. It was as a result of the take-over that Decree No.1¹⁰ of 1984 was promulgated. The commencement date was 31st December, 1983. Section I of this Decree, reads:

"1(1) The provisions of the Constitution of the Federal Republic of Nigeria, 1979 mentioned in Schedule 1 to this Decree are hereby¹⁵ suspended.

(2) Subject to this and any other Decree, the provisions of the said Constitution which are not suspended by sub-section (1) above shall have effect subject to the modifications specified in Schedule 2²⁰ to this Decree."

Under Schedule 2 B - Additional Modification of Particular Provisions - is section 212 which had earlier dealt with the original jurisdiction of the Supreme Court. The modification of that section reads:

"212. For sub-sections (1) and (2) there shall be substituted²⁵ the following new section, that is-

"Original Jurisdiction:

212. The Supreme Court shall have such original jurisdiction as may be conferred upon it by law:

'Provided that no original jurisdiction shall be conferred upon³⁰ the Supreme Court with respect to any criminal matter."

This now takes me to the 1st question posed by Chief Williams, which for ease of reference I will repeat again:

"Is it correct to say that s.212 of the 1979 Constitution ceased³⁵ to have effect as a result of the provision contained in the 1979 Constitution as amended by Decree?"

Unfortunately Chief Williams, S.A.N. did not specify the particular Decree, but in my opinion, the Decree or if one can say so the first Decree that amends section 212 of the 1979 Constitution is De-

cree No.1 of 1984. If a section of any law is suspended, the rights and privileges under that section can no longer be invoked until the section suspended is restored by a subsequent legislation. Until it is restored, it has the same effect as if repealed completely. That suspension obliterates that section for the duration of the suspension. The rights, obligation and liability under the suspended section are extinguished. I take it to be an established rule that so long as the suspension is in force, that Section is deemed not to have been passed by the legislature. Suspension of a right in a law and enforcement of that right cannot co-exist. When section 1 of Decree No. 1 of 1984 suspended sub-sections 1 and 2, this court will not have original jurisdiction until one is conferred by law. This court can only act in accordance with the powers and jurisdiction conferred by the Constitution. We draw our strength of authority from the Constitution. It is for this reason that our jurisdiction must be jealously guarded and preserved. Infraction of any section of the Constitution in force is void. The Courts should be, and in fact are the pillars of the Constitution. Those who sit in our courts must enjoy the general respect of the citizens. We cannot operate legally outside the provision of the Constitution. It appears to me that the language and the message conveyed under section 212 of the 1979 Constitution as a result of the modification of that section are clear and precise. I am bound to give effect to that section as modified. While it is true, as contended by Chief Williams, S.A.N. that section 212 of the 1979 Constitution is not repealed, it will amount to straining the law to say that despite the provision of section 1(2) of the Constitution (Suspension and Modification) Decree 1984, that this court still has original jurisdiction. I must point out again' the superiority of Decrees over the 1979 Constitution. Under Decree No.55 of 1992 - Revised Edition (Laws of the Federation of Nigeria) (Supplementary Provisions) Decree- section 2 of this Decree leaves me in no doubt that Decree No.1 of 1984 has taken away the original jurisdiction of this court. Section 2 of Decree No.55 of 1992 provides:

"For the avoidance of doubt, if any law enacted before 31st December, 1983, including the Constitution of the Federal Republic of Nigeria, 1979, is inconsistent with any decree promulgated by the Federal Military Government, the Decree promulgated by the Federal Military Government shall prevail and that other law shall, to the

extent of the inconsistency be void."

It appears to me that since no provision for original jurisdiction is contained in s.212 of the 1979 Constitution as contained in the Second Schedule, this Court has no original jurisdiction. I will therefore answer question No.1 posed by Chief Williams in the affirmative.

It is assumed, as far as the Constitution of Nigeria mentioned in question No.2, is concerned that the Constitution will be the 1979 Constitution as the 1989 Constitution has not yet come into force. Our powers with regard to original jurisdiction are under section 212 of the 1979 Constitution, but which powers have been modified as a result of the suspension in section 1(1) of Decree No.1 of 1984. So far no law has conferred original jurisdiction on this court. Chief Williams, SAN has sought to justify his contention that sub-sections (1) and (2) of section 212 of the 1979 Constitution have not been abrogated in view of the Supreme Court Act of 1960 Cap.424. Sections 17-20 of Cap.424 deal with original jurisdiction conferred by sections 212(1) "of the Constitution". In view of my earlier conclusion that the 1989 Constitution shall come into force on 27th August, 1993, there can be only one Constitution in force and which is the 1979 Constitution.

Consequently Decree No.1 of 1984 will still prevail. I cannot see any conflict between the clear and unambiguous provision of Decree No.1 of 1984 and section 212 of the 1979 Constitution as in force as at 31st December, 1983, hence the case of *Rex v. Zik's Press Ltd.* (supra) does not apply here as there is neither conflict nor contradiction between the Decree and the 1979 Constitution.

It is in the light of the above reasons that the objection raised by the 1st Defendant on the issue of original jurisdiction is sustained. Consequently this Court has no jurisdiction in the matter and the case is hereby struck out. No order as to costs.

OGUNDARE JSC

On 8th July, 1993 the plaintiffs above filed in this court a writ of summons and a statement of claim whereby they claim from the defendants various declarations, orders and injunctions. It is unnecessary for me to set out in this ruling these claims. Contemporane-

ously with the filing of their Writ and Statement of claim, they also filed a motion on notice for an injunction restraining the Federal Military Government from doing certain things therein mentioned, pending the determination of the suit. The 1st defendant after entering a conditional appearance filed in court a motion on notice praying for
5 an order "striking out this suit for lack of locus standi on the part of the plaintiffs to institute this action and absence of jurisdiction of this court to entertain the same" I need mention that some of the other defendants also entered conditional appearance.

10 Both the plaintiffs' motion for injunction and the 1st defendant's motion to strike out came up for hearing before us on Monday 19th July and Tuesday 20th July. We decided that because of the importance of the court's jurisdiction to adjudication we would hear first arguments from counsel to the parties on the issue of absence of
15 jurisdiction of this court raised in 1st defendant's motion. Learned leading counsel for the 1st defendant and the plaintiffs and some of the learned State Attorneys-General (who are defendants) addressed us on this issue of absence of jurisdiction.

20 Chief Umeadi, S.A.N learned leading counsel for the 1st defendant, in a rather short address, submitted that it was the 1979 Constitution that applied to determine the court's jurisdiction and not the 1989 Constitution which had not yet come into force. Learned Senior Advocate submitted that under Section 212 of the Constitu-
25 tion of the Federation, 1979 as amended by Decree No. 1 of 1984, this court would have no jurisdiction to entertain this action. He observed that since 1984 no law has been enacted conferring original jurisdiction on the Supreme Court.

30 The Attorneys-General of Adamawa, Bauchi, Enugu, Kogi, Kano, Rivers, Sokoto and Kebbi States present at the hearing associated themselves with the submissions of Chief Umeadi.

Chief Williams, S.A.N. learned leading counsel for the plaintiffs observed that Decree No. 1 of 1984 entitled Constitution (Suspension and Modification) Decree, 1984 is now entitled Constitution (Sus-
35 pension and Modification) Act Cap. 64, Laws of the Federation of Nigeria, 1990. Learned Senior Advocate further observed, and correctly too] dare say, that the legislation remains a Decree by virtue of Decree No. 55 of 1992 entitled Revised Edition (Laws of the Federation of Nigeria) (Supplementary Provisions) Decree 1992. Chief

Williams posed two questions which, according to learned counsel, arose from Chief Umeadi's submissions, that is to say:

(1) Is it correct to say that Section 212 of the 1979 Constitution ceased to have effect as a result of the provision contained in the 1979 Constitution as amended? and

(2) Even if the answer to question (1) is in the affirmative, is it correct to say or assume that the Supreme Court has no original jurisdiction to entertain this action, pursuant to its powers under the Constitution of Nigeria?

Chief Williams contended that the 2nd question posed by him raised an issue that formed one of the issues to be determined on plaintiffs' claims and, therefore, urged the court to defer the determination of the issue of jurisdiction until the whole case is gone into.

On Question (1) learned Senior Advocate conceded that there was something to say in favour of the view that the provisions relating to section 212 contained in the Second Schedule to Decree No. 1 of 1984 repealed and re-enacted Section 212 of the 1979 Constitution because there was a provision in that Schedule which expressly stipulated that "what it says shall be substituted for what is in the Constitution." He however, submitted that in construing a document, such as a statute, it is necessary to look into the entire document so as not to reduce what was being construed into silence.

Learned counsel observed that subsection (1) of Section 1 of Decree No. 1 of 1984 suspended some sections of the 1979 Constitution while subsection (2) thereof modified some other sections of the Constitution. Chief Williams then submitted that the expression "subject to" as appearing in subsection (2) implied that there were a governing provision and a subordinate provision and where there was a clash between the two, the governing provision would prevail and the subordinate provision would be ignored. Learned counsel argued further that such a clash did not mean that such a subordinate provision was abrogated or repealed but that it should be applied when there was no clash. He then submitted that section 212 of the Constitution still subsisted and referred to sections 17, 19 and 20 of the Supreme Court Act (Cap.424) to buttress his submission. He also submitted that subsections (1) and (2) of Section 212 of the 1979 Constitution had not been repealed, abrogated or erased from the statute books. Learned Senior Advocate submitted that there was

contradiction between section 1 (2) of Decree No. 1 of 1984 and its Second Schedule. He cited *Rex v. Zik's Press Ltd.* (1947) 12 WACA 202, 205-206 to show how such contradiction was to be resolved. He also submitted that the court ought not to say that there had been an implied repeal and urged the court to read Section 212 of the 1979 Constitution and Second Schedule to Decree No.1 of 1984 together. He cited *Eastbourne Corporation v. Fortes lee Cream Parlour* (1955) Ltd. (1959) 2 QB 92, 107. Learned counsel further submitted that it was not the intention of the legislature to abrogate Section 212 of the Constitution because Decree No.1 of 1984 speaks of "modification" and referred to the definition of that word in Black's Law Dictionary. He referred to Decree No.17 of 1985 entitled Constitution (Suspension and Modification) Decree (Now Act), 1985 and observed that it did not affect Section 212 of the 1979 Constitution. Finally, on Question 1, Chief Williams urged the court not to treat Section 212 as having been repealed or abrogated and submitted that it was still in force.

On Question (2) Learned Senior Advocate observed that plaintiffs' action had raised the issue whether after the enactment of the Transition to Civil Rule (Political Programme) Decree (now Act), Cap.443 particularly Section 7(3) thereof the Federal Military Government retained the power to amend the Constitution which was introduced and enacted by the Constituent Assembly in accordance with the Act. Referring to Section 333(1) of the 1989 Constitution, Cap. 63 which made 1st October 1992, the effective date of the coming into force of the said Constitution, Chief Williams argued that the 1989 Constitution had come into force and was now the source of this court's jurisdiction. He then submitted that the plaintiffs should be heard before the issue of jurisdiction is determined.

Chief Umeadi, in reply, submitted that the 1979 Constitution was not a dead law and contended that the country could not operate both the 1979 and 1989 Constitutions at the same time. It is learned counsel's view that with a military regime, no law was irreversible and referred to Section 2(1) of Decree No.1 of 1984 as to the extent of the legislative powers of the Federal Military Government. He submitted that Decree No. 56 of 1992 entitled Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) (No.2) Decree, 1992 had fixed 27th August, 1993 as the new com-

mencement date of the 1989 Constitution. Learned Senior Advocate maintained that the Second Schedule to Decree No.1 of 1984 had modified Section 212 of the 1979 Constitution. He finally submitted that there was no ambiguity in respect of Section 212 as modified.

5

Let me begin by saying that the request by Chief Williams that the resolution of the question of the court's jurisdiction be deferred until the plaintiffs have been heard on their claims cannot, in my respectful view, be acceded to. Jurisdiction is the authority a court has to decide matters before it or take cognizance of matters presented in a formal way for its decision and where a court exercises a jurisdiction which it does not possess, its decision amounts to nothing. And it is a fundamental principle of law that it is the claim of the plaintiff which determines the jurisdiction of a court. Where it is raised by way of preliminary objection either by motion or in the pleadings it has to be determined before anything else. As Elias C.J.N. put it in *Kalia v. Daniel Kalio* (1975) 2 S.C. 15,22:-

"While we are anxious to determine the issues in controversy between the parties as definitively as possible, we regard it as our duty not to allow ourselves to be drawn into assuming jurisdiction over a chieftaincy matter which may fall to be decided by the competent authority (clearly NOT this court) when plaintiff for any reason ceases to be the chief. The question whether plaintiff or any of the defendants is eligible for the chieftaincy does not seem to us to be the one immediately in issue in this appeal."

Similarly, Aniagolu, J.S.C. observed in *Edun v. Odan Community* (1980) 11 S.C. 103,124:-

"...this court must be sure that it is properly seized of a matter before embarking upon its determination. The court is an appellate court whose foundations are firmly laid in the Constitution and barring the provision in the Constitution giving it original jurisdiction in certain specified matters (see s.212), it has no original jurisdiction.

I am aware that in some cases the court may need some evidence before examining or determining the issue of jurisdiction - see: *Adeyemi v. Opeyori* (1976) 9-10 S.C. 31; *Aburime v. The Secretary, Assemblies of God Mission & Anor.* (1952) 14 WACA 185 cited in *Adeyemi v. Opeyori*; *Barclays Bank v. Central Bank* (1976) 6 S.C.

175. But the case on hand does not fall within such category of cases in that all materials necessary to determine whether or not this court has jurisdiction are before us.

In considering the submissions of learned counsel for the parties, it is necessary for me to set out at the beginning the important
5 legislations that feature prominently in this case. Section 212 of the 1979 Constitution:-

*"(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between states if and in so far as that dispute
10 involves any question (whether of law or fact) on which the existence or extent of a legal right depends.*

*(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original
15 jurisdiction as may be conferred upon it by any Act of the National Assembly. Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter."*

Section 1 of Decree No.1 of /984 (now Act) Cap. 64:-

*"(1) The provisions of the Constitution of the Federal Republic
20 of Nigeria 1979 mentioned in the First Schedule to this Act are hereby suspended.*

*(2) Subject to this and any other Act or Decree, made after the commencement of this Act, the provisions of the said Constitution which are not suspended by subsection (1) of this section shall have
25 effect subject to the modifications specified in the Second Schedule to this Act."*

Relevant part of the Second Schedule to Decree No.1 of 1984:"
Section 212

30 For subsections (1) and (2), there shall be substituted the following new section, that is:-

212. The Supreme Court shall have such original jurisdiction as may be conferred upon it by law:

Provided that no original jurisdiction shall be conferred upon
35 the Supreme Court with respect to any criminal matter."

It is not in dispute that the plaintiffs, by their action, seek to invoke the original, as distinct from the appellate, jurisdiction of this court. For paragraphs 1-3 of their Statement of Claim read:-

"1. Each of the plaintiffs herein is the Attorney-General of the

State by which he is described and each of them bring this action as representative of the Government of that state including the Legislature and the Executive thereof.

2. The 1st defendant who is the Attorney-General of the Federation is sued as the representative of the Federal Military Government including the Legislature and the Executive of the said Govern- 5 ment.

3. Each of the 2nd to the 17th defendants is the Attorney-General of the State by which he is described and each of them is sued as the representative of that state including the Legislature and 10 the Executive thereof."

It is thus an action by some states in the Federation against the Government of the Federation and the other states which are not among the plaintiffs. It is not in dispute also that before 31st December, 1983, this court would have original jurisdiction to determine 15 any dispute between the Federation and a State or between states. Section 212 of the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter is referred to, simply as the 1979 Constitution), in its original form gave this court that jurisdiction. On 31st December, 1983, the Nation's Armed Forces once again intervened in the political order of this country and assumed the Legislative and Executive Powers of the Federation and its constituent states as they once did in January 1966. They promulgated the Constitution (Suspension and Modification) Decree, No. 1 of 1984 (it shall hereinafter be referred 20 to simply as Cap. 64). Subsection (1) of Section I thereof suspended some sections of the 1979 Constitution while subsection (2) of that section modified some other sections of the Constitution. Section 212 is one of such sections that were modified. All these facts seem not to be in dispute. The validity of the modification is not being contested 25 either. What, in my humble view, appears to be in dispute is the effect on section 212 of the Constitution of the modification made to it by Cap. 64.

The defendants contend that section 212 of the 1979 Constitution in its original form, which gave this court original jurisdiction to 35 decide disputes between the Federation and a State (or states) or between states inter se, is dead. And as no law has been made to confer original jurisdiction on the court in similar circumstances as before, this court would have no original jurisdiction under the modi-

fied Section 212 to determine the suit now brought before it by the plaintiffs.

The plaintiffs, on the other hand, contend that as the original section 212 was neither repealed nor abrogated, it remains on the Statute books and must be read along with the modified section 212
5 and be given effect to confer original jurisdiction on this court in the circumstances of the case before us where there is no contradiction between it and its modified form. I shall deal later with the alternative argument of the plaintiffs.

10 I have given careful consideration to the submissions made before us by learned leading counsel for the plaintiffs and the 1st defendant, particularly the two authorities we were referred to by Chief Williams. Subsection (2) of section 1 of Cap. 64 provides for the modification of some sections of the 1979 Constitution of which-
15 section 212 was one. In my respectful view, a modification of the provision of a statute can be achieved by an extension as well as by a narrowing, of that provision. See *Stevens v. General Steam Navigation Company* (1903) 1 KB 890. A close look at section 212 in its original form and in its modified form will reveal that the latter is in
20 fact a narrowing of the former. Indeed, all that the modification has achieved is to repeal or abrogate subsection (1) because the section in its modified form, is a re-enactment of subsection (2) with the deletion of the words "in addition to the jurisdiction conferred upon it by subsection (1) of this section," appearing in lines 1 & 2 thereof
25 and substitution of the word "law" for the words "Act of the National Assembly." Considering the true nature, pith and character of Cap. 64 the intention is clear that the Military Administration, in modifying section 212 of the Constitution in the manner it did, had no intention
30 whatsoever of allowing disputes between the Federation and a state or between states inter se to be subject of litigation in the Supreme Court. And this is understandable. The Military with its command structure would not imagine a situation where a component part would be seen to be quarreling with the apex or another component
35 in a law court; this is something it would rather settle in its own way. The West African Court of Appeal in *Rex v. Zik's Press Ltd.* (supra) at page 206 observed:-

"It is, therefore, the urgent duty of this court to attempt without violence to the language used by the legislature, to give effect to

the intention of the enactment both in respect of sections 77 and 275 and of section 340(2)(b), whether by discovery that the apparent conflict does not really exist upon closer examination, or by modification of the language of the earlier sections, or by the application of that 'cardinal principle' enunciated by Lord Justice James in *Ebbs v. Boulnois* (1875) 10Ch. App. 479; 44 L.J. Ch. 691 in the following terms:

'If there are two inconsistent enactment it must be seen if one cannot be read as a qualification of the other.' "

I can see no conflict between section 212 in its original and in its modified form.

Be the above as it may, the word "modification" as defined in section 274(4)(c) of the 1979 Constitution includes "addition, alteration, omission or repeal." Although this definition is for the purpose of section 274, I am of the firm view that it applies equally to the context in which the word "modify" is used in Cap. 64. By the modification carried out in the Second Schedule to Cap. 64 section 212(1) of the 1979 Constitution was repealed and the opening clause of subsection as well as the words "any Act of the National Assembly" was omitted.

With profound respect to Chief Williams, to give to section 212 the interpretation being urged on us is to create absurdity for I cannot see how section 212 in its original form could stand side-by-side with its modified form; one has to give way for the other. The intention is clear, in my view, that subsection (1) of section 212 has been done away with. As Lord Evershed, M.R. put it in

Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd. (supra) at page 107:-

"The first duty of the court must be, if the result is fairly possible, to give effect to the whole expression of the parliamentary intention. In the present case, for reasons already given I do not think the repugnancy, upon a true analysis, arises."

I cannot see that the situation arises that section 212 in its original form still exists. Having been modified it is the new section 212 as contained in the Second Schedule to Cap. 64 that prevails. As no law has been enacted since the modification conferring original jurisdiction on this court to adjudicate in a dispute between the Federation and States or between states, I must hold, and I do so hold, that this

court has no original jurisdiction to entertain the suit now before us. Perhaps I may end this part of this ruling in the words of Obaseki, J.S.C in *Mandara v. Attorney-General Federation* (1984) 1 SCNLR 311, 342; (1984) NSCC 221, 239 where he observed:-

5 *"Jurisdiction is never conferred in obscurity. The language of the law must be clear and positive and I find this to be in all our laws including all the previous constitutions of this country. Jurisdiction is a power clearly visible to all beholders of Constitution and the law that confers it. Microscopic eyes are not required in order to unearth it."*

10 As regards the submissions of Chief Williams on Question 2 posed by him, my simple answer is that as the 1989 Constitution is a Schedule to a Decree, it can be amended as any other law or Decree can be so amended. Section 331, which provides for the date of the coming into force of the constitution has now twice been amended,
15 the second amendment having been effected by Section 1 of the Constitution of the Federal Republic of Nigeria (promulgation) (Amendment) (No.2) Decree No.56 of 1992; the section reads:-

20 *"1. The Constitution of the Federal Republic of Nigeria (promulgation) Act, as amended, is hereby further amended by substituting for the commencement date '2nd January, 1993' wherever it occurs in the Act a new commencement date '27th August, 1993'."*

With this provision in mind and having regard to the position on the ground as to the governance of the country, I find myself
25 unable to hold that the 1989 Constitution is already in force.

The conclusion I reach is that this court derives its jurisdiction from the 1979 Constitution as modified by Cap. 64. And as there is no law in force conferring original jurisdiction on it to entertain plaintiffs' suit, I hold that this court has no jurisdiction to entertain the suit
30 which is accordingly struck out by me.

I abide by the order as to costs in the ruling of my Lord the Chief Justice of Nigeria.

This ruling arose from a preliminary objection filed by the learned counsel for the 1st defendant praying the court to strike out the plaintiffs' suit for the absence of jurisdiction on the part of this court to entertain the same.

Fourteen plaintiffs, namely the Attorneys-General of Anambra, Benue, Borno, Delta, Edo, Jigawa, Kwara, Ogun, Ondo, Osun, Oyo, Plateau, Taraba and Yobe States of the Federation of Nigeria brought an action against the Attorney-General of the Federation of Nigeria, the Attorneys-General of Abia, Adamawa, Akwa Ibom, Bauchi, Cross River, Enugu, Imo, Kaduna, Kano, Katsina, Kebbi, Kogi, Niger, Lagos, Rivers and Sokoto States of the Federation of Nigeria claiming the following reliefs:-

"(1) A declaration that the legislative and executive powers exercisable by the Federal Military Government during the period referred to as 'the transition period' in the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, Cap. 63 Laws of the Federal Republic of Nigeria, 1990 are not capable of overriding or superceding the express provisions of Section 1 of the aforesaid Decree or Sections 129(b) and 130 of the Schedule thereto.

(2) A declaration that the repeal of the Transition to Civil Rule (political Programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13 of 1993 is null and void and of no legal consequence whatsoever.

(3) A declaration that the repeal of the Transition to Civil Rule (Political Programme) (Amendment) (No.3) Decree No. 52 of 1992 and the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13 of 1993, if valid, is incapable of invalidating or nullifying the election held on Saturday 12th June, 1993.

(4) An order directing the Federal Military Government by itself or through its appropriate agency to complete the process of the Presidential Election by announcing the result thereof and take such further or other steps as may be necessary to complete the transition programme as laid down by law.

(5) An order of injunction restraining the Federal Military Government or any of its agencies (including the National Electoral Commission) from making arrangements or permitting arrangements to be made for holding or purporting to hold any other election to the office of the President and Vice President of the Federal Republic of Nigeria for installation as such in 1993.

(6) A declaration that the Federal Military Government has no executive or legislative power to dissolve or enact the dissolution of

all local governments, state assemblies, the House of Representatives, the Senate, the National Republican Convention or the Social Democratic Party or to annul {sic} or enact the annulment of the election of Governors to the various states within the Federal Republic of Nigeria.

5 (7) *An order of injunction restraining the Federal Military Government and all its agencies and functionaries from:-*

(a) *dissolving or enacting the dissolution of all local governments, State Assemblies, the House of Representatives, the Senate, the National Republic Convention and the Social Democratic Party,*
10 *and*

(b) *annulling or enacting the annulment of the election of Governors to the various states within the Federal Republic of Nigeria.*

(8) *A declaration that only a democratically (sic) government consistent with the structure enshrined in the Constitution of the Federal Republic of Nigeria 1989 can lawfully exercise the executive powers of the Federation under the said Constitution as from 27th August, 1993.*
15

(9) *An order of injunction restraining the Federal Military Government, and all its functionaries and agents from handing over in any manner whatsoever the executive powers of the Federation to any person other than the person duly elected as the President of the Federal Republic of Nigeria in accordance with the Presidential Election (Basic Constitution and Transitional Provision) Decree No. 13."*
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The capacities of the parties to the proceedings are set out in paragraphs one to three of the Statement of Claim as follows:-

"1. *Each of the plaintiffs herein is the Attorney-General of the State by which he is described and each of them bring this action as representative of the Government of that state including the Legislature and the Executive thereof.*"
30

2. *The 1st defendant who is the Attorney-General of the Federation is sued as the representative of the Federal Military Government including the Legislature and the Executive of the said government.*
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3. *Each of the 2nd to 17th defendant is the Attorney-General of the State by which he is described and each of them is sued as the representative of that state including the Legislature and the Executive thereof."*

The action is brought under the original jurisdiction of the Supreme Court. The 1st defendant entered conditional appearance and filed a motion on notice *"praying the court for an order striking out this suit for lack of locus standi on the part of the plaintiffs to institute this action and absence of jurisdiction of this court to entertain the same and for such other orders."* 5

The issue of jurisdiction raised by the 1st defendant is serious and fundamental to the entire proceedings, the court therefore heard arguments on it.

Chief Umeadi, Senior Counsel appearing for the 1st defendant submitted that this court has no jurisdiction to entertain the action. He referred the court to s.212 of the Constitution of the Federal Republic of Nigeria, 1979 which conferred original jurisdiction on the Supreme Court and s.1 of the Constitution (Suspension and Modification) Decree, 1984 otherwise known as Decree No.1 of 1984 or Constitution (Suspension and Modification) Act Cap. 64 Laws of the Federation of Nigeria, 1990 and its second schedule. He concluded by saying that since the coming into force of Decree No. 1 of 1984, no new law has been enacted modifying S.1 thereof. We were urged to strike out the claim. This is the brief submission of the learned Senior Counsel. 10 15 20

In his reply, the Senior counsel appearing for the plaintiffs drew the attention of the court to s.212 of the Constitution of the Federal Republic of Nigeria 1979 and the Second Schedule to the Constitution (Suspension and Modification) Act Cap. 64 Laws of the Federation of Nigeria, 1990 (otherwise called Decree No. 1 of 1984). He also referred the court to the Revised Edition (Laws of the Federation of Nigeria) (Supplementary Provisions) Decree, 1992 otherwise known as Decree No. 55 of 1992. 25 30

He formulated the following two questions and based his argument on them:"

1. Is it correct to say that s.212 of the 1979 Constitution ceased to have effect as a result of (the provision in the 1979 Constitution as amended by Decree. 35

2. Even if the answer to question one is in the affirmative, is it correct to say or assume that the Supreme Court has no original jurisdiction to entertain this action pursuant to its powers to do so under the Constitution of Nigeria."

He submitted that the Constitution (Suspension and Modification) Act Cap. 64 Laws of the Federation of Nigeria, 1990 (Decree No.1 of 1984) has two distinct provisions, namely:-

1. S.212 of the 1979 Constitution shall have effect subject to the modifications specified in the second schedule.

5 2. The Supreme Court shall have such original jurisdiction as shall be conferred on it by law.

He stated that there is something to say in favour of the view that the provision in the Second Schedule repealed and re-enacted S. 212 of the Constitution; that the provision in the said schedule expressly stipulates that what it states shall be substituted for subsections (1) and (2) of s.212 of the Constitution and if one shuts his eyes from the other part of the Constitution, he is bound to come to that conclusion.

15 He submitted that in construing a statute or document, it is better to look at the entire document. He contended that s.1 (1) of Decree No. 1 of 1984 means that s.212 of the 1979 Constitution is not suspended while s.1(2) of the said Decree means that s. 212 of the Constitution of 1979 is meant to have effect subject to modifications of the unsuspended sections of the 1979 Constitution.

20 Senior Counsel further stated that the expression "subject to" in s.1 (2) of Decree No.1 of 1984 means (hat there is a governing provision and a subordinate provision and where there is a clash between the governing and the subordinate provisions, the governing provision shall prevail and the subordinate provision is ignored in certain circumstances.

25 He said that s.212 of the Constitution was not suspended or repealed; that there is a modification which enables the court to apply the law that it is still regarded as existing law. We were referred to sections 17(d), 19 and 20 of the Supreme Court Act Cap.424 Vol. 22 Laws of the Federation of Nigeria, 1990 and that in the revised edition of the Laws of the Federation of Nigeria, 1990, s.212 of the Constitution of the Federal Republic of Nigeria, 1979 has not been repealed or abrogated.

35 It was argued by learned Senior Counsel that there is a conflict between S.1 of Decree No. 1 of 1984 and its Second Schedule. He cited and relied on the cases of *Rex v. Zik's Press Ltd. (1947) 12 WACA 202* at 205 and 206 and *Eastbourne Corporation v. Fortes*

Ice Cream Parlour (1955) Ltd. (1959) 2 Q.B. 92 at 107. We were urged to hold that s.212 of the 1979 Constitution has not been repealed or abrogated.

The learned Senior Counsel for the plaintiffs referred to and relied on the Constitution of the Federal Republic of Nigeria Promulgation Act Cap. 63 Laws of the Federal Republic of Nigeria, 1990⁵ which he said is the law applicable to the case before us and that this law brought the 1989 Constitution into force on 1st October, 1992 and that it is an irreversible legislation. We were urged to overrule the objection.

Chief Umeadi in reply referred the court to s.1 of Decree No.56¹⁰ of 1992 which provided that the commencement date shall be 27th August, 1993 and S.2(1) of Decree No. 1 of 1984.

He said that the effect of the modification of S.212 of the 1979 Constitution by Decree No. 1 of 1984 poses no problem. Learned¹⁵ counsel appearing for some of the defendants associated themselves with the submissions of the Senior Counsel for the 1st defendant. The Honourable Attorney-General of Kogi State added that the amendment of S.212 of the Constitution of 1979 is direct and unequivocal and that the repeal is not by implication. The Honourable²⁰ Attorney-General of Lagos State submitted that the modified s.212 of the 1979 Constitution confers original jurisdiction on the court.

The Honourable Attorney-General of Sokoto while associating himself with the submissions of Chief Umeadi, S.A.N. added that²⁵ there is no law as of now giving this court original jurisdiction.

As I said earlier, the objection to the jurisdiction of a court to entertain a claim is fundamental for if there is want of jurisdiction the proceeding thereafter would become a nullity however well conducted and even as in this case, parties submit to jurisdiction. See Attorney-General, Lagos State v. Dosunmu (1989) 3 NWLR (Pt.111) 552 at 566; and Okoye & Ors v. Nigerian Construction and Furniture Co. Ltd. & Ors. (1991) 6 NWLR (Pt.199) 501; and Onyema v. Oputa (1987) 3 NWLR (Pt.60) 259.

I think that one has to consider the provisions of S.212(1) &³⁵ (2) of the Constitution of the Federal Republic of Nigeria, 1979 and the Constitution (Suspension and Modification) Decree, 1984 otherwise called Decree No. 1 of 1984 to find out if the Supreme Court still retains its original jurisdiction.

S.212 of the 1979 Constitution provides:-

"212(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence
5 or extent of a legal right depends;

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National
10 Assembly.

The Constitution (Suspension and Modification) Decree No. 1 of 1984 provides in its section 1 as follows:

*"1 (1) The provisions of the Constitution of the Federal Republic of Nigeria, 1979 mentioned in Schedule 1 to this Decree are
15 hereby suspended.*

(2) Subject to this and any other Decree, the provisions of the said Constitution which are not suspended by subsection (1) above shall have effect subject to the modifications specified in Schedule 2 of this Decree."

20 While Schedule 1 to the Decree sets out those provisions of the 1979 Constitution which are suspended, Schedule 2 to the Decree substituted S.212(1) and (2) with an entirely new section 212 which reads:-

25 *"1(1) The provisions of the Constitution of the Federal Republic of Nigeria, 1979 mentioned in Schedule 1 to this Decree are hereby suspended.*

*(2) Subject to this and any other Decree, the provisions of the said Constitution which are not suspended by subsection (1) above
30 shall have effect subject to the modifications specified in Schedule 2 of this Decree."*

35 While Schedule 1 to the Decree sets out those provisions of the 1979 Constitution which are suspended. Schedule 2 to the Decree substituted s.212(1) and (2) with an entirely new section 212 which reads:-

"Section 212:

For subsections (1) and (2) there shall be substituted a new section, that is:-

212. The Supreme Court shall have such original jurisdiction

as may be conferred upon it by law.....".

The net result of the modification of section 212 of the 1979 Constitution is the substitution of an entirely new s.212 in Schedule 2 of Decree No.1 of 1984. The original jurisdiction of the Supreme Court contained in section 212 of the 1979 Constitution was completely wiped out. This court has therefore lost its original jurisdiction in the matter. 5

The new section 212 provides a hope of an original jurisdiction which may be conferred upon it by law.

Senior Counsel for the plaintiffs did not refer us to any law since Decree No. 1 of 1984 restoring that original jurisdiction to the Supreme Court. It therefore means that for now those actions which would previously have been brought under section 212 of the 1979 Constitution can no longer be instituted. The amendment of this section is in my view deliberate. 10 15

The language used in the substituted new section 212 in the Second Schedule to Decree No. 1 of 1984 is clear and unambiguous. We must apply it as it stands however unreasonable or unjust the consequences and however we may suspect that the result is not the intention of the legislature. 20

I have construed the 1979 Constitution and Decree No. 1 of 1984 and it is quite clear that for now that original jurisdiction of the court under section 212 does not exist. The modification or substitution is plain and unequivocal. The intention of the legislature can only be taken from the words which it has used in the Act (Decree). The words used are not capable of any limited construction. See *I.R.C. v. Hinchy* (1960) A.C. 767. 25

The attention of the court was drawn to S.1 of the Constitution of the Federal Republic of Nigeria (Promulgation) (Amendment) (No.2) Decree, 1992 otherwise called Decree No. 56 of 1992 made in Abuja on the 27th day of November, 1992. The said section 1 provides:- 30

"1. The Constitution of the Federal Republic of Nigeria (Promulgation) Act, as amended, is hereby further amended by substituting for the commencement date '2nd January, 1993' wherever it occurs in the Act a new commencement date '27th August, 1993' ". 35

This is a second amendment of Cap. 63 of the Laws of the Federation of Nigeria 1990 relied upon by the learned Senior coun-

sel for the plaintiffs. The commencement date was first amended from 1st October, 1992 to 2nd January, 1993.

In view of the above, the law applicable to the case before the court is the 1979 Constitution as amended by Decree No. 1 of 1984 and not the law contained in Cap. 63 Laws of the Federation of Nigeria, 1990. The first question posed by Chief Williams S.A.N. must be answered in the affirmative. The second question in my view, does not arise. This court has no original jurisdiction to entertain the action.

I accordingly uphold the objection of the learned Senior Counsel for the 1st defendant. The suit is struck out.

Preliminary objection upheld,
Case struck out.

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