

SUPREME COURT OF NIGERIA23RD MAY, 1995. SC.158/1994**CORAM:- M.L. UWAI, A.B. WALL, M.E. OGUNDARE,
U. MOHAMMED, A.I. IGU, JJSC.**

CHUKWUEMEKA N. AGWUNA

..... APPELLANT

V.

1. THE ATTORNEY-GENERAL OF THE
FEDERATION

..... RESPONDENTS

2. THE CONTROLLER OF PRISONS
FEDERAL PRISONS SERVICE

CRIMINAL PROCEDURE - *Power conferred on tribunals - Whether exceeded in the present case.***JURISDICTION** - *Special Tribunal (Miscellaneous Offences) Act- Trial thereunder - Jurisdiction of court is excluded.***JURISDICTION** - *Ouster clauses of an Act - Found to have supervisory jurisdiction of the High Court.***FACTS**

The appellant was convicted by the Miscellaneous Offences Tribunal Lagos and sentenced to a term of imprisonment. His appeal to the Special Appeal Tribunal against his conviction for making a forged document was dismissed. Since there is no further appeal under the Special Tribunal (Miscellaneous Offences) Act, appellant sought for an order of Certiorari to quash decision of the Special Appeal Tribunal vide a motion on notice. The trial court granted the certiorari Order. While appellant made attempts the fruits of the order granted in his favour, the Attorney-General of the Federation and the Controller of Prisons (now respondents), applied same High Court to set aside its order of the Writ of Habeas Corpus ad subjudiciendum on the ground that it was made without jurisdiction court granted the application.

The respondents appealed against the order of certiorari made by the learned trial judge while appellant cross-appealed against the trial court's withdrawal from enforcing his freedom from prison. The Court of Appeal al

lowed the respondents' appeal and the appellant's cross-appeal was dismissed. The appellant has further appealed to the Supreme Court raising only one issue.

ISSUE FOR DETERMINATION:

Whether the learned Justices of the Court of Appeal were right in affirming it the ouster clause preclude the High Court from exercising any of its supervisory control over the findings of the Tribunal even where it reaches wrong decision in law on which its jurisdiction is founded or where it makes jurisdictional error in law notwithstanding the ouster clause?

HELD (Unanimously dismissing the appeal per lead judgment of **WALI JSC**)
Jurisdiction - Special Tribunal Act

1. The appellant was tried along with others under the Special Tribunal Miscellaneous Offences) Act (Cap 410) Laws of the Federation of Nigeria, 1990 which conferred the Tribunal with the exclusive jurisdiction to try the category of offences with which the appellant along with others was charged, tried and convicted. The appellant exercised his right of appeal under section 8 of the Act and appealed to the Special Appeal Tribunal Section 11(1) and Cap. 410 is very clear on the exclusion of the jurisdiction of any court to interfere with any decision of either the Special Tribunal or the Special Appeal Tribunal. Sub-section (2) of section 11 is specific in its exclusion of inquiry into any decision questioning the infraction of any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria or contravention of any other provision of the said Constitution done under the Act by the tribunal, in any court of law. (p. 1164 E)

Ousting of high court's supervisory jurisdiction

2. If all the ouster clauses copied in this judgment are read together, it is as clear as daylight that the jurisdiction of all courts, other than the tribunals established under the Act, has been ousted, including the supervisory jurisdiction of the High Court conferred on it by section 236(2) of the Constitution. (p. 1164 G)

Powers conferred on tribunals - Whether exceeded

3. It has not been shown in this appeal that any of the tribunals had exercised any powers not conferred on it in dealing with the case. (p. 1165 A)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Court not to modify the clear meaning of a statute

A court of law is concerned with law, as it is, and not with law, as it ought to be. Accordingly, it is not the business of a court of law, indeed, a court of law is not permitted to ascribe meanings to the clear, plain and unambiguous provisions of a statute in order to make such provisions conform with the court's own views of their meaning or of what they ought to mean in accordance with the tenets of sound social policy. I do not conceive that it is the duty of the courts by means of ingenious arguments or propositions to becloud, change, qualify or modify the clear meaning of the provisions of a statute or Decree once such provisions are plain, unequivocal and unambiguous. (p. 1168G)

2. Proper attitude of court to ouster clauses

It seems to me necessary to point out that I should not be understood to be saying that once an ouster clause is raised in any proceeding, the court must automatically throw in the towel, decline jurisdiction and strike out the action. I make no such proposition. This is because the court, when faced with an ouster clause, has a duty to inquire into the case to enable it determine whether or not it has jurisdiction to entertain the claim. While a person's right of access to the law courts may be taken away or restricted by statute, the legal position is that the language of any such statute must be carefully scrutinized by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. But where, as I have observed, the ouster of court's jurisdiction clause in a Decree is plain, clear and unambiguous, the judicial attitude has always been to decline jurisdiction. I agree that to do otherwise and to refuse to give way to an ouster clause in a Decree in an appropriate case after due inquiry will, no doubt, amount to judicial lawlessness. (p. 1171B)

3. Forgery - Participes criminis is also guilty of the offence

With respect to learned Senior Advocate, it is certainly not the law that only persons who manually write or sign a forged document that may be convicted for the forgery of the document. The law is settled that all persons who are participes criminis. whether as principals in the first degree or as accessories before or after the fact to a crime are guilty of the offence and may be charged and convicted with the actual commission of the crime. Parties, participes criminis to a crime, include inter alia every person who actually does the act or makes the omission which constitutes the offence, persons who aid, abet or assist them in the commission of the offence or who counsel or procure others to commit the offence or knowingly give succour or encouragement to the commission of the crime or who knowingly facilitate the commission of the offence. (p. 1171 G)

REPRESENTATION

Mrs. M. O. Oguntona with E. Bassey, P. Okorie and D.C. Ajaero for the Appellant

M.A. Ayoade, Federal Director of Litigation and Public Law, with Mrs. C.I. Anuogu, Asst. Chief Legal Officer; Sanusi Kador, L. O. & Okey Nwamba L.O. for the Respondents.

CASES REFERRED TO

The Queen v. District Officer & Anor. (1961) 1 All NLR 51 at 56

Labiya v. Anretiola (1992) 8 NWLR (Pt. 258) 139 at 162

Shodeinde v. Registered Trustees of Ahmaddiyya Movement-in Islam (1980) 1-2 SC. 225

Olaniyi v. Aroyehun (1991) 5 NWLR (Pt. 194) 653 at 686

A. G. of the Federation v. Sode (1991) 1 NWLR (pt. 128) 500 at 517

Osadebey v. A.G. Bendel State (1991) 1 NWLR (Pt. 169) 525 at 571

A.G. Lagos State v. Dosume (1989) 3 NWLR (Pt. 111) 552 at 581

Anisminic case Ltd. v. Foreign Compensation Commission (1969) 2 NLR. 168 at 180

R. v. Northumberland Compensation Appeal Tribunal Ex Parte Shaw (1952) 1 KB 338

Anambra State v. A.G. of the Federation (1993) 6 NWLR (Pt. 302) 629

Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria (1976) 1 All NLR 409 at 421

Labiya v. Anretiola (1992) 8 N.W.L.R. 139 at 162

National Electoral Commission v. Chief F. A. Nzeribe (1991) 5 N.W.L.R. (Part 192) 458

STATUTES & RULES REFERRED TO

Decree 9 of 1991 ss. 1(8), 8-10, 1(8)-(10)

Constitution of the Federal Republic of Nigeria 1979 s.236(1) (2)

Decree 7 of 1993 s.236(2)

Constitution of Civil Rule (Political Transition) Act No. 19 of 1987 vol. 23 Cap. 443

Special Tribunal (Miscellaneous Offences) Act (Cap. 410) s.3, 11(1)

Native Court Ordinance s. 28(1) Criminal Code s. 7

LEAD JUDGMENT BY WALIJS

This is an appeal against the unanimous decision of the Court of Appeal, Lagos in which it affirmed the ruling of the High Court Lagos dated 23rd December, 1993 setting aside its earlier order made on 22nd October 1993 on the ground that the said order was made without jurisdiction.

The brief facts involved in the case are as follows:-

The appellant is one of the three persons tried and convicted by the Miscellaneous Offences Tribunal. Lagos and sentenced to various terms of imprisonment. His appeal to the Special Appeal Tribunal against conviction for making a forged document was dismissed.

B Since there is no further appeal from the decision of the Special Appeal Tribunal, the appellant in an effort to gain his freedom, filed in the High Court of Lagos State a Motion on Notice under Order 53 rule 3(1) of the High Court of Lagos State (Civil Procedure) Rules, 1971 with the following prayers:-

C *“1. An order of certiorari to remove into this Honourable Court and quash the same the decision of the Special Appeal Tribunal, Lagos date 27th May, 1993 which upheld the conviction and sentence on a count of forgery against the applicant passed by the Miscellaneous Offences Tribunal, Lagos. 2. And for such further or other order or orders as this Honourable Court may deem fit to make in the circumstances. And further take notice that the Grounds of this application are as follows:-*

D *1. That the Special Appeal Tribunal acted in excess of its jurisdiction.*

2. That the conviction of the applicant was affirmed for an offence which he did not commit.”

E The motion was dated 25th June, 1993. The learned trial Judge (Adeyinka, J.) heard the motion after which he delivered a considered ruling on 22nd October, 1993 in which he granted the application and ordered as follows:-

F *“It is hereby ordered as follows:-1. An order of certiorari is hereby made and it is hereby ordered that the decision of the Special Appeal Tribunal Lagos dated 27th day of May 1993, which upheld the conviction and sentence on a count of forgery against the applicant Chukwuemeka Nnamdi Agwuna passed by the Miscellaneous Offences Tribunal Lagos be removed into this court to be quashed, and it is hereby quashed. The applicant Chukwuemeka Nnamdi Agwuna shall be released from prison custody forthwith.”*

G There were attempts by the appellant to enjoy the fruits of the order granted by the High Court but which hit the rock. On application by the Attorney-General of the Federation and the Controllor of Prisons, Federal Prisons Service, to the High Court to review and set aside the order of the writ of Habeas Corpus ad subjudiciendum of 14th December 1993 and directed to the Controllor of Prisons, Nigerian Prison Services, on ground that it was made without jurisdiction, the same learned trial Judge considered the application, granted it, and set the writ aside in the following words:-

H *“The issue of jurisdiction is an exception to disobedience of court order. I refer to S. 1(8) Decree 9 of 1991 and hold that the first relief sought succeeds. It is hereby ordered as prayed.*

The order of the writ of Habeas corpus ad subjudiciendum of the

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14th day of December 1993 directed to the Controller of Prisons, Nigerian
Prison Services is hereby set aside.”

The learned Attorney-General of the Federation and the Controller of Prisons appealed against the order of certiorari dated 22nd October, 1993 made by the learned judge while the present appellant cross-appealed against the order made by the trial Judge declining to enforce his order for the release of the appellant from prison on ground that he had no jurisdiction to do so. B

In a unanimous judgment of the Court of Appeal, Lagos Division delivered by Pats-Acholonu, J.C.A. the appeal by the Attorney-General of the Federation and the Controller of Prison, Federal Prison Services was allowed and the cross-appeal of the present appellant was dismissed. The learned Justice concluded:-

“I am of the view that the High Court should not have assumed jurisdiction in the way it did and quashed the conviction on the order of certiorari.” C

In the circumstances, the appeal of the appellants succeeds. I have duly stated my view with regard to the issue raised in the cross-appeal. In this case, I cannot uphold the issue raised in the cross appeal. D

I therefore dismiss the issue raised in the cross-appeal”

Dissatisfied with the judgment of the Court of Appeal, the appellant has now appealed to this court. Only one ground of appeal was filed which reads: *“Ground 1: The learned Justices of the Court of Appeal erred in law in holding and affirming that the supervisory jurisdiction which the High Court has over the Special Appeal Tribunal was ousted by sections 8-10 of Decree 9 of 1991 when there was an error in law on the face of the record of the Tribunal* E

Particulars of Error

(a) The learned Justices erred when they affirmed the judgment of the lower court without taking cognisance of the fact that when there is an error on the fact of the Record of the tribunal, and notwithstanding the ouster clause, the court has the supervisory jurisdiction to inquire into such an error with the intent of correcting same in the interest of justice as the Judicial Tribunal is not set-up to decide the law wrongly. F G

(b) The learned Justices erred in law when they had rightly held that when an ouster clause seeks to deprive the court from looking into a provision that is plainly inhuman, oppressive, anti-people and repulsive, the court should strike such provision down, but still went ahead to affirm the judgment of the lower court in complete violation of the above pronouncement.” H

In compliance with the Rules of this Court, parties filed and exchanged briefs of argument.

In the brief filed by the appellant one issue was formulated. It reads thus:

Whether the learned Justices of the Court of Appeal were right in affirming

that the ouster clause preclude the High Court from exercising any of its supervisory control over the findings of the Tribunal even where it reaches a wrong decision in law on which its jurisdiction is founded or where it makes a jurisdictional error in law notwithstanding the ouster clause?"

In the respondents' brief the following single issue was formulated for the purpose of determining this appeal:-

B *"Whether the Court of Appeal was right in upholding the decision of the High Court that it lacks the supervisory jurisdiction over the Special Appeal Tribunal by virtue of the ouster clause provisions in Sections 1(8), (9) and (10) of the Tribunal (Miscellaneous Provisions) Decree No.9 of 1991."*

C The two issues, though worded differently speak of one and the same thing, to wit ouster of the High Court's jurisdiction. So in determining this appeal I shall adopt the issue formulated in the appellant's brief.

It is the contention of the appellant's counsel that where the error complained of is on the face of the record, the tribunal has exceeded its jurisdiction and its decision is a nullity. In support of the submission above, learned Senior Advocate cited and relied on the following cases:- Re-Gilmore's Application (1957) 1 All ER 796 at 801; Anisminic Case Ltd. v. Foreign Compensation Commission (1969) 2 AC 147 and District Officer v. Queen (1961) 1 SCNLR 83 (1961) 1 All NLR 51 at 56. He further submitted that the Court of Appeal was wrong in its decision, since the appellant did not commit any offence that the court could not interfere because of the ouster clause even though the evidence shows that the appellant was not guilty. He said that S. 1(8) - (10) of Decree No.9 of 1991 did not oust the jurisdiction of the courts of Habeas Corpus application.

In reply to the submissions above, learned counsel for the respondents said that the general unlimited jurisdiction of a State High Court is as stated in section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979 as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. Section 236(2) F also confers on the High Court, in addition to that specified in sub-section (1) above, jurisdiction on those matters "which are brought before the High Court to be dealt with by the Court in the exercise of its appellate or supervisory jurisdiction." Learned counsel submitted that with the Military intervention in Nigeria and promulgation of Decrees, the unsuspended provisions of the 1979 Constitution are generally subject to the provisions of Decrees. The case of Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) G 139 at 162 was referred to and relied on.

Learned counsel further submitted that although the powers of superior courts are wide, they are, however, limited by buster of jurisdiction in relevant or appropriate legislations: Shodeinde v. Registered Trustees of Ahmadiyya Movement-IN ISLAM (1980) 1-2 S.C. 225; OLANIYI V. AROYEHUN (1991) 5 NWLR (PT. 194) 653 AT 686; A.G. OF THE FEDERATION V. SODE (1991) 1 NWLR (PT. 128) 500 AT 517; OSADEBEY V. A.G. BENDEL STATE (1991) 1 NWLR (PT. 169) 525 AT 571 ;A.G. LAGOS STATE V. DOSUNMU (1989) 3 NWLR (PT.111) 552 AT 581 AND ANISMINIC LTD. V. FOREIGN COMPENSATION COMMISSION (1969)

A.C. 147. He also cited and relied on section 1(8)-(10) of the Tribunals

Miscellaneous Provisions) Decree No.9 of 1991, section 21 (1) of the Recovery of Public Property (Special Military Tribunals) Act Cap. 389 Laws of the Federation of Nigeria, 1990 and section 11 ((1)-(2) of the Special Tribunal (Miscellaneous Offences) Act Cap. 410 of the Laws of the Federation of Nigeria 1990. He said a court of law is concerned with law as it is, and not as it ought to be and that it is not permitted to ascribe meanings to the clear provisions of a statute in order to make such provisions conform with the court's own views of sound social policy -A.G. Lagos State v. Dosunmu (1989) 3 NWLR (Pt.111) 552 and A.G. of the Federation v. Sode (1990) 1 NWLR (Pt. 128) 500 at 517,541 and 545. He finally submitted that the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991 has effectively terminated the supervisory jurisdiction of the High Court over inferior tribunals and that the provisions should be construed as amending section 236(2) of the 1979 Constitution and urged that the appeal be dismissed as lacking in merit. The germane and determinant issue in this appeal is the construction and application of:

(1) Tribunals (Miscellaneous Provisions) Decree No.9 of 1991, subsection (8), (9) and (10) of Section 1.

(2) Special Tribunal (Miscellaneous Offences) Act Cap. 410 Laws of the Federation of Nigeria, 1990 (Vol. 22).

(3) Transition to Civil Rule (Political Transition) Act No. 10 of 1987 Vol. 23, Cap. 443, Laws of the Federation of Nigeria 1990, and

(4) Recovery of Public Property (Special Military Tribunals) Act No. 3 of 1984 (S.15(1) and 21) Cap. 389 of the Laws of the Federation of Nigeria, 1990 Vol. 21.

For ease of reference, I shall set out hereunder, the provisions of the said laws. Sub-sections (8) (9) and (10) of section 1 of the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991 read thus:

"1(8) Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria, 1979 as amended or any enactment to the contrary the supervisory jurisdiction or power of judicial review of a High Court shall not be extended to any matter or proceedings before a tribunal duly constituted before or after commencement of this Decree.

(9) If any proceedings relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or matter brought before a tribunal is before any High Court after the commencement of this Decree, such action shall abate, cease or be deemed to be discontinued without any further assurance other than this Decree.

(10) Any order, decision; injunction or any other interlocutory order already made pursuant to any proceedings relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or matter

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before a tribunal shall at commencement of this Decree be null and void."

Sub-section 11(1) of Special Tribunals (Miscellaneous Offences) Act Cap. 410 of the Laws of the Federation of Nigeria, 1990 reads thus:

B "11 (1) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to this Act and if any such proceedings are instituted before, on or after the commencement of this Act the proceedings shall abate, be discharged and made void."

C (2) The question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria has been, is being or would be contravened by anything done or proposed to be done in pursuant of this Act, shall not be inquired into in any court of law and, accordingly no provision of that constitution shall apply in respect of any such question."

D Section 15(1) of Recovery of Public Property (Special Military Tribunals) Act, (Cap. 389) Laws of the Federation of Nigeria, 1991 established the Special Appeal Tribunal. It reads thus:-

"(1) There is hereby established an appeal tribunal to be known and styled "The Special Appeal Tribunal (hereinafter in this Act referred to as the Appeal Tribunal)."

And section 21 of subsection (1) thereof provides:-

E "21 (1) The validity of any direction, notice or order given or made or, as the case may be, of any other thing whatsoever done under this Act shall not be inquired into in any court of law and, accordingly, nothing in Chapter IV of the Constitution of the Federal Republic of Nigeria shall apply in relation to any matter arising out of this Act."

F The appellant was charged under section 3 of the Special Tribunal (Miscellaneous Offences) Act (Cap. 410) Laws of the Federation of Nigeria, 1990, and was tried by the Miscellaneous Offences Tribunal established under section 1(1) of the Act. He was convicted and sentenced to terms of imprisonment. The appellant exercised the right conferred on him by section 8 of the Act to appeal to the Special Appeal Tribunal.

G Having regard to the facts and the argument of learned counsel in this appeal, it becomes clear that the salutary and determinant issue is: whether, having regard to the jurisdiction of the High Court under section 236(2) of the 1979 Constitution (as amended), the jurisdiction of the court to deal with the matter had not been ousted.

Section 236(2) provides that:-

H "The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State or those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction." (italics supplied for emphasis).

The jurisdiction exercised by the Lagos State High Court was super-

visory since it dealt with orders of Certiorari and Habeas Corpus. The learned trial Judge after considering arguments for and against the court's competence in granting the orders of Habeas Corpus and certiorari opined and concluded as follows:-

"It is settled principle of law that once the court is satisfied at any stage of the proceedings that it lacked jurisdiction to entertain a matter, the court must terminate the proceedings. I wonder why Mrs. Onuogu never raised Decree 9 of 1991 before the certiorari proceedings were heard. Nevertheless, the issue of jurisdiction can be raised for the first time in the Court of Appeal or the Supreme Court.

I refer to section 1 (8)-(10) of Decree 9 of 1991 and hold that the supervisory jurisdiction of the court to entertain the certiorari proceedings had been ousted by the Decree.

.XXXXXXXXXXXXXXXXXXXXXXXXXXXX

I refer to Chief Arthur Nzeribe v. A.G. a decision of this court the reference of which I cannot remember at the moment. The Court of Appeal considered the Decree ousting the supervisory jurisdiction of the Court and set aside the Ruling of this court on the ground that the court lacked jurisdiction to entertain certiorari proceedings.

That decision of the Court of Appeal is binding on this court. The issue of jurisdiction is an exception to disobedience of Court order.

I refer to section 1(8) - (10) Decree 9 of 1991 and hold that the first relief sought succeeds. It is hereby ordered as prayed.

The order of the writ of Habeas corpus ad subjudiciendum of the 14th day of December 1993 directed to the Controller of Prisons, Nigerian Prison Services is hereby set aside."

Learned Senior Advocate for the appellant referred to in his brief and relied on several cases, both foreign and local in support of his submissions, particularly the decisions in Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 AC 147 and The Queen v. District Officer & Anor (1961) 1 SCNLR 83 (1961) 1 All NLR 51.

The facts in Anisminic case (supra) are totally different from the facts of the present case, and even in that case the Lord Justices who decided the appeal were not all ad idem on the construction of the ouster clause contained in the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959.

The ouster clause contained in section 4(4) of the Order reads thus:

"The determination by the commission on an application made to them under this Act shall not be called in question in any court of law".

In his approach to the interpretation of the word "jurisdiction". Lord Reid stated at page 171 as follows:-

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being to enter on

the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provision setting it up, it had no right to take into account.

I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.”

This notwithstanding it was the consensus of their Lordships in that judgment that where the ouster clause is clear and unambiguous, as to the intention of the law-makers, no other meaning is to be read into it even if the tribunal goes wrong in its decision, provided it made the decision within the confines of its statutory jurisdiction. The part of the judgment in Gilmore’s application (1957) 1 All ER 796 at 801 cited by learned Senior Advocate, in his brief does not support his case. In that judgment Lord Denning LJ said:-

“I find it very well settled that remedy by certiorari is never to be taken away by any statute except by most clear and explicit words.”
(Italics supplied for emphasis)

The part cited by learned Senior Advocate is therefore lifted and cited out of context.

The appellant was tried along with others under the Special Tribunal (Miscellaneous Offences) Act (Cap. 410) Laws of the Federation of Nigeria, 1990 which conferred the Tribunal with the exclusive jurisdiction to try the category of offences with which the appellant along with others was charged, tried and convicted. The appellant exercised his right of appeal under section 8 of the Act and appealed to the Special Appeal Tribunal. Section 11(1) and (2) of Cap. 410 is very clear on the exclusion of the jurisdiction of any court to interfere with any decision of either the Special Tribunal of the Special Appeal Tribunal. Sub-section (2) of Section 11 is specific in its exclusion of inquiry into any decision questioning the infraction of any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria or contravention of any other provision of the said Constitution done under the Act by the tribunal, in any court of law.

If all the ouster clauses copied in this judgment are read together, it is as clear as daylight, that the jurisdiction of all courts, other than the tribunals established under the Act, has been ousted, including the supervisory juris-

It has not been shown in this appeal that any of the tribunals had exercised any powers not conferred on it in dealing with the case.

The decision in the Queen v. District Officer & Ors (supra) cited and relied on by learned counsel is also not apposite. The facts are dissimilar. In that case the District Officer gave judgment in favour of a party - "Kutia" who was not a party to the case. That was why Ademola, C.J.F. said in his judgment, while construing section 28(1) of the Native Court Ordinance -

"It seems clear to me that this provision does not admit of any 'foreign' or third party to the proceedings before the District Officer."

The above quotation shows that the District Officer exercised a jurisdiction not conferred on him by the Ordinance and his decision was therefore a nullity.

A tribunal may commit a mistake of law or fact when reaching its decision.

So long the mistake is committed within the confines of its jurisdiction, and where there is a clear and unambiguous, ouster clause prohibiting interference with its decision, a superior court exercising supervisory jurisdiction cannot interfere with it. See R. v. Northumberland Compensation Appeal Tribunal Ex Parte Shaw (1952) 1 KB 338 at 346 where Denning LJ said:-

"No one has ever doubted that the Court of King's Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which parliament has conferred on it: but it is quite another thing to say that the King's Bench can intervene when a tribunal makes a mistake of law. A tribunal may often decide a point of law wrongly whilst keeping well within its jurisdiction."

See also Shodeinde v. Registered Trustees of Ahmaddiyya Movement-in Islam (1980) 1-2 S.C. 225; Osadebey v. A.G. Bendel State (1991) (Pt. 169) 1 NWLR 525; A.G. of the Federation v. Sode (1990) 1 NWLR (Pt. 128) 500 and Anambra State v. A.G. of the Federation (1993) 6 NWLR (Pt. 302) 629.

In my view, the learned Justice of the Court of Appeal (Pats-Acholonu, J.C.A.) is perfectly right in his conclusion that:-

"Secondly, the Special Appeal Tribunal in this case before us might have been wrong in the way it handled the case, but the Decree that set it up did not oust the jurisdiction of the court so that the appeal tribunal would give atrocious judgments. Where an enactment wears the garb of nazi-like laws so much so that the people who implement it cannot be allowed to take

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shelter on the excuse that they were obeying positive laws, such a law should be declared null and void.

In this case before us, I am in tune with the view expressed by the Supreme Court, in Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria (1976) 1 All NLR 409 at 421 that where person's right of access to the courts may be taken away or restricted by statute, the language of any such statute
B *will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. The law at hand was made at that time to take care of certain prevailing emergencies, and is not to last long.*

In the course of preserving law and order actions may be taken by which one or two suffers, and not the generality of the people being emasculated. It is to be regretted during the time the emergencies last. On that basis, the law made to take care of such emergency shall be treated with some element of leniency as long as it does not offend the fundamental principles governing people's life. Much as I deplore and detest ouster clauses, I am of the view that the High Court should not have assumed jurisdiction in the
C *way it did and quashed the conviction on the order of certiorari."*
D

The other Justices of the Court of Appeal were unanimous in concurring with the decision above.

The appeal therefore fails and it is hereby dismissed. The decisions of the lower courts are hereby affirmed with no order as to costs.

E **UWAIS JSC**

I have had the advantage of reading in draft the judgment read by my learned brother Wali, J.S.C. I agree that this appeal has no merit and that it should be dismissed. Accordingly the appeal is hereby dismissed and the decision of the Court of Appeal, which confirmed that of the High Court, is hereby affirmed, with no order as to costs.

OGUNDARE JSC

I have had the advantage of a preview of the judgment of my learned
G brother Wali, J.S.C just read. I agree with him that this appeal is lacking in merit. For the reasons given by him in the said judgment, I too dismiss it and affirm the decision of the Court below.

MOHAMMED JSC

I agree with the opinion of my learned brother, Wali, J.S.C. in the lead
H judgment just read that this appeal must fail. After reading the ouster clauses in the Special Tribunal (Miscellaneous Offences) Act Cap. 410, Recovery of Public Property (Special Military Tribunal) Act Cap. 380 and Tribunal (Miscellaneous Provisions) Decree No.9 of 1991, it is patently clear that Adeyinka J. of Lagos High Court had no jurisdiction to quash the decision of the Special

Appeal Tribunal, Lagos, delivered on 27th May, 1993. The Court of Appeal is therefore quite right to allow the appeal of the respondents and dismiss the cross-appeal of Chukwuemeka N Agwuna.

This appeal has no merit at all and it is accordingly dismissed.

IGUHJSC

I have had the privilege of reading in draft, the lead judgment just delivered by my learned brother, Wali, J.S.C. I am in entire agreement with him that this appeal lacks substance and should be dismissed. B

The appellant and another were convicted by the Miscellaneous Offences Tribunal, Lagos on a three count charge of forgery, conspiracy to forge and conspiracy to utter a forged document. Each was found guilty and sentenced to 10 years imprisonment on each count, sentences to run concurrently. The appeal of the present appellant against his convictions and sentences was on the 27th May, 1993 dismissed by the Special Appeal Tribunal in respect of the count of forgery. C

The appeal against his convictions and sentences on the counts of conspiracy was allowed on the ground that *"the facts proved were those on which they were convicted on the count of forgery"*. D

By an application dated the 25th June, 1993 the appellant initiated a certiorari proceeding at the Lagos High Court to quash the said decision of the Special Appeal Tribunal. In his ruling delivered on the 22nd October, 1993, Adeyinka, J. quashed the said decision of the Special Appeal Tribunal and ordered that the appellant be released from prison custody forthwith. The appellant later brought an application dated the 10th December, 1993 against the Controller of Prisons, Nigeria Prisons Services for the writ of habeas corpus for the production of the appellant before the court for failure to obey the court order of the 22nd October, 1993. In reply, the present respondents raised a preliminary objection challenging the jurisdiction of the court to entertain the application. E

Adeyinka, J. in a considered ruling delivered on the 3rd December, 1993 declined jurisdiction on the ground, inter alia, that the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991 had ousted the supervisory jurisdiction of the High Court over Tribunals. On appeal, the court below on the 19th July, 1994 unanimously affirmed the decision of the Lagos High Court that it lacked jurisdiction to entertain the application. The appellant has now appealed to this court against the said decision of the Court of Appeal. F

The only issue for decision in this appeal is whether the Court of Appeal was right in upholding the decision of the High Court to the effect that it lacked supervisory jurisdiction over the Special Appeal Tribunal by virtue of the ouster of jurisdiction clause provisions in the Tribunals (Miscellaneous Provisions) Decree 9 of 1991. H

The contention of learned counsel for the appellant, relying on the

decision in the English case of *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 A.C. 147, is that ouster of jurisdiction clause notwithstanding the Special Appeal Tribunal must comply with the provisions of Decree No. 9 of 1991 which established it. He submitted that if the Special Appeal Tribunal commits a jurisdictional error of law, the ouster clause will not confer any immunity on or save its decision from certiorari proceedings to correct the error. He argued that the Special Appeal Tribunal and, indeed, the courts, have no jurisdiction to commit an error of law in the determination of cases before them. He contended that if the Special Appeal Tribunal commits an error in a proceeding, it would have veered outside its jurisdiction with the result that certiorari will lie to correct such an error.

Learned Senior Advocate, Chief B.O. Rhodes, in the appellant's brief, identified the error in law allegedly committed by the Special Appeal Tribunal in the present proceeding. This, he claimed is the fact that the Special Appeal Tribunal found that the 2nd accused person forged the document, Exhibit A but nonetheless proceeded also to convict the appellant of the forgery of the same document. His argument is that in so far as there was no evidence before the Special Appeal Tribunal that the appellant took part in "*writing and/or signing the forged document*", the *affirmation of the conviction and sentence on the count of forgery* is "a jurisdictional error of law" which can be quashed in a certiorari proceeding.

Learned respondent's counsel, M.A. Ayoade, Esq. Federal Director of Civil Litigation and Public Law, in his own brief of argument referred to a number of Acts and Decrees and submitted that the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991 effectively terminated the supervisory jurisdiction of the High Courts over the Tribunals. He further argued that the provisions of that Decree should be construed as amending section 236 of the 1979 Constitution of the Federal Republic of Nigeria which confers the state High Courts with unlimited jurisdiction in all matters set out thereunder unless such jurisdiction is expressly precluded by Statute or the Constitution.

The first point that must be made is that with the Military intervention in Nigeria and the promulgation of Decrees, the unsuspended provisions of the 1979 Constitution have been judicially interpreted as subject to the provisions of the Decrees. See *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139 at 162.

The second point is that in a military regime, Decrees are the supreme laws of the land and all other laws, including the Constitution are inferior thereto. See too *Attorney-General, Anambra State v. Attorney-General of the Federation* (1993) 6 NWLR (Pt. 302) 692.

Thirdly, a court of law is concerned with law, as it is, and not with law, as it ought to be. Accordingly, it is not the business of a court of law, indeed, a court of law is not permitted to ascribe meanings to the clear, plain and unambiguous provisions of a statute in order to make such provisions conform with the court's own views of their meaning or of what they ought to mean in accordance with the tenets of sound social policy. See *Attorney-*

General of the Federation v. Sode (1990) 1 NWLR (Pt. 128) 500 at 541 and 545. I do not conceive that it is the duty of the courts by means of ingenious arguments or propositions to becloud, change, qualify or modify the clear meaning of the provisions of a statute or Decree once such provisions are plain, unequivocal and unambiguous.

With the above principles of law in view, I will now briefly examine the main issue for determination. This is whether the High Court has any supervisory jurisdiction over the Special Appeal Tribunal. B

It seems to me necessary at this stage to refer to one or two legislations, the provisions of which are material to the issue for determination. I will firstly deal with the Recovery of Public Property (Special Military Tribunals) Act. Cap. 389, Laws of the Federation of Nigeria, 1990.

The jurisdiction and powers of the Special Appeal Tribunals are specified in sections 16 and 17 of the Recovery of Public Property (Special Military Tribunals) Act, Cap. 389, Laws of the Federation of Nigeria, 1990. Section 21(1) of this Act provides thus- C

"The validity of any direction, notice or order given or made or, as the case may be, of any other thing whatsoever done under this Act shall not be inquired into in any court of law and, accordingly, nothing in Chapter IV of the Constitution of the Federal Republic of Nigeria shall apply in relation to any matter arising out of this Act." D

(italics supplied for emphasis)

There is next the Special Tribunal (Miscellaneous Offences) Act, Cap. 410, Laws of the Federation of Nigeria, 1990 under which the appellant was tried and convicted. Section 11(1) thereof provides as follows:- E

"No civil proceedings shall lie or be instituted in any court for or on account in respect of any act, matter or thing done or purported to be done under or pursuant to this Act and if any such proceedings are instituted before, on or after the commencement of this Act, the proceedings shall abate, be discharged and made void"(Italics F
Supplied for Emphasis)

There is finally the provisions of sections 1 (8), 1(9) and 1(10) of the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991 which are as follows:-

S. 1(8) *"Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria, 1979 as amended, or any enactment to the contrary, the supervisory jurisdiction or power of judicial review of a High Court shall not extend to any matter or proceedings before a tribunal duly constituted before or after the commencement of this Decree."* G

S.1(9) *"If any proceedings relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or matter brought before a tribunal is before any High Court after the commencement of this Decree, such action shall abate, cease or be deemed to be discontinued without any further assurance other than this Decree."* H

S.1 (10) *"Any order, decision, injunction or any other interlocutory order already made pursuant to any proceedings relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or*

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matter before a tribunal shall at the commencement of this Decree be null and void." (italics supplied for emphasis)

B A close study of the above provisions of Section 21 (1) of the Recovery of Public Property (Special Military Tribunals) Act, Section 11(1) of the Special Tribunal (Miscellaneous) Offences) Act and sections 1 (8), 1(9) and 1(10) of the Tribunals (Miscellaneous Provisions) Decree No. 9 of 1991 discloses in no uncertain terms that these legislations are very carefully worded and promulgated with a clear, definite and unambiguous intention on the part of the law makers to oust the Supervisory jurisdiction of the power of judicial review of the High Court in respect of a cause or matter brought or determined by the tribunals concerned.

C Although therefore, the powers of the superior courts of record such as a High Court are great and; indeed, wide, they are certainly not unlimited. They can be and are indeed sometimes properly limited by ouster of jurisdiction clauses in some legislations such as those above mentioned. See Shodeinde v. Registered Trustees of Ahmaddiya Movement in Islam (1980) 1-2 S.C. 225; D Olaniyi v. Aroyehun (1991) 5 NWLR (Pt. 194) 653 at 686 and Attorney-General of the Federation v. Sode (1991) 1 NWLR (Pt. 128) 500 at 517. I accept that although it has always been the practice of the courts to guard their jurisdiction jealously, if in any given case that jurisdiction is expressly ousted by the provisions of the Constitutions, an Act of Parliament or a Decree, then the E path of justice must dictate compliance with such an ouster of jurisdiction clause especially as under our present constitution, Decrees are the Supreme laws of the land.

F The above view has received definite support in the observation of this court in the case of Osadebay v. Attorney-General of Bendel State (1991) 1 NWLR (Pt.169) 533 at 571 where Belgore, J.S.C. succinctly put the matter as follows:

G *"Any Decree ousting the jurisdiction of the Court does so effectively, because a Decree is a special creature of the Military to shield their own peculiar method of governance; It is for this reason they make their Decrees superior even to the Constitution, Section 12 of Decree No. 37 of 1968 is clear and it should not be clouded by court induced ambiguity. When there is no jurisdiction the court will act ultra-vires should it venture to assume one: for a court embarking on the hearing of a matter not within its jurisdiction is exercising in moot, a function not that of court (Barclays Bank of Nigeria v. Central Bank of Nigeria) (1976) 6 S.C. 175. The peculiar circumstance of Military regime is a point in issue, much H as the Military regime is a point in issue, much as the Military exercise governance and do so effectively, their protective laws must be obeyed; and once the Decrees are clear and unambiguous as to ouster Courts' jurisdiction in certain subject-matter, the courts indeed have no jurisdiction."*

In the same vein, Obaseki, J.S.C. in his own contribution in the same

“The constitutional limitation imposed on the exercise of judicial powers by the courts must not be breached deliberately and consciously or by the use of clever arguments if the Rule of Law is to reign in our society If sympathy is to dominate our judicial task, we will falter and be unable to discharge our permanent duty of preserving the Rule of Law.”

In the present case, the provisions of the above Acts and Decree in so far as the ouster clauses are concerned appear to me unambiguous and absolutely clear.

I entertain no doubt that in the particular circumstances of the present case, such ouster of jurisdiction clauses ought to be fully applied and upheld as to do otherwise would amount to an assault on our judicial system and the rule of law.

It seems to me necessary to point out that I should not be understood to be saying that once an ouster clause is raised in any proceedings, the court must automatically throw in the towel, decline jurisdiction and strike out the action. I make no such proposition. This is because the court, when faced with an ouster clause, has a duty to inquire into the case to enable it determine whether or not it has jurisdiction to entertain the claim. While a person's right of access to the law courts may be taken away or restricted by statute, the legal position is that the language of such statute must be carefully scrutinized by the Courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. See *Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria* (1976) 1 All NLR 326 at 334. But where, as I have observed, the ouster of court's jurisdiction clause in a Decree is plain, clear and unambiguous, the judicial attitude has always been to decline jurisdiction. See *Osadebay v. Attorney-General of Bendel State*, supra, I agree that to do otherwise and to refuse to give way to an ouster clause in a Decree in an appropriate case after due inquiry will, no doubt, amount to judicial lawlessness. See *National Electoral Commission v. Chief F.A. Nzeribe* (1991) 5 NWLR (Pt. 192) 458 at 472.

It is, perhaps, desirable at this stage to comment briefly on the appellant's submission that the Special Appeal Tribunal had committed a jurisdictional error of law as a result of which the ouster clause cannot avail it. The alleged jurisdictional error of law which is the main plank of the appellant's arguments in this appeal is his conviction on the count of the forgery of Exhibit A when the evidence before the tribunal was that it was the second accused/convict and not himself who actually wrote and signed the forged document.

With respect to learned Senior Advocate, it is certainly not the law that only persons who manually write or sign a forged document that may be convicted for the forgery of the document. The law is settled that all persons

who are participes criminis, whether as principals in the first degree or as accessories before or after the fact to a crime are guilty of the offence and may be charged and convicted with the actual commission of the crime. Parties, participes criminis to a crime, include inter alia every person who actually does the act or makes the omission which constitutes the offence, person who aid, B abet or assist them in the commission of the offence or who counselor procure others to commit the offence or knowingly give succour or encouragement to the commission of the crime or who knowingly facilitate the commission of the offence. See section 7 of the Criminal Code.

True enough, the principal in the first degree to this forgery, the 2nd C accused, who personally forged Exhibit A was convicted for the offence of forgery as charged. But there was ample evidence which both the trial tribunal and the appellate tribunal accepted as established that the appellant paid N100,000.00 to the 2nd accused person as gratification for the forged document, made with the intention that the Nigerian Embassy in Manilla might act D upon it as genuine to the prejudice of the Nigerian Government. Said the Special Appeal Tribunal:

"The two letters (meaning the forged documents) were written as a result of contact by 1st appellant (meaning the present appellant) with 2nd appellant. Each of them was initiated by 2nd appellant and without express E or implied authority of the Chairman of National Drug Law Enforcement Agency or any of the four official directors in the Agency. That all that went on was known only to the 1st and 2nd appellants and no other official. There was no doubt that 2nd appellant's action was personal and not official. The tribunal did not accept the 1st appellant's defence that he believed F the letters were written by a top official of National Drug law Enforcement Agency presumably by the chairman."

A little later in its judgment, the Special Appeal Tribunal went on:-

"The falsity was known to both appellants. Further, the tribunal was satisfied that the 1st appellant paid N100,000.00 (One hundred thou- G sand naira) as gratification for the false document, made with the intention that the Ambassador might act upon it as genuine, to the prejudice of the Nigerian Embassy in Manilla.

And it came to the decision "that both appellants acted in complicity, with 2nd appellant as the principal offender with 1st appellant as the H accessory. The 1st and 2nd appellants agreed to make Exhibit A and to utter it to the Ambassador, P.W.I, with the intention that she would act on it for the release of the said Felix Okeke. As a result the appellants were found guilty on each of the three counts and sentenced to ten years on each count."

(Words in brackets supplied)

It concluded thus:-

'The findings of fact are amply supported by the evidence before the Tribunal. The letter was false in that the entire or whole document was A sum of N100,000.00 passed between the 2 appellants for procuring 2nd appellant to make it. The letter was a forgery, within the definition of section 465 because, 2nd appellant made it knowing it to be false with intent that it may be used or acted upon by the Nigerian Ambassador in Philippines (P.W.1) and other Nigerian Embassy officers in Manila and Singapore. And as a matter of fact, P.W.1 and P.W. 2 acted upon it as genuine, by offering 1st appellant official accommodation and procuring him an official visa to travel to Jakarta.'

In the face of the above findings of fact which are fully supported by evidence on record, it seems to me crystal clear that the appellant is not only participates criminis to the offence of the forgery of Exhibit A for which he was jointly charged with the 2nd accused he was properly convicted with the actual commission of the crime pursuant to the provisions of section 7 of the Criminal Code. It is not suggested by the appellant that the Special Appeal Tribunal had no jurisdiction to determine his appeal. On the contrary it is indisputably plain that it had clear jurisdiction to determine the appeal. Having held that the appellant was properly convicted along with the 2nd accused person with the actual commission of the forgery, the main argument of learned counsel for the appellant to the effect that there is a jurisdictional error of law or that the Special Appeal Tribunal acted without or in excess of its jurisdiction becomes, if I may say with respect, totally baseless and misconceived.

In conclusion, it is my view that the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991, in particular, effectively ousted the supervisory jurisdiction of the Special Appeal Tribunal by the High Courts. Accordingly, the lone issue for determination in this appeal must be resolved against the appellant.

It is for these and the more elaborate reasons contained in the lead judgment that I, too, dismiss this appeal as utterly unmeritorious and without substance. I abide by the consequential orders including those as to costs therein made.