

**(1998) KLR VOL 2 PART 58 pp. 287 - 422**

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**Dedicated to the King of kings**

**O. O. NOEL ESQ. Chief Editor**

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**COURT OF APPEAL CASES**

1. Fawehinmi v. Abacha p. 351
2. Warner & Warner Int. Ltd. v. Kumolu-Johnson p. 415

### **CORRIGENDUM**

We are awfully sorry for the typographic omission in our 1998 vol 1 (pt 56), in respect of the Lagos Division of the CA which is now corrected hereunder

### **JUSTICES OF THE COURT OF APPEAL LAGOS DIVISION**

THE HON JUSTICE DAHIRU MUSDAPHER

THE HON. JUSTICE EMMANUEL OLAYINKAAYOOLA

THE HON. JUSTICE MORONKEJI OMOTAYO ONALAJA

THE HON. JUSTICE IGNATIUS CHUKWUDI PATS-ACHOLONU

THE HON. JUSTICE OKWUCHUKWU OPENE

**APPEALS** - Concurrent findings of fact - By the two lower courts - Will not be disturbed by the Supreme Court - Without any convincing ground. Vanderpuye v. Gbadebo p. 287

**APPEALS** - Issue - Raising a fresh issue suo motu - Without hearing the parties on the issue - And abandoning the issues raised by the parties - Amounts to denial of justice. Irom v. Okimba p. 301

**APPEALS** - Issue - Raising a fresh issue for the parties - Is to be avoided as much as possible - Except where serious issues of law or the Constitution is involved. Irom v. Okimba p. 301

**APPEALS** - Hearing - Fresh issue surfacing at the close of hearing - And which was the kernel of the appeal - Where court did not recall parties to address it on the point - Pronouncement made thereon is totally incompetent. Irom v. Okimba p. 301

**BANKING** - Proceeds of bank drafts - From an illegal transaction - Need for court to order that the proceeds be returned to the Central Bank. Alao v. African Continental Bank Ltd p. 311

**CONTRACTS** - Breach of contract - Termination by the appellant without justification - He is solely responsible for the breach Vanderpuye v. Gbadebo p. 287

**CONTRACTS** - Illegality - When will a contract be declared illegal - An illegal contract is void - And cannot be the foundation of any legal right. Alao v. African Continental Bank Ltd p. 311

**FOREIGN EXCHANGE** - Illegal transactions - That offend against the provisions of the Exchange Control Act - Will not be enforced by the law courts. Alao v. African Continental Bank Ltd p. 311

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**PRACTICE AND PROCEDURE** - Counter claim - Is entitled to fail - Where cogent reason was not advanced to buttress it. Vanderpuye v. Gbadebo p. 287

**PRACTICE AND PROCEDURE**- Pleadings - Evidence on facts not pleaded - Is worthless and goes to no issue. Vanderpuye v. Gbadebo p. 287

**COURT OF APPEAL CASES**

**ADMINISTRATIVE LAW** - Legislative judgment - Detention Order - Does not qualify as a legislative judgment by any means. Fawehinmi v. Abacha p. 351 CA

**ADMINISTRATIVE LAW** - Discretionary powers - Under the Detention (of persons) Decree No. 2 of 1984 - The Donee is not accountable to the court. Fawehinmi v. Abacha p. 351 CA

**APPEALS** - Relisting application for leave to appeal - Applicant has done enough - To justify that he was not aware of the hearing. Warner & Warner Int. Ltd. v. Kumolu-Johnson p. 415 CA

**CONSTITUTIONAL LAW** - Enforcement procedure Rules - Made under s. 42 of the Constitution - Cannot be employed in a claim - Based on the African Charter. Fawehinmi v. Abacha p. 351 CA

**EVIDENCE** - Admissibility - Detention Order - Where produced in Court but not tendered or exhibited - And no objection was raised at the trial court - It Cannot now be impugned at the appeal stage. Fawehinmi v. Abacha p. 351 CA

**INTERNATIONAL LAW** - Treaties - African Charter on the peoples and Human Rights provisions - Are in a class of their own - And the ouster clauses contained in Decree No. 107 of 1993 or No. 12 of 1994 cannot affect its operation in Nigeria. *Fawehinmi v. Abacha* p. 351 CA

**JURISDICTION** - Ouster provision - In Decree No. 2 of 1984 - Can not stop the court from adjudicating - On the issue of detention for a period - Not covered by the Detention Order. *Fawehinmi v. Abacha* p.351 CA

**LEGAL PRACTITIONERS** - Absence of counsel - Adjournment - Where counsel insisted he could not go on with a motion - Being handled by another counsel from same Chambers who was absent - Whether the proper procedure was for that counsel to have asked for adjournment. *Warner & Warner Int. Ltd. v. Kumolu-Johnson* p. 415 CA

**PRACTICE AND PROCEDURE** - Enforcement of - The provisions of African Charter on peoples and Human Rights - Can be done vide applicable Rules of Practice in courts. *Fawehinmi v. Abacha* p.351 CA

**PRACTICE & PROCEDURE** - Relisting a struck out appeal - On a balance of probabilities - Applicant has satisfied the Court to exercise discretion in his favour. *Warner & Warner Int. Ltd. v. Kumolu-Johnson* p. 415 CA

**STATUTES** - Detention Order - Decree 2 of 1984 - Amended by Decree No. 11 of 1994 - The rational interpretation and construction - Is that the Inspector General of Police is empowered to issue a detention Order. *Fawehinmi v. Abacha* p. 351 CA

## **INDEX OF STATUTES & RULES**

Exchange Control Act 1962 ss. 3, 7, 8 *Alao v. African Continental Bank Ltd* p. 311

Exchange Control (Anti-Sabotage) Act 1984 Cap. 114 vol II LFN 1990 ss. 1 (i) (e), 1 (1) (d) (iii) *Alao v. African Continental Bank Ltd* p. 311

Exchange Control (Repeal) Decree No. 8 of 1995 *Alao v. African Continental Bank Ltd* p. 311

### **COURT OF APPEAL**

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990 Articles 5, 6 and 12 *Fawehinmi v. Abacha* p. 351

Constitution of Nigeria 1979 ss. 1, 12, 31, 32, 38 and 42 (1) *Fawehinmi v. Abacha* p. 351

Constitution (Suspension and Modification) Decree No. 107 of 1993. *Fawehinmi v. Abacha* p. 351

Decree No. 12 of 1994 s 1 (2) (b) (c) and (ii) *Fawehinmi v. Abacha* p. 351

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Defence (Control of Textiles) Regulations 1945, s. 42 *Fawehinmi v. Abacha* p. 351

Federal High Court (Civil Procedure) Rules, 1976 O. 27 Evidence Act ss. 74 (1) and 75 (1) *Fawehinmi v. Abacha* p. 351

Federal Military Government (Supremacy and Enforcement of Powers) Fundamental Rights (Enforcement Procedure) Rules, 1979 O.1. r.2(1), (3) and (6), O.4 and O. 6 *Fawehinmi v. Abacha* p. 351

State Security (Detention) of Persons) Decree No. 2 1984 ss 1, and 4 *Fawehinmi v. Abacha* p. 351