

COURT OF APPEAL
KADUNA DIVISION
7TH MAY, 1997. CA/K/42/96
CORAM:- U. ABDULLAHI, J. O. OGBE, I. T. MUHAMMAD
JJCA.

THE GOVERNMENT OF KWARA STATE APPELLANTS
MILITARY ADMINISTRATOR OF KWARA STATE
ATTORNEY-GENERAL OF KWARA STATE

V.

ALHAJI SHEHU ABDUL GAFAR RESPONDENT

***APPEALS** - Grounds of Appeal - Classification - Where the grounds qualify to pass as grounds of law - As in the instant case - No leave is required to file them - And they are as such competent grounds.*

***COURTS** - Jurisdiction of the Courts - May be extended by the Legislature but not by the Courts - For part of the interpretation functions of the Courts is to expound but not to expand it.*

***JURISDICTION** - Federal High Court - Claim for the enforcement of fundamental rights - Which arose from the activities of a commission of inquiry established by a State Government under its law - The Federal High Court has no jurisdiction to entertain the claim.*

***JURISDICTION** - Federal High Court - Agency relationship of the Federal Government with State Governments - Relied on by the trial judge to expand his jurisdiction under s. 230 (1) (9) (r) & (s) of the 1979 constitution as amended - Is misconceived.*

FACTS

The plaintiff/respondent instituted an action before the Federal High Court, Ilorin against the defendants/appellants in which he sought to enforce his fundamental rights. The respondent was the former secre-

tary to the Kwara State Government. The Federal Government of Nigeria gave large sums of money namely N76 million and N120 million as grant to the Kwara State Government in order to ameliorate ecological problems in Kwara State as well as for the expansion of Ilorin Water Scheme. The handling of this grant became the subject of a commission of inquiry set up by the Kwara State Government. From the report of the Commission, the Government came out with a white paper in which the respondent was indicted and was directed to pay N 2 million to the 1st appellant or forfeit his personal assets. The respondent was not happy with the outcome of the white paper hence he commenced legal proceedings before the Federal High Court, Ilorin.

On being served with the respondent's claims, the appellants filed a notice of preliminary objection challenging the jurisdiction of the Federal High Court to entertain the reliefs sought. The respondent filed a counter affidavit in opposition to the preliminary objection. The learned trial judge heard the application and dismissed it. He held that he has jurisdiction to hear the case. The appellants were dissatisfied with the ruling and they appealed to the Court of Appeal, Kaduna Division. The respondent filed a notice of preliminary objection concerning the validity of the grounds of appeal filed by the appellant. But the court upheld the grounds of appeal as valid. In their brief of argument the appellants formulated five issues while the respondent formulated four issues. However, issue No.1 formulated by the respondent was regarded as adequate for the determination of the appeal.

ISSUE FOR DETERMINATION

"Whether the trial court did not have jurisdiction to entertain the case of the respondent having regard to his claim before that trial court and the facts of this case."

HELD (Unanimously allowing the appeal per lead judgment of **Abdullahi JCA**)

Grounds of Appeal

1. Where a ground of appeal raises an issue partly law and partly facts it can be regarded as a ground of mixed law and fact. Where however a

ground of appeal raised issues pertaining to legal interpretation of say deeds, documents, terms of art, words or phrases or inferences drawn therefrom, the ground is a ground of law, see Ogbechie v. Onochie (1986) 2 NWLR (Pt. 23) 484. Also where a tribunal states the law on a point wrongly, it commits an error in law. See Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718. Having regard to the substance of the grounds of appeal filed by the appellants, I am of the view that the grounds qualified to pass as grounds of law. In the circumstances, the appellants will not require leave to file them. They are therefore competent grounds, and I so hold. (p. 938 D)

Claim for the enforcement of fundamental rights

2. There is no doubt from the facts of this case, the whole case of the respondent is centred on the recommendation of the Commission of Inquiry set up by the Kwara State Government under the Law of the State. It therefore goes without saying that all the reliefs sought by the respondent before the trial court arose from the action of the commission of Inquiry. In other words, the particular subject matter and principal issue is the recommendation of the Commission of Inquiry. There is therefore no way the respondents fundamental rights can be enforced without a determination as to how the rights were infringed. To be able to do this, the trial court must examine the whole spectrum of the activities of the commission of inquiry set up under the Kwara State Laws and where and when the trial court starts doing this, it will certainly be going beyond the limited jurisdiction of the Federal High Court as conferred by the Provisions of Decree 107 of 1993 set out above. (p. 945 C)

Jurisdiction of the courts

3. There is no doubt that courts are creatures of statute and it is the statute that created a particular court that will also confer on it its jurisdiction. They may be extended, not by the courts, but by the legislature, for it is part of interpretation functions of the courts to expound the jurisdiction of the court but not to expand it. (p. 945 F)

Jurisdiction - Agency relationship

4. Considering the clear provisions of section 230(1)(q) (r)&(s) stated above, I cannot with all respects see how these paragraphs expanded the jurisdiction of the Federal High Court to confer jurisdiction on it to entertain the respondent's suit. The reasoning advanced by the learned trial Judge to show that by the nature of the existing Governmental structures, by which according to him Ideal Operation of Federalism had ceased is to say the least misconceived. The learned trial Judge used the same argument to hold that the appellants stand on agency relationship with the Federal Government and therefore covered by the provision of Section 230(1) (q) (r) and (s). This clearly is a glaring situation where the learned trial Judge both expounded and expanded the jurisdiction of his court. With all respect, he could not do that and he was wrong to do that. (p. 945 G)

REPRESENTATION

M. A. Sanni, Attorney-General Kwara State, with S. A. Mohammed E D.C.R. Kwara State for the Appellant
Yusuf O. Alli with Sikiru U. Solagberu for the Respondent

CASES REFERRED TO

- F Olanrewaju v. Bank of the North Ltd. (1994) 8 NWLR (Pt. 364) 622
- Amuda v. Adelodun (1994) 8 NWLR (Pt. 360) 23
- Ogbechie v. Onochie (1986) 2 NWLR (Pt. 23) 484
- Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718
- Adeyemi v. Opeyori (1976) Vol. 9/10 S.C. 31
- G Tukur v. The Government of Gongola State (1989) 4 NWLR (Pt. 117) 517
- Okafor v. A-G. Anambra State (1991) 6 NWLR (Pt. 200) 659
- Bronik v. Wema Bank (1983) 1 SCNLR at 296
- H Ogbechie v. Onochie (1986) 2 NWLR (Pt. 23) 484.
- Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718

STATUTES AND RULES REFERRED TO

African Charter of Human and People Rights (Ratification and Enforcement) Act 10 Laws of the Federation of Nigeria 1990

Public Officers Protection Act Cap 379 Laws of the Federation 1990,

Fundamental Right (Enforcement Procedure) Rules 1979, O 1 r 2(6) B

Decree No. 1 of 1984

Decree No. 12 of 1994

Constitution Suspension and Modification Decree No. 107 of 1993 s. 230 (1), (9) (r) and (s)

Edit No 4 of 1994 Laws of Kwara State C

Constitution of the Federal Republic of Nigeria 1979 s. 42

Federal High Court (Amended) Decree No. 60 of 1991

LEAD JUDGMENT BY ABDULLAHI JCA

D

This is an interlocutory appeal against the ruling of the Federal High Court, Ilorin. The ruling arose from a preliminary objection raised challenging the jurisdiction of the court to entertain a suit filed by the respondent, Alhaji Shehu Abdul Gafar. The learned trial Judge ruled that he has jurisdiction to try the case, thus overruling the preliminary objection. The appellants felt aggrieved with the dated 2/8/95 and they appealed to this court. E

The brief facts of the case are as follows:

F

The respondent was the former Secretary to the Kwara State Government. The Federal Government of Nigeria gave large sums of money, namely N76 Million and N120 Million as grant to the Kwara State Government in order to ameliorate ecological problems in Kwara state as well as for the expansion of Ilorin Water Scheme. The handling of this grant became the subject of a commission of inquiry set up by the Kwara State Government. G

Initially a commission of Inquiry generally referred to as Justice Ibiwoye Commission was set up in April, 1994. The Commission concluded its work, but it never submitted its report to the appointing authority. H

In April, 1995 another judicial commission of inquiry under the chairmanship of Hon. Justice I.A. Salami was constituted over the same

matter, investigated by Ibiwoye Commission.

The second judicial commission completed its assignment and submitted its report to the Government.

The Government considered the report and came out with a white paper. In the White Paper, the respondent was indicted and was directed to pay N2 Million to the 1st appellant or forfeit his personal assets.

The respondent was not happy with the outcome of the white Paper and he headed to the Federal High Court Ilorin. Before the Federal High Court, the respondent claimed the following reliefs.

(1) A DECLARATION that the respondents, jointly and severally have no right in law or under the Constitution to try and find the applicant guilty of grave criminal offences without affording the applicant a right to a hearing and without the observance of the applicant's constitutional right to a fair hearing and the rules of natural justice and that the purported guilt of the applicant as found by the Justice Issa Ayo Salami Commission of Enquiry (hereinafter referred to as the Commission) and confirmed in a white paper issued by the respondents sometime in May 1995 is unconstitutional, against the rules of natural justice, against the African Charter of Human and People Rights (Ratification and Enforcement) Act 10 Laws of the Federation of Nigeria 1990 and is therefore null, and of no effect whatsoever.

(2) A DECLARATION that the respondents have no power under the law and Constitution to purport to find the applicant guilty of misappropriation of funds when the respondents are the accusers, the prosecutors and the judges all rolled into one.

(3) A DECLARATION that the respondents cannot lawfully order the forfeit of the property of the applicant or order him to pay any money as a reparation for any offence of misappropriation of funds or criminal breach of trust without the observance of the due process and a pronouncement of guilt by a court of competent jurisdiction on the point.

(4) A DECLARATION that the purported trial and conviction of the applicant by the respondent and their agents when he was never accused of any offence nor any valid criminal allegation or charges lev-

ied against him is unlawful, unconstitutional, illegal, against the rules of natural justice and an affront to all standards of justice and is therefore null and void.

(5) A DECLARATION that the applicant as a citizen of Nigeria cannot be made to suffer any disability in his property or person without the observance of due process and observance of his right to a fair hearing.

(6) A DECLARATION that having regard to the mandatory provisions of Section 2 of the Public Officers Protection Act Cap 379 Laws of the Federation 1990, the respondents or their agents have no power in law to inquire into, investigate or in any way look into the official actions of the Applicant more than 18 months after ceasing to be a public officer in the employment of the respondents.

(7) ORDER directing the respondents, jointly and severally not to enforce, give effect to, carry out in any other manner enforce the sanction contained in the white paper they issued on the purported findings of the Commission.

(8) INJUNCTION restraining the respondents, jointly and severally, by themselves, their agents, privies, servants, Panel Commission or any other person or body of persons howsoever from implementing, enforcing, carrying out or in any other manner carry into effect the decisions contained in the white paper they issued as it affects the applicant until the determination of the action.

(9) INJUNCTION restraining the respondents, jointly and severally, by themselves, their agents, privies, servants, Panel, Commission, or any person or body of persons howsoever from taking any further steps that will affect, derogate from or in anyway hinder the fundamental rights of the applicant to a fair hearing, right to liberty and right against acquisition of his properties, moveable and immovable as preserved under the Constitution of the Federal Republic of Nigeria 1979 and the African Charter of Human and Peoples rights aforesaid.

(10) ORDER of this Honourable Court made pursuant to the provisions of Order 1 Rule 2(6) of the Fundamental Rights (Enforcement Procedure) Rules 1979.

(11) AND for such further or other orders as the Court may deem fit to make in the circumstances.

On being served with the respondent's claims, the appellants filed a notice of preliminary objection challenging the jurisdiction of the
B Federal High Court to entertain the reliefs sought.

The respondent filed a counter-affidavit in opposition to the preliminary objection.

The learned trial Judge listened to the arguments for and against the notice of preliminary objection on 19/6/95. On 2/8/95, the learned
C trial Judge delivered his reserved ruling, wherein he dismissed the preliminary objection and held that he has jurisdiction to hear the case.

The appellants were not happy with the ruling and they appealed to this court. Briefs of argument were filed and exchanged including a
D reply brief filed by the appellants.

There is also a notice of preliminary objection filed by the respondent concerning the validity of the grounds of appeal filed by the appellant.

E I shall therefore begin with the preliminary issue concerning the validity of the grounds of appeal.

It is the contention of the learned counsel for respondent that the appeal being an interlocutory appeal and all the grounds of appeal being
F grounds of mixed law and fact, the appellants must seek leave either of the trial court or this court before they can be validly filed. Learned counsel contended further that the appellant did not seek and obtain the necessary leave in this case, consequently, the grounds are not competent and this court lacks the necessary jurisdiction to entertain the appeal.
G He urged that the appeal be struck out. He cited the cases of Olanrewaju v. Bank of the North Ltd. (1994) 8 NWLR (Pt. 364) 622; Amuda v. Adelodun (1994) 8 NWLR (Pt. 360) 23 in support.

The appellants for their part answered the preliminary objection
H in their reply brief, which was filed by leave of this court on 28/1/97. It is the contention of the appellants that apart from ground 1 which is an omnibus ground all the remaining seven grounds of appeal are grounds of law and therefore they need no leave to file them. The grounds of

appeal are therefore competent grounds.

The learned Attorney-General of Kwara State who represented the appellants went through the grounds one by one to explain its purport.

He maintained that, ground 2 raised an issue of interpretation of S. 230 of Decree 107 of 1993. Ground 3 complained about wrong application of principle of law. Ground 4 challenged the courts wrongful application of the principle of law dealing with "doctrine of covering the field" to undisputed set of facts. Ground 5 complained about the trial court's misconstruing the provisions of Decree No. 1 of 1984 and Decree No. 107 of 1993. Ground 6 complained about the misapplication of the provisions of the 1979 Constitution. Ground 7 complained about the refusal of the trial court to apply the provisions of Decree No. 12 of 1994, and ground 8 challenged the trial court's determination of the substantive suit at the hearing of preliminary objection.

I checked and cross-checked the grounds of appeal and I found that what the learned Attorney-General stated gave a substantially correct assessment of what the grounds of appeal really contained. For the purpose of clarity however, I shall set them out without the particulars. They read as follows:-

"2. The learned trial Judge misdirected himself in law and indeed misconstrued the provision of Section 230 of Part B of the second Schedule of the Constitution Suspension and Modification Decree No. 107 of 1993 as it relates to the amendment of Section 230 of the 1979 Constitution by the said Decree No. 107.

3. The learned trial Judge erred in law by misconstruing the decision of the Supreme Court in Adeyemi v. Opeyori (1976) 9 and 10 SC. 31 by not merely looking at the claims of the respondent but also drew conclusion on the same.

4. The learned trial Judge erred in law by invoking "Doctrine of covering the field" to nullify Edict No. 4 of 1994 Laws of Kwara State and also misdirected himself in law in applying the said doctrine of the covering the field to this matter at the preliminary stage of objection raised against the trial court's jurisdiction.

5. *The learned trial Judge erred in law by holding that Decree No. 1 of 1984 and Decree No. 107 of 1993 have abolished the dichotomy of law making power in favour of the Federal Government against the State government.*

B 6. *The Judge erred in law by holding that the State Government is an agent of the Federal Government.*

7. *The Judge erred in law by holding that "it is too premature to invoke the provision of Decree No. 12 of 1994 to oust the jurisdiction of this court."*

C 8. *The learned trial Judge erred in law by determining the substantive suit at the hearing of a preliminary objection on jurisdiction by holding that "..... reliance on a state legislation i.e. Edict No. 4 of 1994 to infringe on the constitutional right of a citizen calls for intervention"*

This issue has fairly been settled by the authorities. **Where a ground of appeal raises an issue partly law and partly facts it can be regarded as a ground of mixed law and fact.**

E **Where however a ground of appeal raised issues pertaining to legal interpretation of say deeds, documents, terms of art, words or phrases or inferences drawn therefrom, the ground is a ground of law, see Ogbechie v. Onochie (1986) 2 NWLR (Pt. 23) 484.**

F **Also where a tribunal states the law on a point wrongly, it commits an error in law. See Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718.**

G **Having regard to the substance of the grounds of appeal filed by the appellants, I am of the view that the grounds qualified to pass as grounds of law. In the circumstances, the appellants will not require leave to file them. They are therefore competent grounds, and I so hold.** This disposes of the preliminary objection, which is accordingly over ruled.

H I shall now go to the appeal itself. In their brief of argument, the appellants formulated five issues for determination and they read as follows:-

"1. ISSUE NO. 1

Whether or not the learned trial Judge has jurisdiction to entertain the respondent's claim. (grounds 1, 2 and 3)

2. ISSUE NO. 2

Whether considering the facts of this case and particularly the terms of reference of Edict No. 4 of 1994 it could be said that the "Doctrine of Covering the field" is applicable to the case at hand." (grounds 4 and 5) B

3. ISSUE NO. 3

Whether considering the circumstances and the constitutional Provisions in this case it will not be a misconception of law to say that 1st and 2nd appellants are agents of the Federal Government. (Ground 6) C

4. ISSUES NO. 4

Whether the issue of "Jurisdiction" being fundamental, cannot be raised at any stage of the proceedings."

5. ISSUE NO. 5

Whether the learned trial Judge can look into and determine the substantive suit by making final pronouncement while he was merely hearing an application challenging his jurisdiction." D

The respondent for his part formulated four issues for determination. E
They read as follows:-

"1. Whether the trial Court did not have jurisdiction to entertain the case of the respondent having regard to his claim before that trial court and the facts of this case.

2. Whether the trial court was not right to have invoked and relied on the jurisprudential doctrine of "covering the Field" in the circumstances of this case and whether the trial court could be said to have decided the main case in the interlocutory ruling. F

3. Whether having regard to all the facts and the provisions of G the law canvassed before the trial court, it can be said that a true federation still exists in the present dispensation.

4. Whether the alleged failure to consider the provisions of Decree No. 12 of 1994 led to a miscarriage of justice and whether on a clear H view of the matter the provisions of Decree No. 12 of 1994 could avail the appellants."

Having regard to the narrow issue that calls for the determina-

tion of this interlocutory appeal, thus avoiding going into the merit of the substantive suit itself, it is my view that issue No. 1 formulated by the respondent, which virtually is the same thing with issue No. 1 in the appellant's brief will be adequate. I shall therefore adopt it, for the purpose of clarity, I shall reproduce it again. It reads thus:-

"Whether the trial court did not have jurisdiction to entertain the case of the respondent having regard to his claim before that trial court and the facts of this case."

It is the submission of the learned counsel for the appellants that the trial court has no jurisdiction to entertain the suit because the totality of the reliefs sought by the respondent are akin to seeking for a review of the Justice Salami Commission of Inquiry. That being the case, there is nothing under the provisions of S. 230 of the 1979 Constitution as amended by Decree 107 of 1993, which empowers the trial court to entertain any of the reliefs sought by the respondent.

It is also the contention of the Learned Attorney General that in a situation like this, the court is required to look only at the relief and the supporting affidavit to arrive at a decision as to whether it has jurisdiction or not. The learned counsel cited in support the case of Adeyemi v. Opeyori, (1976) Vol. 9/10 S.C. 31. Learned Attorney maintained further that all the principal reliefs sought by the respondent arose from the finding of the Justice Salami Commission of Inquiry which was set up by the Kwara State Government and the rests are at best collateral or ancillary to the findings of the Commission, which is outside the jurisdiction of the trial court. He cited in support the case of Tukur v. The Government of Gongola State (1984) 4 NWLR (Pt. 117) 517.

Learned counsel conceded that the trial court has jurisdiction to try matters bordering on Fundamental Human Rights, but if the court discovers that it has no jurisdiction in the matter that led to an alleged threatened breach, it should decline to entertain the suit. It is the contention of the learned counsel that in so trying to find out whether it has jurisdiction or not, the court should only expound its jurisdiction but not to expand same. In this case, the trial court had expanded its jurisdiction, particularly having regard to the fact that the commission of Inquiry

whose recommendations are being challenged by the respondent is a creation of State law, i.e. CAP 25 LAWS OF NORTHERN NIGERIA 1963, applicable to Kwara State as amended by EDICT No. 4 1994. That being the case, the whole reliefs being sought by the respondent arose from a purely Kwara State matter and the trial court has no jurisdiction to entertain the suit. B

Learned counsel then went on to submit that the action of the commission of Inquiry constituted pursuant to an Edict cannot be challenged. He referred to Decree No. 12 of 1994, which he said is in pari materia with Decree No. 13 of 1994. C

Let me say at this juncture, that the real issue raised in this appeal does not accommodate the application of Decree No. 12 of 1994 nor Decree No. 13 of 1994. This issue may be relevant when the substantive suit is being determined, but in my view it is now irrelevant to the present appeal. D

It is also the contention of the respondent, that he is not challenging the power of the appellants to set up the Commission of Inquiry, but that all he was saying and is still saying is that in accepting the report of the Commission the appellants had raised ... the learned counsel for respondents, submitted that section 42 of the 1979 Constitution gives co-ordinate jurisdiction to state and Federal High Courts to deal with complaints of breach or threat of breach of fundamental rights. E

That also by virtue of the provisions of the Federal High Court (Amended) Decree No. 60 of 1991 and Section 230 (1), (q), (s) of the 1979 Constitutional amended by Decree 107 of 1993, the trial court has the jurisdiction to determine the case of the respondent as filed. F

Learned counsel maintained that superior court of record guards its jurisdiction jealously and nothing is assumed to be outside such jurisdiction except what the statutes expressly exclude. He cited in support the case of Ekekebo v. Fiberesima (1994) 3 NWLR (pt. 335) 707; Okafor v. A.G., Anambra State (1991) 6 NWLR (pt. 200) 659. G

Learned counsel contended that the case of Tukur v. Government of Gongola State (supra) is irrelevant to the facts of this case.

I think it is pertinent at this point, to consider some of the find-

ings made by the learned trial Judge on this issue of the jurisdiction of his court. In reviewing the provisions of Section 230 of the 1979 Constitution as amended by the provisions of Decree 107 of 1993, the learned trial Judge came up with the following finding.

B *"With the coming into force of Decree 107 of 1993, Section 230(1) of the 1979 Constitution was substituted for the following new sub-section, that is Section 230(1)(a) and (b) of the 1979 Constitution to be deleted completely and in its place the present Section 230(1) a - s and 1A. The Section provides*

C *"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion to any other*
D *court in civil causes and matters arising from."*

I have not come across the interpretation of this section by the Court of Appeal or the Supreme Court but I am of the humble opinion that it has seriously modified or radically eroded previous interpretation such as
E Bronik v. Wema Bank (1983) 1 SCNLR at 296; Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping and Transport Ltd. & 1 Other (1987) 1 NWLR (pt. 49) 212; Tukur v. Gongola State Government (1989) 4 NWLR (pt. 117) 517.

F I also hold the humble view that Section 230(1)(a)-(s) and 1A has further expanded the jurisdiction of the Federal High Court. There is no dispute that the words *"notwithstanding anything to the contrary in this Constitution"* has wide meaning which can be construed to mean that anything in this Constitution which appears to limit the jurisdiction of the Federal
G *High Court shall be ignored. By the provisions of Section 230(1) (a) - (s) and 1A of Decree 107 of 1993, the jurisdiction of the Federal High Court is not subject to Section 7 of the Federal High Court Act as contended by the learned Attorney General of Kwara State"*

H _____
Further down in the ruling, the learned trial Judge made the following finding:

"It is necessary to reflect on the operation of the 1979 Constitu-

tion as it relates to Federalism before the Military intervention on the 31st December, 1983.

.....
In fact and in law, there was in operation an ideal system of Federalism. With the coming of the Military in December 1993, this ideal operation of Federalism ceased. The states structure continues, but it can hardly be said that administrative, executive and Legislative functions of the Federal law and State Governments are distinct. The Federal Military Government assumes the posture of an overlord in terms of executive and legislative functions. It determines who administer the states and it has overriding powers in terms of law making. It is from this perspective that the agency relationship of the 1st and 2nd Applicants / with the Federal Government will be looked upon."

Towards the end of the ruling, the learned trial Judge made the following finding:

"I now look upon the position of the 1st and 2nd applicants/respondents with regard to Agency relationship with the Federal Government. The 1st applicant, the Kwara State Government is constituted by the Federal Military Government in the sense that the Federal Military Government decides and appoint the person who administers the Kwara State Government and the person who administers the Kwara State Government constituted the Government of Kwara State. So in all respects, the Government of Kwara State is constituted and administered on behalf of the Federal Military Government.

It is also a notorious fact that all the states in the country exist at the mercy of the Federal Military Government if one considers that most, if not all funds to state Governments are derivable from the Federal Government. I am therefore of the humble view that it would not be out of place to consider the 1st applicant as an agent of the Federal Military Government. As for the 2nd applicant / respondent, the Military Administrator of Kwara State, it is an undeniable fact that he is a serving Military Officer, it is not in dispute that the Military institution in Nigeria is an exclusive affair of the Federal Government. It is equally not in dispute that the Federal Military Government appointed the 2nd appli-

cant/respondent to constitute and administer the 1st applicant/respondent, the Kwara State Government, I therefore have no difficulty in finding that the 2nd applicant/respondent is an agent of the Federal Government.

B *With the foregoing, I only need to mention in passing the 3rd applicant/respondent, the Attorney-General of Kwara State, is an agent of the 2nd applicant/respondent."*

Finally, the learned trial Judge came to the following conclusion.

C *"I have no doubt in my mind that all the reliefs sought call for the interpretation and operation of the 1979 Constitution as amended, as it affects the Federal Government or any of agencies and the interpretation of the Public Officers Protection Law Cap. 376, laws of the federation and also injunctive reliefs affecting the validity of any Executive or*
D *Administrative action or decision by the Federal Government or any its Agencies."*

Earlier in this ruling, I found and held that the 1st and 2nd applicants/respondents are agents of the Federal Government and 3rd
E *applicant is an agent of the 2nd applicant/respondent. In view of the foregoing, I find and hold that by virtue of Section 230(1)(Q)(R) &(S) of 1979 Constitution as amended by Decree 107 of 1993, this court has jurisdiction to entertain this action as filed."*

F *So after all that has been said and done, the learned trial Judge claimed jurisdiction to entertain the suit on the authority of the provisions of Decree 107 as set out under section 230 (1)(q)(r)&(s) which provides as follows:-*

G *"230- (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from-*

H *(q) the administration or the management and control of the Federal Government or any of its agencies;*

(r) subject to the provisions of this Constitution, the operation and interpretation of this constitution in so far as it affects the Federal Govern-

ment or any of its agencies; and

(s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies:

Provided that nothing in the provisions of paragraphs (q),(r)and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

There is no doubt from the facts of this case, the whole case of the respondent is centred on the recommendation of the Commission of Inquiry set up by the Kwara State Government under the Law of the State. It therefore goes without saying that all the reliefs sought by the respondent before the trial court arose from the action of the commission of Inquiry. In other words, the particular subject matter and principal issue is the recommendation of the Commission of Inquiry. There is therefore no way the respondent's fundamental rights can be enforced without a determination as to how the rights were infringed. To be able to do this, the trial court must examine the whole spectrum of the activities of the commission of inquiry set up under the Kwara State Laws and where and when the trial court starts doing this, it will certainly be going beyond the limited jurisdiction of the Federal High Court as conferred by the Provisions of Decree 107 of 1993 set out above.

There is no doubt that courts are creatures of statute and it is the statute that created a particular court that will also confer on it its jurisdiction. They may be extended, not by the courts, but by the legislature, for it is part of interpretation functions of the courts to expound the jurisdiction of the court but not to expand it.

Considering the clear provisions of section 230(1)(q) (r)&(s) stated above, I cannot with all respects see how these paragraphs expanded the jurisdiction of the Federal High Court to confer jurisdiction on it to entertain the respondent's suit.

The reasoning advanced by the learned trial Judge to show

that by the nature of the existing Governmental structures, by which according to him Ideal Operation of Federalism had ceased is to say the least misconceived.

The learned trial Judge used same argument to hold that
 B the appellants stand on agency relationship with the Federal Government and therefore covered by the provision of Section 230(1) (q) (r) and (s).

This clearly is a glaring situation where the learned trial
 C Judge both expounded and expanded the jurisdiction of his court. With all respect, he could not do that and he was wrong to do that.

In the case of Alh. Umaru Abb Tukur v. Government of Gongola State (1989) 4 NWLR (pt.117) 517 at 547 Obaseki, J.S.C. stated the law as follows; -

D In the instant appeal, all the breaches of the fundamental rights alleged flow from the deposition of the appellant from the office of Emir of Muri by the Military Governor of the State. The office of Emir is a Chieftaincy office and the deposition of the Emir of Muri is a chieftaincy
 E question which only a state High Court has jurisdiction to determine. The appellant in my opinion is directly complaining by his claim or reliefs claim and affidavit evidence, that his civil rights as a Chief have been breached and that in the process, his fundamental rights of fair hearing, liberty and freedom of movement has also been breached. His claim for
 F an order to quash the order of deposition and restoration to the office is a relief the Federal High Court has no jurisdiction to entertain. It is only the High Court of Gongola State that has jurisdiction to grant the relief. Since the Federal High Court does not have jurisdiction to quash the
 G order of deposition and order restoration of the appellant to his office of Emir of Muri, the jurisdiction to enforce the fundamental rights of fair hearing, liberty of movement of appellant vests only in the High Court of Gongola State in the matter."

H In this appeal, the principal reliefs arose from the activities of a commission of inquiry established by Kwara State Government under its law. I cannot find any statutory provisions conferring on the Federal High Court jurisdiction to entertain the reliefs sought by the respondent.

I already found that the attempt by the learned trial judge to expand the jurisdiction of his court to entertain the situation was based on complete misconception.

In my view, the correct forum for the respondent to seek his reliefs is the Kwara State High Court. B

In the circumstances, the appeal is allowed. The order of the trial Federal High Court assuming jurisdiction to entertain the suit is hereby set aside.

In its place, an order is hereby made that the matter be transferred to the Kwara State High Court, through the Chief Judge of Kwara State for assignment. I make no order as to costs. C

OGEBE JCA

I read in advance the lead judgment of my learned brother Abdullahi, J.C.A. just delivered and I agree entirely with his reasoning and conclusion. D

The trial High Court, Ilorin was totally wrong in assuming jurisdiction over a matter which was clearly outside its jurisdiction. Accordingly, the appeal succeeds and it is allowed. I abide by the consequential orders made in the lead judgment. E

MUHAMMAD JCA

I have the opportunity to read the copy of the judgment of my learned brother Abdullahi, J.C.A. I agree with his reasoning and conclusion. I abide by all the consequential, orders made by him in the aforesaid leading judgment. I make no order as to costs. G

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