

SUPREME COURT OF NIGERIA

5TH MARCH, 1999. SC. 5/1995

**CORAM:- M. L. UWAI S CJN, S. M. A. BELGORE, M. E.
OGUNDARE, E. O. OGWUEGBU, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC**

1. DIRECTOR OF STATE SECURITY SERVICE APPELLANTS
2. ATTORNEY-GENERAL OF THE FEDERATION

AND

OLISA AGBAKOBA RESPONDENT

ACTIONS - *Commencement* - *Originating summons and writ of summons* - *Vital distinction* - *Between both of them.*

ADMINISTRATIVE LAW - *Delegation of Power* - *It was Possible for the Minister of Internal Affairs* - *To delegate his powers to cancel or withdraw a Passport* - *But such powers were not exercised in the present case.*

CONSTITUTIONAL LAW - *Fundamental Rights* - *Freedom of Movement* - *Under S.38 (1) of the 1979 Constitution* - *Withdrawal of Passport* - *The Minister of Internal Affairs has the power to cancel or withdraw a Passport.*

CONSTITUTIONAL LAW - *Freedom of Movement* - *Impounding of the Respondent's Passport* - *By the official of the SSS* - *Was unconstitutional and illegal.*

FUNDAMENTAL RIGHTS - *Enforcement Procedure* - *Where an application is made by motion on notice* - *There cannot be any pleadings.*

JUDGMENTS - *Declaratory relief* - *The principle in Wellersteiner's case* - *The application of the principle* - *Is limited to cases initiated by a writ of summons.*

STATUTES - *Duties of the SSS* - *National Security Agencies Act* - *Pro-*

visions of S.2(3) (4) - Does not empower the officials of the SSS - To seize or withdraw a citizen's passport.

WORDS & PHRASES - *Originating Summons - Definition - And use of originating summons.*

FACTS

The respondent was the applicant in the High Court of Lagos State, holden at Lagos, while the appellants were the respondents in a motion on notice brought under the Fundamental Rights (Enforcement Procedure) Rules, in which the following reliefs were sought:- (1) a declaration that the forceful seizure of the applicant's passport by agents of the State Security Service on April 21, 1992 is a gross violation of the applicant's rights to personal liberty, freedom of thought, freedom of expression and freedom of movement respectively guaranteed under ss. 32, 35, 36 and 38 of the 1979 Constitution and is accordingly illegal and unconstitutional ; and for orders of injunction.

The respondent who is a legal practitioner was at the material time also the president of the Civil Liberties Organization (CLO) a non-governmental human rights body based in Nigeria. The respondent was invited by the Netherlands Organization for International Development and Cooperation (NOVIB) to attend a conference which was scheduled to take place between 22nd and 25th April, 1992. On 21st April, 1992, the respondent intending to attend the conference went to Murtala Mohammed International Airport at Ikeja, Lagos. However, he could not board the plane to the Hague because he was stopped by officers of the Nigerian State Security Service (SSS). The officers impounded his passport without giving any reason for doing so and merely directed that he should report the next morning to their Headquarters at Ikoyi Lagos for further action. On keeping the appointment on that day, the respondent was informed that the Director of the SSS whom he was to report to was not available. Thereafter other appointments were given to the respondent but on each of such occasions he was not able to meet the Director. During one of such visits to the Headquarters, the respondent

was directed by an official of the SSS to forward his complaints to the Attorney-General of the Federation (2nd appellant). The respondent accordingly forwarded his complaint to the Attorney-General vide a letter dated April 29 1992. But this was to no avail. Hence, he instituted this action. The appellants entered appearance but did not defend the case at the trial.

After hearing address by the respondent's counsel, the learned trial judge dismissed the application. Dissatisfied with this decision, the respondent appealed to the Court of Appeal, Lagos Division which allowed the appeal, and granted the reliefs sought by the respondent. Aggrieved, the appellants who further treated the case with disdain and shunned appearance, appealed to the Supreme Court, where they raised four issues but the appeal was determined on two issues.

ISSUES FOR DETERMINATION

3.03. Whether the Court below was right in granting a declaratory relief in favour of the Respondent when there was admission and default of pleadings on the part of the Appellant. Did the official of the SSS have the right to seize the Respondent's passport? If so, under what law did he do so?

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIS, CJN**)

Constitutional Law - Fundamental Rights

1. It is clear from the foregoing that the Minister of Internal Affairs has the powers to cancel or withdraw a passport for any of the reasons given under the provisions of section 5 subsection (1) (a), (b), (c) or (d); and such powers derogate from the provisions of section 38 (1) of the constitution. However, in doing so the name, the particulars of the passport holder and the number of the passport must be published in the Federal Gazette. It is obvious from the facts of this case that no explanation was offered in the High Court by the Appellants; and so it has to be taken that no information was given in the Gazette pursuant to the provisions of section 5 subsection (2) of the Passport (Miscellaneous Provisions) Act, Cap. 343. Again from the facts deposed, the Respondent's passport was not withdrawn

or impounded by the Minister but by an official of the SSS. Whether the official had the authority of the Minister to do so is not stated by the Appellants either. (p. 574 E)

B *Administrative Law - Delegation of Power*

2. The power of a Minister to delegate his powers under a statute is contained in section 3 of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, Cap. 228. Although, admittedly, it was possible for the Minister of Internal Affairs to delegate his powers to cancel or withdraw a passport under the passport (Miscellaneous Provisions) Act, Cap. 343, by virtue of the foregoing provisions, there is no suggestion by the Appellants that such powers were exercised by the Minister to enable the official of the SSS concerned to withdraw the Respondent's passport. (p. 575 A)

Statutes - Duties of the SSS

3. The duties of the SSS are spelt out under section 2 subsections (3) and (4) of the National Security Agencies Act, Cap. 278 of the Laws of the Federation of Nigeria, 1990. These provisions cannot, by any stretch of imagination, be interpreted to empower the officials of the SSS to seize, impound or withdraw a citizen's passport. (p. 576 A)

F *Constitutional Law - Freedom of Movement*

4. In the light of the foregoing, I am satisfied that the official of the SSS concerned in this case had no power to impound or withdraw the Respondent's passport in the manner he did. The impounding was, therefore, unconstitutional and illegal since it offended the provisions of section 38 subsection (1) of the constitution and section 5 subsection (1) of the passport (miscellaneous Provisions) Act. The right to have freedom of movement and the freedom to travel outside Nigeria is guaranteed by the constitution but the right to hold a passport is subject to the provisions of the Act. (p. 576 E)

Fundamental Rights - Enforcement Procedure

5. Now, I think the court below was right in holding that the lower court misdirected itself in relying on the procedural principles laid down by Wellersteiner's case which was approved by the Court of Appeal (Uwaifo, J.C.A.) in Osewale's case (supra) . Order 2 rule 1 (1) of the Fundamental Rights (Enforcement Procedure) Rules, provides:-

"1. (1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate court Form No 1 or 2 in the Appendix may be used as appropriate."

From these, it is obvious that there cannot be any pleadings where a motion on notice is brought because the deposition in the affidavit in support of the motion on notice is not the same as mere averments in a Statement of Claim or Statement of Defence which have to be supported with either a viva voce evidence or documentary evidence. In the case of an affidavit accompanying the application it is infact the evidence in support of the motion on notice. (p. 579 C)

Actions - Commencement

6. An originating summons is not the same as a writ of summons. In the case of the former no pleadings are employed while in the case of the latter there are pleadings in the form of Statement of Claim, Statement of Defence, Reply etc. - See Re Busfield, Whaley v Busfield, (1886) 32 Ch. D. 123 C.A. at p.126 and Re Holloway, ex parte Pallister, (1894) 2 Q.B. 163, C.A. at pp.166 and 167. With this vital distinction between an originating summons and writ of summons it was wrong of the learned trial judge to bring to bear on this case the principle laid down by the cases of Wellersteiner's (supra) and Osewale (supra). (p. 579 G)

Judgments - Declaratory relief

7. The Court of Appeal was, therefore, right in holding that the trial court acted wrongly in following the principle in the cases mentioned to hold that the Respondent's prayer for a declaratory relief had failed. I, therefore, come to the conclusion that the Court of Appeal was right in reject-

ing the application of the principle laid down in Wellersteiner's case. I hold that the application of the principle is limited to cases initiated by a writ of summons which call for pleadings and the calling of witnesses to testify or admission by way of averments in the pleadings. (p.580 B)

B

Words & Phrases - Originating summons

8. A Concise Law Dictionary, Fourth Edition, by Osborn, in defining the word "summons" on p. 824 thereof, defines the term "originating summons" to include every summons other than a summons in a pending cause or matter. It is used in the Chancery Division instead of a writ of summons to obtain a declaration or decision of the Court in the construction of an instrument or of a statutory provision as in the present case. (p. 580 B)

C

D NOTABLE POINTS OF INTEREST

BELGORE JSC

1. The provisions of S. 38 (1) of the 1979 Constitution is not absolute

By the constitution of the Federal Republic of Nigeria, 1979 (as amended) in section 38(1) thereof every citizen of Nigeria is entitled to move freely and reside freely in any part of Nigeria and no citizen of Nigeria should be expelled from the country or prevented from leaving the country. These provisions of section 38(1) (supra) look absolute but for qualifications by section 41(1) of the same constitution which provides:-

F

"41(1) Nothing in sections 34, 35, 36, as amended, 37 and 38 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society:-

G

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons."

Thus the provisions of section 38(1) are not absolute; if absolute passport will have to be issued to a known common criminal, a patient of highly infectious disease, a person dealing with foreign enemies of Nigeria et cetera. (p. 580 F)

H

OGUNDARE JSC*2. To hold a passport is ancillary to the right of egress from Nigeria*

It is not in dispute that the constitution gives to the Nigerian citizen the right to move freely throughout Nigeria and to reside in any part thereof. It also guarantees to the citizen the right not to be expelled from Nigeria nor be refused entry thereto or exit therefrom. Section 38(1) of the constitution provides:

"38. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom."

It is a matter of common knowledge that for a Nigeria to travel out of Nigeria to another country he must first hold or possess a valid passport issued by the Government of Nigeria. See: Section 4(1) of the Immigration Act, Cap. 171 LFN 1990 and the definition of the word passport in section 51 thereof. Without this document, he cannot leave Nigeria or be admitted to another country. It follows, therefore, that without a passport a citizen of Nigeria cannot exercise the right guaranteed him by the constitution, of egress from Nigeria. Can it, then, be said that the right to hold a passport is not one guaranteed by the constitution? That is a question that calls for determination in this appeal. If the view is correct - and I subscribe to it - that possession of a passport makes exit out of Nigeria possible, it follows that without it a citizen of Nigeria cannot enjoy the right of egress from Nigeria given him by section 38(1) of the constitution. In my respectful view, therefore, to hold or possess a passport is ancillary to the right of egress from Nigeria given in section (38(1). It is, as rightly held by the court below, per Ayoola JCA (as he then was), concomitant to the right of egress from Nigeria. It is a concomitant right without which the right of egress from Nigeria becomes hollow or empty. (p. 583 G)

3. Need to give liberal construction to constitutional provisions

That the right to hold a passport is not specifically mentioned in the constitution is to be expected. One does not expect to find in a constitution

minute details for it is necessarily brief and comprehensive . It pre-
scribes outlines, leaving the filling up to be deduced from the outlines. In
setting up an enduring framework of government, the framers of our
constitution undertook to carry out for the indefinite future and in all the
vicissitudes of the changing affairs of men and women, those funda-
mental purposes which the instrument itself discloses. Hence we read its
words, not as we read legislative provisions which are subject to con-
tinuous revision with the changing course of events, but as the revelation
of the great purposes which were intended to be achieved by the consti-
tutions a continuing instrument of Government. The Courts will give
especially broad, liberal construction to those constitutional provisions
designed to safeguard fundamental rights. To construe section 38(1) in
a manner to exclude the right to hold a passport, an important travel
document without which a Nigeria cannot exit from Nigeria, - and this is
the construction the learned Solicitor-General of the Federation urges on
us - is to put a close and literal construction on it which deprives it of
most of its efficacy and leads to gradual depreciation of the right of exit
from Nigeria. In my respectful view, the approach of the court below to
the question under consideration is the correct one.
(p. 584 F)

4. *A Nigerian citizen has a legal right to a passport*
In my respectful view a citizen of Nigeria has a legal right to a passport
and, in this respect, I subscribe to the conclusion reached by Ayoola JCA
that -

*"In the final analysis, what is at issue in this appeal is whether
the Judge was right in the main reason she gave for refusing the applica-
tion, namely, that the appellant has no legal right to the passport. It has,
I venture to think, been sufficiently demonstrated that she was in error in
holding that a citizen of Nigeria has no legal right to a passport and in
effect, that if he has been issued one it could be withdrawn, impounded
or revoked at will by the Government. To agree with that view would
have been tantamount to removing, in one fell swoop, the guarantee of
freedom of exit from our constitution. That should not be."* (p. 585 E)

OGWUEGBU JSC*5. Definition of the word "passport"*

The word "passport," has been defined in section 52(I) of the Immigration Act, Cap. 171 and section 6 of Passport (Miscellaneous Provisions) Act Cap. 343, Laws of the Federation of Nigeria, 1990 respectively. Section 6 B of (Passport Miscellaneous Provisions) Act provides:

"6 *"passport means a document of protection and authority to travel issued by the competent Nigerian officials to Nigerians wishing to travel outside Nigeria and includes as defined in subsections (3) and (4) of this Act, the following - "* C

Being in possession of and producing such passport granted as stated above allows the citizen to leave the country and travel to another country without hindrances. It affords him assistance and protection when travelling in such other country. (p. 589 H) D

ONU JSC*Jurisdiction of the courts to rely on comparative authorities*

6. I agree with the respondent's explanation that our Constitution makes E more specific provisions for right to foreign travels than those of the United States of America and India on whose authorities the court below relied. Note the non-existence of such rights in our 1960 and 1963 constitutions. In these countries (the U.S. and India) only rights to movement and personal liberty are provided for, yet, the right to passport was read into their F Constitutions. I am therefore of the firm view that it is justified of our courts to enforce the right to hold passport as necessary concomitant to right of exit in our constitution. See Ogugu v. The State (1994) 9 G NWLR (Part 366) I at 27-28, where this court has re-affirmed the jurisdiction of courts in Nigeria to rely on comparative authorities in deciding issues in our Constitution to the effect that:

"It has been the cardinal principle of our Constitutional law that on account of the unique character and diversity of our Constitution, the courts should always endeavour to find solutions to constitutional questions within the Constitution through its interpretation but the courts may seek guidance as persuasive authorities from the decisions of

the courts of other common law jurisdiction on the interpretations of their constitutions which are in pari materia with the relevant provisions of our Constitution." (p. 598 G)

7. *What constitutes a valid travel document*

- B As the respondent's passport is the only mandatory facility required of him to legally and factually leave Nigeria and enter into foreign land, the immigration laws and practices in this country and indeed those of foreign countries attest to this. For instance, (I) in relation to immigration, Section 4(I) (a) of the Immigration Act, Cap.171, Laws of the Federation of Nigeria, 1990 provides that a person departing from Nigeria by any means at or from any recognized port, must, as a condition for departure "*satisfy the immigration officers that he is the holder of a valid travel document.*"
- C
- D Though what constitutes "valid travel document" is not statutorily defined, Section 52 of the Immigration Act (the definition section) clearly states that such "valid travel document" must be a document "valid for entry into or travel through any other country as the case may require." It is a notorious fact under the Nigerian Immigration rules as well as the requirements of foreign missions in Nigeria, the Nigeria identity that the document on which visas are normally endorsed is the passport. In so far therefore, as the possession of a national passport is a condition of entry into other countries, the requirement under Section 4(I) (a) of the Immigration Act (ibid) for a "valid travel document" is nothing short of a requirement of possession of a Nigeria passport. Thus, an examination of modern rules of international travel in other countries show clearly that possession of a passport is both legally and factually necessary for entry into, or passage through their territories. (p. 600 A)
- E
- F
- G

8. *In inscription at back of passport is inconsistent with constitutional provisions*

- H It appears clear to me and I accordingly so hold, that the respondent's submission to the effect that the inscription at the back of the passport indicating it belongs to the Federal Government and may be withdrawn or impounded at any time, is inconsistent with Section 38(I) of the present

Constitution (ibid) and that by virtue of Section I of the same Constitution, should be declared null and void to the extent of the said inconsistency. (p. 605 D)

REPRESENTATION

T. Onwugbufor SAN, Solicitor-General of the Federation, with C. Okpoko, Legal Officer, and O. Agusiobo, Legal Officer for the Appellants
Chief C. Chigbue, with S. Etukeyokan for the Respondent

CASES REFERRED TO

Re Busfield, Whaley v Busfield, (1886) 32 Ch. D. 123 C.A. at 126 d 167
Ogugu v. The State (1994) 9 NWLR (Part 366) I at 27-28

Ogugu v. The State (1994) 9 N.W.L.R. (Part 366) 1 at pp. 27H - 28A
and 43H

Ipadeola v. Oshowole (1987) 3 N.W.L.R. (part 59) 18

Orji v. Emovan (1991) 1 N.W.L.R. (Part 168) 487

Rabiu v. The State (1980)12 N.S.C.C. 291 at p.300-301

Attorney-General of Bendel State v. Attorney-General of the Federation (1981)10 S.C.I.

Abdulkarim v. Incar (Nig) Ltd. (1992) 7 N.W.L.R. (Pt.251).

STATUTES AND RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979 ss 32, 35, 36, 38
and 41 Fundamental Rights (Enforcement Procedure)

Rules, cap 62 Laws of the Federation of Nigeria, 1990, O.1 and 2

Passport (Miscellaneous Provisions) Act. cap. 343, Laws of the Federation of Nigeria 1990. s. 5(1) (2) and 6.

African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, cap. 10 Laws of the Federation of Nigeria, 1990 Arts. 12 (2) and 13(2)

Immigration Act, Cap. 171 Laws of the Federation of Nigeria, 1990. ss 4
(1) (a) and 6

Minister's Statutory powers and Duties (Miscellaneous Provisions) Act,
Cap. 228 Laws of the Federation of Nigeria, 1990, s. 3.

National Security Agencies Act, cap. 278 Laws of the Federation of Nigeria 1990 s. 2 (3) and (4)

LEAD JUDGMENT BY UWAIS CJN

B This an appeal from the decision of the Court of Appeal, Lagos division (Kalgo, Uwaifo and Ayoola, JJ.C.A as they were then). The Respondent was the Appellant in the High Court of Lagos State, holden at Lagos, (Akinoboye, J.) while the Appellants were the Respondent in motion on notice brought under the Fundamental Rights (Enforcement Procedure) Rules, Cap. 62. in which the following reliefs were sought:-

C *"1. A DECLARATION that the forceful seizure of the Applicant's passport No. A 654141 by agents of the State Security Services (sic) (1st Respondent herein) on April, 21, 1992 is a gross violation of the Applicant's rights to personal liberty, freedom of thought, freedom of expression and freedom of movement respectively guaranteed under sections 32, 35, 36 and 38 of the constitution of the Federal Republic of Nigeria, 1979 (as amended) and is accordingly unconstitutional and illegal.*

E *2. AN ORDER OF MANDATORY INJUNCTION directing the Respondents to release applicant's passport No. A. 654141 to him forthwith.*

F *3. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents from seizing the Applicant's passport without cause, or in any other was violating the Applicant's rights to personal liberty, freedom of thought, expression and free of movement as guaranteed by the provisions of the 1979 Constitution aforementioned.*

G *4. AND for further consequential order(s) as this Honourable Court may consider appropriate in the circumstances."*

The facts of the case which were not contested by the Appellants are as deposed in the affidavit sworn to by the Respondent in support of his application. They are briefly as follows. The Respondent is a legal practitioner. He was at the material time also the President of a non-governmental human rights body based in Nigeria which is known as the "Civil Liberties Organization" (CLO). In his capacity as President of the CLO he was involved in international activities which were aimed at enhancing

the growth of non-governmental organizations (NGOS) concerned with human rights.

The Respondent was invited by the Netherlands Organization for International Development and Cooperation (NOVIB) to attend a conference which was scheduled to take place between 22nd and 25th April, 1992. On 21st April, 1992, the Respondent intending to attend the conference went to Murtala Mohammed International Airport, at Ikeja, Lagos. However, he could not board the plane to the Hague because he was stopped by officers of the Nigeria State Security Service (SSS). The officers impounded his passport without giving any reason for doing so and merely directed that he should report the next morning to the Headquarters of the SSS at No. 15A, Awolowo Road, Ikoyi, Lagos, for further action. On keeping the appointment on that day, the respondent was informed that the Director of the SS whom he was to report to was not available. Thereafter other appointments were given to the Respondent but on each of such occasions he was not able to meet the Director. During one of such visits to the Headquarters, the Respondent was directed by an official of the SSS to forward his complaints to the Attorney-General of the Federation (2nd Appellant).

On 29th April, 1992 the Respondent wrote a letter to the 2nd Appellant which reads as follows:-

"April 29, 1992.

*THE ATTORNEY-GENERAL OF THE FEDERATION,
ATTORNEY-GENERAL'S CHAMBERS,
FEDERAL MINISTRY OF JUSTICE,
MARINA, LAGOS.*

Dear Sir,

ON SEIZURE OF MY PASSPORT

I write to notify you about the seizure of my Passport on the night of April 21, 1992.

I was scheduled to visit the Hague for a conference on Human Rights And Development on the invitation of the Netherlands Organization For International Development Cooperation.

I was quite astonished that officers of the State Security Service would

deny me "permission" to leave the country. As the Honourable Attorney-General himself had announced sometime ago, the policy of the Federal Government no longer extended to withholding passports of people who want to travel out of the country.

B *I thought I ought to bring this to your attention.*

Yours sincerely,
(signed)

OLISA AGBAKOBA."

C The Respondent deposed in the affidavit that the seizure of his passport had caused him embarrassment and adversely affected his human rights activities. It was as a result that he brought the motion on notice before the High court.

D A statement was filed in the High Court by the Respondent, pursuant to the provisions of Order 1 rule 2 (3) of the Fundamental Rights (Enforcement Procedure) Rules, Cap. 62, which inter alia states the grounds upon which the aforementioned reliefs were sought, namely:-

E *"1. The forceful seizure of the Applicant's passport is a gross violation of his rights to move freely into and out of Nigeria, which right is guaranteed under section 38 (1) of the constitution of the Federal Republic of Nigeria.*

F *2. The forceful seizure of the Applicant's passport as aforesaid is a gross violation of his right to receive and impart ideas and information without interference, which right is guaranteed under section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1979."*

G The Respondent's motion was served upon the Appellants on the 16th July, 1992. On the 24th July, 1992 a Senior State counsel appeared before the learned trial Judge on behalf of the Appellants and requested for time file a return. This was granted and the hearing of the application was adjourned to the 29th July, 1992. By that date no return was again filed by H the Appellants. Further adjournment was granted, at their counsel's request, to the 30th July, 1992, but they still failed to file the return nor did they file a counter-affidavit to the Respondent's affidavit in support of the application. After hearing address by the Respondent's counsel, the

learned trial judge, in dismissing the application, ruled as follows:-

"Respondents in this case failed to depose to any counter-affidavit, therefore, there is no pleadings (sic) before the Court for the Defence. Applicant seeks this Declaration Judgment (sic) in default of Respondents' pleadings. He has stated in his affidavit evidence that he has a right under section 38 (of the 1979 Constitution) of entry into Nigeria and exit therefrom.

But he failed to satisfy this court that the passport is his personal property. For the passport refers to the Holder as 'the Bearer not the owner.' Since it has been decided that the Court should not make it a practice to make Declaration of right in default of pleadings, this application cannot succeed on this ground and it must fail in the first leg.

The next relief sought is a mandatory Injunction directing the Respondents to release to the Applicant Passport No. A654141 to him forthwith.

Before an order of Injunction is made, the Applicant must be able to establish his legal right. This was the decision of the Court in the case of Green v Green. (1987) 3 N.W.L.R. (Part 61) 48 at p. 82

This is an undefended case however and applicant never established by his affidavit evidence that he has a legal right to the passport asked to be released by the Respondents. More especially then, one brings to mind the words contained in the paragraph previously referred to and titled - "Caution" wherein it was clearly stated that -

"This Passport remains the property of the Nigerian Government and may be withdrawn at any time."

as the applicant has failed to rebut the above statement by any of his affidavit evidence, he has failed to establish a legal right to the order sought to warrant as at this stage to grant the order of Mandatory Injunction to compel the Respondents to release the Passport. This application must therefore also fail."

Aggrieved by the ruling, the Respondent herein, appealed to the Court of Appeal against it. Both the parties filed their respective briefs of argument, but the Appellants herein were not represented at the hearing of the appeal. After hearing counsel for the Respondent herein, the Court of

Appeal allowed the appeal and set aside the decision of the learned trial Judge. In his lead judgment, Ayoola, J.C.A. (as he then was) with whom the other learned Justices agreed, held as follows after alluding to the definition of "passport" in both Jowitt's Dictionary of English Law and Black's

B Law Dictionary:-

"In so far as passport is a certificate of identity and nationality and at the same time a request from one state to another to grant entry to the bearer, it stands to reason that a passport is normally an essential document in the exercise of the discretion by a foreign state, which at international law it has, in the reception of aliens into its territory. To that extent a passport is normally an essential document for entry into foreign countries. I also hold, that the possession of a passport in modern times makes exit out of Nigeria possible
C *..... The issue that follows from this conclusion is whether the possession of a passport or its withdrawal has any relevance to the constitutionally guaranteed freedom of movement, including the right of exit from Nigeria, with which this case is directly concerned*
D *.....*

it can thus be seen that while the seizure such as the 1st respondent can be interpreted as a direct expression of refusal of exit to the citizen, it is also a potent curb on the desire of the citizen to travel abroad and an evidence clog on the exercise of his right of freedom of movement."
E

On the issue of the statement in the passport that it remains government property and may be withdrawn at any time, the learned Justice held :-
F

"It will be an affront to all known human rights norms were the right to freedom to exit specifically guaranteed by our constitution to be drained of all effect by derogating to the Government a discretionary and most arbitrary power to withhold, withdraw or revoke a passport."
G

There is a conflict in the statement that the passport remains the property of the Government of the Federal Republic of Nigeria and the right which accrues to every citizen to hold such a passport. The consequence of a passport being the property of the Government is that the holder cannot deal with it as he pleases. He cannot transfer, sell or otherwise dispose of it. If for instance he ceases to be a citizen of Nigeria, he has an obligation, if requested, to return it to the "owner", and
H

the Nigerian Government as the owner of the passport has a right to recover the passport from anyone else who is not entitled to hold it. All these consequences of ownership have nothing to do with the right which a citizen of Nigeria has to be a holder of a Nigerian passport or a right not to have one issued to him impounded other than as provided under a law which meets the standard set by the Constitution

"I feel no hesitation, therefore, in coming to the conclusion that the right not to have a passport impounded, which is the right with which this case is directly concerned, is a necessary concomitant of the freedom of exit which is guaranteed by section 38 (1) of the constitution and Art. 12(2) of the African Charter. I also hold that the statement on the Nigerian passport that "a passport may be withdrawn at any time" is neither in accord with the constitution nor with any law applicable in Nigeria. It is inconsistent with the constitution of Nigeria and the Passport (Miscellaneous Provisions) Act. Cap. 343 Laws of the Federation of Nigeria. Such a statement which does not now represent the law should now be modified to reflect the true state of the law. I am of the clear view that the learned Judge was in error in the view she took that a citizen of Nigeria has no constitutional right to possession of a passport."

The learned Justice concluded the lead judgment thus:-

"To sum, up, I accept the submission of the appellant that the freedom of exit guaranteed by our constitution cannot be exercised without a passport and that (sic) freedom enshrined in section 38 (1) of the constitution carries with it a concomitant right of every citizen of Nigeria to a passport,' I also accept the submission and hold that the seizure of the appellant's passport amounts to a violation of the appellant's passport amounts to a violation of his right to travel abroad guaranteed by section 38 (1) of the constitution."

He then considered the relief to be granted stating as follows:-

"I am of the view that in slightly modified terms the appellant is entitled to the declaratory relief he claimed and I would grant it. He is also entitled to the injunction he seeks directing the respondent to release his passport. The injunction sought to restrain the respondents from seizing the applicant's passport without cause is not only too wide in

its terms but is also unsupported with any fact to show that there is any threat that in future his passport will be seized without cause or at all. I would refuse that injunction sought."

Dissatisfied with the decision, the Appellants herein who hitherto treated the case with disdain and shunned appearance, decided to appeal against it in this court. They filed a joint brief of argument in which they identified 4 issues for us to determine:-

"3.01. *Whether the Court of Appeal was right in holding that the right of exit from Nigeria guaranteed by section 38 (1) of the constitution carries with it a concomittant (sic) right to hold or own a passport. Put the other way, does section 38 (1) of the constitution confer an unlimited right on every Nigerian to hold a passport which cannot be withdrawn or canceled or otherwise interfered with.*

3.02. *Whether, if the answer to the issue No. 1 is affirmative, such right was not derogated from by section 41 (1) of the constitution, section 5 (1) of the Passport (Miscellaneous Provisions) Act, Cap. 343 of (the) Laws of the Federation (of Nigeria) 1990 and /or the inscription at the back of the passport that the passport is the property of the Federal Government.*

3.03. *Whether the Court below was right in granting a declaratory relief in favour of the Respondent when there was admission and default of pleadings on the part of the Appellant.*

3.04. *Whether the Court below was right in holding that the Respondent has a right to hold a passport when the Respondent did not disclose any existence of a right or an infringement of a right in his affidavit."* (Parenthesis mine).

In his brief of argument, the Respondent formulated only one issue for determination and it reads-

"Whether the right to travel out of Nigeria (as guaranteed under section 38 of the constitution of the Federal Republic of Nigeria, 1979) carries with it a right of every Nigerian citizen to hold a passport."

A notice of preliminary objection was raised in the Respondent's brief of argument challenging the reference to section 5 (1) of the Passport (miscellaneous Provisions) Act, Cap. 343 in Appellant's brief of argu-

ment, since the point was not raised in the lower court by them. Furthermore as a fresh point, to raise it before us, leave to do so must first be obtained and that the Appellants had failed to obtain the leave. Case of Popoola v Adeyemo, (1992) 8 N.W.L.R. (part 257) 1 at p. 22C-D was cited in support of the objection. In their reply brief, the Appellants B denied that the point in question had not arisen in the court below. They argued that it was the Respondent who raised it first in his (Appellant's) brief of argument as an issue for determination and argued the point in paragraph 4. 06 of that brief; while Ayoola J.C.A and Uwaifo J.C.A. also C adverted to the point in their respective judgments.

I have read through the references made in the Appellants' reply brief and I am satisfied that section 5 subsection (1) of the Passport (Miscellaneous Provisions) Act, Cap. 343 was cited by the Respondent in his D (Appellant's) brief of argument and that the court below also dwelt on the point. I, therefore, see no merit in the preliminary objection and it is hereby overruled.

I now turn to the Appellant's issue for determination.

Arguing issue No. 3. 01, it is stated by learned Solicitor-General, for the E Appellants, in their brief of argument, that Respondent is obliged to show that section 38 (1) of the constitution confers on him a right not only of ingress or egress to and from Nigeria but also a constitutional right to hold or own a passport. He submitted that the right of exit from Nigeria must F be distinguished from the right to hold a passport - which cannot be derogated from either by impounding or withdrawing the passport. He referred to the provisions of section 38 (1) and further canvassed that whilst it is clear from the express provisions thereof that no Nigerian should be G denied exit from Nigeria, nowhere is it stated that such exit must be with a passport or a visa in order to make the right of exit conterminous with the right to own or hold a passport. He argued that the Court of Appeal in holding that the right under section 38(1) is concomitant with holding a H passport sought to provide a missing link between the right to move freely and the right to hold or own a passport and that the court was in error to have held so since it sought to provide a link that was not contemplated by the constitution. He cited the cases of Egbe v Alhaji, (1990) 21 NSCC

(part 1) 306 at p. 328; Abel v Lee, (1871) LR. R. 6C p. 365 at p. 374; Mersy Docks v Henderson, (1888) 13 Cases 595 at. p. 602; Crawford v. Sponsor, (1846) 6 Moore P.C. 2; Nafiu Rabi'u v State, (1981) 2 S.C.N.L.R (Part 251) 1 at p. 17. Learned Solicitor-General also drew attention to the Court of Appeal's reliance on cases from Britain, United States and India to interpret the provisions of section 38(1) and submitted that the court was in error in doing so since the decisions in the cases were based on the constitutions of those countries, the relevant provisions of which are not in pari materia with those of the Nigerian Constitution. He also argued that the cases cited deal with the right to be issued a passport and not the seizure of passport. He submitted that there is no right under our constitution for a citizen to possess a passport. He stressed that having a right to travel out of Nigeria under the constitution is not in doubt, but to be able to exercise the right one would need a number of other things and documents, such as a passport, an air-ticket, a visa, a boarding pass and a health certificate, all of which cannot be considered to be part of the right under section 38 (1) to travel out of Nigeria. Learned Solicitor-General then submitted that the Court of Appeal failed to appreciate, in interpreting section 38 (1), that the possession of a passport is neither a civil nor statutory right under the Nigerian Municipal laws, since the grant or issuance of a passport is a prerogative of the Federal Government of Nigeria, the exercise of which is discretionary. To buttress the submission he cited the definition of a "passport" in the case of King v Brailsford, (1905) 2 K.B. 730 per Lord Alverstone C.J.

In his reply, learned counsel for the Respondent argued that the Court of Appeal did not fill any gap in interpreting the provisions of section 38 (1) of the 1979 Constitution. Rather, it interpreted the provisions to give effect to its intendment, by holding that the right of exit in the section cannot be exercised without a national passport and that being so, the right to passport is concomitant and inseparable corollary of the right of exit. IT is inconceivable, whether factually or by right, that a right would be given and the essential facility for its effectiveness would be denied. Learned counsel then submitted that an executory right, such as the right of wit, carries with it the rights necessary to its effectiveness

and there is a corresponding duty on the State to provide the facilities. After citing the cases of Nafiu Rabi v The State, (supra) at p. 326 and Ogugu v The State, (1994) 9 N.W.L.R. (Part 366) 1 at pp. 27H - 28A and 43H, learned counsel submitted that the Respondents right to hold a Nigerian passport is inevitable and logical corollary to his right to foreign travel guaranteed under section 38 (1) of the 1979 Constitution and Article 12 (2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 of the Laws of the Federation of Nigeria, 1990. The Respondent also argued that the impounding of his passport by the Appellants was an infringement of his right because by so doing he could not leave the country.

The Respondent delved into the status of a passport in immigration Law and the Practice of international Travels, by referring to section 38 (1) of the constitution, Articles 12(2) and 13 (2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act., Cap. 10, sections 4 (1) (a) and 6 of the immigration Act, 171 of the Laws of the Federation of Nigeria, 1990 and cited some foreign cases.

I think all the foregoing argument and submissions appear to beg the issue. The actual position is that the Respondent was a holder of a passport which was impounded by an official of the 1st Appellant. The simple question then is; did the official have the right to seize the passport? If so, under what law did he do so? If these twin questions are answered, all the issues in the Appellants' brief or argument, except issue No. 3.03, and the only issue in the Respondent's brief of argument would have been dealt with. I, therefore, propose to just do that.

Now section 38 subsection (1) of the 1979 constitution which guaranteed the freedom of movement of every Nigerian citizen provides as follows:-

"38(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom."

However, section 41 subsection (1) of the 1979 constitution, as amended, qualifies the provisions of section 38. It provides:-

"41 (1) Nothing in sections 34, 35, 36, as amended, 37 and 38 of this constitution shall invalidate any law that is reasonable justifiable in a democratic society -

- (a) in the interest of defence, public safety, public order, public morality or public health; or*
- (b) for the purpose of protecting the rights and freedom of other persons."*

By section 5 subsections (1) and (2) of the Passport (Miscellaneous Provisions) Act, Cap. 343 -

"5(1) The Minister may, at any time, cancel or withdraw any passport issued to any person if -

- (a) the passport is obtained by fraud;*
- (b) the passport has expired;*
- (c) a person unlawfully holds more than one passport at the same time;*
- (d) it is in the public interest so to do.*

(2) The number of the passport, name and particulars of the holder of the holder of any passport withdraw or cancelled pursuant to the provisions of subsection (1) of this section shall be published in the Federal Gazette."

It is clear from the foregoing that the Minister of Internal Affairs has the powers to cancel or withdraw a passport for any of the reasons given under the provisions of section 5 subsection (1) (a), (b), (c) or (d); and such powers derogate from the provisions of section 38 (1) of the constitution. However, in doing so the name, the particulars of the passport holder and the number of the passport must be published in the Federal Gazette. It is obvious from the facts of this case that no explanation was offered in the High Court by the Appellants; and so it has to be taken that no information was given in the Gazette pursuant to the provisions of section 5 subsection (2) of the Passport (Miscellaneous Provisions) Act, Cap. 343. Again from the facts deposed, the Respondent's passport was not withdrawn or impounded by the Minister but by an official of the SSS. Whether the official had the authority of the Minister to do

so is not stated by the Appellants either.

The power of a Minister to delegate his powers under a statute is contained in section 3 of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, Cap. 228, which provides:-

"3.(1) Where by any law enacted by the National Assembly or B taking effect as if it had been so enacted, a Minister is empowered to exercise any powers or perform any duties, he may by a delegation notified in the Federal Gazette depute any of the following officers by name or office to exercise those powers or perform those duties, subject to such conditions, exceptions and qualification as the Minister may prescribe - C

(a) the Director-General (Permanent Secretary) having supervision over a department of government with which the Minister has been charged with responsibility, or any officer who comes directly under the authority of such Director-General; D

(b) any officer of any such department of government;

(c) any officer of the police with the consent of the Nigerian Police council or of the Police Service Commission of the Federation, E as the case may require;

(d) any other public officer with the consent of the Minister charged with responsibility for the functions exercised by such officer; or F

(e) any officer in the public service of a State with the consent of the Governor of the State.

(2) No power to sign warrants, or to make regulations, rules, by-laws or orders shall be depute under this section.

(3) Any delegation made under the provision of this section shall be revocable at will and no delegation shall prevent the exercise of any power by the Minister concerned." G

Although, admittedly, it was possible for the Minister of Internal Affairs to delegate his powers to cancel or withdraw a passport under the passport (Miscellaneous Provisions) Act, Cap. 343, by virtue of the foregoing provisions, there is no suggestion by the Appellants that such powers were exercised by the Minister to en- H

able the official of the SSS concerned to withdraw the Respondent's passport.

The duties of the SSS are spelt out under section 2 subsections (3) and (4) of the National Security Agencies Act, Cap. 278 of the Laws of the Federation of Nigeria, 1990. It provides:-

"2. (3) *The State Security shall be charged with responsibility for -*

(a) *the prevention and detection within Nigeria of any crime against the internal security of Nigeria;*

(b) *the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and*

(c) *such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, Commander-in-Chief of the Armed Forces, as the case may be, may deem necessary.*

(4) *The foregoing provisions of this section shall have effect notwithstanding the provisions of any other law to the contrary, or any matter therein mentioned."*

These provisions cannot, by any stretch of imagination, be interpreted to empower the officials of the SSS to seize, impound or withdraw a citizen's passport.

In the light of the foregoing, I am satisfied that the official of the SSS concerned in this case had no power to impound or withdraw the Respondent's passport in the manner he did. The impounding was, therefore, unconstitutional and illegal since it offended the provisions of section 38 subsection (1) of the constitution and section 5 subsection (1) of the passport (miscellaneous Provisions) Act. The right to have freedom of movement and the freedom to travel outside Nigeria is guaranteed by the constitution but the right to hold a passport is subject to the provisions of the Act. In determining the issues in the present case, it is not, with respect, necessary to indulge in the academic exercise of whether the right to travel abroad is concomitant with the right to hold a passport. The real issue in contention here is not whether the Respondent had a right to hold a passport. He infact had a passport already but which was impounded by an official of the SSS. It

is whether such an act by the official was legal and constitutional.

The foregoing, therefore, disposes of the substance of issues Nos. 3.10, 3.02 and 3.04 in the Appellants' brief of argument as well as the only issue in the Respondent's brief of argument.

It now remains to deal with Appellant's issue No.3.03 which raises the question whether the Court of Appeal was right in granting the declaratory relief sought by the Respondent in default of pleadings by the Appellants.

In her ruling the learned trial Judge decided on the point as follows:-

Therefore, even though this action (sic application) is undefended, it is necessary to examine whether applicant has fully satisfied the court on his rights to warrant the ground for Declaratory of Right Judgment (sic) being entered in favour of the applicant as sought in default of pleadings from Respondents. In the case of Osewale v Ezeiheshie, (1991) 1 N.W.L.R. (Part 170) 699 at p. 706 paragraph F to G His Lordship Uwaifo, J.C.A held and I quote: -

"But where a Declaration of Right is involved, it is appropriate to come by way of motion, since a Declaration of right cannot be made on pleadings - see Wallersteiner v Moir, (1974) 3 All E.R. 271 (sic 217) 251 where Buckley, L J said -

It has long been my experience, and I believe it to be a practice of long standing that the court does not make declarations of right either on admission or in default of pleadings but only if the court is satisfied by evidence."

See also Fadorile v University of Ilorin Teaching Hospital Board Management, (1991) 4 N.W.L.R. (Part 183) 43 at 45, Ratio 1 where it was held as follows:-

'A Declaratory judgment being at the discretion of the court to grant can only be given where the justice of the case warrants the justice of the case warrants it having regard to the pleadings and evidence led in proof by the plaintiff in which he discharges the onus of proof under section 136 of the Evidence Act. A Declaratory judgment cannot therefore be granted on admission by the pleadings. Thus the plaintiff must

have proved his case and the justice of the case must merit the declaration sought more than any other remedy Bello v Eweka, (1981) 1 SC. 10 2-3 referred to and followed.'

Respondents in this case failed to depose to any counter-affidavit therefore there is no pleadings before the court for the Defence (sic). Applicant seeks this Declaratory Judgment in default of Respondent's pleadings this application cannot succeed on this ground and it must fail in first leg."

In considering the foregoing, the Court of Appeal held, per Ayoola, J.C.A. as follows:-

"Since I hold the view that the principle in Wellersteiner v Moir does not apply in this case and that the issue raised by the appellant in regard thereto does not arise in the instant appeal, it is not necessary to consider the rational basis of the principle which may throw some light on the proper boundaries of the principle

It suffices to note that for enforcement of fundamental rights special procedure has been established by law as prescribed by the Fundamental Rights (Enforcement Procedure) Rules, 1979.....

In these circumstances, it is difficult to comprehend the equation of the special procedure with the normal procedure in actions tried on the pleadings and to which rules of pleadings apply

The principle in Wellersteiner v Moir does not apply in this case because this is not a case in which the court has been asked to make a declaration on admission or in default of pleading or without evidence."

Learned Solicitor-General contended that declaratory judgments are not granted as of right but subject to certain conditions and restrictions - Ipadeola v Oshowole, (1987) 3 N.W.L.R. (part 59) 18 and Orji v Emovan, (1991) 1 N.W.L.R. (Part 168) 487 - and nowhere under the principles laid by these cases was a distinction made between a declaration sought under a writ of summons and one sought under the Fundamental Rights (Enforcement Procedure) Rules. He submitted that the principle in Wellersteiner's case applies to admissions whether made under pleadings or in the enforcement of a fundamental right; and when the Appellants failed to file a counter-affidavit in reply to the Respondents's affidavit in

the motion on notice, the Appellants were deemed to have admitted all the facts deposed in the affidavit. The Court of Appeal failed to advert to the point on admission and only considered the point on default of pleadings. It was argued that had it done so, it would have come to the conclusion that a declaratory relief could not be granted since there was admission by the Appellants herein. B

In reply, learned counsel for the Respondent, submitted that the ratio decidendi in Wellersteiner's case does not apply to the case in hand by virtue of the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 1979, which exclude pleadings and permit only affidavit evidence. C

Now, I think the court below was right in holding that the lower court misdirected itself in relying on the procedural principles laid down by Wellersteiner's case which was approved by the Court of Appeal (Uwaifo, J.C.A.) in Osewale's case (supra) . Order 2 rule 1 (1) of the Fundamental Rights (Enforcement Procedure) Rules, provides:- D

"1. (1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate court From No 1 or 2 in the Appendix may be used as appropriate." E

From these, it is obvious that there cannot be any pleadings where a motion on notice is brought because the deposition in the affidavit in support of the motion on notice is not the same as mere averments in a Statement of Claim or Statement of Defence which have to be supported with either a viva voce evidence or documentary evidence. In the case of an affidavit accompanying the application it is infact the evidence in support of the motion on notice. F G

Similarly, an originating summons is not the same as a writ of summons. In the case of the former no pleadings are employed while in the case of the latter there are pleadings in the form of Statement of Claim, Statement of Defence, Reply etc. - See Re Busfield, Whaley v Busfield, (1886) 32 Ch. D. 123 C.A. at p. 126 and Re Holloway, ex parte Pallister, (1894) 2 Q.B. 163, C.A. at pp.166 and 167. H

With this vital distinction between an originating summons and writ of summons it was wrong of the learned trial judge to bring to bear on this case the principle laid down by the cases of Wellersteiner's (supra) and Osewale (supra). The Court of Appeal was, therefore, right in holding that the trial court acted wrongly in following the principle in the cases mentioned to hold that the Respondent's prayer for a declaratory relief had failed. A Concise Law Dictionary, Fourth Edition, by Osborn, in defining the word "summons" on p. 824 thereof, defines the term "originating summons" to include every summons other than a summons in a pending cause or matter. It is used in the Chancery Division instead of a writ of summons to obtain a declaration or decision of the Court in the construction of an instrument or of a statutory provision as in the present case. I, therefore, come to the conclusion that the Court of Appeal was right in rejecting the application of the principle laid down in Wellersteiner's case. I hold that the application of the principle is limited to cases initiated by a writ of summons which call for pleadings and the calling of witnesses to testify or admission by way of averments in the pleadings.

On the whole this appeal fails and it is hereby dismissed. The decision on the Court of Appeal is hereby confirmed with N10,000.00 costs to the Respondent.

BELGORE JSC

By the constitution of the Federal Republic of Nigeria, 1979 (as amended) in section 38(1) thereof every citizen of Nigeria is entitled to move freely and reside freely in any part of Nigeria and no citizen of Nigeria should be expelled from the country or prevented from leaving the country. These provisions of section 38(1) (supra) look absolute but for qualifications by section 41(1) of the same constitution which provides:-

"41(1) Nothing in sections 34, 35, 36, as amended, 37 and 38 of this constitution shall invalidate any law that is reasonably justifiable in

a democratic society:-

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons."

B

Thus the provisions of section 38(1) are not absolute; if absolute passport will have to be issued to a known common criminal, a patient of highly infectious disease, a person dealing with foreign enemies of Nigeria et cetera. Therefore the specific law governing issuance of passport, to wit. Passport (Miscellaneous Provisions) Act (Cap 343) Laws of the Federation of Nigeria 1990 provides:-

C

"5(1) The Minister may, at any time, cancel or withdraw any passport issued to any person if:-

(a) the passport is obtained by fraud;

D

the passport has expired;

(c) a person unlawfully holds more than one passport at the same time;

(d) it is in the public interest so to do."

E

The Minister responsible for passport is the Minister of Internal Affairs. He alone can issue a passport or withdraw or cancel a passport already issued. The Minister's powers under Section 5(1) (a), (b) (c) and (d) (supra) must be exercised formally by notice in Gazette or by some other form whereby the holder of such passport will know that his passport is being withdraw, cancelled, etc.

F

In the present appeal before us there is no shred of evidence that the Minister of Internal Affairs was involved in this matter. What we are dealing with is not withdrawal or cancellation of the respondent's passport, rather it was the seizure of his passport that is in issue. The State Security Service has not been shown to be agent of the Minister of Internal Affairs; the State Security Service in fact has not claimed it was acting on behalf of the Minister in seizing the respondent's passport. Assuming the passport was similarly seized by the Immigration Officers who are under the Ministry of Internal Affairs, the difficulty will still be there as there must be full and unambiguous authority under the law to do so. There

G

H

must be clear evidence that the powers of the Minister of Internal Affairs under section 5 Passport (Miscellaneous Provisions) Act have been legally delegated. The Minister's Statutory Powers and Duties (Miscellaneous Provisions) Act is clear in its intendment when it provides in section

B 3 thereof as follows:-

"3(1) Where by any law enacted by the National Assembly or taking effect as if it had been so enacted, a Minister is empowered to exercise any powers or perform any duties, he may by a delegation notified in the Federal Gazette depute any of the following officers by name or office to exercise those powers or perform those duties, subject to such conditions, exceptions and qualifications as the Minister may prescribe:-

(a) the Director-General (Permanent Secretary) having supervision over a department of Government with which the Minister has been charged with responsibility, or any officer who comes directly under the authority of such Director-General (Permanent Secretary);

(b) any officer of any such department of government;

(c) any officer of the police with the consent of the Nigeria Police Council or of the Police Service Commission of the Federation; as the case may require;

(d) any other public officer with the consent of the Minister charged with responsibility for the functions exercised by such officer; or

(e) any officer in the public service of a State with the consent of the Governor of the State.

(2) No power to sign warrants, or to make regulations, rules, by-laws or order shall be deputed under this section.

(3) Any delegation made under the provision of this section shall be revocable at will and no delegation shall prevent the exercise of any power by the Minister concerned." (insertion of "permanent Secretary" in brackets is mine).

Throughout the hearing in High Court, the Court of Appeal and in this court was any suggestion advanced that the Minister for Internal Affairs exercised his powers under section 5 Passport (Miscellaneous

Provisions) Act or that he delegated the same to any person or body. The State Security Service is not the Director-General or Permanent Secretary or any of the persons or bodies mentioned in section 3 (1), (2) and (3) of Cap. 288 (supra). Thus the State Security Service has no powers delegated to it by the minister of Internal Affairs in respect of passport withdrawal on cancellation. It is equally inconceivable that statute establishing the State Security Service (Cap. 278, Laws of the Federation of Nigeria 1990) gives the powers of seizing a passport of a citizen.

Therefore the big issue in this appeal is the seizure of respondent's passport by the State Security Service. I find no substance in this appeal because the seizure of the respondent's passport is ultra vires the powers of the State Security Service. On the other issues, I am in full agreement with the fuller reasoning in the lead judgment of the Chief Justice of Nigeria. I therefore dismiss this appeal with N10,000.00 (Ten Thousand Naira) costs to the respondent.

OGUNDARE JSC

I read in advance the judgment of my learned brother, Uwais Chief Justice of Nigeria just delivered. I agree with the conclusions reached by him. I only want to add a few words of my own.

The Honourable Chief Justice has set out the facts and the arguments of learned counsel for the parties on the issues placed before the court. Suffice it to say that the main thrust of the submissions of the learned Solicitor-General of the Federation, for the Appellants, is that as the constitution does not provide for the right to hold a passport, the holding of one is not a right but a privilege which can be withdrawn at any time by Government whose property it is. I think the learned Solicitor-General is on a very weak wicket.

It is not in dispute that the constitution gives to the Nigerian citizen the right to move freely throughout Nigeria and to reside in any part thereof. It also guarantees to the citizen the right not to be expelled from Nigeria nor be refused entry thereto or exit therefrom. Section 38(1) of the constitution provides:

"38. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom."

It is a matter of common knowledge that for a Nigeria to travel out of Nigeria to another country he must first hold or possess a valid passport issued by the Government of Nigeria. See: Section 4(1) of the Immigration Act, Cap. 171 LFN 1990 and the definition of the word passport in section 51 thereof. Without this document, he cannot leave Nigeria or be admitted to another country. It follows, therefore, that without a passport a citizen of Nigeria cannot exercise the right guaranteed him by the constitution, of egress from Nigeria. Can it, then, be said that the right to hold a passport is not one guaranteed by the constitution? That is a question that calls for determination in this appeal.

If the view is correct - and I subscribe to it - that possession of a passport makes exit out of Nigeria possible, it follows that without it a citizen of Nigeria cannot enjoy the right of egress from Nigeria given him by section 38(1) of the constitution. In my respectful view, therefore, to hold or possess a passport is ancillary to the right of egress from Nigeria given in section (38(1). It is, as rightly held by the court below, per Ayoola JCA (as he then was), concomitant to the right of egress from Nigeria. It is a concomitant right without which the right of egress from Nigeria becomes hollow or empty.

That the right to hold a passport is not specifically mentioned in the constitution is to be expected. One does not expect to find in a constitution minute details for it is necessarily brief and comprehensive. It prescribes outlines, leaving the filling up to be deduced from the outlines. In setting up an enduring framework of government, the framers of our constitution undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men and women, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative provisions which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the constitutions a continuing instrument of Government.

The Courts will give especially broad, liberal construction to those constitutional provisions designed to safeguard fundamental rights. To construe section 38(1) in a manner to exclude the right to hold a passport, an important travel document without which a Nigeria cannot exit from Nigeria, - and this is the construction the learned Solicitor-General of the Federation urges on us - is to put a close and literal construction on it which deprives it of most of its efficacy and leads to gradual depreciation of the right of exit from Nigeria. In my respectful view, the approach of the court below to the question under consideration is the correct one. I agree with Ayoola JCA when he said:

"Right to be meaningful must be effective. The right of free movement, particularly not to be refused entry to or exit from Nigeria will be empty without a concomitant right not to be deprived of the document which makes such movement possible."

The learned Justice added:

"It will be an affront to all known human rights norms were the right to freedom of exit specifically guaranteed by our constitution to be drained of all effect by arrogating to the Government a discretionary and almost arbitrate power to withhold, withdraw, or revoke a passport. In my respectful view a citizen of Nigeria has a legal right to a passport and, in this respect, I subscribe to the conclusion reached by Ayoola JCA that -

"In the final analysis, what is at issue in this appeal is whether the Judge was right in the main reason she gave for refusing the application, namely, that the appellant has no legal right to the passport. It has, I venture to think, been sufficiently demonstrated that she was in error in holding that a citizen of Nigeria has no legal right to a passport and in effect, that if he has been issued one it could be withdrawn, impounded or revoked at will by the Government. To agree with that view would have been tantamount to removing, in one fell swoop, the guarantee of freedom of exit from our constitution. That should not be."

Much weather is made of the inscription in a passport to the effect that it is the property of the Federal Government and may be withdrawn at any time. The statement that a passport can be withdrawn at any time, if

it implies that this can be done at all or arbitrarily, is inconsistent with section 5(1) of Cap.,228 which provides for cancellation or withdrawal for given reasons. The statement is of no legal consequence. On the issue of the ownership of the passport, I think Ayoola JCA has said all that need be said on it, when he observed:

"The consequence of a passport being the property of the Government is that the holder cannot deal with it as he pleases. He cannot transfer, sell or otherwise dispose of it. If for instance he ceases to be a citizen of Nigeria he has an obligation, if requested, to return it to the 'owner'; and the Nigerian Government as the owner of the passport has a right to recover the passport from anyone else who is not entitled to hold it. All these consequences of ownership have nothing to do with the right which a citizen of Nigeria has to be a holder of a Nigeria passport or a right not to have one issued to him impounded other than as provided under a law which meets the standard set by the constitution."

I endorse the above views in their entirety.

That is not to say, however, that the rights given in section 38(1), including the right of exit from Nigeria, are absolute. They are not. For sub-section (2) of section 38 of the constitution provides:

"38. (2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country -

(i) to be tried outside Nigeria for any criminal offence, or
(ii) to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter."

In similar vein, section 41(i) also provides:

"41, (i) Nothing in sections 34, 35, 36 as amended, 37 and 38

of this constitution shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other person."

It is in the light of these provisions that one must construe the provisions of section 5(i) of the Passport (Miscellaneous Provisions) Act, Cap 343 LFN 1990 which reads:

"5 (I) The Minister may, at any time, cancel or withdraw any passport issued to any person if -

(a) the passport is obtained by fraud;

(b) the passport has expired;

(c) a person unlawfully holds more than one passport at the same time;

(d) it is in the public interest so to do."

The part relevant to the case on hand is paragraph (d) which empowers the Minister to cancel or withdraw a citizen's passport

"if it is in the public interest so to do" I am not prepared to say that the Act is not reasonable justifiable in a democratic society, The public interest in

paragraph (d) of subsection (I) of section 5 above can only mean the interest of defence, public safety, public order, public morality, public health or

the protection of the rights and freedom of other persons, as I listed in

paragraphs (a) and (b) of sub-section (I) of section 41. The 2nd Appellant is not the Minister to whom power is given in section 5 of the Passport

(Miscellaneous Provisions) Act to cancel or withdraw a passport. Nor is there evidence on record that the Minister delegated his powers under section 5 to him as prescribed in section 3 of the Ministers' Statutory Powers

and Duties (Miscellaneous Provisions) act, Cap 228, LFN 1990. Section 3 provides::

"3, (I) Where by any law enacted by the National Assembly or taking effect as if it had been so enacted, a Minister is empowered to exercise any powers or perform any duties, he may by a delegation notified in the Federal Gazette any of the following officers by name or

office to exercise those powers or perform those duties, subject to such conditions, exceptions and qualifications as the Minister may prescribe-

(a) *the Director -General having supervision over a department of government with which the Minister has been charged with responsibility, or any officer who comes directly under the authority of such Director-General;*

(b) *any officer of any such department of government;*

(c) *any officer of the police with the consent of the Nigerian Police Council or of the Police Service Commission of the Federation, as the case may require;*

(d) *any other public officer with the consent of the Minister charged with responsibility for the functions exercised by such officer; or*

(e) *any officer in the public service of a State with the consent of the Governor of the State.*

(2) *No power to sign warrants, or to make regulations, rules, by-Laws or orders shall be deputed under this section.*

(3) *Any delegation made under the provision of this section shall be revocable at will and no delegation shall prevent the exercise of any power by the Minister concerned."*

Worst of all, there is no scintilla of evidence that the 2nd Appellant in seizing Respondent's passport at the Murtala Mohammed Airport on April 21, 1992 did so for any or all of the reasons stated in section 41(I) of the Constitution. Whichever way one looks at it, therefore, the seizure of the Respondent's passport by the 2nd Appellant, his servants and/or agents was illegal. The Court below, therefore, was right in its judgment.

For the reasons given herein and the more detailed reasons given in the judgment of the learned Chief Justice of Nigeria, I hold that this appeal is completely devoid of any merit. I dismiss it and affirm the judgment of the Court below. I subscribe to the order for costs contained in the judgment of the Honourable Chief Justice.

OGWUEGBU JSC

I agree with the judgment just delivered by my Lord, the Chief Justice of Nigeria and I only desire to add a few words.

On whether the right of exit from Nigeria guaranteed by section 38(I) of the Constitution carries with it a concomitant right to hold or own a passport, the court below per Ayoola, J.C.A, as he then was, held as follows:

"I feel no hesitation therefore in coming to the conclusion that the right not to have a passport impounded, which is the right with which this case is directly concerned is a necessary concomitant of the freedom of exit which is guaranteed by S.38(I) of the Constitution To sum up, I accept the submission of the appellant that the freedom of exit guaranteed by our Constitution cannot be exercised without a passport and that freedom enshrined in S.38(I) of the Constitution carries with it a concomitant right of every citizen of Nigeria to a passport. I also accept the submission and hold that the seizure of the appellant's passport amounts to a violation of his right to travel abroad guaranteed by section 38(I) of the Constitution."

The learned Solicitor-General of the Federation, Chief T. Onwugbufo, S.A.N. who appeared for the appellants submitted in the appellants' brief that the court below in coming to its decision:

"(a) supplied the cassus omissus or filled the gap in S.38(I) of the Constitution by reading "passport" into it; and

(b) relied on the decisions of other common law jurisdictions which are not in pari materia with S.38(I) of the Constitution."

Section 38(I) of the Constitution provides:

"38(I) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom."

To realize the right of exit from Nigeria enshrined in the above section of the Constitution, the possession of a valid passport by a citizen of Nigeria is imperative. The word "passport," has been defined in section 52(I) of the Immigration Act, Cap. I71 and section 6 of Passport (Miscellaneous

Provisions) Act Cap. 343, Laws of the Federation of Nigeria, 1990 respectively. Section 6 of (Passport Miscellaneous Provisions) Act provides:

"6 *"passport means a document of protection and authority to travel issued by the competent Nigerian officials to Nigerians wishing to travel outside Nigeria and includes as defined in subsections (3) and (4) of this Act, the following - "*

Being in possession of and producing such passport granted as stated above allows the citizen to leave the country and travel to another country without hindrances. It affords him assistance and protection when travelling in such other country.

The fundamental right of exit from and entry into Nigeria guaranteed by the Constitution will be meaningless if the means to realize it is not equally guaranteed. It is not conceivable that a right can be given without the facility of actualizing it. As rightly held by the court below, the Constitution cannot condescend to details in its description of the fundamental rights and freedoms it guaranteed.

The Constitution of the Federal Republic of Nigeria is a written organic instrument. It is a mechanism under which our laws are made and not a mere Act of Parliament or a Decree which declares what the law is to be. It has been an accepted canon in interpretation of documents to interpolate into the text such provision, though not expressed, as are essential to prevent the defeat of their purpose and this applies with special force to the interpretation of constitutions, which, since they are designed to cover a great multitude of necessarily unforeseen circumstances, are cast in general language which are not constantly amended..

There is, therefore, need for liberal approach to its interpretation and this approach was advocated by Sir Udo Udoma, J.S.C. in the case of Nafiu Rabi v. The State (1980)12 N.S.C.C. 291 at p.300-301, thus:

".....mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this court should whenever possible, and in response to

the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution it is my view that the approach of this court to the construction of the Constitution should be, and so, it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat." B

What the court below did in its interpretation of section 38(I) of the Constitution was to give flesh to the broad terms of the fundamental rights provisions and it carried out the object and purpose of the right of exit guaranteed by the said section. See Attorney-General of Bendel State v. Attorney-General of the Federation & 22 Ors. (1981)10 S.C.I. and Abdul Karim v. Incar (Nig) Ltd. (1992) 7 N.W.L.R. (Pt.251). The court below was right in doing so. It was not supplying omissions or defects nor was it filling the gap in section 38 (I) of the Constitution as was contended by the learned solicitor-General. D

The next question is whether the right was not derogated from by section 41(I) of the Constitution, section 5(I) of the Passport (Miscellaneous Provisions) Act Cap, 343 Laws of the Federation of Nigeria, 1990 and/or the inscription at the back of the passport that the passport is the property of the Federal Government. Before the question is answered, it is necessary to examine the provisions of section 41(I) of the Constitution and section 5(I) of passport (Miscellaneous Provisions) Act . F

Section 41(I) of the Constitution:

"41(I) Nothing in sections 34, 35, 36, 37, and 38 of this Constitution shall invalidate any law that is reasonable justifiable in a democratic society - G

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons." H

Section 5(I) of the Passport (Miscellaneous Provisions) Act provides:

"5(I) The Minister may , at anytime, cancel or withdraw any

passport issued to any person if -

- (a) the passport is obtained by fraud;*
- (b) the passport has expired;*
- (c) a person unlawfully holds more than one passport at the*

B same time;

- (d) it is in the public interest so to do."*

There is no doubt that the fundamental rights guaranteed by section 38(I) are not absolute. They are qualified by sections 38(2) and 41(I) of the Constitution. By virtue of section 5(I) of the Passport (Miscellaneous Provisions) Act reproduced above, the Minister of Internal Affairs is the Minister conferred with the powers to cancel any passport issued to any person for the reasons stated in the said sub-section. It would seem that the case of the respondent in this appeal falls within section 5(I) (d) of the Act as argued in the appellants' brief.

It is not case of the parties to this appeal that the Passport (Miscellaneous Provisions) Act is not a law that is reasonably justifiable in a democratic society. One may therefore ask whether the second appellant whose agents impounded the passport of the respondent was the Minister of Internal Affairs or had the authority of the Minister to do so? There is no evidence on record that the powers of the Minister to cancel or withdraw the respondent's passport was delegated to the 2nd appellant as provided in section 3 of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act. Cap. 228, Laws of the Federation of Nigeria, 1990. The agents of the 2nd appellant when impounding the respondent's passport did not even pretend to be acting under any law or authority apart from the worthless piece of paper (Exhibit "B") dated 21/4/92 annexed to the respondent's affidavit which acknowledged the receipt of the passport and advised the respondent to report at the Headquarters of the State Security Service at No.15A, Awolowo Road, Ikoyi, on 22nd April, 1992 at 10 o'clock a.m. "for further necessary action."

I have no hesitation, therefore, in coming to the conclusion as did the court below that seizure of the respondent's passport No. A 654141 by the agents of the 2nd appellant at the Muritala Mohammed International Airport, Ikeja on 21-4-92 did not conform with law and was therefore

unconstitutional.

It is for these reasons and the fuller reasons contained in the judgment of the learned Chief Justice of Nigeria that I, too, dismiss the appeal and affirm the decision of the court below with N10,000.00 costs to the respondent.

B

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Uwais, the Chief Justice of Nigeria in his judgment that this appeal has failed and ought to be dismissed. I adopt the said opinion as mine and have nothing more to add. The appeal is dismissed by me. I also affirm the judgment of the Court of Appeal. The respondent is entitled to the costs of this appeal which I assess at N10,000.00.

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D

ONU JSC

This appeal, the main pivot of which involves the forceful seizure of the plaintiff/respondent's passport at the Murtala Mohammed International Airport, Ikeja on 21st April, 1992 and thus preventing his right of exit from Nigeria, emanates from the Court of appeal, Lagos Judicial Division (Coram: Kalgo, Uwaifo and ayoola, JJ.C.A. as they then were). That court in a considered judgment dated 6th July, 1994 allowed the respondents's appeal and set aside the Ruling of the trial High Court of Lagos State presided over by Akinboboye, J. which on 30th July, 1992 dismissed the respondent's application for declaratory and injunctive reliefs brought pursuant to the Fundamental Rights (Enforcement Procedure) Rules, 1979 for:-

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G

"a declaration that the forceful seizure of his passport No.654141 by the agents of 2nd Appellant is a gross violation of his right to personal liberty, freedom of thought, expression and from freedom of movement etc, respectively as guaranteed under Sections 34, 35, 36 and 38 of the Constitution of the Federal Republic of Nigeria as amended (hereinafter called shortly, the Constitution) and accordingly those acts were uncon-

H

stitutional and illegal."

The facts of the case which are not in dispute are briefly that the agents of 2nd Appellant seized the Respondent's passport No.654141 on or about April 21, 1992 at Murtala Muhammed International Airport, Ikeja, when he was on his way to attended International Conference at the Hague in the Netherlands. After all efforts to get the passport had failed, he said that he instituted the action giving rise to the appeal herein at the Lagos High Court under the Fundamental Rights (Enforcement Procedure) Rules, 1979. The appellants who entered appearances did not defend the case at the trial. After hearing the case of the respondent through his counsel, Tunde Fagbohunlu Esq., the learned trial Judge as hereinbefore stated, dismissed the action, holding as, follows:-

" a Nigeria passport is the property of the Nigerian Government and it is only a privilege and not a right to be in possession of a passport."

Dissatisfied with this decision, the respondent appealed to the Court of Appeal, Lagos which allowed the appeal holding among other things that:-

"the seizure of the respondent's passport No. 654141 by the agents of the State Security Services (2nd Appellant) on April, 21, 1992 is a violation of the Respondent's right of freedom of movement guaranteed by Section 38 of the Constitution of the Federal Republic of Nigeria 1979 (as amended) and is accordingly unconstitutional."

The court below thereupon granted both declaratory and injunctive reliefs in favour of the respondent. Being further aggrieved by the said decision, the appellants filed a Notice and Grounds of appeal containing 3 grounds. Later, leave was sought and obtained to add seven additional grounds. Four issues were stated as arising for the determination of this Court, to wit:-

1. Whether the Court of Appeal was right in holding that the right of exit from Nigeria guaranteed by Section 38(I) of the Constitution carries with it a concomitant right to hold or own a passport. Put the other way, does Section 38(I) of the Constitution confer an unlimited right on every Nigerian to hold a passport which cannot be withdrawn or cancelled or otherwise interfered with.

2. Whether, if the answer to the issue No.I is in the affirmative, such right was not derogated from by Section 41(I) of the Constitution Section 5(I) of the Passport (Miscellaneous Provisions) Act Cap.343 Laws of the Federation 1990 and /or the inscription at the back of the passport that the passport is the property of the Federal Government. B

3. Whether the court below was right in granting a declaratory relief in favour of the Respondent when there was admission and default of pleadings on the part of the Appellants..

4. Whether the court below was right in holding that the Respondent has a right to hold a passport when the Respondent did not disclose any existence of a right or an infringement of a right in his affidavit. C

The respondent submitted in the main a broad issue coupled with a subsidiary one as arising for the determination by this Court, to wit:-

1. Whether the right to travel out of Nigeria (as guaranteed under Section 38 of the Constitution of the Federal Republic of Nigeria, 1979) carries with it a right of every Nigeria citizen to hold a passport. D

2. If the answer to the above is in the affirmative, whether the Respondent had shown that this right was infringed by the Appellants. E

In my consideration of this appeal, I wish to adopt all four issues formulated at the appellant's instance as they would appear to me to encompass all that it takes to do even handed justice to the cases of the parties as formulated, canvassed and decided by the two courts below. F

Before dealing with the issues serially, however, it is pertinent to consider the notice of preliminary objection raised by the respondent to the appellants' submission in paragraph 4.06 of their (appellants') argument. The respondent's grouse in the preliminary objection is to the effect that the appellants in that paragraph are seeking to justify the seizure of the respondent's passport as an exercise of ministerial powers to withdraw a citizen's passport under section 5(I) of the Passport (Miscellaneous Provisions) Act, Cap, 343 Laws of the Federation 1990. His objection, is on the ground that being a fresh issue, the appellants cannot raise and rely on it without leave having been sought and obtained. The case of Popoola v. Adeyemo (1992) 8 NWLR (Part 257) I was cited in support thereof. G H

The law is well settled that a point raised for the first time in this

court can only be argued with leave of the court. See Fadiora v. Gbadebo (1978) 3 SC.219. As Karibi-Whyte, JSC put it in Popoola v. Adeyemo (supra) at page 22:-

"This is because this Court being an appellate Court, with jurisdiction only to correct the errors of the court below on the issue and to know in what respect it can exercise its supervisory jurisdiction to correct any errors of that court. See Purnell v. Great Western Railways 1876) 1 Q. B. D. 636.

However, where the point raised, for the first time in this court arose only from the judgment of the Court of Appeal as herein, the appellant is entitled to argue the point without leave of this Court . This is because it could not have been argue in the court below, the point having not been raised at that stage"

The preliminary objection is accordingly overruled.

Now, to the consideration of the Issues.

ISSUE NO. I.

The finding or conclusion arrived at by the court below that a passport in modern times is an essential document of foreign travel without which a person cannot leave his country or be received in a foreign land has not been challenged by the appellants. That being so, its decision (per Ayoola, J.C.A. as he then was) that:-

"The right of free movement, particularly not to be refused entry to or exit from Nigeria, will be empty without a concomitant right not to be deprived of the document which makes such movement possible."

Which flowed logically from the above conclusion on the premise that :

".....While the seizure of a passport by the Government agency such as the Ist Respondent can be interpreted as a direct expression of refusal of exit to the citizen, it is also a potent curb on the desire of the citizen to travel abroad and an evident clog on the exercise of his right of freedom of movement. Rights to be meaningful must be effective..... the right not to have a passport impounded, which is the right with which this case ism directly concerned, is a necessary concomitant of the freedom of exit which is guaranteed by section 38(I) of the Constitution and Article 12(2) of the Africa Charter."

Cannot, in my opinion, be faulted. The appellants contention in the light of the above decision is that for the respondent to come under the Fundamental Rights Enforcement Rules pursuant to which he brought his action culminating in this appeal, he must show that section 38(I) of the Constitution conferred on him a right not only of ingress or egress to and from Nigeria, but also a constitutional right to hold or own a passport. They therefore argued that the court below by the same token erred to have:

"(a) supplied the casus omissus or filled the gap in Section 38(I) of the Constitution by reading "passport" into it; and

(b) relied on the decisions in other jurisdictions which are not in pari materia with section 38(I) of the Constitution."

That the word "passport" if read into the provisions of section 38(I) of the Constitution and similar decisions in other jurisdictions constitute, in my view, purposive constitutional constructions, particularly the fundamental rights provisions with which we are here concerned. Section 38(I) of the Constitution states:-

"Every citizen of Nigeria is entitled to move freely in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom." (Underlining is mine for emphasis)

The court below justified its decision that the right to passport goes along with the right of exit on the grounds that:

".... the constitution cannot condescend to details in its description of the fundamental right and freedoms it guarantees. The Constitution is an organic document which must be treated as speaking from time to time. It can therefore only describe the fundamental rights and freedoms it guarantees in broad terms. It is for the court to fill the fundamental rights provisions with content such as would fulfil their purpose and infuse them with life. A narrow and literal construction of the human rights provisions in our Constitution can only make the Constitution arid in the sphere of human rights. Such approach will retard the realization, enjoyment and protection of these rights and freedoms and is unacceptable."

The purposive constitutional construction which is incumbent on this court to put on the fundamental rights provisions of our Constitution, for instance under Section 38(I) (*ibid*), as aptly stated by this Court (per Udo-Udoma, JSC) in Nafiu Rabi v. The State (1981) 2 SCNLR 293 at B 326, is that:-

"Whenever possible and in response to the demands of justice, the courts lean to the broader interpretation unless there is something in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purpose of the Constitution."

C His Lordship further said emphatically that:

"I do not conceive it the duty of this court to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve."

D Nnaemeka-Agu, JSC was of the same view when he admonished the adoption of the broader construction in keeping with the maxim UTRESMAGIS VALEAT QUAM PEREAT in the alternative in Abdulkarim v. Incar Nig. Ltd. (1992) 7 NWLR (Part 251) I at 17 Following from the E foregoing, I agree with the court below that Section 38(1) of Constitution should be read to include the respondent's right to his passport, in this case No.654141, in order to carry out the ends and intendment of the rights of exit guaranteed by the Section. It was therefore not one of F supplying a missing provision or filling a gap (casus omissus) in the manner proposed by the appellants. See Mercy Docks v. Henderson 1888) 13 CASES 595 at 602 and Crowford v. Spooner 1846) 6 MOORE P.C.I.

G On the second point that the court below wrongly relied on foreign decisions on the respondent's right to passport, I agree with the respondent's explanation that our Constitution makes more specific provisions for right to foreign travels than those of the United States of America and India on whose authorities the court below relied. Note the non- H existence of such rights in our 1960 and 1963 constitutions. In these countries (the U.S. and India) only rights to movement and personal liberty are provided for, yet, the right to passport was read into their Constitutions. I am therefore of the firm view that it is justified of our courts to enforce

the right to hold passport as necessary concomitant to right of exit in our constitution. See Ogugu v. The State (1994) 9 NWLR (Part 366) I at 27-28, where this court has re-affirmed the jurisdiction of courts in Nigeria to rely on comparative authorities in deciding issues in our Constitution to the effect that:

"It has been the cardinal principle of our Constitutional law that on account of the unique character and diversity of our Constitution, the courts should always endeavour to find solutions to constitutional questions within the Constitution through its interpretation but the courts may seek guidance as persuasive authorities from the decisions of the courts of other common law jurisdiction on the interpretations of their constitutions which are in pari materia with the relevant provisions of our Constitution."

See also the contribution of Belgore, JSC at page 43H that:

"It is always of great help to know the line of thinking jurisprudentially in other countries courts, with constitutional provisions resembling our own....."

Thus, the clear intention of the inclusion of Section 38(I) of the 1979 Constitution (the 1960 and 1963 being bereft of similar provisions) was to guarantee every Nigeria freedom of exit or entry into the country, the duty being that of the State to give effect to this right by providing the facility for its enjoyment. Equally, the Nigeria`s right to hold a Nigeria passport became an inevitable corollary to his right to foreign travel guaranteed under section 38(I) (ibid) and Article 12(2) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap.10 Laws of the Federation of Nigeria, 1990 which provides that:-

"Everyone has the right to leave any country, including his own, and to return to his country."

See also Article 13(2) of the Universal Declaration of Human Rights which Nigeria ratified and whose provision is that :-

"Everyone has the right to leave any country., including his own country; and to return to his country."

The decision of the court below therefore that the right to travel abroad cannot be effectively exercised without the Nigerian passport, connotes

logically and legally that an unjustified denial of the right to hold a passport, is a denial of the right to travel abroad. It is in this wise that I agree with the respondent that the impounding of his passport by the appellants constitute an infringement of this right because by so doing the respondent cannot leave the country. As the respondent's passport is the only mandatory facility required of him to legally and factually leave Nigeria and enter into foreign land, the immigration laws and practices in this country and indeed those of foreign countries attest to this. For instance, (I) in relation to immigration, Section 4(I) (a) of the Immigration Act, Cap.171, Laws of the Federation of Nigeria, 1990 provides that a person departing from Nigeria by any means at or from any recognized port, must, as a condition for departure "*satisfy the immigration officers that he is the holder of a valid travel document.*" Though what constitutes "valid travel document" is not statutorily defined, Section 52 of the Immigration Act (the definition section) clearly states that such "valid travel document" must be a document "valid for entry into or travel through any other country as the case may require."

It is a notorious fact under the Nigerian Immigration rules as well as the requirements of foreign missions in Nigeria, the Nigeria identity that the document on which visas are normally endorsed is the passport. In so far therefore, as the possession of a national passport is a condition of entry into other countries, the requirement under Section 4(I) (a) of the Immigration Act (ibid) for a "valid travel document" is nothing short of a requirement of possession of a Nigeria passport. Thus, an examination of modern rules of international travel in other countries show clearly that possession of a passport is both legally and factually necessary for entry into, or passage through their territories. This is the clear finding of the court below - a decision which has not been disputed by the appellant wherein Ayoola, J.C.A, as he then was, held inter alia:-

The legal nature and incidents of a passport had been noted. Without it the citizen will normally not be able to leave the country and is subjected to enormous handicap such as would effectively make foreign travel impossible. He would be deprived of an internationally accepted document evincing his nationality and identity with the consequence

that he would normally be refused entry into other countries."

The above finding is supported by the immigration law and practice in all parts of the world. In the United Kingdom, for instance, the Court of Appeal observed that "the grant or refusal of a passport (affects) the right of individuals and their freedom to travel" (per Taylor, L. J. in R. v. Secretary of State, Ex-Parte Everett (1989) 1 All E. R. 655 at 660. Also in India, the Supreme Court has held that:-

"possession of a passport is a necessary condition of travel in the international community." Vide Subba Rao, C.J. in Satwant Singh Sawhney v. Assistant Passport Officer & Ors. (1967) 3 S. C. R. 525.

The third reason why passport is essential for movement out of Nigeria is that various transactions necessary or incidental to foreign travel from Nigeria cannot be carried out without a valid passport. For example, a Nigerian travelling abroad is required to provide details of his passport number and its country of issue to Customs authorities at the port of departure when making currency declaration. See Section 4(2) of the Foreign Currency Domiciliary Accounts Act Cap, 151, Laws of the Federation 1990.

From the foregoing, it is factually and legally impossible for the respondent to travel out of Nigeria without a passport as witness the various definitions of passport in Nigerian statutes and under the common law, to wit:

(a) Section 6 of the Passport (Miscellaneous Provisions) Act Cap, 343 Laws of the Federation, 1990 defines a "passport" as
"..... a document of protection and authority to travel issued by the competent and Nigerian officials to Nigerians wishing to travel outside Nigeria and includes as defined in sub-sections (3) and (4) of Section 1 of this Act, the following:-

- (a) *a standard Nigerian passport*
- (b)
- (c)
- (d)"

The Jowitt's Dictionary of English Law defines "passport as "

"a licence for the passage of anyone from one place to another,

or from one country to another."

While Wharton's Law Lexicon, Fourteenth Edition, by A. S. Oppe describes "Passport" inter alia as "*a licence for the safe passage of anyone from one place to another, or from one country to another.....*"

The Black's Law Dictionary defines it more elastically as:-

"a document identifying a citizen, in effect requiring foreign powers to allow the bearer to enter and pass freely and safely..... (and as) evidence of permission from a sovereign to its citizen be allowed to pass freely and safely."

In the premises, the court below, in reliance on these definitions, was perfectly right, in my view, to hold that:-

"In so far as a passport is a certificate of identity and nationality and at the same time a request from one state to another to grant entry to the bearer, it stands to reason that a passport is normally an essential document in exercise of the discretion by a foreign State, which at international law it has, in reception of aliens into its territory. To that extent a passport is normally an essential document for entry into foreign countries."

The appellants have contended that "grant or issuance of a passport is a discretionary prerogative of the Government of the Federal Republic of Nigeria;" further, that the government has an absolute discretion to grant, refuse or withdraw a citizen's passport by virtue of the endorsement at the back of every Nigeria passport that it belongs to the government and may be withdrawn at any time, and also by virtue of Section 5 of the Passport (Miscellaneous) Act.

It ought to be borne in mind that an arbitrary discretion of government in respect of issuance, or withdrawal of passport as the appellants contend, is contrary to the principles of our Constitution and the Rule of Law since any withdrawal of the passport of a citizen must have to be justified. Admittedly and undoubtedly, the right of exit, and consequently the right to passport, are not absolute. They are indeed derogable by a law made under Sections 38(2) and 41(I) of the Constitution both of which provide thus:-

Section 38(2):

"Nothing in sub-section (I) of this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) imposing restriction on the residence or movement of any person who has committed or is reasonably suspected to have committed criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country -

(i) to be tried outside Nigeria for any criminal offence, or

(ii) to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty."

Section 41(I) :

"Nothing in Sections 34, 35, 36, 37, and 38 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other person."

It is my respectful view however, that the import of the above provisions is that the rights to passport under Section 38(I) of the Constitution may be derogated from in the following circumstances:

1. Where there is "a law reasonably justified in a democratic society" authorizing the seizure or withdrawal of a citizen's passport. This means that such, must among other things, include the obligation to observe the rules of natural justice.

2. The deprivation must be in strict compliance with the procedure laid down in the law, or read into the law authorizing such deprivation. This is a trite principle that "those who feel called upon to deprive other persons of their personal liberties in the discharge of their duties must strictly and scrupulously observe the forms and rules of law. See:

I. Garba v. Federal Civil Service Commission (1988) I NWLR (Part 71) 449;

2. Wilson v. Attorney- General Bendel State (1985) I NWLR (Part 4) 572;

3. Nwammiri Okoroafor v. The Miscellaneous Offences Tribunal (1995) 4 NWLR (Part 387) 59; and

B 4. Aiyetan v. NIFOR (1987) 3 NWLR (Part 59) 48.

Commenting on similar derogation provisions in Article 21 of the Indian Constitution in the case of Meneka Ghandi v. Union of India (1978) 2 S.C.R. 62, the Supreme Court of India held inter alia that

C "..... *It safeguards the right to go abroad against executive interference which is not supported by law: "law here means" enacted law" or "state law"* Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure." (Underlining is by me):

D From the foregoing, I agree with the respondent's submission that the seizure and impounding of his passport No.654141 by persons instigated by the appellants or by whosoever, has not been justified under any law in force in Nigeria. The burden lies on the appellants to do so the respondent having shown by affidavit evidence that his right to possession of his passport had been infringed. Thus, when the court below (per Ayoola, J.C.A. as he then was) held that:-

F "*Where the Constitution gives a right, and facts have been proved which prima facie show an infringement, it is for the person alleged to have infringed that right to justify the infringement and not the person whose right has been infringed to exclude all circumstances of justification.* "

G the act of seizure or the respondent's passport by the Secret Service (SSS) did not only amount to unwarranted interference, but it was clearly illegal. This is because these Secret Service agents being no servants of the Minister (i.e. Federal Minister of Internal affairs) vide Section 6 of the Passport (Miscellaneous Provisions) Act, could not have purportedly acted under any guise in accordance with his directives. Under Section 5 (ibid) the Minister may have a person's passport withdrawn or cancelled and this only sequel to publication of his embarking up on such a course of

action in the Federal Gazette. However, seizure off his (respondent`s) passport on 21st April, 1992 at the Ikeja Airport without an explanation on the threshold of his embarking on his trip to the Netherlands to attend a conference, in my opinion, amounted to a flagrant breach of his constitutional right of exit from the country. Since it was not shown that the Minister delegated part of his functions to the Director-General in charge of Security and none of the Security Office's made known to the respondent reasons for their act of seizure of his passport for the period leading up to the termination of the hearing of the appeal herein, their act of illegality could neither be sanctioned, shielded nor condoned. There is no explanation from the appellants that the act of seizure of the passport by their purported agents if agents they were, by the Minister concerned (of Internal Affairs), was under sub-section (d) the only sub-section of Section 5 (ibid) which could have availed him, to the effect that "it is in the interest of public to do so."

It appears clear to me and I accordingly so hold, that the respondent's submission to the effect that the inscription at the back of the passport indicating it belongs to the Federal Government and may be withdrawn or impounded at any time, is inconsistent with Section 38(I) of the present Constitution (ibid) and that by virtue of Section I of the same Constitution, should be declared null and void to the extent of the said inconsistency. As the 1960 and 1963 Constitutions did not make provisions for the right of exit vide Section 38(I) of the present 1979 Constitution, but rather provided for freedom of movement, the seizure of the respondent's passport as deposed to in paragraph 9 of his affidavit in support of the application leading to the appeal herein, is the antithesis of the deliberate and avowed policy of government no longer to restrict the foreign travels of human rights workers. The Minister in whom the power to cancel or withdraw a citizen's passport was invested not having exercise those powers, his purported agents who seized the respondent's passport have equally made no ostensible defence of their wrongful act.

I have no hesitation therefore in holding that the forceful seizure of the respondent's passport No.654141 by the agents of 2nd appellant for no cause, amounted to a gross violation of his personal liberty, freedom

of thought, expression and that of freedom of movement etc as guaranteed under Sections 33, 34, 36, and 38 of the Constitution and these acts are unconstitutional. It is preposterous to assert or allege, late in the day, that the act was that of the State. Such blanket protection conjured up by the impetuous and overzealous officials for their unlawful acts ought not to be encouraged in a civilized society as they are unconstitutional.

My answer to issue No. 1 is therefore rendered in the affirmative.

My answer to issue No. 1 having been answered in the affirmative and which exhaustively and substantially disposes of the matter in contest, I deem it unnecessary to delve into the consideration of the other issues, viz issues 2, 3, and 4 respectively.

For the above reasons and the fuller ones contained in the leading judgment of my learned brother Uwais, CJN, a preview of which I had had before now, I too dismiss the appeal. I make the same consequential orders inclusive of costs as therein contained

E

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by the Honourable the Chief Justice of Nigeria and I am in complete agreement with him that this appeal is devoid of substance and ought to be dismissed.

Extensive arguments have been advanced by learned counsel for the parties in respect of the various questions that seem to arise for determination in this appeal. I however agree entirely with my learned brother, the Honourable the Chief Justice of Nigeria that the real issue for resolution in this appeal is whether, in all the circumstances of the case, there was a legal right in the officials of the State Security Service to seize the respondent's passport or to impound the same at the Murtala Mohammed Airport, Lagos on the 21st day of April, 1992 while he was on his way to attend an international conference at the Hague. It is the main submission of the appellants that even if section 38(1) of the Constitution of the Federal Republic of Nigeria, 1979 conferred a right on the respondent to

own or hold a passport, any such right was derogated from by section 41(1) of the same Constitution and section 5(1) of the Passport (Miscellaneous Provisions) Act, Cap. 343, Laws of the Federation of Nigeria, 1990. It was further argued that section 5(1) of the said Act specifically confers powers on the Minister of Internal Affairs to cancel or withdraw B at any time the passport issued to any person. The appellants thus contended that the right of exit from Nigeria as provided for in section 38(1) of the Constitution cannot be said to be absolute. They argued that the said right is derogable by any law that may be made under sections 38(2) C or 41(1) of the Constitution. In their view, the respondent's Passport was properly seized in the present case by virtue of the provisions of section 5(1) and (2) of the Passport (Miscellaneous Provisions) Act, Cap. 343 which deal with the cancellation or withdrawal of passports.

The respondent, on the other hand, vigorously argued that the D unceremonious seizure of his passport by the appellants was an infringement of his right under section 38(1) of the Constitution as he was thereby barred from leaving the country. He submitted that this breach of his fundamental right by the appellants had not been justified under any law in E force in Nigeria. It was his contention that having established that his right to the possession of his passport had been infringed, the burden of proof was on the appellants to justify that the seizure of the passport was lawful. He submitted that the appellants had failed to discharge this onus F of proof placed on them by law.

Section 38(1) of the 1979 Constitution provides as follows:

"38(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exist therefrom." G

But section 38(2) of the same Constitution stipulates thus:

"38(2). Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society - H

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) *providing for the removal of any person from Nigeria to any other country -*

(i) *to be tried outside Nigeria for any criminal offence, or*

(ii) *to undergo imprisonment, outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty".*

There are also the provisions of section 41 (1) of the Constitution which go as follows -

"41(1) *Nothing in sections 34, 35, 36, 37, and 38 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society -*

(a) *in the interest of defence, public safety, public order, public morality or public health; or*

(b) *for the purpose of protecting the rights and freedom of other person."*

It seems to me plain that the right of exit from Nigeria, which naturally involves the right to the possession of an international passport as prescribed under section 38(1) of the 1979 Constitution cannot by any means be described as an absolute right. This is because, that right is clearly derogable by any law which may be made under sections 38(2) and 41 (1) of the Constitution. Accordingly, any seizure or withdrawal of the passport of any citizen must, to be constitutional, be justified by law and not otherwise. The question that has now arisen in the present case is whether the impounding of the respondent's passport was established by the appellants to be justified under any law in force in Nigeria.

In this regard, I must express my full agreement with the Court of Appeal that the respondent, having shown by evidence that his right to the possession of his passport had been infringed, the burden was on the appellants to establish that their seizure of the said passport was justified by law. The appellants sought to rely on the provisions of section 5 of the Passport (Miscellaneous Provisions) Act, Cap. 343, Law of the Federation of Nigeria to justify this seizure of the respondent's passport. Their contention was that the Minister of Internal Affairs had a right thereunder to withdraw or impound any passport already issued in the interest of the

public. They argued, more specifically, that the seizure of the respondent's passport was pursuant to the provisions of section 5(1) (d) of the Act.

Sections 5(1) and (2) of the Passport (Miscellaneous Provision) Act, Cap. 343 provided as follows -

"5(1) The minister may, at any time, cancel or withdraw any B passport issued to any person if -

(a) the passport is obtained by fraud;

(b) the passport has expired;

(c) a person unlawfully holds more than one passport at the C time;

(d) it is in the public interest so to do;

(2) The number of the passport, name and particulars of the holder of any passport withdraw or cancelled pursuant to the provisions of subsection (1) of this section shall be published in the Federal Ga- D zette".

There can be no doubt that section 5(1) of the passport (Miscellaneous Provisions) Act confers powers on the Minister of Internal Affairs to cancel or withdraw a citizen's passport in any of four circumstances therein E stipulated. These circumstances are strictly limited to where a passport was obtained by fraud or had expired or the citizen holds more than one passport at the same time or it is in the public interest to cancel or withdraw the same. F

In the first place, there is no iota of evidence from the record of proceedings that there existed any one of the four circumstances laid down by section 5(I) of Cap., 343 under which a passport may be seized, cancelled or withdrawn. It was neither suggested that the respondent's was G obtained by fraud nor that it had at all material times expired. There was also no suggestion that the respondent held more than one passport at the same time or that it was in the public interest that his passport should be seized, cancelled or withdrawn .

In answer to a question from the court, learned leading counsel H for the appellants stated, for the first time, that the seizure of the respondent's passport was on ground of public interest pursuant to the provisions of section 5(I) (d) of the Act. This claim was never put forward by the

appellants in either of the two court below. Before us, the nature of the public interest alluded to was neither identified nor explained. It is clear to me, with the greatest respect, that learned Senior Advocate's reliance on section 5(I) (d) of the Act is, to say the least, highly speculative and
B misconceived as the same is neither borne out by any evidence on record from the appellants nor was it alluded to in any manner whatsoever, whether directly or indirectly throughout the hearing before the trial court and, indeed, the court below. In my view, the appellants neither attempted to, nor did they establish that the seizure of the respondent's passport was
C protected under any of the four circumstances stipulated by section 5(I) of the Passport (Miscellaneous Provisions) Act.

In the second place, the respondent's passport, on the evidence, was impounded by agents of the State Security Service (SSS) headed by
D the first appellant. Again, it was neither claimed nor suggested that they acted at all material times as agents of the Minister of Internal Affairs. There was also no evidence before the trial court to suggest that the seizure of the passport was on the instruction or authorization of the appropriate Minister.
E

In this connection, reference must be made to the provisions of section 3(I) of the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, Cap, 228 Laws of Nigeria, 1990 which stipulate as follows -
F

*"3(I) Where by any law enacted by the National assembly or taking effect as if it had been so enacted, a Minister is empowered to exercise any powers or perform any duties, he may by a delegation notified in the Federal Gazette depute any of the following officers by name
G of office to exercise those powers or perform those duties, subject to such conditions, exceptions and qualifications as the Minister may prescribe-*

(a) the Director-General having supervision over a department of government with which the Minister has been charged with responsibility, or any officer who comes directly under the authority of such Director-General;
H

(b) any officer of the such department of government;

(c) any officer of the police with the consent of the Nigerian

Police Council or of the Police Service Commission of the Federation, as the case may require;

(d) any other public officer with the consent of the Minister charged with responsibility for the functions exercised by such officer; or

(e) any officer in the public service of a State with the consent of the Government of the State".

By section 5(I) of Cap. 343 aforementioned the Minister of Internal Affairs is specifically empowered to cancel or withdraw any passport issued to any person on any of the four grounds therein stipulated. There is no evidence to the effect that the said Minister delegated the exercise of this statutory power to either the State Security Service or, more specifically, to the appellants. Neither was it suggested that any such delegation in favour of any of the officers mentioned in section 3(I) of Cap. 228 was duly notified in any Federal Gazette as prescribed under that law. Besides, where in an appropriate case, the Minister validly cancels or withdraws a passport issued to any person under section 5(I) of Cap. 343, the number of such passport and the name and particulars of the holder shall be published in the Federal Gazette pursuant to the provisions of section 5(2) of the same law. There was again no suggestion that any such publication was made in respect of the respondent's seized passport.

The conclusion I therefore reach is that in all the circumstances of this case, no legal right in the officials of the State Security Service was established to justify their seizure of the respondent's passport at the Murtala Muhammed Airport, Lagos on the 21st day of April, 1992. I fully agree that the powers conferred on the State Security Service under the National Security Agencies Act, Cap. 278, Laws of the Federation of Nigeria do not include the seizure or withdrawal of passports. Similarly, they do not cover the impounding of passports by officials of the SSS without due authorization by the appropriate Minister as prescribed by law.

It is for the above and the more detailed reasons contained in the leading judgment of the Honourable the Chief Justice of Nigeria that I, too, dismiss this appeal as lacking in substance. I abide by the order for costs therein made.