

COURT OF APPEAL  
LAGOS DIVISION  
15TH JUNE, 1999. CA/L/27/99  
CORAM:- G. A. OGUNTADE, S. GALADIMA,  
P. O. ADEREMI, JJCA

1. COMPTROLLER, NIGERIAN PRISONS ..... APPELLANTS  
SERVICE, IKOYI, LAGOS  
2. DEPUTY COMPTROLLER, IKOYI PRISON, LAGOS  
3. ATTORNEY GENERAL OF THE FEDERATION

V.

DR. FEMI ADEKANYE & 26 ORS. .... RESPONDENTS

---

***COURTS*** - Appeal - Judgment - Laws - Where the lower court had not specifically considered a law - That cannot be an excuse for the Court of Appeal to fail to apply the law - If it is relevant

***EVIDENCE*** - Affidavit - Unchallenged evidence - When the depositions in an affidavit are unchallenged - The court may act on them

***JURISDICTION*** - High Court - Ouster of jurisdiction - Decree No 18 of 1994 - Section 1(5) and (6) thereof - By those provisions the intention of the law maker - Is to exclude the supervisory jurisdiction of the High Court - On matters in respect of which jurisdiction is given to the Failed Bank Tribunal

***JURISDICTION*** - Ouster - Human rights - African Charter - The Decrees of the Federal Military Government cannot oust - The jurisdiction of the court in relation to matters pertaining to human rights under the African Charter

***STATUTES*** - African charter - Human rights - Jurisdiction - Decree No 18 of 1994 in many respects is inconsistent - With the letter and spirit of the African charter of Human Rights - And the ouster of the supervisory jurisdiction of the High Court - Is ineffectual

*STATUTES - Human Rights Decree No 18 of 1994 - Provisions of section 26 thereof - In its effect is oppressive - And totally destroys the presumption of innocence in favour of an accused*

*STAY OF PROCEEDINGS - Appeal - Courts - Application for stay of proceedings - In a case involving the liberty of a citizen - What a court confronted with such a situation should do*

### **FACTS**

The present respondents were the Applicants in the application before the Lagos High Court. They sought, upon an ex parte application for leave to issue a Writ of Habeas Corpus Ad subjiciendum directed against the present Appellants (who were the Respondents before the High Court). The Respondents had been arrested and arraigned before the Failed Bank Tribunal on diverse offences. Several of them had been in prison custody for over 30 months arising from their inability to meet the bail terms set by the Tribunal. The health of several of them was failing and the Tribunal had not complied with the provisions of section 4 (i) of Decree No 18 of 1994 which provides that the trial of accused persons shall be concluded within 21 days. The Lagos High Court made an Order Nisi in favour of the Respondents on 4/1/99 and the return date was to be 11/1/99. The Appellants did not file a return to the writ. Rather, they on 14/1/99, filed an application before the High Court wherein they contended that the Court lacked the requisite jurisdiction to have entertained the application by the Respondents. The ground for raising the objection is inter alia that by operation of section 1(5) of Decree No. 18 of 1994 as amended, the supervisory jurisdiction or power of the judicial review of a High Court shall not extend to any matter or proceeding before the Tribunal duly constituted under the said Decree.

Arguments were canvassed by both parties and in a considered ruling the High Court held that it had the jurisdiction to hear the matter. Dissatisfied, the Appellants appealed to the Court of Appeal challenging the ruling. Following the ruling on jurisdiction the Appellants filed an

application for stay of execution and proceedings. The Respondents opposed the application. The High Court in its ruling refused the application. The Appellants proceeded to file on the same date of the ruling a similar application for stay before the Court of Appeal. When the matter was to be further proceeded with later on the same date, Appellants' counsel informed the High Court that as he had filed an application for stay of proceedings and execution before the Court of Appeal, the former court should stay further proceedings in the matter. The High Court refused the request whereupon the counsel for the Appellants withdrew further appearance in the matter. The High Court, undeterred, continued with the hearing. Arguments were received on the motion on Notice for the release of the Respondents. The court delivered a ruling wherein an Order absolute for the release of the Respondents was made. Although the Respondents' counsel relied on African Charter on Human Rights (Cap 10 Laws of the Federation of Nigeria, 1990), the High Court in its ruling did not say a word as to its applicability to the application before the court. The appellants further dissatisfied with the ruling filed another appeal contending that the High Court on being informed that an appeal and an application for stay of proceedings were pending before the Court of Appeal, should have stayed further proceedings. Both appeals were consolidated for hearing. The appeals were determined on two main issues.

**ISSUES FOR DETERMINATION**

1. *Whether the lower Court was right to have assumed supervisory jurisdiction over a matter that arose in the Failed Bank Tribunal established by Decree No. 18 of 1994.*
2. *Whether the lower Court ought to have stayed further proceedings in the hearing after it was duly informed that an application for stay of proceedings and execution had been filed at the Court of Appeal.*

**HELD** (Unanimously dismissing the appeal per lead judgment of OGUNTADE JCA)

***Courts - Appeal***

1. What the lower court had to consider was whether or not it had jurisdiction to entertain the application before it. That was the issue. In the

consideration of that issue, the duty on the lower court was to allow itself to be guided by all the relevant laws. The laws of the land are binding on everybody and all the organs including the judiciary which has a distinct duty to apply all the Laws. That the lower Court had not specifically considered the Law cannot be any excuse for this Court to fail to apply the Law if it is considered relevant. It is now a settled principle of law that where a Court reaches a right conclusion, but for the wrong reason, the conclusion will stand. (p. 1759 F)

**C**  
***Jurisdiction - High Court***

2. Clearly the intention of the lawmaker as made manifest in the provisions of Section 1(5) and 1(6) is to exclude the supervisory jurisdiction of the High Court on matters in respect of which jurisdiction is given to the Failed Bank Tribunal under Section 3(2) of Decree No. 18 of 1994. (p. 1760 F)

***Jurisdiction - Ouster***

3. *It is for the above that I hold that the provisions of Cap 10 of the Laws of the Federation 1990 are provisions in a class of their own. While the Decrees of the Federal Military Government may over-ride other municipal laws, they cannot oust the jurisdiction of the court whenever properly called upon to do so in relation to matters pertaining to human rights under the African Charter. They are protected by International Law and the Federal Military Government is not legally permitted to legislate out of its obligations."* I entirely agree with the observation of Musdapher JCA, reproduced above. (p. 1765 E)

**G** *[This principle of law is now overruled by the SC, See Abacha v. Fawehinmi (2000) 4 KLR (pt 100) 857]*

***Evidence - Affidavit***

**H** 4. There was the necessity to invoke the provisions of Cap 10 in aid of the Respondents. The Appellants had not filed a return to the Order Nisi on the Writ of Habeas Corpus served on them. The depositions in support of the application brought on behalf of the Respondents were therefore unchallenged. They went one way. When the depositions in an

affidavit are unchallenged, the Court may act on them. See Olujinle v. Adeagbo (1988) 2 NWLR (pt. 75) 238. Nat. Ins. Corp. of Nig. v. Power & Ind. Eng. Co. Ltd. (1986) 1 NWLR (Pt. 14) 1. (p. 1766 D)

***Statutes - Human rights***

B

5. I am satisfied that Section 26 of Decree No. 18 in its effect is oppressive and totally destroys the presumption of innocence in favour of an accused. It is too harsh and ensures that a person accused of committing an offence under the Decree does not get bail at all. It is a bad legislation and clearly offends Article 7, 1b of African Charter on Human Rights Act, Cap 10, Laws of the Federation 1990. (p. 1769 E) C

***Statutes - African Charter***

6. From the totality of what I have said above, it is manifest that Decree No. 18 of 1994, in many respect is inconsistent with the letter and spirit of the African Charter of human Rights. That being the position, Section 26 and perhaps in a constructive sense, Sections 4 (2) and 5(1) of the same Decree are invalid. The protection under Section 1 (5) and 1 (6) of the said Decree which the law offers as a way from shielding the Failed Bank Tribunal from the supervisory jurisdiction of the High Court is ineffectual. The ouster of the supervisory jurisdiction of the High Court cannot attach to the acts done under a law so patently in conflict with the African Charter of Human Rights. The general supervisory jurisdiction of the High Court over the Failed Bank Tribunal was in my view rightly invoked. The lower Court correctly assumed jurisdiction. (p. 1770 D) D E F

***Stay of Proceedings - Appeal***

G

7. I am satisfied that on 4/2/99, the lower Court was informed that an application for stay of Execution and Stay of Proceedings was pending before this Court. In the Ruling delivered by the lower Court on 4/2/99 reference was made to the application said to have been filed at the Court of Appeal. The Appellants have asked us to set aside the proceedings of the lower Court subsequent to 4/2/99. There is no doubt that we can do so in the exercise of our discretion. It seems obvious to me therefor that the H

lower Court was not intent on disregarding the proceedings before this Court. Rather, I have the impression that it was swayed by sympathy for the Respondents who without being pronounced guilty had been made at the time to spend over thirty months in prison custody. He wanted to move with expedition. In a case involving the liberty of the citizen, it is desirable that a Court should avoid delay. In the process of trying to avoid such delay, the lower court did wrong. To set aside the proceedings subsequent to 4/2/99, will impose a greater hardship on the Respondents. I think it suffices to say here that when confronted with a situation like this in the future, the trial Judge should stay the proceedings in his Court. There may be circumstances where the interest of justice dictates that a Stay of Proceedings should not be granted. The High Court should write a considered ruling explaining the special circumstances so that if a further application is made to us in the Court of Appeal for Stay of Proceedings, we will be made aware of the special circumstances which necessitates the refusal of the application for Stay of Proceedings. (p. 1771 E)

**NOTABLE POINTS OF INTEREST**  
**OGUNTADE JCA**

*1. Limitation to sovereignty*

When it is said that the African Charter of Human Rights Act, Cap 10 is superior to our municipal laws on questions of Human Rights, this does not derogate from the sovereignty of Nigeria as Nation State. One of the enduring attributes of a Nation State under International Law is the sovereignty of the law makers in a Nation State to make laws within its defined borders on matters in general. Occasions do arise however, when a Nation State for the collective good of a larger Community of states including the particular Nation State voluntarily sheds a part or surrenders aspects of its sovereignty. When this happens its true import is the assertion of the sovereign National State to limit its sovereignty. (p. 1765 H)

*2. Methods that should be employed in curbing crimes*

It needs to be borne in mind that even when efforts are made to curb crimes in society only civilized methods should be employed. Society ought not be brutalised. A law that does not discriminate in the award of punishment between the guilty and the innocent is a modern-day anachronism. No nation should tolerate it. And this is one of the reasons that informed the need for African Nations to come together for an African Charter of Human Rights. (p. 1767 G)

*3. Considerations that should guide a court in the grant or refusal of bail*  
In Margaret Eyu v. The State (1988) 2 NWLR (pt.78) 602, this Court sitting at Enugu examined the considerations that should guide a Court in the grant or refusal of bail. I had the privilege of writing the lead judgment in the case. At page 610 of the report I said.:

*"In the exercise of its discretion on whether or not to grant bail pending trial, the usual factors to be taken into account are:*

*(1) The nature of the charge*

*(2) The severity of the punishment*

*(3) The character of the evidence*

*See Mamuda Dantata v. Police (1958) NRNLR 3*

*(4) Another important factor to be borne in mind is the criminal record of the accused and the likelihood of the repetition of the offence ..*

*It seems to me that since the law presumes in favour of the liberty of the subject and his innocence until found guilty, the onus is on the prosecution to show in a given case that an accused/applicant for bail is not one that should be released on bail." (p. 1768 E)*

*4. Jurisdiction to try failed bank offences*

Under Section 251 (3) of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 1999, the Federal High Court now has jurisdiction to try the Respondents on the offence brought against them. (p. 1772 H)

**ADEREMI JCA**

*5. The concept of freedom*

Freedom is no doubt the greatest gift or heritage of man. Omnipotence created man and accorded him with divine freedom. Men are born free with liberty to think what he will, to say what he will and to go where he likes, all in a lawful manner, without let or hindrance from any other persons, private or governmental authorities. It therefore follows that, generally, detention of a man by a fellow man is a violation of the law of God and man. I am not oblivious of the fact that there are checks and balances to the series of freedom given to man. To the extent to which a man must not do his things in a way calculated to injure or adversely affect the exercise of the freedom of another man, his own freedom is limited. The whole of Article 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10, laws of the Federation of Nigeria 1990 is in tune with the universal concept of criminal law in a civilised society that upholds the rule of law as a way of life; by it, accessibility to the court and even to the highest court is guaranteed, to the citizen whose fundamental rights are threatened; his right to presumption of innocence until he is proved guilty by a court of competent jurisdiction is assured; his right to defence which includes the right to be defended by a counsel of his choice is offered to him on a platter of gold and his right to be tried within a reasonable time by an impartial court or tribunal remains sacrosanct. That is the continental law Nigeria voluntarily subscribed to. (p. 1774 H)

*6. The duty of judges*

When lord Atkin during the second world war made that monumental speech in the House of Lords in the case of Liversidge v. Anderson & Anor. (1941) 3 A.E.R 338 and page 361 and I quote him

*"In England, amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that*



*the judges are no respecters of persons and stand between the subject and any attempted encroachments in his liberty by the executive, alert to see that any coercive action is justified in law."*

I think he was addressing not only English Judges but all Judges in democratic environment where the rule of law is raised up. It is the duty of all Judges in democratic society to see that not only is the law obeyed but that government takes place under the law and in accordance with it. I am not saying that suspects particularly those whose pre-occupation is capable of distabilising the society in all material respect, should be treated with kid gloves. Undoubtedly, drastic situation demands drastic solution. But, in meting out drastic solution to drastic situation, rule of law must not be seen to be jettisoned. All Judges bear particular responsibility to see to it that all branches of the government - the legislature, the executive as well as the judiciary conform to the legal norms of a free society. (p. 1776 A)

### **REPRESENTATION**

F. Nwadialo, SAN with Emeka Ngige, O. Ojolowo and O. A. Egwuatu - for the Appellants

Dixon Osuala with W. K. Shittu, A.Y. Usman, C. C. Okoh, C.H. Chinaka - for 1st - 22nd Respondents

Femi Falana with J. Ogunye - for 23rd to 27th Respondents.

### **CASES REFERRED TO**

Olujinle v. Adeagbo (1988) 2 NWLR (pt.75) 238

Liversidge v. Anderson (1941) 3 A. E. R. 338 and page 361

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

Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria 1976 6 S.C. 175

Attorney-General, Lagos State v. Dosumu (1989) 3 NWLR (Pt. 111) 552

Uwaifo v. Attorney - General, Bendel State (1982) 7 S. C 124

Ariyo v. Ogele (1968) 1 All NLR 1

Timitimi v. Amabebe (1953) XIV WACA 374

Olaniyi v. Aroyehum (1991) 5 NWLR (Pt. 194) 652 at 686

Attorney-General of the Federation v. Sode (1990) 1 NWLR (Pt. 128)

**STATUTES REFERRED TO**

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, cap. 10, Laws of the Federation of Nigeria, 1990; Art. 7  
B Failed Banks (Recovery debts) and Financial Malpractices in Banks Decree No 18 of 1994, ss. 1,3,4,5 and 26  
Constitution of the Federal Republic of Nigeria, (Promulgation) Decree No 24 of 1999; S. 251 (3)  
C

**LEAD JUDGMENT BY OGUNTADE JCA**

There are only two serious issues to resolve in this appeal. The first, was the lower Court right to have assumed supervisory jurisdiction over a matter that arose in the Failed Bank Tribunal created by Decree No. 18 of 1994? Secondly, ought the lower Court to have stayed further proceedings in the hearing after it was informed that an application for Stay of Proceedings and Execution had been filed at the Court of Appeal?

E The brief relevant facts are these. The present Respondents (hereinafter referred to as Respondents) were the Applicants in the application before the lower Court. They sought, upon an ex parte application for leave to issue a Writ of Habeas Corpus Ad subjiciendum directed against the Appellants (who were the Respondents before the lower court and are  
F hereinafter referred to as the Appellants). An order Nisi was made in favour of the Respondents on 4/1/99 and the return date was to be 11/1/99.

In the ordinary way, it was expected that the Appellants would produce the Respondents before the lower Court on 11/1/99 and make a  
G return to the writ issued against them. By such return, the Appellants should explain the cause of the detention of the Respondents. There was still to be heard the application on notice filed by the Respondents for their release.

H The Appellants however did not file a return. Rather, they on 14/1/99, filed an application before the lower Court wherein they contended that the lower Court lacked the requisite jurisdiction to have entertained the application by the Respondents. Arguments were canvassed by both

parties on the motion challenging the jurisdiction of the lower Court. On 22/1/99, the lower Court in a considered ruling held that it had the jurisdiction to hear the matter. The Appellants is challenging that ruling in one of the two appeals before us.

Following the ruling on jurisdiction, the Appellants filed an application for Stay of Execution and proceedings. The Respondents opposed the application. On 4/2/99, the lower Court in its ruling refused the application. It would seem that the Appellants upon the refusal of their application for Stay of proceedings and Execution proceeded to file on the same date a similar application for stay before this court. When the matter was to be further proceeded with later on the same date, Appellants' counsel informed the lower Court that as he had filed an application for Stay of Proceedings and Execution before the Court of Appeal, the lower Court should stay further proceedings in the matter. The lower Court promptly refused the request. Mr. Fidelis Nwadialo, learned SAN for the Appellants then informed the lower Court that he was withdrawing further appearance in the matter. The Lower Court, undeterred, continued with the hearing. Arguments were received on the motion on Notice for the release of the Respondents and on 12/2/99, a Ruling was delivered. The lower Court made an Order absolute for the release of the Respondents. On 10/3/99, the Appellants filed another appeal contending that the lower Court on being informed that an appeal and an application for Stay of proceedings were pending before this Court, should have stayed further proceedings.

The result of the above is that we have two appeals before us both by the Appellants which we have consolidated for hearing.

I shall in this judgment be guided by the issues for determination as formulated by the Appellants in their brief. I intend however, to reflect the arguments of parties on the law as I discuss these issues.

In their motion filed on 13/1/99, the Appellants contended that the lower Court lacked the jurisdiction to entertain the application by the Respondents for a Writ of Habeas Corpus to issue against the Appellants. The grounds for raising the objection as to the jurisdiction of the lower Court as put across by the Appellants are these:

"1. That all the Applicants/Respondents (i.e. Respondents in this appeal) have been arraigned and charged before the Failed Bank (Recovery of debts) and Financial Malpractices in Banks Decree No. 18 of 1994 as amended.

B 2. That by operation of Section 1 (5) of the said Decree the supervisory jurisdiction or power of the judicial review of a High Court shall not extend to any matter or proceeding before the Tribunal duly constituted under the said Decree.

C 3. That by the operation of Section 1 (b) of the Decree, if any proceeding relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or matter brought before the Tribunal is before any High Court after the commencement of this Decree, such action shall abate, cease or be deemed to be discontinued without any D further assurance other than the said Decree.

4. That the subject-matter of this suit contravenes the provisions of the said Decree.

E 5. That the Failed Bank Tribunal has exclusive jurisdiction over all ancillary matters and any other preliminary issue connected with an offence or hearing over which the tribunal has jurisdiction under Section 3 (2) of the said Decree.

F 6. That this Honourable Court lacks the requisite jurisdiction to entertain this suit in its entirety."

It is apparent from the above that the objection raised by the Appellants before the lower Court as to its jurisdiction was predicated mainly on Section 1 (5) and 1 (6) of Decree 18 of 1994. In the ruling of the lower Court, Section 1 (b) and (11) of Decree No. 12 of 1994 was also considered. The G Respondents' counsel before the lower Court also addressed on the African Charter of Human Rights in pressing home his arguments that the lower Court had the requisite jurisdiction.

H The lower Court hinged its conclusion that it had jurisdiction to entertain the Habeas Corpus application before it on two main planks namely:

1. That throughout the whole of the thirty sections of Decree No. 18 of 1994, there is no section therein that ousts the jurisdiction of the

High Court specifically.

2. That the Failed Bank Tribunals not having concluded the trial of the Respondents within 21 days as provided under Section 4 (1) of Decree No. 18 of 1994 and that because the Failed Bank Tribunal had not complied with the relevant provision as to the time the trial should be concluded the High Court had the necessary supervisory jurisdiction over the Failed Bank Tribunal. B

Although the lower Court also elected to consider the provisions of Decree No. 12 of 1994 in its Section (1) (6)(1) which it then set out, no specific decision of the lower Court was based there upon as the lower Court had merely said in the passing: C

*"In respect of the deprivation of Civil Rights and properties it must be construed fortissime contra Proferetem i.e. strictly against authority but sympathetically in favour of the citizen whose property or rights are being deprived."* D

Further, although the Respondents' Counsel relied on African Charter of Human Rights etc. Act, Cap 10 Laws of the Federation 1990, a law which I consider the most important and relevant for the matter the lower Court was considering, not a word was said as to its applicability to the application before the lower Court. E

In the Appellants' Reply to the Respondents' brief (No. 1), the Appellants have contended that this appeal should be considered without reference to the African Charter of Human Rights because according to them it did not form part of the matters considered by the lower Court. With respect, I think that that contention was not well founded. **What the lower court had to consider was whether or not it had jurisdiction to entertain the application before it. That was the issue. In the consideration of that issue, the duty on the lower court was to allow itself to be guided by all the relevant laws. The laws of the land are binding on everybody and all the organs including the judiciary which has a distinct duty to apply all the Laws. That the lower Court had not specifically considered the Law cannot be any excuse for this Court to fail to apply the Law if it is considered relevant. It is now a settled principle of law that where a Court reaches a right conclusion, but** F G H

**for the wrong reason, the conclusion will stand.**

B I propose to approach the determination of the issue of the jurisdiction of the lower Court on two grounds, one alternative to the other. One on the supposition that the African Charter on Human Right (Cap 10 Laws of the Federation 1990) did not apply and the other on the supposition that it did starting with the former. I shall then justify the conclusion reached finally as to the applicability of African charter on Human Rights.

C I should say straightaway that the lower Court was mistaken when it said that none of the thirty sections in Decree No. 18 of 1994 ousted the jurisdiction of the High Court. Section 1 (5) and 1 (6) of Decree No. 18 of 1994 provides:

D *"1(5) Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended, or any enactment to the contrary, the supervisory jurisdiction or power of judicial review of a High Court shall not extend to any matter or proceeding before the Tribunal duly constituted under this Decree.*

E *1(6) Subject to section 2 of this Decree, if any proceedings relating to the supervisory jurisdiction or power of judicial review of a High Court on a cause or matter brought before the Tribunal is before any High Court after the commencement of this Decree, such action shall*  
F *abate, cease or be deemed to be discontinued without any further assurance other than this Decree."*

**Clearly the intention of the lawmaker as made manifest in the provisions of Section 1(5) and 1(6) is to exclude the supervisory jurisdiction of the High Court on matters in respect of which jurisdiction is**  
G **given to the Failed Bank Tribunal under Section 3(2) of Decree No. 18 of 1994.**

H If any doubt persists as to the intention of the lawmakers, this soon evaporates upon a perusal and digestion of Section 3(2) of the same Decree.

Since the High Court of a State does not ordinarily have supervisory jurisdiction over a Federal High Court, clothing a Failed Bank Tribunal with the authority and status of the Federal High Court is a clear man-

ner of making it clear that the High Court of a State should not exercise any supervisory jurisdiction over a Failed Bank Tribunal.

Now, in support of its conclusion that no section of Decree No. 18 of 1994 ousted the jurisdiction of the lower Court, the lower Court relied on the statement of Belgore JSC in Osadebay v. A. G. Bendel (1991) 1 NWLR (Pt. 169) 525 at 571. I think with respect, that the learned trial Judge misunderstood or misconceived or both the reasoning of Belgore JSC in the case and the words employed by the learned Justice. On its true analysis, the stand taken by Belgore, JSC, is in fact against the conclusion of the lower court in aid of which it relied on Osadebay v. A. G. Bendel (supra). At page 571 of the report, Belgore, JSC said:

*"Any Decree ousting the jurisdiction of the Court does so effectively because a Decree is a special creature of the Military to shield their own peculiar method of governance; it is for this reason they make their Decree superior even to the Constitution. Section 12 of Decree No. 34 of 1968 is clear and it should not be beclouded by Court-induced ambiguity. When there is no jurisdiction, the Court will act ultra vires should it venture to assume one; for a Court embarking on the hearing of a matter not within its jurisdiction is exercising in moot, a function not that of Court (Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria 1976) 6 S.C. 175. The peculiar circumstance of a military regime is a point in issue, much as the military exercise governance and do so effectively, their protective laws must be obeyed; and once the Decrees are clear and unambiguous as to ouster of Court's Jurisdiction in certain subject-matters the Courts indeed have no jurisdiction. Attorney-General, Lagos State v. Dosumu (1989)3 NWLR (Pt. 111) 552; Uwaifo v. Attorney - General, Bendel State (1982) 7 S. C 124"*

And at page 572 of the same report, Belgore, JSC went on:

*"It must be pointed out that Courts are creatures of statute based on the Constitution. Their jurisdictions are based on statutes and no Court assumes jurisdiction without enabling statute. Jurisdiction cannot be implied where there is no statute to back it up. (Ariyo v. Ogele) (1968) 1 All NLR 1; Timitimi v. Amabebe (1953) XIV WACA 374. When there is no jurisdiction it is futile exercise for a Court to embark on the*

1762 Comptroller of Prisons v. Adekanye (2000) 5 KLR Oguntade JCA  
hearing of a matter (Attorney-General of the Federation v. Sode) (1990)  
1 NWLR (pt. 128) 500, 503, 504."

It is certainly indisputable that the decision of the Supreme Court  
in Osadebay v. Attorney-General (Supra) and in particular the views of  
B Belgore, JSC do not support the conclusion of the lower Court.

Another decision relied upon by the lower Court and the Re-  
spondents' Counsel in their brief is Okoroafor v. Miscellaneous offences  
Tribunal (1994) 4 NWLR (pt. 138) pp. 63-70 where this Court per  
C Acholonu, JCA, observed:

"Where the act or thing required by the statute is a condition  
precedent to the jurisdiction of the tribunal, compliance cannot be dis-  
pensed with and if it be impossible the jurisdiction fails. Moreover, there  
cannot be conferment of jurisdiction even by consent contrary to the  
D clear provisions of the statute."

I have no doubt that pats-Acholonu, JCA, in the Okoroafor's case,  
correctly stated the law given the issues before the Court in that case. The  
observation of the learned Justice of the Court of Appeal, cannot however  
E be just uprooted and transplanted indiscriminately to other circumstances  
which are not the same as in the case in which the observation was made.  
The observation was relied upon in support of the argument that since the  
Failed Bank Tribunal trying the suspects had not concluded hearing within  
F 21 days, the lower Court could assume a supervisory jurisdiction over the  
Failed Bank Tribunal. The reasoning translates into this: If the Failed  
Bank had not complied with a fundamental provision of the Decree which  
created it i.e. Decree No. 18 of 1994. It could not enjoy the benefit of the  
protection afforded it under Section 1 (5) and (6) of the Decree.

G Now Section 4 (1) and (2) of Decree No. 18 of 1994 provides:

"4(1) *The Tribunal shall deliver its judgment not later than 21  
working days from the day of its first sitting.*

(2) *The decision of a Tribunal shall not be set aside or treated as*  
H *a nullity solely on the ground of non-compliance with the provisions of*  
*this section or Section 24 (6) of this Decree unless the Special Appeal*  
*Tribunal exercising jurisdiction by way of appeal from or review of that*  
*decision is satisfied that the party complaining of such non-compliance*



*has suffered a miscarriage of justice by reason thereof."*

It seems to me that the above provisions of Section 4 of Decree No. 18 of 1994, are such that the dictum of Pats-Acholonu, JCA in Okoroafor v. M.O.T. (supra) must be seen as inapposite on the facts in this case. This is because Section 4 (2) of the Decree has stated what the effect of non-compliance with the section should be. It was therefore wrong for the lower Court to have relied on that case for the conclusion that the High Court had jurisdiction in the matter on the ground that the Failed Bank had not complied with Section 4(1) of Decree No. 18 or 1994.

In Agwuna v. A. G. Federation (1995) 5 NWLR (Pt. 396) 418, the Supreme Court had to consider the effect of Section 1 (8), (9) and (10) of the Tribunal (Miscellaneous provisions) Decree No. 9 of 1991 on the supervisory jurisdiction of the High Court. Section 1 (8) and (9) of the said Decree No. 9 of 1991 is in ipsissima verba with Section 1 (5) and (6) of Decree No. 18 of 1994. That case therefore offers a clear guidance to the lower Court as it was obvious that under the doctrine of stare decisis, the lower Court was bound to follow the decision in the case. The decision was cited before the lower Court. The learned trial Judge did not attempt to distinguish the circumstances in the case from the one currently before him; nor offer an explanation as to why he could not follow the case. He just looked the other way. With respect, I do not think that was the right attitude. At page 437 of the case i.e. Agwuna v. A- G. Federation, Iguh JSC said.

*"A close study of the above provisions of Section 21 (1) of the Recovery of Public property (Special Military Tribunals Miscellaneous Offences) Act and Sections 1 (8), 1 (9) and 1 (10) of the Tribunals (Miscellaneous Provisions) Decree No. 9 of 1991 discloses in no uncertain terms that these legislations are very carefully worded and promulgated with a clear, definite and unambiguous intention on the part of the law-makers to oust the supervisory jurisdiction or the power of judicial review of the High Court in respect of a cause or matter brought or determined by the tribunals concerned. Although therefore, the powers of the superior Courts of record such as High Court are great and indeed wide,*

they are certainly not unlimited. They can be and are indeed sometimes properly limited by ouster of jurisdiction clauses in some legislations such as those above mentioned. See Shodeinde v. Registered Trustees of Ahmaddiya Movement in Islam (1980) 1-2 S.C. 225; Olaniyi v. Aroyehum B (1991) 5 NWLR (Pt. 194) 652 at 686; Attorney-General of the Federation v. Sode (1990) 1 NWLR (Pt. 128) 500 at 517. I accept that although it has always been the practice of the Courts to guide their jurisdictions jealously, if in any given case that jurisdiction is expressly ousted by the provisions of the Constitution, an Act of Parliament or a Decree, then C the path of justice must dictate compliance with such an ouster of jurisdiction clause especially as under our present Constitution, Decrees are the Supreme laws of the land."

If I had to consider the issue of the jurisdiction of the High Court D in this matter without reference to the African Charter on Human Rights as enshrined in Cap 10 Laws of the Federation, 1990. I would have not the slightest hesitation in concluding that the High Court had not supervisory jurisdiction in the matter.

E I now come to a consideration of the impact of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap 10 Laws of the Federation, 1990, on Decree No. 18 of 1994. In Fawehinmi v. Abacha (1996) 9 NWLR (pt. 475) 710 at 746 - 747, this Court per F Musdapher, JCA said.

"The member countries - parties to the protocol - recognised that Fundamental Human Rights stem from the attributes of human beings which justify their international protection and accordingly by the promulgation of Cap. 10, the Nigerian State attempted to fulfil its international obligation. It is an international obligation to which the nation voluntarily entered and agreed to be bound. The arrest and detention of the appellants on the facts adduced clearly breached the provisions of the Charter and can be enforced under the provisions of the Charter. G The contracting States are bound to establish some machinery for the effective protection of the terms of the Charter and when the local procedure is exhausted or when delay will be occasioned, the matter will be taken to the International Commission. All these indicate that the provi-

sions of the Charter are in a class of their own and do not fall within the classification of the hierarchy of laws in Nigeria in order of superiority as enunciated in Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139. See Equal Opportunity Commission and Anor v. Secretary for State for Employment (1994) 1 All ER 910. See also Ogugu and Oshevire (cases) B *supra*. It seems to me that the learned trial Judge erroneously acted when he held that the African Charter contained in Cap 10 of the laws of the Federation of Nigeria 1990 is inferior to the Decrees of the Federal Military Government. It is commonplace that no Government will be C allowed to contract out by local legislation, its international obligations. It is my view that notwithstanding the fact that Cap 10 was promulgated by the National Assembly in 1983 it is a legislation with international flavour and the ouster clauses contained in Decree No. 107 of 1993 or D No. 12 of 1994 cannot affect its operation in Nigeria. I agree with the submissions of the learned counsel for the Appellant. In England, where there is no written Constitution and the Parliament is Supreme, it could legislate on any issue. But that sovereignty is now some what limited through the impact of European Community Act of 1972. Although the E British Parliament passed the E. C Law and can in theory repeal it, but there are constraints and limitations and thus parliamentary Supremacy has been surrendered, by implication, by the signing of the union Laws. It is for the above that I hold that the provisions of Cap 10 of the Laws F of the federation 1990 are provisions in a class of their own. While the Decrees of the Federal Military Government may over-ride other municipal laws, they cannot oust the jurisdiction of the court whenever properly called upon to do so in relation to matter pertaining to human G rights under the African Charter. They are protected by International Law and the Federal Military Government is not legally permitted to legislate out of its obligations."

I entirely agree with the observation of Musdapher JCA, reproduced above. When it is said that the African Charter of Human H Rights Act, Cap 10 is superior to our municipal laws on questions of Human Rights, this does not derogate from the sovereignty of Nigeria as a Nation State. One of the enduring attributes of a Nation State under

International Law is the sovereignty of the law makers in a Nation State to make laws within its defined borders on matters in general. Occasions do arise however, when a Nation State for the collective good of a larger Community of states including the particular Nation State voluntarily sheds a part or surrenders aspects of its sovereignty. When this happens, its true import is the assertion of the sovereign National State to limit its sovereignty.

It follows therefore that the High Court when called upon to consider issues bordering on the infraction of the Fundamental Human Rights as protected under Cap 10 Laws of the Federation ought not to throw up its hands in a state of surrender and helplessness in the face of the ouster provisions in the Decrees of the Military Government. The true position is that in questions or issues concerning the Fundamental Human Rights protected under Cap. 10, Laws of the Federation, the provisions of Cap 10 were superior to the Decrees of the Federal Military Government. The next thing is to examine the facts as presented before the lower Court to see if **there was the necessity to invoke the provisions of Cap 10 in aid of the Respondents.**

**The Appellants had not filed a return to the Order Nisi on the Writ of Habeas Corpus served on them. The depositions in support of the application brought on behalf of the Respondents were therefore unchallenged. They went one way. When the depositions in an affidavit are unchallenged, the Court may act on them. See *Olujinle v. Adeagbo* (1988) 2 NWLR (pt.75) 238. *Nat. Ins. Corp. of Nig. v. Power & Ind. Eng. Co. Ltd.* (1986) 1 NWLR (Pt. 14) 1**

The unchallenged evidence revealed that the Respondents had been arrested and arraigned before the Failed Bank Tribunal on diverse offences. Several of them had been in prison custody for over 30 months arising from their inability to meet the bail terms set by the Tribunal. The health of several of them was failing and the Tribunal had not complied with the provision of Section 4 (1) of the Decree No. 18 of 1994 which provides that the trial of accused persons shall be concluded within 21 days.

Section 26 of Decree No. 18 of 1994 dealing with the issue of bail before a Failed Bank Tribunal provides:

*"26(1) Subject to sub-section (2) of this section, the Tribunal shall not grant bail to a person charged with an offence punishable with a term of imprisonment without the option of fine under this Decree.*

*(2) Notwithstanding, sub-section (1) of this section, the Tribunal may grant bail, for an amount equal to that involved in the offence, if the* B *person charged with the offence.*

*(a) deposits half the amount in the tribunal as security for the bail;*

*(b) provided surety for the balance of the amount; and*

*(c) hands over his passport to the Tribunal for the duration of* C *the bail."*

It is apparent from the above that it is only a person who committed the offence for which he is charged that could get bail. A person who was innocent of the offence, given the rigid conditions set for the grant of bail might not get bail. Over-all, the conditions set for bail are a presumption that anyone charged under the Decree is guilty of the offence. More than anything else, it is the provisions of Section 26 on bail that ensured that the Respondents were kept in custody this long. The Chairmen of the Tribunals have no discretion in the matter. D E

I am not unmindful that at the time the Decree was promulgated, the Nigeria economy was badly traumatised as a result of extensive fraud and improprieties perpetrated by several banking officials. They mismanaged their banks. They ruined many individuals and businesses. Several customers of the bankers who could not bear the loss caused them lost their lives as a result of shock induced by hypertension. It was indeed an unhappy time for many people. The economy was nearly ruined and has since not recovered. It was therefore a time for the lawmakers to take stern measures to curb these excesses. F G

Having said that, it needs to be borne in mind that even when efforts are made to curb crimes in society only civilised methods should be employed. Society ought not be brutalised. A law that does not discriminate in the award of punishment between the guilty and the innocent is a modern-day anachronism. No nation should tolerate it. And this is one of the reasons that informed the need for African Nations to come together H

for an African Charter of Human Rights. Article 7 of the Charter is eye-opening. It provides:

*"Article 7*

*1. Every individual shall have the right to have his cause heard.*

B *This comprises:*

*(a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulation and customs in force;*

C *(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;*

*(c) the right to defence, including the right to be defended by counsel of his choice;*

D *(d) the right to be tried within a reasonable time by an impartial Court or Tribunal.*

*2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."* (Underlining mine)

F In Margaret Eyu v. The State (1988) 2 NWLR (pt.78) 602, this Court sitting at Enugu examined the considerations that should guide a Court in the grant or refusal of bail. I had the privilege of writing the lead judgment in the case. At page 610 of the report I said.:

*"In the exercise of its discretion on whether or not to grant bail pending trial, the usual factors to be taken into account are:*

- G
- (1) The nature of the charge*
  - (2) The severity of the punishment*
  - (3) The character of the evidence*

*See Mamuda Dantata v. Police (1958) NRNLR 3*

H *(4) Another important factor to be borne in mind is the criminal record of the accused and the likelihood of the repetition of the offence ..*

*It seems to me that since the law presumes in favour of the liberty of the subject and his innocence until found guilty, the onus is on the prosecution to show in a given case that an accused/applicant for bail is*

*not one that should be released on bail."*

And at pp. 612 - 613, I said further:-

*"While a Court must in the consideration of the question of bail considers the strength of the evidence against an accused, it ought to be borne in mind that the case is not at that stage being tried. The Appellant in this case had pleaded not guilty to charge No. ME/323C/88. When an accused pleads not guilty; he is deemed to have put himself upon his trial. See Section 217 of the Criminal Procedure Act. Since there is a presumption of innocence in favour of an accused, it seems to me odd and oppressive that the Appellant in this case had been called upon to deposit a sum of N400,000.00 as a condition for bail. Is not possible she may at the end of the day be found not guilty of the offence. Why ask her, then, to deposit the very sum she was alleged to have received under false pretences. If the sole purpose of granting bail is to enable an accused come back to take his trial. I do not see that it is necessary to introduce a test of pecuniosity to attain that end. For even an accused who is able to deposit N400,000.00 may still jump bail. Section 120 of the Criminal Procedure Act has laid it down the amount of bail shall not be excessive."*

**I am satisfied that Section 26 of Decree No. 18 in its effect is oppressive and totally destroys the presumption of innocence in favour of an accused. It is too harsh and ensures that a person accused of committing an offence under the Decree does not get bail at all. It is a bad legislation and clearly offends Article 7, 1 b of African Charter on Human Rights Act, Cap 10, Laws of the Federation 1990.**

In another respect, I do not think that Decree No. 18 of 1994, sufficiently guarantees the trial of an accused within a reasonable time as provided in Article 7 1 d of Cap 10, Laws of the Federation. Section 4 (1) of Decree No. 18 of 1994 provides that an accused person shall be tried within 21 days. Under Section 4 (2) non-compliance with Section 4 (1) shall not lead to the decision of the Tribunal is satisfied that such non-compliance has led to a miscarriage of justice.

Section 5 (1) of Decree No. 18 of 1994, exposed the hollowness of the so called protection afforded an accused under Section 4 (1). Sec-

tion 5 (1) of Decree No. 18 provides:

*"A person convicted or against whom a judgment is given under this Decree, may within 21 days of the conviction or judgment appeal to the Special Appeal Tribunal established under the Recovery of Public property (Special Military Tribunal) Decree 1984 as amended in accordance with provisions of that Decree."*

Under the above provision, only a person convicted or against whom a judgment is given can appeal. The result is that if an accused person who has been tried for upwards of 5 years and who contrary to Section 4 (1) of Decree No. 18 of 1994, was put in custody for the duration of trial is eventually found not guilty, he has no way of protesting his unlawful incarceration because under Section 5 (1) above, only a person who has been convicted or against whom a judgment is given can bring an appeal. When you relate that position to the situation of the Respondents in this case, it means that if they are eventually found not guilty, they will have no method of challenging their unlawful detention

**From the totality of what I have said above, it is manifest that Decree No. 18 of 1994, in many respect is inconsistent with the letter and spirit of the African Charter of human Rights. That being the position, Section 26 and perhaps in a constructive sense. Sections 4 (2) and 5(1) of the same Decree are invalid. The protection under Section 1 (5) and 1 (6) of the said Decree which the law offers as a way from shielding the Failed Bank Tribunal from the supervisory jurisdiction of the High Court is ineffectual. The ouster of the supervisory jurisdiction of the High Court cannot attach to the acts done under a law so patently in conflict with the African Charter of Human Rights. The general supervisory jurisdiction of the High Court over the Failed Bank Tribunal was in my view rightly invoked. The lower Court correctly assumed jurisdiction.**

In the result this appeal fails on this score.

The Appellants have also contended that the lower Court when informed that an application for Stay of Execution and Stay of Proceedings was pending in this Court should have stayed proceedings pending the disposal of the two applications by this Court. That ground of appeal



is another way of saying that the final ruling of the lower Court given on 12/2/99, should be pronounced a nullity.

In Mohammed v. Olawunmi (1993) 4 NWLR (pt. 287) 254, the Supreme Court per Olatawura, JSC said:

*"Where a Judge of the High Court is aware of an application in B  
a higher Court like the Court of Appeal in a case before him but deliber-  
ately chooses to ignore it, it is an attitude which borders on judicial  
impertinence and is an affront to the authority of the Court of Appeal.  
This is because all the Courts established under the constitution derived C  
their powers and authority from the Constitution and the hierarchy of  
courts shows the limits and powers of each court. So, for inferior court  
to defy the authority and powers of a superior court is both undesirable  
and distasteful."*

In a recent decision of this Court in Suit No. CA/L/130/95 Nige- D  
ria Arab Bank Ltd. v. Comex Ltd., delivered on 3/5/99, - we set aside the  
judgment of the High Court given in circumstances which showed that the  
High Court deliberately ignored the proceedings before this Court. The  
High Court should never attempt to confront the Court of appeal with a E  
fait accompli by deliberately proceeding with the trial of a matter when it  
was aware that an application for Stay of Proceedings was pending before  
this court.

**I am satisfied that on 4/2/99, the lower Court was informed F  
that an application for stay of Execution and State of Proceedings  
was pending before this Court. In the Ruling delivered by the lower  
Court on 4/2/99 reference was made to the application said to have  
been filed at the Court of Appeal. The Appellants have asked us to  
set aside the proceedings of the lower Court subsequent to 4/2/99. G  
There is no doubt that we can do so in the exercise of our discretion.**

**It seems obvious to me therefore that the lower Court was  
not intent on disregarding the proceedings before this Court. Rather,  
I have the impression that it was swayed by sympathy for the Re- H  
spondents who without being pronounced guilty had been made at  
the time to spend over thirty months in prison custody. He wanted to  
move with expedition. In a case involving the liberty of the citizen, it**

**is desirable that a Court should avoid delay. In the process of trying to avoid such delay, the lower court did wrong. To set aside the proceedings subsequent to 4/2/99, will impose a greater hardship on the Respondents. I think it suffices to say here that when confronted with a situation like this in the future, the trial Judge should stay the proceedings in his Court. There may be circumstances where the interest of justice dictates that a Stay of Proceedings should not be granted. The High Court should write a considered ruling explaining the special circumstances so that if a further application is made to us in the Court of Appeal for Stay of Proceedings, we will be made aware of the special circumstances which necessitates the refusal of this application for Stay of Proceedings.**

I have in this judgment discussed my approach to the appeal if I were of the view that the African Charter on Human Rights Act, Cap 10 of the laws of the Federation did not apply. I have taken the view however, that Cap 10 applied and that the lower Court correctly assumed jurisdiction.

In the final conclusion this appeal is dismissed.

However, I need to say a few more words on the implications of this judgment and its effect on the Respondents. I have earlier in this judgment said that it was Section 26 of Decree No. 18 of 1994 which imposed stringent conditions for the grant of bail which created the situation in which several of the Respondents could not secure bail. The stand I take that the Respondents have been kept in prison custody for too long has no bearing whatsoever on the merits or demerits of the charges brought against them and this judgment is in no way a pronouncement as to the guilt or the innocence of the Respondents.

An order therefore which says that the Respondents should be unconditionally set free is liable to be interpreted to mean that the Respondents have been found not guilty of the offences with which they were charged. I have not said any such thing and indeed the issue before us was not the guilt or innocence of the Respondents.

Under Section 251 (3) of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 1999, the Federal High Court

now has jurisdiction to try the Respondents on the offence brought against them. It is therefore directed that the Respondents be brought before a Judge of the Federal High Court Lagos to enable the Judge grant the Respondents bail only on such terms as will ensure that Respondents come back to take their trial on such date and time it may be fixed for. This is to be done within 7 days from today. B

It is further ordered that such of the Respondents as have been convicted should serve out their terms unless sooner released by a Court of competent jurisdiction or by the force of any law that may be passed by the National Assembly. C

I make no order as to costs.

---

**GALADIMA JCA**

I entirely agree with the reasons for judgment just delivered by my learned brother Oguntade, J.C.A., which I had been privileged to have read, earlier in draft. D

Only two main issues arise for determination in this appeal namely: E

1. Whether the lower Court was right to have assumed supervisory jurisdiction over a matter that arose in the Failed Bank Tribunal established by Decree No. 18 of 1994.

2. Whether the lower Court ought to have stayed further proceedings in the hearing after it was duly informed that an application for stay of proceedings and execution had been filed at the Court of Appeal. F  
Issue of the jurisdiction of the High Court has to be considered with reference to the African Charter on Human Rights as enshrined in Cap. 10, Laws of the Federation 1990. The High Court should not shirk its responsibility to consider issues bordering on infraction of the Fundamental Human Rights as protected under Cap. 10 Laws of the Federation under the thin disguise that there is ouster provision in the Decree promulgated by the Military Administration. Nay, I subscribe entirely to the observation H of Musdapher J.C.A. in Chief Gani Fawehinmi v. General Sani Abacha & 3 Ors. (1996) 9 NWLR (pt. 475) 710 at 746 - 747; that the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act G

Cap. 10 is superior to our municipal laws on questions of human rights. Questions on fundamental Human Rights are well protected under cap. 10, Laws of the Federation, which were superior to the Decrees of the Federal Military Government. There was need to invoke the provisions of  
B Cap. 10 in aid of the Respondents. This the lower Court did, and it rightly assumed jurisdiction.

The Appellants are right to have contended that the lower Court when it was aware that an application for stay of Execution and stay of  
C proceedings was pending in this Court should have stayed proceedings pending the determination of the application by this Court. See Mohammed v. Olawunmi (1993) 4 NWLR (Pt. 287) 254 and the recent decision of this Court in suit No. CA/L/130/95 - Nigeria Arab Bank Ltd. v. Comex Ltd. (Unreported) delivered on 3/5/95. This Court set aside the judgment  
D of the High Court given in the circumstances which clearly indicated that the High Court flagrantly ignored the proceedings before this Court. Learned trial judge was anxious to see to the expeditious disposal of a matter in which the Respondents had spend 30 months in prison custody  
E without their fate having been decided. However, I am of the opinion that the trial judge when confronted with the order of this Court in the future, he should stay proceedings in his Court.

For the fuller reasons contained in the judgment, I also dismiss  
F this Appeal and affirm the decision of the lower Court.

---

### ADEREMI JCA

I have had the privilege of a preview, in draft, of the judgment just  
G read by my learned brother Oguntade J.C.A. He has dealt exhaustively with all the issues flowing out of the appeal. I respectfully agree with his reasonings and conclusions.

In contributing, it is my view that the whole case beams the search  
H light on the need for the preservation of the freedom or liberty of the man. Freedom is no doubt the greatest gift or heritage of man. Omnipotence created man and accorded him with divine freedom. Men are born free with liberty to think what he will, to say what he will and to go where he

likes, all in a lawful manner, without let or hindrance from any other persons, private or governmental authorities. It therefore follows that, generally, detention of a man by a fellow man is a violation of the law of God and man. I am not oblivious of the fact that are checks and balances to the series of freedom given to man. To the extent to which a man B must not do his things in a way calculated to injure or adversely affect the exercise of the freedom of another man, his own freedom is limited. The whole of Article 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10, laws of the Federation of Nigeria 1990 is in tune with the universal concept of criminal law C in a civilised society that upholds the rule of law as a way of life; by it, accessibility to the court and even to the highest court is guaranteed, to the citizen whose fundamental rights are threatened; his right to presumption of innocence until he is proved guilty by a court of competent D jurisdiction is assured; his right to defence which includes the right to be defended by a counsel of his choice is offered to him on a platter of gold and his right to be tried within a reasonable time by an impartial court or tribunal remains sacrosanct. That is the continental law Nigeria voluntarily E subscribed to. It came into force on the 17th day of March 1983. The Failed Bank Decree No. 18 came into force in 1994; Section 26 thereof quoted in extenso in the leading judgment is undoubtedly a draconian law in all its ramification. It contravenes the universal conception F of presumption of innocence in favour of a suspect the criminal law. If there were no other law Decree No. 18 is what must be resorted to, to determine the fate of the applicants. But having voluntarily subscribed to that continental or international law - the African Charter on Human and peoples' Rights, Nigeria as a nation is bound by its provisions. And to the G extend to which any of our laws is in conflict with the provisions of that continental or international law to that extent shall such law remain null and void. This is a clear case of the application of the doctrine of covering the Field. In the realm of fundamental human rights if any law H promulgated by any subscribing African nation runs counter to or is in conflict with the provisions of the African Charter Human and peoples' Rights to the extent of such conflict such law shall remain null and void.

When Lord Atkin during the second world war made that monumental speech in the House of Lords in the case of Liversidge v. Anderson & Anor. (1941) 3 A. E. R. 338 and page 361 and I quote him:

*"In England, amidst the clash of arms the laws are not silent.*

*B They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments in his liberty by the executive, alert to see that any coercive action is justified in law."*

I think he was addressing not only English Judges but all Judges in democratic environment where the rule of law is raised up. It is the duty of all Judges in democratic society to see that not only is the law obeyed but that  
D government takes place under the law and in accordance with it. I am not saying that suspects particularly those whose pre-occupation is capable of distabilsing the society in all material respect, should be treated with kid gloves. Undoubtedly, drastic situation demands drastic solution. But, in  
E meting out drastic solution to drastic situation, rule of law must not be seen to be jettisoned. All Judges bear particular responsibility to see to it that all branches of the government - the legislature, the executive as well as the judiciary conform to the legal norms of a free society. In the instant  
F case, with the disturbing facts staring one in the face it will be a tragedy to the society for a Judge to demonstrate timidity under the municipal law and thereby in cheap obedience to its wordings refuse to assume jurisdiction when faced with the provisions of African Charter on Human and  
G People's Rights. A refusal to assume jurisdiction will make the judge more executive than the executive themselves. The trial Judge of the court below by assuming jurisdiction held himself out as one who is governed by rule law.

It is for this little contribution and of course for the exhaustive  
H reasons and exposition of the law in the leading judgment of my learned brother Oguntade J.C.A. that I also say that the appeal is devoid of merit. It must be dismissed and I accordingly dismiss it. I also endorse the decision of the court below.