

**SUPREME COURT OF NIGERIA**

2ND JUNE, 2000. SC. 182/1999

**CORAM:- A. G. KARIBI-WHYTE, U. MOHAMMED,  
A. I. IGUH, A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

1. HENRY O. AWONIYI

2. GABRIEL ABIKOYE

3. ECWA PRODUCTIONS LTD ..... APPLICANTS  
AND

THE REGISTERED TRUSTEES OF THE ..... RESPONDENTS  
ROSICRUCIAN ORDER, AMORC (NIGERIA)

---

***JUDGEMENTS*** - Consequential order - Definition of - A consequential order must be one giving effect to the judgment from which it flows.

***JUDGMENTS*** - Enforcement - Where the court did not make any order - In favour of any of the parties - There is no order to enforce.

***PRACTICE & PROCEDURE*** - Parties - Necessary parties - All parties necessary for the invocation of the judicial powers of the court - Must be made parties to the action - So as to give the court jurisdiction to grant the reliefs sought

**FACTS**

Before the Supreme Court of Nigeria the applicants filed a motion and prayed for the following orders:

"1. An order directing the Registrar-General of the Corporate Affairs Commission to with-draw and cancel the certificate of registration of the respondent No. 1415 dated 7th July, 1982 or any subsequent certificate issued to the respondent.

2. An order directing the Inspector General of Police to seal up all the offices of the respondent nationwide and to prosecute any persons carrying on activities in the name of the respondent"

The grounds for this application were stated to be: that there is a

subsisting judgment delivered on the 15th of July, 1994 in Suit No. SC.23/1991. The Registered Trustees of the Rosicrucian Order AMORC (Nigeria) vs. Henry O. Awoniyi & Ors. which declared the Respondent to be a secret society; that Order 8 Rule 17 of the Supreme Court Rules 1985 empowers the Supreme Court to enforce its judgment, and that section 38 (4) of the Constitution of the Federal Republic of Nigeria prohibits any person from forming, taking part or being a member of a secret society.

The application is sequel to a protracted litigation between the respondents as plaintiffs and the applicants as defendants. The respondents on 10th July, 1984 issued a writ of summons in the High Court of Cross River State sitting at Calabar claiming from the applicants N10 million as aggravated damages for libel contained in the defendant's journal styled "Today's challenge" of March/April 1984, May/June 1984 and July/August 1984. The Serial article was headed : Rosicrucian Order (Amorc) (Bed fellow with Satanic secret cults?). In the March / April issue, the respondent was referred to, inter alia, as a secret and sinister organisation. In the May / June issue of the journal the respondent was projected as satanic and in July / August issue the source of the teaching of the respondent, one H. Spencer Lewis was viled as a liar, a hypocrite, a swindler, an egoistical charlatan and a man without humour or integrity. Hence, the respondent sued the applicants claiming as aforesaid. The High Court gave judgment in favour of the respondent and awarded N1 million as damages for libel. The applicants appealed to the Court of Appeal, Enugu Division. In a considered majority judgment of 2:1 the appeal was allowed and the judgment of the High Court was set aside. Dissatisfied, the respondent appealed to the Supreme Court. The applicants also cross-appealed. In a unanimous decision the Supreme Court dismissed both the appeal and the Cross-appeal. In the judgment, Justices Wali and Iguh respectively made passing remarks that the evidence before the court justified the description of the respondent as a secret and satanic organisation. It is because of these remarks that the applicants came before the Supreme Court with the motion praying as aforesaid.

The respondent filed a preliminary objection praying the Court to strike out or dismiss the applicants' motion on the grounds of incompetence.

The grounds of objection are inter alia: that Suit SC. 23/1991 in which the appeal and cross-appeal were dismissed on 15/7/94 did not declare any right in the applicants capable of enforcement; and that the Registrar General of the Corporate Affairs Commission, and the Inspector General of Police, being necessary parties in the application who are not joined cannot be bound by any order the Supreme Court will make.

**HELD** (Unanimously striking out the motion for being incompetent per lead ruling of **MOHAMMED JSC**)

***Practice & Procedure - Parties***

1. It is trite that parties against whom complaints are made in an action must be made parties to such action. See Uzor v. Nigerian Stores (1973) 9 - 10 SC. 35. It is an elementary procedure in prosecuting civil claims that all parties necessary for the invocation of the judicial powers of the court must come before it so as to give the court jurisdiction to grant the reliefs sought see Oloriode v. Oyebe (1984) 1 S.C.N.L.R. 390 and Okafor v. Nnaife (1973) 3 S.C. 85. The failure of the applicants to make the Registrar General of the Corporate affairs Commission and the Inspector General of Police as necessary parties has rendered the applicant's motion incompetent. (p.1889 A)

***Judgment - Enforcement***

2. When this court dismissed both the appeal and the cross-appeal in the suit filed by the respondent in Calabar High Court it did not make order in favour of any of the parties. I have mentioned before in this ruling, that the observations made by my Lords, Justices Wali and Iguh which the applicants want to cash on were mere passing remarks. I agree with Akpamgbo, SAN, that the judgment of this court is not a declaratory judgment. There is therefore no order to enforce. (p. 1889 D)

***Judgment - Consequential order***

3. If Mr. Olufon says that he has prayed for is a consequential order. He is wrong. A consequential order must be one giving effect to the judgment from which it flows. The issues which was determined in the High

court at Calabar was libel. The decision of the High Court was set aside by the Court of Appeal. On appeal to this court the judgment of the Court of Appeal was affirmed. That was the end of the matter. We did not declare anything warranting enforcement of our judgment.(p.1889E)

B

## NOTABLE POINTS OF INTEREST

### KARIBI-WHYTE JSC

*1. Judgment in a case must be confined to the claims before the court*

C

It is a well settled principle of judicial adjudication that the judgment in a lis must be confined to the cause of action and the issues raised on the pleadings - See Ochonma v. Ashirim Unosi (1965) NMLR. 231. The court cannot grant remedies or reliefs not claimed by the parties - See Bola Ige v. Omololu Olunloyo & ors. (1984) 1 SC. 258. The opinions expressed by the justices on the findings on the documents and evidence before them cannot be regarded or equated with the claims or counter-claim before the court. There is no claim against the plaintiff that it is a secret society.

D

(p. 1897 B)

E

*2. When a positive consequential order arises*

F

A consequential Order is an order founded on the claim of the successful party. In other words a consequential order is one which is not merely incidental to a decision properly made, but one which is merely to give effect to that decision - See Liman v. Mohammed (1999) 9 NWLR. 116, Gbadamosi & ors. v. Stephen Alete & anor. (1993) 2 NWLR. 113. It is difficult to conceive how a positive consequential order can arise from a claim which has been dismissed. It is equally not easily comprehensible

G

how the reliefs sought by Applicants can be consequential to the dismissal of the cross-appeal in Suit No. SC 23/1991. See also Obayagbona v. Obazee & anor. (1972) 5 SC.247, Mrs. Bassey Ita Okon v. Administrator-General (Cross Rivers State) (1992) 6 NWLR. 473. There is judicial authority for

H

the proposition that where a Court refuses the principal order sought an incidental order cannot be made. - See Hamason (Nigeria) Ltd. v. Pedrotech (Nigeria) Ltd. (1993) 3 NWLR. 548. This is because the principal order on which consequential order should stand having been refused there is

no basis for the making of the consequential order. So it is in this case. This Court having dismissed the appeal and cross-appeal of the parties before it, there was nothing left for it to enforce. (p. 1897 E)

3. *The purpose of joinder of Parties*

B

The purpose of joinder of parties in an action is to enable the court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter - See Oladeinde & anor v. Oduwole (1962) WNLR.

41. It is an elementary and fundamental principle that a judgment in personam is only binding on the parties to the lis. Accordingly all parties who may be affected by the result of the litigation may be joined either as Plaintiffs or Defendants. (p. 1898 G)

C

4. *When a court can exercise inherent powers and when consequential orders can be made*

D

I find it somewhat strange to accept the submission of Mr. Olufon that this court can, relying on the provisions of section 6 (6) (a) & (b) of the constitution 1999 make consequential orders against any person whatsoever.

The constitutional provision referred to and relied upon are very clear. They only enable the exercise of inherent powers where there is jurisdiction. In other words, a Court cannot in the absence of jurisdiction exercise inherent powers. Similarly, consequential orders can only be made where there are principal orders. We have been asked to make orders against the Registrar-General of the Corporate Affairs Commission, and the Inspector-General of Police, who are not parties to the action, and against whom no claims have been made. They have not been notified about the claims against them so that they can be heard on the matter. There can be no clearer infringement of the constitutional protection of fair hearing in section 36 of the Constitution 1999 than what has been suggested by Mr. Olufon - See Eronini v. Iheuko (1989) 2 NWLR. 46, H Liman v. Mohammed (1999) 9 NWLR. 116, Oluwa Glass Co. Ltd. v. Ehinlawo (1990) 7 NWLR. 14. I therefore decline the invitation to do so. (p. 1898 H)

F

G

H

**IGUHJSC**

*5. What consequential order means and the purpose of a consequential order*

And I start by asking myself what a consequential order really means. It is, in my view, an order which flows necessarily, naturally, directly and consequentially from a decision or judgment delivered by a court in a cause or matter. It arises logically and inevitably by reason of the fact that the order in question is per force obviously and patently consequent upon the decision given by the court and did not need to be specifically claimed as a distinct or separate head or item of relief.

The purpose of a consequential order is to give effect to the decision or judgment of the court but not by granting an entirely new, unclaimed and/or incongruous relief which was not contested by the parties at the trial and neither did it fall in alignment with the original reliefs claimed in the suit nor was it in the contemplation of the parties that such relief would be the subject matter of a formal executory judgment or order against either side to the dispute. A consequential order may also not be properly made to give to a party an entitlement to a relief he has not established in his favour. See *Akinbobola v. Plission Fisko Nigeria Ltd. and others* (1991) 1 N.W.L.R. 270 at 288, *Obayagbona v. Obazee* (1972) 5 S.C. 247, *Liman v. Alhaji Mohammed* (1999) 9 N.M.L.R. (Part 617) 116 etc. (p. 1905 F)

*6. When a declaratory judgment can be enforced*

Indeed even in respect of a declaratory judgment, until subsequent proceedings have been taken following its violation or threatened violation, and the right declared in the judgment receives enforcement or is given legal sanction for its violation, there cannot be a stay of execution of the declaratory judgment. This is because, prior to such subsequent proceedings, such a judgment does not contain any enforceable order which can be executed against the defendant. See too *Chief Okoya and others v. Santilli and others* (supra). It is plain that the judgment of this court in the appeal under reference did not declare any rights in the defendants capable of enforcement. No mandatory or executory order was made by this court in favour of the defendants or, indeed, the plaintiff and there is nothing to

execute in the judgment. (p. 1906 E)

*7. When a relief is not consequential*

In the first place it is difficult to comprehend how the two reliefs applied for flow logically and consequentially form the dismissal of the plaintiff's claim in damages for libel and no mandatory order was made in favour of either party which is capable of enforcement. As I have observed, the purpose of a consequential order is to give effect to the decision of a court but certainly not by way of granting entirely new and unclaimed reliefs which were not contested by the parties and do not flow from the judgment of the court. Both reliefs applied for were neither canvassed by the parties before the trial court nor were they established by any evidence whatever. It is my judgment that under no stretch of the imagination can either of the two reliefs applied for in the originating motion be regarded as a consequential relief in this case of libel. (p. 1907 B)

*8. When a document may not be set aside or cancelled*

In the second place the principle of law is well established that a document may not be set aside or cancelled unless such a document as well as the parties are before the court. See Chief Obanikoro v. Chief Oluwa 6 N.L.R. 87. In this case, neither the plaintiff's certificate of registration nor the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police who are necessary parties to the reliefs applied for are before the court. I think Mr. Akpamgbo's preliminary objection to the defendants' application is well founded and ought therefore to succeed. (p. 1907 E)

G

**REPRESENTATION**

A. O. Olufon, with K. O. Ojukwu and A. E. Obieniu (Mrs.), for the Applicants.

Mr. C. O. Akpamgbo, SAN; with him are, Chief Chuks Muoma, SAN, Mr. Onagbedan, Chief A. E. Asam, Mr. T. Awhonda Wopara. O. C. Agbafo and Miss Doyin Ganzallo, for the Respondent.

**CASES REFERRED TO**

Oluwa Glass Co. Ltd. v Ehinlawo (1990) 7 NWLR (pt. 160) 14

Eronini v. Iheuko (1989) 2 NWLR 46

Akinbobola v. Fisko Nigeria Ltd. (1991) 1 NWLR 270 at 288

B Ekpenyong v Nyong (1975) 2 SC. 71 at 80-81

Uzor v. Nigerian Stores (1973) 9 - 10 SC. 35

Oloriode v. Oyebi (1984) 1 S.C.N.L.R. 390

Okafor v. Nnaife (1973) 3 S.C. 85

Okoya v. Santilli (1990) 2 NWLR (pt. 131) 172

C NNSC v. Savannah (1988) 2 NWLR (pt. 74) 23, 36

Liman v. Mohammed (1999) 9 NWLR (pt. 617) 116

**LEAD JUDGMENT BY MOHAMMED JSC**

D Mr. Wole Olufon, learned counsel for the applicants, filed a motion and prayed for the following orders:

*"1. An order directing the Registrar General of the Corporate Affairs commission to withdraw and cancel the certificate of registration of the respondent No. 1415 dated 7th July, 1982 or any subsequent certificate issued to the respondent.*

*2. An order directing the Inspector General of Police to seal up all the offices of the respondent nationwide and to prosecute any persons carrying on activities in the name of the respondent."*

F The motion was supported by an affidavit of 7 paragraphs. It was sworn to by one David Okoh. The facts disclosed in paragraphs 3-7 explain the grounds for this application. Paragraphs 3-7 read.

G *"3. That the Supreme Court of Nigeria delivered judgment in Suit No. SC. 23/1991. The Registered trustees of the Rosicrucian Order, AMORC (Nigeria) Vs. Henry O. Awoniyi & Ors. on the 15th of July, 1994 holding that the respondent is a secret society. Copies of the judgment are hereto attached and marked Exhibits JO 1-10-. 5.*

H *4. That subsequent to this judgment, the respondent which is a registered corporation in Nigeria under the land (Perpetual Succession) Act (Cap 98) Laws of the Federation 1958 which Law has been carrying on its activities as a secret society.*



5. *That the respondent is still recognised as a registered corporation by the Corporate affairs Commission under the Companies and Allied Matters Decree, 1990.*

6. *That the respondent has been carrying on its activities in contempt of the judgment of this Honourable Court, through various publications in the news media."* B

Before Mr. Olufon opened his submission in support of the motion, Akpamgbo, SAN, appearing for the respondent was permitted to move a motion which he filed by way of a preliminary objection. In the motion Akpambo, SAN, prayed the court to strike out or dismiss the applicants' motion on the grounds of incompetence. C

The grounds of objection are as follows:

"(1) *That Suit SC. 23/1991; The Registered trustees of the rosicrucian Order Amorc (Nigeria) Vs. Henry O. Awoniyi & Ors. in which the appeal and cross appeal was dismissed on 15/7/94 did not declare any right in the applicant capable of enforcement;* D

(ii) *That the Registrar general of the Corporate Affairs Commission, and the Inspector general of Police, being necessary parties in this application who are not joined can not be bound by any order the Supreme Court will make;* E

(iii) *That relief Nos. 1 and 2 on the body of the Applicants application dated 6th December, 1999 are Executive action on which the Supreme Court can not afford to exercise jurisdiction."* F

Akpamgbo SAN made a convincing submission against the motion filed by the applicants. He gave his reasons why the motion was incompetent. Learned counsel referred to an appeal No. SC. 23/1991 in which the parties to this present application were involved. The appeal is reported in (1994) 7 NWLR (pt. 355) 154. The history of the dispute between the parties started in the High Court of Cross-River State, sitting at Calabar. The Registered Trustees of the Rosicrucian Order, AMORC (NIGERIA) as plaintiff sued (1) Henry O. Awoniyi (2) Gabriel Abikoye (3) ECWA Production Limited and Caxton Press (W.A.) Limited for Libel. The 1st to 3rd defendants are the applicants in this motion. The action arose from three articles published in three issues of a magazine called G H

Today's Challenge of March/April, May/June and July/August Editions in 1984. In the March/April issue AMORC (hereinafter referred to, in this ruling as the respondent) was referred to, inter alia, as a secret and sinister organisation.

B In the May/June issue of the magazine the respondent was projected as satanic and in July/August issue the source of the teaching of the respondent, one H. Spencer Lewis, was viled as a liar, a hypocrite, a swindler, an egoistical charlatan and a man without humour or integrity. The respondent sued the applicants for libel and claimed 10 million Naira  
C for damages. The High court gave judgment in favour of the respondent and awarded N1 Million as damages for the libel. On appeal to the Court of Appeal, the court below allowed the appeal and dismissed the action of the respondent.

D Dissatisfied with the decision the respondent appealed to this court. The applicants also cross-appealed. In a unanimous decision, in which I took part, this court dismissed both the appeal and the cross-appeal. In the lead judgment delivered by Wali JSC., the learned Justice referred  
E to exhibits 26 and 38 which were tendered during trial and opined that some quotations in those exhibits justified the description of the respondent as a secret and satanic organisation. My Lord Iguh, J.S.C., in his contribution to the lead judgment held:

F *"Clearly to assert, as the plaintiff unequivocally did, that Jesus Christ was a member of secret societies and that he was an advocate of occult teaching is, speaking for myself, satanic, sinister, blasphemous and entirely unacceptable."*

G It is because of these remarks which were not the subject matter of that appeal that the applicants came before this court with the motion disclosed earlier in this judgment, praying for an order (i) directing the Registrar General of the Corporate Affairs Commission to withdraw and cancel the certificate of registration of the respondent No. 1415 dated 7th  
H July, 1982 or any subsequent certificate issued to the respondent and (ii) directing the Inspector General of Police to seal the offices of the respondent nation wide and to prosecute any person carrying on activities in the name of the respondent.

I do not hesitate to say that the ground upon which the applicants' motion is filed is unsustainable due to procedural wrongs. The first error is the failure of the applicant to make both the Registrar General of the Corporate Affairs Commission and the Inspector General of Police parties to the applicants' motion. **It is trite that parties against whom complaints are made in an action must be made parties to such action. See Uzor v. Nigerian Stores (1973) 9 - 10 SC. 35. It is an elementary procedure in prosecuting civil claims that all parties necessary for the invocation of the judicial powers of the court must come before it so as to give the court jurisdiction to grant the reliefs sought see Oloriode v. Oyebe (1984) 1 S.C.N.L.R. 390 and Okafor v. Nnaife (1973) 3 S.C. 85. The failure of the applicants to make the Registrar General of the Corporate affairs Commission and the Inspector General of Police as necessary parties has rendered the applicant's motion incompetent.** B C D

Secondly, when this court dismissed both the appeal and the cross-appeal in the suit filed by the respondent in Calabar High Court it did not make order in favour of any of the parties. I have mentioned before in this ruling, that the observations made by my Lords, Justices Wali and Iguh which the applicants want to cash on were mere passing remarks. I agree with Akpamgbo, SAN, that the judgment of this court is not a declaratory judgment. There is therefore no order to enforce. If Mr. Olufon says that he has prayed for is a consequential order. He is wrong. A consequential order must be one giving effect to the judgment from which it flows. The issues which was determined in the High court at Calabar was libel. The decision of the High Court was set aside by the Court of Appeal. On appeal to this court the judgment of the Court of Appeal was affirmed. That was the end of the matter. We did not declare anything warranting enforcement of our judgment. E F G

I therefore agree with Mr. Akpamgbo, SAN, that the motion filed by the applicants is incompetent. It is accordingly struck out. I award the respondent N1000 as costs of this application. H

**KARIBI-WHYTE JSC**

This is a ruling to strike out the application of the Applicants seeking the following orders:

"1. An order directing the Registrar General of the Corporate Affairs Commission to withdraw and cancel the certificate of registration of the Respondent No. 1415 dated 7th July, 1982 or any subsequent certificate issued to the Respondent.

2. An order directing the Inspector-General of police to seal up all the offices of the Respondent nationwide and to prosecute any persons carrying on activities in the name of the Respondent.

The grounds for this application are stated to be as follows:-

"1. There is a subsisting judgment of the Supreme Court of Nigeria, delivered on the 15th of July, 1994 in suit No. SC. 23/1991. The Registered Trustees of the Rosicrucian Order AMORC (Nigeria) vs. Henry Awoniyi & ors. which declared the respondent to be a Secret society.

2. Order 8 r. 17 of the Supreme Court rules 1985 empowers this Honourable Court to enforce the judgment.

Section 38 (4) of the Constitution of the Federal Republic of Nigeria, 1999 prohibits any person from forming, taking part, or being a member of a secret society."

The Facts:

The application is sequel to a protracted litigation between the Respondents as plaintiffs, and the Applicants as Defendants. The Respondents as plaintiff on 10th July, 1984 issued a writ of summons in the High Court of Cross River State sitting at Calabar claiming from the Applicants as Defendants N10,000.000 (ten million naira only) as aggravated damages for libel contained in the Defendants Journal, styled "Today's Challenge" in March/April, 1984 and May/June, 1984, issues at pages 27 through 29, and 24 through 27 respectively being a serial article headed: Rosicrucian Order (Amorc) (Bed fellow with satanic secret cults?). The Defendants published in the said issues of their journal (which has a large circulation throughout Nigeria, West Africa and Overseas) of and concerning the plaintiff, the words following, that is to say, ..... then follows six items of passages regarded by the plaintiff as libellous. And that plaintiff

has been greatly injured in its reputation and has suffered damage.

After trial on pleadings of the parties, both parties having called a number of witnesses and tendered and received in evidence several documents, the trial Chief Judge, Koofreh CJ, in a reserved judgment delivered on the 23rd May, 1988 found in favour of plaintiff and awarded N1,000.000 (one million naira only) as general damages, with N405, as out of pocket expenses. Plaintiffs, having failed to prove special damage were also awarded N500 costs. The defendants were restrained by an order of perpetual injunction by themselves, or their servants or agents, from further writing, printing or circulating or causing to be written, printed or circulated or otherwise publishing of the plaintiff the said or any similar libel.

Dissatisfied, Defendants, herein Applicants appealed against the decision to the Court of Appeal. In a considered majority judgment of 2:1, delivered on the 11th July, 1988 the Court of Appeal Division, Enugu allowed the appeal, and set aside the judgment of the Cross River State High Court sitting in Calabar. Uwaifo, Katsina-Alu, JCA allowed the appeal. Kutigi JCA dissented.

Both parties appealed against the decision of the Court below to this Court. There was therefore before this Court, the appeal of the Plaintiffs against the decision of the Court, and the Cross Appeal of the Defendants. After arguments on the briefs of argument in this appeal filed by learned Counsel to the parties, the court in a unanimous judgment dismissed both the appeal of the plaintiffs and the cross-appeal of the Defendants. The judgment of the Court of Appeal allowing the appeal of the Defendants against the judgment of the trial chief Judge of the High Court of cross River State in Calabar was affirmed.

Defendants have now brought this motion seeking the orders stated herein. They rely on the provisions of Order 8 r. 17 rules of the Supreme Court 1985 (as amended) for this application.

The pertinent question before us is what judgment are the Applicants asking to enforce? Since the Cross-Appeal of the Defendant was dismissed, there was no judgment in their favour in this Court capable of enforcement. The only judgment in favour of the Applicant is the

judgment of the Court of Appeal which set aside the judgment of the High Court of Cross River State, sitting at Calabar.

Respondents to this application, who were the plaintiffs in the substantive action, opposing, have filed a counter affidavit dated 10th B January, 2000. On the same date they filed a memorandum of entry of appearance under Order 3 Rule 9 of the Supreme Court (Amendment) Rules 1999. In the Counter affidavit deposed to by Patrick Ayomano Okoye, it was averred as follows -

C X X X  
"5. That I admit that the Respondent is duly registered under the  
law and its activities are in strict conformity with the laws of the land.

6. That I vehemently deny the averment in paragraph 6 of the Applicants' Affidavit.

D 7. That in response to paragraphs 6 and 7 of the Applicants' Affidavit I maintain that the publications (exhibits J0 6, J0 7 and J0 8, to which Applicants referred were prompted by Applicants' brutal attacks on the Respondent.

E 8. That some of the vicious and diabolical attacks on the Respondent by the Applicants are attached hereto as Exhs. AMORC 1, to AMORC 5.

9. That the Respondent as a law abiding citizen respects all the judgments of the Supreme Court and remains bound by them, the judgment in Appeal No. SC/23/91 inclusive.

10. That I am informed by our Counsel, Pat Onegbedan Esqr. and I verily believe him that the declaratory judgment of the Supreme Court in Appeal No. SC/23/91 in which the parties lost in the main appeal and the cross-appeal respectively with N1,000 costs awarded to each party left nothing to be enforced, and the Applicants did not file any counter-claim in the matter.

11. That I am further informed by Pat Onegbedan Esq. of Counsel  
H for the Respondent and I verily believe that the two orders sought by the  
Applicants are functions of the executive an arm of Government which  
the Applicants are urging the Supreme Court to usurp."

On the same date, i.e. 10th January, 2000, Respondent gave notice

of motion to the Applicants, praying the Court to strike out and or dismiss the originating Motion of the Appellants on the grounds of incompetence. The following were listed as grounds of objection.

*"1. That suit SC/23/1991, the Registered Trustees of the Rosicrucian Order Amorc (Nigeria) vs. Henry O. Awoniyi & ors. in which the Appeal and cross-appeal were dismissed on 15/7/94 did not declare any right in the Applicant capable of enforcement.*

*2. That the registrar-General of the Corporate affairs Commission and the Inspector-General of Police, being necessary parties in the application who are not joined cannot be bound by any order the Supreme Court will make.*

*3. That relief Nos. 1 and 2 on the body of the Applicants' application dated 6th December, 1999 are Executive action on which the Supreme Court cannot afford to exercise jurisdiction."*

The Applicants' notice of motion aforesaid was listed and came up for hearing on the 27th March, 2000. At the hearing Mr. A. O. Olufon, with who were Mr. K. O. Ojukwu and Mrs. A. F. Obieniu represented the Applicants. For the Respondents and opposing the motion were C. O. Akpamgbo, Esqr. S.A.N., Chief Chuks Muoma, SAN, Mr. Pat Onegbedan, Chief Assam, Mr. Owihonda-Wopara, Mr. O. C. Agbafo, Miss D. Ganzallo, Miss Ann Uzoma.

On the intervention of Mr. C. O. Akpamgbo, SAN, and with leave of this Court, the Motion of the Respondents seeking the order of this Court to strike out the Motion of the Applicants was argued first. The court refused the application of Mr. Olufon for the Applicants to argue the two motions together.

#### Arguments of Counsel.

Arguing the Respondents application to strike out Applicants' Motion, Mr. Akpamgbo, SAN relied on the provisions of section 6(6) (a) of the 1999 Constitution, and Order 2 r. 29(1) (2) of the Rules of the Supreme court. Learned counsel referred to and relied on all the averments in an affidavit of six paragraphs sworn to by Patrick Okogwu. Speaking specifically to each of the Applicants' grounds for the application, learned counsel submitted that the suit No. SC. 23/91 relied upon by the Applicants

made no order positive or mandatory in favour of either party. This Court dismissed both the Appeal and the Cross-Appeal. Accordingly there is nothing to execute. Learned Counsel submitted that an order dismissing an application cannot be said to be declaratory, citing Chief Okoya v. Santilli & ors. (1990) 2 NWLR (pt. 131) 172, it was submitted that a Declaratory judgment is not capable of enforcement, except followed by an order of injunction.

On the second relief sought, learned Counsel submitted that neither the Registrar of Corporate Affairs Commission, nor the Inspector-General of Police was a party to this litigation at any stage. To be bound by any order of this Court, they should have been joined. Having not been joined, the order of this Court cannot bind them. Besides, the action is improperly constituted because of the absence of joinder of the necessary parties. In this case, the action will be struck out since there is nothing to be remitted for a retrial.

Learned Counsel submitted that this Court cannot be called upon to enforce action against a non-party. A judgment creditor can enforce the judgment in the High Court. Learned Counsel submitted that the first prayer calls for an Executive action. The application which is an abuse of the court's process should be struck out.

Mr. Olufon, learned Counsel to the Applicants replied. He referred to the affidavit in support of the application of the motion to strike out his application and particularly paragraphs 4 and 5. Replying to the submission in respect of issue 1, he submitted that Applicants have something to enforce. And on this counsel referred to the judgment of this Court, where it was stated that the Respondent is a secret Society. He cited Okoya v. Santilli (supra), Section 38(4) of the 1999 Constitution, and Order 3 r. 8, Order 8 r. 17 Rules of the Supreme Court 1985.

On the second relief, Mr. Olufon submitted citing NNSC v. Savannah (1988) 2 NWLR (pt. 74) 23, 36, that the Court can direct parties to do things even when they were not parties to an action. Accordingly, the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police can be directed as prayed. Learned counsel submitted that under section 6(6) (a) (b) of the constitution 1999, this



court can under its inherent powers make consequential orders. The judgment in SC. 23/91 is capable of the consequential orders asked for. The decision in Liman v. Mohammed (1999) 9 NWLR (pt. 617) 116 was cited in support. It was also submitted that this Court has the powers to direct Executive Agencies to obey its orders. The Executive agency need not be a party to the action. Counsel referred to and cited section 6(6) (a) of the Constitution 1999, and Fawehinmi (No.1) v. N.B.A (1989) 2 NWLR (pt. 105) 494. Learned Counsel submitted that the objection of the Respondents be struck out.

In a short reply, Mr. akpangbo, SAN for the Respondent/Appellant pointed out that the decision of NNSC v. Savannah (supra) cited relates to the interpretation of the High Court Rules relating to the appointment of a Receiver, and is not applicable to this situation. He pointed out that the dismissal of the appeals made no consequential orders. It was submitted that the conditions for varying the judgments of this Court are clear. On delivery of judgment, the court is functus officio. It was submitted that a consequential Order must not be against the judgment. The relief asked for was never sought in the Court below. Finally, it was submitted that the powers of the Courts under section 6 (6) (a) cannot be exercised in vacuo. It must have statutory backing.

#### Consideration of the Arguments.

I have endeavoured to reproduce the contentions of the parties to this application. Concisely stated, the ruling is on the application of the Respondents to strike out or dismiss the motion of the applicants on the grounds that there is nothing to enforce. It is important to appreciate the real issue in the controversy. The judgment relied upon by the Applicants is that of the Supreme court in SC.23/91. The judgment in SC.23/91, dismissed both the appeal of the Appellants and the cross-appeal of the Respondents. It affirmed the judgment of the Court of Appeal. The Court of Appeal had set aside the judgment of the High Court, which had found in favour of the Plaintiff. The result of the litigation therefore is that plaintiffs action against the Defendant for libel has failed. There is therefore no order in favour of either party to the action in this Court.

A careful analysis of the arguments of learned counsel leads to the

inescapable conclusion that reliance has been placed entirely on the Supreme Court judgment in Suit No. SC.23/91. Registered Trustees of the Rosicrucian Order Amorc (Nigeria) v. Henry O. Awoniyi & ors. This is clearly brought out in the averments in paragraphs 3-7 of the affidavit of David Okoh in support of Applicants' motion where it was averred as follows -

"3. *That the Supreme Court of Nigeria delivered judgment in Suit No. SC 23/1991. The Registered Trustees of the Rosicrucian Order Amorc (Nigeria) Vs. Henry O. Awoniyi & Ors. on the 15th of July, 1994, holding that the Respondent is a secret society. Copies of the judgment are hereto attached and marked Exhibits J01-J05.*

4. *That subsequent to this judgment, the Respondent which is a registered corporation in Nigeria under the Land (Perpetual Succession) Act (Cap. 98) Laws of the Federation 1958 which Law has been repealed and replaced by the Companies and Allied Matters Decree 1990 has been carrying on its activities as a secret society.*

5. *That the Respondent is still recognised as a registered corporation by the Corporate Affairs Commission under the Companies and Allied Matters Decree 1990.*

7. *That the Respondent has made several publications in the news media, seeking to emphasize that it is not a secret society and inviting persons to join the society. Copies of publications made by the Respondent are hereto attached and marked Exhibits J0 6, J0 7 ."*

In his submission, Mr. Olufon, learned Counsel to the Appellants referred to passages in the judgment of this Court in SC. 23/1991 where the Respondents were described as a secret society. The judgments of Wali JSC and Iguh, JSC were referred to and relied upon. The critical issue in applicants' application is whether the decision sought to be enforced was made in favour of the Applicant and what was the right so conferred by the judgment.

I agree with the submission of Mr. Akpamgbo SAN, that the judgment in SC. 23/1991 which dismissed the appeal of the Applicants and cross-appeal of the Respondents made no order positive or mandatory in favour of either party. Accordingly there is nothing in that judgment to

enforce. The claim before the High Court appealed against is for damages for libel and for perpetual injunction restraining the defendants from further publication of the libel. The Defendants did not counterclaim against the plaintiffs that plaintiff was a secret society. The discussion and opinions expressed on whether plaintiff is a secret society do not fall within the claims before the Court. They were only expressed in defence of the claim before the Court. B

It is a well settled principle of judicial adjudication that the judgment in a lis must be confined to the cause of action and the issues raised on the pleadings - See Ochonma v. Ashirim Unosi (1965) NMLR. 231. The court cannot grant remedies or reliefs not claimed by the parties - See Bola Ige v. Omololu Olunloyo & ors. (1984) 1 SC. 258. The opinions expressed by the justices on the findings on the documents and evidence before them cannot be regarded or equated with the claims or counter-claim before the court. There is no claim against the plaintiff that it is a secret society. D

Mr. Olufon has submitted that his application falls within the consequential orders which can be made from the judgment. I do not think such a view is right. A consequential Order is an order founded on the claim of the successful party. In other words a consequential order is one which is not merely incidental to a decision properly made, but one which is merely to give effect to that decision - See Liman v. Mohammed (1999) 9 NWLR. 116, Gbadamosi & ors. v. Stephen Alele & anor. (1993) 2 NWLR. 113. It is difficult to conceive how a positive consequential order can arise from a claim which has been dismissed. It is equally not easily comprehensible how the reliefs sought by Applicants can be consequential to the dismissal of the cross-appeal in Suit No. SC 23/1991. See also Obayagbona v. Obazee & anor. (1972) 5 SC.247, Mrs. Bassey Ita Okon v. Administrator-General (Cross Rivers State) (1992) 6 NWLR. 473. G

There is judicial authority for the proposition that where a Court refuses the principal order sought an incidental order cannot be made. - See Hamason (Nigeria) Ltd. v. Pedrotech (Nigeria) Ltd. (1993) 3 NWLR. 548. This is because the principal order on which consequential order should stand having been refused there is no basis for the making of the H

consequential order. So it is in this case. This Court having dismissed the appeal and cross-appeal of the parties before it, there was nothing left for it to enforce.

Mr. Olufon, relies on Order 8 r. 17 of our Rules of Court which provides as follows-

*"Any decision, including judgment, decree or order given by the Court may be enforced by the Court or by any other Court with subordinate jurisdiction which has been seised of the matter."*

This provision is predicated on the ground that the Court has made an enforceable decision which could be enforced in any other court with subordinate jurisdiction. Where the decision is one of a dismissal, there is clearly nothing to enforce. The decision of Chief Okoya v. Santilli & ors. (supra) cited will not be appropriate in this situation.

Stricto sensu, the determination that Applicant, whose cross-appeal in suit No. 22/1991, together with the appeal of the Appellants were dismissed has nothing to enforce should conclude the matter. This is because the orders to the Registrar-General of the Corporate Affairs Commission, and the Inspector-General of Police are predicated on the basis that these are consequential orders arising from the judgment. They definitely are not. I shall now consider the remaining arguments together.

Mr. Akpamgbo, SAN has submitted that since the Registrar - General of the Commission, and the Inspector-General of Police are not parties to the action they cannot be bound by any orders of this Court. Mr. Olufon relying on NNSC v. Savannah (1988) 2 NWLR (pt. 74) 23, submits differently. In his view the Court has the powers to direct parties to do things even when they are not parties to the suit.

The purpose of joinder of parties in an action is to enable the court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter - See Oladeinde & anor v. Oduwole (1962) WNL.R. 41. It is an elementary and fundamental principle that a judgment in personam is only binding on the parties to the lis. Accordingly all parties who may be affected by the result of the litigation may be joined either as Plaintiffs or Defendants. I find it somewhat strange to accept the submission of Mr. Olufon that this court can, relying on the provisions of section 6 (6)

(a) & (b) of the constitution 1999 make consequential orders against any person whatsoever.

The constitutional provision referred to and relied upon are very clear. They only enable the exercise of inherent powers where there is jurisdiction. In other words, a Court cannot in the absence of jurisdiction B exercise inherent powers. Similarly, consequential orders can only be made where there are principal orders. We have been asked to make orders against the Registrar-General of the Corporate Affairs Commission, and the Inspector-General of Police, who are not parties to the action, and against whom no claims have been made. They have not been notified about the C claims against them so that they can be heard on the matter. There can be no clearer infringement of the constitutional protection of fair hearing in section 36 of the Constitution 1999 than what has been suggested by Mr. Olufon - See Eronini v. Iheuko (1989) 2 NWLR. 46, Liman v. Mohammed D (1999) 9 NWLR. 116, Oluwa Glass Co. Ltd. v. Ehinlawo (1990) 7 NWLR. 14. I therefore decline the invitation to do so.

I agree with the submission of Mr. Akpangbo, SAN that not being parties to the Iis, the Registrar-General of the Corporate Affairs Commission E and the Inspector-General of Police are not and cannot be bound by the judgment in suit No. SC. 23/1991. In any event since the decision of the Supreme Court in SC. 23/1991 was a dismissal of the Appeal and the cross-appeal before it, no consequential Order, and particularly of the kind F sought by Applications can be made against them.

The objection of the Respondents that the application of the Applicants is incompetent and should be struck out, has considerable merit. For the reasons already given in this ruling, the objection is sustained. I G accordingly hold that the notice of originating motion dated 6th February, 1999 brought by Henry O. Awoniyi & ors. against The Registered Trustees of the Rosicrucian Order Amorc (Nigeria) seeking orders against the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police, in relation to the Respondent, is incompetent and is H hereby struck out.

IGUH JSC

In the Calabar Judicial Division of the High Court of Justice, Cross River State, the plaintiff, who is now the respondent, filed an action against the defendants, now applicants, jointly and severally claiming  
B N10,000.000.00 as special and general damages for libel and perpetual injunction restraining the said defendants from further publication of the plaintiff of the alleged or any similar libel.

At the end of the subsequent trial, the learned trial Chief Judge, Koofrey, C.J., in a reserved judgment found for the plaintiff. He concluded  
C as follows:-

*"Having found the defendants liable for the libel on the plaintiff, Amorc, I award N1,000.00 (one million Naira) to the plaintiff as general damages with N405.00 out of pocket expenses. The greater claim for  
D special damages having not been proved I award N500.00 costs only.*

*The defendants and each one of them are restrained by a perpetual injunction by themselves or by their servants or agents from further writing, printing, or circulating or causing to be written, printed  
E or circulated or otherwise publishing of the plaintiff the said or any similar libel."*

On appeal, the Court of Appeal, in a split decision, allowed the appeal, set aside the judgment of the trial court and dismissed the plaintiff's  
F action. It declared:-

*"The appeal succeeds and is allowed. The judgment of the lower court together with the order for costs is hereby set aside. The action is dismissed. I award costs of N1,000.00 in the court below and N1,200.00  
G in this court to the appellants against the respondent."*

Dissatisfied with this decision of the Court of Appeal, both parties appealed to this court.

I think it is necessary for a better appreciation of the issues that arise in this case for the resolution of the court to state that the plaintiff, the  
H Rosicrucian Order ARMOC (Nigeria) is a registered corporation in Nigeria under the Land (Perpetual Succession) Act, Cap. 98, Laws of the Federation of Nigeria, 1958. It brought this action through its registered trustees.

The defendants were concerned with the writing and/or publication

of the articles complained of by the plaintiff.

Both parties are in agreement in their pleadings that the articles, the subject matter of the plaintiff's complaint in this action were published of and concerning the plaintiff by the defendants. The plaintiff by paragraph 39 of its Statement of Claim itemised eight innuendos which it claimed the publications in their natural and ordinary tenor were understood to mean. One of these is that the plaintiff is a secret society. However the defendants in paragraph 11 of their further amended Statement of Defence pleaded as follows:-

*"In so far as the words complained of concerning the plaintiff and no other person consist of statement of facts; they are true in substance and in fact, and in so far as they consist of expression of opinion, they are fair comments on the said facts which are a matter of public interest."*

Dealing with whether or not the plaintiff is a secret organisation or society, the Court of appeal, per Uwaifo, J.C.A., as he then was, had this to say:-

*"I do not think that the plaintiff can complain if it is called a secret society. Dr. (Mrs.) Juliana Unofa Okpapi, (p.w.6), admitted in cross-examination: "I do not dispute the fact that the publications of AMORC describe AMORC as Organisation but that is under the normal meaning of the word secret. You will be talking the truth if you said that according to AMORC publications, it is a secret society. AMORC is not an occult organisation but it has occult teachings..... I am a student of occult knowledge taught by the Rosicrucian Order."*

The court then referred to a number of publications of the plaintiff in which AMORC was referred to as a secret society and to the evidence of a number of witnesses of the plaintiff and arrived at the conclusion that the defendants were justified to describe the plaintiff as a secret society.

Reviewing the above finding of the court below this court per Wali, J.S.C. made reference to Exhibits 26 and 38 which were tendered at the trial and commented thus:-

*"From all these and the quotations referred to by the Court of Appeal in Exhibits 26 and 38, its conclusion was justified in describing the plaintiff as secret and satanic to say that Jesus Christ was a member*

*of secret societies and an advocate of occult teachings. There is nothing secret in the message of Jesus to his people.*

I, for my part, after a review of various publications of the plaintiff tendered in evidence as well as the evidence of some of its witnesses

B concluded as follows:-

*"P.W.6, Dr. (Mrs.) Juliana Unofa Okpapi admitted under cross-examination that she did not dispute the fact that publications of AMORC describe it as a secret society or organisation. She testified that AMORC is not an occult organisation but that it has occult teachings. She claimed to be a student of occult knowledge taught by the Rosicrucian Order.*

C *P.W.4, Kenneth U. Idiodi, for his own part, also admitted under cross-examination that AMORC has "secret signs, secret pass-words and secret hand-claps"*

D *There is also Exhibit 23 which refers to "Rosicrusians" as "the name of a secret society organised in Wurtemberg, Germany in the 17th Century, whose aim was to vitalise and prolong human life."*

E *In the face of the above copious evidence, the question that must arise is whether it can be seriously contended that AMORC is not a secret society. I agree with the majority judgment of the Court of Appeal that it is futile on the part of the appellant to attempt now to deny its secret identity."*

F *I next turned to the claims by the plaintiff in their publications that Jesus Christ, Himself, formed and was a member of secret societies and that He was associated with occult teachings and observed thus:-*

*"..... upon a careful consideration of the above evidence of the plaintiff's witnesses together with the Exhibits which are AMORC publications, I agree entirely with the majority judgment of the Court of Appeal that it is extremely difficult in the circumstances not to associate AMORC with mysticism. I also endorse their conclusion that the respondents, to a large extent, sufficiently established their defence of justification of the alleged libel. In the first place, it cannot be seriously suggested that there was anything secret in the teachings of Jesus Christ which in my view were entirely public and properly documented in the scriptures. Clearly to assert, as the plaintiff unequivocally did, that Jesus Christ was a member of secret societies and that he was an advocate of*



*occult teaching is, speaking for myself, satanic, sinister, blasphemous and entirely unacceptable."*

Accordingly, both the appeal and the cross-appeal were dismissed. The majority judgment of the Court of Appeal was affirmed by this court and the plaintiff's case was dismissed. This was on the 15th day of July, 1994. B

On the 6th December, 1999, well over five years after the said judgment, the defendants applied to this court for the following orders:-

*"1. An order directing the Registrar-General of the Corporate Affairs Commission to withdraw and cancel the certificate of registration of the Respondent No. 1415 dated 7th July, 1982 or any subsequent certificate issued to the Respondent. C*

*2. An order directing the Inspector-General of Police to seal up all the offices of the Respondent nationwide and to prosecute any persons carrying on activities in the name of the Respondent. D*

*AND FOR SUCH further order or orders as the Honourable Court may deem fit to make in the circumstances."*

The grounds for this application were stated to be as follows:- E

*"1. There is a subsisting judgment of the Supreme Court of Nigeria delivered on the 15th of July, 1994 in Suit No. SC. 23/1991, The Registered Trustees of the Rosicrucian Order AMORC (Nigeria) vs. Henry O. Awoniyi & Ors. which declared the Respondent to be a secret society. F*

*2. Order 8 Rule 17 of the Supreme Court Rules 1985 empowers this Honourable Court to enforce its judgment.*

*3. Section 38 (4) of the Constitution of the Federal Republic of Nigeria 1999 prohibits any person from forming, taking part or being a member of a secret society." G*

The application which was titled originating motion was made pursuant to the provisions of Order 8 Rule 17 of the Supreme Court Rules, 1985, as amended by the Supreme Court (Amendment) Rules, 1999 and the Inherent Jurisdiction of the court. H

When the application came up for hearing, learned leading counsel for the plaintiff, C. O. Akpangbo Esq., S.A.N. indicated that he had a preliminary objection to raise. This, he had done by filing a motion on

notice to strike out or dismiss the originating motion of the defendants pursuant to the provisions of Order 2 Rules 29 (1) and (2) of the Supreme Court Rules, 1985 as amended by the Supreme Court (Amendment) Rules, 1999 and section 6 (6) (a) of the constitution of the Federal Republic of Nigeria, 1999.

The main plank on which the argument of learned Senior Advocate rested was that this court merely dismissed both the appeal and the cross-appeal brought before it by the parties on the 15th day of July, 1994 and dismissed the plaintiff's claims. He pointed out that no mandatory order was made by this court in favour of either party nor did the court grant any relief to any one in the appeal. He submitted that an order dismissing an appeal cannot be said to be declaratory and that even a declaratory judgment is not capable of enforcement except where it is followed by an order of injunction. He argued that there is nothing to enforce in the judgment of this court in issue. He observed that neither the Registrar-General of the Corporate Affairs Commission nor the Inspector-General of Police sought to be affected by the reliefs applied for was a party to the suit and none is therefore before the court. He pointed out that as necessary parties, they must be joined and heard before any order is made against them. He submitted that the plaintiff by this application appears to be asking for the enforcement of an order which does not exist. He therefore urged the court to strike out the originating motion on ground of incompetence.

Learned leading counsel for the defendants, A. O. Olufon Esq., in his reply submitted that what the defendants were seeking for are by way of consequential orders and that these may be granted by this court under its inherent powers. He contended that the prayers the defendants seek flow from the judgment of this court in the appeal and he urged the court to overrule the plaintiff's objection to the defendants' originating motion.

As I have already indicated, the claims before the court in the main action were, firstly, N10,000,000.00 general and special damages for libel and, secondly, perpetual injunction restraining the defendants from further publication of similar or other libel against the plaintiff. It is relevant to observe that the defendants filed no counter-claim against the plaintiff and therefore urged the trial court for no reliefs whatever. All they did was

to resist the plaintiff's claims on damages for libel and perpetual injunction on grounds of justification and fair comment. Under such circumstance, it is clear to me that the defendants could not, in law, be entitled to any relief which is capable of enforcement in their favour.

In this regard, the law is long and well settled that where a plaintiff claims, say, a declaration of title to land or whatever, and his claim is dismissed, it will be wrong to grant the declaration to the defendant if he did not ask for it by way of counter-claim. See Ntiaro v. Akpan 3 N.L.R. 10, Abisi v. Ekwealor (1993) 6 N.W.L.R. (Part 302) 643 etc. As has been pointed out repeatedly by this and other courts, courts of law are no father Christmas and they must not grant to a party a relief which he has not sought or claimed or which is more than he has claimed. See Ekpenyong v. Nyong (1975) 2 S.C. 71 at 81 - 82, Nigeria Development Housing Society Ltd. v. Mumuni (1977) 2 S.C. 57 at 81, Union Beverages v. Owolabi (1988) 2 N.W.L.R. (Part 68) 128 at 133, Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206, Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271 etc.

Reliefs claimed in a court action, except in cases of consequential orders, which I will presently deal with are, unlike manna, which in the days of yore fell down from heaven. They ought normally to be claimed specifically in a cause or matter or by way of counter-claim, depending on whether it is the plaintiff or the defendant that is seeking the reliefs in question.

Learned counsel for the defendants, however, contended that the order now applied for are being sought by way of consequential orders. I will briefly dispose of this submission. And I start by asking myself what a consequential order really means. It is, in my view, an order which flows necessarily, naturally, directly and consequentially from a decision or judgment delivered by a court in a cause or matter. It arises logically and inevitably by reason of the fact that the order in question is per force obviously and patently consequent upon the decision given by the court and did not need to be specifically claimed as a distinct or separate head or item of relief.

The purpose of a consequential order is to give effect to the decision or judgment of the court but not by granting an entirely new, unclaimed

and/or incongruous relief which was not contested by the parties at the trial and neither did it fall in alignment with the original reliefs claimed in the suit nor was it in the contemplation of the parties that such relief would be the subject matter of a formal executory judgment or order against either  
B side to the dispute. A consequential order may also not be properly made to give to a party an entitlement to a relief he has not established in his favour. See Akinbobola v. Plission Fisko Nigeria Ltd. and others (1991) 1 N.W.L.R. 270 at 288, Obayagbona v. Obazee (1972) 5 S.C. 247, Liman v. Alhaji Mohammed (1999) 9 N.M.L.R. (Part 617) 116 etc.

C In the present appeal, the judgment of this court was an outright dismissal of the plaintiff's claims for damages for libel and which ordered the defendants to act in a particular way, such as to pay damages for the alleged libel or to refrain from further publication of the alleged libel against  
D the plaintiff; such orders being enforceable by writs of attachment and committal if disobeyed. It was also not a declaratory judgment which proclaimed the existence of any legal relationship or right which decision may be the ground of subsequent proceedings in which any alleged right,  
E having been violated, receives enforcement, but in the meantime, there is no enforcement or any claim on it. See Chief Okoya and others v. Santilli and others (1990) 2 N.W.L.R. (Part 131) 172 and Government of Gongola State v. Tukur (1989) 4 N.W.L.R. (Part 117) 592. Indeed even in respect  
F of a declaratory judgment, until subsequent proceedings have been taken following its violation or threatened violation, and the right declared in the judgment receives enforcement or is given legal sanction for its violation, there cannot be a stay of execution of the declaratory judgment. This is  
G because, prior to such subsequent proceedings, such a judgment does not contain any enforceable order which can be executed against the defendant. See too Chief Okoya and others v. Santilli and others (supra). It is plain that the judgment of this court in the appeal under reference did not declare any rights in the defendants capable of enforcement. No mandatory or  
H executory order was made by this court in favour of the defendants or, indeed, the plaintiff and there is nothing to execute in the judgment.

On the other hand, the orders sought by the defendants seek, firstly, to direct the Registrar-General of the Corporate Affairs Commission to

withdraw and cancel the certificate of registration of the plaintiff. The second order is to direct the Inspector-General of Police to seal up all the offices of the plaintiff nation-wide and to prosecute any persons carrying on activities in the name of the plaintiff. Learned counsel for the defendants has baptised these two entirely new and uncontested claims as consequential B reliefs. It is, however, clear to me, with profound respect, that this contention of learned counsel is without basis and ill-conceived.

In the first place it is difficult to comprehend how the two reliefs applied for flow logically and consequentially form the dismissal of the plaintiff's claim in damages for libel and no mandatory order was made in C favour of either party which is capable of enforcement. As I have observed, the purpose of a consequential order is to give effect to the decision of a court but certainly not by way of granting entirely new and unclaimed reliefs which were not contested by the parties and do not flow from the D judgment of the court. Both reliefs applied for were neither canvassed by the parties before the trial court nor were they established by any evidence whatever. It is my judgment that under no stretch of the imagination can either of the two reliefs applied for in the originating motion be regarded E as a consequential relief in this case of libel.

In the second place the principle of law is well established that a document may not be set aside or cancelled unless such a document as well as the parties are before the court. See Chief Obanikoro v. Chief Oluwa 6 F N.L.R. 87. In this case, neither the plaintiff's certificate of registration nor the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police who are necessary parties to the reliefs applied for are before the court. I think Mr. Akpamgbo's preliminary objection to the defendants' application is well founded and ought therefore to succeed. G

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Mohammed, J.S.C. that I, too, allow the plaintiff's preliminary objection. The defendants' originating motion shall be and is hereby struck out as incompetent and devoid of substance. I H abide by the order as to costs made in the leading ruling.

**KATSINA-ALU JSC**

I have had the advantage of reading in draft the ruling of my learned brother Mohammed, JSC. I agree completely with his reasoning and conclusion.

B The issue here is a simple one really. The Respondent as Plaintiff brought an action at the High Court against the Defendants for damages for libel. The Court of trial found for the Plaintiff. The Defendants' appeal to the Court of Appeal was allowed. The Plaintiff appealed to this Court. C The Defendants also cross-appealed in SC. 23/91. This Court dismissed both the appeal and the cross-appeal. This means that the Plaintiff's claim against the Defendants for libel failed. There was clearly no order of the Court in favour of either party.

D The point made that the Plaintiff was a secret society was raised by the Defendants in defence of the claim against them. It is important to point out that there was no counterclaim against the Plaintiff that it is a secret society. The Court of Appeal and the Supreme Court accepted the submission on behalf of the Defendants based on the evidence on record E that the Plaintiff is a secret society. The consequence of that was that the Plaintiff's suit failed and was dismissed. The findings that the Plaintiff is a secret society cannot be elevated to a counter claim. Parties are bound by their pleadings.

F I am not impressed by the argument of the Applicants that the order they seek for is a consequential order. It clearly does not flow from the decision in this case. In my view, the order sought will form the basis or subject matter of a fresh suit. The objection to the application is well taken. It is sustained also by me. I also strike out the motion for being G incompetent.

---

**EJIWUNMI JSC**

H I was privileged to have read the Ruling just delivered by my learned brother Mohammed, JSC. There can be no doubt that this application novel as it is, is completely devoid of any merit. The applicants by their application have sought for the following orders:-

*"1. An order directing the Registrar General of the Corporate Affairs Commission to withdraw and cancel the certificate of registration of the Respondent No. 1415 dated 7th July, 1982 or any subsequent certificate issued to the Respondent.*

*2. An order directing the Inspector-General of Police to seal up all the offices of the Respondent nationwide and to prosecute any persons carrying on activities in the name of the Respondent."*

The grounds for this application are stated to be as follows:-

*"(1) There is a subsisting judgment of the Supreme Court of Nigeria on the 15th of July, 1994 in Suit No. SC. 23/1991. The Registered Trustees of the Rosicrucian Order AMORC (Nigeria) vs. Henry Awoniyi & Ors which declared the Respondent to be a secret Society."*

*(2) Order 8 and 17 of the Supreme Court rules 1985 empowers this Honourable court to enforce the judgment*

*(3) Section 38 (4) of the Constitution of the Federal Republic of Nigeria, 1999 prohibits any person from forming, taking part, or being a member of a secret society."*

As the facts that formed the basis of this application have been set down in the leading judgment, I need not set them down here. But having regard to the opposition to this application, I will set down the relevant paragraphs of the affidavit filed in support of the application and also that sworn in opposition thereto. The reasons given by the respondents for opposing the application will in the process, be set down. Paragraphs, 3, 4, 5, 6 and 7 of the applicants affidavit in support of the application sworn to by one David Akoh, Esq, a legal Practitioner read thus:-

*"(3) That the Supreme Court of Nigeria delivered judgment in Suit No. SC. 23/1991, The Registered Trustees of the Rosicrucian Order, AMORC (Nigeria) v. Henry O. Awoniyi & Ors on the 15th of July, 1994 holding that the Respondent is a secret society. Copies of the judgment are hereto attached and marked Exhibits J.O. 1 - J.O. 5.*

*(4) That subsequent to his judgment, the Respondent which is a registered Corporation in Nigeria under the Land (perpetual Succession) Act (Cap 98) Laws of the Federation 1958 which law has been repealed and replaced by the Companies and Allied Matters Decree 1990 has*

*been carrying on its activities as a Secret society.*

*(5) That the Respondent is still recognised as a registered corporation by the corporate Affairs Commission under the Companies and Allied Matters Decree 1990.*

**B** *(6) That the Respondent has been carrying on its activities in contempt of the judgment of this Honourable Court through various publications in the news media.*

**C** *(7) That the Respondent has made several publications in the news media, seeking to emphasize that it is not a secret society and inviting persons to join the society. Copies of publications made by the Respondent are hereto attached and marked JO. 6, JO. 7 and JO. 8."*

**D** Upon being served with the motion with its attachments, the respondent entered appearance and proceeded thereafter to file a motion on notice for an order to strike out and or dismiss the applicants originating motion for incompetence. Notice was also given that the grounds of objection are:-

**E** *"(i) That suit No. 23/1991. The Registered Trsutees of the Rosicrucian Order, AMORC (Nigeria) vs. Henry O. Awoniyi & Ors in which the appeal and Cross Appeal was dismissed on 15/7/94 did not declare any right in the applicants capable of enforcement;*

**F** *(ii) That the Registrar-General of the Corporate Affairs Commission, and the Inspector-General of Police, being necessary parties in this application who are not joined cannot be bound by any order the Supreme Court will make;*

**G** *(iii) The relief Nos 1 and 2 on the body of the applicants application dated 6th December 1999 are execution action on which the Supreme Court cannot afford to exercise jurisdiction."*

**H** The following paragraphs of the Counter Affidavit sworn to by one Patrick Ayomano Akogu, who describes himself as a Grand Councillor of the Rosicrucian Order AMORC (Nigeria) deserve to be set down. They are:-

*"6. That I vehemently deny the averment in paragraph 6 of the Applicants' affidavit.*

*7. That in response to paragraphs 6 and 7 of the applicants'*



*affidavit, I maintain that the publications (Exhibits JO 6, JO 7 and JO 8) to which Applicants referred were prompted by Applicants brutal attacks on the Respondent.*

*9. That the Respondent as a law abiding citizen respects all the judgments of the Supreme Court and remains bound by them, the judgment in appeal No. SC/23/91 inclusive.* B

*10. That I am informed by our counsel, Pat Onegbedan Esq and I verily believe him that the declaratory judgment of the Supreme Court in Appeal No. SC/23/91 in which the parties lost in the main appeal and the cross-appeal respectively with N1000 costs awarded to each party left nothing to be enforced, and the applicants did not file any counter claim in the matter.* C

*11. That I am further informed by Pat Onegbedan Esq of Counsel for the Respondent and I verily believe him that the two Orders sought by the Applicants are functions of the Executive Arm of Government which the Applicants are urging the Supreme Court to usurp."* D

From the affidavit and counter-affidavits so filed, pursuant to this motion it is evident that the prayers sought by the applicants depend very much on the judgment of this Court in Appeal No. SC/23/91. E

Mr. C. O. Akpamgbo, SAN, in his argument, relied on the provisions of section 6 (6) (a) of the 1999 Constitution and Order 2 Rules 29 (1) (2) of the Rules of the Supreme Court. He also placed reliance on all the averments in the affidavit sworn to by one Patrick Okogwu to ground his submission that the suit No. SC. 23/91 relied upon by the applicants made no order positive or mandatory in favour of either party. This Court dismissed both the Appeal and the Cross-Appeal. Therefore learned counsel, submitted that there is nothing to execute. In support of his submission he cited Chief Okoya v. Santilli & Ors (1990) 2 NWLR (Pt. 131) 172. A declaratory judgment, he reminded the court, is not capable of enforcement; except followed by an order of injunction, G

On the second relief sought, Mr. C. O. Akpamgbo SAN, submitted H that as neither the Registrar of Corporate Affairs Commission, nor the Inspector-General of Police was a party to the action at any stage, they cannot be bound by any order of this Court. And as they have not been

joined, this court should not make a futile order upon the mere application of the applicants. The application, in the view of learned counsel is an abuse of the process of the Court.

Mr. Olufon, learned counsel for the applicants, as expected took the view that the applicants have something to enforce. In this respect, he referred to the judgment of this court, where it was stated that the respondent is a secret society. In support, he cited OKOYA V. SANTILI; Section 38 (4) of the 1999 Constitution and Order 8 and 17 Rules of the Supreme Court 1985.

With regard to the second relief, it is the submission of Mr. Olufon that the court can direct parties to do things even when they were not parties to an action. For this submission, he referred to NNSC V. SAVANNAH (1988) 2 NWLR (Pt. 74) 23 at 36. He next argued that by virtue of section 6 (6) (a) (b) of the 1999 Constitution, this Court under its inherent powers can make consequential order which had been asked for. Hence, the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police can be directed as prayed, and cited Liman v. Mohammed (1999) 9 NWLR (Pt. 617) 116 in support. Finally, counsel urged that this court has the powers to direct Executive Agencies to obey its orders. The Executive Agency need not be a party to the action, for that submission, he cited section 6 (6) (a) of the Constitution 1999, and Fawehinmi (No. 1) v. N.B.A. (1989) 2 NWLR (Pt. 105) 494. He then submitted that the objection of the Respondents be struck out.

Before I consider the merits of this application, it is necessary to refer, howsoever briefly, to the judgment of this Court in Suit No. SC. 23/1991. The Registered Trustees of the Rosicrucian Order, AMORC (NIGERIA) vs. Henry O. Awoniyi & Ors delivered on the 15th of July 1994. It is common ground that the action leading to the judgment of this court was commenced in the High Court of Cross River State sitting at Calabar with a Writ of Summons issued by the respondent claiming from the applicants as defendants N10,000,000.00 (Ten million Naira) as aggravated damages for libel contained in the Defendants' Journal. In the said Journal, styled "Today's Challenge" and published serial articles headed: Rosicrucian Order (AMORC) (Bed fellow with Satanic Cults? Were

published sometime between March and June 1984. As the Plaintiff, (respondent herein), claimed that it has been greatly injured in its reputation and has suffered damage, commenced action as aforesaid. At the trial court, the plaintiff succeeded and was awarded damages in the sum of N1,000,000 (One million Naira Only) N500 as costs. An order of perpetual injunction restraining the defendants (applicants) by themselves, or their servants, or agents, from further writing, printing or circulating or causing same to be printed or circulated concerning the plaintiff of this libel or any similar libel. However, the judgment of the trial court was reversed by the majority judgment of the Court of Appeal. Both parties appealed to this Court. The two appeals, namely - the appeal of the plaintiff, and the Cross-appeal of the Defendants were unanimously dismissed by this Court. In the course of this judgment, though references were made to the origin of the Rosicrucian Order and the writings of those who believe in their philosophy. It cannot be said that any declaration was made that the Registered Trustees of Rosicrucian Order, AMORC (Nigeria) was satanic. What Wali JSC, said, and I quote is "It is Satanic to say that Jesus Christ was a member of Secret Societies and an advocate to Occult teachings. There is nothing secret in the message of Jesus to his people."

Iguh JSC., in his own judgment had this to say:-

*"I agree entirely with the majority judgment of the Court of Appeal that it is extremely difficult in the circumstances not to associate AMORC with mysticism. I also endorse their conclusion that the respondents to a large extent sufficiently established their defence of justification of the alleged libel. In the first place, it cannot be seriously suggested that there is anything secret in the teachings of Jesus Christ which in my view are entirely public and properly documented in the scriptures. Clearly to asserts as the plaintiff unequivocally did, that Jesus Christ was member of secret societies and that he was an advocate of occult teaching is, speaking for myself, satanic, sinister, blasphemous and entirely unacceptable."*

For the applicants to succeed there must be brought to our attention a specific statement where AMORC was declared as Satanic. This, they have not done. And, in any event, I cannot see how they can produce such

a declaration having regard to what was canvassed in that suit. The defendants did not counter claim against the plaintiff that plaintiff was a secret society. It must be borne in mind the settled principle that the hearing and determination of any cause or matter must be confined to the cause of action and the issues raised on the pleadings. See Ekpenyong v Nyong (1975) 2 SC. 71 at 80-81; African Continental seaways Ltd. v. Nigeria dredging Roads & General Works Ltd. (1985) 1 NWLR (Pt. 20) 299; (1985) 3 SC. 28 at 83 - 84; Hon. Justice Ademola v Chief Harold Sodipo & Ors (1992) 7 NWLR (Pt. 253) 251; (1992) 7 SCNJ (Part 11) 417 at 446 - 447.

The contention of the learned counsel for the applicants that this court could grant his prayers by making consequential orders is obviously misconceived from what I have said above. Suffices to refer to what is a consequential order as defined by Nnaemeka-Agu JSC in Akinbobola v. Fisko Nigeria Ltd. & Ors (1991) 1 NWLR 270 at 288 where he said:-

*"A consequential order is not one merely incidental to a decision but one necessarily flowing directly and naturally from, and inevitably consequent upon it. It must be giving effect to the judgment already given, not by granting a fresh and unclaimed or unproven relief."*

As I had observed earlier that this application as indeed novel, as the applicants are asking this court to make orders upon parties who are not parties to the suit at any stage of the proceedings without having heard them. A clear breach of the provisions of section 36 of the 1999 Constitution. See Oluwa Glass Co. Ltd. v Ehinlawo (1990) 7 NWLR (pt. 160) 14 Eronini v. Iheuko (1989) 2 NWLR 46.

It follows that I must hold that the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police are not bound by the judgment in Suit No. 23/1991.

In the result this application must be struck out and it is hereby struck out for the above reasons and the fuller reasons given in the leading judgment of my learned brother Mohammed JSC. And I abide with the other orders made in the said judgment.