

SUPREME COURT OF NIGERIA
14TH DECEMBER, 2001. SC. 163/1997
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
M. E. OGUNDARE, E. O. OGWUEGBU,
U. A. KALGO, JJSC.

NIGERIA ENGINEERING WORKS LTD.....APPELLANT
AND

1. DENAP LIMITED

2. THE ATTORNEY-GENERAL OFRESPONDENTS
RIVERS STATE

JURISDICTION - Ouster Clause - Ordinary meaning is to be applied-As courts jealously guard their jurisdiction (H3)

JURISDICTION - Ouster of court's jurisdiction - Relevant date of the Act-Must be as provided within the statute - Court has jurisdiction - To try case on revocation of right of occupancy (H4)

LAND USE ACT - Parties - Governor's power of revocation - Is official and not private - He can properly be sued in his official capacity (H1)

LAND USE ACT - Proper party to be sued - Over revocation of right by the Governor - A-G was properly sued (H 2)

LAND USE ACT - Revocation of right of occupancy s. 28 - Must be properly done with due notice - Or the revocation will be null and void (H6)

LAND USE ACT - Revocation of right - Without adequate notice and service of notice ss. 28 & 44 - Is proper ground for setting aside subsequent grant to appellant (H7)

LAND USE ACT - Statutory right of occupancy - Grant of - Extinguishers all existing rights s.5 (2) - Subject to other circumstances (H5)

FACTS

Before the Port Harcourt High Court the plaintiff/1st respondent filed 2 suits which were consolidated. 2nd respondent and appellant were defendants in the action. The controversy is in respect of Statutory Right of Occupancy over the land in dispute. The first grant to the plaintiff in 1982 was revoked and a 2nd grant was made to the appellant in 1986.

The trial Court had to determine which of the two grants is valid. It found in favour of the plaintiff. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, appellant has further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

1. *"Whether the Court of Appeal was not in error for affirming the judgment of the Rivers State High Court which adjudicated over the instant proceedings in which the Hon. Attorney-General of Rivers State was not proper party to be sued and in which the proper party Governor of Rivers State was omitted and if answered in the appellant's favour, what is the consequence for determining such a serious dispute without the inclusion of/he proper and necessary party?"*

2. *Having regard to the provisions of section 1 (2) (a) & (b) of Cap. 137 LFN 1990 i.e. Federal Military Government (Supremacy and Enforcement of Powers) Act. Whether the High Court and indeed the Court of Appeal had any jurisdiction to inquire into the act of revocation of plaintiffs Certificate of occupancy done pursuant to an Act of National Assembly to wit: the Land Use Act Cap 202 LFN 1990?"*

3. *Having regard to the foregoing i.e. the non-joinder of proper and indeed necessary parties and the ouster of jurisdiction of the High Court by Cap 137 LFN, could it be said, regard being had to section 5 (2) of the Land Use Act, that the revocation of plaintiffs title was illegal null and void and the title in appellant's name invalid?"*

HELD: (Unanimously dismissing the appeal per lead judgment of KALGO JSC)

Parties - Governor's power of revocation

1. The power to revoke any statutory right of occupancy under S. 28 of the Act was granted to the Governor in his official capacity and it is therefore a public right the exercise of which constitutes a public act in the public interest. It is not and cannot be, a private act in the interest of the person of the Governor himself.

In the exercise of the powers by the Governor under the Act the Governor was acting for and on behalf of Nigerians directly under his administration and the therefore on behalf of his State Government. His act is therefore the public act of his government for which he can properly be sued in his official capacity. (p. 3374 E)

Land Use Act - Proper party to be sued

2. I agree that the Governor can be sued in his official capacity but I do not agree that, that completely removes the necessity of suing the Attorney-General. It is however clear from the above submission of learned counsel that he is not disputing that the Attorney-General acts for an generally sued on behalf of the State Government. Therefore if, as I held earlier, that the exercise of power by the Governor of Rivers State under S. 28 of the Act is a public act of the Government of Rivers State, the Attorney-General of the Rivers State was a proper party in the case under consideration. He is the Chief Law Officer of the State and is as must interested in the outcome of the plaintiff/appellant's claim. But it is now well settled and as decided by this court in Ransome Kuti V.A.G. of the Federation (1985) 7 NWLR (pt. 6) 221 Ezomo V.A.G. Bendel State (1986) 4 NWLR (pt. 36) 448 at 459 that the Attorney-General is a defendant or a nominal defendant or a nominal defendant in civil cases in which the Government is sued. In this case, the action of the Governor *Virtute Officii* as a public officer, which makes it a government act, was being challenged in court. This makes the Attorney-General a proper defendant to the action. (p. 3375 A/3376 C)

Ouster Clause - Ordinary meaning

3. It is well settled that the courts jealously guard their jurisdiction and any of ouster of jurisdiction in any statute must be scrupulously

examined and would not be construed, without any express provision, to extend beyond its ordinary meaning. This is the general attitude of superior provisions. See Military Governor of On do State V. Adewunmi (1988) 3 NWLR (pt. 82) 280 at 294-295.

B The general principle of law on the construction of statutes ousting the jurisdiction of courts is that the ordinary meaning of the provisions of the statute must be applied so long as such provisions are clear, plain, unambiguous and unequivocal. The language of the statute must also be carefully and critically examined and scrutinized in such a
C way as not to be extended beyond its least onerous meaning unless there are express Words to justify such extension. See A. G. Bendel State V Agbofodoh (supra), Salami V Chairman L.E.D.B (1989) 5 NWLR (pt. 123) 539. (p. 3378 C/3379 C)

D ***Ouster of court's jurisdiction - Relevant data***

4. In other words what I am saying is that except where the Federal Military Government (Supremacy and Enforcement of Powers) Act says so expressly, its provisions cannot apply to any Act or Law which
E was passed before 1984. It did not say so here and so its application must be restricted to all Acts or Laws passed in or after 1984. And so any reference to any "Decree or Edict" in S. 1 (2) (b) (i) of the Act Decree 13 of 1984, must mean only "Decree or Edict" Act or Law promulgated by the Federal Military Government which took effect on 31st December, 1983 and no more. The Land Use Act cannot in my judgment be any
F such Decree or Act and so the provisions of S. 1 (2) (b) (i) of Decree 13 of 1984 cannot apply to it. I therefore find that the provisions of S. L (2) (b) (I) of the Federal Military Government (Supremacy and
G Enforcement of Powers) Act (Cap. 137 Laws of the Federation of Nigeria 1990) did not apply to the Land Use Act (Cap. 202 of Laws of the Federation of Nigeria 1990) and that the trial High Court and the Court of Appeal had jurisdiction to hear this case as they did. This issue therefore fails and is answered in the affirmative. (p. 3380 E)

H

Statutory right of occupancy - Grant of

5. The only reasonable interpretation which can be given to it is that a grant of statutory right of occupancy by the Governor extinguishes all rights existing on the land, the subject of the right of occupancy at the time of the grant. This court has said so in many decided cases. See Saude V Abdullahi (1989) 4 NWLR (pt.116) 387 at 416 this statement is not automatic in all cases and cannot be swallowed hook line and sinker. This is particularly so where there was an earlier grant as in the present case. (p. 3381 E)

Revocation of right must be proper

6. Where there is an existing earlier grant, any later grant in consequence of the exercise of the power of revocation under S. 28 of the Land Use Act, must be done properly and in accordance with the provisions of the Act. The powers of the Governor to revoke any right of occupancy must be exercised in the overriding interest of the public and more importantly the holder of the right of occupancy being revoked must be notified in advance of the revocation. The notice to the holder must state the reason or reasons for the revocation and this will give the holder the opportunity to make any representation he or she wishes to make. Where the notice was not given or notice given was inadequate or not given in compliance with the provisions of the Act, the act or the exercise of revocation under S. 28 of the Act will be null and void. (p, 3381 H)

Revocation of right – Need for adequate notice

7. Where proper and adequate notice was given to the holder as required by the act, his right of occupancy shall be extinguished on receipt of such notice. See S. 28 (6) and (7) of the Land Use Act. By the provisions of S.28 (6) and (7) of the Land Use Act, notice must be given to the holder before the revocation of his right of Occupancy and the service of the notice must be in accordance with the provisions of Section 44 of the of the Act. Both the trial court and Court of Appeal have found on the pleading and evidence that no such notice was given to the 1st respondent in this case, before the revocation of his right of occupancy and that was why they decided in this case, to set aside the grant of the

statutory right of occupancy to the appellant. I entirely agree with them and find that the provisions of S.5 (2) of the Land Use Act is not applicable to the situation of this case. (p. 3382 G)

NOTABLE POINT OF INTEREST

B **KALGO JSC**

1. Grant and revocation of right of occupancy

Under S. 5 (1) (a) of the Act, the Governor has the powers to grant a statutory right of occupancy to any person in respect of any land in the State. Under S. 28 of the said Act, the Governor has the power to revoke any right of occupancy, granted to any person for overriding public interest, which interest is defined under that section. Where the revocation was not in accordance with the provisions of the Act, such revocation can be set aside as invalid, null and void. See Osho & Am V. Foreign Finance Corporation & Anor (1991) 4 NWLR (pt. 184) 157. (p. 3373 E)

REPRESENTATION

E J.B. Dauda SAN, with him, Miss U.N. Agomoh for the Appellant.
Chief C.A.B. Akparanta with R.M. Emem Esq., for the 1st Respondent.
2nd Respondent absent - not represented.

F **CASES REFERRED TO**

Aromire v. Awoyemi (1972) All NLR 90 (Reprint) 105 at 111
Fawehinmi v. NBA (No.1) (1989) 2 NWLR (Pt.105) 475 at 550
Green v. Green (1987) 3 NWLR (pt. 61) 480 at 493
G Adigun v. A.G. Oyo State (1987) 1 NWLR (Pt. 53) 678 at 705
G A.G. of Ogun State v. A.G. of the Federation (1982) 1-2 SC 13 at p.86
Umesi v. A.G. of Imo State (1995) 4 NWLR (pt, 391) 552
Governor of Gongola State v. Tukur (No.2)(1987)2 NWLR (pt.56)308
Olariode v. Oyebi (1984) 1 SCNLR 390
H Ekpere & Ors. v. Aforiyje & Ors. (1972) I All NLR 220
Ransome Kuti v. A.G. of the Federation (1985) 7 NWLR (pt.6) 221
Agwuna v. A.G. of the Federation (1995) 5 NWLR (pt.396)418 at 433
A.G. of the Federation v. Sode (1990) 1 NWLR (ptJ28) 500

STATUTES REFERRED TO

Military Government (Supremacy and Enforcement of Powers) Act
Cap.

137 LFN 1990 S.1(2) (a) & (b)

LAND USE ACT 1978 Cap. 202 LFN 1990, ss. I,5(2), 28, 39, 44

Constitution of Nigeria 1979 SS. 176, 191, 25 I, 267, 236

Decree No. 55 of 1992 S.I

LEAD JUDGMENT BY KALGO JSC

This appeal is from the decision of the Court of Appeal Port
Harcourt, delivered on 17th July, 1997. Originally, there were two sepa-
rate suits filed in the High Court Port Harcourt which were later con-
solidated into one. In the first Suit No. PHC/121/86, the 1st respondent
as plaintiff claimed against the appellant for:

(1) *“A declaration of the plaintiff’s statutory right of oc-
cupancy to the piece or parcel of land lying and situate at Trans-
Amadi Industrial Layout 1, Port Harcourt, and known as plot 51B
Trans-Amadi Industrial Layout 1, Port Harcourt.*

(2) *N100,000.00 (one hundred thousand Naira) being
general damages for trespass.*

(3) *A perpetual injunction restraining the defendant by itself,
its servants, agents or otherwise howsoever from entering the
plaintiff’s said property or ever interfering with the plaintiff in its
possession, occupation, use and enjoyment of its said property”*

The 1st respondent as plaintiff then filed a statement of claim
which was served on the appellant as defendant. In the statement of
defence to the 1st respondent’s action the appellant in paragraph 5 (f) G
and (g) averred as follows:-

(f) *“That the interest, estate and claim of the plaintiff hav-
ing been determined by operation of law by their failure to de-
velop within two (2) years was given legal clothing vide the Rivers
State of Nigeria Official Gazette No.17 in vol.18 of 29th May, H
1986.*

(g) *That after the determination of the plaintiff’s interest
in plot 51 Trans-Amadi Industrial Layout, Port Harcourt by op-*

eration of law, the Rivers State Government issued in the favour of the defendant and in respect of Plot 51 (hereinafter referred to as the “plot in dispute”) a certificate of Occupancy No. 61 Ref: RSG 003555 of 21st September, 1985. This Certificate of occupancy shall be relied upon at the hearing of this case.”

B It is apparent therefore that the appellant’s defence to the 1st suit was that the 1st respondent’s Certificate of Occupancy was revoked by the Rivers State Government and a new one was issued to the appellant in respect of the land in dispute. The 1st respondent there-
C after got a copy of the Official Gazette where the revocation was published and thereafter filed the 2nd suit No. PHC/326/86 in which the 2nd respondent, the Attorney-General of Rivers State alone was made a defendant. In that suit, the 1st respondent as plaintiff claimed per the writ of summons for:

D (i) “A declaration that the purported revocation of the plaintiff’s right of occupancy existing in plot 51B Trans-Amadi Industrial Layout Port Harcourt (as evidenced by certificate of occupancy dated 23rd March, 1982 and registered as No.23 at
E page 23 in volume 99 of the Lands Registry in the office at Port Harcourt) as contained in Government Notice No.86 dated 30th April 1986 and published in No. 17, volume 18 of the Official Gazette of Rivers State of Nigeria dated 29th May, 1986 is null and void; and

F (ii) A declaration that the plaintiff’s certificate of occupancy of the aforesaid Plot 51B Trans-Amadi Industrial Layout 1, Port Harcourt dated 23rd March, 1982 and registered as No. 23 at page 23 in volume 99 of the Lands Registry in the office at Port
G Harcourt is still valid and subsisting and has been so valid and subsisting at all times material to this suit.”

From the above, it is very clear that the 1st respondent was the only plaintiff in both suits and the two suits are inter alia dealing with the validity or otherwise of the two certificates of occupancy; the
H first granted to the 1st respondent in 1982 and the second granted to the appellant in 1986. They were therefore properly consolidated. The case proceeded to trial and at the end of it, the learned trial Judge Tabai, J. (as he then was) found for the plaintiff (now the 1st respon-

dent) in the following terms:-

(a) *“A declaration that the purported revocation of the plaintiff’s right of occupancy existing in Plot 51B Trans-Amadi Industrial Layout 1, Port Harcourt as contained in Government Notice No. 86 dated 30th April, 1986 and published as No. 17 vol. 18 of the Official Gazette of Rivers State of Nigeria dated 29th May, 1986 is null and void* B

(b) A declaration that the plaintiff has the statutory right of occupancy to plot 51B Trans-Amadi Industrial Layout 1, Port Harcourt;

(c) A declaration that the plaintiff’s certificate of occupancy of the aforesaid plot 51B Trans-Amadi Layout 1, Port (sic) dated 23rd March, 1982 and registered as No. 23 at page 23 in volume 99 of the Lands Registry Port Harcourt is still valid and subsisting; C

(d) A perpetual injunction restraining the defendants by themselves, their servants agents or otherwise howsoever from entering the plaintiffs’ said property or ever interfering with the plaintiff’s possession, occupation, use and enjoyment of its property; and D

(e) N10,000.00 general damages against the 2nd defendant for trespass.” E

The appellant was the 2nd defendant in the consolidated suits. The appellant appealed to the Court of Appeal against this order. The Court of Appeal heard the appeal, dismissed it and affirmed the decision of Tabai J. The appellant again appealed to this court. F

In this court, the appellant and the 1st respondent filed their respective written briefs and exchanged them between themselves. The 2nd respondent did not file any brief at all and did not take part in the appeal before us. G

The learned counsel for the appellant raised, in his notice of appeal, four grounds of appeal touching on fair hearing and jurisdiction which have not been canvassed in the lower courts. He sought leave of this court to argue the grounds and leave to do so was accordingly granted. He filed a brief in which the following issues were formulated H for the determination of this court thus:

“1. Whether the Court of Appeal was not in error for affirming the judgment of the Rivers State High Court which adjudi-

cated over the instant proceedings in which the Hon. Attorney-General of Rivers State was not properly party to be sued and in which the proper party is Governor of Rivers State was omitted and if answered in the appellant's favour; what is the consequence for determining such a serious dispute without the inclusion of the proper and necessary party?

2. Having regard to the provisions of section 1(2)(a)&(b) of Cap. 137 LFN 1990 i.e Federal Military Government (Supremacy and Enforcement of Powers) Act. Whether the High Court and indeed the Court of Appeal had any jurisdiction to inquire into the act of revocation of plaintiff's certificate of occupancy done pursuant to an Act of National Assembly to wit: the Land Use Act Cap 202 LFN 1990"

3. Having regard to the foregoing i.e. the non-joinder of proper and indeed necessary parties and the ouster of jurisdiction of the High Court by Cap. 137 LFN, could it be said, regard being had to section 5(2) of the Land Use Act, that the revocation of plaintiff's title was illegal, null and void and the title in appellant's name invalid?

The 1st respondent also set out three issues in his brief which read:-

(i) Whether the Federal Military Government (Supremacy and Enforcement of Powers) Act Cap. 137 Law of Nigeria 1990 ousted the jurisdiction of both the High Court and the Court of Appeal to adjudicate on the 1st respondent's claim against the appellant under the Land Use Act 1978.

(ii) Whether the Court of Appeal was right in confirming and affirming judgment of the trial High Court that the purported revocation of the 1st respondent's right of occupancy was null and void. (iii) whether despite the appearance of the Attorney-General of Rivers State as a party, the non-joinder of the Military Governor of Rivers State per se vitiated the proceedings in the trial High Court and the Court of Appeal.

It is very clear to me that the three issues formulated by the appellant in his brief of argument are very similar in contents to those three issues set out by the pt respondent in his brief. I shall therefore adopt the issues formulated by the appellant for the determination of this appeal.

Before discussing the issues in this appeal, it appears to me reasonable in the circumstances to set out briefly the antecedents of the whole case. The facts of the case are simple and straight forward. Before 1981, Plot 51 Trans-Amadi Industrial Layout, Port-Harcourt, was in the possession and control of Raleigh Industries Limited which held the Certificate of Occupancy No.278 granted to it by the Rivers State Government in respect of the plot. On the 11th of June 1981, the then Government of Rivers State, acting under s. 28 of the Land Use Decree (now Act) revoked the said certificate of occupancy and divided the said plot 51 into two - plot 51A and plot 51 B. Plot 51 A was re-granted to Raleigh Industries Nigeria Limited and plot 51 B granted to the 1st respondent Denap Limited, on application for the grant. The 1st respondent was subsequently given a statutory certificate of occupancy dated 26th March 1982 and registered as No. 23 at page 23 in volume 99 of the Land Registry in the office at Port-Harcourt in respect of the plot. The 1st respondent did not make any improvement in the land up to 1985. On the 21st September, 1985, the appellant was granted a Certificate of Occupancy No. 61 by the Rivers State Government in respect of the original plot 51 Trans-Amadi layout, Port-Harcourt which included the 1st respondent's plot 51 B. Consequently, the 1st respondent could not continue his fencing works on his plot 51 B and the appellant's staff drove away all the 1st respondent's workers from the site. The 1st respondent as plaintiff filed the first action No. PHC/121/86 against the appellant.

Parties filed their pleadings and in the statement of defence of the appellant, the 1st respondent discovered that the then Military Governor of the Rivers State has revoked its certificate of occupancy for plot 51 B. As a result of this discovery the 1st respondent instituted the second action No. PHC1328/86 in which the Attorney-General of the Rivers State was the only defendant. The two cases were then consolidated and the appellant (defendant in the first case) and the Attorney-General of Rivers State (defendant in second case) were made defendants. This briefly is the background to this case.

I shall now proceed to consider the issues raised by the appellant in the appeal ad seriatim.

ISSUE 1:

This issue raised the question of whether the Attorney-Gen

eral of Rivers State sued as a defendant in the consolidated suit is a proper party to this case pursuant to the provisions of the Land Use Act Cap. 202 Laws of the Federation of Nigeria 1990.

B The learned Senior Advocate of Nigeria for the appellant submitted in his brief that since the 1st respondent was complaining about the revocation of his certificate of occupancy in respect of plot 51 B, he is bound to sue the appropriate authority which actually revoked the certificate. It was wrong, he argued, to assume in this case that the deed or misdeed of the “Governor” is attributable to the Attorney-General of Rivers State. Learned counsel contended that under the C Land Use Act S. 28, the “Governor” or “Military Governor” is the only repository of the statutory power of revoking a certificate of occupancy and since the office of the “Governor” or “Military Governor” is D a corporation Sole created by statute, there was nothing which stopped the 1st respondent from suing him. The office of the Military Governor of Rivers State or its successor in office actually revoked the 1st respondent’s certificate of occupancy. The learned Senior Advocate E of Nigeria further argued in his brief that though the Attorney-General is the Chief Law Officer of the State and has statutory and constitutional powers to represent the Government or any of its departments or agency in any suit before the courts, he cannot be sued as a defendant where the act complained of is the exclusive responsibility of the F officer concerned not being the Attorney-General. Therefore, learned counsel submits, the only person to be sued in this case was the Military Governor of Rivers State who was the transgressor in the revocation of the certificate of occupancy concerned and not the Attorney-G G General as was done in this case. He cited in support the cases of *Aromire v. Awoyemi* (1972) All NLR 101 (Reprint) 105 at 111; *Fawehinmi v. NBA* (No.1) (1989) 2 NWLR (Pt. 105) 494 at 550; *Green v. Green* (1987) 3 NWLR (Pt. 61) 480 at 493.

H Before completing his argument on this issue in his brief learned counsel referred to five decided cases dealing with revocation of certificates of occupancy by State Governors and in which (the Governors of the States concerned were sued as the proper and necessary defendants since the statutory responsibility to revoke a right of occu-

pancy under the Land Use Act was vested in them and not any body else. These cases are:-

Chief R. Q. Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634; Governor of Kaduna State v. Dada (1986) 4 NWLR (Pt. 38) 687; Kanada v. Governor of Kaduna State (1986) 4 NWLR (pt. 35) 361 and Titiloye v. Olupo (1991) 7 NWLR (Pt. 205) 519. B

He finally submitted that the Attorney-General of Rivers State was not a proper party to this case as he had no interest in the claims therein and would not be affected by the result.

The learned counsel for the 1st respondent submitted in this C issue, in his brief, that the Attorney-General of Rivers State was properly sued as defendant at the trial of this case and that the non-joinder of the Military Governor of Rivers State as a party did not occasion any miscarriage of justice. He further contended that the Attorney - D General as the Chief Legal Officer of the State can be sued for any action or mis-action of the State by any person aggrieved and is in addition to his powers under the Constitution to represent any government officer including the Governor of a State involved in any civil proceedings before a court of law. He cited the cases of Paul Erokoro E v. Government of Cross River State and Anr (1991) 2 NWLR (pt.185) 322 at 336; Governor of Gongola State v. Tukur (No. 2) (1987) 2 NWLR (Pt.56) 308.

Learned counsel also submitted in the brief that the powers F granted to the Military Governor under s. 28 of the Land Use Act are part of the executive powers of the State and in exercising the powers, he is considered to be acting for and on behalf of the State in its official capacity. He cited the case of Adigun v. A-G. Oyo State (1987) 1 NWLR (Pt.53) 678 at 705 and submitted that since powers can be G delegated by the Governor to any other public officer in the State, they are not private or personal powers only attached to or exercisable only by, the Military Governor. He pointed out that s. 28 (6) of the Land Use Act shows clearly that these powers can be delegated by the Military H Governor to any public officer in the State. Therefore, learned counsel submitted, the powers of the Military Governor to revoke the Certificate of Occupancy of any person in a State under the Land Use Act, as in this case, are public and not private powers and are exercised by

virtue of the office of the Military Governor. He cited in support the cases of *A.G. of Ogun State v. A. G. of the Federation* (1982) 1- 2 SC 13 at P. 86; *Umesi v A.G. of Imo State* (1995) 4 NWLR (Pt.391) 552. Counsel further contended that the act of revocation of the appellant's certificate of occupancy even though carried out by the Military Governor of Rivers State pursuant to s. 28 of the Land Use Act was done in his official capacity and is regarded as the Act of the Rivers State Government for which the Attorney-General may properly be sued in court. Counsel therefore submitted that although the Military Governor of Rivers State may be a desirable party in this case, it was not necessary to make him one, as the case can effectually be determined without him. He cited in support the cases of *Opara v. Dowell S. (Nigeria) Limited* (1995) 4 NWLR (pt. 390) 440; *Peenok Investments Ltd v. Hotel Presidential Ltd.* (1982) 12 SC 1; *L.S.P.D.C. v. Foreign Finance Corporation* (1987) 1 D NWLR (Pt. 50) 413 at 438. Learned counsel also pointed out in his brief that since the appellant's contention was that his certificate of occupancy was valid but was alleged to have been revoked by the Military Governor, it was incumbent upon him to join the Military Governor as a defendant or as a witness in the case. He referred to the case of *Osho v. Foreign Finance Corporation & Anor* (1991) 4 NWLR (pt. 184) 157. Finally, the learned counsel submitted in the brief that the Attorney-General of Rivers State was a proper party in this case and that even if the Military Governor was a desirable party failure to join him as a F defendant, was an irregularity which does not vitiate the proceedings. And therefore, counsel submitted, the proceedings of the trial court and the Court of Appeal in this case were properly conducted as they both had jurisdiction to do so.

G The substance of issue one in the appellant's brief is that the Court of Appeal was wrong in affirming the decision of the trial court, in which the Attorney-General alone was sued as a defendant instead of the Governor of Rivers State and what then is the consequence of determining the case without including the Governor as a party to the suit.

H Let me start by observing that this was a consolidated suit in which the parties were: Denap Limited (Plaintiff) v. Attorney-General of Rivers State and Nigeria Engineering Works Limited and the (defendant). This means that the Attorney-General was the 1st defendant in the suit. The 2nd defendant was the holder of the original certificate

of occupancy in respect of plot 51 Trans-Amadi Industrial Layout 1, Port-Harcourt which was the land in dispute. The only relief claimed against the Attorney-General as 1st defendant was in respect of the revocation of the certificate of occupancy for plot 51B Trans-Amadi Industrial Layout granted to the plaintiff/1st respondent. The main contention of the learned counsel for the appellant is that the power to revoke the statutory right of occupancy or any holder of land under the Land Use Act is that of the Governor of the State concerned and that any complaint against the exercise of that power must be made directly against the Governor and not Attorney-General or anyone else. Learned counsel cited many decided cases in support to which I shall refer later in this judgment.

Section 1 of the Land Use Act Cap. 202 of Laws of the Federation 1990 (hereinafter referred to as the Act) provides:-

“1. Subject to the provisions of this Act, all land comprised in the territory of each state in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordant with the provisions of this Act” (Italics mine)

Under s. 5(1) (a) of the Act, the Governor has the power to grant a statutory right of occupancy to any person in respect of any land in the State. Under s. 28 of the said Act, the Governor has the power to revoke any right of occupancy, granted to any person for overriding public interest, which interest is defined under that section. Where the revocation was not in accordance with the provisions of the Act, such revocation can be set aside as invalid, null and void. See *Osho & Anor v. Foreign Finance Corporation & Anor* (1991) 4 NWLR (Pt. 184) 157.

From the provisions of s. 1 of the Act set out above, it is very clear that all land in the State is “vested in the Governor” who shall hold it “in trust and for the use and common benefit of all Nigerians”. From this, it is very clear to me that the powers vested in the Governor by the Act in dealing with the land entrusted to him is a public and not private power, which he must exercise for the use and common benefit of the Nigerian public. The Governor is no doubt the chief Executive of the State and all powers exercisable by him under any law for and on

behalf of the people are necessarily by virtue of his office and are, as such, public acts. In the consolidated suit of Attorney-General of Ogun, Bendel and Borno States v. Attorney-General of the Federation and 2 Ors, (1982) 1-2 SC 13 at 86 this court in considering the provisions of the Public Order Act 1981, and the powers of the Military Administrator thereunder, held per Idigbe JSC that:-

“Power which is another form of legal right is either public or private. Public powers” are those vested in a person as an agent or instrument of the functions of the State and private powers, on the other hand, “are those which are vested in persons to be exercised for their own purposes and not as agent of the State (see Salmon: JURISPRUDENCE 12th Edition pages 229 - 230 Chapter 42). When a statute confers a power to the holder of an office it is a public power; and then unless the contrary intention appears from or in the statute, the power may be exercised only virtute officii (i.e. by the holder of the office and by his successor-in-office or the holder of the office for the time being).

I entirely agree with and accept this interpretation and find it applicable and apt to the situation in this case. **The power to revoke any statutory right of occupancy under s. 28 of the Act was granted to the Governor in his official capacity and it is therefore a public right the exercise of which constitutes a public act in the public interest. It is not and cannot be a private act in the interest of the person of the Governor himself.**

In the exercise of the powers by the Governor under the Act, the Governor was acting for and on behalf of Nigerians directly under his administration and therefore on behalf of his State Government. His act is therefore the public act of his government for which he can properly be sued in his official capacity. I am not in complete agreement with the learned counsel for the appellant when he submitted in his brief on page 13 that:-

“the statutory responsibility placed upon the Governor, makes him suable in his official capacity thereby displacing or completely removing the necessity for suing the Attorney-General who generally acts or is sued on behalf of the State Government” (Italics mine)

I agree that the Governor can be sued in his official capacity but I do not agree that, that completely removes the necessity of suing the Attorney-General. It is however clear from the above submission of learned counsel that he is not disputing that the Attorney-General acts for and is generally sued on behalf of the State Government. Therefore if, as I held earlier, that the exercise of power by the Governor of Rivers State under S.28 of the Act is a public act of the Government of the Rivers State, the Attorney- General of Rivers State was a proper party in the case under consideration. He is the Chief Law Officer of the State and is as much interested in the outcome of the plaintiff/1st respondent claim.

I also agree with the opinion of Tobi JCA which he expressed in *Erokoru v. Govt. of Cross River State* (supra) at page 336 where he said:-

"I turn to 2nd respondent the Attorney-General of the State. He is not only the head of the Ministry of Justice but also the Chief Legal Adviser of the Government. He is basically responsible in Law for Government actions and inactions. He is the mouth piece of the Government as far as the law is concerned. He is Government's Chief spokesman on the law ... In civil matters affecting Government; the Attorney-General plays a controlling role in the prosecution process. See Governor of Gongola State v. Tukur (No.2) (1987) 2 NWLR (pt.56) 308."

I entirely agree with the learned counsel for the respondent when he said in his brief at pages 29-30 that:-

"The act of revocation can quite legitimately be regarded as an act of the State just as the act of the Military Governor can also be considered as the act of the State being the Chief Executive Officer of the State. The non-inclusion of the Military Governor in any proceedings challenging the validity of such an act cannot therefore render such proceedings null and void or make the courts incompetent to completely adjudicate on the matters in question, particularly if the Attorney-General was made a party in such proceeding."

In *Green v. Green* (supra) this court held that:-

"The non-joinder of a desirable party either by failure of the parties or the court to join suo motu will not be taken as a

ground for defeating an action nor does it rob the court of jurisdiction to entertain the action. See Oloriode v. Oyebe (1984) 1 SCNLR 390; Ekpere & 1 .ors v. Iyiegbu & Ors (1972) 1 All NLR 220.”

B I have carefully studied all the decided cases cited by learned
counsel for the appellant on the issue including the five cases he has
listed in his final submission and found that none of those cases is on all
fours with the instant case and none of them has decided the issue of
the necessity of making the “Military Governor” or the Governor of
C the State concerned, a necessary party in the revocation of a right of
occupancy case like the one under consideration. And sections 176,
191, 251 and 267 of the 1979 Constitution which were mentioned by
the learned counsel for the appellant in his argument here, do not ap-
pear to me to be relevant to this issue. **But it is now well settled and**
D **as decided by this court in Ransome Kuti v. A.-G. of the Federa-**
tion (1985) 7 NWLR (pt.6) 221; Ezomo v. A.-G. Bendel State
(1986) 4 NWLR (Pt.36) 448 at 459, that the Attorney-General
is a defendant or a nominal defendant in civil cases in which the
E **Government is sued. In this case, the action of the Governor**
Virtute officii as a public officer, which makes it a government
act, was being challenged in court. This makes the Attorney-
General a proper defendant to the action.

F For all what I said above, I shall answer this issue in the affir-
mative. This makes it unnecessary for me to consider the second limb
of the issue and I say nothing about it.

ISSUE 2:

G The only question raised by this issue is whether the provisions
of section 1(2)(a) and (b) of the Federal Military Government (Su-
premacy and Enforcement of Powers) Act (Cap. 137 Laws of the
Federation 1990) (hereinafter called Decree No. 13 of 1984), ousted
the jurisdiction of the trial court, and the Court of Appeal in entertaining
the subject matter of this case. The relevant provisions read:-

H “1(2) *It is hereby declared also that -*
(a) for the efficacy and stability of the government of the
Federal Republic of Nigeria; and

(b) with a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria-

(i) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Act or Law and if any such proceedings are instituted before, on or after the commencement of this Act the proceedings shall abate, be discharged and made void,

(ii) the question whether any provision of Chapter IV of the Constitution has been, is being or would be contravened by anything done or proposed to be done in pursuance of any Act or Law shall not be inquired into in any court of law and accordingly, no provision of this Constitution shall apply in respect of any such question.” (Italics mine)

This Act, was in fact called Decree No 13 of 1984 and was no doubt intended to oust the Jurisdiction of Nigerian courts in entertaining any complaints against any action of the Military Government which took over the administration of the country on the 31st of December, 1983. The Decree took effect from the 17th of May 1984, and the Constitution referred to therein was the 1979 Constitution. In the preamble to the Act, the Federal “Military Government” re-affirmed its supremacy by reference to the Constitution (Suspension and Modification Decree) (now Act) No.1 of 1984 in which it suspended parts of that Constitution and rendered null and void the jurisdiction of courts to entertain any challenge to their actions and stated that the provisions of a Decree shall prevail over the Constitution.

Learned counsel for the appellant in his brief referred to s. 1 of Decree No. 55 of 1992, and submitted that the provisions of the Act are still subsisting and valid and that the ouster of the court’s jurisdiction under the Act is still effective. He therefore contended that since the act complained of in this case, is the exercise of the powers by the Military Governor under s 28 of the Land Use Act, the ouster provision applies and the trial court and the Court of Appeal had no jurisdiction to inquire into it.

Learned counsel for the respondent on the other hand submit-

ted in his brief that both the trial court and the Court of Appeal had jurisdiction to entertain the matter as they did, and there was no provision in any statute which expressly ousted their jurisdiction in this matter. Counsel further pointed out that in fact s. 39 of the Land Use Act expressly confers on the High Court the jurisdiction to deal with any question concerning land, the subject of a statutory right of occupancy under the Act, and that s. 236 of the 1979 Constitution confers unlimited jurisdiction to the High Court to inquire into the civil rights and obligations of any person. He went through a series of decided cases of this court and the Court of Appeal to support his submission.

As this is the first time, this issue of ouster of jurisdiction was being raised in this case, I consider it reasonable to state the legal position in this matter as perceived by the courts. **It is well settled that the courts jealously guard their jurisdiction and any signal of ouster of jurisdiction in any statute must be scrupulously examined and would not be construed, without any express provision, to extend beyond its ordinary meaning. This is the general attitude of superior courts on ouster provisions. See Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (Pt. 82)280 at 294-295; Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt. 135) 688. Agwuna v. A.G. of the Federation (1995) 5 NWLR (pt. 396) 418 at 433; Imasuen v. Justice Amissah & Ors. (1996) 8 NWLR (Pt. 467) 452.**

For the sake of clarity, let me again repeat the relevant provisions of Decree 13 of 1984 now under consideration. It states in s. 1(2)(b)(i) *“With a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria:-*

(j) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before, on or after the commencement of this Decree, the proceedings shall abate, be discharged and made void”
(Italics mine)

As I said earlier, the purport of this Decree is to prevent, re

strict or control the courts from exercising any jurisdiction or inquiring into anything done under any Decree or Edict of the Federal or State Military Government. Therefore it is very essential for the courts to determine whether the act complained of comes within the provisions of the Decree or Edict before the ouster of jurisdiction can apply in any particular case. See *A.G. of the Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500. This is also true even where the validity of the ouster provision is not in dispute because the court has the jurisdiction to determine whether the action complained of is one that the ouster provision was intended to protect. See *A.G. Bendel State v. Agbofodor* (1999) 2 NWLR (pt. 592) 476. *N.F.A v. Panalpina World Transport (Nig.) Ltd & Ors.* (1973) 8 NSCC 282.

The general principle of law on the construction of statutes ousting the jurisdiction of court is that the ordinary meaning of the provisions of the statute must be applied so long as such provisions are clear, plain, unambiguous and unequivocal. The language of the statute must also be carefully and critically examined and scrutinized in such a way as not to be extended beyond its least onerous meaning unless there are express words to justify such extension. See *A.G. Bendel State v. Agbofodoh* (supra), *Salami v. Chairman L.E.D.B* (1989) 5 NWLR (Pt.123) 539.

I have carefully read the provisions of s. 1(2) (b) (i) of the Decree 13 of 1984, and it appears to me that the provisions are clear and unambiguous, and given the ordinary meaning, they will have the effect of ousting the jurisdiction of the courts once the act complained of was done pursuant to any Decree or Edict of the then Military Government. There is no doubt that the act complained of in this case was made pursuant to the provisions of S. 28 of the Land Use Decree (now Act) of 1978. But it must be admitted that the said Land Use Decree or Act was promulgated in 1978 by the then Federal Military Government under the Obasanjo regime. It is common ground that, that regime came to an end on the 1st of October, 1979 when the civilian regime under President Shagari took over.

Land Use Act, which was Decree No. 6 of 1978, commenced

operation on the 29th of March, 1978. The Federal Military Government (Supremacy and Enforcement of Powers) Act, which was Decree No. 13 of 1984 came into operation on the 17th of May, 1984. There was nothing in the 1984 Decree (now Act) to show that the Decree or any part of it, was to have come into operation on a date earlier than the commencement date stated therein. If it is intended that any part of the Decree should come into operation on a date earlier than the date of commencement of the Decree itself, provision to that effect would have been made in clear terms. In the absence of any such provision in the said Decree, any contention that the exercise of a power under s. 28 of the Land Use Act (Decree No.6 of 1978) is directly affected by the provisions of S.1(2)(b) (i) of Decree No 13 of 1984, is a great misconception and utterly wrong. In my view, such way as to extend them beyond its onerous meaning, when there is no specific provision to that effect. It is also my respectful view that since the Land Use Act was promulgated by the then Federal Military Government and took effect in 1978, and the Federal Military Government (Supremacy and Enforcement of Powers) Act was promulgated by another Military Government in 1984, and there was no provision in the latter expressly making its provisions applicable to the former, Section 1(2)(b) (i) of Decree 13 of 1984 cannot apply to the Land Use Act. **In other words what I am saying is that except where the Federal Military Government (Supremacy and Enforcement of Powers) Act says so expressly, its provisions cannot apply to any Act or Law which was passed before 1984. It did not say so here and so its application must be restricted to all Acts or laws passed in or after 1984. And so any reference to any “Decree or Edict in s. 1(2)(b) (i) of the Act or Decree 13 of 1984, must mean only “Decrees or Edict’ Act or Law promulgated by the Federal Military Government which took effect on 31st December, 1983 and no more. The Land Use Act cannot in my judgment be any such Decree or Act and so the provisions of s. 1(2) (b) (i) or Decree 13 of 1984 cannot apply to it. I therefore find that the provisions of S. 1(2) (b) (i) of the Federal Military Government (Supremacy and Enforcement of Powers) Act (Cap.137 Laws of the Federation of Nigeria 1990) did not apply to the Land Use**

Act (Cap. 202 of Laws of the Federation of Nigeria 1990) and that the trial High Court and the Court of Appeal had jurisdiction to hear this case as they did. This issue therefore fails and is answered in the affirmative.

ISSUE 3:

This issue depends to a large extent on issues 1 and 2 above. It talks about the joinder or non-joinder of proper party to the case, the ouster of jurisdiction and the effect of the provisions of s. 5 (2) of the Land Use Act on revocation of appellant's right of occupancy. B

I have already found in issue 1 that the Attorney-General of Rivers State was properly sued as defendant to this suit. But I also found that the Military Governor of Rivers State may be desirable though not a necessary party to this action since he only acted in his official capacity. I have also found in issue 2 that the jurisdiction of the trial High Court and the Court of Appeal which heard and determined this case was not ousted by Decree 13 of 1984. What remains of issue 3, is the effect of S. 5 of the Land Use Act on the appellant's right of occupancy. D

S. 5 (2) of the Land Use Act provides:- E

"Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupancy of the land which is the subject of the statutory right of occupancy shall be extinguished".

This subsection is very clear and unambiguous. **The only reasonable interpretation which can be given to it is that a grant of statutory right of occupancy by the Governor extinguishes all rights existing on the land, the subject of the right of Occupancy at the time of the grant. This court has said so in many decided Cases. See Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 416; Dabup v. Kolo (1993) 9 NWLR (Pt. 317) 255 at 279, Titiloye v. Olupo (1991) 1 NWLR (Pt. 205) 579. But this statement is not automatic in all cases and cannot be swallowed hook, line and sinker. This is particularly so where there was an earlier grant as in the present case. Where there is an existing earlier grant, any later grant in consequence of the exercise of the power of revocation under s. 28 of the Land Use Act, must be done properly and in accordance with the provisions of the Act. The powers of the Governor to** F
G
H

revoke any right of occupancy must be exercised in the overriding interest of the public and more importantly the holder of the right of occupancy being revoked must be notified in advance of the revocation. The notice to the holder must state the reason or reasons for the revocation and this will give the holder the opportunity to make any representation he or she wishes to make. Where the notice was not given or notice given was inadequate or not given in compliance with the provisions of the Act, the act of the exercise of revocation under s. 28 of the Act will be null and void. See *Osho v. Foreign Finance Corporation* (supra), where *Obaseki JSC* in considering the validity of the exercise of revocation of right of occupancy by a Military Governor under s. 28 of the Land Use Act had this to say on page 187 of the report:

The purpose for which the power of revocation of a right of occupancy was conferred on the Military Governor of a State has been clearly set out in the Land Use Act. Any revocation for purposes outside the ones prescribed even though ostensibly for purposes prescribed by the Land Use Act is against the policy and intention of the Land Use Act and can be declared invalid and null and void by a competent court of law. The Court of Appeal having found on the evidence that the Military Governor revokes the plaintiff's right of occupancy not in the manner and for the purposes prescribed by the Land Use Act was perfectly justified to have declared the revocation invalid, and null and void".

This fully applies to the situation in this case and I adopt it accordingly.

Where proper and adequate notice was given to the holder as required by the Act, his right of occupancy shall be extinguished on receipt of such notice. See s. 28 (6) and (7) of the Land Use Act. By the provisions of S. 28 (6) and (7) of the Land Use Act, notice must be given to the holder before the revocation of his right of occupancy and the service of the notice must be in accordance with the provisions of section 44 of the said Act. Both the trial court and the Court of Appeal have found on the pleadings and evidence that no such notice was

given to the 1st respondent in this case, before the revocation of its right of occupancy and that was why they decided in this case, to set aside the grant of the statutory right of occupancy to the appellant. I entirely agree with them and find that the provisions of s. 5(2) of the Land Use Act is not applicable to the situation of this case. This issue must also fail and I also answer it in the affirmative. B

Finally I find no merit in this appeal and that no special circumstances were shown why the concurrent findings of the trial court and the Court of Appeal will be interfered with. I accordingly dismiss the appeal in its entirety with N10,000.00 cost to the 1st respondent. C

BELGORE JSC

My learned brother, Kalgo, JSC has adverted adequately to the representation as a defendant by the Attorney- General of Rivers State. To my mind this is not an issue in ambiguity as the role of the Attorney- General in matters like this is not in any doubt, under the Constitution. I adopt the reasoning and the conclusion of Kalgo, JSC in this regard as mine. D

Any holder of a right of occupancy, whether evidenced or yet to be evidenced by a certificate of occupancy, holds that right as long as it is not revoked. Revocation in this instance is that one done in accordance with the law. For nobody will lose his right of occupancy by revocation without his being notified first in writing and the subsequent revocation must also be notified to him in writing. Any other method may be a mere declaration of intent, it will never be notice or revocation. It will be a nullity. The Governor may revoke a right of occupancy for overriding public interest (s. 28(1) Land Use Act). The overriding public interest is clearly spelt out in subsections 2 & 3 of section 28 of Land Use Act. F G

As for notice required to the holder of right of occupancy that his right of occupancy will be revoked or is revoked is clearly explained in section 44 of the Act. H

In the case now on appeal, the Governor never issued any Notice of Intention to Revoke the right of occupancy and the pur-

ported revocation therefore is of no effect; it is null and void.

This appeal, as held in the lead judgment of Kalgo JSC has no merit and I so hold. It is dismissed with N 10,000.00 costs to the first respondent.

B

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Kalgo J.S.C. I agree with him that the appellant has woefully
C failed to show why we should interfere with the concurrent findings of both the trial High Court and the Court of Appeal. I only wish to add that on the issue of the effect of section 5(2) of the Land Use Act on the appellant's statutory right of occupancy, the subsection which is
D clear and unambiguous must be read and understand to have only extinguished "all existing rights to the use and occupation of the land at the time the grant of the statutory right of occupancy was made. And in a situation where there is more than one gram of the same piece of land as in the case it can only be referable to the statutory right of
E occupancy first granted. I do not think one statutory right of occupancy can just on its face "extinguish" another statutory right of occupancy as learned counsel for the appellant would want us to believe. A statutory right of occupancy must first be properly revoked or nullified before another one can be issued in its place. The procedure for revocation is set out in the Land Use Act itself. The procedure was not
F followed in this case. And so the appellant must fail. The appeal therefore fails and it is hereby dismissed. I endorse the order for costs.

G

OGUNDARE JSC

I read in advance the judgment of my learned brother Kalgo JSC just delivered. I agree with him that this appeal is lacking in merit. I, too, dismiss it. I affirm the judgments of the two courts below. I only need to add a few words to what my learned brother had said in his
H judgment.

The facts, and submissions of learned counsel for the parties, have been fully set out in the judgment of Kalgo JSC; I need not go over them again. Suffice it to say that being dissatisfied with the dis-

missal of its appeal to the Court of Appeal, the appellant herein (who was defendant in suit PHC/121/86 instituted by the plaintiff/respondent) appealed to this court upon four grounds of appeal. The other defendant in the consolidated suits - PHC/328/86 and PHC/121/86, that is, the Attorney-General of Rivers State, took no part in this appeal which is a straightforward fight between the plaintiff and the appellant. B

In its brief of argument filed in this court, the appellant formulated three questions as calling for determination, that is to say:

"1. Whether the Court of Appeal was not in error for affirming the judgment of the Rivers State High Court which adjudicated over the instant proceedings in which the Attorney-General of Rivers State was not proper party to be sued and in which the proper party, i.e. Governor of Rivers State was omitted and if answered in the appellant's favour, what is the consequence for determining such a serious dispute without the inclusion of the proper and necessary party?" D

2. Having regard to the provisions of section 1(2)(a)&(b) of Cap. 137 LFN 1990 i.e., Federal Military Government [Supremacy and Enforcement of Power] Act. Whether the High Court and indeed the Court of Appeal had any Jurisdiction to inquire into the act of revocation of plaintiff's certificate of occupancy done pursuant to an Act of National Assembly to wit: the Land Use Act Cap. 202 LFN 1990" E

3. Having regard to the foregoing i.e. the non -joinder of proper and indeed necessary parties and the ouster of jurisdiction of the High Court by Cap 137 LFN, could it be said, regard being had to section 5(2) of the Land Use Act, that the revocation of plaintiffs title was illegal, null and void and the title in appellants name invalid?" F G

The issues formulated by the plaintiff are similar to the above questions.

QUESTION 1- Non-joinder of the Military Governor of Rivers State:

The appellant is raising for the first time the non-joinder of the Military Governor of Rivers State as a party, in these proceedings. The point was never raised in the Court of Appeal. And no leave of this court has been sought nor obtained to raise this new point. The issue H

3386 Nig. Eng. Works Ltd. v. Denap Ltd. (2001) 12 KLR Ogundare JSC
does not arise from the judgment of the court below. Nor from that of
the trial court either.

The attitude of this court towards the raising of new points on appeal has been stated and restated in numerous cases. Generally speaking, a point not raised at the court below would be disallowed if raised
B on appeal- see Okuojeror v. Saga (1958) WNLR 70; Pratt v. Hafner (1959) 4 FSC 82; Ayoola v. Ogunjimi (1964) 1 All NLR 188; Shonekan v. Smith (1964) ANLR 161; Asani v. Adesosun (1966) NMLR 268.

This Court has, in a few cases, relaxed this rule. In Shonekan v. Smith
C (supra) where the new point was in the matter of interpretation of a vital document where no further evidence was required the rule was relaxed. Sir Ademola, CJN at pp.166 -167 of the report observed:

“The third submission which remains for the consideration of the court also involves the interpretation of the deed of settlement (Exh. D A). it is ground 4 of the amended grounds of appeal, and it reads:-

After stating the ground, the learned Chief Justice went on to say:

*“This ground of appeal is far-reaching; it raises a point which was never brought up or argued in the court below. The
E respondent’s counsel did not object to its being argued as he did, with success, to three other grounds. It has been the practice of this court to disallow arguments on a fresh issue which was not raised in the court below, except in a few cases. We are however
F of the opinion that in the matter of interpretation of a document of this nature where no further evidence is required the rule must be relaxed. The question before us is the interpretation of the document - the deed of settlement. It is, in our view, the duty of this court to give full interpretation to the portion of the document
G bearing on or relating to the issue before it, whether or not the point was not raised by counsel in the court below, provided further evidence is not required, though if the argument succeeds the fact that it was raised in the court below may affect the order for
H costs of the appeal.”*

In Kakoyi v. Ladunni (1976) 11 SC 245, 258, this court, per Idigbe JSC, in allowing new point to be raised observed:

“In the first place, although the Court of Appeal is, generally, inclined to scrutinize suspiciously a point not taken in the

court of trial but which is being taken for the first time before it, it will allow the point to be made if satisfied beyond doubt that it has before it all the facts bearing upon the new contention as completely as would have been the case if the controversy had arisen at the trial..... “ (See *The Tasmania* (1890) 15 App. Cas per Lord Herschell at 225), or, if the new argument, being on a point of law, is being raised on one and the same matter and set of facts as were before the court of trial [see *Misa v. Currie* (1876) 1 App. Cas. 554 at 559]; provided always that if the new argument is raised on facts the Court of Appeal ought first to be satisfied that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them in the witness box [see *The Tasmania* (op.cit) per Lord Herschell]. The new point now taken on behalf of the appellant is on a matter of law and, what is more, it is based on the matter and set of facts given in evidence before the trial court.”

Thus, this court will allow a new question to be raised where the question involves substantial point of law, substantive or procedural, and it is obvious that no further evidence could have been adduced which would affect the decision of it - see: *Akpena v. Barclay's Bank Ltd.* (1977) 1 SC 47; *Fadiora v. Gbadeho* (1978) 3 SC 219, 247-249 where Idigbe JSC, delivering the judgment of this court again observed:

*“However, the law is that where a point of law which has not been taken in the court below is put forward by an appellant for the first time in a Court of Appeal that Court ought not to decide in his favour unless it is satisfied beyond doubt; (a) that it has before it all the facts bearing on the new contention as completely as if it has been raised in the lower court i.e. court of first instance), and (b) that no satisfactory explanation could have been given in the court below if it had been so raised. [see *Tasmania (Shipowners and Freight Owners v. Smith etc. City of Corinth (Owners)*, (1890) 15 App. Cases 223]. The point which the appellant seeks to argue is that which relates to the jurisdiction of the Ife Lands Court and he has in reply to our questions to him confirmed that he still has not found the warrant of that court. In other words,*

it could be argued that all the facts bearing on the new contention are not before us; but learned counsel has drawn our attention to a decision of this court given 28th February, 1969, in Suit SC.673/66 between James Adetipe v. Jimoh Omisakan Amodu & Anor, which he contended supports completely the point he wishes to make and which according to him supports also his contention that had the new point been taken in the court below no satisfactory explanation could have been offered by the appellants to counter the contention (which is to the effect that the court which sat over Suit 45/54 had no jurisdiction to do so, that is, entertain, and decide upon the issues in, the suit). The other point, however, for our consideration is that this court is a court of last resort and the rule of practice is that when a question of law is raised for the first time in a court of last resort it is generally not only competent but expedient in the interest of justice for the court to entertain the question [see *Connecticut Fire Insurance Co. v. Kavanagh* (1892) A.C. 473 P.C.]. This rule of practice, however, is subject to the qualification that the court of last resort may refuse to entertain the question of law sought to be raised for the first time if it is satisfied that the court below would have been in a more advantageous position to deal with the matter [see also *Moola (M.E.) Sons Ltd. (Official Liquidator) v. Burjorjae* (1932) 48 TLR. 279]. Accordingly, after due consideration of the application we granted leave to learned counsel for the respondents and received arguments and submissions on the points.”

Turning now to the case on hand, no doubt the question of non-joinder of the Military-Governor was never raised by the appellant at the trial of the consolidated suits. As he was not a party to the Suit PHC/328/86 in which the Attorney-General was the sole defendant, appellant could not be heard to complain about the non-joinder of the Military-Governor. In suit PHC/121/86 in which he was the sole defendant, appellant could, if he had wished, seek leave of court to join the Military-Governor as a co-defendant. He did not. Nor did he raise the issue of non-joinder in the Court of Appeal. He is now raising it in this court for the first time without seeking and obtaining the leave of this court so to do. He is arguing that the Attorney-General of Rivers

State is not a proper party but the Military Governor. He is not a party to the suit in which the Attorney-General is the defendant. I cannot see what standing appellant has in raising this new question now.

Be that as it may, the consequences of non-joinder of a necessary party are to be found in the rules of court. Order 11 rule 5(1) of the High Court (Civil Procedure) Rules of Rivers State provides-

“5(1) If it appears to the court, at or before the hearing of a suit, that all the persons who may be entitled to or who claim some share or interest in the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the court may adjourn the hearing of the suit to a future day, to be fixed by the court and direct that those persons shall be made either plaintiffs or defendants in the suit, as the case may be.”

Surely, if the question of non-joinder had been raised at the trial, the court might have adjourned hearing and direct that the Military-Governor be joined. In any event, it was the appellant who averred in paragraph 5 of its statement of defence in Suit PHC/121/86 that plaintiff's right of occupancy to the land in dispute had been revoked. It was the appellant who ought to have joined the Military-Governor as a party to the action if it felt that his presence would be of advantage to the just conclusion of the case. He cannot now rely on his failure to do so to defeat plaintiff's action - see *Osho & Anor. v. Foreign Finance Corp. & Anor.* (1991) 4 NWLR 157.

Viewed from whatever angle, therefore, I do not think that this is a proper case for the relaxation of the rule against raising new point for the first time in this court. Consequently, I hold that ground 3 is incompetent and I hereby strike it out.

QUESTION 2 -Jurisdiction of the court:

The appellant questions the jurisdiction of the trial High Court, and indeed that of the Court of Appeal, to adjudicate in this matter in view of the provisions of section 1(2)(a) & (b) of the Federal Military Government (Supremacy and Enforcement of Powers) Act Cap. 137 of the Laws of the Federation of Nigeria, 1990, which provides:

“(2) It is hereby declared also that-

(a) for the efficacy and stability of the government of the

Federal Republic of Nigeria; and

(b) with a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria -

B *(i) no civil proceedings shall lie or be instituted on any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Act or Law and if any such proceedings are instituted before, on or after the commencement of this Act the proceedings shall abate, be dis-*
C *charged and made void,*

(ii) the question whether any provision of chapter IV of the Constitution has been, is being or would be contravened by anything, done or proposed to be done in pursuance of any Act or a Law shall not be inquired into in any court of law and, accord-
D *ingly, no provision of the Constitution shall apply in respect of any such question.”*

Again, this point was never raised in either of the two courts below and it is only being raised for the first time in this court. In view, however,
E that the complaint relates to the jurisdiction of the trial court and as the question of jurisdiction can be raised at any stage of the proceedings, even on appeal, I think this complaint should be entertained.

The pith of appellant’s argument is that by virtue of section 1(2) of Cap 137, the two Courts below would have jurisdiction to en-
F tertain plaintiff’s suit which, in effect, is questioning the power of the Military Governor to revoke a right of occupancy under the Land Use Act. It is argued that Cap 137 ousted the court’s jurisdiction.

I find no substance in appellant’s submissions. As Taylor, CJ held in
G *Harriman v. Colonel Mobolaji O. Johnson (1970) ANLR 503*, the words used in Decree No. 28 of 1970, the precursor of Decree No. 13 of 1984 (now Cap. 137) are not words of ouster of jurisdiction. The learned Chief Justice said at pages 509-510 of the report, and I agree with him:

H *“The words used in Decree No.28 and on which learned counsel for the applicant relies are not words of ouster of jurisdiction, but words which make it clear that any decision shall be null and void. To constitute an ‘ouster of jurisdiction’ the words used must be such as to affect and deal with the entertaining of the action as opposed to words dealing with the effect of a decision given in*

such action. I must and do hold, therefore, that there is no ouster of jurisdiction by virtue of Decree No.28 of 1970"

Though section 1(2)(b) of Cap. 137 is not on all fours with section 1(2)(b) of Decree 28 of 1970 titled Federal Military Government (Supremacy and Enforcement of Powers) Decree, it is nevertheless my humble view that it is a misconception of Cap. 137 that it ousted the jurisdiction of the courts; the section contains no ouster words. Section 1(2)(b) of Decree 28 of 1970 rendered null and void the decision of any court given either before or after the promulgation of the Decree which -

(1) declared or purported to declare invalid any Decree or Edict; or

(2) declared or purported to declare any government of the Federation incompetent to make the Decree or Edict.

And for the purpose of the Decree, 'decree' or 'edict included any instrument made by or under such decree or edict.

Now, section 1(2)(b) and (3) of Decree No.28170 read:

(2) It is hereby declared also that -

(b) with a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federation, any decision whether made before or after the commencement of this Decree, by any court of law in the exercise or purported exercise of any powers under the Constitution or any enactment or law of the Federation or of any State which has purported to declare or shall hereafter purport to declare the invalidity of any Decree or of any Edict (in so far as the provisions of the Edict are not inconsistent with the provisions of a Decree) or the incompetence of any of the governments in the Federation to make the same is or shall be null and void and of no effect whatsoever as from the date of the making thereof'

"(3) *In this Decree -*

(a) *"decision" includes judgment, decree or order of any court of law, and*

(b) *the "reference to any Decree or Edict includes a reference to any instrument made by or under such Decree or Edict."*

This court in interpreting the above provision of Decree No. 28/70, seemed to uphold the view of Taylor CJ above. In *A. Adejumo v, H.E.*

3392 Nig. Eng. Works Ltd. v. Denap Ltd. (2001) 12 KLR Ogundare JSC
Col. M. O. Johnson, Military Governor of Lagos State (1972) 3 SC 47,
57; (1972) ANLR 164 at 173, 174, this court sitting as a full court had
per Coker, J.S.C. held:

“We are not in any doubt as to the meaning and effect of
the Federal Military Government (Supremacy and Enforcement of
B Powers) Decree 1970 (No.28 of 1970). We think that briefly speak-
ing that Decree consists of two parts or divisions; the first part
including the preamble ends at section 1 (1). That section con-
C firms the preamble and gives it legislative effect. The second part
consists of section 1(2) to the end of Decree and that part is de-
signed to ensure that ‘any decision by any court of law which has
purported to declare or shall hereafter purport to declare the in-
validity of any decree or of any Edict.shall be null and void
..... By virtue of the provisions of Decree No. 28 of 1970
D one can only attack an Edict If it is inconsistent with a Decree and
as by virtue of section 1(3) of Decree No. 28 of 1970 an instru-
ment made by or under an Edict is given the same protection as
the Edict under which the instrument is made, the same principle
must apply to the instrument as would apply to the Edict itself
E Once the instrument as here is stated to have been made under an
Edict, it seems to us that by virtue of the provisions of Decree No.
28 of 1970 one cannot attack it in any way other than one could
attack the Edict itself Thus, if we could assume jurisdiction in this
F matter our judgment in so far as it possessed the tendencies de-
scribed in Decree No. 28 of 1970 would be null and void. This
court, and indeed any other court, should not and would not ex-
ercise in the circumstances. “ (Italics supplied by me)

Section 1(2) of Decree No. 13 of 1984 titled Federal Military
G Government (Supremacy and Enforcement of Powers) Decree (now
Cap. 137 Laws of the Federation of Nigeria 1990) in its true form,
provides:

- “(2) It is hereby declared also that -
H (a) for the efficacy and stability of the government of the
Federal Republic of Nigeria; and
(b) with a view to assuring the effective maintenance of
the territorial integrity of Nigeria and the peace, order and good
government of the Federal Republic of Nigeria -

(i) no civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void. B

(ii) the question whether any provision of Chapter IV of the Constitution has been, is being, or would be contravened by anything done or proposed to be done in pursuance of any Decree or an Edict shall not be inquired into in any court of law and, accordingly, no provision of the Constitution shall apply in respect of any such question.” C

It is to be observed that this section does not contain words ousting the jurisdiction of the court. What it prohibits is the institution of any civil proceeding that calls in question any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict. And if any such proceedings have been instituted before or are instituted on or after the commencement of the Decree, such proceedings shall abate, be discharge and made void. To this extent therefore, I do not share the view of the Court of Appeal in *Professor Okeke v. Attorney-General Anambra State & Ors.* (1992) 1 NWLR (Pt.215) 60, (a case cited to us by appellant’s counsel) that section 1(2) of Decree No. 13/84 is an ouster clause. I think the purpose of the Decree is to protect any act of the Military Government done in pursuance of a Decree or Edict from being challenged in an action in court. The act protected must be one that is done within jurisdiction. I cannot subscribe to the view of learned counsel for the appellant that the Decree covers a case such as this where the Governor acted without or in excess of the power given him by a Decree or an Edict. Anything done without or in excess of jurisdiction cannot be an act done in pursuance of a Decree or Edict empowering the act. D E F G

The view I hold accords with the decision of this court in *Adejumo v. Col. Johnson* (supra) in the passage I quoted earlier in this judgment. The instant action, ex facie, does not raise any challenge to any Decree or Edict. H

The plaintiff in Suit PHC/121/86 claimed against the appellant:
“(1) A declaration of the plaintiff’s statutory right of oc-

3394 Nig. Eng. Works Ltd. v. Denap Ltd. (2001) 12 KLR Ogundare JSC
cupancy to the piece or parcel of land lying and situate at Trans-
Amadi Industrial Layout I, Port Harcourt and known as Plot 51B
Trans- Amadi Industrial Layout I, Port Harcourt.

(2) N100,000.00 (One hundred thousand Naira) being
general damages for trespass.

B (3) A perpetual injunction restraining the defendant by itself, its
servants, agents or otherwise howsoever from entering the
plaintiff's said property or ever interfering with the plaintiff in its
possession, occupation, use and enjoyment of its said property"

C This action, ex facie, does not raise any challenge to any De-
cree or Edict. In Suit PHC/328/86, however, he claimed against the
Attorney-General of Rivers State as hereunder:

(i) A declaration that the purported revocation of the
plaintiff's right of occupancy existing in plot 51B Trans-Amadi
D Industrial Layout Port-Harcourt (as evidenced by a Certificate of
occupancy dated 23rd March 1982 and registered as No.23 at
page 23 in volume 99 of the Lands Registry in the office at Port
Harcourt) as contained in Government Notice No.86 dated 30th
April 1986 and published in No. 17, volume 18 of the official,
E gazette of Rivers State of Nigeria dated 29th May 1986, is illegal,
null and void;

(ii) A declaration that the plaintiff's said Certificate of
Occupancy of the aforesaid Plot 51B Trans-Amadi Industrial Lay-
F out (1) Port Harcourt dated 23rd March 1982 and registered as
No. 23 at page 23 in volume 99 of the Lands Registry in the office
at Port Harcourt is still valid and subsisting and has been so valid
and subsisting at all times material to this suit.

(iii) N100,000.00 (one hundred thousand Naira) being
G damages for trespass.

(iv) A perpetual injunction restraining the defendant by
itself, its servants, agents or otherwise howsoever from entering
the plaintiff's said land or ever interfering with the plaintiff in its
H possession, occupation, use and enjoyment of its said land."

What, in effect, the plaintiff is saying in the second action is
that, by revoking his right of occupancy to the land in dispute, the Mili-
tary-Governor acted outside his jurisdiction as provided in the Land

Use Act. This court has held that in such a situation, the court would have jurisdiction to make a declaration on it, notwithstanding section 1 of Decree No. 28 of 1970 - see MP.A. v. Panalpina World Transport (Nig.) Ltd. & Ors (1973) NSCC (vol. 8) 282, 295-296 where Coker JSC delivering the judgment of this court, said:

“Concerning the effect of section 1 of the Federal Military Government (Supremacy and Enforcement of Powers) Decree No.28 of 1970, the learned trial Judge observed in the course of his judgment as follows:

“while I think that these provisions of the Supremacy and Enforcement of Powers Decree No. 28 of 1970 completely ousts the jurisdiction of the court in matters within the contemplation of a decree I do not consider that matters which are not in contemplation of the Decree in question can enjoy the protection which the Supremacy and Enforcement of powers decree gives. In other words I am saying that if by a decree a tribunal is set up the decisions of which are stated under the decree setting it up to be final and the tribunal proceeds to take a decision completely outside or in excess of its jurisdiction, It is my view that this court is in cases properly within its territorial jurisdiction, competent to make a declaration on it.”

We are in agreement with the statement of the law as expressed by the learned trial Judge on this point. The difficulty in the cases is to ascertain whether or not the tribunal or in this case the Arbitration Board acted within or without its jurisdiction as provided in the statute which created it. If it does not then its decision is not a matter within the contemplation of the Decree which created it and, would certainly not enjoy the immunity which the Decree prescribes for its decision. Lack of jurisdiction however arises from a number of other short-falls and is not limited to deciding a matter completely unrelated to the Constitution of the tribunal, or in this case, the Arbitration Board. Adverting again to the Anisminic case (supra), we observe that Lord Pearce had occasion to consider in some the question of lack of jurisdiction of inferior tribunals. At page 233 of the report he expressed himself thus:

“Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions

3396 Nig. Eng. Works Ltd. v. Denap Ltd. (2001) 12 KLR Ogundare JSC
precedent to the tribunal having any jurisdiction to embark on an
inquiry. Or the tribunal may at the end make an order that it has
no jurisdiction to make or in the intervening stage, while engaged
on a proper enquiry the tribunal may depart from the rules of
natural justice; or it may ask itself the wrong questions; or it may
B *take into account matters which it was not directed to take into*
account; thereby it would step outside its jurisdiction. It would
turn its enquiry into something not directed by Parliament and fail
to make the enquiry which parliament did direct. Any of these things
would cause its purported decision to be a nullity.'

C *See also in this connection the observations of Denning.*
J. (as he then was) in the case of Taylor (Formerly Xraupl) v.
National Assistance Board and Anor (1957) p. 101 at pp. 111,
112. (Italics mine)

D There is yet another angle to the issue under consideration.
Decree No. 13 of 1984 was promulgated to protect the Military Gov-
ernment that took over power from the constitutional government on
31st December 1983. The purpose of the Decree is to prevent any
challenge to its decrees and edicts and acts done thereunder. The pur-
E pose, in my respectful view, cannot be to protect the laws made, or
deemed to have been made by the constitutional Governments that
preceded it. The Land Use Act is one of such laws. Though it was
promulgated in 1978 in the era of a Military Government, but by the
F provisions of section 274(1) of the 1979 Constitution, it has become an
Act deemed to have been passed by the National Assembly. The Act
cannot, therefore, be in the contemplation of Decree No. 13 of 1984. I
agree entirely with Wali JCA (as he then was) when in *Kanada v. The*
Governor of Kaduna State & Anor (1986) 4 NWLR 361 a 373, he
G opined:

"It (i.e. section 1(2) of Decree No. 13/84) has the effect of
stopping the institution in any court of any civil proceeding for or
on account of or in respect of any act, matter, or thing done or
H *purported to be done under or pursuant to any Decree or Edict,*
since the inception of the military regime."

(brackets and underlining are mine)

I observe that J.B. Daudu, Esq. was counsel in the case but
regrettably he did not draw our attention to the case in his brief for the

appellant in the appeal on hand. See also *Commissioner for Local Government & Ors v. Ezemuokwe* (1991) 3 NWLR (pt.181) 615 where *Oguntade JCA* (with whom *Uwaifo JCA*, as he then was, and - *Chigbue JCA* agreed on the point) said:

“Decrees Nos. 1 and 13 of 1984 only apply to Edicts of Military Governors made subsequent to 31” December 1983 when the civilian administration was overthrown. There is therefore, no reason whatsoever to say that the said Decrees applied to a Law which had been in force since 1981.”

I, therefore, answer Question 2 in the affirmative.

Question 3 - Validity of revocation of plaintiff's right of occupancy:

The learned trial Judge found:

“In this case the settled facts are that by exhibit ‘A’ dated 26th March 1982 title in the property was vested in the plaintiff with effect from the 1st of January, 1982. Following this the plaintiff made some payments, took possession and carried out such jobs as fencing, taking materials to the site, bringing in water into the premises etc.

By exhibit ‘J’ dated 21st September, 1985 title in the same property was purported to be vested in the 2nd defendant with effect from the 1st of January 1985. In January 1986 the plaintiff was working on the premises when servants of the defendants came to stop them on the claim that plaintiff was in trespass on 2nd defendants land. The plaintiff reacted through its solicitor in Exhibit ‘E’ dated 513/86 to which the defendant replied in Exhibit ‘F’ dated 17/3/86. The plaintiff therefore filed Suit No. PHC/121/86 on the 2413/86 against the 2nd defendant. By a notice dated 30/4/86 and published in the Rivers State of Nigeria Official gazette of 29/5/86 the plaintiff's right of occupancy was revoked on the ground that the plaintiff failed to build and complete development of the plot within two years from the date of the Certificate of Occupancy.

When the plaintiff became aware of this revocation it filed the second suit No. PHC/328/86.”

He then opined:

“On these facts the first and main question is whether the revocation can be justified in law. By virtue of section 28(5)(a)

and (b) of the Land Use Act the Governor has power to revoke a certificate of occupancy for

(a) a breach of the terms which a certificate of occupancy is by section 10 deemed to contain or (b) a breach of any term contained in the certificate of occupancy.

B Since the revocation of a person's statutory right of occupancy deprives the holder of his proprietary right, the provisions of the Land Use Act as to the mode of such revocation must be strictly complied with. And where a revocation was not in the manner and in accordance with the provisions of the Land Use Act such revocation is invalid, null, and void. Every revocation of a person's right of occupancy must be proceeded (sic) by a notice to that effect duly served in accordance with section 44 of the Land Use Act. Where there is non-compliance with this provision as to service of notice the revocation will be null and void. For these principles see *Osha v. Foreign Finance Corporation (supra)* and *A-G Lagos State v. Sowande (supra)*"

D On the issue of revocation of plaintiff's right of occupancy, the learned Judge observed:

"In this case the Military Governor of Rivers State granted the Certificate of Occupancy Exhibit 'J' to the 2nd defendant while the grant to the plaintiff was still subsisting. It was after in May 1986 that the purported notice of revocation was published in the gazette. The plaintiff is a corporate body and so service of the notice must be strictly in accordance with the provisions of section 44(d). The onus is on the defence to plead and prove that the plaintiff was duly served with the notice of revocation as laid down in section 44(d) of the Land Use Act. There was no evidence that such notice of revocation in accordance with section 44(d) of the Land Use Act was served on the plaintiff and consequently there has been no compliance with the provisions of the afore said law." and concluded:

H The result is that the purported revocation of the plaintiff's right of occupancy is null and void."

The Court of Appeal affirmed the findings of the learned trial Judge. These findings have not been challenged, nor shown. in this

appeal to be perverse. On the overwhelming evidence on record in support. I too affirm them. On these findings and on the authority of such cases as *Osho & Anor v. Foreign Finance Corp. & Anor* (supra) I am of the respectful view that the learned trial Judge came to the right conclusion when he declared as null and void the revocation of plaintiff's right of occupancy to the land in dispute. The Court of Appeal was equally right in affirming that conclusion. B

It is submitted on behalf of the appellant that by section 5(2) of the Land Use Act, the grant, by the Military Governor, of a right of occupancy to the appellant in respect of the land in dispute extinguished all previous rights, including that of the plaintiff, over the land. Section 5(2) reads: *"(2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is subject of the statutory right of occupancy shall be extinguished."* D

Support for this submission is placed on the decision of this court in *Saude v. Abdullahi* (1989) 4 NWLR (Pt. 116) 387, 416 per Obaseki JSC and *Debus v. Kola* (1993) 9 NWLR (pt.317) 254, 277 per Ogundare JSC. It is pointed out that there was no claim to set aside the right of occupancy granted to the appellant. There would have been some force in this argument if appellant's right of occupancy had been validly granted. Having held, and rightly too, in my respectful view, that the revocation of plaintiff's right of occupancy was invalid, null and void, the Military Governor could not validly grant a right of occupancy to another person over the same land; the second grant, while the first subsists, must be invalid. An invalid certificate of occupancy would not have the effect of extinguishing all previous rights over the land as envisaged in section 5(2). As *Belgore JSC* put in *Ogunleye v. Oni* (1990) 2 NWLR (Pt.135) 745,773, at the appellant has in its hand is "a piece of paper having no value". Obaseki, Ag. CJN, as he then was, observed in the case at p. 774. F G

"The main issue for determination in this appeal is whether the certificate of occupancy granted to the appellant confers title on the appellant when it was issued by the Military Governor of H

Oyo State in pursuance of a deemed grant under section 34 of the Land Use Act 1978. It should be clear from the provisions of that section that any person without title to a parcel of land in respect of which the certificate of occupancy was issued acquires no right or interest which he did not have before. Furthermore, the certificate of occupancy cannot estop the court from enquiring into the validity and existence of the title the person claimed to possess before the issue of the certificate.”

The fact in *Saude v. Abdullahi* and *Dabup v. Kolo* are not on all fours with the facts in the present case, they, therefore, do not help the appellant. The appellant’s case is made worse by the fact that a certificate of occupancy had been issued by the Military Governor to the appellant and had taken effect long before the Governor published the notice of revocation of the plaintiff’s right of occupancy to the land in dispute. Thus, at the time appellant was given a certificate of occupancy, plaintiff’s right of occupancy had not been revoked by the Military Governor. There cannot exist at the same time two valid rights of occupancy to different persons in respect of the same land. One obviously must be invalid. In this case, it is undisputed that plaintiff’s certificate was valid at the time it was issued to it; that of the appellant must, therefore, be invalid at the time it was issued. And being invalid it cannot enjoy the legal consequences of section 5(2) of the Land Use Act.

From all I have been saying, I must answer question 3 in the affirmative. The final result is that I join my learned brother Kalgo JSC in dismissing this appeal, all the issues canvassed having been resolved against the appellant.

I award N10,000,.00 costs to the plaintiff/respondent.

OGWUEGBU JSC

I had a preview of the judgment just delivered in this matter by my learned brother Kalgo, JSC and I agree with it, and for the reasons stated in the said judgment I would also dismiss this appeal and adopt the orders contained therein including the order as to costs.