

**SUPREME COURT OF NIGERIA**  
19TH OCTOBER, 2001. SC. 136/2000  
**CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI,**  
**E. O. OGWUEGBU, A. I. KATSINA-ALU, U. A. KALGO,**  
**S. O. UWAIFO, E. O. AYoola, JJSC**

ATTORNEY-GENERAL OF ONDO STATE ..... PLAINTIFF  
AND  
ATTORNEY-GENERAL OF EKITI STATE ..... DEFENDANT

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***AFFIDAVITS*** - Conflict resolution - Failure to file better affidavit to contradict defendant's counter affidavit - Means that defendant's story is unchallenged (H1)

***CONSTITUTIONAL LAW*** - State creation - Provision vesting property - On new States - Contracting out of it - Parties cannot contract out of the provision - And cannot contract into it (H8)

***CONSTITUTIONAL LAW*** - State creation - Sharing of assets - Constitutionality of - Plaintiff who is not vested with any property under s. 7(1) of Decree No. 36 - Cannot question constitutionality of steps related thereto (H5)

***ESTOPPEL*** - Conduct - Sharing of assets and liabilities - Which has been settled with the plaintiff as a participant - Plaintiff is estopped from contesting the issue (H9)

***INJUNCTIONS*** - Claim - Nonexisting legal right - Section 7(1) of Decree No. 36 of 1996 - Where no property was vested in the plaintiff under the subsection - It has nothing to protect by way of injunction - arising by operation of the subsection (H6)

***STATE CREATION*** - Immovable property - Vesting of - Decree No. 36 of 1996 s. 7(1) - There is no provision that the new state is not entitled to

*any other immovable property elsewhere - Apart from those provided for under s. 7(1) (H4)*

**STATE CREATION** - *Vesting of properties - Decree No. 36 of 1996 - Provision of s. 7(1) - Vests property stated therein in the new state only (H3)*

**STATE CREATION** - *Vesting of property - By section 7(1) of Decree No. 36 of 1996 - Lacuna - How remedied (H7)*

**STATUTES** - *Interpretation - Duty of the Court - Is to interpret - The words of the lawmaker as used (H2)*

### **FACTS**

By an originating summons the plaintiff State seeks a number of declarations and an order of injunction which are founded on the proper construction of the provisions of section 7(1) of the State (Creation and Transitional Provisions) Act otherwise known as Decree No. 36 of 1996 as it affects the plaintiff State and the Defendant State. By the said Decree the Federal Military Government created six new states including the Defendant Ekiti State which was created out of the former Ondo State. The dispute between the parties (the successor States to the former Ondo State) is with respect to the sharing of property belonging to the Old State.

Whilst Plaintiff is contending that property transferred to the Defendant are limited only to those mentioned in section 7(1) of Decree No. 36 of 1996, that is, any immovable property and any chattel which immediately before the commencement of the Decree was situate in the area comprised in a new state. Defendant claimed entitlement to more property. It claimed that the property of the old Ondo State not covered by s. 7(1) should vest jointly in the plaintiff and defendant until such property were shared out between them in the manner stated in the counter affidavit of the Defendant before the court.

**HELD** (Unanimously dismissing the plaintiff's claims per lead judgment of **KUTIGI JSC**)

***Affidavits - Conflict resolution***

1. The Plaintiff did not find it necessary to file a Further and or Better Affidavit in respect of anything deposed to by the Defendant in its Counter affidavit and or Further Counter Affidavit. The proper and only conclusion therefore is that the Defendant's story remained unchallenged and uncontraverted. It is necessary for the Court to be apprised of all necessary and material facts for it to be able to properly consider the case of the parties which I believe is what the Defendant's Counter-Affidavits are intended to achieve. That much is appreciated because without the Counter-Affidavits herein one cannot even really see what the dispute between the parties is, looking at the Plaintiff's 6 paragraphs affidavit alone. The Counter-Affidavits fortunately provided all the missing links in the Plaintiff's case. That will lead to justice. It is proper. I can therefore safely start by saying that I believe the affidavit evidence in this case there being no conflict to be resolved (see UZONDU VS UZONDU 9 N.W.L.R. (PT.521) 466. (p. 3184 E)

***Statutes - Interpretation***

2. It is certainly a cardinal principle of interpretation that where in their ordinary meaning the provisions are clear and unambiguous effect must be given to them without resorting to any aid internal or external. It is the duty of the court to interpret the words of the law maker as used. Those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited (see for example MAGOR AND ST. MELLOW R.D.C. VS. NEWPORT CORPORATION (1951) 2 ALL E.L.R. 839. (p. 3191 E)

***S. 7(1) vests property stated therein in the new State only***

3. Being guided by the above principles of interpretation, it is not difficult for me to see that the property or properties transferred to the Defendant Ekiti State are as provided for under section 7(1) as set out above. The transfers in this case are to the new State Defendant only. There is clearly

no transfer of any property to the Plaintiff Ondo State, under the subsection. I have strenuously read through the whole of Decree 36 of 1996 over and over again and I am unable to find any provision anywhere, whereby any property or chattel was vested in the Plaintiff as was done B for the Defendant under section 7(1). What I am saying in short is that section 7(1) does not or did not vest, transfer or give any immovable property or chattel anywhere to the Plaintiff as at 30th September 1996 or at any time at all. (p. 3191 G)

C  
***State Creation - Immovable Property***

4. There is equally no provision under section 7 or anywhere in Decree 36 of 1996 that the Defendant is not entitled to any other immovable property or chattel elsewhere apart from those provided for under section 7(1). That will amount to reading into the section or Decree what is D not provided therein. I cannot do that. I repeat that Section 7(1) vested no immovable property or chattel in the Plaintiff anywhere. That being so Claim (i) must therefore fail. It is accordingly dismissed. (p. 3192 B)

E  
***State Creation - Assets Sharing***

5. If as I have held above that the Plaintiff is not vested with any property immovable or movable by section 7(1), it follows that it is not competent F for it to say that any arrangement compromise, decision or resolution made between the parties herein are unconstitutional, null and void, simply because according to the Plaintiff the parties cannot contract out of the provisions of section 7(1). The compromises or decisions or resolutions in this case are not in respect of properties covered by section 7(1), G but in respect of properties not covered or provided for under the Decree and section 7(1) in particular. The same treatment goes for rights, titles or interests in companies incorporated or deemed to be incorporated under the Companies and Allied Matters Act which again are not covered H by section 7(1). (p. 3192 E)

***Injunctions - Claims***

6. Claim (iv) clearly in my view presupposes that the Plaintiff has prop-

erties movable and or immovable vested in it by section 7(1). I have already found that no such property was ever vested in it under the subsection, it follows therefore that it has nothing to protect by way of injunction against the Defendant as arising by operation of the subsection. Claims (ii), (iii) and (iv) also fail. I hereby dismiss each and every- B one of them. (p. 3192 G)

***Vesting of property under s. 7(1) - Lacuna***

7. Clearly section 7(1) vests certain properties in the Defendant. It did not vest anything in the Plaintiff. So when the plaintiff realised this, if it C was a realization at all, the remedy in my view lay in an amending Decree and not by reading the clear provisions of section 7(1) up side down or by trying to insert or smuggle in the plaintiff into the subsection. That is not permissible (see LONDON TRANSPORT EXECUTIVE VS BETTS D (Supra). (p. 3193 A)

***Constitutional Law - Provision vesting property***

8. I agree with Chief Williams that in law no government or individual E can contract out of the provisions of the Constitution. But I make bold to say that is if you are a party to the provision of the constitution in question. The case before us here is not that of "contracting out" but rather that of "contracting in". Section 7(1) vests no property in the F plaintiff anywhere and it will be wrong and unacceptable to give it that meaning which the Plaintiff seeks in this suit. Just as the parties cannot contract out of the provisions of section 7(1) as far as the properties into" the subsection which vested nothing in it by claiming that it vested something in it. The Plaintiff must not be allowed to "contract in" when G it has been clearly "contracted out." (p. 3194 B)

***Estoppel - Conduct***

9. I venture to say that the provisions of section 7(1) are not exhaustive, H and to declare the works or decisions of the Assets and Liabilities Sharing Committee as unconstitutional, null and void as the plaintiff would want us to do, will in my view be tantamount to an act of subversion

considering that we have had these Committees since States were first created in this country in 1967. It will result in chaos and confusion all over the country. That must not be allowed to happen. The Plaintiff is certainly estopped or precluded from contesting the issue of the sharing of assets and liabilities of the old Ondo state which had long been settled with it as a participant. (See LADEGA & ORS VS. DUROSIMI & ORS (1978) N.S.C.C. 175. (p. 3197 B)

**NOTABLE POINTS OF INTEREST**

**KUTIGIJSC**

*1. Suit that is a manifestation of bad faith*

In conclusion the plaintiff's claims are hereby all refused. They are dismissed. I shall make no order as to costs the parties being sisters and brothers from time preceding the creation in my view even of the old Western Region of Nigeria by the white men. They will remain as sisters and brothers especially now that they have to run certain companies or ventures, jointly together. This is to be encouraged. It is quite possible that this suit which should never have surfaced in the first place, was merely a manifestation of what, if you may pardon me, may be called "executive psychosis" on the part of the Plaintiff, which I hope should have by now subsided! Did I hear you say why or how? If not, then how do you explain it? The evidence is that the Plaintiff was also given the equivalent of what the Defendant got by virtue of the provision of section 7(1) (ibid) through the Assets and Liabilities Sharing Committee amongst others. Why then file this suit? To deny the Defendant everything? Or do you just call it bad faith? And you will be right! I leave it there. (p. 3197 D)

**KARIBI-WHYTE JSC**

*2. Interpretation of constitutional provisions*

In the construction of constitutional provisions the general principles of interpretation of statutes are properly applicable. See Rabiu v The State (1986) 8-11 SC. 130. It is a well established and cardinal principle of interpretation that where the ordinary plain meaning of the words used in

a provision are clear and unambiguous effect must be given to the words without resorting to any extrinsic aid, See Awolowo v. Shagari (1979) 6-9 SC. 51, Lawal v G. B. Ollivant (1972) 3 SC. 124. The solemn and sacred duty of the Court is to interpret the words used in the Section by the legislation and give to them their intended meaning and effect. - See Adejumo v. Governor Lagos State (1972) 3 SC. 45. B

Where the provision sought to be construed is a section of the Constitution, this Court has decided upon the observance of and adherence to additional principles of construction to safeguard the intention expressed in the provision. For instance the courts are enjoined to approach the construction of provisions of the Constitution liberally. By this it is meant to construe where the question is as to whether the expression used in the Constitution should be applied in the wider or narrower sense, the Court should whenever possible and in the interest of justice lean to the broader interpretation, unless there is something in the text or the rest of the Constitution indicating that the narrower interpretation will best carry out the objects and purposes of the Constitution. - See Rabiu v. The State (1980) 8-11 SC. 130. .... (p. 3203 C) D E

### **OGWUEGBU JSC**

*3. Where properties not mentioned in S.7(1) of Decree No. 36 of 1996 are vested* F

In the circumstances, properties not mentioned in section 7(1) belonging to the former Ondo State are not vested in the new Ondo state or Ekiti State. Their devolution was not provided for in the Decree and they became vested in the two new States created out of the Old Ondo State until shared between them. See Olowofoyeku v. Attorney-General, Oyo State & Ors. (supra). (p. 3214 F) G

### **UWAIFO JSC**

*4. An order of injunction that is bound to foment chaos* H

The order of perpetual injunction sought as relief (iv) is to restrain Ekiti State and all its functionaries, officers, servants or agents from occupying or making use of or exercising any proprietary right in or over any

immovable property or chattel owned by the Ondo State (which I must regard as the former Ondo State although the plaintiff seems erroneously to put itself in that status quo ante) located either outside the geographical area of the two successor States or in the geographical area of Ekiti State but not held by an appropriate body corporate, except with the consent of the plaintiff, i.e. the new Ondo State. From what I have said already, the plaintiff is not entitled to such an injunction. But I must add that no legislation or constitutional provision could ever be intended to create a condition for such an injunction to be claimable without the most unimaginable chaos and provocation being fomented. The scenario would be that the Chief Executive of Ekiti State (i.e. the Governor) would have to seek the consent of the Governor of Ondo State to establish his office building and the Government House. So will similar consent be sought for the Chief Judge and Judges, Hospital and School Authorities, and Local Government Authorities before they can operate, and even for markets to function! This will be the same situation in the other five areas where States were created under Decree No. 36 of 1996. I cannot believe anyone would contemplate this situation being allowed to exist. (p. 3224 H)

### **AYOOLA JSC**

*5. A party who seeks a declaration must do so in clear terms*  
If a liberal construction of the declarations sought is taken, it seems to me that the plaintiff relies on reasoning by implication in order to get to the conclusions he invites this court to reach. A party who seeks a declaration must do so in clear terms and directly without resort to implications. (p. 3228 A)

### *6. What a State means*

A state is first and foremost a community of persons in political association exercising jurisdiction and authority within defined borders. In a federation the community as described above is recognised as a federating unit sharing with the central government powers within a larger state. (p. 3229 C)



*7. The implication of creating new States*

When the composition of the community comprising a state changes as fundamentally as in this case by a redefinition of the areas comprising the state, it will be legalism carried to rather absurd limits to hold that the old order remains. What is real is that the old state is dissolved and new entities are created, none of them representing, and exclusively succeeding to the assets and liabilities of, the dissolved state. That conclusion is consistent with the purposes of state creation in this country, one of which is to "enhance the structure of political and social mobilisation" and to "bring about a better spread of major development centres in the country". A new State can hardly be a development centre when it goes away empty handed without a share of the assets it had contributed to build and with loss of right of ownership over immovable properties in its own territory, some of which, I presume, it may have been using for the purposes of the State. (p. 3229 D)

**REPRESENTATION**

Chief F.R.A. Williams SAN (with him Professor A.B. Kasunmu SAN and T.E. Williams Esq) for the plaintiff.

Obafemi Adewale Esq, Attorney-General Ekiti State (with him Chief R.M. Esan SAN, C.I. Akintayo Esq, Solicitor-General Ekiti State, L. B. Ojo Esq, Director of Civil Litigation, and Yinka Esan Esq) for the defendant.

**STATUTES REFERRED TO**

States (Creation and Transitional Provisions)1996 (Decree No. 36 of 1996) S. 7(1)

**CASES REFERRED TO**

ATTORNEY-GENERAL OF BENDEL STATE VS ATTORNEY-GENERAL OF THE FEDERATION (1981) 12 NSCC 314 at 338

OJO AJAO & ORS VS OPAOLA ALAO & ORS (1986) 5 N.W.L.R. 800

RAIMI OLORIEGBE VS. OMOTOSHO (1993) 1 N.W.L.R 386

ATTORNEY-GENERAL OF ANAMBRA STATE VS ATTORNEY-GEN-

3170 A-G Ondo State v. A-G Ekiti State (2001) 10 KLR Kutigi JSC  
 ERAL OF THE FEDERATION (1993) 6 N.W.L.R (pt 302) 692 at 726,732  
 EGUAMWENSE VS AMAGHIZEMWEN (1993) 9 N.W.L.R (PT. 315)  
 1 at 35.  
 OYEKU VS ATTORNEY GENERAL OF OYO STATE (1996) 10 N.W.L.R  
 (PT. 477) 190  
 B OLAREWAJU VS GOVERNOR OF OYO STATE (1992) 9 N.W.L.R (PT.  
 260) 335 at 362  
 EZEGBU VS F.A.T.B. LTD (1992) 1 NWLR (PT. 220) 699 at 274  
 ARUBO VS AIYELERU (1993) NWLR (PT. 280) 126 at 142  
 C OKORODUDU VS OKOROMADU (1973) 3 SC. 21.

### **LEAD JUDGMENT BY KUTIGI JSC**

By an Originating Summons the Plaintiff seeks for the determi-  
 D nation of the following:-

"(i) A *DECLARATION* that by virtue of section 7(1) of the  
*States (Creation and Transitional Provisions) Act 1996* (hereinafter re-  
 Eferred to as the 'Act') ALL immovable properties and chattels owned by  
 the Plaintiff as at 30th September, 1996 remain vested in and owned by  
 the Plaintiff after that date to the exclusion of the Defendant with the  
 ONLY exception of those immovable properties and chattels that as at  
 the said 30th September, 1996 were held by a body corporate directly  
 F established by a legislation of Ondo State and were situate in the geo-  
 graphical area of Ekiti State.

(ii) A *DECLARATION* that any agreement or arrangement  
 reached or made between officials or other functionaries of the plaintiff  
 and the Defendant in whatever capacity, and any resolution and/or deci-  
 G sion taken, or compromise reached in whatever form between the parties  
 herein, which contradicts or is inconsistent with the provisions of Section  
 7(1) of the Act is unconstitutional null and void and of no effect whatso-  
 ever.

H (iii) A *DECLARATION* that the Defendant has no right title or  
 interest in shares owned by the Plaintiff as at 30th September 1996 in any  
 company incorporated or deemed to be incorporated under the *Compa-  
 nies and Allied Matters Act*.

(iv) *An order of perpetual injunction restraining the Defendant and all its functionaries, officers, servants or agents whomsoever from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by the Plaintiff as at 30th September 1996 and -*

(a) *located outside the geographical area of Ondo State and Ekiti State as at the said 30th September 1996.*

(b) *located in the geographical area of Ekiti State but not held by a body corporate directly established by a legislation of Ondo State, except with the consent of the said Plaintiff."*

The Summons was supported by a six -paragraph affidavit sworn by one Adegboyega Adebuseye, a civil servant. It reads as follows

"1. *That I am the Director of Civil Litigation of the Ministry of Justice in Ondo State.*

2. *On 1st October, 1996, Ekiti State was created by States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the "Act").*

3. *At all times material to this action and before the creation of Ekiti State the plaintiff owns immovable properties as well as chattels located within what is now the geographical area of Ekiti State. In addition the Plaintiff also owns immovable properties as well as chattels outside the geographical areas of Ondo State and Ekiti State.*

4. *Furthermore, as at 30th September 1996, the Plaintiff owned and still owns Shares in companies incorporated or deemed to be incorporated under the Companies and Allied Matters Act such as Ondo State Investment (Holding) Co. Limited and Omega Bank (Nigeria) Plc.)*

5. *Some of the corporate bodies established directly by the legislation of Ondo State own immovable properties and chattels which, as at 30th September 1996 were located in Ekiti State and in Ondo State, and also outside both States.*

6. *That I swear to this Affidavit in good faith believing the H same to be true and correct."*

The Defendant entered appearance and filed a 22 - paragraph Counter-Affidavit sworn by one Lawrence Ojo a civil servant to which

seven (7) exhibits were attached. A Further Counter -Affidavit sworn by one Chief Raphael Makajuola Esan, S.A.N., legal practitioner was also filed later to which again were attached other four (4) exhibits. I consider paragraphs 4-19 of the Counter-Affidavit very relevant. They read

B as follows:-

"4. That Ekiti State was created out of the old Ondo State on 1st October 1996.

C 5. That to facilitate the smooth take off of the new State the Federal Government constituted a committee on the sharing of assets and liabilities between Ekiti and Ondo States. The letter dated 8th November, 1996 intimating the plaintiff of this is herewith attached and marked as exhibit EK1.

D 6. That consequent upon the above, the Government of Ondo and Ekiti State constituted a joint committee on the sharing of the Assets and liabilities of the Ondo State. The list of the Committee members is hereby attached and marked as Exhibit EK2.

E 7. That a sharing formula of 53.87%: 46.13% to Ondo and Ekiti States respectively was agreed upon and approved by the Federal Government in the sharing of the assets and liabilities of the old Ondo State. The letter dated 11th February 1997 is herewith attached and marked as Exhibit EK3.

F 8. That the above sharing formula was executed in relation to moveable properties within the States.

9. That it was jointly agreed that the companies fully owned by the former Ondo State shall be jointly managed by the parties.

G 10. That the parties also agreed that shares in subsidiary and associated companies shall be held by each State in accordance with the approved sharing formula.

H 11. That consequent upon paragraphs 9 and 10 above a joint committee on the two States. The committee comprised the Commissioners of Finance of the two States, their Commissioners of Commerce, Attorneys-General and Commissioners of Justice and the Secretaries to the Governments of the two States.

12. That the above committee on Public Undertakings submit-

*ted its report and the two States decided that a managing Agency called ODEK Investment Limited should manage the companies recommended for continued joint ownership and management by the two States.*

13. *That when the plaintiff was in breach of the decision of the two States as regards the Public Undertakings, the defendant instituted an action at the Federal High Court Akure in Suit No. FHC/AK/CS/6/2000. The writ of summons and the statement of claims are herewith attached and marked as Exhibit EK4.*

14. *That the plaintiff in reaction to paragraph 13 above raised an objection to the competence of the Federal High Court Akure in determining the rights of parties as to the ownership of the public undertakings jointly owned by the parties as at 30th September, 1996 and the objection was dismissed by the Federal High Court.*

15. *That not satisfied with the ruling of the Federal High Court in that case FHC/AK/C5/6/2000 the plaintiff appealed to the Court of Appeal sitting at Benin City. The Notice and ground of appeal is herewith attached and marked as Exhibit EK5.*

16. *That the Defendant has also filed an application for the winding up of the companies jointly owned by the two States due to the oppressive attitude of the Plaintiff in the administration of the Companies. The Petition Suit FH/AK/M/13/2000 is herewith attached and marked as Exhibit EK6.*

17. *That the Plaintiff has deliberately failed to disclose these cases pending at the Federal High Court Akure Ondo State and the Court of Appeal Benin City to this Honourable Court.*

18. *That the Honourable Attorney General of Ekiti State told me and I verily believe him that the action of the plaintiff is intended to preempt the outcome of the action already pending at the Federal High Court.*

19. *That the summary of recommendation of Ondo and Ekiti States Assets and Liabilities sharing committee to the Assets and Liabilities sharing committee set up by the Federal Government is hereby attached as Exhibit Ek7.*

The following paragraphs of the Further Counter Affidavit are

also in my view relevant. They are:-

"1. That I am a former Attorney-General for Ondo State having served in that capacity from January, 1994 till 30th September 1996.

2. That upon the creation of Ekiti State on 1st October, 1996, I  
B served the new State as its first Attorney-General and Commissioner for Justice from 1st October, 1996 till 21st November, 1997 when I left the service to return to my professional practice.

3. That because the government of Ekiti State had seven Minis-  
C tries on inception and there were four Commissioners of Ekiti State Origin serving in the seven Ministries, I also functioned as Commissioner for Education, Ekiti State from 1st October, 1996 till 21st November, 1997.

4. That between November, 1996 and November, 1997, I was  
D also the leader of the Ekiti team on the Joint Assets and Liabilities sub-committee responsible to the Federal Government Assets and Liabilities Committee and I was involved in the exercise of sharing of the Assets held by the Old Ondo State as at 30th September, 1996 between the plaintiff  
E and defendant.

5. That in all these capacities, I became very familiar with the facts and circumstances relevant to this case.

6. That I have the authority and consent of the government of  
F Ekiti State to swear to this affidavit in further opposition to the claims of the plaintiff in the case.

7. That the defendant was created out of what used to be known as Ondo State by announcement by the Head of State Commander in Chief of the Armed forces to the Federal Republic of Nigeria, General  
G Sani Abacha in his broadcast to the nation 1st October 1996.

8. That subsequently a Decree was promulgated by the Federal Military Government headed by General Sani Abacha to give legal backing to the creation of Bayelsa, Ekiti, Gombe, Nasarawa and Zamfara  
H States.

9. That following the creation of the states, Military Administrators were appointed for the new states and sworn in by the Head of State and Commander-in-Chief of the Armed Forces.

10. *That on 13th October, 1996, the new Military Administrator for Ekiti State Lt. Col. Mohammed Inua Bawa arrived Akure and was met on arrival by the Military Administrator for Ondo State, Navy Captain Anthony Onyearugbulem, who introduced the four Commissioners in his cabinet from Ekiti State, (including myself) to him as those who would join him in forming the foundation of the new administration in Ekiti State.*

11. *That the two Administrators formally met the members of the cabinet of the Ondo State and at that meeting, Navy Captain Onyearugbulem in my presence assured the New Administrator of Ekiti State that in view of the policy of the Federal Military Government not to give new states any take off grants, he would make available to the Ekiti State Administrator sufficient proportion of the human and material assets of the Old Ondo State to enable him have a smooth take off pending the formal arrangements for the sharing of the assets of Old Ondo State between Ondo and Ekiti State for which the Federal Military Government promised to set up its own Assets sharing committees for each of the New States and the Old States from which they were created.*

12. *That in my presence, Col. Mohammed Inua Bawa, the Administrator for Ekiti State thanked Navy Captain Onyearugbulem for his encouraging words complaining about the new policy of not giving take-off grants and expressing hope that the promised early setting up of committee to share assets between the old and new states would be carried out expeditiously.*

13. *That in keeping with this promise, Navy Captain Onyearugbulem made available necessary human resources by the deployment to Ekiti State of personnel necessary for immediate take-off of Ekiti State, mostly indigenes of the new state.*

14. *That furthermore, he directed that some movable assets, including cash, vehicles, office furniture and equipment be made available to Ekiti State and proper inventory thereof taken so that they could be taken account of when the Assets and liabilities Sharing Committee arrived to do its work.*

15. *That later in October, 1996 the head of State and Com-*

*mander-in-Chief of the Armed Forces of the Federation of Nigeria set up a committee of five persons to inter alia "articulate acceptable formula for the sharing of all assets and liabilities between the affected States."*

16. That the same committee was assigned the responsibility of sharing the assets of River and Bayelsa States as well as Ondo and Ekiti States.

17. That Air Commodore A. Salihu was the Chairman of the Committee while Dr. Adamu M. Fika was the Secretary and the other members were M.B.A.Mbah, Hajia Aisat Abduraman and Engineer S.A. Ashon Imerea.

18. That on the 18th of November, 1996, members of the Committee arrived at Akure and held an inaugural meeting with the Administrators of the two states at the Ondo State Executive Council Chambers. I and other members of the Executive Councils of Ondo and Ekiti States as well as the secretaries of the Governments of the two States were in attendance.

19. That on that day the Federal Assets and Liabilities Sharing Committee gave guidelines covering all conceivable assets to be shared which guidelines were attached to their letters to the Administrators a copy of which has been attached as Exhibit EK 1 to the affidavit of L. B. Ojo sworn to on 2nd August, 2000.

20. That during the Assets and Liabilities sharing Exercise, a copy of the gazette Containing the Decree, 1996 was available to guide the Federal Assets and Liabilities Sharing Team and the Joint Committee of the two states on the items to be shared and the ones to leave out.

21. That the Joint Committee discussed in particular the provisions of section 7(1) of the Decree and sought clarification as to the intention of government committee members.

22. That the Chairman of the Assets and Liabilities sharing committee told us that the Intention of Government as outlined to the committee by the Head of State was that all immovable assets and chattels of all Statutory corporations, i.e. all bodies created by the laws of Ondo State before 30th September, 1996 should be shared to the state where it was located at that date so that those in Ekiti Area would remain



in Ekiti State while those in Ondo Area would remain vested in Ondo State.

23. That at the Joint Committee level, I and the Attorney General of Ondo State also explained to the other members of the committee that in the sharing of the assets of all Statutory Corporations created by B and under the laws of Ondo State, we were to ensure that those immovable assets and chattels located within Ekiti State up to 30th September 1996 would remain vested in Ekiti State while those in Ondo State area would remain vested in Ondo State.

24. That this provision and the explanation of the intention of C government in enacting it as well as its interpretation as given to the committee by the Attorney General of the two states guided the work of the joint Assets and Liabilities Committee and its Technical sub-committee which ensured due compliance with it, even when compliance with it D distorted the sharing ratio agreed by the committee, and directed to be applied and actually applied to other assets outside those of these Statutory Corporations.

25. That some of the Statutory corporations which were given E special treatment in the sharing of their assets because of the provisions of section 7(1) of Decree No. 36 of 1996 were:-

(a) The Ondo State Housing Corporation where its Housing Estates at Oke-Ila, Ado-Ekiti was taken over by the Ekiti State while its F estates at Ijaro and Oba-Ile in Akure remained vested in Ondo state irrespective of the values of the assets vis-a-vis the agreed sharing formula.

(b) The Ondo State Primary Education Board in which the small Area office in Ado became the take off office of the Ekiti State Primary G Education Board while the gigantic building housing its state headquarters at Akure remained vested in the Ondo State government without the relative values of the assets being taken account of for the purpose of their sharing.

(c) The Ondo State Library Board which had its Branch library H at Ado Ekiti vested in Ekiti state while the headquarters library at Akure and other branch libraries elsewhere in Ondo State became vested in Ondo State without any regard to their values vis-a-vis the sharing for-

mula.

(d) *The Ondo State Civil Commission which had all its immovable property at Akure and all of them remained vested in Ondo State without regard to the sharing arrangement in respect of others assets of the Ondo State Government apart from Statutory Corporations.*

(e) *The Ondo State Health management Board which had all its hospitals health centres training institutions and zonal offices in Ekiti State and all the equipment therein vested in Ekiti State while all those in Ondo State and all Ondo state remained vested in Ondo State without regard to their relative values vis-a-vis the sharing formula.*

(f) *The Ondo State Teaching Service Commission which had all its immovable properties in Ondo state and none in Ekiti State had nothing to vest in the government of Ekiti state irrespective of the sharing arrangement.*

(g) *The Ondo State Local Government Service Commission had its head office Akure and offices or other immovable properties in Ekiti State and the Ekiti State government had nothing vested in it while all the immovable property situate in Ondo State remained vested in the government of Ondo State irrespective of the sharing arrangement in respect of other assets.*

(h) *The Ondo State afforestation Project Multi-billion naira industry, being a project established by a law of Ondo State in collaboration with foreign bodies including the World bank had all its industrial establishment, forest reserves and offices at Epemakinde in Ondo State and no immovable or other assets in Ekiti State and all these remained vested in Ondo State with nothing shared to Ekiti In spite of the sharing arrangement for assets and liabilities.*

(i) *The Ondo State Agricultural Development Project had its head office at Akure and zonal offices at Owo, Ondo, Ikare, and Okitipupa in Ondo state as well as Ado-Ekiti and Ikole in Ekiti state. The immovable assets in Ekiti state were vested in the government of Ekiti state while all the immovable assets in Ondo State remained vested in Ondo State irrespective of their valuation vis-a-vis the sharing formula.*

26. *That in all these instances of properties of Statutory corpo-*

*rations, the government of Ekiti state raised issues with the Federal Government assets sharing committee members and the Ondo State representative on the joint Committee about the lopsidedness in the relative values of the assets of these Statutory corporations with most of them in Ondo State and very little in Ekiti State but the Federal Assets sharing committee and the Ondo State Representatives on the committee maintained that there was nothing that could be done about it in view of the provisions of section 7(1) of Decree No. 36 1996 and the guide lines issued by the Federal Government to implement the Decree in respect of Statutory corporations.*

27. *That the plaintiff in this case, the Attorney-General of Ondo State was a member of the joint committee which took the decisions and so was the Director of civil litigation of Ondo State who is the deponent of the affidavit in support of this summons.*

28. *That the federal Assets and liabilities committee and the joint committee comprising representatives of Ondo and Ekiti States gave the statutory bodies created by and under the law of Ondo State a special treatment in the sharing of the assets and liabilities of the government of Ondo State in obedience to the provisions of section 7(1) of Decree No. 36 of 1996 and carried out detailed sharing of other assets without such special treatment as was accorded to those of the statutory bodies.*

29. *That in relation to the assets of Limited Liability companies, the Federal Government appreciated that the interests of Ondo State in them were to be shared within the provisions of Decree No 36 of 1996 and gave guidelines for the sharing which was carried out by the Federal Assets and Liabilities sharing committee and the two states with the assistance of a consultant, appointed by the joint committee as reflected in Exhibit EK 2 to the counter-affidavit of L. B. Ojo.*

30. *That the consultant who carried out the exercise on behalf of both states and made recommendations which guided the decision of the committee was an indigene of Ondo State.*

31. *That the terms of the sharing arrangement were respected and implemented by the two states until the civilian administration came into office and the Ondo state government excluded the nominees of*

*Ekiti State from participation in the running of the companies, and there was disagreement on the running of Tertiary Institutions.*

32. *That for the purpose of implementing the decisions of the Assets and Liabilities Sharing Committee, ministerial committees comprising equal representatives of Ondo and Ekiti States were set up at the level of each ministry to effect the physical sharing and these committees made detailed returns to the Joint Assets and Liabilities Committee.*

33. *That all the shared items were immediately taken over by the states to which they were shared and such items as Alum and chlorine for water treatment, school chalks, Agricultural chemical, typing Sheets, Computer papers, Duplicating Ink and papers, Photo-copying papers, Drugs and Dressing, Petrol, Diesel, Lubricants, Carbon papers, etc. were shared and each state has since used up these consumables.*

34. *That such item of equipment as motor vehicles, office Typewriters, Duplicating machines, Architectural Drawing Boards. Computer sets and software, generating plants, survey equipment, Library books, hoes, cutlasses, tractors, commercial buses, trailers, motorcards, including those in Saudi Arabia and Jerusalem for pilgrimages and at the Liaison offices in Lagos, and Kaduna have since been shared and used by the states to which they were given.*

35. *That at the end of the exercise, all the members of the Joint Committee expressed satisfaction with the exercise in their report to the Military administrators of the two states as shown in Exhibit EK 2.*

36. *That the Joint Committee headed by the Ondo State Commissioner for Finance and having its Attorney-General and its Secretary to the Government as members said at page 9 of its report:*

*"We are happy to place on record that the exercise which started on an acrimonious note, with both sides maintaining extreme positions on issues, has ended on a very happy, co-operative and collaborative posture, as reflected in the recommendation on the Tertiary Institutions, Companies and some other area of joint endeavours.*

37. *That in concluding their report, the Joint committee comprising key functionaries of the two states wrote:*

*"We are convinced that the recommendation contained in this*

*report on some of our Public Undertakings and Ventures could form the basis of continuing socio-political harmony between the two state."*

38. *That the governments of the two states accepted the recommendations and faithfully executed it until sometime late in 1999 when disagreements surfaced in connection with the management of Ondo state Investment Company and its subsidiaries.* B

39. *That the plaintiff did not disclose to this Honourable court the following facts about the issues involved in this case in relation to the limited liability companies which is leg (iii) of its claim before this court.* C

(a) *That there is a pending litigation between the two States in respect of the shares held by Ondo state in companies incorporated under the Companies and Allied Matters Act; as at 30th September 1996.*

(b) *That the plaintiff herein has contended in that case that the Federal High Court before which that case is pending has no jurisdiction to hear the matter and that it is the Supreme Court which has such jurisdiction.* D

(c) *That the Federal High Court determined that the matter being one dealing with the management and operation of a company or companies incorporated under the Companies and Allied Matters Act, it is within its jurisdiction to the exclusion of the Supreme Court which it held has not original jurisdiction in the matter, (a copy of the ruling of the court is attached herewith as Exhibit EK 8.* E

(d) *that the plaintiff thereafter appealed to the Court of Appeal where the appeal is still pending (copy of Notice of Appeal has been exhibited to the counter-Affidavit of L. B. Ojo as Exhibit EK 5.* F

(e) *That the plaintiff herein later filed an application for the Federal High Court to refer the matter to the Supreme Court for a decision on the issue of the relative jurisdictions of the Federal High Court and the Supreme Court. A copy of the application is attached herewith as Exhibit EK 9.* G

(f) *That the defendants herein objected to the application for H reference on the grounds that the Federal High Court having decided that it is the proper forum and the appeal on the issue being still pending in the Court of Appeal, it was an abuse of the process of the court to seek*

*reference to the Supreme Court other than through the process of an appeal from the decision of the Court of Appeal.*

*(g) That the Plaintiff withdrew the application only to come to this court to raise the same issue by way of originating summons.*

B *(h) That the plaintiff herein has, in a preliminary objection to the competence of the winding up proceeding before the Federal High Court Akure contended that the defendant herein has no interest in the companies as all the shares belong to it. The court held that the defendant herein had disclosed sufficient interest in the companies to clothe it with locus standi to file a petition in respect thereof. A copy of the ruling is attached herewith as Exhibit EK 10.*

C *(i) That in that court, the plaintiff herein had contended that it was entitled to all the shares in the companies by virtue of section 7(1) of D Decree. No. 36 of 1996 and the court had rejected that contention.*

*(j) That all other issues in relation to other issues in relation to other properties other than the Ondo State. Investment Holding Company and all its Associated or Subsidiary Companies which is subject of E litigation in the Federal High Court had been settled and in most cases each state has got what was shared to it and used it as it wished.*

*(k) That it is the dissatisfaction with the decisions of the Federal High Court that led the plaintiff herein to bring an Originating F summons before this court to determine the issues that have been determined or are still pending for determination before the Federal High Court.*

*40. That in respect of Owena Bank Plc and the Confidence Insurance Plc, both states have their representatives on the Board of the G companies to succeed to the interest formerly held by Ondo State in the companies and when the share capitals were to be increased, both states decided to invest more in the companies to meet up with the equity participation proportion formerly held in the company of Ondo State, vis-a-H vis other subscribers.*

*41. That in respect of properties vested in Ondo state outside Ondo and Ekiti States, there has so far not been any dispute about the sharing of those to be shared and the Joint ownership of the one to be*

jointly owned.

42. That it was decided that both states should jointly protect the interest of Old Ondo state in the Owena Towers which is situated at Bourdillion Road, Ikoyi and being managed by a Developer who procured a loan from a bank now distressed and had a lien on the property B for 12 years.

43. That in furtherance of the decision to jointly own and manage the property, after the creation of Ekiti State, Ondo State requested Ekiti State to join it in the Arbitration proceedings then pending before C the Honourable Justice Akinola Aguda (RTD) and the title of the proceedings was changed to reflect the joint interest of Ondo and Ekiti States.

44. That the Attorney-Generals of the two states jointly fought the arbitration proceedings until an award was made in favour of the two owner states by the Arbitrator. D

45. That when the bill for the fees of the Arbitrator was demanded from Ondo State, it requested Ekiti State to pay its own half of the fees and the Ekiti State paid half of it while Ondo State paid half of the fees as joint owners. E

46. That a report of the decisions of the Ondo/Ekiti States Joint Assets/Liability Sharing Committee on ownership and management of the Investment's of the Old Ondo State is attached herewith as Exhibit EK.11 particularly pages 2-3 and 6-7. F

47. That in respect of the properties jointly owned with other states of the old Western region, it was decided that the interests of Ondo State in the properties be succeeded by both Ondo and Ekiti State under the umbrella of the O'dua Investment Company Limited. This arrangement has enabled the two states to participate equally with the other states of Osun, Ogun and Oyo in the management of the O'dua Investment Holding Company and all its subsidiaries. G

48. That the only other properties held by Ondo State at 30th September, 1996 is the Ondo State wing of Oduduwa House at Victoria H Island, Lagos which houses the Ondo State liaison office in Lagos, the Ondo State Guest House, at Ikeja, Lagos, and the uncompleted building in Abuja.

49. *That in realisation of the fact that these are assets of Ondo State the Federal Assets Committee and the Joint committee shared the Oduduwa House to Ondo State and the Guest House at Ikeja to Ekiti State and both parties have implemented this decision without any dispute. The committee decided that the uncompleted building in Abuja be left for Ondo State while Ekiti State should apply for land in Abuja.*

50. *That I verily believe that from the facts deposed herein the Plaintiff is estopped from contending that all the properties of the Ondo State government held as at 30th September, 1996 should solely be vested in it to the exclusion of Ekiti State.*

51. *That I also verily believe from the facts stated herein that the action as presently constituted will have the effect of preempting the actions now pending before the Federal High Court, Akure and appeal before the Court of Appeal, Benin in relation to the rights of Ekiti State in the shares and the management of all companies registered by Ondo State before 30th September, 1996."*

It should be borne in mind that I decided to reproduce not only the Affidavit in support but almost all the paragraphs of both the

Counter-Affidavit and Further Counter-Affidavit above mainly because they are the evidence on which I can base my judgment. I shall mention too that **the Plaintiff did not find it necessary to file a Further and or Better Affidavit in respect of anything deposed to by the Defendant in its Counter affidavit and or Further Counter Affidavit. The proper and only conclusion therefore is that the Defendant's story remained unchallenged and uncontraverted. It is necessary for the Court to be apprised of all necessary and material facts for it to be able to properly consider the case of the parties which I believe is what the Defendant's Counter-Affidavits are intended to achieve. That much is appreciated because without the Counter-Affidavits herein one cannot even really see what the dispute between the parties is, looking at the Plaintiff's 6 paragraphs affidavit alone. The Counter-Affidavits fortunately provided all the missing links in the Plaintiff's case. That will lead to justice. It is proper. I can therefore safely start by saying that I believe the affidavit evidence in this case**



**there being no conflict to be resolved (see UZONDU VS UZONDU 9 N.W.L.R. (PT.521) 466, AGUNEME VS EZE (1990) 3 N.W.L.R. (PT. 137) 242; AJEWOLE VS ADETIMO (1996) 2 N.W.L.R. (PT. 431) 391) and I shall accord them due weight in the judgment.**

In compliance with the order of court, the parties filed and exchanged briefs of argument. The Plaintiff filed Plaintiff's brief and a Reply brief, while the Defendant filed Defendant's brief. These briefs were adopted by the parties at the hearing of the suit during which time additional oral submissions were made by counsel to amplify the briefs.

The Plaintiff in its brief has made submissions on the four reliefs or claims taken together as contained in the originating summons. The Defendant on the other hand has formulated in its brief ten (10) issues or questions as calling for decisions by this court. I would prefer to adopt the Plaintiff's approach here and go by the reliefs or claims sought. I will endeavour to try to bring under each relief the relevant question or questions posed by the Defendant in respect of that relief. I shall now proceed to do just that. Once again the reliefs sought by the Plaintiffs are:

"(i) *A DECLARATION that by virtue of section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the 'ACT' all immovable properties and chattels owned by the Plaintiff as at 30th September, 1996, remain vested in and owned by the Plaintiff after that date to the exclusion of the Defendant with ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996, were held by a body corporate directly established by a Legislation of Ondo State and were situate in the geographical area of Ekiti State.*

(ii) *A DECLARATION that any agreement or arrangement reached or made between officials or other functionaries of the Plaintiff and the Defendant in whatever capacity, and any resolution and/or decision taken, or compromise reached in whatever form between the parties herein, which contradicts or is inconsistent with the provisions of Section 7(1) of the Act is unconstitutional null and void and of no effect whatsoever.*

(iii) *A DECLARATION that the defendant has no right title or*

*interest in shares owned by the Plaintiff as at 30th September 1996 in any company incorporated or deemed to be incorporated under the Companies and Allied Matters Act.*

(iv) *An order of perpetual injunction restraining the Defendant and all its functionaries, officers, servants or agents whomsoever from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by the Plaintiff as at 30th September 1996 and-*

(a) *located outside the geographical area of Ondo State and Ekiti State as the said 30th September 1996.*

(b) *located in the geographical area of Ekiti State but not held by a body corporate directly established by a legislation of Ondo State, except with the consent of the said Plaintiff."*

D Section 7 Subsection (1) of the States (Creation and Transitional Provisions) Decree No. 36 of 1996 enacts thus:-

"7, (1) *Subject to subsection (2) of this section, any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance than this section, vest in the Military Administrator of the new State concerned and be held by him for purpose of the Government of that state and no compensation shall be payable in respect of any transfer effected by this section."*

G By way of introduction Chief Williams, SAN learned counsel for the Plaintiff said that by Decree 36 of 1996 the Federal Military Government created a number of States including the Defendant, Ekiti State. That Ekiti State was created by carving out the area comprising that State out of the old Ondo state. That by this legislative action, Ondo H State though territorially diminished in size, continued to exist as a juridical entity. That since States comprised in the Federal Republic of Nigeria, were established by the Constitution of the Federal Republic of Nigeria it follows therefore that Decree 36 of 1996 was in reality and in effect

an amendment of the Constitution of Nigeria and became part and parcel of the Constitution. Reliance was placed on Sections 1, 2 & 3 of the same Decree. I completely agree with these preliminary submissions.

Coming to the interpretation of section 7(1) above, Chief Williams submitted that the Subsection transferred property to each of the new States including the Defendant Ekiti State, created by the Decree. He said the properties transferred are limited to those mentioned in the subsection, thus:

*"any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict."*

He said the provisions are clear and unambiguous and that the properties so transferred do not extend to any movable or immovable property directly owned by Ondo State and that they are limited to only properties:

*"held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict."*

so long as such property is located in Ekiti State.

It was further submitted that because the Decree transfers only property "held by a body corporate.....," in the absence of any consideration or material fact which produces some other legal consequences, this Court ought to have no difficulty in entering judgment for the Plaintiff on Claims (i), (iii) and (iv). It was contended that the counter-affidavits filed on behalf of the Defendant to the effect that certain events and or occurrence after the enactment of the Decree had resulted in the sharing of all movable and immovable properties between the parties herein, is untenable because none of the facts and matters contained in the Counter-Affidavits are capable of enabling any person or authority to transfer property vested in Ondo State as at 30th September 1996, to Ekiti State, otherwise than in accordance with section 7(1) above. That

the parties herein cannot contract out of the provisions of section 7(1) relating to the transfer of property to Ekiti State. Accordingly, any decision, agreement or arrangement reached or made between the two States or their agents, which are inconsistent with the provisions of section 7(1) cannot stand. That in the absence of any amendment to the constitutional provisions relating to the transfer of assets to Ekiti State, any agreement or arrangement which are inconsistent with the Constitution as amended which are unconstitutional and void as the governments cannot contract out of their constitutional rights. Consequently, no agreement can be pleaded to operate as estoppel or waiver against the Plaintiff from claiming the reliefs in this suit. The cases of ATTORNEY-GENERAL OF BENDEL STATE VS ATTORNEY-GENERAL OF THE FEDERATION (1981) 12 NSCC 314 at 338 per Fatai-Williams C.J.N., 396 per Eso J.S.C, OJO AJAO & ORS VS OPAOLA ALAO & ORS (1986) 5 N.W.L.R. 800 RAIMI OLORIEGBE VS. OMOTOSHO (1993) 1 N.W.L.R 386 were relied upon.

As I have earlier stated the Defendant in its brief has submitted ten (10) questions for decision by the Court. I will only treat such of the questions as I deem relevant to the reliefs sought by the Plaintiffs and which I feel will lead to a just decision in the case.

On the interpretation of section 7(1) of the Decree above, Mr. Obafemi Adewale learned Attorney-General for the Defendant, submitted that a principle of interpretation is that where the words of a statute are clear and free from ambiguity, they should be accorded their ordinary plain meaning and it will not be necessary to put glosses on them or to read into them meanings which render them artificial. And that if this principle is applied to section 7(1), it will be seen that the Plaintiff was not vested with any property or with any interest in property. That it is only the Defendant that was vested with property or interest in property of statutory corporations located in Ekiti state out of properties of statutory corporations created by the laws of the old Ondo State up to 30th September 1996. Reliance was placed on the case of ATTORNEY-GENERAL OF ANAMBRA STATE VS ATTORNEY-GENERAL OF THE FEDERATION (1993) 6 N.W.L.R (pt 302) 692 at 726,732,

EGUAMWENSE VS AMAGHIZEMWEN (1993) 9 N.W.L.R (PT. 315) 1 at 35.

He said further that the only inference that may be drawn in favour of the Plaintiff is that the properties of statutory corporations which are located in its area, should be vested in it just like those in Ekiti State by operation of section 7(1) (ibid). It was then submitted that all the properties of the old Ondo State which are not covered by the provisions of section 7(1) would vest jointly in the Plaintiff and Defendant herein until they are shared out by them or between them as has been done in this case already and disclosed in the Counter-Affidavits before the Court. We were urged to take judicial notice of the fact that in numerous exercises of States creation in this Country, assets and liabilities of the old states from which new states were created had always been shared among the new states created out of them, and that the plaintiff and the defendant cannot be an exception from this judicially noticed rule of practice since there is no statutory enactment by any competent authority to the contrary. We were referred to the cases of OLOWOFOYEKU VS ATTORNEY GENERAL OF OYO STATE (1996) 10 N.W.L.R (PT. 477) 190 OLAREWAJU VS GOVERNOR OF OYO STATE (1992) 9 N.W.L.R (PT. 260) 335 at 362. We were urged to hold that there is no basis for granting the reliefs claimed by the Plaintiff on a proper interpretation of section 7(1) (ibid).

On the plaintiff's claim (iii) in particular the Defendant contended that there is now a pending appeal by the plaintiff in the Court of Appeal Benin, on the question of which court (the Federal High Court or the Supreme Court) has jurisdiction to determine the ownership and rights to manage the limited liability companies owned by the old Ondo State government which is a result of the suit commenced by the Defendant at the Akure Federal High Court in January 2000 seeking *inter alia* for a declaration that the companies were jointly owned by the parties herein and that the Defendant was entitled to participate in their management. It is therefore an abuse of process when the Plaintiff on 6th July 2000 filed this suit in this court seeking for reliefs on the same subject matter pending before the Federal High Court and the Court of Appeal and that the

purpose of this suit is to render ineffective the decision of the Federal High Court without pursuing its appeal in the Court of Appeal. The plaintiff could on the other hand have pursued its appeal and ultimately secure the decision of this court on the issues but it chose to commence  
B another action here. That this is a glaring example of bad faith and abuse of court process on the part of the Plaintiff which actions this court has a bounden duty to prevent. We were urged to dismiss the claims once again. We were referred to a number of cases including-

C EZEGBU VS F.A.T.B. LTD (1992) 1 NWLR (PT. 220) 699 at 274, ARUBO VS AIYELERU (1993) NWLR (PT. 280) 126 at 142. OKORODUDU VS OKOROMADU (1973) 3 SC. 21.

It was further submitted that even if the Plaintiff would have been entitled to the reliefs claimed, the dictates of public policy or public  
D interest do not favour the granting of the reliefs. That it is a notorious fact that six new states were created by Decree 36 of 1996 and that the properties of the old states from which they were created have long been completely shared out with each state taking possession of what was  
E shared to it and using it as it likes and in many cases even used up. And that the reliefs in this case which are couched in general terms would if granted affect all the other states created by the Decree as they may be  
F called upon to return or refund all or some or any of the assets which had been share to them. That the confusion which will inevitably result from the bandwagon effect of any judgment which the plaintiff may receive against the defendant in this case, will be far reaching and may not even be limited to the six states created by the Decree alone. That in the  
G circumstances of this case public interest which overrides the interest of the plaintiff, dictated that the claims be dismissed absolutely. The cases of BADEJO VS FEDERAL MINISTRY OF EDUCATION (1996) 6 N.W.L.R. (PT. 464) 15 at 41 and IBRAHIM VS BARDE (1996) 9 N.W.L.R. (PT. 474) 513 AT 580 were cited in support.

H Now, all the parties are agreed and I agree with them too, that the claims before the court relate to the true interpretation of the provisions of section 7(1) of Decree 36 of 1996. It was as rightly submitted by counsel on both sides a constitutional provision. It is clear to me that

although the plaintiff appeared to have couched its claims in such a way that they look like four different claims, the true position is that all the claims directly or indirectly depend on the outcome of the proper interpretation of section 7(1) above as we shall soon see. Put in another way, the reliefs (ii), (iii) and (iv) depend on the success or failure of relief (i). B

I have already set out the provisions of section 7(1) earlier on in this judgment . I do not need to repeat it. I say straight away that I agree with Chief Williams and Mr. Adewale that the provisions are clear and unambiguous and that the properties transferred to each of the six new states (including the defendant, Ekiti State) created under the Decree are C

*"Any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new state created by the Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new state is created or an instrument having effect as such Edict" (see Section 7(1)).* D

**It is certainly a cardinal principle of interpretation that where in their ordinary meaning the provisions are clear and unambiguous effect must be given to them without resorting to any aid internal or external. It is the duty of the court to interpret the words of the law maker as used. Those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited (see for example MAGOR AND ST. MELLOW R.D.C. VS. NEWPORT CORPORATION (1951) 2 ALL E.L.R. 839, LONDON TRANSPORT EXECUTIVE VS BETTS (1959) AC. 231, ATTORNEY-GENERAL OF BENDEL STATE VS ATTORNY-GENERAL OF THE FEDERATION & ORS (1981) 10 S.C.1, (1981) 12 N.S.C.C.314).** E F G

**Being guided by the above principles of interpretation, it is not difficult for me to see that the property or properties transferred to the Defendant Ekiti State are as provided for under section 7(1) as set out above. The transfers in this case are to the new State Defendant only. There is clearly no transfer of any property** H

to the Plaintiff Ondo State, under the subsection. I have strenuously read through the whole of Decree 36 of 1996 over and over again and I am unable to find any provision anywhere, whereby any property or chattel was vested in the Plaintiff as was done for the Defendant under section 7(1). What I am saying in short is that section 7(1) does not or did not vest, transfer or give any immovable property or chattel anywhere to the Plaintiff as at 30th September 1996 or at any time at all.

There is equally no provision under section 7 or anywhere in Decree 36 of 1996 that the Defendant is not entitled to any other immovable property or chattel elsewhere apart from those provided for under section 7(1). That will amount to reading into the section or Decree what is not provided therein. I cannot do that. I repeat that Section 7(1) vested no immovable property or chattel in the Plaintiff anywhere. That being so Claim (i) must therefore fail. It is accordingly dismissed.

Claims (ii), (iii) and (iv) as indicated above naturally flow from claim (i). If as I have held above that the Plaintiff is not vested with any property immovable or movable by section 7(1), it follows that it is not competent for it to say that any arrangement compromise, decision or resolution made between the parties herein are unconstitutional, null and void, simply because according to the Plaintiff the parties cannot contract out of the provisions of section 7(1). The compromises or decisions or resolutions in this case are not in respect of properties covered by section 7(1), but in respect of properties not covered or provided for under the Decree and section 7(1) in particular. The same treatment goes for rights, titles or interests in companies incorporated or deemed to be incorporated under the Companies and Allied Matters Act which again are not covered by section 7(1). Claim (iv) clearly in my view presupposes that the Plaintiff has properties movable and or immovable vested in it by section 7(1). I have already found that no such property was ever vested in it under the subsection, it follows therefore that it has nothing to protect by way of injunction against the Defendant



**as arising by operation of the subsection.** Claims (ii), (iii) and (iv) also fail. I hereby dismiss each and everyone of them.

Before I close, let me say this. **Clearly section 7(1) vests certain properties in the Defendant. It did not vest anything in the Plaintiff.** So when the plaintiff realised this, if it was a realization **B** at all, the remedy in my view lay in an amending Decree and not by reading the clear provisions of section 7(1) up side down or by trying to insert or smuggle in the plaintiff into the subsection. That is **not permissible** (see **LONDON TRANSPORT EXECUTIVE VS BETTS** **C** **(Supra)**). But I think that much was realised by the parties themselves and the law maker as well. The affidavit evidence which I believe, clearly shows that the then Head of State and Commander-In-Chief of the Armed Forces, set up a Committee to *inter alia* articulate acceptable formula for the sharing of all assets and liabilities between the States **D** affected by Decree 36 of 1996 (see Exhibit EK1). The Federal Assets and Liabilities sharing Committee worked with a sub-committee made up of equal representation of Plaintiff State and Defendant State (see Exhibit EK 2). The Committee and the Sub-committee worked together as a **E** team and arrived at an acceptable formula for sharing the assets and agreed on a proportion of 46% to Ekiti State (Defendant) and 53% to Ondo State (Plaintiff). The formula was approved by the Head of State and was duly executed in respect of all movable and immovable properties. **F** At the end of the exercise the Sub-Committee members issued a joint report to their respective Military Administrators showing appreciation for the successful completion of the exercise (see Exhibit EK. 2 & EK 11). Evidence show that this problem or dispute did not start until 29th May 1999 when Military Administration ended and the civilian **G** administration came on board. The Plaintiff made it impossible for the Defendant's nominees to participate in the management of certain companies and or ventures jointly owned by them as decided by the Joint Assets and Liabilities Committee. **H**

Assets and Liabilities Sharing Committees have always been known to exist in this country each time new States are created since 1967. These Committees have always shared assets and liabilities be-

tween the concerned states and consequently decisions, resolutions or agreements are reached or made. Chief Williams now says any agreement or decision contrary to or inconsistent with the provisions of section 7(1) are unconstitutional null and void and of no effect because  
 B according to him no government or individual can contract out of the provisions of the Constitution citing forcefully the case of ATTORNEY-GENERAL OF BENDEL STATE VS. ATTORNEY-GENERAL OF THE FEDERATION & ORS (supra) in support. **I agree with Chief Williams that in law no government or individual can contract out of the provisions of the Constitution. But I make bold to say that is if you are a party to the provision of the constitution in question. The case before us here is not that of "contracting out" but rather that of "contracting in". Section 7(1) vests no property in the plaintiff**  
 C **anywhere and it will be wrong and unacceptable to give it that meaning which the Plaintiff seeks in this suit. Just as the parties cannot contract out of the provisions of section 7(1) as far as the properties into" the subsection which vested nothing in it by claiming that**  
 D **it vested something in it. The Plaintiff must not be allowed to "contract in" when it has been clearly "contracted out."**

I say it again that I believe the affidavit evidence in this case. I believe that all the properties of the old Ondo State have been shared  
 F between the Plaintiff and the Defendant with each taking possession of whatsoever was shared to it. At the risk of repetition I reproduce once more paragraphs 20, 21, 22, 23,,24 & 25 of the Further Counter Affidavit as follows:-

"20. That during the Assets and Liabilities sharing Exercise, a  
 G copy of the gazette Containing the Decree, 1996 was available to guide the Federal Assets and Liabilities Sharing Team and the Joint Committee of the two states on the items to be shared and the ones to leave out.

21. That the Joint Committee discussed in particular the provisions of section 7(1) of the Decree and sought clarification as to the intention of government in promulgating that sub-section, from the federal government committee members.

22. That the Chairman of the Assets and Liabilities sharing

*committee told us that the Intention of Government as outlined to the committee by the Head of State was that all immovable assets and chattels of all Statutory corporations, i.e. all bodies created by the laws of Ondo State before 30th September, 1996 should be shared to the state where it was located at that date so that those in Ekiti Area would remain in Ekiti State while those in Ondo Area would remain rested in Ondo State.*

23. *That at the Joint Committee level, I and the Attorney General of Ondo State also explained to the other members of the committee that in the sharing of the assets of all Statutory Corporations created by and under the laws of Ondo State, we were to ensure that those immovable assets and chattels located within Ekiti state up to 30th September 1996 would remain vested in Ekiti state while those in Ondo State area would remain vested in Ondo State.*

24. *That this provision and the explanation of the intention of government in enacting it as well as its interpretation as given to the committee by the Attorney General of the two states guided the work of the joint Assets and Liabilities Committee and its Technical sub-committee which ensured due compliance with it, even when compliance with it distorted the sharing ratio agreed by the committee, and directed to be applied and actually applied to other assets outside those of these Statutory Corporations.*

25. *That some of the Statutory corporation where given special treatment in the sharing of their assets because of the provisions of section 7(1) of Decree No. 36 of 1996 were:-*

(a) *The Ondo State Housing Corporation where its Housing Estates at Oke-Ile, Ado-Ekiti was taken over by Ekiti State while its estates at Ijaro and Oba-Ile in Akure remained vested in Ondo state irrespective of the values of the assets vis-a-vis the agreed sharing formula.*

(c) *The Ondo State Primary Education Board in which the small Area office in Ado became the take off office of the Ekiti State Primary Education Board while the gigantic building housing its state headquarters at Akure remained vested in the Ondo State government without the relative values of the assets being taken account of for the purpose of*

*their sharing.*

(d) *The Ondo State Library Board which had its Branch library at Ado Ekiti vested in Ekiti state while the headquarters library at Akure and other branch libraries elsewhere in Ondo State became vested in Ondo State without any regard to their values vis-a-vis the sharing formula.*

(e) *The Ondo State Civil Service Commission which had all its immovable property at Akure and all of them remained vested in Ondo State without regard to the sharing arrangement in respect of other assets of the Ondo State Government apart from Statutory Corporations.*

(d) *The Ondo State \health management Board which had all its hospitals health centres training institutions and zonal offices in Ekiti State and all the equipment therein vested in Ekiti state while all those in Ondo State and all Ondo state remained vested in Ondo State without regard to their relative values vis-a-vis the sharing formula.*

(f) *The Ondo State Teaching Service Commission which had all its immovable properties in Ondo state and none in Ekiti State had nothing to vest in the government of Ekiti state irrespective of the sharing arrangement.*

(g) *The Ondo State Local Government Service Commission had its head office Akure and offices or other immovable properties in Ekiti State and the Ekiti State government had nothing vested in it while all the immovable property situate in Ondo State remained vested in the government of Ondo State irrespective of the sharing arrangement in respect of other assets.*

(h) *The Ondo State afforestation Project Multi-billion naira industry, being a project established by a law of Ondo state in collaboration with foreign bodies including the World bank had all its industrial establishments, forest reserves and offices at Epemakinde in Ondo state and no immovable or other assets in Ekiti State and all these remained vested in Ondo State with nothing shared to Ekiti In spite of the sharing arrangement for assets and liabilities.*

(i) *The Ondo State Agricultural Development Project had its head office at Akure and zonal offices at Owo, Ondo, Ikare, and Okitipupa*

*in Ondo State as well as Ado-Ekiti and Ikole in Ekiti state. The immovable assets in Ekiti State were vested in the government of Ekiti state while all the immovable assets in Ondo state remained vested in Ondo State irrespective of their valuation vis-a-vis the sharing formula."*

That is as it should have been. **I venture to say that the provisions of section 7(1) are not exhaustive, and to declare the works or decisions of the Assets and Liabilities Sharing Committee as unconstitutional, null and void as the plaintiff would want us to do, will in my view be tantamount to an act of subversion considering that we have had these Committees since States were first created in this country in 1967. It will result in chaos and confusion all over the country. That must not be allowed to happen. The Plaintiff is certainly estopped or precluded from contesting the issue of the sharing of assets and liabilities of the old Ondo state which had long been settled with it as a participant. (See LADEGA & ORS VS. DUROSIMI & ORS (1978) N.S.C.C. 175.**

In conclusion the plaintiff's claims are hereby all refused. They are dismissed. I shall make no order as to costs the parties being sisters and brothers from time preceding the creation in my view even of the old Western Region of Nigeria by the white men. They will remain as sisters and brothers especially now that they have to run certain companies or ventures, jointly together. This is to be encouraged. It is quite possible that this suit which should never have surfaced in the first place, was merely a manifestation of what, if you may pardon me, may be called "executive psychosis" on the part of the Plaintiff, which I hope should have by now subsided! Did I hear you say why or how? If not, then how do you explain it? The evidence is that the Plaintiff was also given the equivalent of what the Defendant got by virtue of the provision of section 7(1) (ibid) through the Assets and Liabilities Sharing Committee amongst others. Why then file this suit? To deny the Defendant everything? Or do you just call it bad faith? And you will be right! I leave it there.

**KARIBI-WHYTE JSC**

I had the advantage of reading the judgment of my learned brother Kutigi, JSC in this action brought by the Attorney-General of Ondo State, for and on behalf of the Government of Ondo State against the Attorney-General of Ekiti State for and on behalf of the Government of Ekiti state. Plaintiff is seeking the Declarations and injunction therein which are founded on the proper construction of the provisions of Section 7(1) of the State (Creation and Transitional Provisions) Act 1996 as it affects these two States.

**The Facts.**

The facts which gave rise to the action are not disputed. It is the creation of Ekiti State out of the Old Ondo State and the sharing of property belonging to the Old State. The resolution of the issue in dispute as I have already stated, rests on the proper interpretation of Section 7(1) of the Decree 36 of 1996. Whilst Plaintiff is contending that property transferred to Defendant Ekiti State are limited ONLY to those mentioned in the section, on the other hand, the Defendant Ekiti state rejecting this contention argue that Defendants ONLY are vested with any property within the meaning of the section. In addition it was contended that all the property of the old Ondo state not covered by the provisions of the section, should vest jointly in the Plaintiff and Defendant until such property were shared out between them in the manner stated in the counter affidavits of the Defendant before the Court.

It is common ground between the parties that the determination of the dispute turns entirely on the correct interpretation of the provisions of section 7(1) States (Creation and Transitional Provisions) Decree No. 36 of 1996 referred to above.

Section 7(1) provides as follows:-

*"Subject to sub section (2) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of*

*this section and without further assurances than this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section."*

It is significant and important to appreciate the fact that both parties agree that the words of the section reproduced above are clear and unambiguous. It is therefore necessary in construing the provisions of the section to accord to those words their plain and ordinary meaning. See Toriola v. Williams (1982) 7 SC. 27, Bronik Motors v Wema Bank (1983) 1 SCNLR 296.

A reading of the words of the Section shows that subject to sub-section (2) they are concerned with the transfer of-

(a) any immovable property and any chattel,

(b) situate in the area comprised in a new State created by the Decree (that is the Defendant Ekiti State)

(b) held by a body corporate established by an Edict of the Military Administrator of the State out of which the new State is created (that is Ondo State) or an instrument having that effect.

The section goes on to vest such property in the Military Administrator of the new State concerned, to be held by him for the purpose of the Government of that State.

Analysis of this section clearly demonstrates that it is concerned ONLY with vesting in the new State, the property prescribed therein and held by a body corporate directly established by a law or an instrument with legal effect of the State out of which the new state is created. It seems to me obvious that the intention of the section is to vest in the new state created out of an existing state, all immovable property or any chattel situate in the area comprised in the new State - See Bronik Motors v. Wema bank (ibid), Attorney-General of the Federation v. A-G Imo State (1982) 12 SC. 274.

### **Submissions of Counsel**

Learned Counsel for the plaintiff has submitted and I entirely agree, that the property so transferred in Section 7(1) do not extend to any movable or immovable property directly owned by the state out of

which the new State was created, or I should add immovable or moveable property or chattel situate in the State out of which the new State was created, in this case, Ondo State. Such property and chattel are not covered by Section 7(1). See Yerokun v. Adeleke (1960) 5 FSC. 126,

B Mobil v F.B.I.R. (1977) 3 SC. 53.

It was the contention of the Plaintiff that because the Decree transferred only property "held by a body Corporate..." in the absence of any consideration or material fact which produces some other legal consequences, this court ought to have no difficulty in entering judgment on claims (i), (iii) and (iv) for the plaintiff in the originating summons.

C Learned counsel for the Plaintiff further contended that Defendant had filed affidavits claiming that certain events and or occurrence subsequent to the enactment of the Decree had resulted in the sharing of all movable and immovable property between the parties. It was contended that this is untenable because none of the facts and matters deposed to in the counter-affidavit are capable of enabling any person or authority to transfer property vested in Ondo State as at September 30th, 1996 to Ekiti State in contravention of the provisions of the section. This submission is anchored on the proposition that parties cannot contract out of the provisions of Section 7(1) relating to the transfer of property to Ekiti State. Accordingly, it was submitted, any decision, agreement or arrangement reached or made between the two States inconsistent with the provisions of Section 7(1) cannot stand.

F The legal position adopted by learned counsel to the plaintiff was that in the absence of any amendment to the provisions relating to the transfer of assets to Ekiti State, any arrangement or agreement inconsistent with the provisions of the Constitution as amended by Decree No. 36 of 1996 are unconstitutional and void, since the parties cannot contract out of their constitutional rights. Hence, it was submitted no arrangement or agreement can be pleaded to operate as estoppel or waiver against the plaintiff from claiming the reliefs in this suit.

G In support of these submissions, the Att-Gen.. of Bendel State v. A-G of the Federation (1981) per Fatayi-Williams CJN; Ojo Ajao & ors v. Alao & ors. (1986) 5 NWLR. 800; Raimi Oloregbe v. Omotosho (1993)



1 NWLR. 386 were cited and relied upon.

Mr. Obafemi Adewale, learned Attorney General for the Defendant, Ekiti State in his reply to Plaintiff's counsel's submission on the question of the interpretation of the provisions of section 7(1) agreed with the applicable principle of interpretation suggested by learned counsel to the Plaintiff. This is that where the words of a statute are clear and free from ambiguity, they should be accorded their ordinary plain meaning free from any glosses on them. It was submitted the interpreter should avoid reading into the provision meanings, which render them artificial.

It was submitted that on application of this principle the conclusion is inevitable from its provisions that Plaintiff was not vested with any property or any interest in property. Only the Defendant was as at Sept. 30th 1996 vested with property or interest in property of statutory corporations located in Ekiti State, out of the property of statutory corporations located in Ekiti State, out of the property of statutory corporations created by the laws of the old Ondo State. The decisions of *A-G of Anambra State v. A-G of the Federation* (1993) 6 NWLR 692, *Egwanwunze v. Amaghiznwen* (1993) 9 NWLR. 1 were cited in support.

It was suggested that the only reasonable inference that could be drawn in favour of Plaintiff from the provisions of Section 7(1) is that the property of statutory corporations located in its territorial area should be vested in it as those in Ekiti State were vested in that State by virtue of the operation of section 7(1).

Learned Attorney-General then went on to submit that all the property of the Old Ondo State not covered by the provision of Section 7(1) would vest jointly in the Plaintiff and Defendant until shared out by them or between them as has been done in this case as disclosed in the counter-affidavits before the Court. The Learned Hon. Attorney-General urged us to take judicial notice of the practice in earlier numerous exercises of states creation in this country, where the assets and liabilities of the old have been shared with the new States. Plaintiff and Defendant cannot be an exception to this judicially noticed rule of practice in the

absence of any statutory enactment by any competent authority to the contrary. The decisions of Olowofoyeku v. A-G of Oyo State (1996) 10 NWLR (pt. 477) 190; Olarenwaju v. Gov. of Oyo State (1992) 9 NWLR 335. Learned Hon. Attorney-General urged us to hold that there was no basis for granting the reliefs claimed by the Plaintiff on a proper interpretation of Section 7(1).

### **Consideration of the Arguments**

This is a concise summary of the submissions of Counsel to the parties on the construction of the section. Before continuing my analysis of the Section I consider it necessary to state the very helpful submission of Chief F. R. A. Williams SAN, learned Counsel to the plaintiff of the preliminary considerations to be borne in mind in the interpretation of the section. Chief Obafemi Adewale did not disagree with this submission.

In his introductory remarks to his submission, Chief F. R. A. Williams, SAN observed that the Decree 36 of 1996 of the Federal Military Government subject matter of the interpretation created a number of states including the Defendant Ekiti State. The Defendant Ekiti State was created by excision of or carving out the area constituting the state out of the then existing Ondo State. It was submitted that the old Ondo State, by this legislative action continued to exist juridically as a State even if diminished in size territorially.

Learned Counsel correctly rationalised, relying on sections 1,2,& 3 of the Decree No 36 of 1996 that since States were established by the Constitution of the Federal Republic of Nigeria, it followed that Decree No. 36 of 1996 was in reality and in effect an amendment to the Constitution. I agree with this submission. It is a well settled principle of the application of the Decrees of the Military administration, that Decrees occupied the highest status of the legislative hierarchy and are superior to provisions of the Constitution, A-G Bendel State v. Agbafodoh (1999) 2 NWLR.476, A-G Anambra State v. A-G of the Federation (1994) 6 NWLR. 692. Decree therefore can abrogate entirely or amend provisions of the Constitution pro tanto where they are in conflict. I am in complete agreement with these preliminary remarks - See Decree No. 1 of 1966.

I now turn to the construction of the provisions of Section 7(1) in the light of the submissions of learned counsel and the principles of interpretation applicable to the facts of this case. I agree that Section 7(1) being an amendment to the Constitution, the general rules for the construction of constitutional provisions are properly applicable - See Bendel State v. Federation (1981) 10 SC.1. B

Before going into analysis of the words of the section 1 deem it necessary to point out that the four reliefs sought by the Plaintiff in the originating summons rely on and depend upon the proper interpretation of Section 7(1) which govern the transfer of property on the creation of States. C

In the construction of constitutional provisions the general principles of interpretation of statutes are properly applicable. See Rabiu v The State (1986) 8-11 SC. 130. It is a well established and cardinal principle of interpretation that where the ordinary plain meaning of the words used in a provision are clear and unambiguous effect must be given to the words without resorting to any extrinsic aid, See Awolowo v. Shagari (1979) 6-9 SC. 51, Lawal v G. B. Ollivant (1972) 3 SC.. 124. E The solemn and sacred duty of the Court is to interpret the words used in the Section by the legislation and give to them their intended meaning and effect. - See Adejumo v. Governor Lagos State (1972) 3 SC. 45. D

Where the provision sought to be construed is a section of the Constitution, this Court has decided upon the observance of and adherence to additional principles of construction to safeguard the intention expressed in the provision. For instance the courts are enjoined to approach the construction of provisions of the Constitution liberally. By this it is meant to construe where the question is as to whether the expression used in the Constitution should be applied in the wider or narrower sense, the Court should whenever possible and in the interest of justice lean to the broader interpretation, unless there is something in the text or the rest of the Constitution indicating that the narrower interpretation will best carry out the objects and purposes of the Constitution. - See Rabiu v. The State (1980) 8-11 SC. 130. F G H

In interpreting the Constitution or Decree amending it the court

should take into serious consideration the preamble of the Decree and objects and purposes of the provision sought to be interpreted - See Ogun State v. Federation (1982) 1-2 SC. 13, Bronik Motors v. Wema Bank (1983) 1 SCNLR. 296. The Court cannot amend the Constitution or change its words suo motu except through their interpretation of the words of the Constitution. - See Bendel State v. The Federation (1981) 10 SC.1. It is important and in my opinion compelling to adhere to the purposes of a provision where the history of the legislation indicates to the court the object of the legislation in enacting the provision - See Bronik Motors v. Wema bank (1983) SCNLR. 296.

A careful perusal of Section 7(1) demonstrates the consistency in the words used of the transfers to and vesting in property to the State created out of the existing States. No-where in the section was any transfer and vesting of property and/or chattel made in the existing State. This unequivocally demonstrates the intention of the legislation that transfers of property from the existing states was to be to the state created out of it. This shows that the context of the provision demands interpretation in the narrower sense. This is in accord with the accepted principle of interpretation expressed in Latin maxim expressio unius est exclusio alterius or expressum facit cessare tactitum.

The two related principles mean firstly that "to state a thing expressly ends the possibility that something inconsistent with it is implied". Secondly "to express one thing is impliedly to exclude another" which is an aspect of the latter. This principle of construction is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless those mentioned are mentioned only as examples, or ex abundanti cautela, or for some other sufficient reason the rest are taken to be excluded from the proposition.

Accordingly since Section 7(1) has only transferred to the Defendant Ekiti State, the property/and chattels etc, as provided in that section, and has not mentioned the Plaintiff Ondo State it is clear and without doubt that Ondo State is excluded from that arrangement - See Ogbuinyinya V Odudo (1979) 6-9 SC. 32 INEC V. PDP (1999) 11 NWLR. 174. I have come to this conclusion on a very careful reading and analy-

sis of the words of Section 7(1) in issue. Accordingly, as at 30th September, 1996 or at any time thereafter Section 7(1) did not vest, transfer or give any immovable property or chattel any where to the Plaintiff.

Learned Counsel for the Plaintiff has submitted that Defendant is not entitled to any other immovable property or chattel elsewhere apart from those provided for under section 7(1). It is a little difficult to appreciate this submission. Mr. Adewale, learned Hon. Attorney-General for Ekiti State has rejected the submission and argued that all the property of the Old Ondo State not affected by Section 7(1) would vest jointly in the Plaintiff and Defendant, until shared out between them. The Hon. Attorney-General is relying on the depositions in Defendant counter affidavit, and the sharing arrangement agreed upon by the parties.

Chief F. R. A. Williams, SAN for the Plaintiff submitted that since Section 7(1) of the Decree No. 36 of 1996 has transferred to Ekiti State only property, "held by a body corporate..." it has transferred to and vested in Ondo State all other property as at 30th September, 1996; The facts and matters in Defendant's counter-affidavit cannot enable or authorise any person to transfer property vested in Ondo State as at 30th September 1996. Learned Counsel relied on the proposition that Ondo State and Ekiti State cannot contract out of the provisions of Section 7(1) relating to the transfer of property to Ekiti State, accordingly any agreement reached or arrangement made between the two states or their Agents inconsistent with Section 7(1) is a nullity. The contention appears to follow from the conclusion that having vested in Ekiti State, only "property" held by a body corporate..." of the old Ondo state, every other property held by Ondo state remains vested in it to the exclusion of the newly created Ekiti State.

There appears to be a slight misconception on the part of Plaintiff of the true legal effect of Section 7(1) of Decree No. 36 of 1996. I have already held that the section was concerned ONLY with the vesting of property and chattels, etc. in the Defendant, Ekiti State. It did not refer to Ondo State and was not even by implication suggested that any property even that already held vested in the Plaintiff Ondo State. There is no suggestion from the words of Section 7(1) that Defendant is ex-

cluded from and not entitled to any other immovable property or chattel elsewhere apart from those provided for under Section 7(1). The plain words of Section 7(1) do not permit a reading into the section what has not been provided - See Customs v. Barau (1982) 10 SC. 48. It is important to bear in mind the elementary and fundamental principle of law that what has not been prohibited is allowed. Since the common vesting of the property of the old Ondo State in the new State and the Old, has not been prohibited by Decree No. 36 of 1996, and such property was not vested in Ondo State by section 7(1). There is considerable force in the submission that Ekiti State and Ondo State were intended to own these property jointly and in the shares proposed. Section 7(1) cannot be construed and understood to mean that such property remain vested in the Plaintiff to the exclusion of the Defendant as claim (1) suggests. Claims (1) seeks *"a declaration that by virtue of section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the Act) all immovable properties and chattels owned by the Plaintiff as at 30th September, 1996 remain vested in and owned by the Plaintiff after that date to the exclusion of the Defendant with only exception of those immovable properties and chattels that as at the said 30th September, 1996, were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State."*

This being the position claim (1) fails and is accordingly hereby dismissed. This brings me to consideration of Claims (ii), (iii) and (iv), which are undoubtedly based on claim (ii). Claim (iii) seeks a declaration that Defendant has no right title or interest in shares owned by the Plaintiff as at 30th September, 1996 in any company incorporated or deemed to be incorporated under the Companies and Allied Matters Act.

Mr. Adewale, Hon. Attorney-General for Ekiti has submitted in respect of this claim that there is a pending appeal in the Benin Division of the Court of Appeal on the question of the (jurisdiction of the Federal High Court or the Supreme Court as to) the determination of the ownership and right to manage the limited liability companies by the Old Ondo state Government. The action was taken out by the Defendant as Plain-

tiff in the Akure Federal High Court seeking *inter alia* a declaration that the Companies were jointly owned by the parties herein and that the Defendant was entitled to participate in their management.

The third relief in the instant case which is on identical terms with the action pending in the Court of Appeal is therefore an abuse of process of the Court. It seems to me inescapable from the conclusion herein that section 7(1) did not vest any property in the Plaintiff, that the contention of Plaintiff in claim (iii) that Defendant has no right, title or interest in shares owned by the Plaintiff as at 30th September, 1996 is misconceived. Section 7(1) or any other law not having vested any shares in the Plaintiff, and no law having excluded Defendant from any claim in respect of such property, the claim of the Defendant to such property subsists. A declaration cannot be made in respect of a matter in which the Defendant has a legal interest. - See Ogbuehi v. Gov. Imo State (1995) 9 NWLR. 53.

I agree with Mr. Adewale, Hon. Att-General of Ekiti State, that the action seeking in this Court for a relief already before another Court in a pending action between the parties is without doubt an abuse of the Judicial process. Plaintiff did not have an answer to the allegation - See Doma v. Adamu 4 NWLR. 311 Benaplastic v. Vasilyer (1999) 10 NWLR.620.

The relief sought in claim (iii) therefore fails and is accordingly dismissed.

The fourth relief is a claim for perpetual injunction restraining the Defendant and all its functionaries, etc. from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by Plaintiff as at 30th September 1996, whether located outside the geographical area of Ondo State and Ekiti State, or in Ekiti State but not held by a body corporate directly established by a legislation of Ondo State except with the consent of the said Plaintiff.

Simply stated, Plaintiff is by this relief assuming the ownership of certain immovable property or chattel located outside the geographical area of Ondo State and Ekiti State, and if located in Ekiti State, not held by a body corporate directly established by a legislation of Ondo State.

This is Plaintiffs interpretation of the effect of Section 7(1) of Decree No.36 of 1996 in issue.

Learned Counsel to the Plaintiff has not either in his brief of argument or oral expatiation of same referred to any other law he relies upon for the claim. In argument it was submitted that the Decree transfers only property "held by a corporate body..." It was merely stated that "... in the absence of any consideration or material fact which produces some other legal consequence, the supreme Court ought to have no difficulty in entering judgment for the Plaintiff on claims (i) (iii) and (iv) "in the originating summons."

This predicated statement is relying on the argument of the invalidity of the exercise of the sharing of the property vested in Ondo State as at 30th September, 1996 to Ekiti State otherwise than in accordance with Section 7(1) of Decree No.36 of 1996. The proposition relied upon is that Ondo State and Ekiti State cannot contract out of the provisions of Section 7(1) relating to the transfer of property to Ekiti State. Accordingly any agreement of arrangement reached or made between the two states or their Agents, which are inconsistent with the provisions of Section 7(1) cannot stand.

It is pertinent to observe that the operation of Section 7(1) does not involve the entering into any agreement between Plaintiff and Defendant. The words of the Section which are clear and unambiguous state unequivocally that the vesting of the property mentioned shall, "...by virtue of this section and without further assurance than this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State...."

The vesting of the property, etc. is a constitutional provision, which did not require the intervention of the act of the parties affected to give effect to it. The issue of an agreement or arrangement does not arise.

Since Plaintiff is not by Section 7(1) or any other law included therein vested with property, it is not competent for it to challenge any agreement or arrangement made in respect of such property. Injunction is granted to protect an existing legal right with the object of keeping



matters in statu quo - See Union Beverages Ltd. V. Pepsi cola International Ltd. & Ors. (1994) 3 NWLR.1, Okafor v. Nnaife (1987) 4 NWLR.613. The claim assumes erroneously the ownership of property vested in it by law. It follows therefore having no property to protect by way of injunction against the Defendant, the claim fails and is dismissed. B  
- See Obeya Memorial Hospital v. A-G Federation & anor. (1987) 3 NWLR. 325.

I now return to consideration of claim (ii).

The ground on which learned Counsel to the Plaintiff is challenging the arrangement in respect of property not covered by Section 7(1) is on the proposition that Governments have no capacity to contract out of their constitutional rights. Accordingly the agreement or arrangement to set up the Joint Committee on the sharing of the Assets of Ondo State between that State and the new Ekiti State in the absence of any amendment to the constitutional provisions relating to the transfer of assets to Ekiti State is inconsistent with the Constitution as amended by the Decree No.36 of 1996 and unconstitutional and void. Reliance for this proposition was based on Attorney-General Bendel State v. A-G of the Federation & Ors. (1981) 10 SC. 1. C D E

There is no doubt Chief F.R.A. Williams, SAN, learned Counsel to the Plaintiff has stated the proposition correctly that parties cannot contract out of their constitutional rights. That is clearly not permissible, and in my opinion not subject matter for argument between the parties. F  
The issue here is whether the subject matter in dispute is a matter within the provisions of section 7(1) of Decree No.36 of 1996 which vested property in the Defendant Ekiti state only, and none in the Plaintiff Ondo State. The Decree I have held in this judgment said nothing about any property vesting in Ondo State as at September 30, 1996 or any time thereafter. G

The property subject matter of dispute herein are property not covered by the provisions of Section 7(1) or any other provision vesting property in the parties. These property come within the category of property not vested in either of the parties, and in respect of which the then Head of State set up a Committee to work out an acceptable formula H

for the ratio in which the property ought to be shared between them. The Committee and sub-committee worked together as a team with members nominated by the Plaintiff and Defendant State affected and arrived at an acceptable ratio of 53% and 46% of the property outstanding to Plaintiff and Defendant respectively.

I have not been convinced how this arrangement which has not affected the property vested by Section 7(1) on the Defendant or any other provisions has offended against provisions of the Constitution and therefore not contrary to it can be unconstitutional and void. On the facts of the instant case, there was a valid agreement between the parties for the sharing of the property not covered by section 7(1). Since the Decree has not vested such property in either of the parties, there is nothing in law precluding the making of the arrangement to share the property equitably between them. This arrangement which is not inconsistent with and have not contravened any provision of the constitution cannot in my opinion be said to be unconstitutional and void. The property already shared in the agreed ratio have been accepted by the parties concerned. Plaintiff seeking the relief that the arrangement was unconstitutional and void, had accepted the share of its property. Plaintiff is therefore as an active participant therein estopped from contesting the issue of sharing the assets and liabilities of the Old Ondo State. - See Ladega & ors. v. Durosimi & ors. (1978) 3 SC. 91, Claim (ii) therefore fails and is dismissed.

I adopt reasons given in the lead judgment of my learned brother Kutigi, JSC and in addition to the reasons given in this judgment I dismiss all the reliefs claimed by the Plaintiff in this action.

I make no order as to costs.

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### **OGWUEGBU JSC**

I had the advantage of a preview of the judgment which has just been delivered by my learned brother Kutigi, JSC. I agree entirely with his reasoning and conclusions. I would also dismiss the plaintiff's case.

The facts of the case have been set out in the said judgment of

my learned brother and I do not intend to repeat them in this short comment. The plaintiff by an Originating Summons sought the following reliefs in this court:-

"(1) A DECLARATION that by virtue of Section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the 'Act') ALL immovable properties and chattels owned by the Plaintiff as at 30th September, 1996 remain vested in and owned by the Plaintiff after that date to the exclusion of the Defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996, were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State.

(ii) A DECLARATION that any agreement or arrangement reached or made between officials or other functionaries of the plaintiff and the defendant in whatever capacity, and any resolution and/or decision taken, or compromise reached in whatever form between the parties herein, which contradicts or is inconsistent with the provisions of Section 7(1) of the Act is unconstitutional, null and void and of no effect whatsoever.

(iii) A DECLARATION that the Defendant has no right title or interest in shares owned by the Plaintiff as at 30th September 1996 in any company incorporated or deemed to be incorporated under the Companies and Allied matters Act.

(iv) An order of perpetual injunction restraining the Defendant and all its functionaries, officers, servants or agents whomsoever from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by the Plaintiff as at 30th September 1996 and

(a) located outside the geographical area of Ondo State and Ekiti state as at the said 30th September, 1996

(b) located in the geographical area of Ekiti State but not held by a body corporate directly established by a legislation of Ondo State except with the consent of the said Plaintiff."

The dispute as agreed by the parties is on the interpretation of

section 7(1) of Decree No. 36 of 1996 otherwise called States (Creation and Transitional Provisions) Decree, 1996. By the said Decree the Federal Military Government created six new States, namely Bayelsa, Ebonyi, Ekiti, Gombe, Nasarawa and Zamfara States. These six States were  
B given the same rights, powers and privileges as states existing prior to the commencement of the Decree. Ekiti State which is one of the six states created by Decree No. 36 of 1996 came into existence on 1st October, 1996. It was created out of the former Ondo State.

C Section 7(1) of Decree No. 36 provides:  
*"Subject to subsection (2) of this section, any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new state created by this Decree and was held by a body corporate directly established by an Edict  
D or the Military Administrator of the State out of which the new state is created or an instrument having effect as such Edict shall by virtue of this section and without further assurance than this section, vest in the Military Administrator of the new state concerned and be held by him for  
E the purpose of the Government of that State and no compensation shall be payable in respect of any transfer affected by this section."*

Subsection 2 does not apply to the facts of this case.

It was submitted in the plaintiff's brief of argument that the prop-  
F erties transferred by the said decree are limited to"

*"any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by any Edict of the Military Administrator  
G of the State out of which the new State is created or any instrument having effect as such Edict....."*

It was also submitted that the properties so transferred do not extend to any movable or immovable property directly owned by Ondo  
H State; that they are limited only to properties held by a body corporate directly established by an Edict or the Military Administrator of the state out of which the new state is created or an instrument having effect as such Edict so long as such property is located in Ekiti State.

It was further submitted that since the Decree transferred only property "held by a body corporate..." and in the absence of any consideration or material fact which produces some other legal consequence, the court should have no difficulty in entering judgment for the plaintiff on reliefs (i), (iii) and (iv) in the Originating Summons.

I should make it clear from the onset that with the coming into force of Decree No. 36 of 1996, the Old Ondo State ceased to exist after 30th September 1996. It became legally extinct and one of the two new States created out of the old state was assigned the name of the old state. Coming back to section 7(1) of the Decree, this subsection specifically transferred defined properties to Ekiti State. These are not the only properties owned by the former Ondo State. The other properties which do not form part of those transferred to Ekiti State are the subject of the interpretation sought by the plaintiff, the new Ondo State in this suit.

It was the contention of the plaintiff that Ondo State and Ekiti State cannot contract out of the provisions of section 7(1) of the Decree and any arrangement reached or made between the two States or their Agents which is inconsistent with the provisions of section 7(1) cannot stand. But from the brief of argument and the counter-affidavits filed on behalf of the defendant, it was the contention of Ekiti State that certain events and occurrences took place after the enactment of Decree No. 36 which resulted in the sharing of all other movable and immovable properties of the old Ondo State between the two new States. That the words of section 7(1) of the Decree are clear and unambiguous and should be given their ordinary meaning, that no property was transferred to the new Ondo State by the said section 7(1) and therefore the properties of the Old Ondo State including shares in companies incorporated under the Companies and Allied Matters Act not mentioned in section 7(1) belong to the plaintiff and the defendant jointly until they are shared. The court was referred to the following cases: *Attorney-General, Anambra State v. Attorney-General of the Federation* (1993) N.W.L.R. (pt. 302)692 at 726 and 732, *Egwuamwense v. Amaghizemwen* (1993) 9 NWLR (pt.315)1 at 35, *Olowofoyeku v. Attorney-General Oyo State & Ors.* (1996) 10 NWLR (pt.477) 190 and *Olanrewaju v. Governor of Oyo State & Ors.*

**3214** A-G Ondo State v. A-G Ekiti State (2001) 10 KLR Ogwuegbu JSC  
(1992)9 NWLR (pt.265)335 at 362.

Both Chief Williams, SAN and the Honourable Attorney-General of Ekiti state rightly submitted in their respective briefs that the provisions of section 7(1) of the Decree are clear and free from any ambiguity and that this court should have no difficulty in expounding the provisions. They are quite right in this submission and I agree with them. The words used in section 7(1) of the Decree are very clear and unambiguous. They are primarily used in their ordinary meaning as they would ordinarily be understood and it is my duty to interpret the words of the said subsection in their natural and ordinary sense. They do not admit of any doubt and will not admit of any absurd result. See *Bronik Motors Ltd. & Ors v. Wema Bank Ltd. (1983) 1 SCNLR 269 and Sussex Peerage Case 8 ER 1034 at 1057.*

The properties transferred by section 7(1) are to the new States of which Ekiti State is one. There is no way this court can find that properties not transferred by section 7(1) remains vested in the new Ondo State. Such interpretation will lead to an unjust, unreasonable and inequitable result and will not be in the interest of peace and stability in the States affected by the Decree. I am not unmindful of the fact that it is not the duty of a Court of law to decide on the reasonableness or unreasonableness of an Act of Parliament. See *Homes v. Bradfields Rural District Council (1949)2 KB 1 at 7.* The fact remains that there is no ambiguity in the language used in section 7(1) of Decree No. 36 of 1996.

In the circumstances, properties not mentioned in section 7(1) belonging to the former Ondo State are not vested in the new Ondo state or Ekiti State. Their devolution was not provided for in the Decree and they became vested in the two new States created out of the Old Ondo State until shared between them. See *Olowofoyeku v. Attorney-General, Oyo State & Ors. (supra)*. The Federal Military Government in its wisdom set up Assets and Liabilities Sharing Committee comprising equal representatives of the two State. The Committee did a thorough work and came out with a sharing formula which was accepted by both States and the properties were accordingly shared. Some have been consumed and it will be inequitable for the plaintiff to resile from the said agreement.

For the above reasons and the fuller reasons contained in the judgment just delivered by my learned brother Kutigi, JSC the plaintiff's action fails and I hereby dismiss it with N10,000.00 costs.

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**KATSINA-ALU JSC**

I read in advance the judgment of my learned brother, Kutigi, J.S.C. I agree with it.

The claim of the plaintiff is in the following terms:-

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"(i) A DECLARATION that by virtue of section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the 'Act') ALL immovable properties and chattels owned by the plaintiff as at 30th September, 1996 remain vested in and owned by the plaintiff after that date to the exclusion of the defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996 were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State.

E

(ii) A DECLARATION that any agreement or arrangement reached or made between officials or other functionaries of the plaintiff and the defendant in whatever capacity any resolution and/or decision taken, or compromise reached in whatever form between the parties herein, which contradicts or is inconsistent with the provisions of section 7(1) of the Act is unconstitutional null and void and of no effect whatsoever.

F

(iii) A DECLARATION that the defendant has no right title or interest in shares owned by the plaintiff as at 30th September 1996 in any company incorporated or deemed to be incorporated under the Companies and Allied Matters Act.

G

(iv) An order of perpetual injunction restraining the defendant and all its functionaries, officers, servants or agents whomsoever from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by the plaintiff as at 30th September 1996."

H

It will be seen clearly that the claim calls for an interpretation of

section 7(1) of the State (Creation and Transitional Provisions) Decree No. 36 of 1996. Learned counsel for the plaintiff, Chief F.R.A. Williams, S.A.N., submitted that the provisions of section 7(1) are clear and unambiguous. In his view only the property prescribed in the Act are transfer-  
 B able. The contention of the plaintiff is to the effect that section 7(1) of the Decree vests in the plaintiff all the movable and immovable property of the old Ondo State except those immovable properties and chattels "held by a body corporate directly established by an Edict of the Military  
 C Administrator of the State out of which the new State is created or an instrument having effect as such Edict" so long as such property is located in Ekiti State.

On the other hand, the learned Attorney-General of Ekiti State, Obafemi Adewale Esq. was of the view that section 7(1) was clear and  
 D free from ambiguity and should therefore be accorded its ordinary and plain meaning without putting any glosses on it. He contended that if this was done it would be seen that the plaintiff was not vested with any property or any interest in property under section 7(1) of Decree No. 36  
 E of 1996.

Now section 7(1) of the Decree reads:-

*"Subject to subsection (2) of this section, any immovable property and any chattel which, immediately before the commencement of this  
 F Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance than this section, vest in the  
 G military Administrator of the new State concerned and be held by him for the purpose of the Government of that state and no compensation shall be payable in respect of any transfer effected by this section".*

I am in agreement with learned counsel for the parties that the  
 H words of section 7(1) of the Decree are clear and free from ambiguity and must therefore be accorded their ordinary and plain meaning. See A.G. Anambra State v. A.G. Federation (pt. 302) 692. The provision of section 7(1) seems very clear to me. It did not vest the plaintiff with any



property or any interest in any property. It is only the defendant that was vested with property movable or immovable as carefully spelt out in the Decree. In other words the property and chattel mentioned in section 7(1) belong to Ekiti State and not Ondo State. The submission of the plaintiff is tantamount to standing the correct interpretation of section B 7(1) of Decree No. 36 of 1996 on its head.

It has also been said that only the property prescribed in the Decree are transferable. I do not accept this submission. I think any property not covered by S. 7(1) remains the joint property of Ondo State C and Ekiti State. Surely, it was in realisation of this that the Federal Government set up the Assets Sharing Committee. See *Olowofeyeku v. A.G. Oyo State* (1996) 10 N.W.L.R. (pt. 477) 190 at 219. As a matter of fact the defendant has shown by documentary evidence that the properties D not covered by section 7(1) have already been shared between the two States.

So, what gave rise to this action? I wish I knew. All I can say, in the circumstances is that this action is vexatious. The assets have already been shared with painstaking attention to detail. The claim is totally mis- E conceived. I would also dismiss the claim. I make no order as to costs.

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### KALGO JSC

I have read in advance the judgment just delivered by my learned F brother, Kutigi, J.S.C., in this case and I entirely agree with his reasoning and conclusions reached therein. I shall therefore dismiss the plaintiff's case as being without any merit.

In the originating summons filed by the plaintiff in this court on G the 6th of July 2000, there are four reliefs. The most important relief in my view, upon which the other three entirely depend in order to succeed, is the first one which reads:-

"(i) A DECLARATION that by virtue of section 7(1) of the States H (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the 'Act') ALL immovable properties and chattels owned by the plaintiff as at 30th September, 1996 remain vested in and owned by the plain-

*tiff after that date to the exclusion of the defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996 were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State."* (underlining mine)

By this declaration, the plaintiff claimed to be the owner of all the properties movable and immovable which belonged to the old Ondo State as at 30th September, 1996 when Ekiti State was created except those properties which were within Ekiti State and were held by a body corporate created by the Law of Edict of the old Ondo State.

Chief Williams, S.A.N., for plaintiff submitted and I agree with him, that the substance of this action entirely depends on the interpretation of the provisions of Section 7(1) of the State (Creation and Transitional Provisions) Decree, 1996 (hereinafter referred to as the Decree). I also agree with him that Section 7(1) of the Decree is part of the 1979 Constitution and cannot be waived, and that any action carried out in contradiction or contravention thereof, is null and void. Section 7(1) of the said Decree reads:-

*"Subject to subsection (2) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance that this section, vest in the military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section."*

The Decree which was No. 36 of 1996, created new States including Ekiti State. Ekiti State was created out of the old Ondo State. The Decree took effect from the 30th of September 1996, so that the geographical areas of both new Ondo and Ekiti States was the old Ondo State - no more, no less.

Having said earlier that Section 7(1) of the Decree is part of the

1979 Constitution, it must be interpreted accordingly. It is "subject to the provisions of subsection (2)" which talked about Federal Government properties. This means that Section (1) does not and cannot apply to immovable or movable properties of the Federal Government within Ondo and Ekiti States. See *Tukur v. Govt. of Gongola State*, (1989) 4 N.W.L.R. B (pt. 117) 517 at 542, 565 and 580.

In the interpretation of any statute including the Constitution, the general principle is that words must be given their ordinary meaning, except where the intention of the law maker is obvious and clear. In the *Tukur* case (supra) this court per Nnaemeka-Agu, J.S.C., at page 579 of the report said:- C

*"One cannot arrive at a correct interpretation of Section 42 of the 1979 Constitution and Section 7 of the Federal High Court Act without constantly bearing in mind the object for which the Federal Revenue D Court was initially set up. And in interpretation too, one cannot proceed in a manner that pretends to show that one is oblivious of the history of a constitutional or statutory provision or of decision antecedent to the instant case in order to ensure that violence is not done to the develop- E ment of the law. Rather, that a constitutional or statutory provision should be interpreted from its historical setting has the support of high authorities. See for examples: River Wear Commissioners v. Adamson (1977) 2 App. Case. 743 per Lord Blackburn; also Eastman photographic Mate- F rial Co. Ltd v. Comptroller-General of Patents (1898) A.C. 571 per the Earl of Halsbury L.C.*

*Finally, I must approach the matter from the view point that since the decision of this court in Nafiu Rabi v. The State (1981) 2 N.C.L.R. 283, this court has opted for the principle of construction often G expressed in Latin maxim: ut res magis valeat quam pereat. This means that even if alternative constructions are equally open, I shall opt for that alternative which is to be consistent with the smooth working of the system which the Constitution as a whole has set out to regulate, and so H the alternative which will disrupt the smooth development of the system is to be rejected. See *Shannon Realities Ltd. v. Villr De St. Michel* (1924) A.C. 185 per Lord Shaw at pages 192 and 193". (underlining mine)*

In the Nafiu Rabi case also reported in (1980) 12 N.S.C.C. 291 at page 301, this court on the interpretation of the Constitution said per Sir Udo Udoma, J.S.C.:-

"My Lords, it is my view that the approach of this court to the construction of the constitution should be, and so it has been, one of the liberalism, probably a variation on theme of the general maxim *ut res magis valeat quam pereat*. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends".

Mr. Adewale learned Attorney-General for Ekiti State appearing for the defendant agree that Section 7(1) of the said Decree, is unambiguous and given its plain and ordinary meaning, it was very clear that no property, movable or immovable, was vested on the plaintiff. But, he further submitted that any other property not mentioned by Section 7(1) of the Decree remains the joint property of the new Ondo State and Ekiti State and that was why the then Military Government set up the Assets Sharing Committee for the states created under the Decree. He referred us to the case of *Olowofoweku v. A.G. of Oyo State* (1996) 10 N.W.L.R. (pt 477) 196 at 219 and affidavit evidence filed by him. Counsel also made other submissions which I do not consider important in this matter.

The main contention of Chief Williams, SAN, for the plaintiff, is that as the provisions of Section 7(1) of the Decree are clear and unambiguous, the defendant Ekiti State is only entitled to the properties vested in it by the Decree out of the properties originally belonging to the old Ondo State before 30th September, 1996, and that all the remainder of those properties, exclusively, wholly and completely belonged to are owned by the plaintiff, the Ondo State. He distinguished the *Olowofoweku* case (supra) with the instant case in that in the former, one State was dissolved to create two or more States whereas in the latter, there was excision from an existing State only. He then contended that in the case of the former, the new State can share the assets of the dissolved State but in the latter, i.e. this case, it cannot be so. He cited no authority to

support this contention.

I now come back to the interpretation of Section 7(1) of the Decree. There is no doubt in my mind that on the strict interpretation of Section 7(1), only Ekiti State was vested with some properties and that the new Ondo State was not. But on the liberal interpretation of constitutional provisions following Nafiu Rabi'u's case and Tukur's case (supra), it is my respectful view that the old Ondo State as the mother State, originally owned everything, and it is the intention of the law makers that the properties owned by the old Ondo State, less what Section 7(1) vests in Ekiti State, must be jointly owned by the new Ondo State and Ekiti State. This interpretation would be consistent with the smooth working of the system and will not disrupt the smooth development of that system. It is common ground that the case of Ondo and Ekiti States was just one of many States created under the 1979 Constitution. And the fact that the plaintiff and defendant agreed on the sharing formula as shown in the affidavit evidence filed by the defendant, is not inconsistent with the Constitution, since both parties agreed to do so and is binding on them. Therefore any property so shared, properly legally vests in the state concerned and such State has absolute right, title and interest in such property. It cannot be restrained from occupying, using or exercising its legal right on the properties. I therefore reject the submissions of Chief Williams on the interpretation of this section having regard to what I have said above.

In the final analysis, I entirely agree with Kutigi, J.S.C., in the leading judgment that the plaintiff's case must fail in its entirety. I accordingly so find and dismiss all the reliefs claimed in the originating summons of the plaintiff in this action. I also make no order as to costs.

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### UWAIFO JSC

I read in advance the judgment of my learned brother Kutigi JSC H and for the reasons he has given I am in agreement with it.

As pointed out by Kutigi JSC, the plaintiff's action is based on an interpretation of section 7(1) of the State (Creation and Transitional Pro-

visions) Decree (or Act) 1996, known as Decree No. 36 of 1996. In that sense, a decision on relief (i) of the claim essentially resolves the other reliefs (ii), (iii) and (iv). I reproduce the first relief as follows:

"(i) A *DECLARATION* that by virtue of Section 7(1) of the States (Creation and Transitional Provisions) Act 1996 (hereinafter referred to as the 'Act') ALL immovable properties and chattels owned by the Plaintiff as at 30th September 1996 remain vested in and owned by the Plaintiff after the date to the exclusion of the Defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996, were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State.

This calls for an interpretation of section 7(1) of the Act. Learned Senior Advocate for the plaintiff, Chief F.R.A. Williams, submits that the provisions of the said section are clear and unambiguous. That means they should be given a literal interpretation; *See Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt. 135) 688; Chime v. Ude (1996) 7 NWLR (Pt. 461) 379*. On the other hand, the learned Attorney-General of Ekiti State, Obafemi Adewale Esq, while urging that the court should not read into a section of a statute a meaning which cannot be described as the intention of the legislator, submits that "the court in contruing the statute shall have regard to the cause and necessity of the Act and then such construction should be put upon it as would promote its purpose and arrest the mischief which it is intended to deter." Although this submission certainly goes over the pale of literal interpretation into what is regarded as the purposive rule and the mischief rule combined, I think the learned Attorney-General finally took the position that section 7(1) was free from ambiguity, rightly in my view, and therefore the language should be accorded its ordinary and plain meaning without putting any glosses on it and that if this was done, it would be seen that the plaintiff was not vested with any property or any interest in property under the said section. This is clearly an argument in support of a literal interpretation of section 7(1).

It seems therefore that both sides are agreed that the section

should be given its strict interpretation by relying on the ordinary, plain and grammatical meaning of the language used. I agree that since the section is clear and unambiguous, that is the correct approach: *see Attorney-General, Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552; National Bank of Nigeria Ltd v Weide & Co. (Nig) Ltd (1996) 8 NWLR B (pt. 465) 150;; Shell Petroleum Development Co. (Nig) Ltd. v federal Board of Inland Revenue (1996) 8 NWLR (pt 466) 256*. Now, section 7(1) in question reads:

*"Subject to subsection (2) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance than this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section."* E

It is clear to me that the above-stated provision in relation to the present case is concerned with (1) immovable property and chattel (2) which were situate in the area comprised in Ekiti State created by Decree No.36 of 1996 (3) which immovable property and chattel were held by an appropriate body corporate, and (4) that such immovable property and chattel would vest in Ekiti State automatically. Nothing is said by that provision about any other immovable property and chattel (not held by a body corporate) situate in the area comprised in Ekiti State or about any property whatsoever (whether or not held by a body corporate) situate in the remaining area of the erstwhile Ondo State. Furthermore, no property or any description is vested by that provision in the Ondo State represented by the plaintiff in this case. It therefore follows, in my view, that the mere interpretation of section 7(1) of Decree No.36 of 1996 the way I have done, which I believe is the correct interpretation, does not and cannot lead to the declaration sought by the plaintiff in relief (i) of its claim before this court. This is more so because there is nothing what-

soever in the submission of counsel for the plaintiff to indicate against or along which any other statutory or constitutional provision or provisions the said section 7(1) may be interpreted in order to achieve a result that will support such a declaration sought by the plaintiff which is predicated solely upon and "by virtue of section 7(1) of the States (Creation and transitional Provisions) Act 1996". I therefore cannot grant that relief.

It is a known fact that Ekiti State represented by the defendant and Ondo State represented by the plaintiff are the two States which have emanated from the creation of a new State out of the entire area which comprised what was the former Ondo State as was then known before Decree No.36 of 1996. To put it in other words, the two States represented by the plaintiff and the defendant respectively are the successor States of the former Ondo State. Each of the said successor States has assumed a new and separate body politic and 'soul'. The new Ondo State cannot pretend to bear the same significance as the former Ondo state in regard to the authority over the properties which had been singly held and controlled by it. It seems to me that any property not specifically vested by Decree No.36 of 1996 in either of the two States must be regarded as belonging jointly to the two State and which they could be an appropriate, judicious and practicable arrangement share between themselves. Copious evidence has been adduced which has not been disputed that they have in fact so done. The observation of Ogundare JSC at page 219 and of Ogwuegbu JSC at pages 221-222 in *Olowofoyeku v. Attorney-General Oyo State (1996)10 NWLR (pt.477) 190* would appear to support that legal point of view and such arrangement. The declaration sought under relief (ii) that the arrangement made and carried into effect is unconstitutional, null and void, and the one sought under relief (iii) to deny Ekiti State of any right, title or interest in shares owned by the former Ondo State in any company incorporated under the Companies and Allied Matters Act, have no support.

The order of perpetual injunction sought as relief (iv) is to restrain Ekiti State and all its functionaries, officers, servants or agents from occupying or making use of or exercising any proprietary right in or over any immovable property or chattel owned by the Ondo State



(which I must regard as the former Ondo State although the plaintiff seems erroneously to put itself in that status quo ante) located either outside the geographical area of the two successor States or in the geographical area of Ekiti State but not held by an appropriate body corporate, except with the consent of the plaintiff, i.e. the new Ondo State. B From what I have said already, the plaintiff is not entitled to such an injunction. But I must add that no legislation or constitutional provision could ever be intended to create a condition for such an injunction to be claimable without the most unimaginable chaos and provocation being C fomented. The scenario would be that the Chief Executive of Ekiti State (i.e. the Governor) would have to seek the consent of the Governor of Ondo State to establish his office building and the Government House. So will similar consent be sought for the Chief Judge and Judges, Hospital and School Authorities, and Local Government Authorities before they D can operate, and even for markets to function! This will be the same situation in the other five areas where States were created under Decree No.36 of 1996. I cannot believe anyone would contemplate this situation being allowed to exist. E

Accordingly, I am satisfied that the two States took lawful steps to share the properties and chattels jointly owned by them. In my judgment, there is no merit in the claim of the plaintiff for the reasons I have given and those more fully stated by my learned brother Kutigi JSC. I F therefore also dismiss the claim and make no order for costs.

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### **AYOOLA JSC**

I have had the privilege of reading in draft the judgment just G delivered by my learned brother, Kutigi, JSC. I agree with his conclusion that this action should be dismissed and with the reasons he gives for that conclusions. I only wish to make comments on some aspects of the H case.

The plaintiff by its originating summons seeks a number of declarations and orders, but it is evident that the principal declarations which it seeks are as follows:-

(i) A DECLARATION that by virtue of section 7(1) of the States (creation and Transitional Provisions) Act 1996 (hereinafter to as the 'Act') ALL immovable properties and chattels owned by the Plaintiff as at 30th September 1996 remain vested in and owned by the plaintiff after that date to the exclusion of the Defendant with the ONLY exception of those immovable properties and chattels that as at the said 30th September, 1996 were held by a body corporate directly established by a legislation of Ondo State and were situate in the geographical area of Ekiti State.

(ii) A DECLARATION that any agreement of arrangement reached or made between officials or other functionaries of the Plaintiff and the Defendant in whatever capacity, and any resolution and/or decision taken, or compromise reached in whatever form between the parties herein, which contradicts or is inconsistent with the provisions of Section 7(1) of the Act is unconstitutional null and void and of no effect whatsoever.

(iii) A DECLARATION that the Defendant has no right title of interest in shares owned by the Plaintiff as at 30th September 1996 in any company incorporated or deemed to be incorporated under the Companies and Allied Matters Act.

Section 7(1) of the States (Creation and Transitional Provisions) Act 1996 ("the Act") provides as follows:

"Subject to subsection (2) of this section, any immovable property and any chattel which immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance than this section, vest in the Military Administrator or the new State concerned and be held by him for purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section."

By virtue of section 1(1) of the Act as from 1st October, 1996 and notwithstanding the provisions of the Constitution of the Federal

Republic of Nigeria 1979, as amended, or any other enactment or law, there was created, among other states, Ekiti State, which is the defendant in these proceedings.

Section 1(2) of the Act provides that:

*"Subject to the provisions of sections 3 to 8 of this Decree the new States created by Sub-section (1) of this section shall have the same rights, power and privileges, as the States existing prior to the commencement of this decree."* B

It was by virtue of section 2 of the Act that the defendant Ekiti state, got its name, and the area comprising the State was prescribed as shown in the schedule to the Act. Although the Act did not so state expressly, it is clear and common ground that the new state, Ekiti State was created out of the former Ondo State. Before the creation of Ekiti State the Local Government Areas which are now the areas comprising Ekiti State were part of the areas comprising former Ondo State. The former Ondo State was thus split into two - the state out of which the new state was created, which remained Ondo State, but which must now be described in regard to the area comprising it to the exclusion of the Local government Areas comprising the new State; and, the new State, Ekiti State. The plaintiff in this case is the Ondo State ("the Plaintiff") that emerged, by necessary implication redefined as a result of the creation of Ekiti State. C D E

Section 7(1) transferred properties described in the sub-section to the new States. Those properties were defined as: (a) any immovable property and any chattel; which, immediately before the commencement of the Act, was situate in the area comprised in the new State created by this Act; (b) and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State was created, or an instrument having effect as such Edict. F G

Sub-section 1 of section 7 of the Act was intended to have the limited application expressed in its provisions. It vested properties described in it in Ekiti State, but did not vest any property in Ondo State. It was in this wise that, in strict terms, the declaration sought by the plaintiff that properties were owned by the plaintiff by virtue of that subsec- H

tion is misconceived. However, if a liberal construction of the declarations sought is taken, it seems to me that the plaintiff relies on reasoning by implication in order to get to the conclusions he invites this court to reach. A party who seeks a declaration must do so in clear terms and directly without resort to implications. It is only because of the importance of this case that it is desirable to consider the case which the plaintiff sought to make notwithstanding the defect in the wording of the first declaration sought by it.

Learned counsel, on behalf of the plaintiff, puts the plaintiff's case in a clear and concise manner which considerably facilitates a statement of the substance of its case. It is that the Act is an amendment of the 1979 Constitution wherein the states comprised in the Federal Republic of Nigeria were established. By the amendment, although Ondo State was diminished in size, it continued to exist as a juridical entity in which movable and immovable properties were vested. Of the properties vested in Ondo state the only properties transferred to Ekiti State were those comprised in the provisions of subsection 1 of section 7 of the Act. In consequence, all other properties, movable or immovable, which were vested in Ondo State before the creation of Ekiti State, except for those properties expressly transferred to Ekiti State by virtue of subsection 1 of section 7. Neither Ondo State nor Ekiti State could by agreement alter the vesting of properties by the Constitution.

The defendant's brief is of considerable length and in it has been argued several issues. Extracting the core of the defendant's response to the substance of the plaintiff's case from the mass of issues raised by the defendant, I summarise the substance of the defendant's case in so far as it is relevant to this judgment. The defendant's case is that properties were vested only in Ekiti State by virtue of subsection 1 of section 7. In regard to the property of the old Ondo state, it was submitted on the strength of the decision of this court in *Olowofoyeku v. Attorney-General for Oyo State and others* [1976] 10 NWLR (part 447) 190, that all the properties of the old Ondo State were vested in the two States - Ondo and Ekiti. The defendant also called in aid the fact that the Federal Military Government which made the Act had immediately after its enact-

ment proceeded to set in motion machinery for sharing the assets of the old Ondo State not covered by the Act.

It is evident that the plaintiff's case was founded on a number of premise. First, that upon the creation of Ekiti State, the former Ondo State remained intact as a juridical entity. Secondly, that subsection 1 of section 7 of the Act was a Constitutional amendment. Thirdly, that mere vesting of some assets of the former Ondo State in Ekiti State confirmed the exclusive right to and ownership of the reconstituted Ondo State to assets of the former Ondo State not transferred to Ekiti State by that Act.

The first premise ignores a truth of political theory. A state is first and foremost a community of persons in political association exercising jurisdiction and authority within defined borders. In a federation the community as described above is recognised as a federating unit sharing with the central government powers within a larger state. When the composition of the community comprising a state changes as fundamentally as in this case by a redefinition of the areas comprising the state, it will be legalism carried to rather absurd limits to hold that the old order remains. What is real is that the old state is dissolved and new entities are created, none of them representing, and exclusively succeeding to the assets and liabilities of, the dissolved state. That conclusion is consistent with the purposes of state creation in this country, one of which is to "enhance the structure of political and social mobilisation" and to "bring about a better spread of major development centres in the country". A new State can hardly be a development centre when it goes away empty handed without a share of the assets it had contributed to build and with loss of right of ownership over immovable properties in its own territory, some of which, I presume, it may have been using for the purpose of the State.

As regards the second premise, although aspects of the Act can be regarded as amending the Constitution, or whatever of it was left by the Military Government, the Constitution cannot be said to have been amended in such terms that what it and the Act had not provided for should be read into the Constitution as part of it. There is nothing in the circumstances that would have made such implication necessary and

compelling.

The third premise is clearly misconceived. For reasons which may now be a matter of mere speculation, the makers of the Act deemed fit to vest certain assets of the former Ondo State in Ekiti State. There does not appear to me to be any logic in inferring from that fact that the properties of the former Ondo State not so vested remained the exclusive property of any one of the two states emerging from the former State. In regard to those properties, the source of the title claimed by the plaintiff to them must be traced to authority outside the Act.

Ondo State which was split into two by the creation of Ekiti State was itself created in 1976 when the Western State was split into three by the creation of Oyo, Ondo and Ogun State. (See States (Creation and Transitional Provisions) Decree 1976). The transitional arrangements made in respect of the new States created in 1976, including Oyo, Ondo and Ogun States included arrangements for the sharing of assets of the new States in terms that any immovable property and any chattel which at the time of the creation of the States was situated in the area of a new State and was held by the Military Governor of a former State or by a statutory corporation of that State, devolved without further assurance on the Military Governor of the new State in which it was situated, and was to be held by him for the benefit of his government. (See States (Creation and transitional Provisions) Decree 1977). Starting, I believe, from 1991 when Abia, Anambra, Delta, Jigawa, Kebbi, Kogi, Osun, Taraba, and Yobe States were created, the provisions relating to arrangements relating to sharing of assets ceased to include words to show that the sharing arrangements covered assets including assets held by the Governor of the former state. It is mere speculation whether the omission was deliberate or whether it was due to a drafting error which went unnoticed at a time when law making in our country was casual, hurried and was neither subjected to adequate scrutiny nor submitted to democratic discussion. Whatever the cause of the omission, it was clear that the Federal Government never intended that one State upon the splitting up of a former State should succeed to all the assets of the former State as a matter of right and as a previous owner thereof.

The fact is deposed to in the counter-affidavits filed on behalf of the defendant and well supported by documents that the Federal Government, which made the Act, had set up an Ondo and Ekiti States Assets and Liabilities Sharing Committee whose mandate, among others, was to: "Articulate acceptable formula for the sharing of all assets and liabilities between the affected States;" and to "Make recommendations on any matter in pursuance of the spirit of equitable sharing of assets of the affected States."

It is common ground that as a result of the sharing exercise directed by the Federal Government, as put in the plaintiff's brief, "A sharing formula was agreed by the parties and all properties were shared on the basis of this formula and agreement was arrived at by both parties in regard to the management and control of public undertakings and other properties and assets including shares in companies incorporated under the Companies and Allied Matters Act." The case of the plaintiff is that such agreement was inconsistent with the Constitution as amended by the Act and is therefore null and void. Enough, I believe, has been said to show that the premise which underlie this contention is not valid. The court will not hold an act to be inconsistent with the Constitution where there is no provision of the Constitution relating to the matter whatsoever, expressly or by necessary implication. Quite apart from the fact, pointed out earlier, that the Constitution, as amended, did not vest the assets of the former Ondo State in the reconstituted Ondo State, there is nothing unconstitutional in Ondo State divesting itself of property it owned.

Be that as it may, the important fact is that it was the Federal Government that made the Act that very shortly thereafter also set up the Committee to share the assets of the former State between the parties. What it has done was deliberate and consistent with the joint ownership by the two States of assets not covered by subsection 1 of section 7 of the Act and was inconsistent with the implication the plaintiff now urges.

The consequence of what the plaintiff contends is staggering. Were the plaintiff right in its contention, Ekiti State would have become a tenant in its own territory; and it would have lost the assets it contributed to build through taxes collected from its people and revenues allocated to

the former Ondo State on the basis of a formula which took into consideration population and land mass which included the population and land mass of areas now comprising Ekiti State. The court will not impute such preposterous, unjust and absurd consequences to a statute. No  
B reasonable tribunal will imply in a statute consequences that lead to absurdity and injustice.

For these reasons and the more detailed reasons in the judgment delivered by my learned brother, Kutigi, JSC., I too dismiss the plaintiff's  
C case with N10,000 costs to the defendant.

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