

SUPREME COURT OF NIGERIA

19TH OCTOBER, 2001. SC. 31/1997

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

1. THE MISCELLANEOUS OFFENCES TRIBUNAL
2. THE HONOURABLE (MRS.) ONI-OKPAKU,
JUDGE, MISCELLANEOUS OFFENCES APPELLANTS
AND
NWAMMIRI EKPE OKOROAFOR & ANOR. RESPONDENTS

ADMINISTRATIVE LAW - Tribunal - Created under the Act - Procedure
- For prosecution and trial of offences that fall within those triable in a
tribunal - Must strictly be followed (H5)

APPEALS - Briefs - Court of Appeal - Where the Rules do not provide
for the filing of briefs in a matter - It is not enough to dismiss an appeal
because a brief of argument was filed (H10)

COURTS - Interlocutory matter - Pronouncement touching on the main
issue - That was only a reflection of the court - Would not inhibit a court
- That has to determine the real issues between the parties (H9)

COURTS - Jurisdiction - Ouster provisions of a statute - Court reserves
the right to consider - Whether the ouster clause ought to be obeyed (H3)

CRIMINAL PROCEDURE - Time frame - Tribunal - Where the legisla-
tion specified time limit - Failure of prosecution to maintain the time
frame - May lead to discharge of the accused (H8)

JURISDICTION - Ouster - By a statute - The courts are obliged to uphold
the ouster of its jurisdiction (H2)

JURISDICTION - Ouster clause - Proceedings before a tribunal - Ouster
of jurisdiction of High Court - Should not preclude it from determining

3234 Miscellaneous Offences Tribunal v. Okoroafor (2001) 9/10 KLR

- Whether the proceedings in question - Comes within the scope of power conferred by the enabling statute (H4)

STATUTES - *Interpretation - Counterfeit and Fake Drugs Act s. 4 - By that provision the intention was made clear - That procedure for prosecution and trial of offences under the Act - Would be in accordance with provisions made in the Special Tribunals Act (H7)*

STATUTES - *Interpretation - Principle - Court faced with the interpretation of a statute - Has a duty to first discover the intention of the lawmakers (H6)*

WORDS & PHRASES - *Jurisdiction - What it means (H1)*

FACTS

In the Lagos High Court, the Respondents filed an application seeking for: an order of prohibition directed against the Appellants and prohibiting the Appellants from trying the charges comprised in charge No: MOT / 140 / 89 (The Federal Republic of Nigeria vs. Nwammiri Ekpe Okoroafor & Anor,) and an order of certiorari to remove into the High Court for the entire proceedings comprised in charge No. MOT / 140 / 89 (Federal Republic of Nigeria vs. Nwammiri Ekpe Okoroafor & Anor). The Respondents were Pharmacists. On the 29th June, 1989 they were arrested and detained upon an allegation that they were involved in the manufacture of fake and adulterated drugs. Subsequently, on the 15th September, 1989, they were brought before the Miscellaneous Offences Tribunal where they were charged with possession of adulterated drugs. They were then remanded in prison custody from that date (15th September, 1989) until the 15th of November, 1990, when bail was granted to them. The respondents upon the advice of their counsel, and upon the belief that appellants have not proceeded with the them in accordance with the law that set up the offences and the Tribunal, that is, that proceedings in respect of offences under the Act shall be concluded by the Tribunal within 14 days of its first sitting decided to

move to the High Court and sought the aforesaid reliefs.

When the application came before the High Court, four questions were thereafter referred to the court of Appeal. However, when the application came up for hearing before the Court of Appeal only one question was raised for consideration of that court And it reads:-

"When would the ouster clauses contained in Decree No . 9 of 1991 apply so as to take away the supervisory jurisdiction of the High Court of Lagos State to review proceedings in the Miscellaneous offences Tribunal."

The question so posed was resolved in favour of the Respondents. Hence, the Appellants have now appealed to the Supreme Court raising four (4) issues.

ISSUES FOR DETERMINATION

(1) Whether the Provisions of section 1(8) of Decree No. 9 of 1991 that ousted the supervisory jurisdiction or power of judicial review of a High Court is dependent upon the tribunal complying with the provisions of law creating it.

(2) Whether the provisions of Sections 4, 5(5) and 6(1) of Special Tribunal (Miscellaneous Offences) Act, Cap 410 L.F.N. 1990 is applicable to the trial of offences created under Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap. 73 L.F.N. 1990.

(3) Was the Court of Appeal right in so holding that in this case before us there has been flagrant disobedience of the law of the land by the agencies authorized to effectuate it. Therefore neither the tribunal nor the prosecution can take shelter under the ouster clause.

(4) Whether by Court of Appeal Rules, brief writing is required to argue a Reference.

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

Jurisdiction - What it means

1. In the resolution of this question, it is desirable to recall that it is well settled principle having regard to the very many decided cases of this Court that the word jurisdiction means the authority which a court has to

decide matters before it or to take cognizance of matters presented before it for its decision. (p. 3251 B)

Jurisdiction - Ouster

- B 2. Where the jurisdiction of the Court has been clearly ousted by a Decree or a Statute, the Courts are obliged to uphold the ouster of its jurisdiction. Some of such decisions that represent this view, are as follows:- Hope Harriman V Mobolaji Johnson (1970) ALL. NLR 503.
C (p. 3251 G)

Courts - Jurisdiction

- D 3. A Court would be obliged to respect and uphold the ouster provisions of a Decree or Statute. But the Court reserves to it the right to consider whether the ouster clause ought to be obeyed, having regard to other surrounding facts and the law relevant to the provisions ousting its jurisdiction. (p. 3254 F)

Ouster clauses - Tribunal

- F 4. It seems to me that where as in this case questions are raised as to whether the proceedings before the Tribunal have been properly initiated in accordance with the law that set up the trial before the Tribunal, the ouster of the jurisdiction of the Court should not preclude it from exercising jurisdiction to interpret the ouster clause or to determine whether or not the proceedings in question comes within the scope of power of authority conferred by the enabling Statute.

- G I would therefore uphold the view held by the Court below that though the jurisdiction of the High Court appear ousted by virtue of the provisions of Decree No. 9 of 1991 the Court is not precluded from considering whether in the circumstances the ouster jurisdiction comes within the scope of power of authority conferred by the enabling statute.
H (p. 3255 B)

Administrative law - Tribunal

5. The procedure for the prosecution and the trial of offences for trial

under any Tribunal created under the Special Tribunal (Miscellaneous Offences) Act, are no doubt a clear departure from that generally followed in the trial of offences in the ordinary courts. But there can be no question that the law makers intended that all offences that fall within those triable in a Tribunal so created must strictly be followed by those concerned with the prosecution and trial of such offences. (p. 3259 D)

Statutes - Interpretation

6. It is generally acknowledged that the Court faced with the interpretation of statute has duty to first discover the intention of the lawmakers. This has to be discovered from the words used in their ordinary and natural sense - when there is no doubt or ambiguity about their meaning. As was said in Barrel v. Fordree (1932) A.C.676 at 682 per Lord Warrington of Clyffe: "*The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.*" See also International Bank For West African Ltd v. Imano (Nig.) Ltd. (1988) 3 NWLR (Pt.85) 633. (p. 3260 C)

Interpretation - Counterfeit and Fake Drugs Act s. 4

7. It seems that there is no doubt that the law makers by the provisions made in Section 4 of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act, the intention was made clear that the procedure for the prosecution and trial of offences under the 1973 Act, would be in accordance with the provisions made in the Special Tribunals (Special Provisions) Act Cap 410 of the Laws of the Federal Republic of Nigeria 1990, apply to the trial by a Tribunal of offences charged under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap 73 of Laws of Nigeria 1990. (p. 3261 A)

Time frame - Tribunal

8. The enactment of a time frame is, of course, a departure from the normal practice in the prosecution of cases of this kind. This is because of the erstwhile prevailing view that in the prosecution of criminal cases

time does not run against the State. However, it seems clear that by this legislation a deliberate departure was made by the law maker to make time of the essence in the prosecution of the cases arising from the law so enacted. It must also follow that where the State, on whose behalf
B the Attorney-General undertakes the prosecution of cases failed to observe and maintain the time frame laid down for the prosecution cases for trial in the Tribunal, then that failure to keep within the time frame may, in my view lead to the discharge of the accused upon a proper
C application made to that effect. (p. 3261 D)

Courts - Interlocutory matters

9. There is no doubt the principle that in the hearing and determination of an interlocutory matter, the Court ought to refrain from making pro-
D nouncement touching upon the main issue that would have to be decided between the parties.

In this matter, the observation so made, having regard to the materials presented to the Court, was only a reflection of the Court on
E the material before it. I do not in my humble view therefore consider that observation would inhibit a Court that has to determine the real issues between the parties. I therefore do not consider that there is any merit in this issue. It is dismissed. (p. 3262 A)

F
Appeals - Briefs

10. It is clear that the Rules of the Court of Appeal do not provide for the filing of briefs in respect of the matter under consideration. However, it is not enough in my humble view to dismiss an appeal simply because a
G brief of argument was filed as was done in the instant matter. The appellants should have gone further to show that they suffered a miscarriage of justice because of the brief so filed. It must be borne in mind that the writing of briefs came into existence in order to assist the Court in the
H determination of issues raised before it. And if properly considered a clear and reasoned argument of counsel in respect of issues in a brief, would certainly help both sides to articulate their conflicting contentions. The fact that one of the parties had as in this case presented his argument

in a brief for the Court and obviously also opposing counsel, without showing what disadvantage, if any that the opposing counsel suffered as a result is not in my view, sufficient to set aside the judgment of the Lower Court. (p. 3262 H)

B

NOTABLE POINTS OF INTEREST

EJIWUNMIJSC

1. Despite ouster clauses courts guard their sovereignty jealously

But, though the Courts have in essence upheld the ouster clause in a Decree of Legislation, it would appear from the decided cases that the Courts have always striven to guard and that jealously the sovereignty of the Courts in the determination of the civil rights and obligations of the people of this Country. (p. 3252 B)

D

2. Counsel to maintain high standard of professional conduct

Before concluding, it is necessary to remind counsel particularly those who are in the Ministries of Justices that they are obliged by virtue of their employment to maintain a very high standard of professional conduct in the discharge of their duties. It is expected of them to be very conversant with the provisions of the law that are relevant to the matter they are called upon to prosecute or defend. The Courts can then find them a dependable ally in the dispensation of Justice. (p. 3263 D)

F

KARIBI-WHYTE JSC

3. The Constitution is supreme save during military regime

The Constitution of the country is its fundamental law, the fons et origo of all laws, the exercise of all powers, and the source from which all laws, institutions and persons derive their authority - See S.1(1) Constitution 1999. During the Military administration Decrees of the Supreme Military Council took precedence over the provisions of the Constitution. Accordingly, where there was conflict or inconsistency the provisions of the Decrees prevailed, or the provisions of the Constitution are allowed to operate to the extent of the inconsistency. (p. 3276 F)

G

H

4. *Constitutional reference is different from interlocutory matters*

It is a misunderstanding of the provisions of section 259(2) of the Constitution 1979 to argue that the Court to which a reference is made on the interpretation of the provision of the Constitution is, as in ordinary interlocutory matters, precluded from making findings or statements that may decide the substantive case.

The principles applicable to constitutional reference is completely different from that of interlocutory appeals. Hence a reference is sui generis and peculiar. The same principle applies to appeals. A reference is stricto sensu not an interlocutory appeal. It is important to observe that the question of law referred to the higher Court for interpretation must be a substantial question of law that has arisen from the proceedings - see S. 259(1). The Court to which the question is referred must give its decision upon the question and the Court in which the question arose shall dispose of the case in accordance with the decision - see S.259 (2), Bamaiyi v. A.G. Federation (2001) 12 NWLR 468. (p. 3283 A)

5. *Briefs of appeal - Purpose of*

The purpose of a written brief is to present a party's case on appeal in a summary form, succinctly, lucidly and with such accuracy as not only to give to the Court and the opposing party in advance a good resume of the case, but also to convince the Court of the justice of the party's cause. Of the many and varied reasons which have been adduced in support of brief writing, the most accepted being to assist learned Counsel on both sides to understand and identify the issues to be settled by the Appellate Courts so that they can limit their arguments and submissions to those issues. Finally, the general purpose is to assist the administration of justice by facilitating the work of both counsel and Court at the stage of hearing. It promotes justice by controlling Counsel and ensuring that their arguments are properly focused and directed. (p. 3284 B)

OGWUEGBU JSC

6. *Consequences of breach of a procedural rule*

The whole scope and purpose of the enactment must be considered.

Breach of procedural or formal rule is likely to be treated as a mere irregularity if non-compliance is of trivial nature or if no substantial prejudice has been suffered. The High Court Lagos State has the jurisdiction to interpret the ouster clause itself and determine whether or not what the tribunal has done is within or outside its powers and its effect on the proceedings of the tribunal. (p. 3286 B)

REPRESENTATION

C. Okpoko, Esq., Legal Officer, Federal Ministry of Justice, for the Appellants.

I. Wilson, Esq. for the Respondents.

CASES REFERRED TO

Bode V A. G. Federation (1986)2 NWLR (Part 24) 568 at 577 D

Nwosu V Imo State Environmental Sanitation Authority (1990)2 NWLR (Part 135)688 at 933

Doherty V Balewa (1961)2 NSCC 248 at 256 - 257

University of Ibadan V Adamolekun (1976)5 NSCC 210 E

Lakanmi V. Attorney-General (West) (1970)6 NSCC 143.

NPA V Panalpina World Transport (Nig) Ltd. (1973)8 NSCC 282

F.C.D.A. V Sule (1994)3 NWLR (Pt. 332) 257

Agwuna V A-G. Federation (1995)5 NWRL (Pt.396)418 F

Guardian Newspapers Ltd V A-G. Federation (1999)9 NWLR (Pt. 618)

Attorney-General Lagos State V Dosunmu (1989)3 NWLR (Pt. 111) 552

Madukolu V Nkemdilim (1962)1 ALL N.R. 587

Uti V Onoyivwe (1991)1 NWLR (Pt.166) 166 at 243 G

STATUTES & RULES REFERRED TO

Special Tribunal (Miscellaneous Offences) Act (Cap 410) LFN 1990, ss. 4, 5(5) & 6(1)

Counterfeit and Fake Drugs (Miscellaneous Provisions) Act (Cap 73) H LFN, S. 4

Decree No. 9 of 1991 S. 1(8)

Guardian Newspapers and African Guardian Weekly Magazine (Proscrip-

tion and Prohibition from circulation) S. 3

Federal Military Government (Supremacy and Enforcement of Powers)
Decree No. 12 of 1994

Court of Appeal Rules O. 6 r. 2

B Supreme Court Rules (as amended), O. 8 r. 5(1)

LEAD JUDGMENT BY EJIWUNMIJSC

In this appeal which emanated from the Court of Appeal (Lagos Division), questions with regard to whether the Lagos High Court has
C supervisory jurisdiction over inferior tribunals, such as the Miscellaneous Offences Tribunal that was set up under and by virtue of Decree No. 20 of 1984 (as amended) have been raised.

The matter apparently came before the Court of Appeal in this
D manner. The respondents to this appeal were Pharmacists. On the 29th June, 1989 they were arrested and detained upon an allegation that they were involved in the manufacture of fake and adulterated drugs. Later, on the 15th September, 1989, they were brought before the Miscella-
E neous Offences Tribunal where they were charged with possession of adulterated drugs. They were then remanded in prison custody from that date, namely 15th September, 1989. They were so remanded in prison custody until the 15th of November 1990, when bail was granted to them.

F The respondents upon the advice of their counsel, and upon the belief that appellants and the Tribunal have not proceeded with the trial of the allegation levelled against them in accordance with the law that set up the offences and Tribunal decided to move to the High Court for reliefs.

G For that purpose, the respondents filed an application to the High Court, pursuant to Order 53 Rule (2) of the Lagos State High Court (Civil Procedure) Rules 1972 for the following reliefs.

H "(1) An Order of Prohibition directed against the respondents herein and prohibiting the said respondents from trying the charges comprised in charge No. MOT/140/89 (The federal Republic of Nigeria Vs. Nwammiri Ekpe Okoroafor and Another).

(2) An Order of Certiorari to remove into this Honourable Court,

for the purpose of their being quashed, the entire proceedings comprised in charge No. MOT/140/89 (Federal Republic of Nigeria Vs. Nwammiri Ekpe & Another).

(3) *And for such further consequential Order(s) as this Honourable Court may consider appropriate to make in the circumstances."* B

The grounds upon which reliefs were sought read thus:-

(1) A fundamental condition precedent for exercising jurisdiction (to wit:- service of the statutory summons to appear on the accused persons) has not been complied with. C

(2) A fundamental condition precedent to jurisdiction to wit:-

(a) The applicants were brought before the Miscellaneous Offences Tribunal in respect of the aforementioned charges for the first time on September 15, 1989. D

(b) Section 4A(1) of the Special Tribunal (Miscellaneous Offences) Decree of 1984 (as amended by Decree No. 27 of 1986) requires that proceedings in respect of offences shall be concluded by the Tribunal within 14 days of its first sitting. E

(C) A period of over one year and six months has elapsed since the said September 15, 1989, but prosecution has not, and is yet to commence in respect of the aforesaid charges.

(3) By remanding the Applicants in prison custody for a period of one year and two months, the Miscellaneous Offences Tribunal has fettered its own discretion to impose a lesser sentence than imprisonment for one year and two months (In the event of the applicants being found guilty) and has thereby deprived itself of jurisdiction to try, convict and/ or sentence the applicants herein. F G

When the application came before the High Court of Lagos State, it would appear that four questions were thereafter referred to the Court of Appeal for:-

"(1) *Is the Miscellaneous Offences Tribunal, as constituted under the Miscellaneous Offences Decree No. 20 of 1984 (as amended) an inferior tribunal, or is it a Superior Court of Record, having regard to section 6 of the Constitution of the Federal Republic of Nigeria, 1979*

(as amended)?

(2) *If it is held that the Miscellaneous Offences Tribunal is an inferior tribunal, then does section 236 of the Constitution of the Federal Republic of Nigeria 1979 (as amended) not confer supervisory jurisdiction on the High Court over the proceedings of the Miscellaneous Offences In the event that (2) above is answered in the Tribunal aforesaid?*

(3) *In the event that (2) above is answered in the Affirmative, can the High Court exercise supervisory jurisdiction by way of Certiorari and Prohibition over the proceedings of the Miscellaneous Offences Tribunal aforesaid notwithstanding the provisions of the TRIBUNAL (Miscellaneous Provisions) Decree No. 9 of 1991.*

(4) *Is there any stipulation of law (constitutional or otherwise) to the effect that the "Supervisory jurisdiction conferred on the High Courts under section 236 of the constitution can only be exercised in respect of matters over which the High Court has "Original jurisdiction?"*

However, when the application came up for hearing before the Court below, the applicants decided to limit for the consideration of that court, only one question. And it reads:-

"When would the ouster clauses contained in Decree No. 9 of 1991 apply so as to take away the supervisory jurisdiction of the High Court of Lagos State to review proceedings in the Miscellaneous Offences Tribunal."

The question so posed was resolved in favour of the applicants, who are now the respondents in this appeal. In the event of the leading Judgment of Pats-Acholonu JCA, the primary contention of the respondents, now appellants that the provisions of Sections 4, 5(5) of the Miscellaneous Offences Act Cap 410 of the Laws of the Federation 1990 are not applicable to offences under the Counterfeit and Fake Drug (Miscellaneous Provisions) Act, Cap. 73 Laws of the Federation of Nigeria, was considered and rejected. His Lordship, then went further to hold thus:-

"There is no doubt in my mind that the employment of the word 'shall' in the Special Tribunal (Miscellaneous Offences No. 2) Amend-

ment Decree and as reflected in Cap 73 of the Laws of the Federal Republic of Nigeria shows that it is a command of the legislature intended to be abided by all concerned in the administration of justice in that regard."

And with regard to the question posed to the Court, he held , as follows:-

"I would state that an Ouster Clause in Decree No. 9 of 1991 will apply to take away the supervisory jurisdiction of the High Court of State only when an inferior tribunal abides strictly in its entirety to the prescription which gives it powers where it does not seek to substitute its own procedure contrary to that laid down by statute as to make a trial conducted by it a nullity. In this case before us there has been flagrant disobedience of law of the land by the agencies authorized to effectuate it. Therefore neither the tribunal nor the prosecution can take shelter under the ouster clause."

As the court below decisively answered the question raised before in the affirmative, the appellants have appealed to this Court pursuant thereto, they filed three grounds of appeal. They need not be set out in this judgment. This is because the issues raised for the determination of the appeal flow from the grounds of appeal.

In the appellants' brief filed for them by their Learned Counsel, C.I. Okpoko, a Legal Officer, in the Federal Ministry of Justice, the following are issues set down for the determination of the appeal:-

"(1) Whether the Provisions of section 1(8) of Decree No. 9 of 1991 that ousted the supervisory jurisdiction or power of judicial review of a High Court is dependent upon the tribunal complying with the provisions of law creating it.

(2) Whether the provisions of Sections 4, 5(5) and 6(1) of Special Tribunal (Miscellaneous Offences) Act, Cap 410 L.F.N. 1990 is applicable to the trial of offences created under Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap. 73 L.F.N. 1990.

(3) Was the Court of Appeal right in so holding that in this case before us there has been flagrant disobedience of the law of the land by the agencies authorized to effectuate it. Therefore neither the tribunal

nor the prosecution can take shelter under the ouster clause.

(4) Whether by Court of Appeal Rules, brief writing is required to argue a Reference."

The respondents in the brief filed on their behalf by their Learned
B Counsel, Inam Wilson, issues upon which this appeal should be identified
were also set down. I do not, however, propose to reproduce them here.
This is because the issues so framed raised questions similar to those
raised by the issues reproduced above from the appellants' brief. For
that reason, the merit of this appeal will be considered in the light of the
C issues raised in the appellant's brief.

With regard to the 1st issue, it is the contention of the appellants,
that the provisions of section 1(8) of Decree 9 of 1999, clearly ousted
the supervisory jurisdiction of the High Court of Lagos State over the
D Miscellaneous Offences Tribunal. It further argued for the appellants
that the Court below was in error to have held that the effectiveness of
the ouster clause in the provisions of section 1 (8) of Decree No.9 of
1991 is not dependent upon the tribunal complying with the provisions of
E the law creating it.

In support of this contention the case of A.G. Lagos State V. Dosunmu (1989)3 NWLR (Pt.111) 552 at 580 where Oputa JSC said:-

In Attorney-General V.Dosunmu (supra) this Court in construing
F provisions similar to the above in relation to the jurisdiction of High
Courts to hear matters brought before it said at page 580 thus:-

*"It is true that the powers are great, they are however not unlimited. They are limited by any ouster clause. In these days that a Decree has supremacy even over the Constitution (See the Federal Military Government (Supremacy etc.) Decree No 28 of 1970) any clear and specific ouster in a Decree as in section 2(1)(a) of Decree No. 17 of 1977 has to be seriously considered and religiously obeyed. It is the duty of the courts to expound their jurisdiction but it is no part of our duty to expand our
G jurisdiction that will require legislation. The best advice here is that given by Rigby, L.J. In Re Walkins (1896) L.R.2Ed. P339 that "we ought not to overstep our jurisdiction because we think it might be advantageous so to do".*

Later in that judgment, His Lordship at page 581, said:

"In a recent case of Joseph Mangup Din V. Attorney-General of the Federation (1988)4 NWLR (Pt.87) 147 at P. 171, this court held that an indirect challenge to the validity of Act No. 58 of 1970 forfeiting the appellants' property. "Falls within the ambit of the provisions of section 6 subsection (6)(d) of the 1979 Constitution. Courts guard their jurisdiction zealously. And that is how it should be. But if it "any given case that jurisdiction" has been ousted by the provisions of the Constitution or a Decree (Act), then the path of constitutionalism will dictate a willing compliance with the ouster clauses."

It is upon this decision of the Supreme Court that the appellants have argued that the jurisdiction of the High Court over this matter is completely ousted having regard to the ouster clause in Section 1 (8) of Decree No. 9 of 1991. And which is reproduced hereunder:-

"Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended, or any enactment to the contrary, the supervisory jurisdiction or power of judicial review of a High Court shall not extend to any matter or proceedings before a tribunal duly constituted before or after commencement of this Decree."

It is manifest from the brief for the respondents by their learned counsel, that the first point they took is to recognize that the provision in Section 1(8) of Decree 9, was intended to oust the jurisdiction or power of a High Court to carry out review of any matter or proceedings of a duly constituted tribunal. Learned counsel for the respondents has however argued in their brief that any Court should not merely throw in the towel, for the simple reason that its jurisdiction has been ousted by the provisions of an Act. It is his submission that any court faced with such a legislation ought to first identify carefully the material facts of the case; and then consider whether those facts disclosed any features which show conformity vel non, with all the legislation relevant to the ouster of its jurisdiction.

It is his further submission that if upon the result of the enquiry, the Court is satisfied that the provisions of the law relevant to the ouster of its jurisdiction. For this proposition, references were made in the

respondents' brief to several decided cases of this Court, and decisions in the English Courts. But, for the purpose of this judgment, I would refer to the following cases:- Bode V A.G. Federation (1986)2 NWLR (Part 24) 568 at 577; Nwosu V Imo State Environmental Sanitation Authority (1990)2 NWLR (Part 135)688 at 933; Saidu Garba V Federal Civil Service Commission (1988)1 NWLR (Part 71)449 at 478. Barclays Bank of Nigeria Ltd. V Central Bank of Nigeria (1976) 6 S.C. 175; Doherty V Balewa (1961)2 NSCC 248 at 256 - 257; University of Ibadan V Adamolekun (1976)5 NSCC 210; Lakanmi V. Attorney-General (West) (1970)6 NSCC 143; NPA V Panalpina World Transport (Nig) Ltd. (1973)8 NSCC 282; F.C.D.A. V Sule (1994)3 NWLR (Pt. 332) 257; Agwuna V A-G. Federation (1995)5 NWRL (Pt.396)418; Guardian Newspapers Ltd V A-G. Federation (1999)9 NWLR (Pt. 618); Attorney-General Lagos State V Dosunmu (1989)3 NWLR (Pt. 111) 552; Madukolu V Nkemdilim (1962)1 ALL N.R. 587; Uti V Onoyivwe (1991)1 NWLR (Pt.166) 166 at 243.

Before the principles that emerge from the above cases are considered, the facts relevant for consideration in the instant case ought to be set out. It is common ground that the respondents were remanded in custody for one year and two months before they were let out on bail. Though, after their arrest, they were arraigned before the tribunal, their trial had not commenced for one year and five months following their arraignment. Their learned counsel then submits that as the proceedings of the Tribunal were governed by the Special Tribunal (Miscellaneous Offences) Act (Cap 410) LFN 1990 by virtue of section 4 of the Counterfeit and Fake Drug (Miscellaneous Provisions) Act (Cap 73), of LFN the appellants, as the prosecutor, and the Tribunal were clearly in breach of the provisions of sections 4,5(5) & 6(1) of the Special Tribunal (Miscellaneous Offences) Act, when the proceedings were commenced the proceedings against the respondents. It is further contended for the respondents that the Court, of first instance, having regard to the contention of counsel on whether the jurisdiction of the Court was ousted pursuant to the provisions of section 1(8) of Decree No. 9 of 1991, properly referred certain questions to the Court below. It is the further submis-

sion of Learned Counsel for the respondents that the Court below was right to have held, having regard to the questions raised before it, that the ouster clause in Decree No. 9 of 1991 will not apply to take away the supervisory jurisdiction of the High Court when the Tribunal failed to abide strictly to it enabling statute. It is also his contention that the ouster clause will not apply where the Tribunal sought to substitute its own procedure contrary to that laid down by the statute that governed it with respect to procedure for the trial of offences charged before it. Again, before I consider the argument of counsel dealing with whether the supervisory jurisdiction of the High Court has been ousted by the provisions of Section 1(8) of Decree No. 9 of 1991, may I refer to the view already held that the procedure for the prosecution and trial of Offences under the Counterfeit and Fake Drugs (Miscellaneous Offences) Act (Cap 3) LFN is as laid down in the various provisions of the Special Tribunal (Miscellaneous Offences) Act, (Cap 410) LFN. These provisions of the Act being Section 4,5(4), 5(5) and 6(1), and which I have already reproduced in this judgment. I do not therefore need to make any further references to this point, and my reasons for arriving at that conclusion.

I will now consider the argument for and against the contention with regard to whether the supervisory jurisdiction of the High Court over the tribunals created to try the offences for which the respondents were charged, has been ousted by virtue of the provisions contained in Section 1(8) of Decree 9 of 1991.

For the appellants, as already noted, the argument for the contention that the jurisdiction of the Court was ousted, by reason of the provisions of section 1(8) of Decree 9 of 1991 rested mainly on the decision of this Court in A-G. V Dosunmu (supra). I have in this judgment set down the portion of the judgment of Oputa JSC, which does appear to support the contention of the appellants that the supervisory jurisdiction of High Court has been ousted by the aforesaid provisions of Section 1(8) of Decree 9 of 1991.

However, as it is contended for the respondents that as the facts of Attorney-General V Dosunmu (supra) cited in support of the appellants' submission are distinguishable from those in the instant appeal, the

dictum of Oputa JSC in Attorney-General V Dosunmu (supra) cannot in the circumstances be held in support of this position of appellants.

The main facts in the instant appeal have already been reiterated in this judgment and they will not be repeated, except as necessary to bring into focus the factors that distinguish the instant appeal from the Attorney General V Dosunmu's case (supra). In that case, the Government of Lagos State sometime in 1975 introduced a policy whereby no individual could own more than one plot of State land in Victoria Island, and not more than two at South west, Ikoyi. Pursuant thereto, a Committee to compile a comprehensive list of persons who owned lands affected by the policy was set up. Based on the Committee's report, the Military Governor of Lagos State enacted Edict No.3 of 1976 (Determination of Certain Interests in Lands) and Order LSLN No. 9 of 1976 (Determination of Certain Interests in State Lands Order). As a result of the implementation of that Order, the interest of the Hon. Justice Dosunmu in plot No. 272, registered as LO. 7307 being one of the two plots owned by him in Victoria Island was determined. As the Hon. Justice Dosunmu was aggrieved with that determination of his interest, he challenged its forfeiture. It was his contention that the provisions of Edict No. 3 of 1976 and Order No. 9 of 1976 are unconstitutional, null and void because they are inconsistent with the provisions of Section 22(1) and 31(1) of the 1962 Constitution of Nigeria.

Thus upon those facts the Learned Counsel argued in the respondents' brief that in the Attorney-General V Dosunmu's case (supra), the challenge was against the validity of Edict No. 3 of 1976 and Order No. 9 of 1976. He further argued that in that case, there was no issue of non-compliance by the Commission of inquiry with the law setting it up. The central issue in this appeal, and which remains the main plank of the contention of the respondents, is that the tribunal created for the trial of offences such as those for which the respondents were charged did not comply with the statute that created it. While there may be such a distinction as outlined above, it must be noted that distinction does not appear to be part of the decision in Attorney General V Dosunmu (supra).

However, be that as it may, the point that is in contention in this

appeal is whether by reason of the ouster clause provision in Decree No. 9 of 1991, the High Court must simply decline jurisdiction without considering the ouster provisions in the context of the facts surrounding the particular case before it.

In the resolution of this question, it is desirable to recall that it is well settled principle having regard to the very many decided cases of this Court that the word jurisdiction means the authority which a court has to decide matters before it or to take cognizance of matters presented before it for its decision. See: Ndaeyo V Ogunnaya (1977) 1 SC 11. It must also be noted, that as all courts of record are creatures of statute, the unlimited jurisdiction granted to the Court by the constitution, as evidenced by section 236 (1) of the 1979 Constitution (applicable) in the context of this case, may be curtailed by the Decree of the Federal Military Government. However whether the unlimited jurisdiction of the Court was curtailed or not, the Court must in whatever situation it finds itself bear in mind whether it has the competence to exercise its jurisdiction. In Madukolu V Nkemdilim (1962) 1 ALL. NLR.587; (1962) SCNLR 34, it has long been settled that a Court has the necessary competence to exercise jurisdiction in a cause or matter, if it is (a) properly constituted with respect to the number and qualification of its membership, (b) the subject matter of the action is within its jurisdiction, (c) the action is initiated by the due process of law, and (d) any condition to the exercise of its jurisdiction has been fulfilled.

In the case in hand, it is manifest from the provisions of the other clause in Decree 9 of 1991, that jurisdiction of High Court was limited by virtue of the provisions therein. On whether the jurisdiction of the Court was ousted by virtue of the provisions in Decree 9 of 1991, it is necessary to observe that this Court had in several cases dealing with this question taken the position that **where the jurisdiction of the Court has been clearly ousted by a Decree or a Statute, the Courts are obliged to uphold the ouster of it jurisdiction. Some of such decisions that represent this view, are as follows:- Hope Harriman V Mobolaji Johnson (1970) ALL. NLR 503; Adenrele Adejumo, Nigerian Construction Company Ltd. V Col. Mobolaji Johnson (1974) ALL NRL**

3252 Misce. Offences Tribunal v. Okoroafor (2001) 10 KLR Ejiwunmi JSC
(2nd Edition Vol. 1) 26 at 30; Adejumo V Military Governor of Lagos State (1972) 1 ALL NRL (Pt.1) 159; Uwaifo V Attorney General of Bendel State (1983)4 NCLR 1; SODE V Attorney General of the Federation (1990) 1 NWLR (Pt.128) 500; at p. 518; Obada V Military Governor of Kwara State (1990)6 NWLR (Pt.157) 482; Labiya V Anretiola (1992)8 NWLR (Pt.258) 13; Osadebey V Attorney General of Bendel State (1991) 1 NWLR 533.

But, though the Courts have in essence upheld the ouster clause in a Decree or Legislation, it would appear from the decided cases that the Courts have always striven to guard and that jealously the sovereignty of the Courts in the determination of the civil rights and obligations of the people of this Country. In this context may I quote the apt and pungent dictum of Obaseki JSC in Governor of Lagos State V Ojukwu (1986) 1 NWLR (Pt.18) 621 at 313 - 314, which reads:-

"Nigerian Constitution is founded on the rule of law, the primary meaning of which is that every thing must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary power which Coke colourfully spoke of as 'golden and straight metwand of law as opposed to the uncertain and crooked cord of discretion' (see 4 inst.41). More relevant to the case in hand, the rule of law means that disputes as to the legality of acts of Government are to be decided by judges who are wholly independent of the executive....."

The judiciary cannot shirk its sacred responsibility to the Nation to maintain the rule of law. It is both in the interest of the Government and all persons in Nigeria."

It is pertinent to observe that before the observation above was made by Obaseki JSC, it is evident that the Supreme Court has also expressed the view that while it will not challenge the right or the legal capacity or power of Military regime to make a Decree or Edict, it reserved the power to inquire into whether or not such Decree or Edict was consistent with the provisions of the Constitution. See: Barclays Bank V Central Bank of Nigeria (1976)6 S.C. 175; University of Ibadan V Adamolekun (1967)5 NSCC 210.

It would therefore appear that whereas the Court would ordinarily abide with as ouster provision of its jurisdiction, yet it would appear that before doing so, it reserves to it the right to consider whether the provisions of the ouster order were applicable in the circumstances. This point was made clearly in FCDA V SULE (1991)3 NWLR (Pt.332) 257, B when Adio JSC at page 285, observed that:-

"The provision in the Decree ousting the jurisdiction of the Courts does not authorize application of the provisions of the Decree to public officers in case in which the provisions are inapplicable or flagrant disregard of the salient provisions in cases in which the Decree is applicable." C

And at page 286, he further made this pertinent observation:-

"There is a misconception that however careless those concerned with the administration or the application of the provision of Decree No. 17 of 1984 to public officers at Administrative level might be, the provisions of the Decree ousting the jurisdiction of the Courts could always be relied upon or invoked to cover up such carelessness or irregularities even in cases of misapplication of the provisions of Decree to public officers in circumstances in which it was obvious that the provisions were not applicable. In Garba V Federal Civil Service Commission & Anor. (1988) 1 NWLR (Pt.71) 449, this Court notwithstanding the ouster provisions, in the Decree, held that the provisions of this Decree were not applicable in the case of the interdiction of a public officer." D E F

It is manifest from the decided cases that I have referred to above that the principle has crystallized that where a legislation ousts the jurisdiction of the High Court, the Court reserves to it the right to examine whether the provisions of the ouster clause, apply to the particular case in hand. In addition, it must be recognized that no discussion of this principle can be complete without reference to the latest pronouncement of this court on this question. The case under reference is A.G.Federation V. Guardian Newspapers Ltd (1999) 9 NWLR (PT.618) raised therein. G H In that case, Decrees No.8 and 12, namely, section 3 of the Guardian Newspapers and African Guardian Weekly Magazine (Proscription and Prohibition from circulation) Decree No. 8 of 1994, and the Federal Mili-

tary Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994 were enacted by the Federal Military Government. The effect of the promulgation of these Decrees was that the publication of the Guardian Newspapers and the African Guardian Weekly were halted. After sometime they took action in the Federal High Court for the enforcement of their Fundamental Human Right under the Fundamental Right (Enforcement Procedure) 1979. The learned Trial Judge declined jurisdiction, having regard to the ouster clause in the Decrees referred to above that refusal and other questions were agitated on appeal in the Court of Appeal. His Lordship Ayoola JCA, (as he then was), formed the view that the Federal High Court should not have declined jurisdiction. On Appeal to this court, Uwaifo JSC in the course of his judgement vide A.G. Federation V Guardian Newspaper Ltd. (Supra) page 217, endorsed that decision and quoted with approval that part of the judgment of Ayoola JCA (as he then was), thus:-

"In this case even if the two instruments (Decrees No.8 and No. 12 of 1994) are effective as Decrees, the Federal High Court ought not to have declined jurisdiction at the stage it did without further inquiry. Ouster of the jurisdiction of a court does not preclude it from exercising jurisdiction to interpret the ouster clause itself or to determine whether or not the action in question comes within the scope of power of authority conferred by the enabling Statute."

Having regard to the cases reviewed above, I think, it can be said that **a Court would be obliged to respect and uphold the ouster provisions of a Decree or Statute. But the Court reserves to it the right to consider whether the ouster clause ought to be obeyed, having regard to other surrounding facts and the law relevant to the provisions ousting its jurisdiction.**

In the instant case, the contention of the respondents is that both the Attorney-General of the Federation and the Tribunal did not exercise the right to prosecute the charges levelled against the respondents as provided for it Special Tribunal (Miscellaneous Offences) Act as amended (Cap. 410 LFN 1990), particularly, Sections 4,5(5) and 6(1) thereof, that I have earlier held in this judgment apply to the prosecution and trial of

the offences for which the respondents were charged before the Tribunal.

The question then is whether the High Court should not, having regard to the facts presented to it, consider whether proceedings before the Tribunal have been properly initiated and conducted before it, in accordance with the Statutes that created it. B

It seems to me that where as in this case questions are raised to as to whether the proceedings before the Tribunal have been properly initiated in accordance with the law that set up the trial before the Tribunal, the ouster of the jurisdiction of the Court should not preclude it from exercising jurisdiction to interpret the ouster clause or to determine whether or not the proceedings in question comes within the scope of power of authority conferred by the enabling Statute. C D

I would therefore uphold the view held by the Court below that though the jurisdiction of the High Court appear ousted by virtue of the provisions of Decree No. 9 of 1991 the Court is not precluded from considering whether in the circumstances the ouster jurisdiction comes within the scope of power of authority conferred by the enabling statute. This issue is therefore resolved in favour of the respondents. I would therefore uphold the view held by the Court below. This issue is therefore resolved in favour of the respondents. E F

I now will consider issue 2 raised in the appellants' brief. The question that was raised in that issue is whether the provisions of Section 4, 5(5) and 6(1) of Special Tribunal (Miscellaneous Offences) Act, Cap. 410 L.F.N. 1990 is applicable to the trial of offences created under Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap 73 L.F.N.1990. G

The main argument advanced for the appellants is that the provisions of Sections 4, 5(5) and 6(1) are confined to offences created under the Special Tribunal (Miscellaneous Offences) Act (supra). In effect, it is argued for the appellants, that offences charged under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act (supra), are not subject to the provisions enacted in the Special Tribunal (Miscellaneous Offences) Act (supra). It is further argued for the appellants that though it is pro- H

vided in section 4 of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act (supra), that the Tribunal established under the Special Tribunal (Miscellaneous Offences) Act, shall exercise jurisdiction to try offences charged under the Counterfeit and Fake Drugs (Miscellaneous
B Offences) Act (supra), does not in law make for the application of Sections 4, 5(5) and 6(1) of the provisions in Cap 410 (supra). It is the contention of Learned Counsel for the appellants that if the makers of the laws wanted the said sections of Cap 410 to apply, they would have made specific provisions in Cap 73 (supra), to that effect.

C For the respondents, it is the submission of their Learned Counsel that the contention of the Learned Counsel for the appellants, that the provisions of the Special Tribunal (Miscellaneous Offences) Act Cap 410, are inapplicable to the prosecution and trial of offences created under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act is
D erroneous. The contention of the learned Counsel for the respondent that the provisions of the Special Tribunal (Miscellaneous Offences) Act, is applicable is premised on the view that as procedure by which offenders are to be tried was not provided for in Decree No. 17 of 1989 (Cap 73
E)L.F.N. 1990, that lacuna was filled by section 4 of the Decree (Cap. 73)L.F.N. 1990. It is therefore further submitted that it was the intention of the law makers to incorporate the Special Tribunal (Miscellaneous Offences) Act (Cap 410) in the Counterfeit and Fake Drugs (Miscellaneous
F Provisions) Act (Cap 73 by reference. The effect then of that incorporation is that the Special Tribunal that will try offences relating to Counterfeit and Fake Drugs will adopt and follow the procedure laid down in the Special Tribunal (Miscellaneous Offences) Act (Cap 410) of Laws of
G Federation of Nigeria, 1990. A careful reading of this Act would disclose that detailed provisions were made for the rules of procedure that have to be followed when prosecuting offences brought before the Tribunal. For present purpose, references would be made to Section 4, sub Sections 4 and 5 of Section 5 and Section 6(1) of the Act. They read thus:-

"(4) Police investigation into cases relating to offences under this Act shall be concluded not later than 28 days after the arrest of the accused person and particular of such investigation shall be sent to the

Attorney-General of the Federation not later than 7 days after the conclusion of Police investigation.

5(4) -Where the rules of procedure contained in the schedule to this Act contain no provisions in respect of any matter relating to or connected with the trial of offences under this Act, the provisions of the Criminal Procedure Code or depending on the venue, the Criminal Procedure Act shall with such modification as the circumstances may require, apply in respect of such matter to the same extent as they apply to the trial of offences generally. B

5(5) Prosecution for offences under this Act shall be instituted within 14 days after the receipt by the Attorney-General of the Federation of the file containing completed police investigation in respect of the offence. (Underlining mine). C

6(1) Proceedings in respect of offences under this Act Shall be concluded by the tribunal within 14 days of its first siting. (Underlining mine). D

Bearing in mind the meaning ascribed to the word 'shall' it is manifest from the above provisions of the Special Tribunal (Miscellaneous Offences) Act, that the law maker deliberately set down a time frame which is imperative for the investigation by the police, consideration of the merits of the investigation, and the trial of offences that were meant to be heard and determined by any Tribunal set up under the provisions of Special Tribunal (Miscellaneous Offences) Act (supra). E F

It seems to me that having regard to the contention of Learned Counsel for the appellants that offences created under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act are not triable by the Tribunal created by virtue of the provisions of the Special Tribunal (Miscellaneous Offences Act) (supra), it is necessary to refer to the nature of the accusation made against the respondents, and the venue where they were charged. G

The record of proceedings show that the respondents were H charged before the Miscellaneous Offences Tribunal as reproduced hereunder:-

COUNT 1

STATEMENT OF OFFENCE

Possession of adulterated drug contrary to Section 1(a) of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Decree No. 17 of 1989 and thereby committed an offence punishable under section 3(1) (a) of the same Decree.

PARTICULARS OF OFFENCE

(1) NWAMMIRI EKPE OKOROAFOR

(2) ANAYO J. AKAMNONU

On or about the 12th day of July, 1989 at 31 Faulks Road, Aba thereby committed an offence.

COUNT 2

STATEMENT OF OFFENCE

Possession of adulterated drug contrary to Section 1(a) of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Decree No. 17 of 1989 and thereby committed an offence punishable under Section 3(1) (a) of the same Decree.

PARTICULARS OF OFFENCE

(1) NWAMMIRI EKPE OKOROAFOR

(2) ANAYO J. AKAMNONU

On or about the 12th day of July, 1989, at 31 Faulks Road, Aba, Imo State did possess adulterated drug to wit:-

NIROK VITAMIN C SYRUP

AND THEREBY committed an offence.

It is beyond dispute from the above that the appellants charged the respondents before the Miscellaneous Offences Tribunal as reproduced above for offences created by the Counterfeit and Fake Drugs (Miscellaneous Provision) Decree No. 17 of 1989 Cap. 73 of Laws of Federation of Nigeria (1990). In order to consider whether the respondents were improperly charged or not before the Miscellaneous Offences Tribunal, it is relevant to reproduce the provisions of Section 4 of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act (Supra). It reads:-

"The Tribunal established under Special Tribunal (Miscellaneous Offences) Act, as amended, shall have the jurisdiction to try offenders

under this Act".

There can be no doubt from a close reading of the above provisions of this Act, that the intention of the law makers was that offences brought before a Tribunal created under the Act for the trial of offences brought before it must be prosecuted with deliberate speed as set out in its provisions. By the provisions made in the said Act, the prosecution of offences intended to be charged before the Tribunal shall be instituted within 14 days after the receipt by the Attorney - General of the Federation of the file containing completed police investigation in respect of such offences. Before the matter is referred to the Attorney - General, the police authorities are not to spend more than 28 days investigating the offences. And the Tribunal must within 14 days of it sitting conclude the proceedings in respect of such offences charged before it.

The procedure for the prosecution and the trial of offences for trial under any Tribunal created under the Special Tribunal (Miscellaneous Offences) Act, are no doubt a clear departure from that generally followed in the trial of offences in the ordinary courts. But there can be no question that the law makers intended that all offences that fall within those triable in a Tribunal so created must strictly be followed by those concerned with the prosecution and trial of such offences.

In the instant appeal, it is conceded that the appellants are not challenging the provisions of this Act with regard to the rules set down for the prosecution of cases brought before the Tribunal created under the Act. It is however the contention of the learned counsel for the appellants that the provisions of this Act do not apply to the prosecution of offences under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act. Cap 73 of the Laws of the Federation of Nigeria 1990. It would appear from that contention of the appellants that the procedure for the prosecution and determination of offences charged under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act, was intended to be that followed in the prosecution and trial of criminal offences, such as those in the Criminal Code, where time is not of the essence in the prosecution of such cases.

Now, as previously stated, the learned counsel for the respondent has argued that the position taken by the learned counsel for the appellants on this question cannot be right. The question then is whether the Learned Counsel for the respondents is right in his submission that though the offences were created under the Counterfeit and Fake Drugs (Miscellaneous Provisions Act), the procedure for investigating, prosecution and trial of such offences as those for which the respondents were charged, was vested in the provisions enacted in the Special Tribunal (Miscellaneous Offences) Act Cap. 410 by virtue of Section 4 of the Counterfeit and Fake Drugs Act. In order to answer this question it is necessary to refer to the principles governing the interpretation of statutes generally.

It is generally acknowledged that the Court faced with the interpretation of statute has duty to first discover the intention of the lawmakers. This has to be discovered from the words used in their ordinary and natural sense - when there is no doubt or ambiguity about their meaning. As was said in Barrel v. Fordree (1932) A.C.676 at 682 per Lord Warrington of Clyffe: "*The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.*" See also International Bank For West African Ltd v. Imano (Nig.) Ltd. (1988) 3 NWLR (Pt.85) 633; Salami v. Chairman L.E.D.B. (1989) 5 NWLR (Pt. 123) 539 - 550 - 551; Aqua Ltd. V. Ondo State Sports Council (1988) 4 NWLR (Pt.91) 622 at 641.

The House of Lords had reason to consider this question in Ingle V Farrand 1927 AC 417 at page 428, Lord Atkinson said thus:

"Your Lordships were referred to several authorities in laying down the principle upon which the question should be determined whether a statute acts retrospectively or not. Amongst those authorities the case of Smith V Callonder (1990) A.C 297 and Lindley L. J ' S judgment in Lauri V Renad (1892)2 Ch. 402, 421 were included. The rule which according to those authorities is to be applies is thus stated in Moscowell on Statutes, P.382. It is a fundamental rule of English Law that no

statute shall be construed so as to have a retrospective operation unless such a construction appear very clearly in the terms of the Act, or arises by necessary and distinct implication"

Having regard to the principle enunciated above, **it seems that there is no doubt that the law makers by the provisions made in Section 4 B of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act, the intention was made clear that the procedure for the prosecution and trial of offences under the 1973 Act, would be in accordance with the provisions made in the Special Tribunals (Special C Provisions) Act Cap 410 of the Laws of the Federal Republic of Nigeria 1990, apply to the trial by a Tribunal of offences charged under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap 73 of Laws of Nigeria 1990.**

The enactment of a time frame is, of course, a departure D from the normal practice in the prosecution of cases of this kind. This is because of the erstwhile prevailing view that in the prosecution of criminal cases time does not run against the State. However, it seems clear that by this legislation a deliberate departure E was made by the law maker to make time of the essence in the prosecution of the cases arising from the law so enacted. It must also follow that where the State, on whose behalf the Attorney-General undertakes the prosecution of cases failed to observe and F maintain the time frame laid down for the prosecution cases for trial in the Tribunal, then that failure to keep within the time frame may, in view lead to the discharge of the accused upon a proper application made to that effect.

The 3rd issue raised in the appellants' brief is whether the Court G of Appeal was right to have made in the course of its Judgment, the following observation:

"In this case before us there has been flagrant disobedience of law of the land by the agencies authorised to effectuate it. Therefore H neither the Tribunal nor the prosecution can take shelter under the ouster clause"

The contention of Learned Counsel for the appellant appear to

be that the observation so made went beyond the scope of the question raised before the Court. And supported his contention by the views of this Court in Attorney-General of Anambra State V Okafor (1992) 3 NWLR (Pt.224) at 396. **There is no doubt the principle that in the hearing and determination of an interlocutory matter, the Court ought to refrain from making pronouncement touching upon the main issue that would have to be decided between the parties.**

In this matter, the observation so made, having regard to the materials presented to the Court, was only a reflection of the Court on the material before it. I do not in my humble view therefore consider that observation would inhibit a Court that has to determine the real issues between the parties. I therefore do not consider that there is any merit in this issue. It is dismissed.

Finally, the appellants have questioned whether by the Court of Appeal Rules, brief writing is required and/or necessary to file a brief pursuant to the reference made to the Court of Appeal in respect of this matter. For the appellants their Learned Counsel contends that though Order 6 Rules 2, of the Court of Appeal Rules and Order 8 Rules 5(1) of the Supreme Court Rules (as amended), provide for the writing of Briefs. Their use is limited to when substantive appeals fail to be heard and determined in those Courts. For that contention, reference was made to Ibero V. Obioha (1994) 1 SCNJ O.44 at 54; (1994) 1 NWLR (Pt.32) 503 at 519.

There can be no doubt that the preparation of briefs in support of arguments is as limited in the Rules of Court referred to above. But, then Learned Counsel, apparently recognised the futility of his appeal in respect of this issue. This is apparent from the relief he wants in respect of this issue as Learned Counsel for the appellants has asked in the appellants' brief not to dismiss and/or strike out the reference on account of the brief. Rather he contends that the Court should uphold their submission that it is not proper for an applicant without more to file a brief of argument while making a reference to the Court below.

It is clear that the Rules of the Court of Appeal do not provide for the filing of briefs in respect of the matter under con-

sideration. However, it is not enough in my humble view to dismiss an appeal simply because a brief of argument was filed as was done in the instant matter. The appellants should have gone further to show that they suffered a miscarriage of justice because of the brief so filed. It must be borne in mind that the writing of briefs came into existence in order to assist the Court in the determination of issues raised before it. And if properly considered a clear and reasoned argument of counsel in respect of issues in a brief, would certainly help both sides to articulate their conflicting contentions. The fact that one of the parties had as in this case presented his argument in a brief for the Court and obviously also opposing counsel, without showing what disadvantage, if any that the opposing counsel suffered as a result is not in my view, sufficient to set aside the judgment of the Lower Court.

Before concluding, it is necessary to remind counsel particularly those who are in the Ministries of Justices that they are obliged by virtue of their employment to maintain a very high standard of professional conduct in the discharge of their duties. It is expected of them to be very conversant with the provisions of the law that are relevant to the matter they are called upon to prosecute or defend. The Courts can then find them a dependable ally in the dispensation of Justice.

In conclusion, from the several reasons given above, this appeal is devoid of any merit. And it is dismissed in toto. I will make no order as to costs.

KARIBI-WHYTE JSC

I have read the judgment of my learned brother Ejiwunmi JSC. I agree that's this appeal be dismissed.

This appeal is against the ruling of the Court of Appeal, Lagos, Division, delivered on the 19th December, 1999. On the 25th Nov., 1991, the High Court of Lagos, by virtue of Section 259(2) of the Constitution 1979 (as amended) referred to the Court of Appeal, Lagos, Division, the determination of the question "When would the ouster clauses contained in Decree No. 9 of 1991 apply so as to take away the supervi-

3264 Misce. Off. Tribunal v. Okoroafor (2001) 10 KLR Karibi-Whyte JSC
sory jurisdiction of the High Court of Lagos State to review proceedings
in the Miscellaneous Offences Tribunal."

The questions reproduced below were referred to the Court of Appeal on the interpretation of the Constitution of the federal Republic of Nigeria 1979 as amended.

"QUESTIONS FOR DETERMINATION:

5.1 The following questions as to the interpretation of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) have now arisen in these proceedings, namely:

(1) Is the Miscellaneous Offences Tribunal, as Constituted under the Miscellaneous Offences Decree No.20 of 1984 (as amended) an inferior tribunal, or is it a superior Court of Record, having regard to Section 6 of the Constitution of the Federal Republic of Nigeria, 1979 (as amended)?

(2) If it is held that the Miscellaneous Offences tribunal is an inferior tribunal, then does Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) not confer supervisory jurisdiction on the High Court over the proceedings of the Miscellaneous Offences tribunal aforesaid?

(3) In the event that (2) above is answered in the affirmative, can the High Court exercise supervisory jurisdiction by way of Certiorari and Prohibition over the proceedings of the Miscellaneous Offences Tribunal aforesaid, notwithstanding the provisions of the TRIBUNAL (MISCELLANEOUS PROVISIONS) DECREE No.9 of 1999?

(4) Is there any stipulation of law (constitutional or otherwise) to the effect that the "supervisory" jurisdiction conferred on the High Courts under Section 236 of the Constitution can only be exercised in respect of matters over which the High Court has "original" jurisdiction?

5.2. The above questions of law are referred for the decision of the COURT OF APPEAL."

These questions involve the interpretation of Section 6, 236 of the Constitution 1979 (as amended) as they relate to the provisions of the Tribunal (Miscellaneous Provisions) Decree No.9 of 1991 with respect

to the supervisory jurisdiction of the High Court in relation to the offences tried under the Miscellaneous Offences Tribunal.

The questions raise the issues whether the

(a) Tribunal constituted under the Miscellaneous offences Decree No.20 of 1984, is an inferior Tribunal under the meaning of Section 6 of the Constitution 1979? B

(b) If an inferior tribunal, whether Section 236 of the Constitution 1979 conferred supervisory jurisdiction on the High Court over their proceedings? C

(c) If (b) is in the affirmative, can the High Court exercise supervisory jurisdiction by means of orders of Certiorari and Prohibition over their proceedings? C

(d) Is there any provision that the supervisory jurisdiction conferred on the High Court can only be exercised in respect of matters within the original jurisdiction of the High Court? D

The questions were referred to the Court below at the instance of the accused persons who were seeking the interpretation of the court on the crucial issue whether the Miscellaneous Offences Tribunal could exercise jurisdiction in respect of the offences for which they stood charged. It is obvious therefore that the determination of the interpretation of the enabling statutory and constitutional provisions is predicated on the facts of the case, which are stated precisely as follows- F

Applicants who are Pharmacists alleged to be involved in the manufacture of fake drugs were arrested for the commission of offences under the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act Cap. 73 LFN 1990 and detained from 29/6/89. They were arraigned and thereafter remanded in prison Custody on the 15/9/89. They were granted bail on the 15/1/90. The provisions of Section 3A, 4(5), 4(A)(1) of the Decree No.20 of 1984 as amended by the Special Tribunal Miscellaneous Offences (No.2) (Amendment) Decree 1986 has prescribed the procedure for bringing accused persons to trial and regulates the duration of their trial. G H

Applicants are contending that because a period of 17 months from the date of their arrest to the date on which they were granted bail

had elapsed, trial having not even commenced, the Tribunal lacked the jurisdiction to try them. This is because of the contravention of the procedural provisions prescribed in the above cited Decree.

This was the basis for the application dated 3/4/91 brought in
 B the High Court of Lagos, seeking the order of Prohibition or Certiorari
 against the Respondents Prohibiting the trial of the Appellants in charge
 No. MOT/140/89 Federal Republic of Nigeria vs. Okoroafor and anor.,
 and /or quashing the entire proceedings.

C The gravamen of the applicants' contention is the lack of juris-
 diction in the Tribunal to try them on the offences with which they were
 charged. On the other hand, the Respondents' contention in opposing
 the application and the grant of the orders was that the High Court lacked
 the necessary jurisdiction to enquire into the matter, because their super-
 D visory jurisdiction over the Tribunal was ousted by virtue of Section 1
 (8) of Decree No.9 of 1991.

The above short synopsis of the facts is the geneis of the ques-
 tion before us.

E The High Court on the request of the Applicant dated 4th Nov.,
 1991 referred the question to the Court below on the 25th Nov., 1991. In
 their answer to the question the Court of Appeal in a unanimous decision
 stated that the High Courts supervisory jurisdiction over the Tribunal
 F was not affected by the ouster provisions of Section 1(8) of Decree
 No.9 of 1991.

Dissatisfied, Respondent appealed to this Court against the deci-
 sion of the Court below. The following three grounds of appeal were
 filed, and out of which learned Counsel to the Appellant formulated four
 G issues for the determination of this Court. For ease of reference, I repro-
 duce verbatim the grounds of appeal filled by the Appellant and the issues
 for determination formulated by both parties.

"GROUNDS OF APPEAL.

H GROUND ONE

The learned Justices of the Court of Appeal erred in law by
 stating that *"an ouster clause in Decree No.9 of 1991 will apply to take
 away the supervisory jurisdiction of the High Court of Lagos State only*

when an inferior tribunal abides strictly in its entirety to the prescription which gives it powers and where it does not seek to substitute its own procedure, contrary to that laid down by statute as to make a trial conducted by it a nullity."

PARTICULARS

(a) The supervisory jurisdiction or power of judicial review of a High Court of Lagos State under Section 236 of the Constitution of the Federal Republic (1979) as amended has been effectively removed in a clear and unambiguous language by Section 1(8) of the Tribunals (Miscellaneous Provisions) Decree 1991.

(b) The entire proceedings in the High Court is deemed to be abated as the Suit relate to the Supervisory Jurisdiction of the High Court under Section 1 (a) of the Tribunals (Miscellaneous Provisions) Decree 1991.

(c) The learned Justices of the Court of Appeal failed to give effect to the clear and unambiguous ouster Provisions of Section 1(8), (9) and (10) of the Tribunals (Miscellaneous Provisions) Decree No.9 of 1991.

GROUND TWO

The learned Justices of the Court of Appeal erred in law by holding that the procedural provisions in Section 4,5(5) and 6(1) of the Special Tribunal (Miscellaneous Offences) Act CAP.410 L.F.N 1990 which apply to offences created under Sections 3(1)-(19) of the same Act are applicable to offences created under Counterfeit and Fake Drugs (Miscellaneous Provisions) Act CAP 73 L.F.N. 1990.

PARTICULARS OF ERROR

(a) The procedural provisions of Section 4,5,(5) and 6(1) of the Special Tribunal (Miscellaneous Offences) Act CAP. 410, Laws of the Federation are strictly Limited to offences created under that Act.

(b) The jurisdiction conferred on the Special Tribunal in Section 4 of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act H Cap. 73 Laws of the Federation of Nigeria is strictly limited to offences created under Sections 1-3 of the same Act.

GROUND THREE

The learned Justices of the Court of Appeal erred in law by failing to consider that filling of briefs under Order 6 Rule 1 of the Court of Appeal Rules (1981) is strictly limited to subject matter of appeals before that Court.

B PARTICULARS OF ERROR

(a) Reference of questions of law under Section 259 (2) of the Constitution of the Federal Republic of Nigeria (1979) as amended is not "*an appeal*" for the purpose of Section 220, 221 and 222 of the same Constitution or Section 2 of the Court of Appeal Rules.

C (b) The learned Justices erred in its interpretation of the Supreme Court decision in OBIOHA Vs. IBERO (1994) 1 NWLR. 503 at 519 paragraph F with reference to the provisions of Order 6 Rules 1-10 of the Supreme Court Rules 1985 when it held that brief writing is essential when that is a reference on a question of law Additional grounds of Appeal will be filed on receipt of the record."

ISSUES FOR DETERMINATION

E 2.01 Whether the provisions of Section 1 (8) of Decree No.9 of 1991 that ousted the supervisory jurisdiction or power of judicial Review of a High Court is dependent upon the tribunal complying with the provisions of the law creating it.

F 2.02 Whether the provisions of Section 4, 5(5) and 6 (1) of Special Tribunal (Miscellaneous Offences) Act Cap. 410 L.F.N. 1990 is applicable to the trial of offences created under Counterfeit and Fake drugs (Miscellaneous Provisions) Act Cap. 73 L.F.N. 1990.

G 2.03. Was the Court of Appeal right in so holding that "*in this case before us there has been flagrant disobedience of the law of the land by the agencies authorised to effectuate it. Therefore neither the tribunal nor the prosecution can take shelter under the ouster clause.*"

2.04 *Whether by Court of Appeal Rules, brief writing is required to argue a Reference.*"

H ISSUES FOR DETERMINATION

a. Whether the Ouster Clause(s) contained in Decree No. 9 of 1991 will not apply to take away the Supervisory jurisdiction of the High Court of Lagos State to review proceedings in the Miscellaneous Of-

fences Tribunal When the Tribunal is acting contrary to the provisions of law establishing it.

b. Whether the decision of the Court of Appeal affected the substantive matter still pending before the Lagos High Court. And if so, Whether the Court of Appeal had jurisdiction to decide as it did in answer B to questions of law referred to it under Section 259(2) of the 1979 Constitution.

c. *Whether the Court of Appeal was right in allowing the Respondents argue the case stated on a written Brief of Argument.*" C

Respondent formulated only three issues for determination which encompass and cover the four formulated by the Appellant. It is clearly disapproved to proliferate issues for determination by formulating more issue than there are grounds of appeal. Issues for determination consists of a crystallisation of more than one ground of appeal. Accordingly, I D have for the purposes of this judgment adopted Respondents' formulation of three issues which adequately cover the grounds of appeal before us. The issues I formulated are identical, whereas issues 2&3 of the Respondents cover 2, 3 and 4 of the Appellant. E

It is important to observe that the question referred to the Court below is only on the issue Whether the supervisory jurisdiction of the High Court over Tribunals was ousted by the provisions of Section 1(8) of Decree No.9 of 1991. This is adequately covered by issue 1 as formulated by both. F I shall now state concisely the arguments of counsel in support of their contentions before us.

Arguments of Appellants' Counsel on Issue 1

Arguing the first issue for determination, learned Counsel for the Appellant referred to Section 1(8) of Decree No.9 of 1991 and to the G ouster provision. He also referred to the provisions of Section 236(1) of the Constitution 1979 which vested unlimited jurisdiction in State High Courts. It was submitted that by the provisions of Section 1(8) of Decree No.9 of 1991, the ouster of the jurisdiction of the High Court of H Lagos State to entertain and adjudicate on the Respondents' action as constituted and conceived is clear and unambiguous. He argued citing and relying on A-G of Lagos State v. Dosunmu (1989) 3 NWLR (pt.111)

552 at p.581, that where provisions of an ouster clause are clear and unambiguous effect should be given to it.

B Learned Counsel further submitted that the words of the ouster clause in Section 1(8) of Decree No.9 of 1991 show that the application of the ouster clause is not predicated upon the Tribunal complying with the law creating it. Hence it was submitted that the holding of the Court below that '*An ouster clause in Decree No.9 of 1991 will apply to take away the supervisory jurisdiction of High Court of Lagos State only when an inferior tribunal abides strictly in its entirety to the prescription which gives it powers and where it does not seek to substitute its own procedure contrary to that laid down by statute as to make a trial conducted by it a nullity*' as not incongruous in law but also otiose in application.

Argument of Respondents' Counsel on Issue 1

D Learned Counsel for the Respondent in his argument in Respondents' brief of argument replying to the first issue for determination submitted that the Miscellaneous Offences Tribunal is amenable to supervision by the High Court of Lagos State, being an inferior Court. It was E submitted that superior courts have always possessed supervisory jurisdiction to acquire and determine whether an inferior tribunal was acting within the law. The tribunal will only be protected by ouster clauses only if there is a strict compliance with the prescriptions of the enabling statute. Where there is non-compliance with conditions precedent to the F exercise of jurisdiction, the ouster clause will not avail. Referring to the effect of Section 1 (8) of Decree No.9 of 1991, learned Counsel submitted that the provisions would only apply if the tribunal had acted within the amplitude of the powers conferred on it.

G On the issue whether the Tribunal had acted within the amplitude of the powers vested in it, learned Counsel referred to the provisions of Section 4 of Decree No. 17 of 1989 Cap. 73. Appellants were tried under the Special Tribunal (Miscellaneous Offences) Decree No.20 of H 1984. The provisions of Section 4 states,

"The tribunal established under the Special Tribunal (Miscellaneous Offences) Act, as amended, (Cap. 410 LFN. 1990) shall have the jurisdiction to try offenders under this Decree."

Learned Counsel referred to the provisions of Sections 4, 5(5), 6(1) of the Decree No.27 of 1986 enabling the exercise of jurisdiction and pointed out the mandatory nature of the provisions by the use of the words "*shall*" therein. In the Respondents brief of argument the nature and limits of ouster clauses were discussed in great detail. It was pointed out that the character of ouster provisions reveal that the legal effect attributable to each vary according to the context in which they appear. It is therefore important to discover what is meant to be protected by the ouster clause. A limited ouster provision directed at executive acts only would not be construed to oust the jurisdiction of a superior court to review the judicial acts of an inferior tribunal.

Where an error is alleged in proceedings in an inferior tribunal, there is always jurisdiction and duty of the superior courts to look into the complaint and ascertain whether (i) the powers claimed by the inferior court was infact conferred, and (ii) whether those powers had been properly and validly exercised. Some of the several decided cases, Nigerian and commonwealth, were cited in support of the above submissions are Bode v. A-G Federation (1986) 2 NWLR (pt.24) 568, 577, Liversidge v. Anderson (1942) A.C.206; Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria (1976) 6 SC. 175; Doherty v. Balewa (1961) 2 NSCC.248, University of Ibadan v. Adamolekun (1967) 5 NSCC. 210, FCDA V. Sule (1994) 3 NWLR (pt.332) 257, Agwuna v. A-G Fed. (1995) 5 NWLR (pt.396) 418; Guardian Newspapers Ltd. V. A-G. Fed. (1999) 9 NWLR (pt. 618) 187.

It was submitted that where the tribunal has no jurisdiction to embark on proceedings unless a condition precedent was satisfied, the determination made in the absence and contravention of the condition precedent prescribed is a nullity. A tribunal has no jurisdiction to circumvent the procedure prescribed in the exercise of it jurisdiction. It was submitted that superior courts are vested with jurisdiction to correct such exercise of power by the inferior tribunal. It was also submitted that any defect in proceedings would fatal however well conducted, because the defect was extrinsic to adjudication. - Anisminic Ltd. V. Foreign Compensation Commissioner & Anor. (1969) A.C 147 Madukolu v. Nkemdilim

3272 Misce. Off. Tribunal v. Okoroafor (2001) 10 KLR Karibi-Whyte JSC
(1962) 1 All NLR.587; Uti v. Onoyivure (1991) 1 NWLR (pt.166) 166
Ariori v Elemo (1983) NSCC.1.

Issue 2. Argument of Appellants' Counsel

Learned Counsel to the Appellants in arguing his issues 2 and 3
B which is issue 2 of the Respondents referred to the provisions of Section
4, 5(5) and 6(1) of the Special Tribunal (Miscellaneous Offences) Act,
Cap. 410 Laws of the Federation of Nigeria 1990. It was submitted that
the provisions which are clear and unambiguous are confined to offences
C created under that Act. The Respondents were charged under the different
statute of Counterfeit and Fake Drugs (Miscellaneous Provisions)
Act, Cap. 73 LFN 1990.

It was argued that since Cap.73 does not contain provisions
similar or in Pari materia to sections 4,5(5) and 6(1) of Cap. 410, these
D provisions cannot be lifted into Cap. 73. Admitting that Section 4 of Cap.
73 Provides that Tribunals established under Cap. 73, but argued that did
not in law enable the application of the section 4, 5(5) and 6(1) of Cap.
410 to proceedings under Cap. 73. It was submitted that if the law mak-
E ers so wanted, it would have done so by specific adoption of the provi-
sions under Cap.73.

The Court of Appeal, it was submitted was wrong to have held
that the section were applicable, and that they were not applicable to trial
F of offences under Cap. 73, notwithstanding section 4 of Cap. 73. It was
also submitted that the Court of Appeal was to have held that there has
been a flagrant disobedience of the laws of the land by the Agencies
authorised to effectuate it. The trial Court failed to comply with the
provisions of the law. This was still an issue bending awaiting determi-
G nation.

Issue 2. Argument of Respondents' Counsel.

In his submission on this issue, learned Counsel to the Respon-
dents referred to the provisions of Section 4 of Cap. 73 and argued that
H the procedure for the trial of offenders was not provided in Decree No.
17 of 1989. The omission was supplied by the provision of Section 4 of
Decree No. 73 LFN. 1990. It was submitted that the intention is to
incorporate by reference, section 4 of the Special Tribunal (Miscella-

neous Offences) Act Cap. 410 into the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act, Cap.73. The effect of the incorporation is that the Tribunal that will try Offences relating to Counterfeit Fake drugs established pursuant to Cap. 410 will be governed by the procedure under Cap. 410.

With reference to the government that the Court below was wrong to have held that Appellant had committed a flagrant disobedience to the laws of the land by the authorised agencies, the Respondent submitted that the contention is misconceived. Appellant has misunderstood the scope and purpose and effect of section 4, 5(5) 6(1) of Special Tribunal (Miscellaneous Offences) Act Cap. 410. The court below has made a correct construction of the provisions. There is no doubt Appellants were in flagrant disobedience of the provisions.

Learned Counsel had submitted that the Court below by their decision had granted a relief not claimed before it, and that the appeal should be allowed on that ground. This contention has been covered by issue 2 of the Respondents. In answer to Appellant's submission that Court did not make any finding on the allegation of the flagrant disobedience of the procedural provisions, pending the answer to the questions referred to it, with the result that statement had taken away the jurisdiction of High Court to adjudicate on the substantive issues still pending before it. It was accordingly submitted that the judgment of the Court below is null and void, and should be set aside.

In answer to the above submission, by the Appellant, Respondent submitted that the only issue before the High Court was whether the Court could exercise its supervisory jurisdiction over the Tribunal by way of judicial review. The issue whether or not Appellant failed to comply with the provisions of any law did not arise before the High Court because the facts leading to the conclusion were never in dispute. Accordingly it was not necessary to make any finding on those undisputed facts.

It was submitted that the only issue before the Court was a reference to it on the interpretation and application of the Constitution. This is a matter sui generis, and an exception to the general principle that

courts should not make any finding or statement in an interlocutory matter, that may decide the substantive case. This is because in such matters the question of law referred to the Higher court must be a question that has arisen in the proceedings. Again, the Court to which the question is referred is required *"to give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision."* - See section 269(2) of 1979 and Section 295(2) of the 1999 Constitution. Hence in answering the question referred to it, the Court will necessarily and inevitably the admitted facts to their interpretation of the Constitution - See Atake v. Afejuku (1994) 9 NWLR (pt. 368) 379.

Issue 3. Submission of Appellants' Counsel.

The third issue for determination is whether the Court of Appeal was right in allowing the respondents to argue the case stated on a written brief. The objection of the Appellants on the authority of Obioha v. Ibeto (1994) 1 NWLR. 503 is that the Rules of the Court of Appeal provide for the filling of written briefs only in substantive appeals, and not in interlocutory appeal. The Court was urged to discountenance the brief of argument filed on the reference as contrary to the Rules of Court.

Respondents' answer to issue 3

In answer, learned Counsel for Respondents submitted relying on Atake v. Afejuku (1994) 9 NWLR.379 and Obayogie v. Ojomo (1994) 2 NWLR. (pt. 346) 645 as references in interlocutory appeals where brief writing had been used. The Court of Appeal by Order 7 r.2 of its Rules has an inherent power to direct the filling of briefs of arguments in any cause or application before it.

It was submitted that the practice of brief writing is to assist the Court to expedite the disposal of issues pending before it in the administration of justice. It is pertinent to observation that Appellant is not urging the Court to dismiss or strike out the reference on account of the brief of argument, but merely to discountenance the Respondents' brief of argument. It is also pertinent to observe that Appellant's have not alleged any miscarriage of justice resulting from the reliance on the Respondents' brief of argument. It is also not contended that the Rules of

Court specifically disallows filing of briefs of argument in these cases.

Consideration of the Submissions

The above is a succinct resume of the contentions of Counsel in this appeal. It is however necessary to observe that the issue before the Court below was a reference to it on an issue of the interpretation of the Constitution. The purpose of the reference is to enable the Court referring the question to determine the issue pending before it and be guided by the answers to the question or questions referred to it. The appeal to this Court is a Challenge to the interpretation by the Court below of the question referred to it. The question referred and which seeks interpretation is founded both on the provisions of the Constitution of the Federal Republic of Nigeria, and other provisions of Statutes affecting and determining the exercise of jurisdiction. It is helpful to refer to the principal section of the Constitution of Nigeria and other statutes involved in the answer of the question.

Before enumerating the provisions it is helpful to state the question referred to Court below.

"QUESTIONS FOR DETERMINATION

The following questions as to the interpretation of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) have now arisen in these proceedings, namely:

(1) *Is the Miscellaneous Offences Tribunal, as constituted under the Miscellaneous Offences Decree No. 20 of 1984 (as amended) an inferior tribunal, or is it a superior Court of Record, having regard to Section 6 of the Constitution of the Federal Republic of Nigeria, 1979 (as amended)?*

(2) *If it is held that the Miscellaneous Offences Tribunal is an inferior tribunal, then does Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) not confer supervisory Jurisdiction on the High Court over the proceedings of the Miscellaneous Offences tribunal aforesaid?*

(3) *In the event that (2) above is answered in the affirmative, can the High Court exercise supervisory Jurisdiction by way of Certiorari and Prohibition over the proceedings of the Miscellaneous Offences Tri-*

bunal aforesaid, notwithstanding the provisions of the TRIBUNAL (MISCELLANEOUS PROVISIONS) DECREE NO.9 of 1991?

(4) *Is there any stipulation of law (constitutional or otherwise) to the effect that the "Supervisory" Jurisdiction conferred on the High Courts under Section 236 of the Constitution can only be exercised In respect of matters over which the High Court has "Original" jurisdiction?*

The above questions of law are referred for the decision of the COURT APPEAL."

In summary, all the four questions seek an answer to the question whether the High Court of Lagos can exercise supervisory jurisdiction over the Miscellaneous Offences Tribunal as constituted under the Miscellaneous Offences Decree No.20 of 1984 (as amended by Decree No.27 of 1986), an inferior Tribunal or is the Tribunal a superior court of record having regard to Section 6 of the Constitution 1979. The principal provisions to be considered are the relevant sections of the Constitution. Section 6, 236, 259(2) of Constitution 1979 or 295 of 1999 and other statutory provisions such as

Section1(8) Tribunal (Miscellaneous Provisions) Decree No.9 of 1991. Section 4 5(5), 6(1) Special Tribunal (Miscellaneous Offences) Decree No.20 of 1984 as amended, (Cap. 410 LFN. 1990)

Section 4 Counterfeit and Fake Drugs (Miscellaneous Offences Provisions) Decree No.17 of 1989 Cap. 73 LFN. 1990.

The Constitution of the country is its fundamental law, the fons et origo of all laws, the exercise of all powers, and the source from which all laws, institutions and persons derive their authority - See S.1(1) Constitution 1999.

Section 6 of the Constitution has rested all judicial powers of the Constitution on the court's named in subsection 5 of the section. Section 236 of the Constitution which has prescribed the scope of the powers of the powers of the State High Courts, also vests in them the exercise of limited jurisdiction in respect of the subject matters so vested in them.

The legislative hierarchy and authority was distorted by the Military Administration. During the Military administration Decrees of the

Supreme Military Council took precedence over the provisions of the Constitution. Accordingly, where there was conflict or inconsistency the provisions of the Decrees prevailed, or the provisions of the Constitution are allowed to operate to the extent of the inconsistency - See Adigun v. A-G of Oyo State (1987) 4 S.C. 272. B

By the provisions of Section 6(6)(a), of the Constitution 1999, the judicial powers of the Constitution vested in the courts extends to all inherent powers and sanctions of a courts of law - See Akilu v. Fawehinmi (No.2) (1989) 2 NWLR (pt.102) 122 S.C. Kotoye v. C.B.N. (1989) 1 C NWLR (pt.98) 419 SC.

Accordingly these Courts exercise an inherent supervisory jurisdiction over inferior Courts. Hence the Superior Courts correct patent errors of inferior courts in terms of excess of jurisdiction or procedural errors. D

The answer to the question referred to the Court below involves the determination whether the constitutional jurisdiction and powers vested in the High Court of States by virtue of Section 6 and 236 of the Constitution 1979 has in the case before the Courts been ousted by the ouster clause in section 1(8) of the Tribunal (Miscellaneous Provisions) Decree No.9 of 1991. E

Section 1(8) of Decree No.9 of 1991 provides-

"Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended, or any enactment to the contrary, The supervisory jurisdiction or power of judicial review of a High Court shall not extend to any matter or proceedings before a tribunal duly constituted before or after commencement of this Decree." (underlining is made for emphasis) F G

This is the provision relied upon by the Appellant as ousting the jurisdiction of the Court. The expression relied upon in support of the contention are the underlined words of Section 1(8) which are said to be clear and unambiguous. The words relied upon by Appellant as operating as ouster of the jurisdiction of the High Court are as follows- H

"....The supervisory jurisdiction or power of judicial review of a High Court, shall not extend to any matter or proceedings before a tribu-

nal duly constituted"

Section 1(8) opens with the expression "*Notwithstanding the provision of the Constitution of the Federal Republic of Nigeria 1979, as amended, or any enactment to the contrary...*" Which suggest the total
B and absolute exclusion of the application of the provisions of the Constitution 1979 or any enactment to the contrary Section 1(8). This it could do because a Decree is superior to the provisions of the Constitution 1979, and where there is inconsistency the provisions of the Decree
C prevail. Where the words of a statute are clear and unambiguous the words used must be given their plain ordinary, plain meaning. See UBRBDA V. Alka (1998) 2 NWLR 328. In construing a provision all the words used must be interpreted. It is clear from the words section 1(8),
D that the supervisory jurisdiction of the High Court is only ousted where the tribunal is duly constituted in respect of any matter or proceedings before it. Accordingly, as learned Counsel to the Respondent has submitted the provisions of section 1(8) would apply if and only if the tribunal had acted within the amplitude of powers conferred on it. The provision is therefore not a total ouster.- See Emuze v. University of Benin (1998) 6 NWLR. 142.

It is relevant to our consideration of this issue to examine the nature and limits of ouster clauses. An ouster clause may be absolute
F whereby there is a total exclusion of the exercise of jurisdiction, or a limited ouster, where the exercise of jurisdiction is excluded only in certain situations. In considering the ouster provision the words used must be carefully construed to determine the effect intended. Hence
G where the words conotes an ouster only in certain situations, the jurisdiction of the superior Court is only excluded on the fulfillment of those conditions. Superior courts of record guard the exercise of their constitutional jurisdiction zealously with jealousy. Hence whereas they may tolerate the exclusion or restriction by statute of a personal right of access
H to the courts the language expressing such exclusion or restriction will be carefully watched by the courts, and will not be extended beyond its least onerous meaning. Only clear and unambiguous words will be allowed to have such effect.- See Bode v. A-G Federation (1986) 2 NWLR

(pt.24) 568 at p.577, Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688, Fawehinmi v. Abacha (1996) 9, NWLR 710. The Superior Courts are not expected to and do not abdicate the exercise of their constitutional supervisory judicial jurisdiction merely because of a statutory provision suggesting the exclusion or restriction of the exercise of such jurisdiction- see Barclays Bank of Nigeria Ltd. V. Central Bank of Nigeria (1976) 6 SC. 175, Guardian Newspapers Ltd. V. A.G. Federation (1999) 9 NWLR (pt. 618) 187. An ouster clause merely does not put the Superior Court to flight - See Doherty v. Balewa (1961) 2 NSCC 248. C

It has always been the law, notwithstanding the enactment of ouster clauses, that where an error is alleged in the proceedings of an inferior Court, it was always the duty of the Superior Court to which an application is brought to ascertain whether the error alleged was made out, and whether the inferior Court was in fact exercising the powers conferred on it by statute - See Adeboye v. Ajala (1998) 1 NWLR 631 Eguamwense v. Amaghizenwem (1993) 9 NWLR 1. D

This Court has held in NPA v. Panalpina World Transport (Nig) Ltd. (1973) 8 NSCC 282, that an Arbitration Board can only enjoy the right to finality where such rulings were validly made in accordance with powers specially vested in the Board. Since the Board exceeded its powers, such exercise of powers in excess of those granted it were not in the contemplation of the Decree ousting the jurisdiction of the Courts. F

In the instant case, the question referred to the court was predicated on whether the Tribunal had the jurisdiction to try the Applicants in view of the enabling procedural provisions. I have already stated the facts in this judgment. They are undisputed. The dispute lies in the interpretations of the enabling procedural provisions for the exercise of the jurisdiction of the Tribunal. Where as Appellant is of the view that Applicants who were being tried under the Counterfeit and fake Drugs (Miscellaneous Provisions) Act Cap. 73, LFN 1990, a different Statute, H were not governed by the procedure in sections 4, 5(5) and 6(1) of the Special Tribunal (Miscellaneous Offences) Act, Cap. 410 LFN 1990.

The contention of the Applicants who are the Respondents to

this appeal, and accepted by the Court below in answer to the question referred to it was that in fact section 4 of the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act states thus (especially referring to Cap. 410 on jurisdiction)-

B *"Tribunal established under the Special Tribunal (Miscellaneous Offences) Act as amended shall have jurisdiction to try offenders under this Act."*

C I agree with the interpretation of the Court below. Even a cursory reading of the words of section 4 of Cap. 73 LFN, 1990 clearly shows that the use of the expression "*shall*" in the Decree connotes a command and mandatory intention to be complied with by all.

D The submission of learned Counsel to the Respondents that the omission of procedural provisions in Decree No.17 of 1989 was supplied by section 4 of the Decree is a persuasive even if compelling argument and I agree. There is no doubt the intention was to incorporate by reference, the Special Tribunal (Miscellaneous Offences) Act Cap. 410 into the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act E Cap. 73. The effect of the incorporation is that the same procedural provisions will apply to both laws. This is understandable and logical since the Miscellaneous Offences Tribunal was established pursuant to the Special Tribunals (Miscellaneous Offences) Act, Cap. 410. Learned F Counsel to the Appellant would appear to have misunderstood the enabling procedural provisions to have thought the applicable provisions were different. Symmetry, logicity and ordinary common sense demands and in the case dictates that were the policy governing the creation and prosecution of the offences are based on identical considerations, it is ideal to formulated and adopt identical or same procedural G provisions. This is what has guided the adoption of section 4.

H The question now is whether the Tribunal complied with the procedural provision applicable to the trial offences before it. The facts are not in dispute. It is not in dispute that by application of the provisions of sections 4, 5(5) and 6(1) of the Special Tribunal (Miscellaneous Offences) Act, Cap. 410 LFN 1990, Applicants must be brought to trial within 63 days of their arraignment. It is also not in dispute that Appli-

cants who were arrested and detained on 29/6/89 were released on bail seventeen months after the offences were alleged to have been committed on 1/11/90. By the 3rd April, 1991 when this application for judicial review was commenced trial of the Applicants, now Respondents had not commenced.

The Court of Appeal was therefore right to hold, and I agree that the Tribunal did not comply with the enabling provisions of the law in the exercise of its jurisdiction, trial of the accused persons having not commenced within 63 days of arraignment.

It is a well settled principle of our administration of justices that a Court is only competent to exercise the jurisdiction vested in it if,

(ii) It is properly constituted in relation to numbers qualification of the Judges;

(ii) The subject matter is within its jurisdiction;

(iii) The case is properly initiated by due process and all conditions precedent to the exercise of jurisdiction is fulfilled.

It is an important consideration that any defect in proceedings would be fatal however well conducted because the defect is extrinsic to the adjudication. - see Madukolu v. Nkemdilim (1962) 1 All NLR 587.

There is no doubt in my mind that the charge against the Applicants/Respondents cannot be initiated by due process, the conditions precedent to the exercise of jurisdiction having not been fulfilled - See Uti v. Onoyivwe (1991) 1 NWLR (pt.166) 166. In the case this Court declared,

"Where a statute purports to exclude the jurisdiction of the High Court and vest jurisdiction in a tribunal or an inferior Court, the High Court in exercising its supervisory jurisdiction, may by certiorari quash the decision, of the tribunal or inferior Court either for breaching the rules of natural justice or for following the wrong procedure."

I have already stated above that an ouster clause of the category enacted in section 1(8) can only protect proceedings validly conducted in compliance with its enabling procedure and in exercise of the prescribed jurisdiction vested in the appropriate tribunal. The proceedings of the tribunal, which exceeded the powers vested in it or contravened its en-

abling procedural provisions, would be impugned.

It is obvious from the foregoing that the supervisory jurisdiction of the High Court has not been ousted by the provisions of section 1(8) of Decree No 9 of 1991, since the Tribunal acted contrary to the provisions of the law establishing it. I therefore answer the first issue in the affirmative.

Issue 2 was formulated from Appellants' challenge of the judgment of the Court below that it affected the substantive matter still pending before the High Court. It was accordingly doubted whether the Court of Appeal had jurisdiction to decide as it did in answer to question of law referred to it under section 259(2) of the 1979 Constitution.

I have already reproduced the contentions of the parties on this issue. I only have to say here that the answer to Appellants' criticism of the position adopted by the Court of Appeal, can be found in the enabling constitutional provision. Section 259(2) of the Constitution 1979 provides as follows-

"Where any question as to the interpretation or application of this Constitution arises in any proceedings in the Federal High Court, and the Court is of opinion that the question involves a substantial question of law, the Court may, and shall if any party to the proceedings so requests, refer the question to the Court of Appeal, and where the question is referred in Pursuance of this subsection, the Court shall give its Decision upon the question and the Court in which the Question arose shall dispose of the case in accordance with that decision."

The gravaman of Appellants complaint on this issue is this dictum of the Court below that -

"In this case before us there has been a flagrant disobedience of the law of the land by the agencies authorised to effectuate it. Therefore neither the Tribunal nor the prosecution can take shelter under the ouster clause." (pt.78 of the record)

I have already stated the contentions of learned Counsel on this issue. The question whether or not Appellants failed to comply with the provisions of any law was not an issue before the High Court since the facts were not disputed. Therefore no finding need be made on the

issue. The only issue before the High Court was whether the Court could exercise its supervisory jurisdiction over the Tribunal.

It is a misunderstanding of the provisions of section 259(2) of the Constitution 1979 to argue that the Court to which a reference is made on the interpretation of the provision of the Constitution is, as in ordinary interlocutory matters, precluded from making findings or statements that may decide the substantive case.

The principles applicable to constitutional reference is completely different from that of interlocutory appeals. Hence a reference is sui generis and peculiar. The same principle applies. A reference is stricto sensu not an interlocutory appeal. It is important to observe that the question of law referred to the higher Court for interpretation must be a substantial question of law that has arisen from the proceedings - see S. 259(1). The Court to which the question is referred must give its decision upon the question and the Court in which the question arose shall dispose of the case in accordance with the decision - see S.259 (2), Bamaiyi v. A.G. Federation (2001) 12 NWLR 468, African Newspapers v. Federal Republic of Nigeria (1985) 2 NWLR (pt.6) 137 SC., UBA Trustees v. Niergrob Ceramic Ltd. (1987) 3 NWLR (pr. 62) 600; Gamioba v. Ezezi (1961) 1 All NLR 584; Ifegwu v. FRN (2001) 13 NWLR 103. In answering the question or questions referred to it, the Court to which the question is referred will inevitably apply the facts of the case which are usually undisputed to their interpretation of the Constitution.

The dictum of the Court below criticised is clearly within the scope and ambit of the question referred to it and cannot be said to be made without jurisdiction. The Court below having answered the question referred to it, is now left to the High Court from which the question was referred to dispose of the case before it in accordance with decision. This is strictly in compliance with the provisions of section 259(2) of the Constitution 1979, now section 295(2) of the Constitution 1999.

Issue 3 is on Whether the Court of Appeal was right to have allowed the Respondents to argue the case stated on a written brief of argument. The reason for this submission is that the rules of the Court of Appeal have provided for the filing of written briefs of arguments

only in substantive appeal. Learned Counsel to the appellants relied for the submission on Obioha v. Ibero (1994) 1 NWLR (pt. 322) 503. The contention seems to be that what is not provided is prohibited. This is Non sequitar: The better opinion is that what is not prohibited is permitted. The filing of written briefs in matters other than substantive appeals is not prohibited by the rules.

The purpose of a written brief is to present a party's case on appeal in a summary form, succinctly, lucidly and with such accuracy as not only to give to the Court and the opposing party in advance a good resume of the case, but also to convince the Court of the justice of the party's cause. Of the many and varied reasons which have been adduced in support of brief writing, the most accepted being to assist learned Counsel on both sides to understand and identify the issues to be settled by the Appellate Courts so that they can limit their arguments and submissions to those issues. Finally, the general purpose is to assist the administration of justice by facilitating the work of both counsel and Court at the stage of hearing. It promotes justice by controlling Counsel and ensuring that their arguments are properly focused and directed.

Brief writing is clearly employed even in the determination of references as was done in Atake v. Afejuku (1994) 9 NWLR 379; Obayogie v. Ojomo (1994) 2 NWLR (pt.346) 645.

It is well settled that rules of court are designed to aid the due administration of justice, and not intended to impede effective and efficient administration of justice. The duty to do justice is fundamental to its administration. Accordingly wherever the rules of procedure which are the indispensable handmaids of the administration of justice can be made to have its optimum effect, nothing should stand in the way of the judge to rely on it in doing substantial justice in the determination of the case before him - See Afolabi v. Adekunle (1983) 2 SCNLR 141; Gwonto v. State (1983) 1 SCNLR 142. The complaint in this case cannot even be regarded as an error because by order 7 r.2 of its rules the Court is allowed to depart from its rules. There is in fact an inherent power to direct the filling of briefs of argument in any cause or application before it. Since the error alleged is only as to form and has not affected the substance of

the case in relation to the competence of the reference, and no miscarriage of justice has been suggested to have occasioned thereby, the issue is not fatal to the adjudication. The Court of Appeal was right to hold that there was nothing wrong in allowing the Respondents to argue the case stated on a written brief of argument. B

All the issues having failed the Appeal fails and is hereby dismissed. The decision of the Court below that procedural provisions enabling the exercise of jurisdiction by the Tribunal, the ouster provision in section 1(8) of Decree No. 9 of 1991 has not deprived the High Court C of its supervisory jurisdiction over the Tribunal, is affirmed.

There is no order as to costs.

OGWUEGBU JSC

I had a preview of the leading judgement just delivered by my D learned brother Ejiwunmi, J.S.C. and I entirely agree with him that the appeal should be dismissed.

In this case, the procedure for the proceedings against the respondents is as provided in the Special Tribunal (Miscellaneous Offences) E Act, Cap 410 Laws of the Federation of Nigeria, 1990 as amended. Section 6(1) of the Act provides that proceedings in respect of offences under the Act shall be concluded by the tribunal within 14 days of its first sitting. This was not done in the case of the respondents. They were in F custody for one year and five months from the date of their arrest before they were granted bail. They brought proceedings in the High Court of Lagos State for Orders of prohibition and certiorari for breach of section 6(1) of the Act. Decree No. 9 of 1991 was promulgated by the Federal G Military Government on 17/5/91. It purports to oust the jurisdiction of the High Courts over the tribunal. The appellants herein invoked the ouster clause and the proceedings led to this appeal.

The courts should not throw in the towel on the mere mention H of an ouster provision. The proceedings of the Tribunal can be impeached in the High Court of Lagos State as was done in this case, notwithstanding the ouster provision where the procedure laid down for the commencement and conclusion of proceedings of the Tribunal was not

complied with. There was disobedience by the tribunal to observe the procedural rule. It is for the court to determine whether this procedure rule as to commencement and conclusion of proceedings is mandatory, in which case disobedience will render void or voidable what has been done, or as directory, in which case disobedience will be treated as an irregularity not affecting the validity of what has been done.

The whole scope and purpose of the enactment must be considered. Breach of procedural or formal rule is likely to be treated as a mere irregularity if non-compliance is of trivial nature or if no substantial prejudice has been suffered. The High Court Lagos State has the jurisdiction to interpret the ouster clause itself and determine whether or not what the tribunal has done is within or outside its powers and its effect on the proceedings of the tribunal.

It is for these reasons that I too would dismiss the appeal. The appeal is dismissed and I abide by all the orders made in the leading judgment of my learned brother Ejiwunmi, J.S.C.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ejiwunmi, J.S.C. And I agree entirely that this appeal is without substance and should be dismissed. I have nothing more to add.

Accordingly, I, too, dismiss this appeal. I make no order as to costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the Judgment of my learned brother EJIWUNMI, JSC. In this appeal. I agree with it. For the reasons which he gives I would also dismiss the appeal and also make no order as to costs.

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