

**SUPREME COURT OF NIGERIA**  
FRIDAY 31ST MAY, 2002. SC. 49/1996  
**CORAM:- S. A. BELGORE, E. O. OGWUEGBU,**  
**U. MOHAMMED, S. O. UWAIFO, A. O. EJIWUNMI, JJSC**

CHIKEZIE ONYEANUSI ..... APPELLANT  
AND  
MISCELLANEOUS OFFENCES  
TRIBUNAL, EASTERN ZONE,  
OWERRI ..... RESPONDENT

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JURISDICTION - Miscellaneous Offences Tribunal - Arson - Special Tribunal Decree 1984 s. 3(4)(a) - Interpretation - Learned trial judge construed the section before applying s. 8(1) of the Decree (H1)

WORDS & PHRASES - “Public building” and “dwelling house” - Definitions - Under Special Tribunal Decree 1984 s. 3(4)(a) - Public building is building occupied by or operated on behalf of Federal or a State government - While dwelling house is a place occupied by family as residence (H2)

STATUTES - Interpretation - Special Tribunal Decree 1984 s. 3(4)(a) - Offence provided in the section - Covers public and private dwelling houses - And is not restricted to dwelling house belonging to government (H3)

ACTIONS - Ouster clause - Special Tribunal Decree 1984 s. 8(1) - The section stipulates that where the tribunal acts within its jurisdiction - No proceeding shall be instituted in any court - On account of any thing done pursuant to the Decree (H4)

**FACTS**

Appellant and 33 others were arraigned before respondent i.e. Miscellaneous Offences Tribunal, Owerri on a two count charge of arson of dwelling houses and arson of cultivated crops under sections 3(4)(a) and 3(5) of Special Tribunal Decree No. 20 1984, respectively. Appellant filed an application at the High Court of Imo State, Owerri for leave to apply for an order of prohibition restrain-

ing respondent from further proceeding with the said charges on the ground that respondent lacked the jurisdiction to hear and determine same.

The court granted appellant the leave to apply for the order and also made an interim order restraining respondent from further trial of the charges. Subsequently, appellant filed a motion on notice praying the court for an order prohibiting respondent from further proceeding with the trial of the charges. After arguing the motion, the court struck it out and thus discharged the interim order it earlier gave. Dissatisfied, appellant appealed to the Court of Appeal. The court dismissed the appeal which led appellant to file an appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

*1. Whether the question of the construction/interpretation of section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 was the very thing referred to the Court of Appeal by the Appellant.*

*2. Whether on a true and correct construction/interpretation of section 3(4) of Decree No. 20 of 1986, the Court of Appeal was right in its conclusion, that the offence under which the Appellant and 33 others were charged in count one comes under section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986.*

*3. Whether section 8(1) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 ousts the jurisdiction of Imo State High Court of Justice for all purposes as held by C. B. C. Ubah, J and affirmed by the Court of Appeal.*

*4. Whether taking into account the circumstances of this case, the court of appeal should not have made an order setting aside the ruling of the High Court of Imo State (C. B. C. Ubah, J) dated 30th April, 1991 and prohibited the Respondent from further proceeding with the trial of charge No. M.O.J./IM/16C/90; the Federal Republic of Nigeria Versus Chikezie Onyeanus and 33 others.*

**HELD** (Unanimously dismissing the appeal per

**OGWUEGBU JSC)**

*JURISDICTION - Miscellaneous Offences Tribunal - Arson*

**1. From the above averments, there is no doubt that the parties joined issue on the jurisdiction of respondent to try the applicant for an offence under section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986. The complaint of the appellant in issue (1) is that since the learned trial judge did not interpret section 3(4)(a) in his ruling of 30th April, 1991 which he appealed against to the Court of Appeal, the latter should not have proceeded to construe the said section 3(4)(a) since the trial court did not express any opinion on it.**

**I am unable to agree with the learned appellant's counsel that Ubah, J. (as he then was) did not construe section 3(4)(a). He did so before he came to the conclusion that section 8(1) of Decree No. 20 of 1984 as amended applied. See pages 8 to 10 of the Ruling of the learned trial judge.**

**The court below construed the provisions of section 3(4)(a) of Decree No. 20 of 1984 as amended before applying section 8(1) which was precisely what the learned trial judge did. The court below construed section 3(4)(a) of Decree No. 20 of 1984 and before it applied section 8(1) (supra) it said:**

***"Now the main contention in this appeal is whether the High Court has jurisdiction to entertain this matter in view of or in spite of section 8(1) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 vis-a-vis section 3(4)(a) of the same Decree."***

**In the circumstance, I see no merit in issue (1) and I resolve it against the appellant. (pp. 1380 G/1381 F)**

*Statutes - "Public building" and "dwelling house" - Definitions*

**2. Decree No. 20 of 1984 was amended by Decree No. 22 of 1986. Section 3 of the principal Decree (No. 20 of 1984) was substituted by a new section 3 and its original section 3(2)(a)(i) which I reproduced above was replaced by a new section 3(4)(a) which reads:**

***"3(4) Any person who willfully or maliciously sets fire -  
(a) to any public building, dwelling house, office or structure whatsoever, whether completed or not, occupied or not;  
...shall be guilty of an offence..."***

*In section 10 of Decree No. 20 of 1984 (the interpretation section), “public building” is defined as “any building, structure or edifice belonging to, occupied by or operated on behalf of the Government of the Federation or of a State or any department or statutory corporation thereof.”*

**B** *By the above definition, ‘public building’ would appear to cover any building belonging to, occupied by or operated on behalf of the Government of the Federation or of a State or any department or statutory corporation thereof which is open for use by everyone or people in general whereas a dwelling house is defined in Black’s Law Dictionary, 6th ed. at page 505 as a house or structure:*

*“which a person or persons live; a residence; abode, habitation; the apartment or building, or group of buildings occupied by a family as a place of residence —”*

*In the same Black’s Law Dictionary, Office is defined as:*

*“a place for regular transaction of business or performance of a particular service...”*

**E** *A public building in the context of section 3(4)(a) of Decree No. 22 of 1986 must belong to, occupied by or operated on behalf of the Government of the Federation or of State or any of its department or corporation for use by people in general. The International Conference Centre is a public building belonging to the Government of the Federation. A building housing a State Library is a public building belonging to a State Government. The Government of the Federation can rent a house and use the same as a public building for its service and it acquires the character of a public building. A dwelling house, on the other hand, does not admit of the use by everyone or people in general. It is a place occupied by a family as a place of residence. (p. 1384 A)*

*STATUTES - Interpretation - Special Tribunal Decree 1984*

**H** *3. After reading the whole of section 3 of Decree No. 22 and the meanings attached to the phrases public building, dwelling house and office, I am unable to agree with the submission of learned appellant’s counsel that a dwelling house, office or structure must be public in nature to come within the provi-*

**sion of section 3(4)(a) of Decree No. 22 of 1986.**

**Section 3(4)(a) of Decree No. 20 of 1984 as amended did not restrict the offence of arson to dwelling house belonging to the Government of the Federation or of a State or any department or statutory corporation thereof. The offence covers both public and private dwelling houses. I have read the entire provisions of Decree No. 20 of 1984 as amended and section 3(4)(a) in particular. The conclusion I have reached is that the language of section 3(4)(a) is plain, precise and unambiguous and it is unnecessary for me to examine the intention of the Decree as canvassed by the learned appellant's counsel. The plain and natural meaning of the words used should be expounded.**

**"Dwelling house" in the context of section 3(4)(a) of Decree No. 20 of 1984 as amended is not restricted to "public" dwelling house and it is doubtful if that adjective can be applied to dwelling house. I agree with the court below that courts should interpret the laws as they are and not as they ought to be. The court below was right in its construction of section 3(4)(a) and (5) of Decree No. 20 of 1984 as amended. The offence with which the appellant and 33 others were charged in count one comes within the provision of section 3(4)(a) of the aforesaid Decree. (p. 1385 B)**

*ACTIONS - Ouster clause - Special Tribunal Decree 1984*

**4. Where the Tribunal acts within its jurisdiction, section 8(1) of Decree No. 20 of 1986 as amended is emphatic and absolute in its stipulation that no proceeding shall lie or be instituted in any court for or on account of any act, or matter or thing done or purported to be done under or pursuant to the Decree.**

**But where the Tribunal has acted in excess of its jurisdiction, for example, if the offence of arson is not triable by it, certainly, the High Court has the power to grant an order of certiorari.**

**The courts below over-stretched their interpretation of Sode's case, and were therefore wrong to hold that section 8(1) of Decree No. 20 of 1984 as amended ousted the juris-**

***diction of the High Court to issue a prerogative order even where the Tribunal exceeded its jurisdiction. This is not the law.*** (p. 1389 F)

**REPRESENTATION**

- B Parties were absent and not represented by counsel

**CASES REFERRED TO**

- A-G Federation v. C. O. Sode (1990)1 NWLR (Pt. 128) 500  
C Tafida v. Abubakar (1992) 3 NWLR (Pt. 230) 511  
Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622  
Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517  
Egbe v. M. D. Yusuf (1992) 23 NSCC (Pt. 2) 243  
D Chairman LEDB v. Jamilsaid (1968) NMLR 183  
Odeneye v. Efunnoga (1990) 7 NWLR (Pt. 164) 618  
Okoroafor v. Miscellaneous Offences Tribunal (1995) 4 NWLR (Pt. 387) 59  
Guardian Newspapers Ltd. v. A-G Fed (1995) 5 NWLR (Pt. 398)  
E 703  
Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 WLR 123  
In Re Mayfair Property Co. (1898) 2 Ch. 28  
Oram v. Breary (1877) 2 EX D 346  
F Francis v. Yiewley & West Drayton Urban District Council (1957) 2 QB 136  
R v. Plowright (1686) 3 Mod. 94  
Ekpo v. Calabar Local Govt. (1993) 3 NWLR (Pt. 281) 324

G

**STATUTES & RULES REFERRED TO**

- Special Tribunal Decree No 20 of 1984 (as amended by Decree No 22 of 1986) ss.3(4)(a), 8(1), 3(5), 3(2)(a)(i)  
Decree No. 37 1968 s. 12  
H Investigation of Assets (Public Officers and other persons) Decree, No 37 of 1968, s.12  
Public Officers (Special Provisions) Decree No. 10 of 1976, s.6(3)  
Industrial Relations Act 1967, s.29(3)(a)  
Imo State High Court (Civil Procedure) Rules 1988, O. 43 r. 3(1) &

(2)

Supreme Court Rules, O. 6 r. 8(b)

**BOOK REFERRED TO**

Blacks Law Dictionary, 6th Ed p. 505

B

**LEAD JUDGMENT BY OGWUEGBU JSC**

The appellant and 33 others were arraigned before the respondent (The Miscellaneous Offences Tribunal, Eastern Zone, Owerri) on a two count charge of arson of dwelling houses under (i) section 3(4)(a) of Special Tribunal Decree, 1984 as amended by Decree No. 22 of 1986 and (ii) arson of cultivated crops under section 3(5) of the said Decree, 1984 as amended. (Charge No. MOJ/IM/16C/90) C

Upon an ex parte application for leave to apply for an order of prohibition to restrain the respondent herein from further proceeding with charge No MOJ/IM/16C/90 on the ground that the respondent lacked the jurisdiction to hear and determine the said charge, the learned trial judge on 26th October, 1990 granted leave to the appellant to apply for the said order and also made an interim order restraining the respondent from further trial of the said charge. D E

The appellant subsequently filed a motion on notice praying the court for the following orders:

*“(1) An Order of Prohibition prohibiting the Respondent from further proceeding with the trial of Charge No. MOT/IM/16C/90: The Federal Republic of Nigeria v. Chikezie Onyeanus and 33 Others.* F

*(2) An Order staying the proceedings of the Miscellaneous Offences Tribunal holding at Owerri Imo State in Charge No. MOT/O/16C/90: The Federal Republic of Nigeria v. Chikezie Onyeanus & 33 Others.”* G

The motion on notice was argued and on 30th April, 1991, the learned trial judge Ubah, J. (as he then was) in a considered ruling struck out the application and discharged the interim order. He concluded his ruling thus:

*“And so, even if the Tribunal exceeded its jurisdiction while purporting to act under the Decree, it seems to me that this court cannot properly issue a prerogative order or otherwise entertain any suit in respect of anything done or purported to be done under the Decree. This action is incompetent and the exercise under it is void.* H

*Accordingly the suit is struck out with N500.00 costs.”*

Dissatisfied with the ruling of the learned trial judge, the appellant appealed to the Court of Appeal. That court dismissed the appeal. He has further appealed to this court. From the four grounds of appeal filed, the following issues were formulated:

B *“Whether the question of the construction/interpretation of section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 was the very thing referred to the Court of Appeal by the Appellant.*

C *Whether on a true and correct construction/interpretation of section 3(4) of Decree No. 20 of 1986, the Court of Appeal was right in its conclusion, that the offence under which the Appellant and 33 others were charged in count one comes under section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986.*

D *Whether section 8(1) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 ousts the jurisdiction of Imo State High Court of Justice for all purposes as held by C. B. C. Ubah, J and affirmed by the Court of Appeal.*

E *Whether taking into account the circumstances of this case, the Court of Appeal should not have made an order setting aside the ruling of the High Court of Imo State (C. B. C. Ubah, J) dated 30th April, 1991 and prohibited the Respondent from further proceeding with the trial of charge No. M.O.J./IM/16C/90; the Federal Republic of Nigeria v. Chikezie Onyeanus and 33 others.”*

F This appeal came up for hearing on 5-3-2002. The parties and their counsel were absent but briefs were filed by all the parties in the appeal. The appeal was treated as having been argued in accordance with Order 6, rule 8(b) of the Rules of this Court.

G The complaint of the appellant in issue (1) appears to be that the appellant did not invite the court below to construe or interpret section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 and that the said court was wrong to have done so when the learned trial judge did not consider the said provision at all in his  
H ruling. The learned appellant’s counsel further submitted in the appellant’s brief as follows:

*“It is respectfully submitted that the Court of Appeal’s effort in this regard in interpreting section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 was rather premature, pre-*

*emptive and unrewarding.*

*All that was required of the Court of Appeal by the Appellant was a condemnation of the High Court of Imo State in declining jurisdiction to entertain the Appellant's application in view of Order 43 Rule 3(1) and (2) of the Imo State High Court (Civil Procedure Rules, 1988 notwithstanding the said section 8(1) and (2) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986.* B

*It is respectfully submitted that the fact that the Court of Appeal prematurely pronounced on the effect and purport of section 3(4)(a) of Decree No. 20 of 1984 without having had the advantage of appreciating the High Court's opinion thereon deprived it of the efficiency and authority which increase and strengthen its opinion on matters referred to it on appeal and thereby came to a wrong conclusion. In the circumstance the Supreme Court is invited to hold that this ground of appeal succeeds and allow the appeal."* C D

In the affidavit in support of the order of prohibition one Innocent Utulu a legal practitioner in the Chambers of Okoye & Okoye & Co. deposed as follows:

*"1. That I am a Legal Practitioner in the Chambers of Okoye & Okoye & Co. Counsel for the applicant who is a co-accused in Charge No. MOT/IM/16C/90: THE FEDERAL REPUBLIC OF NIGERIA v. CHIKEZIE ONYEANUSI AND 33 OTHERS and as such I am familiar with this matter and all facts deposed to herein are within my personal knowledge.* E

*2. That the Applicant is in prison detention and cannot make this Affidavit.* F

*3. That I have authority of the applicant to depose to this affidavit.*

*4. That on the 27th of September, 1990 the applicant was charged before the Miscellaneous Offence Tribunal Eastern Zone holding at Owerri on a two count charge of Arson of Dwelling House - under Section 4(a) of Special Tribunal Decree 1984 (as amended) by Decree No. 22 of 1986 and (b) Arson of Cultivated Crops under Section 5 of Special Tribunal Decree 1984 as amended by Decree No. 22 of 1986.* G H

*5. That Section 4(a) of the said Decree carries a sentence of Life Imprisonment.*

*6. That a copy of the said Charge is attached and marked*

*Exhibit 'A'.*

7. *That the particulars of the offence in the Charge states that the property which was set on fire is a Dwelling House property of Oduatu Akporo kindred Achara Izuochi.*

B 8. *That the building stated in paragraph 7 above is not a public building.*

9. *That the Miscellaneous offence Tribunal has started hearing of the matter which it does not have jurisdiction and has already taken six witnesses.*

C 10. *That the matter was adjourned to 23rd October, 1990 for continuation of hearing.*

11. *That if an order of prohibition is not granted the Miscellaneous Offences Tribunal would go on with the matter despite the fact that it does not have jurisdiction."*

D The respondent filed a counter-affidavit in opposition to the application. In paragraphs 4, 5, 7 and 8 of the said counter-affidavit, Jide Ayenibiowu, and Assistant Director in the Federal Ministry of Justice deposed as follows:-

E "4. *That the applicant/accused is facing a two-count charge of arson contrary to Sections 3(4)(a) and 3(5) of Decree No. 22 of 1985 as amended by Decree No. 22 of 1986 before the respondent.*

5. *That the Miscellaneous Offences Tribunal has jurisdiction to try the applicant/accused under the sections mentioned in paragraph 4 above for the two counts of arson.*

F 6. ....

7. *That the Tribunal has jurisdiction to try the accused/applicant for willfully setting fire on a dwelling house and stack of cultivated crops.*

G 8. *That dwelling house as indicated in Section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 has the usual meaning of any building occupied by a family as a place of residence."*

H ***From the above averments, there is no doubt that the parties joined issue on the jurisdiction of respondent to try the applicant for an offence under section 3(4)(a) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986. The complaint of the appellant in issue (1) is that since the learned trial judge did not interpret section 3(4)(a) in his ruling of 30th***

**April, 1991 which he appealed against to the Court of Appeal, the latter should not have proceeded to construe the said section 3(4)(a) since the trial court did not express any opinion on it.**

**I am unable to agree with the learned appellant's counsel that Ubah, J. (as he then was) did not construe section 3(4)(a). He did so before he came to the conclusion that section 8(1) of Decree No. 20 of 1984 as amended applied. See pages 8 to 10 of the Ruling of the learned trial judge.** It was after an exhaustive consideration of the said sub-section that he came to the following conclusion:

*"By entertaining the application up to this stage the court has had an opportunity to examine the complaint brought before it by the applicant and has now come to the conclusion that it is incompetent for this court to deal with the suit. The text of section 8(1) of the decree is in pari materia with section 6(3) of Public Officers (Special Provisions) Decree No. 10 of 1976 which came before the Supreme Court for consideration in the case of Attorney-General of Federation v. C. O. Sode & 2 ors. (1990)1 NWLR (Pt.128) 500...*

*And so, even if the Tribunal exceeded its jurisdiction while purporting to act under the decree, it seems to me that the court cannot properly issue a prerogative order or otherwise entertain any suit in respect of anything done or purported to be done under the Decree."*

**The court below construed the provisions of section 3(4)(a) of Decree No. 20 of 1984 as amended before applying section 8(1) which was precisely what the learned trial judge did. The court below construed section 3(4)(a) of Decree No. 20 of 1984 and before it applied section 8(1) (supra) it said:**

***"Now the main contention in this appeal is whether the High Court has jurisdiction to entertain this matter in view of or in spite of section 8(1) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986 vis-a-vis section 3(4)(a) of the same Decree."***

**In the circumstance, I see no merit in issue (1) and I resolve it against the appellant.**

As to whether the court below was right in its interpretation of section 3(4)(a) of Decree No. 20 of 1984 as amended and its conclu-

sion that the offence under which the appellant and thirty three others were charged in count one of the charge comes under section 3(4)(a), the learned appellant's counsel submitted in the brief that the provisions of section 3(4)(a) and (5) of Decree No. 20 of 1984 as amended were enacted with the intention of punishing and curbing acts of arson on public building and all structures that come within that class. He further submitted that the offence committed by the appellant does not fall within those contemplated by Decree No. 20 of 1984 as amended by Decree No. 22 of 1986, that the Decree forbids willful and malicious setting of fire *"to any public building, dwelling house, office or structure whatsoever, whether completed or not, occupied or not"* and that the implication is that the dwelling house, office or structure must be public in nature. Learned counsel referred the court to the case of *Tafida v. Abubakar* (1992) 3 NWLR (Pt. 230) 511; *Ekpo v. Calabar Local Government* (1993) 3 NWLR (Pt. 281/324; *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622 at 641-642 and *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 579.

For the respondent, it was contended that where the wording of a statute or a section of an enactment is clear and unambiguous, there is no need to go on a voyage of discovery to know the intention of the writer and that the ordinary or literal interpretation of the statute should be adopted. We were referred to the case of *Egbe v. M. D. Yusuf* (1992) 23 NSCC (pt.2) 243; *Ademola v. Shodipo* (1968) 5 NWLR Pt. 121) 327; *Chairman LEDB v. Jamilsaid & ors.* (1968) NMLR 183 and *Odeneye v. Efunnoga* (1990) 7 NWLR (Pt. 164) 618 at 624.

It was further contended that while interpreting section 3(4)(a) of Decree No. 20 of 1984 as amended, the Court of Appeal took the whole of section 3 together before arriving at the conclusion that the respondent has jurisdiction to try the appellant and that reading the whole section together, it was clear that the provision is wide enough to cover both public and private dwelling houses in section 3(4)(a).

Learned counsel for the respondent finally submitted on this issue that section 3(4)(a) of Decree No. 20 of 1984 as amended has not been specifically restricted to arson on public dwelling house and that it covers both public and private dwelling houses.

Section 3(4)(a) and (5) of Decree No. 20 of 1984 as amended

by Decree No. 22 of 1986 provides:

*“4. Any person who willfully or maliciously sets fire -  
(a) to any public building, dwelling house, office or structure  
whatsoever, whether completed or not, occupied or not; or*

*shall be guilty of an offence and liable on conviction to be  
sentenced to imprisonment for life.*

*(5) Any person who willfully or maliciously sets fire to any stack  
of cultivated vegetable produce or mineral or vegetable field shall be  
guilty of an offence and liable on conviction to be sentenced to im-  
prisonment for a term not exceeding 14 years without option of fine.”*

On section 3(4)(a) and (5) (supra) the court below held as follows:

*“I think the above provision of subsection (5) is quite plain. Its  
scope is not limited to vegetable produce or mineral or vegetable fuel  
cultivated by the Government of the Federation, State or their  
parastatals. This explains why jurisdiction of the Tribunal has not been  
impugned by the appellant in this appeal.*

*When therefore both subsections (4)(a) and (5) are read to-  
gether the scope of subsection (4)(a) becomes clear.*

*The subsection talks of ‘public building’, ‘dwelling house’ and  
‘office’. It will be observed that ‘public building’ is separated from  
‘dwelling house’ and ‘dwelling house’ is separated from ‘office’ by  
comas. The use of comas in my view puts the properties or structures  
into distinct and separate compartments. In other words the provi-  
sion appears to me wide enough to cover public as well as private  
“dwelling houses and public and private ‘offices’.”*

Section 3(4)(a) of Decree No. 20 of 1984 as amended by  
Decree No. 22 of 1986 provides that any person who willfully or  
maliciously sets fire to any public building, dwelling house, office or  
structure whatever, whether completed or not, shall be guilty of an  
offence. Decree No. 20 of 1984 in its section 3(2)(a)(i) provides as  
follows:

*“3(2) Without prejudice to subsection (1) of this section, any  
person who does any of the following things shall be guilty of an  
offence under this Decree and shall be proceeded against and pun-  
ished as provided in this Decree, that is to say -*

*(a) commits arson, that is, the willful and unlawful burning of  
any of the following things:*

(i) any public building or structure whatsoever whether completed or not;”

**Decree No. 20 of 1984 was amended by Decree No. 22 of 1986. Section 3 of the principal Decree (No. 20 of 1984) was substituted by a new section 3 and its original section 3(2)(a)(i) which I reproduced above was replaced by a new section 3(4)(a) which reads:**

**“3(4) Any person who willfully or maliciously sets fire -  
(a) to any public building, dwelling house, office or structure whatsoever, whether completed or not, occupied or not;  
...shall be guilty of an offence...”**

(The underlined words did not form part of section 3(2)(a)(i) of Decree No. 20 of 1984.

**In section 10 of Decree No. 20 of 1984 (the interpretation section), “public building” is defined as “any building, structure or edifice belonging to, occupied by or operated on behalf of the Government of the Federation or of a State or any department or statutory corporation thereof.”**

The amendment Decree of 1986 has no interpretation section. **By the above definition, ‘public building’ would appear to cover any building belonging to, occupied by or operated on behalf of the Government of the Federation or of a State or any department or statutory corporation thereof which is open for use by everyone or people in general whereas a dwelling house is defined in Black’s Law Dictionary, 6th ed. at page 505 as a house or structure:**

**“which a person or persons live; a residence; abode, habitation; the apartment or building, or group of buildings occupied by a family as a place of residence...”**

**In the same Black’s Law Dictionary, Office is defined as: “a place for regular transaction of business or performance of a particular service...”**

**A public building in the context of section 3(4)(a) of Decree No. 22 of 1986 must belong to, occupied by or operated on behalf of the Government of the Federation or of State or any of its department or corporation for use by people in general. The International Conference Centre is a public building belonging to the Government of the Federation. A building**

**housing a State Library is a public building belonging to a State Government. The Government of the Federation can rent a house and use the same as a public building for its service and it acquires the character of a public building. A dwelling house, on the other hand, does not admit of the use by everyone or people in general. It is a place occupied by a family as a place of residence.** B

**After reading the whole of section 3 of Decree No. 22 and the meanings attached to the phrases public building, dwelling house and office, I am unable to agree with the submission of learned appellant's counsel that a dwelling house, office or structure must be public in nature to come within the provision of section 3(4)(a) of Decree No. 22 of 1986.** C

**Section 3(4)(a) of Decree No. 20 of 1984 as amended did not restrict the offence of arson to dwelling house belonging to the Government of the Federation or of a State or any department or statutory corporation thereof. The offence covers both public and private dwelling houses. I have read the entire provisions of Decree No. 20 of 1984 as amended and section 3(4)(a) in particular. The conclusion I have reached is that the language of section 3(4)(a) is plain, precise and unambiguous and it is unnecessary for me to examine the intention of the Decree as canvassed by the learned appellant's counsel. The plain and natural meaning of the words used should be expounded.** D E F

**"Dwelling house" in the context of section 3(4)(a) of Decree No. 20 of 1984 as amended is not restricted to "public" dwelling house and it is doubtful if that adjective can be applied to dwelling house. I agree with the court below that courts should interpret the laws as they are and not as they ought to be. The court below was right in its construction of section 3(4)(a) and (5) of Decree No. 20 of 1984 as amended. The offence with which the appellant and 33 others were charged in count one comes within the provision of section 3(4)(a) of the aforesaid Decree.** G H

Did section 8(1) of Decree No. 20 of 1984 as amended oust the jurisdiction of Imo State High Court for all purposes as held by the courts below? It was contended in the appellant's brief that the

ouster clause in section 8(1) of Decree No. 20 of 1984 as amended will apply to take away the supervisory jurisdiction of the High Court only when the Tribunal abides strictly to the provisions of the statute which established it and does not go outside its jurisdiction. It was further contended that the High court has jurisdiction to decide whether the issue before the Tribunal was one that it was empowered to determine. The court was referred to the cases of Ekpo v. Calabar Local Government & Or. (1993) 3 NWLR (Pt. 281) 324 at 337 (C.A.) and Okoroafor v. Miscellaneous Offences Tribunal (1995) 4 NWLR (Pt. 387) 59 at 80 and 81 (C.A.). The learned appellant's counsel objected strongly to the endorsement by the court below of the conclusion reached by Ubah, J. that even if the Tribunal exceeded its jurisdiction while purporting to act under the Decree, the High Court has no jurisdiction to issue a prerogative order or otherwise entertain any suit in respect of anything done or purported to be done under the Decree.

Counsel finally submitted on issue (3) that since the ouster provision is predicated on the exercise of jurisdiction by the Tribunal in the manner provided in the Decree, the act of arraigning the appellant for offences not contemplated by the Decree would not attract the protection of section 8(1) of the Decree. He referred the court to the case of Guardian Newspapers Ltd. v. Attorney-General of the Federation (1995) 5 NWLR (Pt. 398) 703 (C.A.). It was submitted in the respondent's brief that the wording of section 8(1) of the Decree is in pari materia with the wording of section 6(3) of Decree No. 10 of 1976 and that this court had considered the latter enactment in the case of Attorney-General of the Federation & Ors. v. Sode & Ors. (1990) 1 NWLR (Pt. 128) 500. He further submitted that the ouster provision in section 8(1) is total and all embracing leaving no room for the courts to enquire whether or not they have jurisdiction. It was further contended that the court cannot assume supervisory jurisdiction where its jurisdiction had been ousted.

Section 8(1) of the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984 as amended provides as follows:

*"No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to this Decree and if any such proceedings are instituted before, on or after the commence-*

*ment of this Decree the proceedings shall abate, be discharged and made void."*

To a layman, a power of this nature would appear to deprive the courts of jurisdiction over the Tribunal. In *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 WLR 123, it was held by the House of Lords that section 4(4) of the Foreign Compensation Act, 1950 which provided that a determination by the Commission of an application shall not be called in question in a court of law, did not protect any such determination from the jurisdiction of the courts. The effect of that case is that a provision of an Act of Parliament which directly or indirectly protects a particular act or thing from the jurisdiction of courts or manifests an insulation of that act or thing from the interference by the courts will not be countenanced by the courts in respect of a remedy that the courts feel they are in a position to give.

Ouster clauses have a long history. Among the earliest cases is *R v. Plowright* (1686) 3 Mod. 94. A statute imposed a tax on chimneys and empowered the Justices of Peace, in a case of dispute, "*to hear and finally determine the matter.*" On an application for a writ of certiorari the court held that the absence in the statute of a reference to certiorari did not mean that the remedy by way of certiorari had been excluded. The courts have been consistent in their disapproval of attempts by the Legislature to oust or curtail their jurisdiction. See *Oram v. Breary* (1877) 2 EX D 346 and *Francis v. Yewley & West Drayton Urban District Council* (1957) 2 QB 136.

In the case of *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* (1981) AC 363, the court was faced with the interpretation of section 29(3)(a) of the Industrial Relations Act. 1967. The section provides that,

*"Subject to this Act, an award of the Industrial Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any court of law."*

An application was made by the company to the High Court for an order of certiorari to quash the award made by the Industrial Court. The ground of the application was that there were errors of law on the face of the record. The High Court granted the order. On appeal by the respondents, the Federal Court of Malaysia held that

there was no error of law and restored the Industrial Court's award. On further appeal to the Privy Council on the question whether the jurisdiction of the High Court was excluded by section 29(3)(a) of the 1967 Act, it was held dismissing the appeal that the words of section 29(3)(a) providing that an Industrial Court award should not be quashed or called in question in any court of law were wide enough to oust the jurisdiction of the High Court to review the decision by certiorari although paragraph (a) could not exclude the jurisdiction of the High Court if the Industrial Court had exceeded its jurisdiction. As a result, there was no power to grant certiorari for an error of law on the face of the award which did not affect jurisdiction of the Industrial Court and therefore since the only allegation was that there were errors of law on the face of the award, the High Court had no jurisdiction to grant an order of certiorari.

Coming back home, the Court of Appeal, Enugu Division in the case of Ekpo v. Calabar Local Government Local Council & Ors. held that where a statute seeks to deprive the court from the exercise of its jurisdiction on a matter, such statute must be strictly and scrupulously construed. In the case of Attorney-General of the Federation & Or. v. Sode & Ors. (1989) 1 NWLR (Pt. 128) 50, a panel constituted by seven Justices of this court considered the question whether the High Court, the Court of Appeal and this court can exercise jurisdiction to determine the respondent's claim in respect of the estate of Chief Samuel Oyekoya Oyelate Sode (deceased), who was the owner of a two-storey building at No. 132 Broad Street, Lagos having regard to the ouster provisions contained in the Investigation of Assets (Public Officers and other Persons) Decree, No. 37 of 1968 and the Public Officers (Special Provisions) Decree No. 10 of 1976.

Section 12 of Decree No. 37 of 1968 Provides:

*"12. The validity of any direction, notice or order given or made or of any other thing whatsoever done, as the case may be, under this Decree, or the circumstances under which such direction, notice or order has been given or made or other thing whatsoever done, shall not be inquired into in any court of law, and accordingly nothing in the provisions of Chapter III of the Constitution of the Federation (1963) shall apply in relation to any matter arising out of this Decree or out of any enactment or other law repealed by this Decree."*

Section 6 of Decree No. 10 of 1976 provides:

*“(3) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceeding has been or is instituted before or after the commencement of the Decree, the proceedings shall abate, be discharged and made void.* <sup>B</sup>

*(4)...”*

Section 6(3) of Decree No. 10 of 1976 (i.e. Public Officers (Special Provisions) Decree) is in pari materia with section 8(1) of Decree No. 20 of 1984 as amended. <sup>C</sup>

This court in a unanimous decision held that where a provision ousting the jurisdiction of the court is clear and unambiguous, the court is bound to apply it as it is, that the court still has jurisdiction to decide whether it is not precluded from hearing the subject-matter of the action. At page 542 of the report, Karibi-Whyte, J.S.C. held as follows:

*“It was clear on the pleadings that the jurisdiction of the court was ousted by the provisions of the Decrees and Legal Notices relied upon by the 1st defendant now 1st appellant. The Court of Appeal was in error to have ignored the provisions ousting the jurisdiction of the court. It is not necessary to go into the issues, which in my view is a futile exercise. Where there is no jurisdiction the exercise of jurisdiction will result in nullity.”* <sup>E</sup>

I have earlier in this judgment said that section 6(3) of Decree No. 10 of 1976 is in pari materia with section 8(1) of Decree No. 20 of 1984 as amended by Decree No. 22 of 1986. ***Where the Tribunal acts within its jurisdiction, section 8(1) of Decree No. 20 of 1986 as amended is emphatic and absolute in its stipulation that no proceeding shall lie or be instituted in any court for or on account of any act, or matter or thing done or purported to be done under or pursuant to the Decree. But where the Tribunal has acted in excess of its jurisdiction, for example, if the offence of arson is not triable by it, certainly, the High Court has the power to grant an order of certiorari.*** <sup>F</sup>

***The courts below over-stretched their interpretation of Sode’s case, and were therefore wrong to hold that section 8(1) of Decree No. 20 of 1984 as amended ousted the juris-*** <sup>G</sup> <sup>H</sup>

***diction of the High Court to issue a prerogative order even where the Tribunal exceeded its jurisdiction. This is not the law.*** Happily, the Tribunal did not exceed its jurisdiction in proceeding to try the appellant and 33 others for the offence of arson under section 3(4)(a) of Decree No. 20 of 1984 as amended.

B In conclusion, the appeal fails. The court below was right in its interpretation of section 3(4)(a) of Decree No. 20 of 1984 as amended. The court would be acting improperly if a perfectly clear and unambiguous provision of an enactment such as section 3(4)(a) is treated with scant respect or ignored without strong and compelling reasons.  
C I therefore resolve issue (1) and (2) against the appellant. Issue (3) is answered in the negative and it is not necessary for me to determine issue (4) in view of my answers to issues (1) and (2).

D For the above reasons, I dismiss the appeal and uphold the decision of the court below. I make no order as to costs.

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### **BELGORE JSC**

E My learned brother, Ogwuegbu JSC., has treated all matters in this appeal clearly that I hardly find it necessary to add anything more. For the reasons set out in the judgment, which I adopt as mine, I also dismiss this appeal as lacking in merit with no order as to costs.

F

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### **MOHAMMED JSC**

G I have had the privilege of reading the judgment of my learned brother, Ogwuegbu J.S.C., in draft, and I agree with him that this appeal is without merit and ought to be dismissed. My learned brother has considered all the salient issues raised in the appeal and I do not find it necessary to add to his well considered judgment. The appeal is dismissed. I make no order as to costs.

H

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### **UWAIFO JSC**

I agree with the judgment of my learned brother Ogwuegbu JSC. There are two main issues arising from the appeal. The first is the interpretation to be given to the relevant provisions of section 3

of the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1984 which read:

*“3(1) A tribunal shall have power to try any person for any of the offences specified under this section and to impose the penalty relating thereto.*

*(4) Any person who willfully or maliciously sets fire* B

*(a) to any public building, dwelling house, office or structure whatsoever, whether completed or not;*

*Shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life.”*

In interpreting the above provisions, the court below first made reference to section 3(5) which provides that- C

*“Any person who willfully or maliciously sets fire to any stack of cultivated vegetable products or mineral or vegetable fuel shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 14 years without the option of a fine.”* D

It then resorted to a combination of the two subsections to determine the scope and meaning of section 3(4)(a) when it observed:

*“When therefore both sub-section 4(a) and (5) are read together the scope of sub-section 4(a) becomes clear. The sub-section talks of ‘public building’, ‘dwelling house’ and ‘office’. It will be observed that ‘public building’ is separated from ‘office’ by commas. The use of commas in my view puts the properties or structures into distinct and separate compartments. In other words the provision appears to me wide enough to cover public as well as private ‘dwelling houses’ and public and private ‘offices’. Any other interpretation would be absurd having regard to the provision of sub-section (5) whose scope is not limited to vegetable produce or mineral or vegetable fuel cultivated by the Government of the Federation, State or their parastatals.”* E  
F  
G

With all due respect to the court below, I do not think it adopted a proper interpretative approach in this instance. In particular, reliance on subsection (5) was inappropriate. Section 3 in question is concerned with arson. It is important to look at any prior federal law which deals (or dealt) with arson to see if there is any difference in their wording. If there is, then it will be necessary to ascertain what mischief this later law was meant to cure. Section 443 of the Criminal H

Code Act provides for arson, as may be relevant to the present case, as follows:

*“443. Any person who willfully and unlawfully sets fire to any of the following things:-*

B *(a) any building or structure whatever, whether completed or not;*  
*is guilt of a felony, and is liable to imprisonment for life.”*

It is clear from the above that what section 3(4)(a) of Decree No. 20 of 1984 did was to substitute *“any public building, dwelling*  
C *house, office”* in place of *“any building”* as used in section 443(a) of the Criminal Code Act. In other words, it simply spelt out what is considered as *“any building”* to be any public building, any dwelling house, any office. It did not and was not intended to delimit any such structure to be only of a *“public”* nature, that is to say Government  
D property as the appellant has erroneously argued.

The mischief rule as interpretation was laid down in 1584 in *Heydon’s Case* 3 Co. Rep. 7a In *In Re Mayfair Property Co.* (1898) 2 Ch. 28 at P. 35, Lindley M.R. said:

E *“In order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydon’s Case (1584) 3 Rep. 7a to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief.”*  
F

From all indications, the mischief against which section 3(4)(a) of the Decree was directed was to make it clear that *“any building”* means any public building or any private building. Jurisdiction was accordingly conferred on the Miscellaneous Offences Tribunal to try  
G cases of arson in respect of any such building. On this issue therefore, the appeal fails.

The other issue is whether the High Court has jurisdiction to entertain an action challenging the jurisdiction of the Miscellaneous Offences Tribunal to try the particular arson offence. The trial High  
H Court, relying on section 8(1) of Decree No. 20 of 1984 (as amended), declined jurisdiction to entertain an action for an order of prohibition against the Tribunal founded on lack of jurisdiction. The said section 8(1) provides-

*“No civil proceedings shall lie or be instituted in any court for*

*or on account of or in respect of anything done or purported to be done under or pursuant to this Decree and if any such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void."*

The court below upheld the trial court. Both courts below relied on Attorney-General of the Federation v. Sode (1990) 1 NWLR <sup>B</sup> (pt. 128) 500. I have no doubt that what that case decided was misconceived by both courts. The question in the present case is whether, if the tribunal did not have the jurisdiction to try the offence with which the appellant was charged, the ouster clause in the Decree <sup>C</sup> which established the tribunal would prevent any court from pronouncing on that issue of jurisdiction. When a law establishing an inferior court or tribunal sets out the jurisdiction of that court or tribunal, the intention is that that jurisdiction must not be exceeded. No ouster clause in the law establishing the said court or tribunal can <sup>D</sup> protect it against a violation of its jurisdictional limits. It is only when the court or tribunal acts within jurisdiction set for it and in that regard does or purports to do anything that it can hide behind the ouster clause: see *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 W.L.R. 123. <sup>E</sup>

However, although the court below went wrong on the issue of the ouster of jurisdiction in the present case, since the tribunal could try the offence with which the appellant was charged, his attempt to obtain an order of prohibition against the tribunal was a <sup>F</sup> worthless exercise. Accordingly I too dismiss this appeal and make no order as to costs.

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### ***EJIWUNMI JSC***

I have had the privilege of reading before now the judgment just delivered by my learned brother Ogwuegbu JSC. <sup>G</sup>

In the said judgment, the issues arising from the facts have been carefully collated and discussed before reaching the conclusion that the appeal lacks merit. As I agree with his reasoning and conclusion <sup>H</sup> thereon, I adopt the judgment as my own. Accordingly, the appeal is also dismissed by me with no order as to costs.