

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2002. SC.184/1999
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,
A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC

COMPTROLLER NIGERIAN PRISONS
SERVICES, IKOYI, LAGOS & 2 Ors APPELLANTS
AND
DR. FEMI ADEKANYE & 25 Ors RESPONDENTS

CRIMINAL PROCEDURE - Attorney-General's powers - Delegation
- The private legal practitioners were duly appointed - To act for
appellants for prosecution of respondents (H1)

APPEALS - Ground of law - Raised without leave - Competence -
The ground being of law is competent - And it is not necessary to
obtain leave to file and argue it (H2)

APPEALS - Basis - As ruling of the trial court was not based on pro-
visions of the African Charter of Human Rights - Appeal to Court of
Appeal cannot be predicated on the Act (H3)

APPEALS - Courts - Issues - Suo motu raising - Olusanya v. Olusanya
- Where appellate court raises point suo motu - Parties must be given
opportunity to address court on the points - Before decision is made
(H4)

APPEALS - Issues - Determination - Basis - Appellate court considers
issues - Based on grounds of appeal before it - Since trial court ought
to have made primary findings of fact (H5)

FACTS

Accused/respondents were charged before various tribunals
set up under Decree 18 of 1994 i.e. Failed Banks (Recovery of Debts)
and Financial Malpractices for diverse offences. They were initially
granted bail. However, being unable to fulfill the bail conditions, they
were all kept in custody while their trial went on. Their trials were
however not concluded within 21 days as stipulated in section 4(1)

of the Decree. Hence, respondents approached the High Court of Lagos State, where they took writ of Habeas Corpus for their release. On being served with the writ, prosecution/appellants filed a Notice of Preliminary objection challenging the jurisdiction of the court to entertain the application. The objection was overruled and appellants appealed to the Court of Appeal, Lagos.

In the meantime, an application by appellants for stay of proceedings at the High Court was refused. A similar application was then filed at the Court of Appeal following the refusal by the High Court. The Court of Appeal granted the application for a stay of proceedings. Notwithstanding being aware of the order, the High Court proceeded with the hearing of the application for Habeas Corpus. A date was subsequently fixed for ruling. This prompted appellants to file application at the Court of Appeal seeking to arrest the delivery of the said ruling. The court ruled against appellants. Being dissatisfied, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10 Laws of the Federation of Nigeria 1990 (hereinafter referred to as “Cap. 10”) is superior to the Decree of the Federal Military Government and if this is so,

(a) Whether sections 1(5) and 1(6) of the Failed Banks Recovery of Debts) and Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree No. 18 of 1994 as amended (hereinafter referred to as Decree 18 of 1994) providing for ouster of supervisory jurisdiction of the High Court in respect of proceedings before the “Failed Banks Tribunal” are in conflict(s) with Cap.10 and therefore invalid.

(b) Whether section 26 of Decree 18 of 1994 offends Article 7 of CAP.10 and consequently along with sections 4(2) and 5(1) of the same CAP.10 invalid? (Grounds 1, 3 and 2 respectively).

2. Whether the Court of Appeal was right to have relied on CAP.10 in its decision when the judgment of the trial judge appealed against upholding that he had supervisory jurisdiction made no reference to or relied in any way on CAP.10; the effect of CAP.10 on the said jurisdiction did not arise from any of the ground of appeal; the issues formulated by both the appellants and the Respondents have no bearing on CAP.10 there was no cross-appeal or Respondents’

Notice raising the issue of CAP.10 in relation to the supervisory jurisdiction of the lower Court (Ground 5) and was decision arrived at thereby by the Court of Appeal correct?

3. *Whether the Court of Appeal was right in failing to exercise its disciplinary jurisdiction in respect of the proceedings before the trial High Court taken in defiance of the Interim Order of stay of proceedings by the Court of Appeal on 11/2/99 and the other motion for stay of proceedings before the High Court filed in the Court of Appeal.*"

HELD (Unanimously allowing the main appeal and

dismissing the cross-appeal per **EJIWUNMI JSC**)

CRIMINAL PROCEDURE - Attorney-General's powers - Delegation

1. The main complaint of the cross-appellants in respect of these issues is concerned with whether Fidelis Nwadialo SAN, and Emeka Ngige had the competence to prosecute the respondents/cross-appellants for the various offences they were charged before the Miscellaneous Tribunal created by the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree No.18 of 1994. It is clear from those issues that the main question raised therein is whether the appointment of Fidelis Nwadialo Esq., SAN and Emeka Ngige as counsel for the appellants did not contravene the provisions of section 160 of the 1979 Constitution with regard to the prosecution of criminal cases by the Attorney General of the Federation. This includes the question as to whether the Attorney General of the Federation can properly delegate his duties in that regard to Legal Practitioners who are not serving legal practitioners in the Federal Ministry of Justice. All these questions were clearly raised in the SC.183/1999 *Comptroller, Nigerian Prisons Services & 2 Ors v. Dr. Femi Adekanye & Ors* (Delivered on 12th July 2002) by Belgore JSC (as yet unreported). I was privileged to have read the draft of the said judgment in which it was held by my learned brother, Belgore JSC that Messrs. Fidelis Nwadialo, SAN and Emeka Ngige were duly appointed to prosecute the respondents for

the various offences with which they were charged. For the reasons given in that judgment, and with which I agree entirely, it is in my view unnecessary to consider the questions raised in the several issues, which I have adumbrated above in this judgment. With that conclusion, all those
B **issues that questioned the appointment of Messrs. Fidelis Nwadio SAN and Emeka Ngige by the Attorney General of the Federation to act for the appellants and which challenged their appearance in every aspect of this matter are**
C **resolved in favour of the appellants. The cross-appeal of the respondents is to that extent dismissed.** (p. 2197 H)

APPEALS - Ground of law - Raised without leave - Competence

2. It is my view that there is no merit in this contention. The
D **ground of appeal being a ground of law is competent and it is not necessary to obtain leave to file and argue it.** (p. 2206 H)

APPEALS - Basis

3. In deciding the appeal on the provisions of Cap.10, it would
E **appear that the Court below fell into error. This is because neither the appellants not the respondents appealed to the Court below on the failure of the trial Court to found jurisdiction on Cap.10. As I have shown from the excerpts from the**
F **ruling of the trial Court, the court was not also based on Cap.10. Therefore, it is clear that the appeal to the Court below cannot be predicated on the provisions of Cap.10.**
(p. 2208 E)

G *Courts - Issues - Suo motu raising*

4. The question then is, whether the Court below was right to have determined the question before it on a ground which was raised suo motu by the Court. In Olusanya v. Olusanya (1983) 14 NSCC 97 at p.102, this Court stated the governing
H **principles that should guide a court in such circumstances,**

“This Court has said on a number of occasions that although an appeal court is entitled, in its discretion, to take points suo motu if it sees fit to do so, yet that discretion must be exercised sparingly and in exceptional circumstances only:

where the points are so taken the parties must be given the opportunity to address the appeal court before decision on the points is made by the appeal court.” (p. 2208 G)

APPEALS - Issues - Determination - Basis

5. It is settled law that the Court of Appeal being an appellate Court can only consider issues based on grounds of appeal filed before it. It has been said that the rationale for this is that a trial court is generally required to make primary findings of fact and to express its opinion on the law in regard to the findings. The appellate court relies on the opinion of the court below for its determination of the appeal before it. The jurisdiction of the appellate court is essentially confined to the correction of the errors of the court from which it hears appeals. It can only do so, naturally, where the points argued before it consist of allegation of errors made by that court and not on matters not canvassed before it. (p. 2209 B)

REPRESENTATION

Emeka Ngige with O. A. Egwuatu for the Appellants
Dickson Osuala for 1st, 3rd - 26th Respondents
Femi Falana for 2nd Respondent

CASES REFERRED TO

Olusanya v. Olusanya (1983) 14 NSCC 97
Kuti v. Jibowu (1972) 1 All NLR (Pt. 11) 180
Salawu Ajao v. Karimu Ashiru (1973) 1 All NLR (Pt. 11) 51
Atanda v. Lakanmi (1974) 1 All NLR (Pt. 1) 168
Kuti v. Balogun (1978) 1 LRN 353
Bankole v. Pelu (1991) 8 NWLR (Pt. 211) 523
United Marketing Co. v. Kara (1963) 2 All ER 553
North Staffordshire Railway Company v. Edge (1920) AC 254
Debisi Djukpan v. Rhorhadjor Orovuyevbe (1967) 1 All NLR 134
Western Steel Works v. Iron and Steel Workers (1987) 1 NWLR (Pt. H 49) 284

STATUTES REFERRED TO

Failed Banks (Recovery of Debts) and Financial Malpractices in Banks

Tribunal Decree No. 18 of 1994 s. 4(1)

African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. 10 LFN 1990

LEAD JUDGMENT BY EJIWUNMI JSC

B The proceedings leading to this appeal deserve to be set down as much as possible in order to appreciate how this appeal eventually wended its way into this Court.

C The respondents were apparently charged before various tribunals set up under Decree 18 of 1994 i.e. the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks for diverse offences. At the beginning of their trial, each of them was granted bail under the conditions laid down in section 26 of the said Decree. But, as they were unable to fulfill the conditions of the bail, they were all D kept in custody while their trial went on. Their trials in the various tribunals were not however concluded within the 21 days stipulated in section 4(1) of Decree 18 of 1994.

E Believing that their trial beyond the 21 days stipulated in the Decree was illegal, null and void, they took a writ of Habeas Corpus for their release. On being served with the writ, the appellants who were then the respondents, filed a Notice of Preliminary objection challenging the jurisdiction of the High Court to entertain the application. The objection was overruled and the appellants appealed F against the ruling. In the meantime, the High Court refused the application for stay of proceedings pending the hearing of the appeal filed in the Court below. Another application for stay of proceedings was then filed in the Court of Appeal on the same day when the earlier stay of proceedings was refused by the High Court. The Court G of Appeal granted to the appellants that subsequent application for a stay of proceedings. The order so made was immediately brought to the attention of the learned trial judge before whom the writ of habeas corpus was lying. But the learned judge in spite of the order made by the Court of Appeal decided to proceed with the hearing of H the application for habeas corpus. Following the hearing, the learned trial judge adjourned his ruling to the 12th of February 1999. On the 8th of February, the appellants filed a motion in the Court of Appeal for arresting or suspending the delivery of the ruling of the High Court on the 12/2/99 to which it was earlier adjourned for

delivery.

This appeal is against the judgment of the Court below. In that judgment, the Court below upon the exercise of their discretion considered two issues suitable for the determination of the appeal. These are first, whether the trial Court was right to have assumed supervisory jurisdiction over a matter that arose in the Failed Banks Tribunal created by Decree No. 18 of 1994. And secondly, whether the trial Court ought to have stayed further proceedings in the hearing after it was informed that an application for stay of proceedings had been filed in the Court below. The Court below resolved these questions against the appellants hence the appeal to this Court. I will later in this judgment dwell further on the decision of the Court below on issue 1 raised by the Court. However, on the second issue, which is, whether the trial Court was right to have continued with the hearing of the matter when it was aware that an application for staying the proceedings of the trial Court was pending in the Court of Appeal. The Court below took the view that it is clear that the trial Court was wrong not to have stayed proceedings in the Court having been notified of the pending application before that Court. However, the Court below felt that the urgency of the matter before it might have contributed to the error of the trial Court in carrying on with the matter before it. In any event, the appeal was dismissed by the Court below upon the two issues raised by it as aforesaid.

The Court below then went on to make further orders which were framed as follows:-

“Under section 251(3) of the Constitution of the Federal Republic of Nigeria (Promulgation Decree No.24 of 1999) the Federal High Court now has jurisdiction to try the Respondents on the offences brought against them. It is therefore directed that the Respondents be brought before a Judge of the Federal High Court, Lagos to enable the Judge grant the Respondents bail only on such terms as will ensure that Respondents come back to take their trial on such date and time it may be fixed for. This is to be done within 7 days from today.”

The appellants being dissatisfied with the judgment and orders of the Court below have further appealed to this Court. Pursuant thereto, the appellants filed five grounds of appeal against the judgment and orders of the Court below. The respondents with the leave

of this Court also filed a cross appeal. Briefs of argument were thereafter filed and exchanged for the parties by counsel. And at the hearing learned counsel adopted and placed reliance on their respective briefs.

In view of what I would refer to presently, it is necessary to reiterate that when this appeal was heard on the 15th of April 2002, Emeka Ngige appeared for the appellants. For the 1st - 22nd respondents, Dickson Osuala appeared for all of them, while Femi Falana appeared for the 23rd to the 27th respondents. All the said counsel who appeared as stated above adopted and placed reliance on the briefs filed on behalf of the appellants, the 1st - 22nd respondents and the 23rd - 27th respondents respectively. At the end, the Court reserved judgment for the 12th of July 2002.

But by a Motion on Notice dated 4th day of June 2002, filed by learned counsel, Femi Falana acting on behalf of the 2nd respondent, prayed this Court to make following orders in his favour. They are as follows:-

“(1) An order permitting Femi Falana Esq. of Falana and Falana’s Chambers to represent the 2nd respondent herein.

(2) An order granting leave to the 2nd respondent to file his Brief of Arguments out of time.

(3) An order deeming the Brief of Arguments filed by the 2nd Respondent as having been properly filed and served.

(4) An order permitting the 2nd respondent to adopt the said Brief and adduce oral arguments on same.”

Attached to this motion is a 16 paragraph affidavit deposed to by the 2nd respondent, namely, Otumba Olufemi Ajayi.

For present purposes, paragraphs 3 - 12 of the affidavit deposed to be set down.

“Para 3. That as soon as the appeals herein were filed I specifically requested Mr. Femi Falana to represent me in this Honorable Court.

4. That when Mr. Falana informed me that he could not take up this matter as Mr. Osuala was representing all the respondents, I wrote to Mr. Osuala to allow Mr. Falana to represent my interests in these appeals. A copy of my letter is attached and marked Exhibit A.

5. That when I asked Mr. Falana sometimes in February this year whether he had filed the necessary papers on my behalf he

informed me that Mr. Osuala had filed a brief on behalf of all the respondents including me.

6. That when I informed Mr. Falana that I was going to take up this matter in open court he advised me to speak to Mr. Osuala in order not to embarrass him in the circumstance.

7. That thereafter I contacted Mr. Osuala and pleaded with him to discontinue his further appearance for me in this matter. ^B

8. That Mr. Osuala assured me that he would take urgent steps to withdraw his appearance for me before the hearing of the appeals.

9. That when Mr. Osuala later received the hearing notice on behalf of the respondents including me he did not forward the hearing notice to me. ^C

10. That to my utter dismay when the appeal was heard on April 15, 2002 Mr. Osuala announced his appearance for all the respondents including me. ^D

11. That I only became aware two weeks ago when Mr. Femi Falana informed me that this appeal had been heard and judgment fixed for July 12, 2002.

12. That although this Honorable Court has heard the appeal and adjourned the matter for judgment I have already filed and served my brief on the parties.” ^E

As this Court considered that this application is of immense importance to the applicant and to the administration of justice, the application was set down for hearing on the 20th June 2002. On that day, Mr. Femi Falana counsel for the 2nd respondent moved his application in the presence of Mr. Emeka Ngige, learned counsel for the appellants/respondents. Mr. Dickson Osuala was absent. ^F

After due consideration of the affidavit filed by the 2nd respondent, I formed the firm view that the application has merit. Moreso, when it is manifest that the 2nd respondent had manifested his intention, by virtue of Exhibit A, that he would prefer Mr. Femi Falana to represent his interests in this appeal. It is unfortunate that his wish in this regard appears not to have been respected. Be that as it may, bearing in mind that it is a cardinal principle in the administration of justice that a party to a suit ought to have the right to have a legal practitioner of his choice to defend his interests in any cause or matter, leave was granted to the applicant as prayed. In the result, ^G ^H

leave was granted to Mr. Femi Falana to defend the 2nd respondent, and the Brief of Argument already filed on his behalf was deemed properly filed and served. Thereafter, Mr. Falana adopted and placed reliance on the said brief for the determination of the appeal. He also made further submissions on the issues raised in the appeal. Mr.

B Emeka Ngige also replied.

For the appellants, the issues identified for the determination of the appeal are as follows:-

C “1. *Whether the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10 Laws of the Federation of Nigeria 1990 (hereinafter referred to as “Cap. 10”) is superior to the Decree of the Federal Military Government and if this is so,*

D (a) *Whether sections 1(5) and 1(6) of the Failed Banks Recovery of Debts) and Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree No. 18 of 1994 as amended (hereinafter referred to as Decree 18 of 1994) providing for ouster of supervisory jurisdiction of the High Court in respect of proceedings before the “Failed Banks Tribunal” are in conflict(s) with Cap.10 and therefore invalid.*

E (b) *Whether section 26 of Decree 18 of 1994 offends Article 7 of CAP.10 and consequently along with sections 4(2) and 5(1) of the same CAP.10 invalid? (Grounds 1, 3 and 2 respectively).*

F 2. *Whether the Court of Appeal was right to have relied on CAP.10 in its decision when the judgment of the trial judge appealed against upholding that he had supervisory jurisdiction made no reference to or relied in any way on CAP.10; the effect of CAP.10 on the said jurisdiction did not arise from any of the ground of appeal; the issues formulated by both the appellants and the Respondents have*
G *no bearing on CAP.10 there was no cross-appeal or Respondents’ Notice raising the issue of CAP.10 in relation to the supervisory jurisdiction of the lower Court (Ground 5) and was decision arrived at thereby by the Court of Appeal correct?*

H 3. *Whether the Court of Appeal was right in failing to exercise its disciplinary jurisdiction in respect of the proceedings before the trial High Court taken in defiance of the Interim Order of stay of proceedings by the Court of Appeal on 11/2/99 and the other motion for stay of proceedings before the High Court filed in the Court of Appeal.”*

Though at the hearing Mr. Dickson Osuala appeared for all the respondents, it is now evident from what I have said above that his appearance is now limited to the 1st, 3rd - 27th respondents. For these respondents and for whom a cross-appeal was also filed, the issues identified for the determination of the appeal are:-

“1. *Whether the appellants were competent to Appeal before the lower Court (Court of Appeal, Lagos Division)?* B

2. *Whether the appellants have a competent appeal before Supreme Court of Nigeria?*

3. *Whether the appellants are contemnors who should be stopped from bringing appeals and applications before the courts until they are purged?* C

4. *Whether an application for the issues of a Writ of Habeas Corpus Ad Subjiciendum challenging the legality of commitment to prison of the respondents by the defunct Failed Banks Tribunals pursuant to criminal charges filed before the said Failed Banks Tribunals is a criminal or civil matter?* D

5. *Whether the letters produced by learned Senior Advocate, Fidelis Nwadio Esq., SAN dated 04/02/99, 09/02/99 and 28/01/99 constitute valid authority to the Private Legal Practitioner, Fidelis Nwadio Esq., SAN to prosecute a criminal matter arising from exercise of the criminal jurisdiction of the defunct Failed Banks Tribunals set up under Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994?* E

6. *Whether it is not ultra vires the powers conferred on the 3rd appellant herein under section 160(1) to delegate the said powers with the letters dated 04/02/99, 09/02/99, 28/01/99 and also the letter dated 11/04/99 having regard to the express provisions of section 160(2) Constitution of the Federal Republic of Nigeria 1979 (then applicable)?* F G

7. *Arising from the above issues whether the letter of the then incumbent Attorney-General of the Federation dated 15/04/99 constitute valid authority for the continuing appearance of Messrs. Fidelis Nwadio Esq., SAN and Emeka Ngige Esq., for the appellants?* H

8. *Whether the manner of prosecuting the respondents resulting in their long detention and subsequent application for a Writ of Habeas Corpus Ad Subjiciendum is in compliance with the provisions of section 160(3) Constitution of the Federal Republic of Nige-*

ria, 1979 (then applicable)?

B 9. *Whether the appellants herein can validly stop the respondents from inquiring into whether the Constitutional provisions in section 160 Constitution of the Federal Republic of Nigeria, 1979 has been complied with, with regards to their prosecution by the 3rd appellant?*

C 10. *Arising from issues 5,6,7,8 and 9, whether the respondent/cross-appellants' prosecution was in compliance with the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994.*

D 11. *Further to the foregoing issues, whether the defunct Failed Banks Tribunals acquired jurisdiction ab initio to adjudicate over the purported criminal charges brought against the respondent/cross-appellants?*

E 12. *Arising from grounds 7,8 and 9 of the respondents' cross-appeal, whether any legal consequences can flow from the order of Oguntade JCA directing further trial of the respondent/cross-appellants before the Federal High Court when the issue did not arise in the appeal?*

F 13. *Having held on 15th day of April, 1999 that Fidelis Nwadialo Esq., SAN (of blessed memory) lacked the standing to appear for the appellants and after further holding on 20th day of April, 1999 at page 381 of the records as follows:-*

G *'All the processes filed before 16th April, 1999, and signed by Mr. Nwadialo (SAN) as counsel and in particular the motions filed on 4th day of February 1999, 4th day of March 1999, 30th day of March, 1999 are struck out being processes signed and filed without the necessary authority',*

H *whether their Lordships Oguntade and Galadima JJCA are in their respective Contributions contained at last paragraph of page 19 and page 20 (at pages 444 and 445 of the record Coram G.A. Oguntade JCA) and last paragraph of page 1 and last paragraph of page 2 Coram Sulaiman Galadima JCA (at pages 448 and 449 of the record) were right to consider the appellants' said application dated 4/2/99 in their various contributions after having struck same out on 20/04/99?"*

The issues identified for the 2nd respondent for the determination of this appeal read thus:-

“(i) *Whether the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap.10, Laws of the Federation of Nigeria, 1990 is superior to the Decrees of the Federal Military Government.*

(ii) *Whether the Court of Appeal was right in applying Cap.10 to the facts of this case.* B

(iii) *Whether the Court of Appeal was right in holding that certain sections of the Failed Banks (Recovery of Debts and Malpractices in Banks) Tribunal Decree No.18 of 1994 are in conflict with Cap.10 and are therefore invalid.* C

(iv) *Whether the Court of Appeal was right in failing to set aside the proceedings of the Lagos High Court for its refusal to halt further proceedings after the granting of interim order of stay by the Court of Appeal.”*

Before the consideration of the merits of the appeal and the cross-appeal, I deem it proper to comment, howbeit briefly, in respect of the issues set down for the respondents/cross-appellants for the determination of the appeal. Now, though their nine grounds of appeal have not been set down in this judgment, it is manifest that from those nine grounds of appeal, thirteen issues were distilled for the determination of this appeal. There can be no doubt that the formation of 13 issues out of nine grounds of appeal cannot be in the proper sense to have been the product of a reasoned distillation of issues arising out of the grounds of appeal. What this Court has laid down in several of its decisions is that issues for consideration in an appeal should be the combination of one or more grounds of appeal and each of them must be a concise formulation of the complaints of the appellant. But in the instant appeal, the issues set down for them for determination of the appeal are not prolix but are unnecessarily repetitive. The effort of counsel in this regard is simply not what is expected of counsel seised with the preparation of a brief for the due determination of the merits of an appeal. F

In this connection I must also refer to issues 5,6,7,8,9 and 13 set out above as part of the issues set down by learned counsel for the respondents/cross-appellants for the determination of the appeal. H
The main complaint of the cross-appellants in respect of these issues is concerned with whether Fidelis Nwadialo SAN, and Emeka Ngige had the competence to prosecute the respon-

dents/cross-appellants for the various offences they were charged before the Miscellaneous Tribunal created by the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Decree No.18 of 1994. It is clear from those issues that the main question raised therein is whether the

B appointment of Fidelis Nwadio Esq., SAN and Emeka Ngige as counsel for the appellants did not contravene the provisions of section 160 of the 1979 Constitution with regard to the prosecution of criminal cases by the Attorney General of the Federation. This includes the question as to whether the

C Attorney General of the Federation can properly delegate his duties in that regard to Legal Practitioners who are not serving legal practitioners in the Federal Ministry of Justice. All these questions were clearly raised in the SC.183/1999 Comptroller, Nigerian Prisons Services & 2 Ors v. Dr. Femi Adekanye & Ors (Delivered on 12th July 2002) by Belgore JSC (as yet unreported). I was privileged to have read the draft of the said judgment in which it was held by my learned brother, Belgore JSC that Messrs. Fidelis Nwadio, SAN and Emeka

E Ngige were duly appointed to prosecute the respondents for the various offences with which they were charged. For the reasons given in that judgment, and with which I agree entirely, it is in my view unnecessary to consider the questions raised in the several issues, which I have adumbrated above in this judgment. With that conclusion, all those issues that questioned the appointment of Messrs. Fidelis Nwadio SAN and Emeka Ngige by the Attorney General of the Federation to act for the appellants and which challenged their appearance in

F every aspect of this matter are resolved in favour of the appellants. The cross-appeal of the respondents is to that extent dismissed.

I will now turn to consider the three issues raised in the appeal filed by the appellant. Though, I have set out above the three issues

H identified by the appellants in their brief seriatim in this judgment, I will however consider issue 2 first. This is because of the resolution of that issue may to a large extent determine the result of this appeal. By that issue 2, the question raised therein is whether the Court of Appeal was right to have relied on CAP.10 in its decision when the

judgment of the trial Court appealed against made no reference to or relied in any way on any of the provisions of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, CAP.10 of the laws of the Federation of Nigeria 1990. (This Act shall be referred to as CAP.10 from henceforth). It is also contended for the appellants that not one of the grounds of appeal filed against the ruling of the High Court questioned the effect of CAP.10 on the supervisory jurisdiction of the High Court. Therefore, it is argued that the issues formulated by both the appellants and the respondents have no bearing on CAP.10. Neither it is pointed out, did the respondent file a cross-appeal or a respondents' notice raising the issue of CAP.10 in relation to the supervisory jurisdiction of the High Court. In arguing this issue, learned counsel for the appellants submits in the appellants' brief that not a word was said as to its applicability to the application before the lower Court. It is further argued that the Notice of Appeal filed by the appellants has no ground in it whatsoever dealing with CAP.10 and it follows naturally that none of the issues raised thereon relate in any way with CAP.10. Also, he further submits that all the issues raised by the learned counsel for the 23rd - 27th respondents in the respondents' brief had nothing to do with CAP.10. And there was no cross-appeal by the respondents nor was a respondents' notice filed by the respondents on CAP.10 to enable the Court below to decide the appeal on the provisions of Cap.10 . In support of his submission, learned counsel for the appellants referred to the well settled principle of law that the Appellate Court is bound by the grounds of appeal and by the issues arising from the grounds of appeal. Appellate Courts are therefore obliged to give their decisions upon the grounds of appeal filed and the issues raised thereon. For this submission, he referred to *Olusanya v. Olusanya* G (1983) 3 SC 4; *Iyayi v. Eyigebe* (1987) 3 NWLR (pt.61) 523; *Western Steel Works v. Iron & Steel Workers* (1987)1 NWLR (pt.49) 284; *UAC (Nig) Ltd v. Global Transport S.A.* (1996) 5 NWLR (pt.448) 291.

It is also the contention of the appellants that the Court below clearly raised 'suo motu' the applicability of CAP.10 to the question before it, and should have therefore invited addresses from learned counsel for the parties before reaching its decision on it. Learned counsel for the appellants thereafter went on to discuss at some length

in the brief the provisions of Decree 107, and whether the writ of Habeas Corpus ought to have been issued against the appellants to effect the release of the respondents. It is however the contention of the appellants that the learned trial judge clearly relied solely on the provisions of section 4(1) of Decree No.18 of 1994 to hold that he
B had jurisdiction in the matter on the ground of non-compliance with the provisions of section 4(1) of Decree No.18 by the Tribunal.

Learned counsel then pointed out that the Court below in its judgment clearly rejected the only ground, referred to above, on
C which the trial judge held that it had jurisdiction on the matter. It is therefore the argument of learned counsel for the appellant that with the rejection of the sole ground relied upon by the trial judge to vest the court with jurisdiction in the matter, completely knocked the bottom off the judgment of the High Court. The proper course submits
D learned counsel for the appellant, for the Court below to have taken was to allow the appeal. But the Court below fell into error by making a new and different case for the respondents to sustain the judgment of the trial Court.

The main argument proffered for the 1st, 3rd to 27th respondent by their learned counsel against issue 2, is the contention that the ground of appeal germane to this issue is a ground of mixed law and fact. He therefore contends that the ground of appeal cannot be competent as there was no leave of this Court or the Court below
E was obtained to give competence to the ground of appeal. As I have
F read the relevant ground of appeal, it is my view that there is no merit in this contention. The ground of appeal being a ground of law is competent and it is not necessary to obtain leave to file and argue it. It is also argued for the appellants/cross-respondents that the defunct Failed Banks Tribunal lost jurisdiction to adjudicate in the trial of
G the respondents/cross-appellants after twenty-one working days from the date of its first sitting, per section 4(1) of Decree No.18 of 1994. It is therefore the contention of learned counsel that the Tribunals no longer have jurisdiction to remand the respondents/applicants to the
H Federal Prisons, Ikoyi or anywhere else. Again, the Court below did not make any pronouncement on this statement, I therefore must hold that the grounds of appeal and the issues raised are incompetent. They are therefore struck out.

In order to appreciate the argument proffered for the appel-

lants in this appeal, it is necessary to examine very carefully the rulings of the learned judge of the High Court which formed the basis of the appeal in the Court below. It is manifest from the perusal of the rulings of the High Court that the learned judge did not determine the question raised before it on CAP10. This is made clear from the penultimate paragraph of the ruling of the learned judge delivered on 22nd January 1999 where he said thus:

“The learned counsel to the Respondent himself admitted that 21 working days have passed between the date of arraignment and the time the Applicants filed this Writ of Habeas Corpus, therefore since the Tribunal had not kept to the strict wordings of the Decree that set them up and cogent reason had been shown that the Tribunal had been empowered to enlarge the time for completing their assignment the simple interpretation is that the tribunal had not conform (sic) to the Decree that set them up. By reason of that noncompliance this Honorable Court has the necessary jurisdiction to interpret the said sections and has done so.”

The learned judge then concluded his ruling, by holding thus:

“Consequently therefore this Honorable Court has the necessary jurisdiction to look into the Writ of Habeas Corpus as presented by the Applicants...”

It is clear therefore from the above quoted passage from the ruling of the learned judge that he resolved to hold that the Court is vested with the jurisdiction to look into the Writ of Habeas Corpus because the respondents failed to complete the prosecution of the offences for which the applicants were charged within 21 days as stipulated in the Decree that set up the Tribunals. The second ruling of the High Court per Hunponu-Wusu J., against which appellants appealed to the Court of Appeal was delivered on the 12th of February 1999. In this ruling, although reference was made to CAP10 in the course of discussing the arguments addressed to the court by the learned counsel for the parties, it is manifest that in the end the Court did not arrive at its conclusion in the ruling on the basis of any of the provisions of CAP10. It is apposite to quote the relevant portion of the ruling to show the reasoning of the learned judge. It reads thus:

“Since the Tribunal that convicted the two Applicants had not complied strictly with the provisions of the Decree that set them up, their conviction cannot and should not be allowed to stand. In this

wise the High Court being a supervisory Court of Record has a supervisory jurisdiction over the proceedings of the Tribunal that has not complied with the Decree that set it up. Since these Tribunals have only delivered their Judgment in respect of two out of the 27 Applicants before this Court and since I have held that those Judg-
B ment were delivered without jurisdiction because the Tribunal did not comply with the decree that set them up, the said Judgment are hereby declared illegal and void and of no effect for lack of jurisdiction. As regards the other 25 Applicants, their continued detention
C at the Ikoyi Prison despite the purported bail granted to them, are therefore illegal and void. The Respondents have not filed the necessary returns as provided for by the Rules. Even when the Counter-Affidavit filed by the Respondents are considered the Respondents had not given any special reasons why they have not complied with
D the mandatory 21 working days as provided for by the said Decree No.19 of 1994. Consequently therefore, I hold that the continued detention in Ikoyi Prisons of these Applicants and their continued trial before the Tribunal are ultra vires the powers of the said Tribunal. Each of the 27 Applicants should therefore be set free FORTH-
E WITH.”

The appellants who were dissatisfied with the ruling of the learned judge of the High Court appealed to the Court of Appeal. Because of what would be said in connection with these rulings and the grounds
F of appeal filed thereon, I propose to set down the grounds of appeal filed against the rulings in the Court below. In respect of the first ruling, the grounds of appeal without their particulars read, as follows:-

“(1) The learned trial judge erred in law when he assumed
G jurisdiction to hear and determine the application for a writ of Habeas Corpus Ad Subdiciendum brought by the respondents when he lacked jurisdiction to hear and determine the matter.

(2) The learned trial judge erred in law when he proceeded to quash the decision of the Failed Banks (Recovery of Debts) and Fi-
H nancial Malpractices in Banks Tribunal wherein it convicted the 21st and 22nd applicants at the lower Court.

(3) The learned trial judge erred in law by ordering the release of the Respondents.

(4) The learned trial judge erred in law when he proceeded to

take argument and deliver a ruling on the application for writ of Habeas Corpus Ad Subjiciendum brought by the Respondent after he had become aware of the pendency before this Honorable Court in suit No. CA/L/27m/99 of an application dated 4th February 1999 for stay of execution and further proceedings in the matter; and 8th February 1999 for order averting the ruling sought to be delivered, filed by the applicants herein.” ^B

With regard to the 2nd ruling, the following grounds of appeal also without their particulars are as follows:-

“1. *The learned trial judge erred in law when he assumed jurisdiction to hear and determine the application for a writ of Habeas Corpus Ad Subdiciendum brought by the respondents when he lacked jurisdiction to hear and determine the matter.*” ^C

2. *The learned trial judge erred in law when he proceeded to quash the decision of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal wherein it convicted the 21st and 22nd Applicants at the lower court.*

3. *The learned trial judge erred in law when he proceeded to take argument and deliver a ruling on the application for writ of Habeas Corpus Ad Subjiciendum brought by the respondent after he had become aware of the Suit No: CA/L/27m/99 of an application dated 4th February 1999 for order arresting the ruling sought to be delivered, filed by the Appellants herein.”* ^E

In accordance with the Rules of the Court, briefs were filed and exchanged. The appellants in their own brief, pursuant to the appeal to the Court, which they classified as First and Second appeals. For the first appeal they framed the following issues: ^F

“1. *Whether the exercise of Supervisory jurisdiction or judicial control of the High Court of Lagos State by way of the writ of Habeas Corpus is ousted in respect of proceedings before the Tribunal by virtue of the provisions of Decree 18 of 1994, as amended (Ground 1).*” ^G

2. *Whether the Trial Judge was right in his decision that failure by the Tribunal to complete the trial of the Respondents within 21 days as provided for in Section 4(1) of Decree 18 and the absence of any provision for enlargement of this period in the Decree as well as of reasons for this non-compliance and without considering the import of Section 4(2) of Decree of 1994 invalidated the proceeding* ^H

before the Tribunal thereby vesting in him supervisory jurisdiction by way of the writ of Habeas Corpus over same. (Ground 3).

3. *Whether the provisions of the Federal Government (Supremacy And Enforcement) of powers Decree No.12 of 1994, and Decree 18 of 1994 properly construed support the assumption of jurisdiction by the trial judge. (Ground 4)."*

For the second appeal, the issues for determination that they identified are:

1. *Whether the High Court of Lagos State by virtue of provisions of Decree 107 of 1993 and Decree No.18 of 1994 has supervisory jurisdiction by way of Writ of Habeas corpus over Federal Agencies in respect of proceedings before the Failed Banks {etc.} Tribunal (Grounds 1,2 and 3 of the second appeal).*

2. *Whether the proceedings before the learned trial judge held when there were pending applications for stay of execution and proceedings at all material times at the Court of Appeal were valid in law. (Ground 4)."*

The respondents also as appellants in the Court below being dissatisfied with the ruling of the trial Court delivered on the 4th of February 1999 also filed a cross-appeal upon the following grounds. Their 3 grounds of appeal read thus without their particulars:-

1. *The Court below misdirected itself in Law when it heard the argument in respect of the Respondents/Appellants' Motion for Stay of Proceedings when there was no return filed in obedience to the order of the court dated 4th day of January, 1999.*

2. *The lower Court erred in Law when it failed and/or neglected to discharge unconditionally the Applicants when it assumed jurisdiction on the 27th day of January 1999, as in Suit No. M/626/98 despite the Respondents' failure to file a return.*

3. *The Court below erred in Law when it granted audience to Mr. Fidelis Nwadialo (SAN) appearing as Counsel to the Respondents/Applicants when there was no evidence of authority or delegation from the Attorney General of the Federation."*

The following issues were identified for the 1st - 22nd respondents by their learned counsel, Mr. Dickson Osuala in the respondents/cross-appellants' brief before the Court of Appeal.

1. *Whether the respective tribunals purportedly trying the respondents had lost jurisdiction to continue the trial of the respon-*

dents?

2. *Whether the Lagos High Court No.8 wherein sat the Honourable Mr. Justice Hunponu-Wusu was right in assuming jurisdiction to entertain the Respondents' application for a Writ of Habeas Corpus Ad Subjiciendum notwithstanding the Provisions of Sections 1(5), 1(6), 3(2) 3(3), 4(2) and 28 of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994?* ^B

3. *Whether the Federal Government Supremacy and Enforcement Decree No.12 of 1994 howsoever construed ousted the jurisdiction of the lower court?*

4. *Whether the trial court still had jurisdiction to entertain the respondents' application for the prerogative Writ of Habeas Corpus Ad Subjiciendum having regard to Decree 107 of 1993. Alternatively, whether a State High Court (Lagos) has jurisdiction to try matters involving the Federal Government and its agencies?* ^C

5. *Whether the Failed Banks (Recovery of Debts) And Financial Malpractices in Banks decree No.18 of 1994, particularly Sections 1(5), 1(6), 4(2), 3(1) (d), 26 and 28 is not otiose, improper, unnecessary, having regard to our international obligations under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap.10, Laws of Nigeria 1990?* ^D

6. *Whether the National Assembly, in the instant case, the Provisional Ruling Council can properly make a law ousting the criminal jurisdiction of the High Court of a Federating unit of the Federal Republic of Nigeria without distorting the Federal structure of Nigeria?* ^E

7. *Whether the Common Law Supervisory Jurisdiction of the High Court of a State can validly be ousted by Decree 107 of 1993 and the Failed Banks Decree No.18 of 1994?* ^F

8. *Whether the Appellants can build their consolidated appeal on the interim order of this Honourable Court based on Appellants' applications dated 04/02/99 and 08/02/99 which have been struck out for incompetence on the grounds of lack of standing of Appellants' Counsel, Messrs Fidelis Nwadialo SAN and Emeka Ngige Esq.,?* ^G

ALTERNATIVELY,

9. *Whether the interim order dated 11/02/99 was not obtained by constructive misrepresentation of Appellants' Counsel who held themselves out as donees of the fiat of the 3rd Applicant which*

in fact they were found not to be?

For the 23rd to the 27th respondents, these are the issues set down for the determination of the appeal before the Court of Appeal:-

B *“(1) Whether the Tribunals constituted under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 are inferior tribunals or superior courts of record having regard to Section 6 of the Constitution of the Federal Republic of Nigeria, 1979, as amended.*

C *(2) Whether by the combined effect of Decree 107 of 1993 and Decree 18 of 1994 the Lagos High Court can exercise supervisory jurisdiction over agencies of the Federal Government by way of writ of habeas corpus.*

D *(3) Whether the learned trial judge was right in holding that failure of the tribunals to conclude the trial of the respondents within 21 days vitiated and rendered their continued detention illegal.*

E *(4) Whether the lower court was right in proceeding with the matter notwithstanding that a motion for stay of execution / proceedings had been filed before the Court of Appeal by the Appellants’ Counsel.”*

The grounds of appeal filed against the judgment of the trial court at the Court of Appeal have been deliberately set out above in order to determine whether any ground of appeal was filed touching upon whether the decision of the High Court was based on CAP.10 of the Laws of the Federation. It would be recalled that the point taken by the learned counsel for the appellant is that the decision of the trial court must not be based on the provisions of CAP.10. It seems to me manifest that learned counsel for the appellant is right with regard to that submission and hence in order to make that point clear was the reason which led to the setting out of the grounds of appeal as above.

H The argument proffered for the 1st, 3rd to 27th respondents by their learned counsel against issue 2 is the contention that the ground of appeal germane to this issue is a ground of mixed law and fact. He therefore contends that the ground of appeal cannot be competent as there was no leave obtained by this Court or the court below to give competence to the ground of appeal. ***It is my view that there is no merit in this contention. The ground of appeal***

being a ground of law is competent and it is not necessary to obtain leave to file and argue it. Issue 2 in the 2nd respondent's brief is not dissimilar to the 2nd issue raised in the appellants' brief. In the 2nd respondent's brief, the thrust of the argument for the 2nd respondent appears to be that by virtue of Section 1 of Cap.10, Nigerian Courts are under a duty to apply the provisions of the African Charter. It is also the submission of learned counsel to the 2nd respondent that the Court below did not stumble to Cap.10 as copious references were made to it by the respondents during the hearing. Hence, it is argued for the 2nd respondent that the Court below was right to have decided the appeal before it on the provisions of Cap.10.

It is clear from the records that at the hearing of the appeal before the Court below, learned counsel for all the parties adopted and placed reliance on the briefs filed on behalf of their clients for determination of the appeal, afterwards, judgment was reserved by the Court below. In the lead judgment delivered by Oguntade JCA (with Galadima & Adeyemi JJCA concurring), as previously noted, the Court below began the consideration of his judgment by saying -

"There are only two serious issues to resolve in this appeal. The first, was the lower Court right to have assumed supervisory jurisdiction over a matter that arose in the Failed Bank Tribunal created by Decree No.18 of 1994? Secondly, ought the lower Court to have stayed further proceedings in the hearing after it was informed that an application for Stay of Proceedings and Execution had been filed at the Court of Appeal?"

Then, after a full consideration of the judgment, the Court below came to the following conclusion:

"If I had to consider the issue of the jurisdiction of the High Court in this matter without reference to the African Charter on Human Rights as enshrined in Cap.10 Laws of the Federation, 1990, I would have not the slightest hesitation in concluding that the High Court had no supervisory jurisdiction in the matter. I now come to the consideration of the impact of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap.10 Laws of the Federation 1990, on Decree No.18 of 1994."

It is clear from the above excerpt from the judgment of the Court below that the Court clearly held that the trial had no supervi-

sory jurisdiction over the Tribunal set up by Decree No.18 of 1994. But it then went on to consider whether the provisions of Cap.10 Laws of the Federation - The African Charter on Human Rights avail the respondents in the circumstances. Then after due consideration of the relevant provisions of the African Charter on Human Rights promulgated in Chapter 10 of the Laws of Nigeria 1990 in relation to the provisions of Decree No.18, which set up the Failed Bank Tribunal and under which the respondents were charged and were then being prosecuted before the tribunals, set up under the Decree, the Court below observed thus:-

"From the totality of what I have said above, it is manifest that Decree No.19 of 1994, in many respects is inconsistent with the letter and spirit of the African Charter of Human Rights. That being the position, section 26 and perhaps in a constructive sense, sections 4(2) and 5(1) of the same Decree are invalid. The protection under section 1(5) and section 1(6) of the said Decree which the law offers as a way from shielding the Failed Bank Tribunal from the supervisory jurisdiction of the High Court is ineffectual. The ouster of the supervisory jurisdiction of the High Court cannot attach to the acts done under a law so patently in conflict with the African Charter of Human Rights. The general supervisory jurisdiction of the High Court over the Failed Bank Tribunal was in my view rightly invoked. The Lower Court correctly assumed jurisdiction."

In deciding the appeal on the provisions of Cap.10, it would appear that the Court below fell into error. This is because neither the appellants not the respondents appealed to the Court below on the failure of the trial Court to found jurisdiction on Cap.10. As I have shown from the excerpts from the ruling of the trial Court, the court was not also based on Cap.10. Therefore, it is clear that the appeal to the Court below cannot be predicated on the provisions of Cap.10.

The question then is, whether the Court below was right to have determined the question before it on a ground which was raised suo motu by the Court. In *Olusanya v. Olusanya* (1983) 14 NSCC 97 at p.102, this Court stated the governing principles that should guide a court in such circumstances,

"This Court has said on a number of occasions that although an appeal court is entitled, in its discretion, to take

points suo motu if it sees fit to do so, yet that discretion must be exercised sparingly and in exceptional circumstances only: where the points are so taken the parties must be given the opportunity to address the appeal court before decision on the points is made by the appeal court. See Kuti & Anor. v. Jibowu & anor. (1972) 1 All NLR (Pt.11) p.180 at p.192; Salawu Ajao v. Karimu Ashiru & Ors (1973) 1 All NLR (Pt.11) p.51 at p.63; Atanda & Anor. v. Lakanmi (1974) 1 All NLR (Pt.1) p.168 at p.178 and Kuti v. Balogun (1978) 1 LRN 353 at 357.”

It is settled law that the Court of Appeal being an appellate Court can only consider issues based on grounds of appeal filed before it. It has been said that the rationale for this is that a trial court is generally required to make primary findings of fact and to express its opinion on the law in regard to the findings. The appellate court relies on the opinion of the court below for its determination of the appeal before it. The jurisdiction of the appellate court is essentially confined to the correction of the errors of the court from which it hears appeals. It can only do so, naturally, where the points argued before it consist of allegation of errors made by that court and not on matters not canvassed before it. See Bankole v. Pelu (1991) 8 NWLR (Pt.211) 523 at 547 per Karibi-Whyte, JSC relying on United Marketing Co. v. Kara (1963) 2 All ER. 553. It is appropriate here to quote the observation of Lord Birkenhead LC. in North Staffordshire Railway Company v. Edge (1920) AC. 254, 263 cited with approval by the Supreme Court in Debisi Djukpan v. Rhorhadjor Orovuyevbe (1967) 1 All NLR 134 at page 138 as follows:-

“The efficiency and authority of a Court of Appeal and especially a final court of appeal, are increased and strengthened by the opinions of learned Judges who have considered these matters below. To acquiesce in such an attempt as the appellants have made in this case is in effect to undertake decisions which may be of the highest importance without having received any assistance at all from the Judges of the courts below.”

It is evident from the grounds of appeal filed and the issues raised thereon that none of the parties to the appeal called for the determination of the appeal on the premise upon which the Court below dismissed the appeal before it. It seems to me therefore that

the contention of the appellant in respect of this decision has merit.

Hitherto, I have set out all the grounds of appeal filed by the appellants and the respondents/cross-appellants against the ruling of the learned Justice of the High Court of Lagos. The issues raised thereon before the Court of appeal have also been reproduced earlier in this judgment. This was done in order to appreciate the main contention of the Court below. That contention being to the effect that the learned justices of the court below were in error to have decided the appeal before them and the impact of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act), CAP.10 Laws of the Federation 1990 on Decree No.18 of 1994 and also concluded erroneously that CAP.10 applied and that the High Court of Lagos State correctly assumed jurisdiction. For an Appellate Court to determine a matter upon an issue raised suo motu by the court without giving the counsel appearing for the parties the benefit of being heard and the question so raised by the court cannot be allowed to stand as it surely portends a miscarriage of justice. Having so held, issue 2 must be resolved in favour of the appellant.

In view of the decision I have reached in respect of issue 2, it is no longer necessary to consider issue 1. It would be recalled that issue 1 is tied to the grounds of appeal dealing with the provisions of Cap.10. I do not also deem it necessary to make any pronouncement on issue 3 in the circumstances particularly with the reversal of the judgment of the Court below. Earlier in this judgment the various issues raised for the respondents/appellants had been considered. These issues were all resolved against them for the reasons that I had set down in the course of my judgment. It follows that their respondents/cross-appeal having failed must be dismissed.

In the result, this appeal is allowed for the reasons given in this judgment. It is hereby ordered that arrangements be made to prosecute in the appropriate Court those of the respondents whose trials have not been concluded before this action commenced.

H

BELGORE JSC

I agree that this appeal has great merit and for the reasons duly set out in the judgment of my learned brother, Ejiwunmi JSC, I allow it. I also allow the cross-appeal.

KUTIGI JSC

I read in advance the judgment just rendered by my learned brother Ejiwunmi, JSC. I agree with his conclusion to allow the appeal and dismiss the cross-appeal. And I so order. I endorse the consequential order contained in the said judgment. B

SC 185/1999

I read before now the judgment just delivered by my learned brother Ejiwunmi, JSC. I agree with him that it is proper to strike out both the appeal and the cross-appeal herein in view of our judgments in the sister cases earlier delivered this morning. The appeal and cross-appeal are accordingly struck-out. C

ONU JSC

I have had the opportunity to read before now the judgment just delivered by my learned brother Ejiwunmi, JSC. I am in complete agreement therewith that the appeal be allowed for the reasons given therein. I too order that arrangements be made to prosecute in the appropriate court those of the Respondents whose trials have not been concluded before this action commenced. D E

KATSINA-ALU JSC

I have read before now in draft the judgment of my learned brother EJIWUNMI JSC. I entirely agree with it. For the reasons which he has given, I also allow the main appeal and dismiss the cross-appeal. I abide by the order for costs. F G

H