

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2002, SC. 183/1999  
**CORAM: S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,**  
**A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

1. COMPTROLLER, NIGERIAN PRISONS  
SERVICES, IKOYI, LAGOS)
2. DEPUTY COMPTROLLER,  
IKOYI PRISONS, LAGOS ..... APPELLANTS
3. ATTORNEY GENERAL OF THE  
FEDERATION
- AND
1. DR. FEMI ADEKANYE & 25 Ors ..... RESPONDENTS
- 

STATUTES - Presumption of regularity - Decree No. 18 of 1994 - It is presumed that s. 24(2) thereof is complied - Whenever a private legal practitioner appears for NDIC or CBN - To prosecute criminal offences (H1)

**FACTS**

Prosecution/appellants were before the High Court of Lagos State by way of an application under Habeas Corpus Law of Lagos State initiated by accused/respondents who were then held in prison custody for alleged offences under Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994. The Decree provides for bail in exceptional circumstance as provided in S. 24(2) thereof. However, since the conditions for bail could not be met by respondents, they (respondents) applied to the High Court to pray for their freedom under Habeas Corpus proceedings. The Decree in part II provides for recovery proceedings to be initiated by Receiver/liquidator appointed by Central Bank of Nigeria (CBN) or Nigeria Deposit Insurance Corporation (NDIC) before the Tribunal. On being served with the writ, appellants filed Notice of Preliminary Objection challenging the jurisdiction of the High Court. The preliminary objection was overruled.

This led to appeal by appellants to the Court of Appeal, Lagos Division. At the Court of Appeal, appellants were represented by Fidelis Nwadialo SAN (now deceased) with Emeka Ngige Esq.

Nwadialo SAN was a private legal practitioner but claimed he was briefed by NDIC i.e. the Receiver of many failed banks. Receiver thus applied for stay of proceedings before the High Court pending decision in the appeal. Learned counsel to respondents objected to the appearance of Nwadialo, SAN. The objection was overruled. The High Court refused to grant stay. This led to a further appeal by appellants to the Court of Appeal on similar application. The court granted the stay. However, the learned judge of the High Court went on with the proceedings in Habeas Corpus. In further proceedings before the Court of Appeal, counsel for respondents raised objection that Nwadialo SAN had no locus standi to appear for the Attorney-General of the Federation. It was on the basis of this objection that appellant filed appeal at Supreme Court.

**HELD** (Unanimously allowing the appeal per **BELGORE JSC**)

*1. STATUTES - Presumption of regularity*

***By presumption of regularity it is presumed, whenever a private legal practitioner appears for Nigerian Deposit Insurance Corporation or the Central Bank of Nigeria to prosecute criminal offences under Decree No. 18 of 1994, that S. 24(2) (b) has been complied with. Whoever asserts that it has not been complied with must prove.*** (p. 2217 H)

### **REPRESENTATION**

Nnaemeka Ngige, Esq, for the Appellants  
Dickson D. I. Osuala Esq, for 1<sup>st</sup>, 3<sup>rd</sup> - 26<sup>th</sup> Respondents  
Femi Falana for 2<sup>nd</sup> Respondent

### **CASES REFERRED TO**

Vaswani v. Savalakh (1972) 12 SC 77  
Mohammed v. Olawunmi (1993) 4 NWLR (Pt. 287) 254

### **STATUTES REFERRED TO**

Failed Banks (Recovery of Debts) & Financial Malpractices in Banks  
Decree No. 18 of 1994, s. 24(2)

Constitution of Federal Republic of Nigeria 1979, s. 160

**LEAD JUDGMENT BY BELGORE JSC**

The appellant, Comptroller, Nigerian Prisons Services, was before the High Court of Lagos by way of an application before the Court under Habeas Corpus Law of Lagos initiated by respondents who were then held in prison custody for the alleged offences under Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994. The Decree provides for bail in exceptional circumstance as provided in S. 24(2) thereof. The conditions for bail, admittedly draconian, could perhaps not be met by respondents and this led to their choice of High Court to pray for their freedom under Habeas Corpus proceedings. All respondents were standing trial in various Zones of the Tribunals set up purposely under the Decree aforementioned.

The Decree in part II provides for recovery proceedings to be initiated by Receiver or liquidator appointed by Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation before the Tribunal. The Decree provides for jurisdiction exclusively before the tribunal or if expedient, for purpose of their Habeas Corpus application went before Lagos High Court instead of the Tribunal. They claimed they were not on bail, or precisely that they were not granted bail. The present appellants, on being served with Motion on Notice in respect of Habeas Corpus proceedings filed Notice of Preliminary Objection challenging the jurisdiction of Lagos High Court. The Objection was argued by a State Counsel from Federal Ministry of Justice. The preliminary objection was overruled, meaning that the Lagos High Court ruled it had jurisdiction. This led to appeal to Court of Appeal, Lagos Division. At the Court of Appeal, the appellants were represented by Fidelis Nwadialo, S.A.N., Emeka Ngige, Esq. with him. Nwadialo (now deceased) was a private legal practitioner but claimed he was briefed by Nigerian Deposit Insurance Corporation, the Receiver of many failed banks. As a result of the appeal to Court of Appeal, the Receiver applied for stay of proceedings before Lagos High Court pending decision in the appeal. But prior to the motion being heard the counsel to respondents, Dickson Osuala, Esq. objected to the appearance of Nwadialo S.A.N. which the trial Judge, Humponu - Wusu J, overruled. But another application for adjourn-

ment of the Habeas Corpus proceedings was refused. The appellants then proceeded to Court of Appeal with the same motion for stay of proceedings and attempts made to serve the trial court and respondents were resisted as none of them accepted service. Learned trial judge went ahead with the Habeas Corpus proceedings despite this  
 B Court's decisions in Vaswani Vs. Savalakh [1972] 12 S.C. 77, and Mohammed v. Olawunmi [1993] 4 N.W.L.R. (Pt 287) 254.

It is of great interest to recast the occurrences before Court of Appeal and trial Lagos High Court. When the appellants discovered  
 C that trial judge was determined to proceed on hearing the habeas corpus application they got Court of Appeal to stay further proceedings on 11<sup>th</sup> day of February 1999. On 12<sup>th</sup> February, the trial judge was to continue the hearing and his attention was drawn to the order of stay of proceedings by Court of Appeal of the previous day, but he  
 D ignored this order. In ignoring this he went ahead to deliver his ruling holding that the motion before Court of Appeal was incompetent! In further proceedings before the Court of Appeal, Osuala Esq. raised objection that Nwadialo S.A.N. had no locus standi to appear for the Attorney-General of the Federation. This, to say the least, is bizarre,  
 E because the Court in normal circumstance regard counsel appearing before them as officers of court who could not deceive the court. The stand of the counsel, Osuala Esq. to say the least, connotes Mr. Nwadialo had no instruction whatsoever to appear in the case. The  
 F presiding justice then asked Mr. Nwadialo as follows: -

*"Where is the letter authorizing you to appear for the Attorney-General of the Federation?"*

Learned senior advocate had to produce confidential letters from Attorney-General of the Federation and from NDIC about how  
 G he got briefed. In normal practice these letters were not to be produced lightly as they were privileged communication between client and Counsel. Mr. Osuala's argument was predicated on section 160 of Constitution of Federal Republic of Nigeria 1979 which provides.

*"The Attorney-General of the Federation shall have power:*

H (a) *to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;*

(b) *to take over and continue any such criminal proceedings*

*that may I have been instituted by any other authority or person;*

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.*

2. *The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.* <sup>B</sup>

3 *In exercising his powers under this section the Attorney-General shall have regard to the public interest, the interests of justice and the need to prevent abuse of legal process. It is clear from the provisions of S. 160 of the 1979 Constitution that the Attorney-General's powers of public prosecution is not exclusive; the "any other authority or person" in subsection (1) can institute and undertake criminal proceedings. The Central Bank of Nigeria and Nigeria Deposit Insurance Corporation are also authorities that can institute criminal proceedings under Failed Banks (Recovery of Debts) and Financial Malpractices In Banks Decree 1994. (See S. 24 thereof). The Attorney-General can institute and undertake criminal proceedings in any court in Nigeria, other than a Court-martial in respect of any offence and can take over or discontinue any such proceedings instituted by any other authority or person."* <sup>C</sup> <sup>D</sup> <sup>E</sup>

The Decree No. 18 of 1994, that is Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree has clearly set out in S. 24(2) as follows: "(2) *prosecutions for offences under this Decree shall be instituted before the Tribunal in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorize so to do, and in addition thereto, he may* <sup>F</sup>

*(a) after consultation with the Attorney-General of any State in the Federation, authorize the Attorney-General or any officer in the ministry of justice of that State; or* <sup>G</sup>

*(b) if a Tribunal so directs or if the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation so requests, authorize any other legal practitioner in Nigeria to undertake any such prosecution directly or assist therein."* <sup>H</sup>

**By presumption of regularity it is presumed, whenever a private legal practitioner appears for Nigerian Deposit Insurance Corporation or the Central Bank of Nigeria to pros-**

***ecute criminal offences under Decree No. 18 of 1994, that S. 24(2) (b) has been complied with. Whoever asserts that it has not been complied with must prove.***

To my mind, objection leading to this appeal instead of expanding the horizon of legislative interpretation has unfortunately  
B delayed hearing of the substantive issue. From the foregoing I allow the appeal as deserving great merit and set aside the decision of Court of Appeal. Therefore S. 24(2)(b) of the Decree No, 18 of 1994 has not derogated from the Constitution of 1979 S.160 (supra).

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### **KUTIGI JSC**

I read in advance the judgment just delivered by learned brother Belgore, J.S.C. I agree with his conclusion that the appeal is  
D meritorious. It is accordingly allowed and the judgment of the Court of Appeal is set aside.

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### **ONU JSC**

E Having had the opportunity to read in draft the judgment of my learned brother Belgore, J.S.C. just delivered, I subscribe to his reasoning and conclusion by allowing the appeal. I make similar consequential orders as contained in the leading judgment.

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### **KASTINA-ALU JSC**

I have read in advance in draft the judgment of my learned brother Belgore, J.S.C., in this appeal. I entirely agree. There is  
G nothing I can usefully add.

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### **EJIWUNMI JSC**

I have had the privilege of reading in advance the judgment  
H just delivered by my learned brother Belgore J.S.C.

For the reasons given in the said judgment leading to the conclusion that the above appeal must be allowed. I allow the appeal.