

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY 2002, SC. 149/97
CORAM: M. L. UWAIS CJN, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED, U. A. KALGO, JJSC

ORTHOPEDIC HOSPITALS
MANAGEMENT BOARD APPELLANT
AND
1. MALLAM UMARU GARBA
2. MALLAM MOHAMMED
GWAMMAJA RESPONDENT
3. MR. NDANUSA ABAFI

APPEALS - Court - Issues - Suo motu raising - Propriety - Court of Appeal was in error for failing to give counsel time - To prepare for address on the issue raised suo motu (H1)

CONSTITUTIONAL LAW - Constitution Decree No. 107 of 1993 - Purpose - The Decree was enacted to restore and suspend some - And modify other provisions of 1979 Constitution (H2)

STATUTES - Repealing - Effect on existing rights - By s.6(1)(c) Interpretation Act - Rights accrued to individual shall not be affected - By the repeal of an enactment (H3)

FACTS

Plaintiffs/respondents are employees of defendant/appellant at the National Orthopedic Hospital, Dala-Kano State. Respondents were placed on suspension following allegation of theft leveled against them by appellant. Thereafter, respondents made appeals to the Hospital Board to reinstate and pay their full salaries. When the Hospital refused to heed to respondents' demand, respondents filed this action at the High Court of Kano State. They claimed for their reinstatement and payment of their full salaries.

Appellant counter-claimed on the ground that the bad conduct of respondents necessitated their dismissal. Eventually, the court granted the claims of respondents and dismissed appellant's counter-claim. Dissatisfied, appellant appealed to the Court of Appeal, Kaduna.

The court suo motu raised a constitutional issue of jurisdiction on the ground that by virtue of Constitution (Suspension & Modification) Decree No. 107 of 1993, the matter should be heard at Federal High Court. The court allowed the appeal. Notwithstanding the decision of the court, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was correct to have raised the constitutional issue of the jurisdiction of the lower court suo motu, and proceeded to take argument on the point immediately without affording the parties an opportunity to prepare for an argument on the point, especially as it involved a constitutional issue, when the appellant's counsel having not had prior notice of the development was not present in court, and the appellant's representative in court was only a layman.

2. Whether the Kano State High Court truly lacked the jurisdiction to have tried the case and given judgment thereon, having regard to the provisions of Decree 107 of 1993 and Decree No. 60 of 1991 vis-a-vis the subject matter of the suit; and having regard also to the fact that the action was commenced in November 1992 before promulgation and the commencement of Decree No. 107 of 1993."

HELD (Unanimously allowing the appeal Per
MOHAMMED JSC)

Court - Issues - Suo motu raising - Propriety

1. The submission of learned counsel for the appellant is legally correct. The issue raised by the Court of Appeal is a constitutional issue and that being so, the learned justices should have adjourned the hearing of the appeal and seen to it that a constitutional panel of five justices of the Court of Appeal were set up to hear the legal argument. The court below was in error to fail to give counsel reasonable time to prepare for an address on the constitutional issue which it raised suo motu. (p. 2432 G)

Constitution Decree No. 107 of 1993 - Purpose

2. I agree with the submission of the learned counsel that Decree No. 107 of 1993 which further amended the jurisdiction of the Federal High Court did not contain any abatement provision. That being so I am of the opinion that the argument of the learned counsel that the abatement provision is impliedly repealed is based on sound reasoning. Decree No. 107 of 1993 was the Constitution (Suspension and Modification) Decree, 1993. It was enacted with the sole purpose of restoring and suspending of some and modification of other provisions of the 1979 Constitution. Section 230 of Decree 107 of 1993 provided for detailed jurisdiction of the Federal High Court. There is no provision for cases which are pending in the State High Courts to have abated and I agree that it could be implied that the provision of abatement in Decree 60 of 1991 had been repealed. (p. 2434 D)

STATUTES - Repealing - Effect on existing rights

3. As is clear from the provisions of section 6(1) (c) of the Interpretation Act any right, privilege or obligation accrued to an individual shall not be affected by the repeal of an enactment. It is clear from the wordings of the Interpretation Act that legal proceedings may be continued as if the enactment has not been repealed.

I should add that a right in existence at the time a new law is passed transferring jurisdiction of a court to another court will not be lost. In the case in hand the Kano State High Court was about to deliver its judgment when the new law was passed ordering that all cases dealing with the administration or management and control of the Federal Government or any of its agencies shall be within the exclusive jurisdiction of the Federal High Court. In other words, the State High Court had no jurisdiction to determine such actions. Since there was no provision in Decree No. 107 of 1993 that pending cases in the State High Courts shall abate with effect from the date the new Decree took effect, the decision of the Kano State High Court in the appellant's case is valid and not void. Before the law was passed it was a right which the parties acquired and it cannot be taken away. (p. 2436 A/F)

REPRESENTATIONS

G.A. Adetola-kaseem for the appellant

No appearance for or by any of the respondents

B CASES REFERRED TO

Ntukidem v. Oko (1986) 17 NSCC 1303

Olusanya v. Olusanya (1983) 3 SC 41

Akinbobola v. Plisson Fisko (1991) 1 NWLR (pt. 167) 270

C Uwaifo v. A-G Bendel (1982) NSCC 221

C Are v. A-G of Western Region (1960) NSCC 76

University of Ibadan v. Adamolekun (1967) NSCC 210

Colonial Sugar Refining Co. Ltd. v. Irving (1905) AC 369

University of Ilorin Teaching Hospital v. Akilo (2000) 22 WRN 117

D Udoh v. OHMB (1993) 7 NWLR 139

Adamu v. The State (1991) NSCC 76

STATUTES REFERRED TO

Constitution (Suspension & Modification) Decree No. 107 of 1993,
E s. 230(1)(q)(r)(s)

Federal High Court (Amendment) Decree No. 60 of 1991, s.
7(6)(a)(b)

Interpretation Act, s. 6(1)(c)

F LEAD JUDGMENT BY MOHAMMED JSC

The plaintiffs, who are the respondents in this appeal, are employees of the National Orthopaedic Hospital, Dala, Kano. They were suspended from duty following an allegation of theft of some properties belonging the National Orthopaedic Hospital, Kano. The respondents were arrested and taken to a Chief Magistrate's Court in Kano. They were tried and discharged. Since then they were suspended from duty and placed on half salary. When their appeal for reinstatement on full salary was not granted they went to court and
H filed the following claim against Orthopaedic Hospitals Management Board:

“(a) A declaration that the plaintiffs are still employees of the defendant.

(b) An order compelling the defendant to re-instate the plain-

tiffs to their posts.

(1) N28,000.00 as arrears of salary and allowance due to the 1st plaintiff from the day of suspension till November, 1992 and thereafter his full salary and allowance until he lawfully ceases to be the defendant's employee.

(2) N36,000.00 as arrears of salary and allowance due to the 2nd plaintiff from the date of suspension till November, 1992 and thereafter his full salaries and allowances until he lawfully ceases to be employee of the defendant.

(3) N40,000.00 as arrears of salaries and allowance due to the 3rd plaintiff from the date of suspension till November, 1992 and thereafter his full salaries and allowances until he lawfully ceases to be the Defendant employees.

(4) N26,000.00 as arrears of salaries and allowances due to the 4th plaintiff from the date of suspension to November, 1992 and thereafter his full salaries and allowances until he lawfully ceases to be employee of the Defendant.”

The defendant/appellant filed a counter-claim against the respondents and averred that by the totality of the conduct of the respondents, since 1986, they had rendered themselves liable to be dismissed from service. At the end of the trial the learned trial judge granted the declarations, which the respondents prayed for and ordered for their re-instatement. In addition the court ordered some amount of money to be paid to the respondents as special damages. The learned trial judge dismissed the counter-claim

Dissatisfied with the decision, the Orthopaedic Hospitals Management Board filed an appeal to the Court of Appeal. Learned counsel for the appellant, before the Court of Appeal identified the following issues for the determination of the appeal.

“(a) Did the learned trial judge properly evaluate the evidence before him before coming to the conclusion that the delay between the occurrence of the incident is 1986 and the commencement of disciplinary processes in 1992 was unjustified and therefore amounted to non-compliance with the provisions of section 14 of the Orthopaedic Hospitals Management Board Act?

(b) Having regard to the entire circumstances of the case, was the learned trial judge correct in his conclusion that the plaintiffs were not given fair hearing by the defendant before seeking to dismiss the

plaintiff:

(c) *Was there any or any sufficient evidence before the court to warrant the monetary awards made by the learned trial judge in favour of the plaintiffs?*

B 3rd *plaintiff who had died before judgment was delivered in the case?"*

The Court of Appeal fixed the appeal for hearing on 22nd May, 1997. On that day the court suo motu raised the issue of jurisdiction of the High Court to hear the action instituted by the plaintiffs/respondents, having regard to the provisions of section 230(1), (q), (r) and (s) of the Constitution (Suspension and Modification) Decree No. 107 of 1993 which provides as follows:

D *"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from.*

(q) *the administration or the management and control of the Federal Government or any of its agencies;*

E (f) *subject to the provision of this Constitution the operation and interpretation of this Constitution in so far it affects the Federal Government or any of its agencies; and*

F (s) *any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages*
G *injunction or specific performance where the action is based on enactment, law or equity.*

The Court of Appeal also relied on the provisions of section 7 (6) (a) and (b) of the Federal High Court (Amendment) Decree No. 60 of 1991 in reaching its decision that the Kano State High Court H had ceased to have jurisdiction to determine the suit filed by the respondents before it. Section 7(6) (a) and (b) of Decree No. 60 of 1991 reads as follows:

"(6) Any decision made after the commencement of this section by any court of law in any purported exercise of any power

under the Constitution of the Federal Republic of Nigeria or of any Federal or State law shall, as from the date of making of the decision be and void if it-

(a) has declared the decision invalid or the court incompetent to exercise exclusive jurisdiction in respect of any of the matters specified under subsection (1) or (2) of section 7 of this Act before it was substituted by this section' or ^B

(b) has conferred or purported to confer on any other court, apart from the court, concurrent jurisdiction in respect of the matters specified under section 7 of this Act before it was substituted by this section: ^C

Provided that any decision taken by any court other than the court as a result of the power of the concurrent jurisdiction so conferred shall be valid, but all other cases pending in the said other courts, other than Appeal Court, shall, at the commencement of this section, D abate and the judge before whom it is pending shall transfer them to the Registrar of the court to be heard as new suits."

The Court of Appeal pointed out that by the provisions of section 7(6) (a) and (b) of the Federal High Court (Amendment) Decree No. 60 of 1991, reproduced above, all pending cases before the State High Court in matters in which exclusive jurisdiction was vested in the Federal High Court shall be transferred to the Registrar of the Federal High Court to be heard as a new suit." ^E

The Court of Appeal allowed the appeal and declared the judgment of the Kano State High Court a nullity. It transferred the claim filed by the respondents to the Registrar of the Federal High Court, Kano, for re-hearing as a new suit. The Orthopaedic Hospitals Management Board filed an appeal against the decision of the Court of Appeal. The appellant's counsel, Mr. Adetola-Kaseem identified two issues for the determination of the appeal. The issues are as follows: ^F

Issue NO. 1 (Based on Ground 1)

"Whether the Court of Appeal was correct to have raised the constitutional issue of the jurisdiction of the lower court suo motu, and proceeded to take argument on the point immediately without affording the parties an opportunity to prepare for an argument on the point, especially as it involved a constitutional issue, when the appellant's counsel having not had prior notice of the development was not present in court, and the appellant's representative in court ^H

was only a layman.

Issue No 2 (Based on Grounds 2 and 3)

Whether the Kano State High Court truly lacked the jurisdiction to have tried the case and given judgment thereon, having regard to the provisions of Decree 107 of 1993 and Decree No. 60 of 1991 vis-a-vis the subject matter of the suit; and having regard also to the fact that the action was commenced in November 1992 before promulgation and the commencement of Decree No. 107 of 1993."

The respondents have not filed any brief. In fact, even at the Court of Appeal they did not file any brief. From the records it was clear that they were not represented by a counsel there. Be that as it may, when we were about to hear this appeal we became satisfied that the respondents had been served and were aware of the hearing date of this appeal. We permitted the appellant's counsel to make his oral submissions in support of the appeal.

Learned counsel for the appellant submitted that the issue of jurisdiction which was raised suo motu by the court was hinged on the supposed breach of the provisions of 1979 Constitution as amended by Decree No.60 of 1991 and Decree No. 107 of 1993. That being the case the issue was a complex constitutional issue and could only be unraveled by reasoned legal argument. Counsel argued further and said that the Court of Appeal ought to have adjourned the matter to afford counsel the opportunity to prepare for an argument. He submitted that the Court of Appeal ought not to have directed the question to a layman who was not equipped to argue the point. In support of this submission counsel referred to the cases of *Ntukidem & Ors. v. Oko & Ors.* (1986) 17 NSCC. 1303; *Olusanya v. Olusanya* [1983] 3 SC 41 at 56-57 and *Akinbobola v. Plisson Fisko* [1991] 1 NWLR (part 167) 270 at 286.

The submission of learned counsel for the appellant is legally correct. The issue raised by the Court of Appeal is a constitutional issue and that being so, the learned justices should have adjourned the hearing of the appeal and seen to it that a constitutional panel of five justices of the Court of Appeal were set up to hear the legal argument. The court below was in error to fail to give counsel reasonable time to prepare for an address on the constitutional issue which it

raised suo motu.

In the second issue the appellant queried the Court of Appeal's decision questioning the jurisdiction of the Kano State High Court giving judgment in this suit having regard to the provisions of Decree 107 of 1993 and Decree 60 of 1991. The decision of the Court of Appeal showing that the jurisdiction of the Kano High Court to determine the suit filed by the respondents had been ousted is in the following finding:

“that as from the 17th day of November 1993 the Kano State High Court caused (sic) [ceased] to have jurisdiction to entertain such a matter as such jurisdiction has been exclusively reserved for the Federal High Court. It follows therefore that any steps that the lower court took from that day up to the 26th of April, 1995 when it delivered its judgment was done without jurisdiction. This is more so as the Decree No. 107 of 1993 did not make provision for pending D cases. However, with the Federal High Court amendment Decree No. 60 of 1991 which came into effect on the 26th day of August, 1993, the jurisdiction of the Federal High Court was extended and certain matters were reserved exclusively for its jurisdiction”.

Learned counsel for the appellant made far reaching submissions on this subject. He deserves commendation because the decision of the Court of Appeal, was in his client's favour, but in view of the legal implications raised in the Court of Appeal's decision he decided to obtain Supreme Court's opinion on the legal issue involved. Mr. Adetola-Kaseem submitted that the principle of law has been well established that the rights and obligations of parties are considered in the light of the law at the time the cause of action arose. He referred to *University of Ilorin Teaching Hospital v. Akilo* [2000] 22 WRN. 117 at 123 and *Uwaifo v. Attorney-General (Bendel)* (1982) NSCC 221. Counsel thereafter submitted that it had been held by this court that the fact that the statute conferring jurisdiction had been amended did not mean that it could by necessary implication have the effect of putting a stop to proceedings which had already been validly commenced, and that to hold otherwise would be tantamount to saying that the amending statute secured the undoing of something that has already been done. Learned counsel supported this submission with reference to the case of *Are v. Attorney-General of Western Region* [1960] NSCC 76 at 77.

Learned counsel pointed out that Decree No. 60 of 1991 came into effect on 26th August, 1993 which was after the cause of action in these proceedings had arisen and the trial of the suit had commenced at the Kano State High Court. In any event, counsel further submitted, Decree No. 107 of 1993 had revised the jurisdiction of the Federal High Court and had impliedly repealed the provisions of Decree No. 60 of 1991 which contained the following provisions:

“Provided that any decision taken by any court other than the court (Federal High Court) as a result of the power of the concurrent jurisdiction so far conferred shall be valid, but all other cases pending in the said other courts, other than Appeal Court, shall, at the commencement of this section, abate and the judge before whom it is pending shall transfer them to the Registrar of the court to be heard as new suits”.

I agree with the submission of the learned counsel that Decree No. 107 of 1993 which further amended the jurisdiction of the Federal High Court did not contain any abatement provision. That being so I am of the opinion that the argument of the learned counsel that the abatement provision is impliedly repealed is based on sound reasoning. Decree No. 107 of 1993 was the Constitution (Suspension and Modification) Decree, 1993. It was enacted with the sole purpose of restoring and suspending of some and modification of other provisions of the 1979 Constitution. Section 230 of Decree 107 of 1993 provided for detailed jurisdiction of the Federal High Court. There is no provision for cases which are pending in the State High Courts to have abated and I agree that it could be implied that the provision of abatement in Decree 60 of 1991 had been repealed.

The strongest supporting case for the appellant in this appeal is the decision of this court in *Are v. Attorney-General Western Region* (supra). In that case the appellant claimed from the Government of Western Region by way of petition of right at the High Court, a large sum of money as compensation for land acquired by the Government 20 years previously. Subsequent to the filing of the claim and the endorsement of the Governor’s fiat, an amendment to the relevant law stated as follows:-

“Subject to the provisions of section 20, no claim to any estate interest or right in or to any lands in respect of which a notice has been served and published in the Gazette in accordance with section 9, or to any compensation or rent in respect of any such estate, interest or right, made after the expiration of twelve months from the publication of the notice, shall be entertained by any public officer whose duty it is to receive such claims or by any court”.

The learned trial judge who was handling the claim of the appellant held that the new subsection in the law had affected the petition of the appellant retrospectively. As more than 12 months had expired between the publication of the Gazette notices provided for by section 10 of the Public Land Acquisition (Amendment) Law, 1958 of the Western Region and the filing of the petition, it could not be entertained. This court, per Abbott, F.J, held that the effect of the wording of the amending law is clear “*in futuro*” which could not by necessary implication have the effect of putting a stop to proceedings, which had already been validly commenced. It was held that it is a cardinal principle of law that, unless it affects purely procedural matters, a statute cannot apply retrospectively unless it is made to do so by clear and express terms.

The decision in *Are v. Attorney-General of Western Region* (supra) is strengthened by the provisions of section 6 of Interpretation Act on the effect of repeals of enactments. Section 6(1) reads:

“6. (1) *The repeal of an enactment shall not*
(a) revive anything not in force or existing at the time when the repeal takes effect;
(b) affect the previous operation of the enactment or anything done or suffered under the enactment
(c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;
(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;
(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been

repealed.”

As is clear from the provisions of section 6(1) (c) of the Interpretation Act any right, privilege or obligation accrued to an individual shall not be affected by the repeal of an enactment. It is clear from the wordings of the Interpretation Act that legal proceedings may be continued as if the enactment has not been repealed.

Another relevant decision which will help the appellant and support counsel’s submission is the case of *University of Ibadan v. Adamolekun* [1967] NSCC 210. In that case the counsel of Ibadan University had filed an appeal to the Supreme Court against the decision of the Western Region High Court. While the appeal was pending, the Court of Appeal for the Western Region was set up and made to start functioning with effect from April 1, 1967. In June, 1967 the University council applied to the Supreme Court for accelerated hearing of the appeal and a consequential order directing the Registrar of the High Court to dispatch the records of appeal to the Supreme Court. Counsel for the respondent objected to the Supreme Court entertaining the application on the ground that the appeal could not be heard by it but must be heard in the first instance by the new Western Region of Nigeria Court of Appeal. It was held in that case that parties in proceedings which were in existence before the Court of Appeal was set up, have a right to come from the High Court to the Supreme Court directly on appeal without going to the Court of Appeal. See also the decision of the Privy Council in *Colonial Sugar Refining Co. Ltd. v. Irving* [1905] A.C. 369.

I should add that a right in existence at the time a new law is passed transferring jurisdiction of a court to another court will not be lost. In the case in hand the Kano State High Court was about to deliver its judgment when the new law was passed ordering that all cases dealing with the administration or management and control of the Federal Government or any of its agencies shall be within the exclusive jurisdiction of the Federal High Court. In other words, the State High Court had no jurisdiction to determine such actions. Since there was no provision in [Decree No. 107 of 1993 that pending cases in the State High Courts shall abate with effect from the date the new Decree took effect, the decision of the Kano

State High Court in the appellant's case is valid and not void. Before the law was passed it was a right which the parties acquired and it cannot be taken away.

In conclusion, this appeal succeeds and it is allowed. The judgment of the Court of Appeal is set aside. The appeal from the judgment of Kano State High Court in respect of this case is sent back to the Kaduna Division of the Court of Appeal for re-hearing before a differently constituted panel of the Court of Appeal. I make no order as to costs.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Mohammed, J.S.C. I entirely agree with his reasoning and conclusion. I do not wish to add anything except to commend action of learned counsel for the appellant for raising the point on is jurisdiction which the Court of Appeal raised Suo motu and determine without waiting for address by counsel.

I too hereby allow the appeal and adopt the order as contained in said lead judgment.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Mohammed. J.S.C. I agree with him that the appeal is meritorious and if hereby allowed. The judgment of the Court of Appeal is set aside and the case remitted to the same court for hearing afresh by a new panel of the court. I make no order as to costs.

OGUNDARE JSC

The main issue arising for determination in this appeal is whether trial High Court of Kano State had jurisdiction to continue with and determine the action leading to this appeal after the Constitution (Suspension and Modification) Decree NO. 107 of 1993 had conferred on the Federal High Court exclusive jurisdiction in the subject matter of the suit pending before the said High Court at the time the Decree was promulgated.

The facts in so far as they are relevant to the determination of this main issue are rather simple. The respondents were employees of the Appellant Board. They along with some other employees, were put on an indefinite suspension in consequence of which the Respondents and another employee in 1992, brought an action
 B against the Appellant Board claiming a declaration and arrears of salaries. Pleadings were ordered, filed and exchanged. The Appellant Board counter-claimed for a declaration. The suit proceeded to trial at the conclusion of which the learned trial judge found for the
 C plaintiffs and entered judgment in their favour ordering their reinstatement and awarding to each of them various sums of money; the Appellant's counter-claim was dismissed.

Being dissatisfied with the judgment, the Appellant appealed to the Court of Appeal. The appeal was heard in the absence of the
 D Respondents. Before judgment was delivered, they filed a motion praying the court below

for an order that the appeal be set down afresh for argument. The motion was argued on 22/5/97 and dismissed. The court below, however, took advantage of the occasion of the hearing of the motion to
 E pose a question on the validity of the proceedings in the High Court. This is what happened in court that day and it is better explained in the words of Ogebe, JCA., who read the lead judgment of the court:

*"On the 12th day of May, 1997 the respondents filed a motion praying this court to vary the ruling setting aside the appeal for
 F judgment and ordering that the appeal be set down for argument. This motion was argued on the 22nd day of May, 1998 and the application was dismissed. The court took advantage of the presence of the parties on that day to pose (sic) a question particularly to the
 G learned counsel for the respondents whether the State High Court had jurisdiction to try the matter now on appeal, having regard to the recent case of Ali v. C.B.N. [1997] 4 NWLR (pt. 495) 192 and the unreported case of Egypt Air v. Abdullahi Appeal No. CA/K/273/95 delivered on the 22nd day of May, 1997.*

H *Mr. Ilori the learned counsel for the respondents in answer to the question submitted that in the light of the cases drawn to his attention it was clear that the Kano State High Court delivered the judgment at a time when it lacked jurisdiction. The judgment was therefore, a nullity and the case should be transferred to the Federal*

High Court for hearing. The appellant's representative, Mr. Haranimi in reply, left the matter to the court's discretion."

In the subsequent judgment delivered, Ogebe JCA., with whose judgment Ibrahim T. Mohammed and Mahmud Mohammed, JJ.CA., agreed, opined and adjudged:

"Section 230(l)(q), (r) and (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 (hereinafter referred to as Decree No. 107 of 1993) reads as follows:-

'Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:

(a) the administration or the management and control of the Federal Government or any of its agencies;

(b) subject to the provision of this Constitution the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(c) any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal or any of its agencies; provided that:

Nothing in the provisions of paragraphs (q), (r) and (s) of this sub-section shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance, where the action is based on any enactment, law or equity."

The amendment came into effect on the 17th day of November, 1993. The suit before the trial court had to do with the administration or management and control of the Federal Government or any of its agencies. The appellant is a Federal agency set up by Orthopedic Hospitals Management Board (Cap. 341 of the Laws of the Federation 1990) and the respondents are its employees in the Orthopedic Hospitals, Kano. It is therefore, clear that as from the 17th day of November, 1993 the Kano State High Court ceased to have jurisdiction to entertain such a matter as such jurisdiction has been exclusively reserved for the Federal High Court. It follows, therefore, that any steps that the lower court took from that day up

- to the 26th of April, 1995 when it delivered its judgment was done without jurisdiction. This is more so as the Decree No. 107 of 1993 did not make provision for pending cases. However with the Federal High Court amendment Decree No. 60 of 1991 which came into effect on the 26th day of August, 1993, the jurisdiction of the
- B Federal High Court was extended and certain matters were reserved exclusively for its jurisdiction. Section 7(5) and (6) make provision for pending cases as follows: ‘(5) Notwithstanding anything to the contrary contained in any other enactment or rule of
- C law including the Constitution of the Federal Republic of Nigeria, any power conferred on a State High Court or any other court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which jurisdiction is conferred on the court under the provisions of this section. (6)
- D Any decision made after the commencement of this section by any court of law in any purported exercise of any power under the Constitution of the Federal Republic of Nigeria or of any Federal or State law shall, as from the date of making of the decision be null and void if it -
- E (a) has declared the decision invalid or the court incompetent to exercise exclusive jurisdiction in respect of any of the matters specified under subsection (1) or (2) of section 7 of this Act before it was substituted by this section; or
- F (b) has conferred or purported to confer on any other court, apart from the court, concurrent jurisdiction in respect of the matters specified under section 7 of this Act before it was substituted by this section:
- G Provided that any decision taken by any court other than the court as a result of the power of the concurrent jurisdiction so conferred shall be valid, but all other cases pending in the said other courts, other than Appeal Court, shall, at the commencement of this section, abate and the judge before whom it is pending shall TRANSFER IT TO THE Registrar of the court to be heard as a new suit.
- H By this amendment all pending cases before a State High Court in matters in which exclusive jurisdiction was vested in the Federal High Court started before the State High Court and the judge before whom such a matter was pending shall transfer same to the Registrar of the Federal High Court to be heard as a new suit.

It follows therefore, that which ever way one looks at it, whether by virtue of Decree No. 107 of 1993 or Decree No. 60 of 1991, the Kano State High Court had ceased to have jurisdiction to try the subject-matter of this appeal at the time it gave judgment. I, therefore, allow the appeal and declare the judgment of the lower court dated 28th day of April, 1995 a nullity. The case is hereby transferred to the Registrar of the Federal High Court Kano for hearing as a new suit. I make no order as to costs.” B

The Appellant has now appealed to this court against that judgment. In the normal run of things one would expect that the Respondents would be the one to appeal as the judgment of the Court of Appeal disturbed the judgment of the trial High Court in their favour. C It is, therefore, very magnanimous that the Board, obviously on counsel’s advice, decided to test the correctness of the judgment of the Court of Appeal on such an important constitutional issue. I commend learned counsel, Adetola-Kaseem Esquire, for his noble contribution to the development of the law in this country, particularly in the area of constitutional law. D

The Respondents did not take part in the appeal to this court as they failed to file a brief and did not appear at the oral hearing of the appeal either. Mr. Adetola-Kassem filed a brief on behalf of the Appellant Board in which he raised two questions as calling for determination in the appeal, to wit: E

“1. *Whether the Court of Appeal was correct to have raised the constitutional issue of the jurisdiction of the lower court suo motu, and proceeded to take argument on the point immediately without affording the parties an opportunity to prepare for an argument on the point, especially as it involved a constitutional issue, when the appellant’s counsel having not had prior notice of the development was not present in court, and the appellant’s representative in court was only a layman.* F

2. *Whether the Kano State High Court truly lacked the jurisdiction to have tried the case and given judgment thereon, having regard to the provisions of Decree 107 of 1993 and Decree No. 60 of 1991 vis-a-vis the subject matter of the suit; and having regard also to the fact that the action was commenced in November 1992 before promulgation and the commencement of Decree No. 107 of 1993.” H*

I will not belabour myself with the issue raised in (1) above. On 22/5/ 97 when Respondents' motion came up for hearing in the Court of Appeal, Appellants' counsel was absent but Appellant was represented by one Nasiru Harazimi, an Assistant Secretary. When their Lordships of that court raised suo motu the constitutional issue
 B as to the validity of the proceedings in the trial High Court, counsel for the respondents proffered an argument. Mr. Harazimi who, not being a legal practitioner and, therefore, not in a position to express a view on the issue raised, should have asked for an adjournment to
 C enable the Board's counsel to address the court on the issue. But he did not; he left issue to the court's discretion.

While I would say that out of the abundance of prudence the court below should have given notice to learned counsel to the parties to address it on such an important issue, so as to be of better
 D assistance to the court, I would, however, not say that what happened in court that day was incorrect as postulated in Issue (1) as neither side asked for, and was refused, an adjournment to address the court on the issue.

It is the second Issue, that is, the decision of the court below on
 E the important constitutional question raised by it, that is the crux of this appeal. It is not in dispute that the trial High Court of Kano State had jurisdiction when the suit was instituted - see section 236 of the 1979 Constitution. It is equally not in dispute that Decree No. 107 of
 F 1993 amended the 1979 Constitution by giving exclusive jurisdiction to the Federal High Court in, amongst others,

“any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies”.

G The Decree came into effect on 17th November 1993. By the amendment, the State High Court lost its jurisdiction to try such an action. It is not in dispute also that the action leading to this appeal was one of such actions. The record of appeal shows that as at 17th
 H November, 1993, the case for the plaintiffs (that is, Respondents) had closed but defence did not open its case until 14/2/94. (See pages 44 and 46 of the record). The question that arises is: On 14/2/ 94 when defence opened its case had the trial High Court jurisdiction any longer to continue with the hearing of the case?

The court below answered this question in the negative. Mr.

Adetola Kaseem has, however, argued that the court below was wrong. It is learned counsel's submission that the rights and obligations of parties are considered in the light of the law at the time the cause of action arose. It is further submitted that a statute is to be construed so as to have retroactive effect, except it is so stated specifically in the statute. It is finally submitted that where a statute conferring jurisdiction is amended, this does not mean that the amendment puts an end to proceedings already validly begun. Learned counsel cited *University of Ilorin Teaching Hospital v. Akilo* [2000] 22 WRN 117 at 123; *Uwaifo v. Attorney-General Bendel State* [1982] NSCC 221; *Udoh v. OHMB* [1993] 7 NWLR 139 at 149 D-H; *Adamu v. The State* [1991] NSCC 76 at 77 in support of these submissions. B C

On the Federal High Court (Amendment) Decree No. 60 of 1991 to which reference was made by the court below, Mr. Adetola-Kassem submitted as follows: D

"Concerning Decree No. 60 of 1991, it is submitted respectfully, in the first place that there is nothing in the Decree that extended the jurisdiction of the Federal High Court to cover the subject matter of the suit. It is a fundamental principle, that jurisdiction is determined by the plaintiff's claim. See Tukur v. Government of Gongola State [1989] 4 N.W.L.R. (pt. III) 517 at 549 (B). The claims of the plaintiffs in this case as endorsed in their Writ of Summons (pp. 104 - 105) and statement of claim (pp. 118-119) are for declaratory reliefs and damages in relation to contract of employment. It is submitted most respectfully that these would not qualify for any of the items listed under 7(a)-(u) of the Federal High Court Act as amended by Decree No. 60 of 1991. It is further submitted with respect therefore that the conclusion of the Court of Appeal that Decree No. 60/1991 applied to the subject matter of the case is erroneous. E F G

Secondly, the Court of Appeal recognized that Decree No. 60 of 1991 came into effect on 26th August, 1993, which was after the cause of action in these proceedings had arisen and the suit commenced at the Kano State High Court. H

Thirdly, Decree No. 107 of 1993 further revised the jurisdiction of the Federal High Court and by the revision impliedly repealed the provisions of Decree No. 60 of 1991. As earlier submitted, the application of Decree No. 107/1993 commenced on 17th Novem-

ber, 1993, and it did not contain any abatement provision, unlike Decree No. 60 of 1991. This being the case, it is humbly submitted as at the time judgment was delivered by the Kano State High Court on 28th April, 1995, the abatement provision of Decree No. 60/1991 was no longer in operation, and that the judgment was therefore

validly delivered.

It is submitted in the alternative to the above that even if the abatement provision of Decree No. 60/1991 was still operative, since the subject matter of the suit was unaffected by either the provisions of Decree No. 60/1991 or Decree No. 107 of 1993, the judgment delivered by the Kano State High Court on 28th April, 1995 is still valid because the operative statute regulating the jurisdiction of the courts was the 1979 Constitution which in its s.236(1) conferred unlimited jurisdiction on State High Courts to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

The validity of the Kano State High Court judgment is however subject to the appeal against it, which has not been considered on its merit by the Court of Appeal.”

I think their Lordships of the court below, with respect, were in error to refer to Decree No. 60 of 1991 at all, for this legislation was just not applicable to the question raised by them. I agree with the submissions of learned counsel in the passage above. Plaintiffs’ action does not come within the exclusive jurisdiction given the Federal High Court by section 7 of the Decree, The Decree is just not relevant to the case on hand.

On Decree 107 of 1993, there is no doubt that the Decree had no retrospective effect as it was a constitutional amendment which was not declared to take effect retrospectively. The plaintiffs acquired their right to sue in the State High Court at the time their cause of action accrued, that is, since before 1993 when they instituted in Kano High Court the action leading to this appeal. By virtue of section 236 of the 1979 Constitution, the High Court of Kano State had jurisdiction at the time to entertain the action. Proceedings were still on when Decree No. 107 of 1993 came into effect on 17th November 1993. By this Decree exclusive jurisdiction was conferred on the Federal High Court in, among other things, “an action or proceeding for a declaration or injunction affecting the validity of

any executive or administrative action or decision by the Federal Government or any of its agencies.” Would the coming into effect of Decree No. 107 of 1993 on 17th November, 1993 deprive the High Court of Kano State jurisdiction to continue and conclude the plaintiffs’ action before it? ‘

The court below held that High Court lost its jurisdiction over the proceedings on 17th November, 1993. With respect to their Lordships of the court below, they are wrong. Not being an adjectival law but one of substantive law and not having retrospective operation, Decree No. 107 of 1993 would not affect pending legal proceedings so as to deprive the State High Court of jurisdiction to conclude such proceedings. Section 6(1) of the Interpretation Act, Cap. 192 Laws of the Federation of Nigeria 1990 is a complete answer. It provides:

“6. (1) *The repeal of an enactment shall not -*

(a) *revive anything not in force or existing at the time when the repeal takes effect;*

(b) *affect the previous operation of the enactment or anything duly done or suffered under the enactment;*

(c) *affect any right privilege, obligation or liability accrued or incurred under the enactment;*

(d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;*

(e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.” (italics are mine for emphasis)

Had their Lordships adverted their minds to the above provisions would not have decided in the manner they did. Section 6(1) of the Interpretation Act apart, this court has as long ago as 1967 decided the issue-see *The Council of the University of Ibadan v. N.K. Adamolekun* [1967] ANLR 225. Under s.117 of the Constitution of the Federation, 1963, an appeal lay as of right to the Supreme Court from the Regional High Courts in certain specified cases. An intermediate Court of Appeal might, however, be set up in a Region by (a) a Notice issued by the Regional Governor bringing into operation the

provisions of the Regional Constitution that established such a court in this case ss. 52'and 53 of the Constitution of Western Nigeria, 1963 -coupled with (b) an Order made under s. 127 of the Constitution of the Federation, by virtue of which s.117 then took effect as relating to appeals from the Regional Court of Appeal to the Supreme Court.

The Court of Appeal for the Western Region was set up, with effect from April 1, 1967, after the defendant council had already filed an appeal as of right to the Supreme Court from the decision of the Regional High Court. When the council subsequently applied to the Supreme Court (in June 1967) for accelerated hearing of the appeal and a consequential order directing the registrar of the High Court to despatch the records of appeal to the Supreme Court, counsel for the respondent objected that the Supreme Court could not entertain the application because the appeal could not be heard by it but must be heard in the first instance by the new Regional Court of Appeal.

This turned on the effect of the transitional provisions contained in the Court of Appeal Edict, 1967, made by the Regional Military Governor. By s. 35 of the Edict, all appeals from the Regional High Court including those in which notice of appeal was given before April 1, 1967, should as from that date lie in the first instance to the Regional Court of Appeal: subs. (1) and (2), except where on date the record of appeal had been received in the Supreme Court and duly entered on the cause list: subs. (4). One of the questions arising in the case was the effect had on appeals relating to proceedings which were already in existence when a Regional Court of Appeal was set up under the relevant constitutional provisions. This court (Ademola CJN, Brett, Bairamian, Coker and Lewis, JJ.SC.) held that the setting up of a Regional Court of Appeal under s. 127 of the Constitution of the Federation and the relevant provisions of the Regional Constitution was not merely a matter of procedure and did not automatically take away rights of appeal to the Supreme Court in proceedings already in existence when the new court was set up. In *Colonial Sugar Refining Co. Ltd. v. Irving* (1905] AC 369, which was followed by this court in *Adamolekun*, it was held that the right of appeal from the Supreme Court of Queensland (Australia) to His Majesty in Council given by the Order in Council of 1860, has been

taken away by the Australian Commonwealth Judiciary Act 1903, and the only appeal therefrom now lies to the High Court of Australia, yet the Act is not retrospective, and a right of appeal to the King-in-Council in a suit pending when the Act was passed and decided by the Supreme Court afterwards was not taken away. At page 372 of the report, the Privy Council, per Lord MacNaghten, said: B

“As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter or procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or any necessary intendment. And therefore D the only question is. Was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as E of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principles that statutes are not to be held to act retro- F spectively unless a clear intention to that effect is manifested.

In my respectful view the same principle that applied in Adamolekun and Irving applies equally in this case too where the facts are similar to those in the two earlier cases. In effect, the High G Court of Kano State properly concluded the plaintiffs’ action notwithstanding Decree No. 107 of 1993. The Decree did not affect the Kano State High Court’s jurisdiction to conclude and decide the cases pending before it when the Decree was promulgated and came into force. It is for the reasons stated herein that I agree with my H learned brother Mohammed J.S.C., that this appeal succeeds and it is allowed by me. The case is remitted to the court below for it to determine the Defendant’s appeal to it on its merit.

I make no order as to costs of this appeal.

KALGO JSC

I have read in draft the judgment in this appeal just delivered by my learned brother Mohammed J.S.C. I agree with him that there is merit in the appeal and it ought to be allowed. I adopt his reasoning and conclusions reached therein as mine.

The Court of Appeal was clearly wrong in its interpretation of the provisions of section 230 of Decree No. 107 of 1993 i.e. the Constitution (Suspension and Modification) Decree, 1993 (hereinafter referred to as the Decree) as it applies to the instant appeal. This Decree came into effect on the 17th of November 1993, and the suit giving rise to this appeal was instituted in the Kano High Court on the 20th of November 1992, almost one year before the Decree came into operation. The Decree has no transitional provisions dealing with pending cases, or anything to show that it has retrospective effect or anything to that effect. Therefore, following the provisions of section 6 of the Interpretation Act (Cap. 192 of the Laws of the Federation 1990) the jurisdiction of the High Court of Kano State to entertain this suit which was pending before the Decree came into effect, was not ousted by the provisions of the said Decree. See *University of Ibadan v. Adamolekun* [1967] 5 NSCC 210. *Colonial Sugar Refining Company Limited v. Irving* [1905] A.C. 369. Therefore the case properly and validly entertained by the High Court Kano by the virtue section 236 of the 1979 Constitution, and the appeal to the Court of Appeal which was not heard, should now be heard on its own merits.

It is pertinent to observe that the decision of the Court of Appeal was in favour of the appellant in this case but it was the learned appellant's counsel who now appealed to this court from that decision. He must have done so because of the constitutional issue involved in it and I must commend him for this effort which in my view enhances the constitutional legal developments in this country.

With this and the fuller reasons given by Mohammed, JSC in the leading judgment, I also allow this appeal, set aside the decision of the Court of Appeal and order a rehearing of the appeal on its own merits by a different, constituted panel of the Court of Appeal. I make no order as to costs.