

**SUPREME COURT OF NIGERIA**  
FRIDAY 31ST JANUARY, 2003. SC.227/2002  
**CORAM:- M. L. UWAI S C J N, S. M. A. BELGORE,**  
**I. L. KUTIGI, M. E. OGUNDARE, S. U. ONU,**  
**A. I. IGUH, S. O. UWAIFO, JJSC**

1. ATTORNEY-GENERAL OF ABIA STATE

& 35 Ors.

..... PLAINTIFFS

AND

ATTORNEY-GENERAL OF THE FEDERATION ..... DEFENDANT

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CONSTITUTIONAL LAW - Separation of powers - Concept of - Purport - It is that none of the three arms of government under the constitution - Should encroach into the powers of the other (H1)

CONSTITUTIONAL LAW - Existing laws - Power of modification - Justification for - It is justified by our historical circumstance - Without it the country might find itself operating unconstitutional statutes (H2)

CONSTITUTION LAW - Existing laws - Power of modification - Extent of - It includes the power to add - Alter, omit or repeal the law - To bring it in conformity with the constitution (H3)

**FACTS**

Plaintiffs, who are Attorneys-General of all the thirty six states of Nigeria, on behalf of their respective states, brought this action against the Attorney-General of the Federation representing the Federal Government of Nigeria as defendant. The action was brought before the Supreme Court in its original jurisdiction, wherein plaintiffs are contesting the constitutionality of statutory instrument No 9 of 2002 by which the President of the Federation modified the Allocation of Revenue (Federation Account, Etc.) Act 1990 as amended by Allocation of Revenue (Federation Account, Etc.) Decree (No 106) of 1992.

The case directly arose from an earlier decision of the Supreme Court in a case between defendant (as plaintiff) and plaintiffs (as defendants). In that case the Court had declared the allocation of

7.5% of the Federation Account to “Special Funds” unconstitutional in that the constitution only provided for sharing of money in the account amongst the three tiers of Government. The question consequently arose as to what was to be done with the 7.5%. By the statutory instrument now being challenged, the President had made an order which increased the share of the Federal Government by additional 7.5% by modifying the existing law on the subject, thereby denying the States any share in the 7.5% saved by the earlier Supreme Court decision. Plaintiffs now argue that the action of the President was not only unconstitutional but also a direct nullification of the said earlier judgment of the Supreme Court. Defendant claims the president had constitutional powers to do what he did.

### **ISSUES FOR DETERMINATION**

*“Whether S.315 of the Constitution of the Federal Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16. Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, Etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002?”*

## **HELD** (Unanimously dismissing the action per

**BELGORE JSC)**

*CONSTITUTIONAL LAW - Separation of powers - Concept of*

**1. The principle behind the concept of Separation of Powers is that none of the three arms of government under the Constitution should encroach into the powers of the other. Each arm - the Executive, Legislative and Judicial - is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction. (p. 14 B )**

*CONSTITUTIONAL LAW - Existing laws - Power of modification*

**2. One may easily frown on what Section 315 of the Constitution has provided. But our Constitution is a product of our own circumstance, and the like of Section 315 (supra) has lived with us all along. Similar provisions were in Independence Constitution of 1960 but the exercise of it was limited to only six months of its existence because it was under Transitional Provisions. The Republican Constitution of 1963 limited it to three years. It is obviously now deliberate that Section 315 has no limited time.**

**It must be pointed out that no two democratic constitutions are the same. Our own constitution has its peculiarities due to our historical circumstance. Without the provisions of S. 315 of our 1999 Constitution, and with this Court's judgment in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (supra) the country might easily find itself operating an unconstitutional revenue allocation statute. The President sent to National Assembly a bill on Revenue Allocation which has not been passed into an Act of national Assembly. There was hardly a better time to invoke his power of modification. The provision is a part of our supreme law, the Constitution and its consequence is clear. (p. 14 D)**

*CONSTITUTIONAL LAW - Existing laws*

**3. It is noteworthy that the Constitution, itself, has defined "appropriate authority" for the purpose of an Act of National Assembly for modification as the "President." It also defines "modification" as follows In S. 315(4)(c):**

**"315(4)(c) 'modification' includes addition, alteration, omission or repeal."**

**Thus the President has wide power when modifying any existing law to bring it in conformity with the Constitution. It is true that "separation of powers" is essential to a healthy democracy, the power given the President and also to State Governors in existing law of the State by the Constitution is not an abuse of the principle or doctrine of separation of powers, it is essential to giving meaning to an existing law so that**

***the Constitution itself is not abused.***

***I therefore hold that the exercise of the power to modify the allocation formula in the existing Allocation of Revenue (Federation Account Etc.) Act (Cap. 16, Laws of the Federation of Nigeria, 1990) as amended by Allocation of Revenue (Federation Account etc) (Amendment) Decree (No. 106 of 1992) is constitutional and within the scope of his right under the Constitution.*** (p. 15 H)

## C NOTABLE POINTS OF INTEREST

### **UWAIS CJN**

#### ***1. Existing Laws - Modification means more than textual change***

D Learned Senior Advocate for the plaintiffs does not dispute that the President has the power to “modify” an existing law, but contends that the power is limited to textual changes in the law to be modified.

E The word “*modification*” has been defined by the Constitution to include addition, alteration, omission and repeal. Surely these words go beyond mere textual changes. For instance the repeal of a legislation cannot be limited or even equated to textual change for it is the abrogation of an existing legislation or part of it. The wordings of the Constitution are to be given liberal interpretation. To interpret “*modification*” to mean textual change only, is to give a very narrow meaning to the word. (p. 19 F )

#### ***2. Constitutional principles may be excluded by a constitution***

G Learned Senior Advocate also argues that the modification Order made by the President is a usurpation by him of the legislative powers of the National Assembly and a violation of the principles of separation of powers between the three arms or organs of government, namely the legislative, the executive and the Judiciary. Ideally, H propounded principles of constitutional law should be applied in the interpretation of the Constitution; but where such principles are expressly or impliedly excluded by the Constitution itself, I am afraid it will be difficult or untenable for the courts to follow the dictates of the

principles. (p. 20 B)

***3. Federation Account expenditures - He who creates bodies must fund them***

I think one thing that stands clear from our decision in ATTORNEY-GENERAL OF THE FEDERATION V. ATTORNEY-GENERAL OF ABIA STATE & 35 ORS. (supra) is that, if any of the three tiers of Government decides to form, create or constitute new bodies, or things whatsoever, the tier and that tier of Government alone, must be prepared to fund such things or bodies from its own share of allocation and not any more directly from the Federation Account. (p. 23 A)

**OGUNDARE JSC**

***4. Constitution prevails over adherence to constitutional doctrines***

It has been argued that the Modification Order is usurpation by the President of the legislative powers of the National Assembly in that the Constitution provides for separation of powers whereby legislative power is vested in the National Assembly. I agree that the Constitution in Sections 4, 5 and 6 has enshrined in it the doctrine of separation of powers. But it is the same Constitution that enacts its Section 315, a section later than Section 4. No doubt, the framers of the Constitution, in their wisdom, must have included this section to avoid lacuna in governance. The section is one of the transitional provisions of the Constitution although the duration of the transition, unlike in the 1960 and 1963 Constitutions, is not stated. If there is an infraction of the doctrine of separation of powers, it is one authorised by the Constitution itself. And the Constitution prevails over a strict adherence to any doctrine. Section 315 is not the only doctrinal aberration in the Constitution. Another aberration can be found in some provisions of the Constitution that derogate from the principles of federalism upon which the Republic is built. I think it is the provisions of the Constitution that the courts give effect to and not to strict adherence to such principles like separation of powers except where these principles assist in the construction of particular provisions of the Constitution. (p. 37 F)

**UWAIFO JSC**

***5. Words of the constitution cannot be defeated upon some idealism***

There is a presumption that words in a statute or constitution are not mere surplusage or tautology:

- B And once the words of any section of the Constitution are to be interpreted and applied, they cannot be defeated upon some idealism or doctrine but the court must presume that the framers of the Constitution were well aware of such doctrine but preferred the wisdom of inserting in the Constitution an exigent, though apparently aberrant provision. (p. 65 D)

***6. Words & phrases - Text includes figures***

- D The other aspect of the contention is that what the President is expected to do is only to make necessary changes to the text of an existing law, i.e., changes in the words and not in the figures wherever they appear in the said law. With due respect, I reject this approach as too narrow as well as misconceived. It has completely failed to take into account the definition of “modification” as contained in subsection (4)(c) which the President is empowered to do to an existing law when modifying it to bring it into conformity with the Constitution. He may add to, alter, make omission in, or repeal the existing law as appropriate. The word “text” as used in subsection (2) of Section 315 of the Constitution must be given a liberal interpretation and when so done, it would be understood to mean what constitutes the main body of what is written or printed as a relevant existing law. That, in my view, is the proper approach to give a true interpretation to the constitutional provision in Section 315 (2) (p. 65 F)

**REPRESENTATION**

O. C. J. Okocha, Esq., with Isaac Anumudu Esq., and other counsel for each State, for the Plaintiffs

- H Rotimi Jacobs, Esq., with Kayode Oni, Esq, and G. Esegene, Esq., for the Defendant

**CASES REFERRED TO**

Onigbenen v. Balogun (1975) 4 S.C. 85

Obayuwana v. Governor (1982) 12 S.C. 147

Mohammed v. Olawunmi (1990) 2 NWLR (Pt. 133) 458  
 Adigun & Ors. v. A-G. Oyo State & Ors. (1987) 1 NWLR (Pt.53) 678  
 Garba v. Fed. Civil Serv. Commission (1988) 1 NWLR (Pt. 71) 449  
 Ojukwu v. The Governor of Lagos State (1985) 2 NWLR 806  
 A.G. of Ondo State v. A.G. of the Federation (2002) 6 SC (Pt. I) 1  
 Adigun v. A.G. of Oyo State (1987) 1 NWLR (Pt. 53) 678 B  
 A-G Federation v. Guardian News Papers Ltd (1999) 5 SC (Pt. III) 59  
 Tukur v. Govt. of Gongola State (1989) 9 SC 1  
 A-G of Bendel State v. A-G Federation & 22 Ors. (1982) 3 NCLR 1  
 A-G Federation v. A-G Abia State & 35 Ors. (2002) 4 SC (Pt. I) 1 C

### **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999, ss. 1, 3 & 315  
 Allocation of Revenue (Federation Account, Etc.) Act, cap. 16, L. F.  
 N. 1990 D  
 Allocation of Revenue (Federation Account, Etc.) Act, 1992  
 Allocation of Revenue (Federation Account, Etc.) (Modification) Or-  
 der 2002

### **LEAD JUDGMENT BY BELGORE JSC**

This is a suit in the original jurisdiction of this court brought by  
 virtue of Section 232 of the Constitution of the Federal Republic of  
 Nigeria, 1999 (hereinafter referred to as the Constitution). The Plaintiffs  
 are the Attorneys-General of all the thirty-six states of Nigeria who, F  
 on behalf of their respective states, brought this action against the  
 Attorney-General of the Federation representing the Federal Gov-  
 ernment of Nigeria. The grouse of the plaintiffs is the Statutory In-  
 strument No. 9 of 2002 wherein the President of the Federal Repub-  
 lic of Nigeria, Chief Olusegun Obasanjo, made an order modifying G  
 the Allocation of Revenue (Federation Account Etc.) Act, 1990 as  
 amended by Allocation of Revenue (Federation Account, Etc.) De-  
 cree (No. 106) of 1992. By the 1992 Decree (No. 106), Sections 1,  
 2, 3 and 4 of the principal Act were amended. It is the principal Act as  
 amended by Decree 106 of 1992 that has now been modified. This H  
 order is now challenged.

The Constitution in Section 162(1) provides:

*“162(1) The Federation shall maintain a special account to be  
 called “The Federation Account” to which shall be paid all revenues*

*collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja. ”*

B And in subsection (2) of the same Section 162 the Constitution provides:

(2) The President, upon the receipt of advice from the Revenue Mobilization, Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density:

D Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.

E The President relying on Section 315 of the Constitution, especially subsections (1)(a), (2) and (4)(a)(i) thereof made the Order now in issue i.e. Allocation of Revenue (Federation Account Etc.) Order, 2002 on 8th day of May, 2002, and thereby altered the existing formula in the principal Act as amended by Decree 106 of 1992. The law as it existed before 8th May, 2002, provided allocation formula inter alia as follows in Section 1 (a) to (e):

“(a) *the Federation Government.....48.5%*  
 (b) *the State Government..... 24%*  
 (c) *Local Governments..... 20%*  
 (d) *Special Funds.....7.5%*  
 (i) *Federal Capital Territory, 1% of the Federation Account*  
 (a) *Development of the mineral producing areas.... 3% of the revenue accruing to Federation Account derived from minerals*  
 (b) *General ecological problems .... 2% of the Federation Account*  
 (c) *Derivation ... 1% of the revenue accruing to the Federation Account derived from universals*  
 (d) *Stabilization Account .... 0.5% of the Federation Account, plus the revenue arising out of using mineral revenue, instead of the*



*Federation Account, as the base for allocation to the fund for development of the mineral producing areas and derivation."*

By the Order now in issue it is provided inter alia as follows:

*"Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002*

*Commencement: 29th May, 1999*

*In exercise of the powers conferred upon me by subsections (1)(a), (2) and (4)(a)(i) of Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 and of all other powers enabling me in that behalf, I, OLUSEGUN OBASANJO, President of the Federal Republic of Nigeria, hereby make the following Order:-*

*1. The Allocation of Revenue (Federation Account, Etc.) Act in this Order (referred to as "the principal Act") as amended, is hereby further modified as provided in this Order. .*

*2. Section 1 of the principal Act is hereby modified by substituting therefore the following:*

*1. The amount standing to the credit of the Federation Account, less the sum equivalent to 13 per cent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge for distribution to the beneficiaries of the derivation funds in accordance with the Constitution shall, be distributed among the Federal and State Government and the local government councils in each State of the Federation on the following basis, that is to say -*

- (a) the Federal Government 56.00 per cent;*
- (b) the State Governments 24.00 per cent;*
- (c) the Local Government Councils 20.00 per cent.*

*3. Section 2 of the principal Act is modified by substituting for subsections (1) and (2) thereof the following new subsections :-*

*2(1) The 56.00 per cent specified in Section 1 (a) of f this Act shall be allocated to the Federal Government and utilized as follows:-*

- (a) Federal Government - 48.50 per cent;*
- (b) General Ecological Problems -2.00 per cent;*
- (c) Federal Capital Territory - 1.00 per cent;*
- (d) Stabilisation Account - 1.50 per cent*
- (e) Development of Natural Resources - 3.00 per cent*

*(2) The 24.00 per cent standing to the credit of all the States in the Federation Account as specified in Section 1 (b) of this Act shall be*

*distributed among the States of the Federation using the factors specified in this Act.*

4. *Section 3 of the principal Act is modified by substituting therefore the following new section:-*

B *3. Subject to the provisions of this Act, the amount standing to the credit of local government councils in Federation Account shall be distributed among the States of the Federation for the benefit of their local government councils using the same factors specified in this Act.*

C *5. In this Order, unless the context otherwise requires:-*

*“Constitution” means the Constitution of the Federal Republic of Nigeria, 1999;*

*“Federation Account” means the Federation Account established under Section 162(1) of the Constitution.*

D *6. This Order shall be cited as the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 and shall be deemed to have come into force on 29th May, 1999.*

*MADE at Abuja this 8th day of May, 2002.”*

E The Order contains an Explanatory Mote at the end, but by normal construction of statutes it is only what it says, because it is not part of the statute. Therefore what is before this Court is the substantive Order quoted above by me. The plaintiffs’ case is that the Order is a direct nullification of this Court’s decision in suit No. SC. 28/2001 Attorney-General of Abia State and 35 Ors. v. Attorney-General of the Federation (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 762) 542, F wherein this Court held inter alia as follows:

G *“(i) Funding of joint venture contracts and the Nigerian National Petroleum Corporation priority projects cannot, by any stretch of construction, come within Section 162(3) of the Constitution which provides for the distribution of the Federation Account among the three tiers of government, that is Federal States and Local Government. Therefore all those charges on the Federation Account are inconsistent with the Constitution and are therefore, invalid.*

H *(ii) It has transpired also that other deductions are being made from the Federation Account in respect of monies paid to the National Judicial Council for funding the Federal and State Judiciaries; for servicing external debts and for funding Joint Venture Contracts and n Nigerian National Petroleum Corporations Priority Projects. All*

these deductions are carried out as first line charges on the Federation Account. All the deductions are not provided for by the 1999 Constitution, notwithstanding the provisions of Section 162 subsection (9) in the case of the National Judicial Council, so that even if any enactment has provided for them, like the Appropriation Act by the National Assembly, such enactment is inconsistent with the Constitution and is therefore invalid to the extent of the inconsistency. Sections 3 and 4 of the General Loans and Stock Act, Cap. 161, which the Plaintiff relies upon to support deductions from the Federation Account for servicing foreign debts falls under this category.

Section 314 of the Constitution, which the Plaintiff relies upon does not, in my opinion, provide justification for making the deduction from the Federation Account. The section provides:-

*“314 Any debt of the Federation or of a State which immediately before the date when this section comes into force was charged on the revenue and assets of the Federation or on the revenue and assets of a State shall, as from the date when this section comes into force, continue to be so charged”. I think the charge to the revenue of the Federation or the revenue of a State simply means a charge to the Consolidated Revenue of a State into which monies received from the Federation Account are credited.*

*(iii) The appropriate authority in respect of the Allocation of Revenue (Federation Account, etc) Act, Cap.16, Laws of the Federation, 1990 (as amended) is the President. Thus, the President has the constitutional power, by order, to modify Cap.16 either by way of addition, alteration, omission or repeal to bring it into conformity with the Constitution.*

*(iv) The correct position, in my respectful view, is that Cap. 16 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending a time the National Assembly comes up with a formula as directed by the Constitution. Cap. 16 is, however, only applicable in so far as it is not inconsistent with the provisions of the 1 999 Constitution”.*

Also, it is the contention of the plaintiffs that the President has no power, constitutional or statutory to issue the said Order “with particular regard to paragraphs 2(1)(a) and 3 thereof.” The plaintiffs contend that the Constitution in S. 315 thereof has limited the power, which is now exceeded, to make the Order. It is therefore pertinent

to set out what Section 3 15 of the Constitution provides:

*“315(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -*

B *(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered to make laws; and*

C *(b) a Law made by a House of Assembly to the extent that it is a Law with respect to any matter on which a House of Assembly is empowered by this Constitution to make Laws.*

D *(2) The appropriate authority may at any time by Order make such modifications it the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.”*

And in subsection (3) it provides:

E *“(3) Nothing in this Constitution shall be construed as effecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say:-*

*(a) any other existing law*

*(b) a law of a House of Assembly*

F *(c) an Act of the National Assembly, or (d) any provision of this Constitution.”*

G The subsection (4) thereof then says the expression “appropriate authority” means the President in relation to any law of the Federation or the Governor of a State in relation to an existing law deemed to be made by the House of Assembly of that State, or any person appointed by law to revise or rewrite the laws of the Federation or of a State.

The plaintiffs in respect of this suit raised the following Issues for Determination

H *“Whether S.315 of the Constitution of the Federal Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16. Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, Etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2(1)(a) and 3 of the Allo-*

*cation of Revenue (Federation Account, Etc.) (Modification) Order, 2002?"*

The Defendant raised the following issues:

- "(i) whether paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President on the 8th day of May, 2002 are not constitutional.* B
- (ii) whether paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President of the Federal Republic of Nigeria are not contrary to and in disobedience of the judgment of this Honourable Court in Suit SC/28/2001 between Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542 delivered on Friday, 5th April, 2002."* C

The plaintiffs' argument is that the President of Nigeria has trespassed into the realm of powers essentially belonging to the legislature i.e. the National Assembly, because what he has done by the Order now being challenged is legislating. According to them (plaintiffs) in a constitutional democracy like Nigeria, the powers of government are categorized into three, i.e. the "Legislature, Executive and Judicial" each of which *"is vested in a separate and distinct department/arm of government"*. In this regard, the Executive power is to administratively implement the policies of governance made by National Assembly into Laws. The National Assembly is to make the laws but the implementation of the laws is vested in the Executive. F

The judiciary is to interpret the laws. The Executive powers are vested by S.5 of the Constitution in the President; the Judicial powers are vested by S.6 thereof in the Courts established for the Federation. The legislative powers, by virtue of S.4 of the Constitution are, vested in the National Assembly for laws within its competence and in the House of Assembly of a State for laws within its competence to make. G

One wonders, therefore, how the President or Governor in the case of State, can modify a law within the competence of the legislature. It looks anomalous except for the circumstance of our Constitution. The Constitution is the supreme law of this country; H without it no law can independently exist.

It is very clear in Section 1 of the Constitution where it is provided:

*"1.(1) This Constitution is supreme and its provisions shall have*

*binding force on all the authorities and persons throughout the Federal Republic of Nigeria”*

and to emphasize this supremacy if provides in subsection (3) of Section 1:

“(3) *If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.*”

***The principle behind the concept of Separation of Powers is that none of the three arms of government under the Constitution should encroach into the powers of the other. Each arm - the Executive, Legislative and Judicial - is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction. If viewed in the above perspective one may easily frown on what Section 315 of the Constitution has provided. But our Constitution is a product of our own circumstance, and the like of Section 315 (supra) has lived with us all along. Similar provisions were in Independence Constitution of 1960 but the exercise of it was limited to only six months of its existence because it was under Transitional Provisions. The Republican Constitution of 1963 limited it to three years. It is obviously now deliberate that Section 315 has no limited time.***

***It must be pointed out that no two democratic constitutions are the same. Our own constitution has its peculiarities due to our historical circumstance. Without the provisions of S. 315 of our 1999 Constitution, and with this Court’s judgment in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (supra) the country might easily find itself operating an unconstitutional revenue allocation statute. The President sent to National Assembly a bill on Revenue Allocation which has not been passed into an Act of national Assembly. There was hardly a better time to invoke his power of modification. The provision is a part of our supreme law, the Constitution and its consequence is clear. In the case***

*of Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors. (2002) 4 S.C (Pt. 1); (NO.2) 6 NWLR (Pt. 764) 542, 755 - 757 this Court held that the purport of S. 162(3) of the Constitution is that the formula for share or allocation of revenue as in Allocation of Revenue (Federation Account etc) Act, 1990, as amended by Decree No. 106 of 1999, is in direct contradiction to the Constitution, S.162 (3) which states:*

*“Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the national Assembly”*

(Therefore by providing for special funds enumerated in the Act (as amended) for:

Special Fund:

- i. Federal Capital Territory
- ii. Development of the Mineral producing areas
- iii. General ecological problems
- iv. Derivation
- v. Stabilization Account

the Act went beyond what the Constitution provided.

The Act has gone beyond what was constitutional and the Items set out under Special Fund are against the Constitution. S.162 (2) provides that once the President receives advice from Revenue Mobilization Allocation and Fiscal Commission, the Executive body charged with advising on revenue allocation, he shall table before the National Assembly “proposals for revenue allocation from the Federation Account.” The parties admit the President has tabled the proposals before the National Assembly and up to now nothing has come out of it. The law as it is i.e. Chapter 16, Laws of the federation of Nigeria, 1990 as amended by Decree No. 106 of 1992, has been rendered unconstitutional in part by this Court’s decision in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (supra) therefore, the President’s only option was to invoke his powers under S. 315(1) of the Constitution and modify the Act to bring it into conformity with the Constitution. This, the President has done.

***It is noteworthy that the Constitution, itself, has defined “appropriate authority” for the purpose of an Act of National***

**Assembly for modification as the “President.” It also defines “modification” as follows In S. 315(4)(c):**

**“315(4)(c) ‘modification’ includes addition, alteration, omission or repeal.”**

**Thus the President has wide power when modifying any existing law to bring it in conformity with the Constitution. It is true that “separation of powers” is essential to a healthy democracy, the power given the President and also to State Governors in existing law of the State by the Constitution is not an abuse of the principle or doctrine of separation of powers, it is essential to giving meaning to an existing law so that the Constitution itself is not abused.**

**I therefore hold that the exercise of the power to modify the allocation formula in the existing Allocation of Revenue (Federation Account Etc.) Act (Cap. 16, Laws of the Federation of Nigeria, 1990) as amended by Allocation of Revenue (Federation Account etc) (Amendment) Decree (No. 106 of 1992) is constitutional and within the scope of his right under the Constitution.** Except in military regime, the supreme law is the Constitution itself. That is why this is stated clearly in Section 1 of the Constitution of 1999 as follows:-

**“1. (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria**

**(2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.**

**(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”**

Therefore the declaration sought by the plaintiffs, to wit:

**“that paragraphs 2(1)(a) and (3) the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 are unconstitutional, null and void and of no effect whatsoever”** is hereby dismissed, because the President’s power to modify the existing law is Constitutional.

The Order sought by the plaintiff **“...directing the Defendant**



to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and such local government councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account Etc.) Act, Cap 16 Laws of the Federation, 1990” was withdrawn by the plaintiffs and it is hereby struck out. At any rate, it has all along been a futile prayer for an order that the Court may be called upon to supervise. B

For the foregoing reasons, I dismiss this action in its entirety. There will be no order as to costs.

C

### UWAIS CJN

I have had the privilege of reading in draft the judgment read by my learned brother, Belgore, JSC. I agree that there is no merit in this action and that it should be dismissed. D

The promulgation of the Revenue Allocation (Federation Account etc.) (Modification) Order, 2002 (i.e. Statutory Instrument No. S. I. 9 of 2002) by the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, followed the decision of this Court in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542; (2002) FWLR (Pt. 102) 1. The Order which was made on the 8th day of May, 2002, came into force retrospectively, with effect from the 29th May, 1999. The aim of the Order is to bring the parts of the Revenue Allocation (Federation Account etc.) Act, Cap. 16 of the Laws of the Federation of Nigeria, 1990, (which were declared inconsistent with the Constitution of the Federal Republic of Nigeria, 1999) into conformity with the Constitution. F

The step taken by the President was consistent with the dicta of Ogundare, JSC., on p. 669 C-D thereof, Onu, JSC., on p. 867 D-E and mine on p. 773 E-F thereof. G

The plaintiffs were aggrieved by the Order and therefore brought this suit against the defendant. They ask for the following in paragraph 8 of the Amended Statement of Claim: - H

“(i) A DECLARATION that paragraphs 2(1 )(a) and (3) of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 are unconstitutional, null and void and of no effect whatsoever.

(ii) *An ORDER directing the Defendant to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990.*”) B

Briefs of argument were filed and exchanged by the parties. The plaintiffs formulated only one issue for us to determine. It reads: “*Whether S. 315 of the Constitution of the Federation Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002?*” C D

The defendant formulated 2 issues as follows:-

“(i) *whether paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President on the 8th day of May, 2002 are not constitutional.* E

“(ii) *whether paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President of the Federal Republic of Nigeria are not contrary to and in disobedience of the judgment of this Honourable Court in Suit SC./28/2001 between A.G. Federation v. A.G. Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542 delivered on Friday, 5th April, 2002.*” F

The arguments by counsel in support of the issues are sufficiently stated in the judgments of my learned brothers, Belgore and Ogundare, JJSC. It will therefore serve no useful purpose to repeat them here. However, Section 31 subsections (1) and (2) of the 1999 Constitution provides:- G

“315 (1) *Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as maybe necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -* H

(a) *an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is em-*

powered to make laws; and

(b) a Law made by a House of Assembly to the extent that it is a Law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by Order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that Law into conformity with the provisions of this Constitution.”

and subsection (4) therefore states: -

“(4) In this section, the following expressions have the meanings assigned to them, respectively -

(a) “appropriate authority” means -

(i) the President, in relation to the provisions of any law of the Federation,

(ii) the Governor of a State, in relation to the provisions of any existing law deemed to be a Law made by the House of Assembly of that State, or

(iii) any person appointed by any law to revise or rewrite the Laws of the Federation or of a State;

(b) “existing law” means any law and includes any rule of law or any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date; and

(c) “modification” includes addition, alteration, omission or repeal.”

Learned Senior Advocate for the plaintiffs does not dispute that the President has the power to “modify” an existing law, but contends that the power is limited to textual changes in the law to be modified. He cited the cases of A.G. of Ogun State v. A.G. of the Federation & Ors. (1982) 3 NCLR 166 and Prince Yahaya Adigun & Ors. v. A.G. of Oyo State & Ors. (1987) 1 NWLR (Pt. 53) 678 in support.

The word “modification” has been defined by the Constitution to include addition, alteration, omission and repeal. Surely these words go beyond mere textual changes. For instance the repeal of a legislation cannot be limited or even equated to textual change for it is the abrogation of an existing legislation or part of it. The wordings of the

Constitution are to be given liberal interpretation (see *Nafiu Rabi v. The State* (1981) 2 NCLR 293). To interpret “modification” to mean textual change only, is to give a very narrow meaning to the word. With respect, the decision in *A.G. of Ogun State & Ors. v. A.G. of the Federation & Ors.* (supra) which learned counsel for the plaintiffs  
B relies upon does not support the plaintiffs’ contention.

Learned Senior Advocate also argues that the modification Order made by the President is a usurpation by him of the legislative powers of the National Assembly and a violation of the principles of  
C separation of powers between the three arms or organs of government, namely the legislative, the executive and the Judiciary. Ideally, propounded principles of constitutional law should be applied in the interpretation of the Constitution; but where such principles are expressly or impliedly excluded by the Constitution itself, I am afraid it  
D will be difficult or untenable for the courts to follow the dictates of the principles. In *A.G. of Ondo State v. A.G. of the Federation* (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222 where it was argued that the provisions of an Act impinged on the principle of federalism on the equality and autonomy of State governments and non-interference  
E with the functions of State governments by the federal government, I made the following observation on page 308 thereof :-

*“This is true, but as seen above, both the Federal and State Governments share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principles of federalism, then, I am afraid it is the Constitution that makes provisions that have facilitated breach of the principles. As far as the aberration is supported by the provisions of the Constitution, I think it cannot  
F rightly be argued that an illegality has occurred by the failure of the Constitution to adhere to the cardinal principles which are at best  
G ideals to follow or guidance for an ideal situation.”*

I believe the same applies here for it is the provisions of the Constitution under Section 315 that enable the President to make the Order in question.

H It is for these and the reasons contained in the judgment of my learned brother, Belgore, JSC, that I too will dismiss this action. Accordingly, plaintiffs’ claim (i) had been abandoned by learned Senior Advocate, it is hereby struck out. I abide by the order made in the aforementioned judgment.

**KUTIGI JSC**

The Plaintiffs' claim against the Defendant is contained in paragraph 8 of their Amended Statement of Claim. They read as follows:-

*“(i) A DECLARATION that paragraphs 2(1 )(a) and (3) of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 are unconstitutional, null and void and of no effect whatsoever.*

*(ii) AN ORDER directing the Defendant to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States as approved in the Allocation of Revenue (Federation Account, Etc.) Act, Cap.16, Laws of the Federation of Nigeria, 1990.”*

The case is not difficult to understand.

A careful reading of the Plaintiffs' Amended Statement of Claim and the Defendant's Statement of Defence as well as their briefs of argument clearly show that this case arose from the decision of this court in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1; (No. 2) (2002) 6 NWLR (Pt. 764) 542 wherein the court declared amongst others as null and void and unconstitutional the allocation of 7.5% of the Federal Account to “Special Funds” contrary to Section 162(3) of the 1999 Constitution which provides for distribution of the Federation Account amongst the three tiers of Government, that is the Federation, States and Local Governments. The question that then arose was: What was to become of the 7.5% allocation and or the very objects or items listed under the “Special Funds”?

After the decision above, the President of the Federal Republic of Nigeria exercising his powers under Section 315(1)(a), (2) and (4)(a)(i) of the 1999 Constitution, made or enacted the Allocation of Revenue (Federation Account, Etc.) (Modification) Order. 2002 (S. I. 9 of 2002 for short), subject matter of this suit. The Order which came into force on the 29th May, 1999, the day the President was sworn in and the day on which the 1999 Constitution also came into force purported to have altered the existing formula of revenue allocation as stipulated in the existing law, that is the Allocation of Revenue (Federation Account etc.) Act, Cap.16, Laws of the Federation,

1990 as amended by Decree 106 of 1992.

Now, under the existing law, that is Cap. 16 as modified by Decree 106 of 1992, the formula for allocation is as follows:-

1. the Federal Government 48.5%
2. the State Governments 24%
- B 3. Local Government Councils 20%
4. Special Funds 7.5%

And under the new Presidential Order, that is S. I. 9 of 2002, the formula for allocation now reads -

- C (a) the Federal Government 56%
- (b) the State Governments 24%
- (c) the Local Governments Councils 20%

What strikes one immediately is the fact that the share for the Federal Government appears to have been the only share raised D from the old 48.5% to a new 56%. The increase is exactly and clearly 7.5% and no more. The shares of allocation to the other two tiers of Government that is, the State Governments and Local Government Councils are not affected by the new Order. They remained at 24% and 20% respectively as shown above.

E     The significant point to note in the Order, however, is the provision in Section 3(2)(1) which reads thus-

“3. (2)(1) The 56.00 per cent specified in Section 1 (a) of this Act (Order) shall be allocated to the Federal Government and utilized as follows: -

- F (a) Federal Government     - 48.50 per cent
- (b) General Ecological Problems - 2.00 per cent
- (c) Federal Capital Territory - 1.00 per cent
- (d) Stabilisation Account     - 1.50 per cent
- G (e) Development of Natural Resources - 3.00 per cent”

It should be noted immediately that (b) + (c) + (d) + (e) = 7.50 per cent.

H It will clearly be seen from these provisions of percentage shares of the allocation that the purported increase of 7.5% to the Federal Government share of the Federation Account has been effectively and completely utilised or shared out amongst the items or things enumerated in Section 3(2)(1)(b)(c), (d) and (e). As stated above the total of allocations to items (b), (c), (d) and (e) under the section is exactly 7.5%. This in effect means that even the 56% purported

new share of the Federal Government was not in real or practical terms achieved or realized. It is merely notional. For practical purposes it is still the same allocation of 48.5% for the Federal Government as contained in Cap. 16 as amended.

I think one thing that stands clear from our decision in *ATTORNEY-GENERAL OF THE FEDERATION V. ATTORNEY-GENERAL OF ABIA STATE & 35 ORS.* (supra) is that, if any of the three tiers of Government decides to form, create or constitute new bodies, or things whatsoever, the tier and that tier of Government alone, must be prepared to fund such things or bodies from its own share of allocation and not any more directly from the Federation Account.

I have read the enabling provision and other relevant sections of the Constitution. And I think what the President has done by making the Order is quite proper in the circumstances of this case. His action clearly is in obedience to the decision of this court in the case cited above as well as in obedience to the Constitution. By the Order, the President has now brought the law, that is Cap. 16 as amended, into conformity with the provision of the Constitution which stipulates for the distribution of the Federation Account amongst the three tiers of Government only. It is now clear that the 7.5 per cent “*Special funds*” is now an allocation direct from the federal Government’s share of the Federation Account to the items or things listed under the “*Special Funds*” itself, pending such time that the National Assembly determines a new formula of allocation as provided for under Section 162(2) of the Constitution. It may be added that having declared as unconstitutional, the allocation to the “*Special funds*” in Cap. 16 as amended, the President has a duty at least to see to the judicious use of the 7.5 per cent allocation to “*Special Funds*,” which to me is what he has done. The Nigerian experience is not good when such funds usually described as “windfalls” are lodged in the so called “dedication account,” “escrow account,” “special account” or any account you care to name at all! Such monies just disappear in the end! That may help to explain why the Plaintiffs are calling for immediate distribution of same to them now.

As I said the President I believe has acted constitutionally. I find nothing wrong with the Order. It is to me a valid and proper Order. Plaintiffs’ claim (i) therefore automatically fails. It follows too that claim (ii) must also fail since there is no 7.5% of the Federation

Account left anywhere to be distributed to the Plaintiffs. The suit is clearly devoid of any merit. If the Plaintiffs require larger shares from the Federation Account, that can only be achieved by an Act of the National Assembly (see Section 162 of the Constitution). The Defendant clearly lacks power under the law to do what the Plaintiffs are asking it to do under relief (ii) above.

It is for these reasons that I agree with the judgment of my learned brother, Belgore, JSC., to dismiss Plaintiffs' claims which are hereby dismissed. I make no order as to costs.

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### **OGUNDARE JSC**

The only question calling for determination in this case is the extent to which the appropriate authority, be it the President of the Republic or the Governor of a State, can, under sub-section (2) of Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter is referred to as the Constitution) modify an existing law, as defined in sub-section (4)(b) in order to bring it into conformity with the provisions of the Constitution.

In Suit No. SC. 28/2001: Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. the plaintiff therein had sued the defendants praying for -

*“a determination of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999.”*

Some of the defendants in that case also counter-claimed. Specifically, the 10th defendant, the Attorney General of Delta State, counter-claimed, inter alia:

*“(f) A declaration that the under-listed economic policies and/or practices of the plaintiff are unconstitutional being in conflict with the 1999 Constitution. That is to say:*

*(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to Section 162(2) of the 1999 Constitution.*

*(ii) Non payment of the shares of the 10th defendant in respect of proceeds from capital gains taxation and stamp duties.*



(iii) *Funding of the judiciary as a first line charge on the Federation Account.*

(iv) *Servicing of external debts via first line charge on the Federation Account.*

(v) *Funding of Joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) Priority Projects as first line charge on the Federation Account.* B

(vi) *Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.”*

In its judgment, this Court granted plaintiff's claim and some of the defendants' counter-claims; the other counter-claims were either dismissed or struck out. See: Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542; (2002) FWLR (Pt. 102) 1. This Court specifically found that Section 1 (d) of the Revenue Allocation (Federation Account etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990 (as amended by the Allocation of Revenue (Federation Account Etc.) (Modification) Decree No. 106 of 1992 (hereinafter is referred to as Cap. 116) was inconsistent with the Constitution and was accordingly declared null and void. There are dicta in the judgments of their Lordships recognising the power of the President to issue a Modification Order to bring Cap. 116 into conformity with the provisions of the Constitution. I shall refer to some of these dicta later in this judgment. C D E

Following the judgment of this Court given on 5th April, 2002 in that case, the President, Chief Olusegun Obasanjo issued an order titled: Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002, S.I. 9 of 2002 dated 8th May, 2002 but to take effect from 29th May, 1999. The Order sought to modify Cap. 16 to bring it into conformity with the provisions of the Constitution. Paragraphs 2 and 3 of this Order are crucial to this case and I set them out hereunder: F G

“2. Section 1 of the principal Act is hereby modified by substituting therefor the following: - H

1. The amount standing to the credit of the Federation Account, less the sum equivalent to 13 per cent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge for distribution to the beneficiaries of the derivation

funds in accordance with the Constitution shall, be distributed among the Federal and State Government and the local government councils in each State of the Federation on the following basis, that is to say -

- B (a) the Federal Government 56.00 per cent;  
 (b) the State Governments 24.00 per cent;  
 (c) the Local Government Councils 20.00 per cent.
3. Section 2 of the principal Act is modified by substituting for subsections (1) and (2) thereof the following new subsections :-
- C 2 (1) The 56.00 per cent specified in Section 1(a) of this Act shall be allocated to the Federal Government and utilized as follows:-
- (a) Federal Government - 48.50 per cent;  
 (b) General Ecological Problems - 2.00 per cent;  
 (c) Federal Capital Territory - 1.00 per cent;
- D (d) Stabilisation Account - 1.50 per cent;  
 (e) Development of Natural Resources - 3.00 percent;
- (2) The 24.00 per cent standing to the credit of all the States in the Federation Account as specified in Section 1(b) of this Act shall be distributed among the States of the Federation using the factors specified in this Act.
- E

The States of the Federation were irked by the above provisions which in effect gave to the Federal Government the entire 7.5% of the Federation Account represented by the annulled Section 1(d) of Cap.16. They, through their respective Attorneys-General sued the Attorney-General of the Federation, as representing the Federal Government claiming as per paragraph 8 of their amended statement of claim -

F

G *“(i) A DECLARATION that paragraphs 2(1)(a) and (3) of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 are unconstitutional, null and void and of no effect whatsoever.*

H *“(ii) An ORDER directing the Defendant to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990.”)*

Pleadings were filed and exchanged; the Plaintiffs with leave of

Court, amended their statement of claim. The parties also filed and exchanged their respective briefs of argument. In the plaintiffs' brief, the only issue formulated for determination reads.

*"Whether S. 315 of the Constitution of the Federal Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account, etc.) (Modification) Order, 2002?"*

The Defendant, on the other hand, raised the following 2 issues in his brief, to wit:-

*"(i) whether paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President on the 8th day of May, 2002 are not constitutional.*

*(ii) whether paragraph 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President of the Federal Republic of Nigeria are not contrary to and in disobedience of the judgment of this Honourable Court in Suit SC/28/2001 between Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors. (2002) 4 S.C. (Pt. 1) 1; (2002) 6 NWLR (Pt. 764) 542 delivered on Friday 5th April, 2002."*

I think Defendant formulated Issue (ii) to meet the averment in paragraph 7(i) of the amended statement of claim which reads:

*"7. The Plaintiff shall at the trial contend as follows:*

*(i) Paragraph 2(1)(a) and (3) of the Order issued by the President is a violation of the judgment of this Court in the aforesaid Suit G No. SC/28/2001"*

and the submissions advanced in the Plaintiffs' brief in support of this averment.

In the course of the oral hearing of the action, O.C.J. Okocha, Esquire, learned Senior Advocate of Nigeria appearing for the Plaintiffs, to questions by the Court, readily conceded that claim (ii) was not maintainable. I think he is right to make this concession. If the President had no right to make the Order complained of as contended by the Plaintiffs he would not have power "to divide and

distribute” the 7.5% of the Federation Account involved in this dispute. And the Court, in any event, would have no jurisdiction to direct the President to so do. As claim (ii) is not maintainable, I hereby strike it out.

The dispute between the parties revolves around the validity or otherwise of paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 made by the President on 8th May, 2002 (hereinafter is referred to as the Order simpliciter). Mr. Okocha, learned Senior Advocate, for the Plaintiffs, both in his brief and oral arguments, observed that paragraph 2(1)(a) was a radical alteration of the existing formula of revenue allocation which was 48.5% to the Federal Government, 24% to the States and 20% to Local Governments. He submitted that by Section 313 of the Constitution the formula in Cap. 16 prevailed. Learned Senior Advocate opined that this case could be traced to the decision of this Court in *A. G. Federation v. A.G. Abia State & 35 Ors.* where this Court annulled a part of Decree 106 of 1992 whereby 7.5% of the Federation Account was allocated to certain Funds which this Court found to be unconstitutional. He observed that it was this 7.5% that the President, in the Order, allocated to the Federal Government to the exclusion of the other tiers of government. Learned Senior Advocate submitted that the President had no power to do so but only the National Assembly. He submitted that the President could not formulate a new revenue allocation formula. He pointed out that paragraph 3 of the Order allocated the said 7.5% to the same funds that this Court had held could not participate in the revenue allocation. Counsel submitted that paragraph 3 was not only unconstitutional but an affront on the judgment of this Court. He argued that if the National Assembly had enacted a law on the line of the Order, he would not question its validity. He argued that the Constitution had enshrined in it the doctrine of separation of powers and referred to Sections 4, 5 and 6 of the Constitution. Learned Senior Advocate submitted that the making of the Order by the President was a usurpation of the legislative power of the National Assembly and a violation of the doctrine of separation of powers. He further submitted that paragraphs 2 and 3 of the Order could only be enacted by the National Assembly and not the President. On Section 315 of the Constitution, learned Senior Advocate submitted that the section only

empowered the President to make textual alterations in an existing law and not fundamental changes as in paragraphs 2 and 3 of the Order. He urged the Court to find for Plaintiffs on claim (i).

Mr. Jacobs, for the Defendant, argued that the President made the Order by virtue of the powers conferred on him by Section 315 of the Constitution. He submitted that the only limitation placed on the power is that the modification must conform with the Constitution. Counsel observed that Section 1(d) of Cap.16 had been declared unconstitutional by this Court, hence the need for the Order to modify the existing law (Cap. 16) to bring it into conformity with the Constitution. He argued that paragraph 2 complied with Section 162 of the Constitution. Mr. Jacobs submitted that the extent of the power to modify in sub-section (2) of Section 315 was governed by subsection (4) and it was to add to, alter, omit or repeal the existing law. He submitted that *Adigun & Ors. v. A-G. Oyo State & Ors. (1987)* 1 NWLR (Pt.53) 678 was of no help to the Plaintiffs but supported the Defendant. He urged the Court to dismiss plaintiffs' claim (i).

Learned counsel both in their briefs and in oral submissions cited a number of decided cases. I shall refer to those I consider relevant in the course of this judgment. Before proceeding with a consideration of the issues raised and arguments advanced, I think this is an appropriate stage to set out sections of the Constitution that are relevant in deciding this case. These are:

*Section 4"(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.*

*(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.*

*(3) The power of the National Assembly to make laws for peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.*

*(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have*

power to make laws with respect to the following matters, that is to say -

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

B (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the C law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void.

(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of D judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

(9) Notwithstanding the foregoing provisions of this section, E the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect."

Section 162 (2) and (3):

F "(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue G generation, land mass, terrain as well as population density:

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from H any natural resources.

(2) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and state Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly."

Section 313. *“Pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among the States, between the States and local government councils and among the local government councils in the States, the system of revenue allocation in existence for the financial year beginning from 1st January, 1998 and ending on 31st December, 1998 shall, subject to the provisions of this Constitution and as from the date when this section comes into force, continue to apply:”* B

*Provided that where functions have been transferred under this Constitution from the Government of the Federation to the States and from the States to local government councils the appropriations in respect of such functions shall also be transferred to the States and the local government councils, as the case may require.”* C

The second proviso to the section is unnecessary for our present purpose. D

Section 315(1)-(4):

*“315. (1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be-* E

*(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered to make laws; and* F

*(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.*

*(2) The appropriate authority may at any time by Order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.* G

*(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say:-* H

*(a) any other existing law;*

*(b) a Law of a House of Assembly;*

*(c) an Act of the National Assembly, or*

*(d) any provision of this Constitution.”*

*(4) In this section, the following expressions have the meanings assigned to them, respectively-*

*(a) “appropriate authority” means-*

*(i) the President, in relation to the provisions of any law of the Federation,*

*(ii) the Governor of a State, in relation to the provisions of any existing law deemed to be a Law made by the House of Assembly of that State, or*

*(iii) any person appointed by any law to revise or rewrite the laws of the Federation or of a State;*

*(b) “existing law” means any law and includes any rule of law or any rule of law or any enactment and or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after; that date; and*

*(c) “modification” includes addition, alteration, omission or repeal.”*

That the President has constitutional powers to modify an existing law is not dispute. The stand of the Plaintiffs is that, that power only relates to textual changes in the law. Learned Senior Advocate has submitted in his brief-

*“It is humbly submitted that the intention of the framers of the Constitution, as stated in the clear and unambiguous language used in Section 315(2), is that the appropriate authority can make textual changes, that is changes to the text, the wording used in the law. This clearly indicates that what the appropriate authority can do is limited, in nature and scope, to making changes to correct verbal or clerical inconsistencies, changing names or titles or designations so as to substitute what was contained in the old existing law with what is appropriate to make it conform with present realities. Examples abound, and may include names of new States and Local Government Areas and new capitals or headquarters for them, new designations like Chief Judge for Chief Justice, Governor for Military Governor, Commissioner for Minister, Executive Council, Act for Decree, Law for Edict; all for the sole purpose of bringing the existing law into conformity with the Constitution, etc, etc. Accordingly, a power to make textual changes cannot be extended to the making of amendments*



*alterations, changes or modifications to the substance of existing law or the polity or activity regulated by such law. This is more so because textual changes to existing law necessarily assume that the law remains in full force and effect with regard to all its substantive provisions, not that the law of any of its substantive provisions will be varied or abrogated.*

*See 1. Attorney-General of Ogun State v. Attorney-General of the Federation, etc. (1982) 3 NCLR 166.*

*2. Prince Yahaya Adigun & 2 Ors. v. Attorney-General of Oyo State & 18 Ors. (1987) 1 NWLR (Pt.53) 678. “*

With respect to learned leading counsel for the Plaintiffs, I am unable to put such a narrow construction on the power to modify in view of the definition of the word “modification” in sub-section 4(c).

Section 315(2) enjoins the President to effect such modifications in the text of an existing law as he may consider necessary or expedient to bring the law into conformity with the provisions of the Constitution. The word “text” is not defined in the Constitution but in its ordinary dictionary meaning the word means -

the original words and sentences of an author or document; the main body of a book or other piece of writing as distinct from appendices, illustrations etc the wording of anything written or printed; the very words, phrases and sentences as written.

And the word “*modification*” is defined in the Constitution to include “*addition, alteration, omission or repeal.*” Thus, in exercising his power under Section 315(2), the President may add to, alter, make omissions in or completely repeal any provision of an existing law in so far as it is necessary or expedient to bring such existing law into conformity with the provisions of the Constitution. The power given to an appropriate authority (such as the President is) by sub-section (2) of Section 315 cannot in my respectful view, mean just dotting the “i’s” and crossing the “t’s” in an existing law. It goes further than that. It is precisely that the substance of an existing law, or part of it, is not in conformity with the Constitution that the appropriate authority is empowered to modify it either by way of “addition, alteration, omission or repeal” to bring the law into conformity with the Constitution. Hence the limit to the power given in subsection (2) of Section 315 is conformity with the provisions of the Constitution.’

I have support for my view of Section 315 in the decision of

this Court in *Attorney-General of Ogun State & Ors. v. Attorney-General of the Federation & Ors.* (1982) 3 NCLR 166; (1982) 1-2 S.C. 13 where the President issued an order - the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order, 1981 in purported exercise of the powers conferred on him under  
 B Section 274 (2) of the 1979 Constitution (now Section 315(2) of the 1999 Constitution), as the appropriate authority modifying certain provisions of the Public Order Act, 1979, an existing law by virtue of Section 274 (now Section 315) of that Constitution. The Order, which  
 C came into force on 10th February, 1981 modified the provisions of Section 1 of the Act by -

- (a) substituting "Commissioner of Police" for "Military Administrator",
- (b) substituting a new Sub-section (5) for the existing subsection,  
 D tion, and
- (c) deleting the whole of subsection (6).

Section 4(3) was also modified by the deletion of the words "after consultation with the Military Administrator" and the substitution therefore of the words-  
 E *"with the concurrence of the Governor of the State"*

In Section 6(2) the *"Attorney-General of the Federation"* was substituted for the *"Attorney-General of the State."* Finally, new sections which conferred powers on the Minister charged with the responsibility for police affairs were substituted for Sections 10 and 11.  
 F Section 12, the definition section, was also consequentially amended. Being dissatisfied with these modifications made in the Order, the Governors of Ogun, Bendel and Borno States in three separate actions, which were consolidated, challenged, as in the action on hand,  
 G the power and authority of the President to make the Adaptation Order. The Order was attacked as being unconstitutional and *ultra vires* the President; unlawful exercise of legislative power which did not (and still does not) reside in the President but in the National Assembly; and as repugnant to and inconsistent with the Constitution - issues that are similar to those raised by the Plaintiffs in the  
 H present action. This Court held among other things, that by virtue of subsections (2) and (4)(a)(i) of Section 274 of the 1979 Constitution (now Section 315(2) and (4)(a)(i) of the 1999 Constitution), the President was the only competent authority to adopt the Public Or-

der Act so as to bring the law into conformity with the Constitution. Eso, JSC., at pages 199-200 of the first report, had this to say:

*“Having held that the Public Order Act is an existing law and also that it is a Federal legislation, the next issue to examine is who has power under the Constitution to adapt it. By virtue of Section 274(4)(a)(i) of the Constitution, the President is the appropriate authority in relation to the provisions of any law of the Federation for the purpose of adaptation of the laws. He has power under Section 274(2) of the Constitution to make such changes in the text of any existing law as he considers necessary or expedient to bring the law into conformity with the provisions of the Constitution...”*

*In making these changes in the text of the Act, the President could modify the Act for the purpose of bringing it into conformity with the provisions of the Constitution and ‘modification’ has been defined under Section 274(4)(c) to include addition, alteration, omission or repeal.”*

In *Adigun v. Gov. of Oyo State* (supra) Obaseki, JSC., at pages 705-706 said:

*“Modification has been defined in Section 274(4)(c) of the Constitution as including addition, alteration, omission or repeal. In other words, in order to bring an existing law into conformity with the Constitution, the modifications envisaged include addition, alteration, omission or repeal.”*

*In Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (supra), I observed at page 110 of the 2nd report:*

*“Now, sub-section (2) of Section 315 of the Constitution provides for modification of an existing law to bring it into conformity with the Constitution. The sub-section reads:*

*(2) The appropriate authority may at any time by Order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.”*

*The word ‘modification’ is defined in sub-section (4) of Section 315 as including -*

*‘addition, alteration, omission or repeal.’*

*See Att. Gen.. Ogun State v. Att. Gen. of the Federation (1982) 1-2 S.C. 13. And the appropriate authority in respect of Cap.16, a*

*law of the Federation, is the President. Thus, the President has constitutional power, by Order, to modify Cap.16 either by way of addition, alteration, omission or repeal, to bring it into conformity with the Constitution.”*

Uwais, CJN., at p.186 also observed

B *“As has been seen earlier all the counter-claims are based on the premise that the provisions as to 13% of the revenue from natural resources should, on principle of derivation under Section 162 (2), apply to the current system of allocation of revenue. This is a misconception and cannot be correct; because the National Assembly is yet to enact an Act that will take into account the provisions of subsection (2) of Section 162 including the proviso thereto. In my view the provisions cannot apply to the Act, as it now stands, until it is modified by the President of the Federal Republic of Nigeria in accordance with the provisions of Section 315 (2) and (4) of the Constitution. The President has not made any ‘modification’ to the Act in question to bring it in conformity with the Constitution. Therefore, all such claims in the counter-claims are misconceived and must fail and I hereby deem them all as failed.”*

E Onu, JSC., too commented on the power of the President under Section 315 of the Constitution. At p. 277 of the 2nd report the learned Justice of the Supreme Court opined:

F *“Sub-section 2 of the Section 315 of the Constitution provides for modification of an existing law to bring it into conformity with the provisions of the 1999 Constitution when it enacted as follows:*

G *‘(2) The appropriate authority may at any time by Order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.’*

*The word modification is defined in sub-section (4) of Section 315 as including:*

*‘addition, alteration, omission or repeal.’*

H *The appropriate authority in respect of Cap.16 has been stipulated to be the President. Hence, by the self same Constitution the President is empowered to add to, alter, omit or repeal to bring it into conformity with the Constitution.”*

My observation above has been described by the Plaintiffs as an obiter dictum. It is argued in the Plaintiffs’ brief thus:

*“It is humbly submitted, with the greatest respect to the Learned Justices of the Supreme Court that the aforesaid statement in the Leading Judgment can rightly be regarded as obiter dictum, a statement made by the Learned Justice Ogundare, JSC., in passing. The relief claimed by the Federal Government of Nigeria in the suit in question was for a determination of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating revenue accruing to the Federation Account directly from any natural resources derived from that Statue (sic) pursuant to Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999. The President did not claim any reliefs as to whether he could modify the Allocation of Revenue (Federation Account, Etc.) Act, or who was the appropriate authority to make modifications to the Act, and neither did any of the Defendants in the said suit counter-claim for any such reliefs.”*

With profound respect to learned counsel for the Plaintiffs, I think there is a misconception of the issues in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. Not only was this Court concerned with the plaintiffs’ claim in that case but there were also counterclaims of some defendants necessitating an examination of provisions of the Constitution such as Sections 313 and 315. Far from the dictum in question being obiter, it was one of the rationes decidendi for refusing the counter-claim of the defendants to 13% derivative allocation. I say no more on it.

It has been argued that the Modification Order is usurpation by the President of the legislative powers of the National Assembly in that the Constitution provides for separation of powers whereby legislative power is vested in the National Assembly. I agree that the Constitution in Sections 4, 5 and 6 has enshrined in it the doctrine of separation of powers. But it is the same Constitution that enacts its Section 315, a section later than Section 4. No doubt, the framers of the Constitution, in their wisdom, must have included this section to avoid lacuna in governance. The section is one of the transitional provisions of the Constitution although the duration of the transition, unlike in the 1960 and 1963 Constitutions, is not stated. If there is an infraction of the doctrine of separation of powers, it is one authorised by the Constitution itself. And the Constitution prevails over a strict adherence to any doctrine. Section 315 is not the only doctrinal ab-

erration in the Constitution. Another aberration can be found in some provisions of the Constitution that derogate from the principles of federalism upon which the Republic is built. I think it is the provisions of the Constitution that the courts give effect to and not to strict adherence to such principles like separation of powers except where  
 B these principles assist in the construction of particular provisions of the Constitution.

Having held that the President has power to make the Modification Orders, the only question that arises is: is there any infraction of the Constitution in the Order? The Plaintiffs have not pointed to  
 C any provision of the Order that is inconsistent with the Constitution. Their grouse is that the provisions of the Order ought to have been enacted by the National Assembly and if so enacted, they would not complain. From submissions of learned counsel for the Plaintiffs and  
 D their claim (ii), Plaintiffs were unhappy that the President allocated to the Federal Government the whole of the 7.5% involved in the annulled Section 1(d) of Cap.16. Had the President in the Modification Order shared this percentage among the three tiers of government mentioned in Section 162(3) of the Constitution as beneficiaries of  
 E the Federation Account, the Plaintiffs would not have instituted this action.

Section 1(d) of Cap. 16 was success fully challenged in Attorney-General of the federation v. Attorney-General of Abia State &  
 F 35 Ors. (supra) on the ground that under sub-section (3) of Section 162 there could be no direct allocation to the beneficiaries listed in Section 1(d) of Cap. 16. That sub-section only permits of direct allocation to Federal and State Governments and local government councils. But as the subsection permits of the distribution among the three  
 G tiers of government “on such terms and in such manner as may be prescribed by the National Assembly”, it is my considered view that the national Assembly has the power to prescribe that a part of the allocation to a tier of government be disbursed in a particular way. This appears to be what the Modification Order has done in this case  
 H in respect of the allocation to the Federal Government. This, in my respectful view, is within the contemplation of Section 162(3) of the Constitution.

I have myself read through the Modification Order and having regard to the provisions of Section 162(3), I find no infraction of the

Constitution in it. I must, therefore, hold that the order is valid. It is interesting to note that paragraph 3 of the Order which prescribes the manner the 56% allocated to the Federal Government is to be applied is similar to Section 2(2) of Cap. 16 in its original form which came for scrutiny of this Court in *Attorney-General of Ogun State & Ors. v. Attorney-General of the Federation* (supra) but was not tampered with. It is generally interesting to observe that the items covered by the annulled Section 1(d) of Cap. 16 are all matters in the sphere of the Federal Government.

It is also argued for the Plaintiffs that the Modification Order is “a brazen affront and wilful disobedience and disrespect of the Supreme Court’s judgment in Suit No. SC/28/2001 *Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors.*” With respect, I do not share this criticism. Nowhere in the judgments of their Lordships in that case was it stated that the percentage of the Federation Account covered by the annulled Section 1(d) of Cap. 16 (as amended) was not to be left floating or un-allocated or allocated in a particular way - which would have been ultra vires the Court so to decide. Rather, this Court recognised in that case the power of the President under the Constitution to modify Cap. 16 to bring it into conformity with the provisions of the Constitution. And this was precisely what the President has done in making the Modification Order.

For all I have said above and for the reasons contained in the judgment of my learned brother, Belgore, JSC., a preview of which I have ere now, I find no merit in this action. I, too, dismiss Plaintiffs’ claim (i). I abide by the order for costs made by my learned brother.

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### **ONU JSC**

I have had the privilege of reading before now the judgment of my learned brother, Belgore, JSC., just delivered. I am in entire agreement with him that the case is devoid of merit and ought therefore to fail.

I will make a few comments of mine in expatiation thereto as follows:

In the case which I consider to be the forerunner of this Suit namely, Suit No. SC.28/2001 - *Attorney - General of the Federation v. Attorney - General of Abia State and 35 Others* (now reported as

Attorney-General of the Federation v. Attorney-General of Abia State (No. 2)(2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR 542 (S.C.) several of the States now suing as Plaintiffs, counterclaimed against the Attorney-General of the Federation and in a considered judgment delivered by this Court on the 5th April, 2002, it was held, inter alia, as follows:

“(i) *Funding of joint contracts and the Nigerian National Petroleum Corporation priority projects cannot, by any stretch of construction, come within Section 163 (3) of the Constitution which provides for the distribution of the Federation Account among the three tiers of Government, that is Federation, States and Local Governments. Therefore all those charges on the Federation Account are inconsistent with the Constitution and are therefore, invalid. Per Uwais, CJN., at page 289, paragraphs B-D.*

“(ii) *It has transpired also that other deductions are being made from the Federation Account in respect of monies paid to the National Judicial Council for funding the Federal and State Judiciaries; for servicing external debts and for funding Joint Venture Contracts and Nigerian National Petroleum Priority Projects. All these deductions are carried out as first line charge on the Federation Account. All the deductions are not provided for by the 1999 Constitution, notwithstanding the provisions of Section 162 subsection (9) in the case of the National Judicial Council, so that even if any enactment has provided for them, like the Appropriation Act by the National Assembly, such enactment is inconsistent with the Constitution and is therefore invalid to the extent of the inconsistency. Sections 3 and 4 of the General Loans and Stock Act, Cap. 161, which the Plaintiff relies upon to support deductions from the Federation Account for servicing foreign debts, falls under this category. Section 314 of the Constitution which the Plaintiff relies upon does not, in my opinion, provide justification for making the deduction from the Federation Account.”*

The Section provides:

“314. *Any debt of the Federation or of a State which immediately before the date when this Section comes into force was charged on the revenue and assets of the Federation or on the revenue and assets of a State shall, as from the date when this Section comes into force, continue to be so charged.*”



(iii) The appropriate authority in respect of the Allocation at of Revenue (Federation Account etc) Act, Cap. 16, Laws of the Federation, 1990 (as amended) is the President. Thus, the President has the Constitutional power, by order, to modify Cap. 16 either by way of addition, alteration, omission or repeal to bring it into conformity with the Constitution. Per Ogundare, JSC. at page 669 paragraphs B C-D.

(iv) The correct position, in my respectful view, is that Cap. 16, Laws of the Federation, 1990 (as amended by Decree 106 of 1992) provides the formula to be used for the purpose of revenue allocation pending a time the National Assembly comes up with a formula as directed by the Constitution. Cap.16, is however, only applicable in so far as it is not inconsistent with the provisions of the 1999 Constitution.” Per Ogundare, JSC., at page 660, paragraphs A-D. C

The above dicta, particularly dictum (iii) underlined by me, D appear to be what led the President of the Federation, Chief Olusegun Obasanjo, to promulgate Statutory Instrument 9 of 2002 titled “Allocation of Revenue (Federation Account etc) (Modification) Order 2002.” The Order, in turn has led to the Suit herein wherefore in their Amended Statement of Claim the Plaintiff averred thus: E

*“1. The Allocation of Revenue (Federation Account Etc.,) Act in this Order (referred to as ‘the principal Act’) as amended is hereby further modified as provided in this Order.*

*2. Section 1 of the principal Act is hereby modified by substituting therefore the following:* F

*(1) The amount standing to the credit of the Federation Account, less the sum equivalent to percent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge for distribution to the beneficiaries of the derivation funds in accordance with the Constitution shall, be distributed among the Federal and State Governments and the Local Government Councils in each State of the Federation on the following basis, that is to say:* G

*(a) the Federal Government 56%* H

*(b) the State Government 24%*

*(c) the Local Government Councils 20%*

*3. Section 2 of the Principal Act is modified by substituting for subsections (1) and (2) thereof the following new subsections:*

*2(1) the 56% specified in Section 1 (a) of this Act shall be allocated to the Federal Government and utilized as follows:-*

*(a) Federal Government 48.50%*

*(b) General Ecological Problems 2%*

*(c) Federal Capital Territory 1%*

B *(d) Stabilization Account 1.50%*

*(c) Development of Natural Resources 3%*

C *(2) The 24% standing to the credit of all the States of the Federation as specified in Section 1 (b) of the Act shall be distributed among the States of the Federation using the factors specified in this Act.*

4. Section 3 of the principal Act is modified by substituting therefore the following new section:

D *(3) Subject to the provisions of this Act, the amount standing to the credit of Local Government Councils in the Federation Account shall be distributed among the States of the Federation for the benefit of their Local Government Councils using the same factors specified in this Act.*

E *5. In this Order, unless the context otherwise requires: "Constitution" means the Constitution of the Federal Republic of Nigeria, 1999; "Federation Account" means the Federation Account established under Section 162 (1) of the Constitution.*

F *6. This Order shall be cited as the Allocation of Revenue (Federation Account, Etc.) (Modification) Order 2002 and shall be deemed to have come into force on 29th May, 1999.*

*Made at Abuja this 8th day of May, 2002."*

G Thus, at the commencement of this action wherein their penultimate paragraphs 7 and 8 of the Statement of Claim, the Plaintiffs claimed against the Defendant jointly and severally as follows:-

*"7. The Plaintiffs shall at the trial contend as follows:*

H *(i) Paragraph 2 (1)(a) and (3) of the Order issued by the President is a violation of the judgment of this Court in the aforesaid Suit No. SC. 28/2001.*

*(ii) The President has no power, constitutional or statutory to issue paragraphs 2 (1)(a) and 3 of the aforesaid Order in circumstances calculated to enrich the Defendant at the expense of the Plaintiffs.*

8. *Whereof the Plaintiffs have been damnified and claim, jointly and severally, against the Defendant as follow:*

(iii) *A DECLARATION that paragraphs 2 (1)(a) and (3) the Allocation Revenue (Federation Account, Etc.) (Modification) Order 2002 are unconstitutional, null and void and of no effect whatsoever.* B

(iv) *An ORDER directing the Defendant to calculate 75% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account, Etc.) Act. Cap. 16, Laws of the Federation of Nigeria, 1990.* C

The Defendant in paragraph 5 of his Statement of Defence dated 9th September, 2002 joined issue with the Plaintiffs when he pleaded thus: D

*“(i) The President has a Constitutional and/or statutory power to issue paragraph 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account Etc.) Modification Order, 2002.*

*(ii) Paragraph 1 (a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order 2002 issued by the President does not violate the decision contained in the judgment of this Honourable Court in Attorney-General, Abia State and 35 Ors. v. Attorney – General, Federation (No. 2)” (supra).* E

From the respective pleadings and Briefs of Argument filed by the parties to the Suit in hand, the Plaintiffs’ sole issue submitted as arising for determination at the Plaintiffs’ instance which is co-extensive and overlaps the Defendant’s, states as follows: F

Whether Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account Etc.) Act Cap. 16, Laws of the Federation of Nigeria, 1990 as, amended by the Allocation of Revenue (Federation Account, Etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order 2002. G H

## ARGUMENT

## SEPARATION OF POWERS

In the argument of this Suit, I wish to adopt the Plaintiffs’ lone

issue wherein their counsel, O.C.J. Okocha, Esq. (SAN) submitted, that the first premise upon which the Plaintiffs' case is predicated is that the said Order made by the President is a gross violation of the doctrine of separation of powers enshrined in the Constitution of Nigeria, 1999. That also, in Nigeria, just like in any Constitutional  
B democracy, the powers of government are by the Constitution categorized into three i.e. Legislative, Executive and Judiciary, each of which is vested in a separate and distinct department/arm of government. The Legislative powers of the Federal Government of the Federal Republic of Nigeria, learned Senior Advocate, further contended,  
C are vested in the National Assembly in which the executive powers are vested in the President, while judicial powers are vested in the Courts. Reliance was placed generally on Sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999. Legislative  
D power, it is argued, has been defined as the law-making powers of a legislative body, whose functions includes the power to make, alter, amend and repeal laws. Under the Constitution, and in accordance with the doctrine of separation of powers, he maintained, the legislature's power to make laws is exclusively vested in it and cannot  
E be delegated to any other person or authority, adding that the legislature may however delegate rule making and regulatory powers to other departments of government or particular operatives of government in the executive or judicial branches/arms. The following  
F authorities were cited in support of the above proposition, to wit:

1. Black's Law Dictionary (6th Edition), page 900
2. Attorney-General of Bendel State v. Attorney - General of the Federation & 22 Ors. (1982) 3 NCLR 1,69, & 144-145.
3. Attorney-General of the Federation v. Guardian News Papers Limited & 5 Ors. (1999) 5 S.C. (Pt. III) 59; (1999) 9 NWLR (Pt. 618) 187, 236 (B-D)
4. Festus Keyamo v. House of Assembly, Lagos State & 40 Ors. (2000) 12 NWLR (Pt. 680) 196, 218 (A-B)

Learned Senior Advocate in further argument submitted that  
H a proper reading and understanding of Section 162 (3) of the 1999 Constitution indicates that only the National Assembly is given power under the Constitution to make any law on the terms and manner of the allocation and distribution of any amount standing to the credit of the Federation Account among the Federal Government, State

Governments and Local Government councils in the States. All that the president is entitled to do with regard to the Federation Account, it is further argued, is as provided in Section 162(2) of the Constitution, and that is to table before the National Assembly proposals for revenue allocation from the Federation Account, and that is after he has received advice on the matter from the Revenue Mobilization Allocation and Fiscal Commission. Section 313 of the Constitution, he argued underscores that it is for the National Assembly and not the President, to make the requisite law for revenue allocation, and goes on to say that pending the enactment of such law, the system of revenue allocation in existence for the financial year from 1st January, 1998 to 31st December, 1998 shall continue to apply. Our earlier decision in Attorney-General of Abia State & 35 Ors. (supra) at pages 755-757 (G-H) was called in aid of the proposition, adding that a similar provision as in Section 162 (3) of the 1999 Constitution was contained in Section 149 (2) of the Constitution of the Federal Republic of 1997.

It was in pursuance thereof, it is pointed out, that the National Assembly made the Allocation of Revenue (Federation Account, Etc.) Act Cap. 16, Laws of the Federation of Nigeria, 1999.

In the light of the foregoing, learned Senior Advocate contended, the President of the Federal Republic of Nigeria had with the greatest respect, acted unconstitutionally and contrary to the principles enunciated in the doctrine of separation of powers when he issued the Allocation of Revenue (Federation Account Etc.) (Modification) Order 2002, in so far as the said Order purported to alter and amend the hitherto existing law on revenue allocation and distribution in Nigeria i.e. The Allocation of Revenue (Federation Account ETC) Act, Cap. 16 Laws of the Federation of Nigeria, as amended, by making new stipulations in that regard. That, he argued, was clearly an exercise of law-making/legislative power, a power that was constitutionally vested in the National Assembly, and not in the President. In any serious democracy, he urged, this is an excess which must be curbed, especially by the Courts, so as to discourage any tendency to tyranny and dictatorship.

#### SECTION 315 AND ADAPTATION OF LAWS

The second premise upon which Plaintiffs' case is predicated, argued learned Senior Advocate, is that the President of the Federal

Republic of Nigeria acted erroneously and misunderstood and misapplied the provisions of Section 315 of the Constitution, when he purported to exercise the powers reserved for him therein to make adaptation of existing laws, not for the purpose of bringing the Allocation of Revenue (Federation Account Etc.) Act, as amended into conformity with the Constitution, but for effecting a radical alteration and amendment to the said law, as declared valid by the Supreme Court. It is clear from the text of Allocation of Revenue (Federation Account, Etc.) (Modification) Order 2002, learned Senior Advocate further argued, that the President, in issuing the said Order claimed to have acted under the provisions of Section 315 (1) (a), (2) and 4 (a) (i) of the Constitution. After setting out for clarity and ease of appreciation the Section as well as the definition of "Modification" which includes addition, alteration, omission or repeal, learned Senior Advocate submitted that the provisions of the Constitution as stipulated in Section 1 thereof are supreme while all persons and institution are obliged to obey same. Proceeding further, it is also submitted that in the interpretation of the provisions of the Constitution, such as the aforesaid subsections of Section 315, the usual canons must be applied, principal among which are the following five (5) of the so called "twelve (12) Commandments" laid down by Obaseki, JSC., in Attorney General of Bendel State v. Attorney-General of the Federation & 22 Ors. (1982) 3 NCLR 1, 77- 78, namely that:

- (1) Effect must be given to every word;
- (2) A construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context;
- (3) A Constitutional power cannot be used by way of condition to attain unconstitutional result;
- (4) The language of the Constitution where clear and unambiguous must be given its plain evident meaning; and
- (5) The Constitution of the Federal Republic of Nigeria is an organic scheme of Government to be dealt with as an entirety, a particular provision cannot be dis severed from the rest of the constitution.

The following cases were cited in support thereof, viz:

"1. Alhaji Umaru Abba Tukur v. Government of Gongola State (1989) 9 S.C. 1 (1989) 4 NWLR (Pt. 117) 517 (C).

2. Attorney-General of Abia State & 35 Ors. v. Attorney - General of the Federation & Ors. (supra).

3. Attorney-General of Ondo State v. Attorney-General of the Federation & 35 Ors. (2002) 6 SC. (Pt. I) 1; (2002) 9 NWLR (Part 772) 222, 418 - 419 (G-A) 462 (G-G), 340 (B-D) and 467 (A-C).

After emphasising that it would appear that the issuance of the Allocation of Revenue (Federation Account Etc.) (Modification) Order 2002 actually originated from the judgment of this Court in Attorney-General of the Federation v. Attorney-General of Abia State and 35 Ors. (supra) whereby this Court nullified the allocation of 7.5% of the Federation Account made to "Special Funds" *vide* the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, Etc.) (Amendment) Act, 1992 (Decree No. 106 of 1992). We were thereafter referred by the learned Senior Advocate to the dictum of my learned brother, Ogundare, JSC., to the word "modification" as defined in Section 315 (4) herein before set out by me when he proceeded to say *"...And the appropriate authority in respect of Cap. 16, a law of the Federation, is the President. Thus, the President has constitutional power, by order, to modify Cap. 16, either by way of addition, alteration, omission or repeal, to bring it into conformity with the Constitution. This has not been done. At least, our attention has not been drawn to any order made by the President modifying Cap. 16 to bring it into conformity with the 1999 Constitution."*

Learned Senior Advocate next submitted that with the greatest respect to the learned Justices of this Court, that the above quoted statement in the Leading Judgment can rightly be regarded as obiter dictum. The relief claimed by the Federal Government of Nigeria in the Suit in question, the learned Senior Advocate emphasised, was for determination of the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating revenue accruing to the Federation Account directly from any natural resource derived from that State pursuant to Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999. The President, he asserted in further argument did not claim any reliefs as to whether he could modify the Allocation of Revenue (Federation Account Etc) Act or who was the appropriate authority to make modifications to

the Act, and neither did any of the Defendants in the said suit counter-claim for any such reliefs. Reliance is placed on the case of *General Sanni Abacha & 3 Ors. v. Chief Gani Fawehinmi* (2000) 4 S.C. (Pt. II) 1; (2000) 6 NWLR (Pt. 660) 228,322 - 333 (A-A), 351 (C-D). Besides, the learned Senior Advocate pointed out that, as it would appear, the President saw the said statement in the said judgment as an unsolicited open invitation or order, which could not have been the intention of the Supreme Court to tinker with the Allocation of Revenue (Federation Account Etc) Cap. 16, Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account Etc) (Amendment) Act, 1992 (Decree No. 106 1992), he hastily, ill-advisedly and unguardedly accepted the same. Whereupon the President issued the Allocation of Revenue (Federation Account Etc) (Modification) Order 2002, albeit erroneously, he added.

Further, learned Senior Advocate submitted, Section 315 and the relevant subsections thereof, must be read in the context of the entire Constitution, which clearly reserves law-making power for the legislature. That while Section 315(1) and (3) extend to the interpretation and application of existing law, and power of courts to give effect to or nullify the same, the learned Senior Advocate contends, Section 315 (2) extends to the power of the President of the Federal Republic, the Governor of a State or any person/persons revising or reviewing laws to make only textual changes or alterations to such existing law.

The power to adapt laws, learned Senior Advocate maintained, has always been inserted in new Constitutions of emerging nation - States or nation - States transiting from one system or form of government to another, example of colonial to independent, parliamentary to republican, military to civilian etc, etc.

Learned Senior Advocate therefore submitted that the intention of the framers of the Constitution, as stated in the clear and unambiguous language used in Section 315 (2), is that the appropriate authority can make textual changes, that is changes to the text, the wording used in the law. This, it is pointed out, clearly indicates that what the appropriate authority can do is limited in nature and scope, to making changes to correct verbal or clerical inconsistencies, changing names; titles or designation so as to substitute what was



contained in the old existing law with what is appropriate to make it conform with present realities. Examples abound, it is argued, and may include names of new States and Local Government Areas and new capitals or headquarters for them, new designations like Chief Judge for Chief Justices, Governor for Military Governor, Commissioners for Minister, Executive Council for Governor-in-Council, Governor for Executive Council, Act for Decree, Law for Edict; all for the sole purpose of bringing the existing law into conformity with the Constitution etc, etc. Accordingly, learned Senior Advocate urged, a power to make textual changes, cannot be extended to the making of amendments, alterations, changes or modifications to the activity regulated by such law. This is the change to existing law necessary to assume that the law remains in full substantive provisions, not that the law or any of its substantive provisions will be varied or abrogated.

The cases of Attorney - General of Ogun State v. Attorney-General of the Federation (supra) Prince Yahaya Adigun & 2 Ors. v. Attorney-General of Oyo State & 18 Ors. (1987) 1 NWLR (Pt. 53) 678 were cited to buttress the contention. In the light of the foregoing, the learned Senior Advocate submitted that what the President did by the Allocation of Revenue (Federation Account, Etc) (Modification) Order 2002 went beyond making textual changes to the Allocation of Revenue (Federation Account, Etc) Act Cap. 16, 1990, as amended by the Allocation of Revenue (Federation Account, Etc) Act, 1992 (Decree No. 106 of 1992) which was clearly in violation of the Constitution and Laws of Nigeria and should be so declared.

The learned Senior Advocate after setting out the form in which the Allocation of Revenue (Federation Account, Etc) (Modification) Order 2002 was promulgated and the allocations to special funds with some other first line charges on the Federation Account, upon us to answer the sole question for determination in the Negative, to declare the Allocation of Revenue (Federation Account Etc.) (Modification) Order 2002 as indisputably unconstitutional and to hold that Section 315 of the Constitution does not authorise the President to amend the Allocation of Revenue (Federation Account, Etc) Act Cap. 16 Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, Etc.) (Amendment) Act, 1992 in the manner and to the extent contained in paragraphs 2

(1)(A) and 3 of the Allocation of Revenue (Federation Account, Etc) (Modification) Order 2002.

Elaborating further their argument, the Plaintiffs in their penultimate paragraph 8 of the Statement of Claim, pleaded thus:

B *“1. A DECLARATION that paragraphs 2 (1)(a) and 3 of the Allocation of Revenue (Federation Account Etc) (Modification) Order 2002 are unconstitutional null and void and of no effect whatsoever; and*

C *2. AN ORDER directing the Defendant to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation, as approved in the Allocation of Revenue (Federation Account, Etc) Act, Cap. 16 Laws of the Federation of Nigeria, 1990.”*

D I wish to commence the consideration of the arguments by saying firstly, that the area of conflict between the Plaintiffs and the Defendant in their respective paragraph 7 of the Statement of Claim and paragraph 5 of the Statement of Defence, that the dispute between them is a question of law and not of fact. Indeed, the powers  
E conferred by the Sections mentioned therein are constitutional; hence I agree with the Defendant’s first submission to the effect that paragraphs 2 (1)(a) and 3 of the Allocation of Revenue (Federation Account, Etc) (Modification) Order 2002 made by the President of the  
F Federal Republic of Nigeria on the 8th day of May, 2002, is constitutional and correctly invoked. The Constitution unequivocally and incontrovertibly empowers the President to modify existing laws and it is pursuant to the Constitution that the President modified the Allocation of Revenue (Federation Account, Etc) Act Cap. 16 LFN 1999  
G as amended to make the modification. From the provisions of Section 162 (1) of the 1999 Constitution, a Special Account called “Federation Account” has been created and all revenues collected by the Federal Government with the few exceptions mentioned therein shall be paid into the account.

H By the provisions of Section 162(2) of the 1999 Constitution, the President is to table proposals for the revenue allocation before the National Assembly. Any amount standing to the credit of the Federation Account shall by Section 162(3) of the 1999 Constitution be distributed among the Federal and State Governments and the Local

Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly. Although the President had tabled before the National Assembly proposals for revenue allocation from the Federation Account, the National Assembly is yet to exercise its power under Section 162 of the 1999 Constitution to pass the Act to prescribe the formula for the allocation of revenue standing to the credit of the Federation Account. By virtue of Section 313 of the 1999 Constitution an antidote is provided by a formula to provide for the problem created for the revenue allocation among the three tiers of Government. Section 313 of the Constitution provides:

*“Pending any Act of the National Assembly for the provisions of a system of revenue allocation between the Federation and the States, among the States, between the States and Local Government Councils and among the Local Government Councils in the States the system of revenue allocation in existence for the financial year beginning from 1st January, 1998 and ending on 31st December, 1998 shall, subject to the provisions of this Constitution and as from the date when this Section comes into force, continue to apply.”* (Underlining above is mine for comments later)

The system of revenue allocation applicable during the financial year beginning 1st January, 1998 and ending on 31st December, 1998 was the Revenue Allocation (Federation Account Etc) Act Cap., 16 of the Laws of Federation of Nigeria 1990 as amended in 1992 by the Allocation of Revenue (Federation Account, Etc.) Amendment Act No. 106 of 1992. The words “subject to” underlined above in Section 313 of the Constitution implies that the Section is subservient to quite separate and independent provisions of the Constitution which govern application of existing law. Thus, Section 313 is subject to Section 315 of the Constitution. See *Obayuwana v. Governor* (1982) 12 S.C. 147 at 188 and *Onigbenen v. Balogun* (1975) 4 S.C. 85 at 97. Apart from Section 313 of the Constitution, the Revenue Allocation (Federation Account Etc.) Act Cap. 16 as amended qualifies as an existing law within the ambit of Section 315 (4) (b) of the Constitution under Section 315 (1) and (2) of the Constitution, existing law must be accepted with such modification as may bring it into conformity with the provisions of the Constitution. Under Section 315(1) and (2) of the Constitution, existing law must be ac-

cepted with such modification as may bring it into conformity with the provisions of the Constitution.

The appropriate authority in respect of the Allocation of Revenue (Federation Account, Etc) Act, Cap. 16 Laws of the Federation, 1990 (as amended) is the President. Thus, the President has the  
 B Constitutional power by Order, to modify Cap. 16 either by way of addition, alteration, omission or repeal to bring it into conformity with the Constitution. See Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors. (No.2) (supra) where Ogundare, JSC.,  
 C in his leading judgment at page 669, paragraphs C-D held inter alia, as follows:

*“The Word “Modification” is defined in subsection (4) of Section 315 as including:*

*“addition, alteration, omission or repeal.”,*

D *See Attorney-General, Ogun State v. Attorney-General of the Federation (1982) 3 NCLR 166; (1982) 1-2 SC. 13. And the appropriate authority in respect of Cap. 16, a law o/the Federation, Is the President. Thus, the President has constitutional powers, by way of addition, alteration, omission or repeal, to bring it into conformity*  
 E *with the 1999 Constitution. “*

Also, at page 773 (E-F) of the report, Wali, JSC., held, Inter alia, that *“Section 315 (2) of the 1999 Constitution gives the President of the Federal Republic of Nigeria as the appropriate authority,*  
 F *power to amend any existing law to conform with the provision of the Constitution. “I cannot agree more.*

Indeed, I see no reason to derogate from the power conferred on the President by the Constitution in the above two quotations which, in my opinion, are irrefutable, dogmatic and clear. I adopt  
 G them as sound interpretation as to what constitutes modification, which the 1999 Constitution upholds. See also Attorney-General of Osun State v. Attorney-General of the federation (supra).

In this Court’s decision in Attorney General, Federation v. Attorney-General, Abia State & 35 Ors. (No.2) (supra), certain deductions from the Federation Account were declared unconstitutional  
 H e.g. the 7.5% which could not be allocated under the existing law. The President, as earlier pointed out, in the explanatory note to the Statutory Instrument No. 9 of 2002, made pursuant to the order which stipulates the formula to be used in the distribution of revenue

standing to the credit of the Federation Account pending the prescription by an Act of the National Assembly of a new revenue formula e.g. Section 1 (d) of the Act on Special Fund was declared to be inconsistent with the provision of Section 168 (3) of the Constitution. The question is whether the President is constitutionally competent to issue or make the Order? My answer to the question is in the affirmative. Indeed, the President is under the provisions of Section 315 of the 1999 Constitution empowered to modify existing law to bring it in conformity with the provisions of the Constitution. The said Section 315 (ibid) provides as follows:

*“315 (1) Subject to the provision of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it conformity with the provisions of this Constitution and shall be deemed to be-*

*(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and*

*(b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.*

*(2) The appropriate authority may at any time by order make such modification in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.*

*(3) Nothing in this Constitution shall be construed as affecting the power of a Court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say -*

*(a) any other existing law;*

*(b) a law of the House of Assembly*

*(c) an Act of the National Assembly; or*

*(d) any provision of this Constitution*

*(4) In this Section, the following expressions have the meanings assigned to them, respectively-*

*(a) “appropriate authority” means-*

*(i) the President in relation to the provisions of any law of the Federation,*

*(ii) The Governor of a State, in relation to the provisions of*

*any existing law deemed to be a law made by the House of Assembly of that State; or*

*(iii) Any person appointed by any law to revise or re-write the laws of the federation or of a State.*

B *(b) “existing law” means any law includes any rule of law of say enactment or instrument whatsoever which is in force immediately before the date when this Section comes into force or which having been passed or made before that date comes into force after that date; and*

C *(c) “Modification” includes addition, alteration, omission or repeal.”*

I agree with Mr. Rotimi Jacobs, learned Counsel for the Defendant that the provision of Section 315 (ibid) quoted above, is in pari materia with Section 274 of the 1979 Constitution and that, that D Section came up for consideration or construction by this Court in the earlier case of Attorney-General, Ogun State and Ors. v. Attorney-General of the Federation (1 982) 3 NCLR 166. In that case, the President of Nigeria issued an order titled “The Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order E 1981 in the exercise of his power conferred on him under Section 274 (2) of the Constitution as the appropriate authority modifying certain provisions of the Public Order Act, 1979 an existing law.

The Order modified the provisions of Section 1 of the Public Order Act, 1979 by:

F *“(a) Substituting Commissioner of Police for Military Administrator*

*(b) Substituting a new subsection (5) for the existing subsection 5 of the existing sub-section, and*

G *(c) Deleting the whole of sub-section (6), Section 4(3) was also modified by the deletion of the words “after consultation with the Military Administrator” and the substitution therefore of the words - “with the concurrence of the Governor of the State.”*

H In Section 6 (2) the “Attorney-General of the Federation” was substituted for the Attorney-General of the State.

Finally, new sections which conferred special powers on the minister charged with the responsibility for Police affairs were substituted for Sections 10 and 11. Section 12 which is the definition Section, was also consequently amended.

Whereupon, three states of the Federation then challenged the authority of the President to make the Adaptation Order No. 5 of 1981. The Order was attacked as being inter alia unconstitutional, ultra vires, the President; and being an unlawful exercise of Legislative powers which does not reside in the President and as such repugnant and inconsistent with the Constitution. Although the President made an extensive modification to the Public Order Act, this Court to a very large extent, held that the modification order was constitutional and the modification correctly made. Fatayi-Williams, CJN., held at page 179 of Report thus:

*‘Again since the Act was enacted by the Federal Military Government, it took effect, not as a State law as contended by the learned Attorney-General of Ogun State but as a Federal Law and is therefore deemed to be an Act of the National Assembly. Being an Act of the National Assembly, the appropriate authority to make such modification or changes in its provisions is the President of the Federal Republic of Nigeria. Section 274(4)(c) of the 1979 Constitution refers.’*

The text which this Court prescribed for the constitutionality of the Modification or Adaptation Order as stated by Fatayi-Williams, CJN., at pages 179 and 181 of the Report was:

*“Do the Modification and changes in the provisions made by the President in the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order, 1981, (Section 1 No. 5 of 1981) bring that Act into conformity with the provision of the 1979 Constitution as required by Section 274(2) thereof?”*

At page 181 of the Report, His Lordship further enquired:

*“Has there been an infraction of the Constitution in the Adaptation Order.*

Thus, the two texts established in the Attorney-General. Ogun State case

*“1. Whether the Modification Order brings the Act modification into conformity with the provisions of the 1979 Constitution?”*

*2. Has there been an infraction of the Constitution in the Adaptation or Modification Order?”*

See the dictum of Udo Udoma, JSC., at pages 189 -190 (supra) much along the same line toed by Fatayi-Williams, CJN.

In the instant case where learned Senior Advocate, Mr. O.C.J.

Okocha, SAN, has visited the Order made by the President in Statutory Instrument No. 9 of 2002 with vituperative words such as its being in gross violation of the doctrine of separation of powers enshrined in the Constitution; that not only the doctrine of separation of powers has been flouted but that a power which vested in the National Assembly has been flagrantly usurped by the President and that in any serious democracy such as ours, excesses must not only be curbed but that such tyranny and dictatorship should be outrightly discouraged. The underlined words are mine for emphasis. I see no justification for the attack in that, applying the principles decided in Attorney - General Ogun State & Ors. v. Attorney - General of the Federation (supra) and lately in the Attorney-General. Federation v. Attorney-General Abia State & 35 Ors. (No. 2) (supra), the modifications and changes into the provisions of the Allocation of Revenue (Federation Account Etc) Act, Cap. 16 of the Laws of the Federation, 1990, as amended by Act No. 106, 1992, have not breached or violated the provisions of the 1999 Constitution.

Indeed, no infraction of the provisions of that Constitution, to my mind, has been proven and I make bold to say that it is democracy and full governmental processes as enshrined in Sections 4, 5 and 6 of the 1999 Constitution at work. The Order merely ensured that allocation of revenue from Federation Account is distributed among the three tiers (namely Federal, State and Local Governments) in consonance with provisions of Section 163(3) of the 1999 Constitution albeit as a stop-gap. Let it be three tiers of Government vide Section 162 of the Constitution, the President's act in invoking powers conferred on him pursuant to Section 315 (ibid) to do what he did, ought not to invoke a resort to litigation against him. It is in my view therefore surprising that the learned Senior Advocate said in his address, erroneously though, that:

(a) Section 315 only empowers the President to make only textual changes or alteration to correct verbal or clerical inconsistency, changing names or title or designation so as to substitute what was contained in the old existing law with the current Constitution.

(b) The opinion expressed by this Court in Section 315 of the Constitution in the case of Attorney-General, Federation v. Attorney-General, Abia State and 35 Ors. (No. 2) (supra) was a mere obiter.

There is nothing further from the truth in my view. The em-



powerment is the President's, pomp and plain. Besides, in the instant case, I can see in the Allocation of Revenue (Federation Account Etc) (Modification) Order 2002 no iota of usurpation of the powers of the legislature by the President. See *Ojukwu v. The Governor of Lagos State* (1985) 2 NWLR 806 at 822 - 823; *Paul Iyorpuu Unongo v. Aper Aku* (1983) 9 S.C. 126 and *Dr. Sofekun v. Chief Akinyemi & 3 Ors.* (1980) 5 - 7 S.C. 1 at 28 - 30. Nor, in my firm view, has the doctrine of separation of powers been violated thereby. See *Lakanmi & Anor. v. Attorney-General (West) and Ors.* (1971) 1 All NLR (Pt. 11) 201. My answer to the lone issue is in the affirmative.

For these and the fuller reasons contained in the leading judgment of my learned brother, Belgore, JSC., I too dismiss this Plaintiffs'/Applicants' Suit as lacking in merit and make similar consequential orders inclusive of costs as therein contained.

### IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Belgore, JSC. and I agree entirely that the plaintiffs' claims before this court are without substance and ought to be dismissed.

The background facts that led to the institution of this action are fully set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that in this action, all the thirty-six States of the Federal Republic of Nigeria, represented by their Attorneys-General as plaintiffs sued the defendant, the Federal Republic of Nigeria, represented by the Attorney-General of the Federation claiming as follows:-

*"(1) Declaration that the provisions of Sections 2(1) (a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 are unconstitutional, and void.*

*(2) An order directing the Defendant to calculate 7.5% of the Federation Account, divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990."*

The action was brought pursuant to the provisions of Section

232 of the Constitution of the Federal Republic of Nigeria, 1999 and the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria, 1990 (as amended). The plaintiffs in the suit invoked the original jurisdiction of this court and attached the said provisions of Sections 2 (1)(a) and 3 of the Allocation of Revenue (Federation Account, etc) (Modification) Order, 2002 published as Statutory Instrument No. 9 of 2002 in the Official Gazette of the Federal Republic of Nigeria.

The basis of the plaintiffs' claims as pleaded in paragraph 7 of their amended Statement of Claim are as follows:-

*"i. Paragraphs 2(1)(a) and (3) of the Order issued by the President is a violation of the judgment of this court in the aforesaid suit No. SC./28/2001*

*ii. The President has no power, constitutional or statutory, to issue paragraph 2(1)(a) and 3 of the aforesaid order in circumstances calculated to enrich the defendants at the expense of the plaintiffs."*

The defendant, for its part, denied the said paragraph 7 of the statement of claim and contended per paragraph 5 of its statement of Defence as follows:-

*"(i) The President has a Constitutional and/or statutory power to issue paragraph 2(1)(a) and 3 of the Allocation of Revenue (Federation Account Etc.) Modification Order, 2002.*

*(ii) Paragraph 1 (a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order 2002 issued by the President does not violate the decision contained in the judgment of this Honourable Court in Attorney-General, Abia State and 35 Ors. v. Attorney-General, Federation reported in (2002) 3 S.C. 106 (2002) 6 NWLR (Pt. 764) 542."*

It is plain that the dispute between the parties is essentially a question of law and not of facts.

Both parties filed their pleadings together with briefs of argument in support of their respective cases as ordered by this court. The plaintiffs in their brief of argument submitted one issue as arising for the determination of this court. This they formulated thus:-

*"1. Whether paragraphs 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account Etc.) (Modification) Order, 2002 made by the President on the 8th day of May, 2002 are not constitutional.*

*2. Whether paragraphs 2 (1) (a) and 3 of the Allocation In, of Revenue (Federation Account Etc) (Modification) Order 2002 made*

*by the President of the Federal Republic of Nigeria are not contrary to and in disobedience of the judgment of this Honourable Court in Suit SC/28/2001 between A.G. Federation v. A.G. Abia State and 35 Ors (2002) 6 NWLR (Pt. 764) 542 delivered on Friday 5th April, 2002."*

There can be no doubt that the dispute between the parties centres on the validity or otherwise of paragraphs 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account etc.) (Modification) Order, 2002 which was issued by the President on the 8th May, 2002. The question, put differently, is whether the President is constitutionally competent to issue or make the order under reference.

In this regard, the President, under the provisions of Section 315 of the 1999 Constitution is empowered to modify an existing law to bring it in conformity with the provisions of the Constitution. See too Section 274 of the 1979 Constitution, the provisions of which are in pari materia with those of Section 315 of the 1999 Constitution under reference and Attorney-general, Ogun State and Others v. Attorney - General of the Federation (1982) 3 NCLR. 166. I think it cannot be disputed that the modification and changes with regard to the provisions of the Allocation of Revenue (Federation Account etc) Act, Cap. 16, Laws of the Federation of Nigeria, 1990 as amended by Act No.1 06 of 1992 per the adaptation order published in the Statutory Instrument No. 9 of 2002 is to bring the Act into conformity with the provisions of the 1999 Constitution as required by Section 315 (2) thereof. It is clear to me that the modification in question is not in breach or violation of the provisions of the 1999 Constitution.

It cannot be disputed also that the order in issue merely ensured that allocation of revenue from the Federation Account is distributed among the three tiers of Government in consonance with the provisions of Section 162 (3) of the 1999 Constitution. See too Attorney-General of the Federation v. Attorney-General of Abia State (2002) 4 S.C. (Pt. I) 1; (No. 2) 2002 6 NWLR. (Part 764) 542 at 668 - 669 in which case this court decided that the President of the Federal Republic of Nigeria is empowered under Section 315 of the 1999 Constitution to modify either by way of addition, alteration, omission or repeal, the provisions of the Allocation of Revenue (Federation Account etc) Act, Cap.16, Laws of the Federation of Nigeria, 1990 as

amended by Act No. 106 of 1992.

Learned Senior Advocate of Nigeria did however contend with considerable force that the President of the Federal Republic of Nigeria had no power to make the Allocation of Revenue (Federation Account etc) (Modification) Order on the ground that this would cut across the principle of separation of powers. He argued that the power to legislate is by Section 4 of the 1999 Constitution conferred exclusively on the National Assembly and that by Sections 162 (2) and (3) and 313, it is the National Assembly that is empowered to make laws on revenue allocation.

There can be no doubt that the function of the legislature is primarily to enact laws whilst that of the executive is to execute or implement such laws passed by the legislature. The Judiciary, for its own part, interprets and enforces such laws. Where however, such separation of powers between the executive, the Legislature and the Judiciary is provided for by the Constitution, as in the case of the 1999 Constitution, neither organ may encroach upon the province of the other. But in the case of the legislature, the principle is subject to at least one exception. That exception is that the legislature has no power to ignore any provisions of the Constitution relating to the enactment of any law. The Constitution being an organic law, the grundnorm and the Supreme Law of the land may restrict the operation of this principle of separation of powers. Accordingly, the power of the legislature may be restricted by an express provision of the Constitution. See *Attorney-General of Bendel State v. Attorney-General of the Federation* (1981) 10 S.C. 1 at 175. See too *Bribery Commissioners v. Patrick Ranasunghe* (1965) AC 172. In other words, the Constitution itself may permit the breach of the principle of separation of powers. This would appear to be what the 1999 Constitution did in Section 315 thereof which allows the President to modify an existing law by the process of addition, alteration, omission or repeal. Whereas, the 1999 Constitution provided for the principle of separation of powers, the same. Constitution conferred the President with power under Section 313 of the constitution to modify an existing law by the process of alteration, addition, omission or repeal. In my view, the doctrine of separation of powers may not be invoked in the present case to defeat the express provision of Section 315 of the Constitution.

In conclusion, it is my judgment that the President of the Federal Republic of Nigeria has the Constitutional power to act and indeed acted within the purview of the Constitution when he issued paragraphs 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account etc) (Modification) Order, 2002. It is also my view that paragraphs 2(1)(a) and 3 of the Allocation of Revenue (Federation Account, etc.) (Modification) Order, 2002, issued by the President did not violate nor did it constitute, no matter how remotely, an act of disrespect of the decision of this court in suit No. SC.28/2001. B

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Belgore, JSC., that I, too dismiss the plaintiffs' claim (i). Claim (ii) having been withdrawn is hereby struck out. I abide by the order for costs made in the leading judgment. C

D

### **UWAIFO JSC**

Under Section 162 (1) of the 1999 Constitution, the Federation of Nigeria shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, "except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja." The revenue thus collected are paid into the Federation Account which is also referred to as the distributable pool account. E F

It is from this account that distribution is made in conformity with the provisions of Section 162 (2) and (3) of the Constitution G which read thus:

*"162(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue Allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:*

*Provided that the principle of derivation shall be constantly*

*reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.*

*(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly."*

This means that after setting aside not less than 13 per cent of the revenue accruing to the said Federation Account directly from any natural resources, any amount outstanding in that account shall be distributed among only three categories of bodies, namely Federal Government, State Governments and Local Government Councils as provided by Section 162 (3). The distribution is done on such terms and in such manner as may be prescribed by the National Assembly.

The National Assembly has not prescribed any terms and manner in which the distribution may be made in accordance with Section 162 (3). But there is an existing law on revenue allocation viz, the Allocation of Revenue (Federation Account etc.) Act, Cap. 16 Laws of the Federation of Nigeria, 1990 as amended by the Amendment Act No. 106 of 1992. The said Act makes allocation of revenue directly from the Federation Account i.e. as first line charge, to a fourth body known as "Special Funds" in the following terms:

(a) the Federal Government .....	48. 5 per cent
(b) the State Governments'.....	24 per cent
(c) Local Government Councils.....	20 per cent
(d) Special Funds .....	7.5 per cent

It was the Special Funds that sustained the expenditure for Federal Capital Territory (1 per cent) Development of the Mineral Producing Area (3 per cent), General Ecological Problems (2 per cent), Derivation (1 per cent), and Stabilization Account (0.5 per cent).

In the absence of any Act of the National Assembly enacted in line with the procedure in Section 162(2) for allocating revenue to the beneficiaries named in Section 162(3), the revenue allocation system in the Act in question would, by virtue of Section 313 be applicable. But the aspect of the Act which provided for the allocation of Special Funds from the Federation Account was found not to

be in conformity with Section 162 (3) of the Constitution and was so declared to be unconstitutional and void by this court in the case of Attorney-General of the Federation v. Attorney-General of Abia State &Ors. (2002) 4 S.C. (Pt. I) 1; (No. 2) (2002) 6 NWLR (Pt. 764) 542 delivered on 5 April, 2002. Notwithstanding that decision, the said Allocation of Revenue (Federation Account etc.) Act remains the existing law on revenue allocation under Section 315 (1) (a) of the 1999 Constitution. B

However, it was necessary to modify the existing law so as to bring into conformity with Section 162 (3) of the Constitution by the appropriate authority who, under Section 315 (4)(a)(i), is the President of the Federal Republic of Nigeria. By an Order dated 8 May, 2002, (Statutory Instrument 9 of 2002) paragraph 2(l)(a) and (3), the President, Chief Olusegun Obasanjo, modified the said Allocation of Revenue Act. The Order distributed the amount standing to the credit of the Federation Account (less the sum equivalent to 13 per cent of the revenue accruing to the Federation Account directly from any natural resources as a first line charge) as follows: C

- (a) the Federal Government .....56.00 per cent
- (b) the State Governments.....24.00 per cent E
- (c) the Local Government Councils..... 20.00 per cent

Out of its own share of 56 per cent the Federal Government earmarked 7.5 per cent thus: General Ecological Problems (2 per cent), Federal Capital Territory (1 per cent), Stabilization Account (1.5 per cent) and Development of Natural Resources ( 3 per cent). F

As a result of the allocation of the 56 per cent to the Federal Government, the plaintiffs who complain that, that figure involved an improper inclusion of the 7.5 per cent originally meant as Special Funds under the Allocation of Revenue (Federation Account etc) Act, brought this suit whereof they seek the following reliefs: G

- “(i) declaration that paragraphs 2 (1) (a) and 3 of the Allocation of Revenue (Federation Account, Etc.) (Modification) Order, 2002 are unconstitutional, null and void and of no effect whatsoever*
- (ii) An order directing the Defendant to calculate 7.5% of the Federation Account and divide and distribute the same amongst the parties hereto and each of the Local Government Councils in the States of the Federation as approved in the Allocation of Revenue (Federation Account, Etc.) Act, Cap. 16, Laws of the Federation of* H

*Nigeria, 1990.*”

In urging their case upon this court, the plaintiffs put up ostensibly three contentions but in effect they are two. The first talks about the Order made by the President being “a gross violation of the doctrine of separation of powers enshrined in the Constitution of Nigeria” and therefore in competition with the legislative powers of the National Assembly to make, alter amend and repeal laws. The argument concludes that the President acted unconstitutionally and contrary to the doctrine of separation of powers “in so far as the said Order purported to alter and amend the hitherto existing law on revenue allocation and distribution in Nigeria.” The second contention is that Section 315 (2) of the Constitution envisages only textual changes in the wording of an existing law to bring it into conformity with the Constitution. The arguments concludes that accordingly “a power to make textual changes cannot be extended to the making of amendments, alterations, changes or modifications to the substance of existing law or the policy or activity regulated by such law.” These two contentions are separately aimed at the increase in the percentage allocation of revenue made in the Order to the Federal Government from 48. 5 per cent to 56 per cent. I think therefore it is just one contention with two aspects to it and I shall deal with it in that light.

The modification made in the Order by the President was by virtue of Section 315 of the Constitution. I need not set the entire section out. Subsection (2) of that section provides that -

*“The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.”*

By subsection (4)(a)(i), the appropriate authority for the present purposes in relation to Federal laws is the President. Subsection (4)(c) defines “modification” to include addition, alteration, omission or repeal.

The 1999 Constitution which provides for separate powers for the Legislature, the Executive and the Judiciary in Sections 4, 5 and 6 respectively also deems it proper and constitutional for the President (as the Executive) to have and exercise the legislative power to modify any existing law either by addition, alteration, omission or



repeal as an interim measure under the transitional provisions and savings of the same Constitution. This is without prejudice to what the National Assembly may decide to do thereafter. It cannot therefore be a strong argument that such a power given to the President to modify existing laws under the appropriate provisions of the Constitution is in contravention of the doctrine of separation of powers and ought not to be exercised by him as the need may arise. The Constitution is supreme. It is the duty of the court to interpret its provisions with a view to giving effect to and reconciling all of them. None of the provisions are made in clear terms in a Constitution, it cannot be rightly argued before a court that they are in violation of some constitutional doctrine and on the basis of which the court is urged to declare those provisions as either void or unenforceable. That is the implication of this aspect of the plaintiffs' complaint that the power given to the President by the Constitution and exercised by him to modify an existing law was contrary to the doctrine of separation of powers. There is a presumption that words in a statute or constitution are not mere surplusage or tautology: see *Garba v. Federal Civil Service Commission* (1988) 1 NWLR (Pt. 71) 449; *Orubu v. N.E.C.* (1988) 12 S.C. (Pt. III) 1; (1988) 5 NWLR (Pt. 94) 323; *Tukur v. Govt. of Gongola State* (1989) 4 NWLR (Pt. 117) 517. And once the words of any section of the Constitution are to be interpreted and applied, they cannot be defeated upon some idealism or doctrine but the court must presume that the framers of the Constitution were well aware of such doctrine but preferred the wisdom of inserting in the Constitution an exigent, though apparently aberrant provision.

The other aspect of the contention is that what the President is expected to do is only to make necessary changes to the text of an existing law, i.e., changes in the words and not in the figures wherever they appear in the said law. With due respect, I reject this approach as too narrow as well as misconceived. It has completely failed to take into account the definition of "modification" as contained in subsection (4)(c) which the President is empowered to do to an existing law when modifying it to bring it into conformity with the Constitution. He may add to, alter, make omission in, or repeal the existing law as appropriate. The word "text" as used in subsection (2) of Section 315 of the Constitution must be given a liberal interpretation

and when so done, it would be understood to mean what constitutes the main body of what is written or printed as a relevant existing law. That, in my view, is the proper approach to give a true interpretation to the constitutional provision in Section 315 (2). It has been laid down by the Supreme Court in *Nafiu Rabi v. The State* (1981) 2 B NCLR 293 at 326, and followed in several cases including *Mohammed v. Olawunmi* (1990) 2 NWLR (Pt. 133) 458 at 484; *Abdulkarim v. Incar (Nig.) Ltd.* (1992) 7 NWLR (Pt. 251) 1 at 14, that

“.....where the question is whether the Constitution has used an expression in the wider or narrower sense..... This Court should wherever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purpose of the Constitution.”

D The plaintiff fail to recognise that there are several dictionary meanings attributable to the word “text” as can be seen in *The Shorter Oxford English Dictionary (On Historical Principles)*, 3rd edition, vol. II, page 2273. The one relevant to the present issue is given thus:

E “The very words and sentences as originally original language, as opposed to a translation or rendering; b. in the original form and order, as distinct from a commentary, or from annotations. Hence, in later use, the body of any treatise, the authoritative or formal part, as distinct from notes, appendices etc.”

F This is a reference to the actual body of a written material in contradistinction to any side notes, annotations or commentary made therein. It is that body that constitutes the text. The body may contain not only words but also figures. It must be realised, however, that figures stated in any writing are simply the abbreviations or signs G of the words in which the figures might have been written. For example, 48.5% might be written as forty-eight and half per cent. It would be a misconception not to regard the quantity 48.5 per cent in the existing law as part of the body of the said law just because it is stated in figure. Therefore figures form part of the text of any writing H and are themselves also subject to modification.

The main condition which the modification to an existing law should satisfy, in my opinion, is that it should bring it into conformity with the Constitution in regard to the subject matter of the existing law: See: *Attorney-General Ogun State & Ors. v. Attorney-General*

of the Federation (1982) 3 NCLR 166. In respect of the distribution of the amount standing to the credit of the Federation Account, all that Section 162(3) of the 1999 Constitution demands compliance with by any law on Allocation of Revenue is that only the three tiers of government shall be the first line beneficiaries, namely the Federal Government, the State Governments and the Local Government Councils. This is what in effect the modification Order made by the President has achieved. The question what percentage each tier gets is a political one which is not justiciable as a direct legal issue. B

The other contention by the plaintiffs is that the President acted in disobedience of the decision of this court in Attorney-General of the Federation v. Attorney-General of Abia State 8 Ors. (supra) declaring as unconstitutional the allocation of 7.5 per cent made to “Special Funds” (as a first line charge) in addition to the allocations to the three tiers of government under the Allocation of Revenue (Federation Account etc) Act. The President in his Order increased the allocation to the Federal Government by 7.5 per cent. This is what the plaintiffs argue is a willful disobedience of this court’s decision. I think, with due respect, this argument is also misconceived. As I have already stated, Section 162 (3) of the Constitution simply provides for allocation to be made to the Federal Government, the State Governments and the Local Government Councils. This is what the Order in question has done in line with the decision of this court. The Order merely went further to appropriate for different items the 7.5 per cent which has indeed become part of the Federal Government’s share of allocation. The 7.5 per cent is not stated as a separate allocation in the Order as to offend against Section 162 (3) of the Constitution. In my view, the Order made by the President is constitutional being in conformity with Section 162 (3) of the Constitution and in line with the decision of this court in Attorney-General of the Federation v. Attorney -General of Abia State & Ors. (supra). C D E F G

The question for determination set down by the plaintiffs is as follows-

*“Whether S. 315 of the Constitution of the Federal Republic of Nigeria, 1999 authorises the President to amend the Allocation of Revenue (Federation Account, etc) Act, Cap. 16, Laws of the Federation of Nigeria, 1990, as amended by the Allocation of Revenue (Federation Account, etc) Act, 1992 in the manner and to the extent H*

**68**     A-G Abia State v. A-G Federation (2003) 1 KLR Uwaifo JSC  
*contained in paragraphs 2 (1) (a) and 3 of the Allocation of Revenue*  
*(Federation Account, etc) (Modification) Order 2002?"*

My answer is clearly in the affirmative, the same manner my  
learned brother, Belgore, JSC., gave it in his judgment which I have  
had the opportunity to read in advance and with which I entirely  
B agree that the plaintiffs claim must be dismissed. I too dismiss the  
claim. I make no order as to costs.

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