

SUPREME COURT OF NIGERIA
FRIDAY 25TH APRIL, 2003. SC. 25/1999
CORAM:- S. M. A. BELGORE, A. O. EJIWUNMI,
S. U. ONU, U. A. KALGO, S. O. UWAIFO, JJSC

CHIEF EMMANUEL
OLATUNDE LAKANMI APPELLANT
AND
1. PETER ADEBAYO ADENE
2. DR. E. O. AKINDELE
3. DR. OLUITAN RESPONDENTS
4. DR. F. ADERO
(Practicing as Skyline
Specialist Hospital)

JURISDICTION - Absence of - Effect - Where court lacks jurisdiction to entertain a matter - The proceedings therein are nullity - No matter how well conducted (H1)

JURISDICTION - Absence of - Proper order - Where court is satisfied that it has no jurisdiction in a matter - The matter should be struck out (H2)

PROPERTY LAW - Forfeiture - Statutes - Onus of proof - Appellant must prove that the law which took away his property - Was null and void (H3)

PROPERTY LAW - Forfeiture order - Validity - The order made in 1967 was validly made - Hence appellant was properly dispossessed of his property (H4)

FACTS

The then Western State of Nigeria, Ibadan following a directive from the then Federal Military Government, set up Tribunal of Inquiry to investigate assets of public officers including that of plaintiff/appellant (a public officer). After the investigation, some assets (including the property in dispute) belonging to appellant were confiscated and forfeited to the State Government. The assets were pub-

lished in the State Government's Notice No. 99 of 1967 as having been confiscated from appellant and forfeited to the State Government. Later on, the Military Government issued Decrees and Edicts validating the forfeitures. Appellant not happy with the action of the State Government, commenced an action in 1967 at the High Court in Ibadan, seeking to nullify the confiscation and forfeiture of his property. The court dismissed the action and confirmed the forfeiture order. When the matter came on appeal before the Supreme Court in suit No. SC. 58/69, the court invalidated the Edict and quashed the forfeiture order. In reaction, the Federal Military Government promulgated Decree No. 28 of 1970 which nullified the Supreme Court's decision.

Consequently, the said State Government advertised the forfeited assets (including appellant's property in dispute) for sale. 1st defendant/1st respondent saw the advert, selected and eventually bought the disputed property - No. NW5/540 Salvation Army Road, Ibadan from the State Government. Exhibit P4 – Deed of Conveyance was prepared which put 1st respondent in possession of the above property. 2nd, 3rd and 4th defendants/respondents were therefore put as tenants in the property. Much later in 1984, appellant instituted this action at the Oyo State High Court Ibadan, seeking for re-possession of the property and that the confiscation and forfeiture are not valid. At trial, appellant tendered the Supreme Court judgment in suit No. SC. 58/69 in his favour. At the close of hearing, the learned trial Judge dismissed appellant's claims in its entirety for failure to prove that the Decree or Edict that took away his property was invalid. Aggrieved, appellant appealed to the Court of Appeal, Ibadan while respondents cross appealed on the issue of jurisdiction of the trial court in the matter. The court dismissed the appeal and allowed the cross appeal. Appellant was dissatisfied and he further appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Was the Court of Appeal right to decide on issues not properly raised before it, if the answer is in the negative whether the appellant has discharged the onus of proof that the forfeiture order was invalidly made having not complied with Investigation of Assets Edict, 1967.

2. Was the Court of Appeal right in relying on WSLN 99 of

1967 in giving judgment for the respondents when it was never pleaded and the instrument which forfeited the Appellant's property was never tendered in court.

3. Was the Court of Appeal right to hold that the trial court has no jurisdiction to entertain the case and yet proceed to affirm the judgment of the High Court.

HELD (Unanimously dismissing the appeal per **KALGO JSC**)

JURISDICTION - Absence of - Effect

1. The importance of jurisdiction in an adjudicative exercise cannot be over-emphasised and it is well settled that if a court is shown to have no jurisdiction to entertain a matter before it, the result will be that all its proceedings on the matter, however well conducted, are a nullity and any decision reached thereon by the court is void ab initio and of no effect whatsoever. (p. 1168 E)

JURISDICTION - Absence of - Proper order

2. Where however a court is satisfied that it has no jurisdiction to try a matter, for any reason whatsoever, the matter should there and then be struck out. A fortiori where an appellate court, as in this case, is satisfied that a lower court which tried a case has no jurisdiction to try the case which came to it on appeal, the proper order the appellate court should make is to allow the appeal, strike out the case before that lower court and declare the whole proceedings a nullity ab initio. (p. 1168 G)

PROPERTY LAW - Forfeiture - Statutes - Onus of proof

3. That Court then came to the conclusion that the appellant as plaintiff had the onus of adducing evidence to prove the invalidity or illegality of the relevant Decrees or Edicts or the order of forfeiture which divested him of his right to the property concerned before it was sold to the respondent. I agree entirely with the Court of Appeal that in the particular cir-

cumstances of this case, the onus of proof lay squarely on the appellant. It did not shift and the appellant, as plaintiff, had the duty to prove that the laws or notices which took away his property from him were ineffective, null and void before he could succeed. From the record of appeal it is clear that the appellant called no evidence to challenge the validity of any Decree or Edict. He only tendered the Supreme Court judgment in SC. 58/69 (Exhibit P2) and testified that Decree No. 28 of 1970 which nullified the judgment was repealed by Decree No. 105 of 1979. (p. 1172 C)

PROPERTY LAW - Forfeiture order - Validity

4. By this subsection, the repeal of Decree No. 45 of 1968 by Decree No. 105 of 1979, did not affect its previous operation so that anything duly done under it, and any investigation and forfeiture made under it, may be enforced as if the enactment has not been repealed. Therefore, the validation of the forfeiture order made by the Western State Government vide WSLN 99 of 1967, forfeiting the property in dispute of the appellant remained valid and can be enforced even after the repeal of Decree No. 45 of 1968. I have already found earlier in this judgment that Decree No. 28 of 1970, had completely nullified the effect of the judgment of the Supreme Court in SC. 58/69. Therefore, the Western State of Nigeria Forfeiture Order, 1967, WSLN 99 of 1967, stands valid and enforceable, and being a published legal enactment or instrument, it was not necessary in the circumstances of this case to plead it or tender it in court before a court can consider it. I shall therefore answer both issues 1 and 2 in the affirmative. The result of all what I have said above is that the forfeiture order in 1967 on the appellant's property in dispute was validly made and so the appellant was properly dispossessed of the said property. After the said order, the property in dispute became that of the Western State Government which had full rights to dispose of it in anyway it chose. When it decided to sell it to the 1st respondent in 1972, it was exercising its own right and the 1st respondent took over that right from the said government by virtue of that sale. (p. 1175 A)

REPRESENTATION

R. A. Ogunwole with M. A. Numgbe, for the Appellant
A. Adenipekun, Esq, for the Respondents

CASES REFERRED TO

Wilson v. A.G. Bendel (1985) 1 NWLR (Pt.2) 572
Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt.44) 212
Sule v. Nigeria Cotton Board (1985) 2 NWLR (Pt.5) 17
Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt.135) 688
Okefi v. Ogu (1996) 2 NWLR (Pt.432) 603
Tsokwa v. U.B.N. (1996) 10 NWLR (Pt.478) 281
Okefi v. Ogu (1996) 2 NWLR (Pt.432) 603
Tsokwa v. U.B.N. (1996) 10 NWLR (Pt.478) 281
Michelin v. George (1973) 1 NMLR 128
Matari v. Dangaladima (1993) 3 NWLR (Pt.281) 266
Adeigbe v. Kushimo (1965) 1 All NLR 248
Madukolu v. Nkemdilim (1962) 2 SCLR 341
F.C.D.A. v. Naibi (1990) 3 NWLR (Pt.138) 270

STATUTES REFERRED TO

Forfeiture of Assets (Validation Decree) No. 45 of 1968, s. 2(1)
Constitution of the Federal Republic of Nigeria 1979, s. 6(6)(d)
Public Officers & Other Persons (Investigation of Assets) Edict No.5 of 1967
Interpretation Act Cap 192 LFN 1990, s. 6(1)

LEAD JUDGMENT BY KALGO JSC

In the High Court of Justice, Oyo State, holden at Ibadan, the appellant, as plaintiff, claimed against the respondents, as defendants, jointly and severally, the following reliefs:-

“(i) Declaration that he is entitled as against the defendants to the possession of landed property and building situate thereon, lying at NW5/540, Salvation Army Road, Ibadan more properly delineated on plan attached to the instrument dated 19th September, 1964, and Registered as No. 14 at page 14 in volume 782 of the Lands Registry, Ibadan.

(ii) *Possession of the said property of which the Defendants wrongly hold and continue to hold against the plaintiff*”.

At the trial, the parties filed and exchanged pleadings, called witnesses and produced documents in proof of their respective cases. At the close of the case, the learned counsel for the parties addressed the trial court, and in a reserved judgment delivered on 15/1/86, the learned trial Judge, Falade, J., dismissed the plaintiff’s/appellant’s claims in toto. The appellant appealed to the Court of Appeal and the respondents cross-appealed. The Court of Appeal dismissed the appeal and allowed the cross-appeal. The appellant was dissatisfied and he further appealed to this court. Based on the grounds of appeal filed, he formulated the following issues for the determination of this court in the appeal:-

“1. *Was the Court of Appeal right to decide on issues not properly raised before it, if the answer is in the negative whether the appellant has discharged the onus of proof that the forfeiture order was invalidly made having not complied with Investigation of Assets Edict, 1967.*

2. *Was the Court of Appeal right in relying on WSLN 99 of 1967 in giving judgment for the respondents when it was never pleaded and the instrument which forfeited the Appellant’s property was never tendered in court.*

3. *Was the Court of Appeal right to hold that the trial court has no jurisdiction to entertain the case and yet proceed to affirm the judgment of the High Court.*

The respondents formulated only 2 issues which read:

“1. *Whether or not the Court of Appeal was right in its decision that the jurisdiction of the trial court to entertain the Appellant’s suit has been effectively ousted by the combined effect of S.2(1) of the Forfeiture of Assets etc. (Validation Decree) No. 45 of 1968 and S.6(6) (d) of the 1979 Constitution of the Federal Republic of Nigeria.*

2. *Was the Court of Appeal right in upholding the validity of the forfeiture order made in the Western State Legal Notice (WSLN) No. 99 of 1967 and subsequently validated by Decree No. 45 of 1968 and in its view that the appellant has failed to prove the illegality or invalidity of the Decrees and Edicts and the order of forfeiture”.*

The background to the case is simple and not complicated. Before 1966 or between 1964 and 1966, the appellant was a public officer in the then Western State of Nigeria, Ibadan. After the Military take over of this country in 1966, the Federal Military Government empowered State Governments to set up various tribunals to investigate assets of public officers, and take appropriate actions. As a result, the Shomolu Tribunal of Inquiry was set up in Western State of Nigeria which investigated the assets of public officers including the appellant. After the investigations, some assets belonging to the appellant and other persons were confiscated and forfeited to the Western State Government. These assets were then published in the Western State of Nigeria Notice No.99 of 1967. The property now in dispute was listed in the said notice as having been confiscated from the appellant and forfeited to the Western State Government. Thereafter, Decrees and Edicts were promulgated by the Military Government validating the forfeitures published as a result of investigation of assets.

In 1967, the appellant challenged the confiscation and forfeiture of his property which is now in dispute by an action in the High Court in Ibadan. He applied for a writ of certiorari to quash the order confiscating and forfeiting his property and declaring all the validating Edicts and Decrees applicable to the said forfeiture as null and void.

The trial court dismissed the appellant's action and confirmed the forfeiture order. The appellant appealed to the Supreme Court by his case No. SC. 58/69 and the court allowed his appeal on 24th April, 1970, declared the validating Edict, 1967 null and void and quashed the forfeiture order.

The Federal Military Government did not take kindly to this judgment of the Supreme Court and it swiftly promulgated Decree No. 28 of 1970, titled "The Federal Military Government (Supremacy of Powers) Decree, 1970", which nullified the decision of the Supreme Court in SC. 58/69 and declared it null and void and of no effect whatsoever. This then meant that the forfeitures were revived and were validly made, and all properties forfeited by Western State of Nigeria Notice No. 99 of 1967 belonged to the Western State Government. Following this, the Western State Government advertised some of the forfeited properties including that of the appellant

now in dispute, in the daily newspapers for sale. The 1st respondent saw this advertisement and after complying with the requirements thereof, he eventually selected and bought the appellant's house at No. NW5/540, Salvation Army Road, Ibadan, from the Western State Government in 1972. The said government conveyed the property
 B to the 1st respondent by a deed of conveyance (Exh. P4) and put him in possession. He thereafter put the 2nd, 3rd and 4th respondents as tenants in the house. In 1984, the appellant brought this action for re-possession of the house in dispute. I shall now consider
 C the issues raised by the appellant from the grounds of appeal filed.

I shall take Issue 3 first. This issue was asking whether the Court of Appeal was right in holding that the trial court had no jurisdiction to entertain the case and yet proceed to affirm the judgment of the trial court. My understanding of this issue is that the appellant was
 D not challenging the finding of the Court of Appeal that the trial court had no jurisdiction to entertain the case, but that if it did so, could it also proceed to affirm the decision of the trial court on that case. In other words, the question being asked by the appellant in this issue is that when an appellate court finds that a lower court from which the
 E appeal came has no jurisdiction to try the matter, what orders can the appellate court make?

***The importance of jurisdiction in an adjudicative exercise cannot be over-emphasised and it is well settled that if a court is shown to have no jurisdiction to entertain a matter
 F before it, the result will be that all its proceedings on the matter, however well conducted, are a nullity and any decision reached thereon by the court is void ab initio and of no effect whatsoever.*** See *Matari v. Dangaladima* (1993) 3 NWLR (Pt.281) 266, *Adeigbe v. Kushimo* (1965) 1 All NLR 248; *Madukolu v. Nkemdilim* (1962) 2 SCLR 341. ***Where however a court is satisfied that it has no jurisdiction to try a matter, for any reason
 G whatsoever, the matter should there and then be struck out. A fortiori where an appellate court, as in this case, is satisfied
 H that a lower court which tried a case has no jurisdiction to try the case which came to it on appeal, the proper order the appellate court should make is to allow the appeal, strike out the case before that lower court and declare the whole proceedings a nullity ab initio.*** See *Wilson v. A.G. Bendel* (1985) 1

NWLR (Pt.2) 572; Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt.44) 212; Sule v. Nigeria Cotton Board (1985) 2 NWLR (Pt.5) 17, Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt.135) 688.

In the instant appeal, the Court of Appeal while allowing the cross-appeal of the respondents on the issue of jurisdiction of the trial court, proceeded to say that-

“The judgment of the lower court is hereby affirmed”.

This is no doubt a wrong order to make in the circumstances of this case. I therefore find that the Court of Appeal was wrong in making that order and I answer issue 3 in the negative.

I now intend to take the appellant’s issues 1 and 2 together. The combined effect of issues 1 and 2 together is that since there was non-compliance with the Public Officers and other Persons (Investigation of Assets) Edict No. 5 of 1967, which set up the Shomolu Tribunal and the Western State Legal Notice No. 99 of 1967 upon which the Court of Appeal relied in giving judgment for the 1st respondent was not pleaded or tendered at the trial, the forfeiture of the appellant’s property now in dispute was not validly made.

It was not in dispute that the landed property lying at NW5/ 540, Salvation Army Road, Registered as No.14 at page 14 in volume 782 of Lands Registry at Ibadan belonged to the appellant before 1972. It was also not in dispute that it was confiscated and forfeited to the Western State Government after the Shomolu Tribunal of Inquiry in 1967 and the appellant was one of those investigated by the tribunal. There was also no dispute that the said landed property was subsequently sold to the 1st respondent by the Western State Government in 1972 and was conveyed to him and registered as No. 13 at page 13 in volume 1543 of Lands Registry at Ibadan. The main contention of the appellant in this action was that the confiscation and the forfeiture was not valid and so the property should be returned to him. In paragraph 5 of his amended statement of claim, the appellant, as plaintiff, averred as follows:-

“5. The plaintiff will contend at the trial that the said instrument No.13 at page 13 in volume 1543 of the Lands Registry at Ibadan is ineffective in vesting plaintiff’s title of right to possession of the property in dispute on the 1st defendant for the following reasons:

(i) *The purported forfeiture order recited in the instrument as divesting the plaintiff of his title to the property is ultra vires, null and void as so declared by Nigeria's final judicial organ, the Supreme Court, in SC. 58/69 E.U. Lakanmi & Anor. v. Attorney-General West & 2 Ors a judgment delivered on 24th April, 1970, and which create*
 B *an estoppel against the defendants as "privies in estate".*

(ii) *The 1st Defendant's purported vendor has no valid title to the property to pass on to the 1st Defendant, and the principles of NEMO DAT QUOD NON HABET will be relied upon".*

C The 1st respondent in reply also averred in paragraph 11 of his Amended Statement of Defence thus:-

"11. With reference to paragraph 5 of the Statement of Claim, the Defendants will contend at the hearing of this action that:

(i) *the plaintiff having lost the land in dispute to the Western*
 D *State Government since the forfeiture of his assets in 1968 or thereabout has no longer any rights against the Defendants, such rights, if any, having been statute barred;*

(ii) *the plaintiff can not rely on the judgment suit SC. 58/69: E. O. Lakanmi & Anor v. Attorney-General (West) & 2 Ors. delivered*
 E *on 24th April, 1970, in view of Decree No. 28 of 1970."*

At the trial, the appellant testified that the decision of the Supreme Court in SC. 58/69 was in his favour, but Decree No. 28 of 1970 was promulgated nullifying that decision. He also added that
 F another Decree No. 105 of 1979 which was subsequently promulgated repealed Decree No.28 of 1970 thereby lifting the embargo on the Supreme Court judgment in SC.58/69. He however admitted in cross-examination that his property in dispute was confiscated by the Western State Government and sold to the 1st respondent
 G who has since been in possession.

Learned counsel for the appellant argued in his brief that issues were not joined at the trial on the question of validity or otherwise of the relevant Decrees or Edicts applicable to the matter in dispute. He further argued that since the appellant's name did not
 H appear in the schedule to the Western State of Nigeria Legal Notice WSLN No. 99 of 1967, his investigation and subsequent forfeiture of his properties are illegal, null and void. Counsel further contended that as the forfeiture order was not tendered in court, the publication of the forfeiture could not cure that defect and therefore, he submit-

ted, the decision of the Court of Appeal relying upon WSLN. 99 of 1967, was wrong and perverse. He cited Michelin v. George (1973) 1 NMLR 128 learned counsel in support however conceded the efficacy of the validation Decrees which applied to validate the various forfeiture orders made but submitted that they do not apply to the appellant B

Issue 2 of the respondents would appear to have covered issues 1 and 2 of the appellant. Under this issue, the learned counsel for the respondents submitted in his brief that by virtue of paragraphs 4, 5 and 6 of the appellant's Amended Statement of Claim and paragraphs 5, 6, 9, 11 and 12, of the Amended Statement of Defence C issues were properly joined on the main issues in dispute between the parties particularly on the application of the various Decrees and the Edict upon which the respondent relied as his own defence. Counsel further submitted that by said paragraphs of the Amended Statement of Defence, the respondents have clearly shown their reliance D upon the relevant Decrees and the Edict to establish their possession of the property in dispute and that therefore the appellant has a duty to discredit or render valueless the efficacy or validity of these Decrees and the Edict in order to succeed. He further argued that since E the Decrees and the Edict are all laws, there was no need to specifically plead them in the Amended Statement of Defence. He relied on the cases of Okefi v. Ogu (1996) 2 NWLR (Pt.432) 603; Tsokwa v. U.B.N. (1996) 10 NWLR (Pt.478) 281 in support of his submission. F

There is no doubt that the appellant in his paragraph 5(1) of the Amended Statement of Claim challenged the forfeiture of his property, the subject of this case, and the respondents by the combined effect of paragraphs 9, 11 and 12 of the Amended Statement of Defence, have joined issue on the validity or otherwise of the forfeiture orders upon which they relied. And the learned trial Judge G identified this situation when he said:-

"It is my humble view that the above assertion in his pleading which were expressly and categorically denied by the respondents in paragraph 11 of the Amended Statement of Defence, the appellant H as plaintiff had the onus of adducing evidence to prove the illegality or invalidity of the decrees, edicts and the order of forfeiture which had divested him of his right to possession to the property before selling it to the respondent".

This finding by the learned trial Judge was not challenged in the Court of Appeal or in this court. In the Court of Appeal, the only 2 issues for determination were directed at whether the respondents have proved better title and discharged the onus of proof that the property in dispute had been properly forfeited.

B The Court of Appeal, in considering the onus of proof in this case had this to say:-

"In the present case, and going by the pleadings of the parties, it was the appellant who first asserted that he had a better right to possession than the respondent on the ground that the purported order of forfeiture against his properties being null and void did not effectively divest him of his said properties (including the land in dispute)".

That Court then came to the conclusion that the appellant as plaintiff had the onus of adducing evidence to prove the invalidity or illegality of the relevant Decrees or Edicts or the order of forfeiture which divested him of his right to the property concerned before it was sold to the respondent. I agree entirely with the Court of Appeal that in the particular circumstances of this case, the onus of proof lay squarely on the appellant. It did not shift and the appellant, as plaintiff, had the duty to prove that the laws or notices which took away his property from him were ineffective, null and void before he could succeed. From the record of appeal it is clear that the appellant called no evidence to challenge the validity of any Decree or Edict. He only tendered the Supreme Court judgment in SC. 58/69 (Exhibit P.2) and testified that Decree No. 28 of 1970 which nullified the judgment was repealed by Decree No. 105 of 1979. This could have been the end of the matter but for the necessity to examine these Decrees and the effect of the repeal in so far as the forfeiture order is concerned.

H The Supreme Court judgment in SC. 58/69 (Exhibit P2) which was delivered on 24th April, 1970, inter-alia declared both Western State of Nigeria Edict No. 5 of 1967 and Federal Military Government Decree No. 45 of 1968 ultra vires, null and void. Then by Decree No. 28 of 1970, the Federal Military Government nullified completely the decision or judgment of the Supreme Court where it provided in Section 1(2) and (3) thus:-

*"1(2) It is hereby declared also that-
any decision whether made before or after the commencement of
this Decree, by any court of law in the exercise or purported exercise
of any powers under the Constitution or any enactment or law of the
Federation or of any State which has purported to declare or shall
hereafter purport to declare the validity of any Decree or of any
Edict (in so far as the provisions of the Edict are not inconsistent with
the provisions of a Decree) or the incompetence of any of the gov-
ernments in the Federation to make the same is or shall be null and
void and of no effect whatsoever as from the date of the making
thereof.*

(3) In this Decree-

*(a) "decision" includes judgment decree or order of any court
of law and*

*(b) the reference to any Decree or Edict includes reference to
any instrument made by or under such Decree or Edict."*

By this provision, the judgment of the Supreme Court as from the 24th of April, 1970, in Exhibit 2, was null and void and of no effect whatsoever. This clearly means that Decree No. 45 of 1968 and Edict No. 5 of 1967 were revived and shall continue to apply in the normal way, until otherwise repealed.

Decree No. 45 of 1968 titled "The Forfeiture of Assets, etc (Validation) Decree, 1968", was repealed by Decree No. 105 of 1979 just before the advent of the Civilian regime of the 2nd Republic in Nigeria. But before then, the Western State Legal Notice No. 99 of 1967 was made under "The Public Officers and Other Persons (Forfeiture of Assets) Order, 1967" by the Military Governor of the then Western State of Nigeria in pursuance of his powers under the "The Public Officers and Other Persons (Investigation of Assets) Edict, No. 5 of 1967". This order was validated by Decree No. 45 of 1968 which in S.1(1) provides:-

"1. (1) All orders specified in column 2 of Part A of the schedule to this Decree and made under the provisions of any enactment or other law (repealed by subsection (1) of S. 14 of the Investigation of Assets (Public Officers and Other Persons) Decree, 1968) for the purpose of forfeiting the assets of, or adjudging liable to make reparation, any public officer or other person specified in column 1 of Part A of the schedule to this Decree, are hereby validated for all

purposes with effect from their respective dates of commencement as specified in column 3 of that Part, and accordingly, the said orders shall have effect by virtue of this Decree as hereinbefore provided and the assets aforementioned shall be deemed to have been forfeited and the same may be disposed of or otherwise dealt with as provided in those orders”.

Item 4 (a) Part A of the Schedule above-mentioned reads:-

Persons whose assets forfeited Title of Orders Date of commencement. EMMANUEL O. LAKANMI the Public Officers 1st Dec. 1967 and Other Persons (Forfeiture of Assets) Order, 1967, WLSN 99 of 1967.

Item 4(a) of Part A of the schedule above no doubt refers to the appellant who by his own admission testified that he was a public officer as Executive Director of Western Nigeria Housing Corporation between 1964 to 1966. And by S.3 of Decree 45 of 1968, he qualified as a public officer within the meaning of S.13(1)(d) of Decree No. 37 of 1968. Therefore, the fact that he was investigated by the tribunal set up for that purpose and his properties confiscated or forfeited to the Government of Western Nigeria as per WSLN 99 of 1967 was in full compliance with the aims and objectives of the Edict No. 5 of 1967 of Western State of Nigeria.

I shall now consider the effect of repealing Decree No. 45 of 1968, which validated the forfeiture of the appellant's property now in dispute vide WSLN 99 of 1967, and by which he qualified to be a public officer. Decree No. 45 of 1968 was repealed by Decree No. 105 of 1979, but the repeal of the former by the latter, did not affect any act duly done, during the operation of the former. This is clearly stated in S.6(1) of the Interpretation Act (Cap. 192) Laws of the Federation of Nigeria, 1990, which provides:-

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

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

(b) affect the previous operation of the enactment or any thing duly done or suffered under the enactment;

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

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfei-

ture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed”

By this subsection, the repeal of Decree No. 45 of 1968 by Decree No. 105 of 1979, did not affect its previous operation so that anything duly done under it, and any investigation and forfeiture made under it, may be enforced as if the enactment has not been repealed. Therefore, the validation of the forfeiture order made by the Western State Government vide WSLN 99 of 1967, forfeiting the property in dispute of the appellant remained valid and can be enforced even after the repeal of Decree No. 45 of 1968. I have already found earlier in this judgment that Decree No.28 of 1970, had completely nullified the effect of the judgment of the Supreme Court in SC. 58/69. Therefore, the Western State of Nigeria Forfeiture Order, 1967, WSLN 99 of 1967, stands valid and enforceable, and being a published legal enactment or instrument, it was not necessary in the circumstances of this case to plead it or tender it in court before a court can consider it. See S.74 of Evidence Act and F.C.D.A. v. Naibi (1990) 3 NWLR (Pt.138)270. I shall therefore answer both issues 1 and 2 in the affirmative. The result of all what I have said above is that the forfeiture order in 1967 on the appellant’s property in dispute was validly made and so the appellant was properly dispossessed of the said property. After the said order, the property in dispute became that of the Western State Government which had full rights to dispose of it in anyway it chose. When it decided to sell it to the 1st respondent in 1972, it was exercising its own right and the 1st respondent took over that right from the said government by virtue of that sale. See Exhibit P4

For the reasons stated above, I find that there is no merit at all in this appeal and I accordingly dismiss it. I affirm the decision of the Court of Appeal in respect of the main appeal brought before it and in respect of the issue of jurisdiction it decided in the cross-appeal, I hereby order that the suit before the trial court be struck out. I award N10,000.00 costs to the 1st respondent.

BELGORE JSC

In view of Decree No. 28 of 1970 and despite his victory at the Supreme Court in Case No. SC.58/1969 (Lakanmi & Anor. v. Attorney-General (West) & Ors. delivered on 24th April, 1970) the Plaintiff now appellant have no valid right to protect in this action. The asset, i.e. the property at Ibadan confiscated as forfeited to the Government of Western State of Nigeria by virtue of Legal Notice No. 99 of 1967 was not challengeable and the action leading to this appeal was misconceived. No doubt, the appellant was by virtue of the Decree and the forfeiture order, dispossessed of his property now subject of this action because it was regarded by the Decree and the Legal Notice as illegally acquired by the appellant.

I therefore agree with my learned brother, Kalgo, JSC., that this appeal has no merit. I accordingly dismiss it and order N10,000.00 as costs to respondents.

ONU JSC

Having been privileged to read in draft the judgment of my learned brother, Kalgo, JSC., just delivered, I am in agreement with his reasoning and conclusion that the appeal must perforce fail. Accordingly, I too dismiss the appeal and make the same consequential order as to costs as therein contained.

UWAIFO JSC

I had the advantage of reading in advance the judgment of my learned brother, Kalgo, JSC., and for the reasons he gives I agree with him that the appeal fails and that the suit be struck out.

The plaintiff/appellant in contravention of the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970, instituted this action seeking (1) a declaration that he is entitled as against the defendants to the possession of landed property and building situate at NW 5/540, Salvation Army Road, Ibadan as delineated in the plan attached to the instrument registered as No. 14 at page 14 in volume 782 of the Lands Registry, Ibadan; (2) possession of the said property.

The plaintiff who was a civil servant in the First Republic was found by the Military Government which succeeded that Republic to have fraudulently enriched himself. One of the assets confiscated from him after an investigation was the property in question in this action. The confiscation was done by the Public Officers And Other Persons (Investigation of Assets) Edict, 1967, issued by the then Military Government of Western Region. That Edict was subsequently reinforced and validated by two Decrees made by the Federal Military Government, viz, the Investigation of Assets (Public Officers and Other Persons) Decree No. 37 of 1968 and the Forfeiture of Assets, etc (Validation) Decree No. 45 of 1968.

The plaintiff had at that time gone to court to challenge the forfeiture of his said property. He lost at the trial court. On appeal to the Supreme Court, despite the two Decrees mentioned above, the Supreme Court held that the Military Government did not have sufficient authority to effect the forfeiture and allowed the appeal. This led the Federal Military Government to promulgate the Federal Military Government (Supremacy and Enforcement Powers) Decree No. 28 of 1970 to nullify the judgment of the Supreme Court and to assert its authority to do as it liked and that the jurisdiction for the court in the matter was effectively, finally and permanently ousted. The challenge to its authority thereby ceased. That meant that following the annulment of the judgment of the Supreme Court reported as *Lakanmi v. Attorney-General Western State* (1970) NSCC 143, the plaintiff lost his ownership of the property in question forever. Furthermore, Decree No. 28 of 1970 made it clear that no court would have the jurisdiction to entertain plaintiff's claim to it.

But undaunted, the plaintiff recently brought this action to seek to recover the said property from those to whom the Government sold it and passed its interest therein. The learned trial Judge, Falade, J., heard the case and dismissed it. However, upon the antecedent events concerning the property, the learned trial Judge should have refused to entertain the action. It was not a question of taking evidence to see if the plaintiff could prove his claim. It was simply whether the court had jurisdiction to entertain it. The proper order, on reaching the inevitable conclusion that the court lacked jurisdiction, was to strike out the action in limine and not to dismiss it.

The plaintiff appealed against the judgment upon two issues

including whether the property was properly confiscated by the Edict and Decrees earlier mentioned. The present respondents cross-appealed on three issues including whether the court had jurisdiction to entertain the suit. That was the very crucial issue. When properly resolved it leads to the striking out of the action. The court below
 B certainly resolved it properly. But having done so, it arrived at a conclusion in which it affirmed the decision of the trial court. In my view, that would be an erroneous conclusion in view of the fact that the trial court dismissed the claim. The trial court had no business and no
 C power to dismiss the claim because it had no jurisdiction to entertain it in the first instance. Although the court below was right in dismissing the appeal and allowing the cross-appeal, the proper order is for the suit to be struck out.

The plaintiff further appealed to this court raising the issue of
 D lack of jurisdiction arrived at by the Court of Appeal and querying whether that court was right. It is obvious to me that the argument of Mr. Ogunwole on behalf of the appellant is unpardonably erroneous. I find no merit in the appeal. I accordingly dismiss it and strike out the action.

E I abide by the order for costs made by my learned brother, Kalgo, JSC.

EJIWUNMI JSC

F I have had the opportunity before now of reading the draft of the judgment just delivered by my learned brother, Kalgo, JSC. From the facts and the law reviewed in the said judgment in respect of the issues raised in this appeal, it is manifest that the appeal lacks merit.
 G However, it must be pointed out that when the Court below considered the appeal to that Court, it was resolved that the High Court had no jurisdiction to hear the matter. In dismissing the appeal, the Court below should have struck out the case for that reason. Having decided as above that this appeal lacks merit, the consequential
 H order that ought to be made is an order striking out the suit. Accordingly, the suit is hereby struck out. I award costs in the sum of N10,000.00 in favour of the 1st respondent.