

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 2003. SC. 102/1999
CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,
U. MOHAMMED, A. I. IGUH, D. O. EDOZIE, JJSC

E. A. EMUZE APPELLANT
AND
1. THE VICE CHANCELLOR
UNIVERSITY OF BENIN RESPONDENTS
2. UNIVERSITY OF BENIN

JURISDICTION - Ouster clause - Construction - Any enactment which takes away right of access to court - Ought to be constructed very narrowly - Against anyone claiming it's benefit (H1)

STATUTES - Exercise of power - Condition precedent - Public Officers (special provision) Decree - It must be shown inter alia that the power is exercised by appropriate authority - Or any person authorized by him (H2)

STATUTES - Appointment - Termination of - Ouster clause - Public Officers (special provision) Decree - Termination of appellant's appointment did not fall within the statute - So as to oust jurisdiction of court (H3)

FACTS

Plaintiff/appellant was appointed as Executive Officer Account by 2nd respondent. He was later deployed to the internal audit department as Principal Accountant where he remained till his employment was allegedly terminated. The termination was as a result of the directive issued by the visitor to the university to the Governing Council following the report of a visitation panel. Incidentally, the visitor to the university happens to be the same person as the Head of State of the Federation. Consequently, appellant filed this action against defendants/respondents at the High Court of Edo State challenging the alleged wrongful termination of his employment.

At the trial, respondents raised an objection that the court's ju-

risdiction was ousted by virtue of the Public Officer (special provision) Decree NO 17 of 1984. Respondents' contention is that appellant was a public officer and that the person who ordered the termination of his appointment being the Head of State, the ouster provisions of the decree No. 17 would apply to oust the court's jurisdiction in the matter. After hearing the parties, the court upheld the objection and struck out the suit for want of jurisdiction. Aggrieved, appellant appealed to Court of Appeal, Benin City. The court dismissed the appeal. This is a further appeal by appellant to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Head of State in exercising his power as the Visitor of the University of Benin can lawfully terminate the appointment of an employee of the University pursuant to Decree No. 17 of 1984, now known as Public Officers (Special Provisions) Act, Cap. 381 Volume 21, Laws of the Federation, 1990. (Act for short).

HELD (Unanimously allowing the appeal per EDOZIE JSC)

JURISDICTION - Outer clause - construction - Manner of

1. The courts do guard their jurisdiction jealously and zealously and as such any enactment, which takes away a citizen's right of access to the court ought to be construed very narrowly against anyone claiming its benefit, that is, fortissime contra proferentes.

Ouster clauses are interpreted more liberally on the side retaining and preserving the court's jurisdiction.

In *Nwosu v. Imo State Environmental Authority* (1990) 2 NWLR (Pt. 135) 688 at 723, this court laid down guiding principles in the interpretation of ouster clauses as follows:-

“Certain principles guide the court in such an exercise. If there should be any doubt, gap, duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right:

If there is a reasonable construction which will avoid the penalty in any particular case, the court will adopt that construction:

If there is any doubt as to whether the person to be penal-

ized or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt.

If after the above approach and the application of the above principles the person to be affected comes squarely and fairly within and is affected by the words of the statute, the court has no alternative than to apply it.” (p. 1433 A)

STATUTES - Exercise of power - Condition precedent

2. For there to be a valid exercise of power under the Act in question, three conditions must be satisfied, viz, (a) the person whose appointment is affected is a public officer within Section 277 of the Constitution, 1979, (now Section 318 of 1999 Constitution) (b) the grounds for the exercise of the power are laid within those prescribed in Section 1(1) of the Act and (c) the power is exercised by the appropriate authority or any person authorised by him. In the instant case, there is no dispute over (a) and (b) above. The dispute centres on condition (c). (p. 1433 G)

STATUTES - Appointment - Termination of - Ouster clause

3. It is patent from Exhibit ‘A’ that is, the letter by which the Appellant was notified of the termination of his appointment that the termination was made by the Governing Council of the University of Benin at the instance of the Visitor of the University. The Visitor is not an appropriate authority as defined in Section 4(2) of the Act but the President or Head of State, who is the appropriate authority happens to be the Visitor of the University. The narrow issue to be resolved is whether the Visitor in exercising his power as the Visitor of the University is deemed to be acting as the President or Head of State pursuant to the Act.

The sum total of all that has been said above is that the Visitor of the University in implementing the report of the Visitation Panel was not acting or exercising the powers of the Head of State. Therefore, in the instant case, Exhibit A, the letter by which the appointment of the Appellant was terminated was not issued by the Head of State or by any person authorised by him. That being the case, the termination of the Appellant’s appointment did not fall within the ambit of the Public Officers (Special Provisions) Act so as to oust the jurisdiction

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of the court. (p. 1434 B / 1435 H)

NOTABLE POINT OF INTEREST

IGUH JSC

B 1. *Power conferred by statute must be exercised in accordance with the statute*

The powers of the Visitor are expressly spelt out and conferred by Law. Where a statute confers specific or special powers on any person or authority for the performance of certain acts or duties, it is only that person or authority and no other person else that is contemplated in the performance of such acts or duties under the relevant Law. He must also act in strict accordance with the powers vested in him by the relevant statute and may not exceed such powers. (p. 1437 E)

REPRESENTATION

D Chief H.O. Ogbodu, with Marcel Eriofoloh, Esq., for the Appellant
O.I. Uwaifo (Miss), for the Respondents

CASES REFERRED TO

E Odofin v. Agu (1992) 3 NWLR (Pt. 229) 350
Anya v. Iyayi (1993) 7 NWLR (Pt. 305) 290
I.R..C. v. Duke of Westminster (1936) AC 1
Tuck & Sons v. Priestner (1887) 19 QBD 629
Barclays Bank Ltd. v. Central Bank of Nigeria (1976) 6 S.C. 115
F Peenok Investment Ltd. v. Hotel Presidential (1983) 4 NCLR 122
Oloba v. Akereja (1988) 7 S.C. (Pt. 1) 1
Mgt. Enterprises Ltd. v. Otusanya (1987) 2 NWLR (Pt. 55) 179
Nwosu v. Imo State Environmental Authority (1990) 2 NWLR (Pt. 135) 688
G London & County Commercial Properties Investments Ltd. v. A-G (1953) 1 All ER 436
Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550
Anyanwu v. Iyayi (1993) 7 NWLR (Pt. 305) 290

STATUTES REFERRED TO

H Public Officers (Special Provisions) Decree No. 17 of 1984, s.4(2)
Federal Military Government (Supremacy and Enforcement of powers) Decree No.13 of 1984

University of Benin (Transitional Provisions) Act Cap 452 LFN 1990

LEAD JUDGMENT BY EDOZIE JSC

This appeal deals with wrongful termination of appointment and raises the vexed question as to whether the Head of State in exercising his power as the Visitor of the University of Benin can lawfully terminate the appointment of an employee of the University pursuant to Decree No. 17 of 1984, now known as Public Officers (Special Provisions) Act, Cap. 381 Volume 21, Laws of the Federation, 1990. (Act for short).

The Appellant, E. A. Emuze was on 14th September, 1970, appointed by the University of Benin, the 2nd Respondent, as Executive Officer Accounts and in 1974, he rose to the post of Accountant. Thereafter, in 1977 he was deployed to the Internal Audit Department as a Principal Accountant. He remained in that Department until 1987 when the Head of State, who was also the Visitor to the University set up a Visitation Panel to look into the affairs of the University between 1975 and 1985. On the completion of its assignment, the Visitation Panel submitted its report to the Visitor who thereafter issued a White Paper containing in paragraphs 28 and 29 thereof a directive to the Governing Council of the University to the following effect:-

“28. Recommendation:-

As early as possible, the Council should seek expert guidance for the purpose of ensuring that things are put right in the Internal Auditing aspect of the University operation.

29. Comment:-

The Visitor noted the serious indictment of the Internal Audit Department of the University and directs that all efforts should be made to put things right. As a first step, the Governing Council of the University is directed to terminate the appointment of the Chief Internal Auditor, Mr. E.A. Emuze.”

In the implementation of the above directive, the Acting Registrar and Secretary of the Governing Council of the University, Mr. R.A. Williams, addressed a letter No.REG/RO/C/38/199 of 20th May, 1987, to the Appellant terminating his appointment. The letter reads as follows:-

“REG/RO/C/38/199

Mr. E. A. Emuze,

Internal Audit,
20th May, 1987
University of Benin,
Benin City.

Dear Mr. Emuze,

B The Visitor's View on the Report
of the Visitation Panel to the University
of Benin. 1975-1985

Consequent upon the White Paper arising from the above
C report, I am directed to convey to you the directive of the Visitor, the
President, Commander-in-Chief of the Armed Forces of the Federal
Republic of Nigeria, Major General Ibrahim Badamosi Babangida,
in exercise of the powers conferred on him as the Visitor to the
University of Benin, that your appointment as Principal Accountant
(Internal Audit) be terminated with immediate effect for lack of expert
D guidance in the Internal Audit and for your inability to ensure that
things are put right in the Internal Auditing aspect of the University
operation.

Accordingly, your appointment is hereby terminated with
immediate effect.

E By endorsement of this letter, the Acting Bursar is being
requested to pay you your entitlements less any indebtedness to the
University.

You should hand over all University properties in your pos-
F session to Mr. M.E. Ekeoba, Accountant Grade II and vacate your
official quarters with immediate effect.

Yours sincerely,

R. A. Williams,

Ag. Registrar and Secretary to the Council."

G The Appellant reacted by instituting an action culminating
in the present appeal. In that action, filed at the Benin High Court
as suit No. B/312/92 dated 8th June, 1992, he claimed against the
Respondents, as Defendants, the sum of Forty-five Thousand Naira
special damages for wrongful termination of his appointment as Prin-
cipal Accountant in the Internal Audit Department of the University
of Benin. Pleadings were duly filed and exchanged. In paragraph
H 12 of the Respondents' joint statement of defence, the Respondents
maintained that the court lacked the jurisdiction to try the suit by

pleading thus:

“12. At or before the trial, the Defendants shall contend that under the Public Officers (Special Provisions) Decree No. 17 of 1984 and the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984 respectively, the Plaintiff’s complaint in this case is not justiciable and this Honourable Court consequently lacks the jurisdiction to entertain same.” B

Subsequent to filing their statement of claim, the Respondents filed a motion on notice praying the trial court for an order setting down for hearing before the trial of the suit, the point of law raised in the aforementioned paragraph 12 of the statement of defence. The motion was supported by a 13 paragraph affidavit and a 7 paragraph further and better affidavit setting out the facts narrated above. Annexed to the supporting affidavit and further and better affidavit were respectively the letter dated 20th May, 1987, terminating the Appellant’s appointment, Exhibit ‘A’ and the relevant part of the Government White Paper, Exhibits B, B1. C

The motion came up for hearing before Akhigbe, J., who after taking arguments from learned counsel on both sides delivered a reserved ruling on 30th November, 1995, which he concluded as follows:- E

“I am however satisfied that Exhibit ‘A’ was issued on the directive by (sic) the appropriate authority to the Governing Council of the University and therefore comes within the provision of Decree No. 17 of 1984 and I so hold. F

Accordingly, this application succeeds and this suit is hereby struck out for want of jurisdiction pursuant to Decree No. 17 of 1984. I make no order as to costs.”

Against that ruling, the Appellant lodged an appeal to the Court of Appeal, Benin Judicial Division, which in a unanimous judgment delivered on the 1st day of April, 1998, dismissed the appeal when in the last paragraph of its judgment at page 96, it held thus:- G

“In the result, I have no doubt in holding that the respondents clearly satisfied the lower court that the action taken against the appellant in their letter in question was authorised by the appropriate authority as defined under Section 4(2)(ii) of the afore-mentioned Decree No. 17 of 1984. The effect, therefore, is that the jurisdiction of the lower court to entertain the action was effectively ousted under H

Section 3(3) of the same Decree. There is therefore no merit in the appeal. I accordingly dismiss it. But I will make no order as to costs.”

Dissatisfied with that judgment, the Appellant has lodged a further appeal to this court based on only one ground of appeal which reads:-

B GROUND OF APPEAL

i. The learned Justices of the Court of Appeal erred in law in dismissing the appeal of the Appellant when the High Court had jurisdiction to entertain the claim.

C PARTICULARS OF ERROR

i. When Decree No. 17 of 1984 is not applicable to the case.

ii. When it is clear that the appropriate authority did not terminate the appointment of the appellant.

D The parties filed and exchanged briefs, which they adopted in the consideration of the appeal. In the appellant’s brief, one issue was identified as arising for determination. That issue which was adopted by the Respondents, reads thus:-

E “Whether the learned Justices on Appeal were right in holding that the High Court lacked jurisdiction to entertain the case of the Plaintiff (appellant) having held that the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria acted as a Visitor to the University of Benin in directing the termination of the appointment of the Plaintiff (Appellant)?”

F In arguing the lone issue for determination, learned counsel to the Appellant, in his brief of argument referred to the letter Exhibit ‘A’ by which the appointment of the Appellant was terminated, pointing out that the letter discloses that the Head of State in directing the termination of the appointment of the Appellant was exercising the power conferred on him as the Visitor of the University pursuant to the statute creating the University. Counsel cited the cases of Garba & Ors. v. University of Maiduguri & Ors. (1986) 1 NWLR (Pt. 18) 550 and Anya v. Iyayi (1993) 7 NWLR (Pt. 305) 290 at 315 to submit that the powers of the Head of State are distinct and separate from those of the Visitor. He then submitted that the Head of State acted as Visitor to the University of Benin in terminating the appointment of the appellant and not as Head of State and the appropriate authority with powers to remove any public officer from office in accordance with the provisions of Decree No. 17 of 1984, or Public Officers (Spe-

cial Provisions) Act, Cap. 381 Volume XXI, Laws of the Federation of Nigeria, 1990.

In his response to the above submissions, learned counsel to the Respondents stated that the statute establishing the University of Benin is the University of Benin (Transitional Provisions) Act, Cap. 452 of the Laws of the Federal Republic of Nigeria, 1990, and the Schedule to the Act titled University of Benin Law, 1995. Counsel referred to Section 14(1) of Cap. 452 of the Laws of FRN, 1990, which provided that the President shall be the Visitor of the University. It was then submitted that Section 14(1) of Cap. 452 of Laws of FRN, 1990, did not draw any distinction between the exercise of the powers of the Visitor and that of the President. Learned counsel contended that the letter, Exhibit A, by which the Appellant's appointment was terminated, was issued at the instance of the appropriate authority as contemplated by Section 4(2) of the Public Officers (Special Provisions) Act, Cap. 381 and therefore the Court of Appeal was right in holding that the trial court lacked the jurisdiction to entertain the Appellant's suit.

Jurisdiction is a threshold issue. It is so radical that it forms the foundation of adjudication. If a court lacks jurisdiction, it also lacks the necessary competence to try the issue before it. A defect in competence is fatal, for the proceedings are null and void ab initio, however well conducted and well decided they may otherwise be: *Oloba v. Akereja* (1988) 7 S.C. (Pt. 1) 1, (1988) 3 NWLR (Pt. 84) 508, *Barclays Bank Ltd. v. Central Bank of Nigeria* (1976) 6 S.C. 115, *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) 350, *Management Enterprises Ltd. v. Otusanya* (1987) 2 NWLR (Pt. 55) 179.

In the instant case both the trial High Court and the Court of Appeal held that the Appellant's suit was not justiciable by virtue of the ouster clause in the Public Officers (Special Provisions) Act, supra which ousted the jurisdiction of the court to try it. For better appreciation of the contentions of counsel, the relevant provisions of the Act are reproduced hereunder:-

"1 (i) Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that –

(a) it is necessary to do so in order to facilitate improvements in the organisation of the department or service to which a public officer belongs; or

(b) by reason of age or ill health or due to any other cause, a public officer has been inefficient in the performance of his duties; or

(c) the public officer has been engaged in corrupt practices or has in any way corruptly enriched himself or any other person; or

B (d) the general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest.”

C the appropriate authority may at any time, after 31st December, 1983-

“(i) dismiss or remove the public officer summarily from his office, or

(ii) retire or require the public officer to compulsorily retire from the relevant public service.” (Underlining for emphasis)

D Section 3(3) of the Act provides that:-

E “3(3) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before, on or after the making of this Decree, the proceedings shall abate, be discharged and made void.”

The term “appropriate authority” is defined in Section 4(2) as follows:-

F “4(2) in the operation of this decree, the appropriate

(a) in respect of any office which was held for the purposes of any State, shall be the Military Governor of that State or any person authorised by him; and

(b) in any other case, shall be the President or any person authorised by him or the Armed Forces Ruling Council.”

G By Section 3(3) of the Act reproduced above, no civil proceedings shall lie or be instituted in any court in respect of any act done or purported to be done under the Act. The courts do guard their jurisdiction jealously and zealously and as such any enactment, which takes away a citizen’s right of access to the court ought to be construed very narrowly against anyone claiming its benefit, that is, fortissime contra proferentes. See *Peenok Investment Ltd. v. Hotel Presidential* (1983) 4 NCLR 122. Ouster clauses are interpreted more

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liberally on the side retaining and preserving the court's jurisdiction vide Barclays Bank of Nigeria v. Central Bank of Nigeria (1976) 1 All NLR (Pt. 1) 409.

In Nwosu v. Imo State Environmental Authority (1990) 2 NWLR (Pt. 135) 688 at 723, this court laid down guiding principles in the interpretation of ouster clauses as follows:-

“Certain principles guide the court in such an exercise. If there should be any doubt, gap, duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right: see London and County Commercial Properties Investments Ltd. v. Attorney-General (1953) 1 All ER 436 at p. 441- 442. If there is a reasonable construction which will avoid the penalty in any particular case, the court will adopt that construction: Tuck and Sons v. Priester (1887) 19 QBD 629 at 638. If there is any doubt as to whether the person to be penalized or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt, I.R.C. v. Duke of Westminster (1936) AC 1 at p. 18. See on these, Maxwell: on Interpretation of Statutes (12 Edn.) p. 239. If after the above approach and the application of the above principles the person to be affected comes squarely and fairly within and is affected by the words of the statute, the court has no alternative than to apply it.”

In the instant case, for there to be a valid exercise of power under the Act in question, three conditions must be satisfied, viz, (a) the person whose appointment is affected is a public officer within Section 277 of the Constitution, 1979, (now Section 318 of 1999 Constitution) (b) the grounds for the exercise of the power are laid within those prescribed in Section 1(1) of the Act and (c) the power is exercised by the appropriate authority or any person authorised by him. In the instant case, there is no dispute over (a) and (b) above. The dispute centres on condition (c). The Appellant contends that his appointment was not terminated by the appropriate authority as defined in Section 4(2) of the Act but the Respondents hold a contrary view. It is patent from Exhibit 'A' that is, the letter by which the Appellant was notified of the termination of his appointment that the

termination was made by the Governing Council of the University of Benin at the instance of the Visitor of the University. The Visitor is not an appropriate authority as defined in Section 4(2) of the Act but the President or Head of State, who is the appropriate authority happens to be the Visitor of the University. The narrow issue to be resolved is whether the Visitor in exercising his power as the Visitor of the University is deemed to be acting as the President or Head of State pursuant to the Act.

This issue arose for determination in the case of *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290, and in discussing it I can do no better than refer to the opinion of this court per Karibi-Whyte, JSC., at pp. 314, 315 where he said:-

“I do not find the rather imponderable submission of Dr. Odje that the Head of State acting as Visitor in a dual capacity both as Head of State was an appropriate authority in the exercise of powers under the University of Benin (Transitional Provisions) Act No. 3 sufficiently persuasive. It is clear from S. I. No. 18 of 1986 and the recital therein, the Instrument constituting the Visitation Panel to the University of Benin, 1975-85 that the Panel was constituted by the Head of State as Visitor in exercise of powers conferred upon him by S. 13 of the University of Benin (Transitional Provisions) Act No. 20 of 1975. It can hardly be disputed that the powers of the Visitor can hardly be exercised by virtue of and under that law. The enabling Section 14(2) of the University of Benin Law provides that:

“The Visitor shall as often as he may consider necessary, conduct a visitation which shall be conducted by such persons and in respect of any such affairs of the University as the Visitor may specify in the direction.”

I agree with Mr. Femi Falana, Learned counsel to the respondent, that even if the Head of State acting also as the Visitor of the 4th appellant was acting under and by virtue of the University of Benin Law he can only exercise powers under Section 14 of that law. He cannot also, as submitted by Dr. Odje, SAN, be acting as Head of State. The two powers and circumstances, which are mutually exclusive are not interchangeable. There is no doubt that the powers of Head of State are distinct and separate from those of a Visitor. The powers were intended to be separate and separable and to be exercised under separate circumstances and conditions. The powers

of the Visitor are expressly conferred by law.

It has always been the law, and consistent with common-sense and the intention of the legislation that where statute confers specific or special powers on any person or authority for the performance of certain acts, it is only that person or authority and no other that is contemplated in the performance of the duties under the law. Accordingly, since the appointment of the Visitation Panel was a creation of the University of Benin Law and the powers to make the appointment and give directives implementing the reports is vested in the Visitor, it is only the Visitor that was intended. It is immaterial that the Visitor is also the Head of State. He cannot exercise the powers of a Visitor to the University when acting in that capacity even as Head of State. This clearly is the law. It is intended to avoid confusion, obey the rule of law and abuse of powers.

It would seem to me that Dr. Odje was misled by the fact that the S.I. No. 19 of 1986, the instrument setting up the Visitation Panel was signed by the Head of State who is also the Visitor to the University. The explanation is that the Head of State signed the instrument in his legislative capacity, which is quite different from the capacity of Visitor vested in him by the University of Benin Law. He was therefore not acting as Head of State when he was acting as a Visitor. As I have already stated above, I agree with the Court of Appeal that-

“Although the President, Commander-in-Chief of the Armed Forces is by law, the Visitor to all Federal Universities in Nigeria.... but when he acts as Visitor to a University, he acts in accordance with powers vested in him by statute creating the University and he cannot exceed those powers - See Garba & Ors. v. University of Maiduguri & Ors. (1986) 2 S.C. 128, (1986) 1 NWLR (Pt. 18) 550.”

The sum total of all that has been said above is that the Visitor of the University in implementing the report of the Visitation Panel was not acting or exercising the powers of the Head of State. Therefore, in the instant case, Exhibit A, the letter by which the appointment of the Appellant was terminated was not issued by the Head of State or by any person authorised by him. That being the case, the termination of the Appellant's appointment did not fall within the ambit of the Public Officers (Special Provisions) Act so as to oust the jurisdiction of the court. The two lower courts were in error to have held otherwise.

In conclusion, the appeal is allowed. The judgment of the Court of Appeal is set aside. The Appellant's suit is transferred to the High Court, Benin for expeditious determination before another Judge other than Akhigbe, J. The sum of N10,000.00 costs is awarded to the Appellant against the Respondents.

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UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother, Edozie, JSC., I agree with his reasoning and conclusion. I have nothing to add.

Accordingly, I too would allow the appeal. The decision of the Court of Appeal is set aside and the case is remitted to the High Court, Benin-City, for trial, before another Judge, other than Akhigbe, J. N10,000. 00 costs is awarded against the Respondent in favour of the Appellant.

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OGUNDARE JSC

I agree entirely with the judgment of my learned brother, Edozie JSC., just delivered. I have nothing more to add other than to observe that the courts below appeared oblivious of the case of Anya v. Iyayi. It was first decided in the Court of Appeal and reported in (1988) 3 NWLR 359; the learned trial Judge ought to have noticed this. The Supreme Court affirmed the Court of Appeal in (1993) 7 NWLR 290 before the Court of Appeal gave its decision in this case.

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I too, allow the appeal and abide by the consequential orders, including the order for costs, made by him.

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MOHAMMED JSC

I entirely agree. I also set aside the judgment of the Court of Appeal for the reasons given by my learned brother, Edozie JSC., in the lead judgment which he permitted me to read before now. The appeal is allowed. The appellant's action is transferred to the Edo State High Court for hearing. I also award N10,000.00 in favour of the appellant.

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IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Edozie JSC., and I entirely agree that there is merit in this appeal. B

It is not in dispute that the Head of the Federal Military Government, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria was, at all material times, by law, the Visitor to the University of Benin. There can be no doubt also that the powers of the Head of State are, quite clearly, distinct and separate from those of the Visitor of a University and it would not matter that both posts reside in one person. Both powers are mutually exclusive. They are also intended to be exercised under separate circumstances and conditions. The powers of the Visitor are expressly spelt out and conferred by Law. Where a statute confers specific or special powers on any person or authority for the performance of certain acts or duties, it is only that person or authority and no other person else that is contemplated in the performance of such acts or duties under the relevant Law. He must also act in strict accordance with the powers vested in him by the relevant statute and may not exceed such powers. See *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290 at 315 where Karibi-Whyte JSC., explained the position thus:- C D E

“...Since the appointment of the Visitation Panel was a creation of the University of Benin Law, and the powers to make the appointment and give directives implementing the Report is vested in the Visitor, it is only the Visitor that was intended. It is immaterial that the Visitor, is also the Head of State. He cannot exercise the powers of a Visitor to the University when acting in that capacity even as Head of State. This clearly is the law. It is intended to avoid confusion... and abuse of powers.” F G

See too *Garba and Others v. University of Maiduguri and Others* (1986) 1 NWLR (Pt. 18) 550. H

Now, in the present case, it cannot be disputed that the Head of State expressly purported to act as Visitor to the University of Benin in terminating the appointment of the appellant. He did not exercise this power as Head of State, Commander-in-Chief of the Armed

Forces and, therefore, as the appropriate authority with powers to dismiss, remove or retire compulsorily any Public Officer from office pursuant to the provisions of Decree No. 17 of 1984, otherwise also known as Public Officers (Special Provisions) Act, Cap. 381, Laws of The Federation of Nigeria, 1990.

B In the circumstances, it is my view that the provisions of Decree No. 17 of 1984 are not applicable to the facts of the present case. This is for the simple reason that it was not the appropriate authority as envisaged under the said Decree, otherwise also known
C as Public Officers (Special Provisions) Act, Cap. 381, Laws of the Federation of Nigeria, 1990, that terminated the appointment of the appellant. On the contrary, the Head of State acted as Visitor to the University of Benin in terminating the appointment of the appellant. Accordingly, the provisions of Decree No. 17 of 1984 or Cap. 381, Laws of the Federation of Nigeria, 1990, cannot be applicable to this
D case.

It is for the above and the more detailed reasons contained in the leading judgment that I too, allow this appeal and set aside the judgment of the court below. The appellant's suit is hereby transferred to the High Court of Justice, Benin City Judicial Division, Edo
E State, for hearing and determination before another Judge, other than Akhigbe, J. I abide by the order for costs made in the leading judgment.

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