

ARRANGEMENT ERROR, NO OF DISSENTS, where to place them???

SUPREME COURT OF NIGERIA

FRIDAY 13TH JUNE, 2003. SC. 353/2001

**CORAM:- M. L. UWAIS CJN, S. U. ONU, U. A. KALGO,
S. O. UWAIFO, A. O. EJIWUNMI,
E. O. AYOOLA, N. TOBI, JJSC**

ATTORNEY-GENERAL OF LAGOS STATE PLAINTIFF
AND
1. THE ATTORNEY-GENERAL OF
THE FEDERATION & 35 Ors. DEFENDANTS

CONSTITUTIONAL LAW - Legislative powers - 1999 Constitution ss.4(4)(b) & 4(7)(6) - Scope - Power provided in the sections is either in relation to particular matter - Or it is a residuary power (H1)

CONSTITUTIONAL LAW - Legislative powers - National Assembly - 1999 Constitution s.20 - Effect - Though N.A. can make relevant laws by virtue of the provision - It cannot make such law as Decree No. 88 of 1992 on the basis thereof (H2)

COURTS - Constitution - Interpretation - Purposive approach - Justification - Court is entitled to use materials as it considers helpful - In relation to meaning it gives to ambiguous provision (H3)

CONSTITUTIONAL LAW - Making of laws - 1999 Constitution s.20 - Scope - The provision is not concerned with making laws - For the physical layout and developmental control of any town in Nigeria (H4)

CONSTITUTIONAL LAW - Existing Laws - Incorporation - 1999 Constitution s.315(1) - Decree on residual list that remains as existing law after the exit of the military - Shall become a law deemed to have been enacted - By State House of Assembly (H5)

CONSTITUTIONAL LAW - Legislative powers - Urban & regional planning - N.A. can make planning laws for the FCT Abuja - And so can State Houses of Assembly legislate for their respective States (H6)

LAND LAW - State planning laws - Binding effect - Though Federal land may be situate in a State - Federal Govt. must respect regulations of State in respect of same - Or act in consultation with appropriate authorities (H7)

FACTS

Plaintiff sued defendants before the Supreme Court by virtue of the Court's original jurisdiction. By the action, plaintiff was challenging the powers of 1st defendant to legislate on urban and regional planning for the whole country under the 1999 Constitution. More particularly, plaintiff was challenging the validity of the provisions of the Nigerian Urban and Regional Planning Decree No. 88 of 1992 as an existing law under the Constitution.

The basis of plaintiff's case was that though Decree 88 was validly made in 1992 under the military regime (when the country operated a more or less Unitary system of government), but as at the coming into force of the Constitution and the consequent enthronement of the federal system of government, the tenor and scope of Decree 88 was no longer valid in that it offended the federal principles entrenched in the constitution. It is argued that urban and regional planning is a residual item within the exclusive legislative competence of States. Therefore Decree 88 was unconstitutional so far as it purports to apply to land within the component State of the federation.

ISSUES FOR DETERMINATION

"1. Whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legislative matters.

2. If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are within the legislative and executive jurisdiction of the Federal Government.

3. Whether Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution therefore unlawful, null and void.

4. Whether the ownership rights of the Federal Government over land in state territories include the power to control and regu-

late town planning and physical development in relation to such land.

5. *Whether all approvals, permits and licenses granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the Plaintiff are not illegal, null and void."*

HELD (Granting the claim in part by a majority decision per **UWAIFO JSC**, **Uwais CJN** and **Ayoola JJSC** dissenting)

Legislative powers - 1999 Constitution ss.4(4)(b) & 4(7)(6) - Scope

1. We have also heard arguments that town and regional planning is a concurrent matter, citing the provisions of Section 4(4)(b) and 4(7)(b) in support. I will at this stage react that it hardly needs be said that when any power to legislate is claimed in Section 4(4)(b) under "any other matter", (1) it must be clear beyond dispute that such power exists in relation to a particular matter; or (2) it must be regarded as the residual legislative power of the National Assembly in respect of the Federal Capital Territory, Abuja, as if it was one of the States of Nigeria by virtue of Section 299(1) of the Constitution. Therefore the provisions of Section 4(4)(b) and 4(7)(b) cannot be read as if they confer concurrent legislative power on the Federation and the States. Concurrent powers are limited to the Concurrent Legislative List. That is what the 1999 Constitution provides for and I have always understood this to be so as a feature of federalism. (p. 1657 B)

Legislative powers - National Assembly - 1999 Constitution s.20

2. The contention of the 1st defendant is that the National Assembly can make relevant laws by virtue of the provision of Section 20 of the 1999 Constitution through the same process as Act No. 5 of 2000 was made. I have no doubt that that is a tenable contention as it stands. The further argument arising from that is that that same provision in Section 20 makes it possible for the National Assembly to enact a law such as

the Nigerian Urban and Regional Planning Decree No. 88 of 1992.

The learned Attorney-General of Lagos State submits that such an argument is a gross misconception. He contends that Section 20 is concerned entirely with environmental objectives under the State Policy and was never intended as a basis for the conception, design and implementation of an urban/town and regional plan for the Federation of Nigeria. He argues that no method of interpretation of Section 20 can be good and tenable enough to support the orientation behind Decree No. 88 of 1992 and to bring it within a law the National Assembly can enact for the Federation of Nigeria. I agree entirely with the learned Attorney-General. (p. 1662 E)

D Constitution - Interpretation - Purposive approach

3. The court is entitled to take account of and use such materials or information which it considers will help it to determine the true intendment of a statutory or constitutional provision in a purposive interpretative approach; or which will lead it to assess the correctness of a meaning it has, through the usual canons of interpretation, given to such a provision. This is particularly so of a provision which is either ambiguous or seems to have become controversial.

F In *Pepper v. Hart* (1993) 1 All ER 42, the House of Lords took that course.

At page 61, Lord Browne-Wilkinson who gave the leading opinion said:

G “Although the courts’ attitude to reports leading to legislation has varied, until recently there was no modern case in which the court had looked at parliamentary debates as an aid to construction. However, in *Pickstone v. Freemans Plc* (1988) 2 All ER 803, (1989) AC 66, this House, in construing a statutory instrument, did have regard to what was said by H the minister who initiated the debate on the regulations. Lord Keith after pointing out that the draft regulations were not capable of being amended when presented to Parliament, said that it was ‘entirely legitimate for the purpose of ascertaining the intention of the Parliament to take into account the terms

in which the draft was presented by the responsible minister and which formed the basis of the acceptance' (see (1988) 2 All ER 803 at 807, (1989) AC 66 at 112)." (p. 1673 B)

1999 Constitution s. 20 - Scope

4. I would, however, have to make the point that town and country planning may be influenced by environmental laws in appropriate circumstances. If, for instance, an environmental law is directed at preserving the beauty of an elegant landscape, or the existing archaeological or architectural works or monuments of historic or artistic interest, relevant town and country planning laws must take account of such a law. It must be expected that the operators of town and country planning will have to comply with such directions given by the appropriate authority in charge of environment to meet the objectives. That is the essence of the Environmental Impact Assessment Decree No. 86 of 1992 whose objectives I have already reproduced in this judgment.

Again, land can be safeguarded by relevant environmental laws which may prohibit any activities on land that could lead to, say landslide or erosion or land pollution with toxic waste with its catastrophic effect.

It is in the light of all these that the scope of Section 20 of the Constitution should be ascertained. When so done, it will be realized that that provision is not concerned with making laws for the physical layout and developmental control of any town or region in any part of Nigeria. The roles of the two types of laws are distinguishable although they could be complementary to each other. (p. 1675 B)

CONSTITUTIONAL LAW - Existing Laws - Incorporation

5. By this constitutional arrangement which allocates legislative jurisdiction between the National Assembly and the House of Assembly of a State, it is recognised that any matter not mentioned either in the Exclusive or Concurrent Legislative List becomes a residual matter exclusively for the State House of Assembly by virtue of Section 4 subsection 7(a); and similarly it is a residual matter exclusively for the National As-

sembly in regard to the Federal Capital Territory, as if it were a State, by virtue of Section 299 of the Constitution.

If a Decree promulgated by the Federal Military Government for the entire Federation on a subject which ordinarily would have been the exclusive matter for the States remains an existing law after the exit of the military, it becomes a Law deemed enacted by the State Houses of Assembly. This is the effect of an enabling constitutional provision like Section 315(1) of the 1999 Constitution. (p. 1677 F)

C Legislative powers - Urban & regional planning

6. In the circumstances, I have to say that Professor Osinbajo is right, in my view, in his submission that urban and regional planning for the Federal Capital Territory, Abuja is within the exclusive legislative function of the National Assembly but only by virtue of Section 299(a) conferring residual power on it and not the controversial Section 20 of the Constitution. Similarly, each State House of Assembly has exclusive function to make planning laws and regulations for the State under its residual power. It must follow that the National Assembly cannot make a law in the form and to the detail and territorial extent of the present Nigerian Urban and Regional Planning Decree No. 88 of 1992. To do so will be in clear breach of the principles of federalism and an incursion into the legislative jurisdiction of the States. But it can make planning laws for the Federal Capital Territory, Abuja only on the basis of its residual powers. (p. 1680 F)

G LAND LAW - State planning laws - Binding effect

7. Again, the argument that the Federal Government has planning power in respect of land owned by it in any State by virtue of the Land Use Act is faulty. Ownership of land in any State by the Federal Government is primarily limited to the question of title and the right to possession and use of it. It gives the Government the right to use it for its purposes. Like any other individual landowner, though obviously with more awesome presence, the Federal Government must respect the planning laws and regulations of the State, or at least act in

consultation with the appropriate authorities or agencies with a view to achieving mutual accommodation for the project intended. It must not act in competition with or unwholesome subjugation of the State by superimposing its own planning regulations by whatever method. There is no reason why the Federal Government should not respect and abide by those laws. After all, it is the State which provides the necessary infrastructures in line with its development plans. Those plans cannot be altered, distorted or superimposed by any other authority on the ground that it is making use of the land which belongs to it in a State. (p. 1684 F)

NOTABLE POINTS OF INTEREST

UWAIFO JSC

1. A breach is a breach however salutary the effect

Once it is established that the power of making planning laws is reserved exclusively by the Constitution for the States under their residual power, the Federal Government cannot be allowed to enact any Act or make any regulation under any Act in any guise in competition with any State in respect thereof no matter the salutary nature of such a law. The court must so decide in an appropriate case. (p. 1682 A)

UWAIS CJN (Dissenting)

2. Town planning is one way of safeguarding environment

What then is the meaning of the phrase in Section 20 of the Constitution which reads, “*The State shall ...safeguard... land?*” The earlier words “protect and improve the environment and” therein have to be read by implication disjunctively from the latter words of the section in view of the use of the word “and” which I underline. Does the word “safeguard” embrace “Urban and Regional Planning?” The Concise Oxford Dictionary. Seventh edition, defines the word as - “*safe conduct, proviso, stipulation, quality or circumstance, that tends to prevent something undesired; guard or protect (rights etc.) by precaution or stipulation.*”

Halsbury’s Laws of England, Volume 46, Fourth Edition, describes ‘Town and Country Planning’ (which connotes urban and

regional planning) in paragraph 1 page 16 thereof, as follows:-

“*The town and country planning system is designed to regulate the development and use of land in the public interest; and it is an important instrument for protecting and enhancing the environment in town and country, preserving the built and natural heritage, conserving the rural landscape and maintaining Green Belts.*”

It is trite canon that in interpreting the Constitution narrow meaning should not be given to it unless it becomes necessary to do so

I am, therefore, satisfied that the word “safeguard”, when liberally interpreted, means the regulation of development and the use of land in the public interest, and also the protection and enhancement of the environment in town and country. (p. 1754 H)

D 3. National Assembly cannot impose physical plans on States

By Section 2(2) of the 1999 Constitution, Nigeria shall be a federation and by the doctrine of federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the federal government, is essential to federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government.

It follows, therefore, that the National Assembly cannot impose on the plaintiff in this case, or determine for the plaintiff the types and levels of the physical plans the plaintiff or any State of the Federation should have. (p. 1757 G)

G 4. Claim No. 3 is vague and too wide

Under this claim the plaintiff prays for the declaration to be granted in respect of other federal statutes, which vest power in the 1st defendant to grant approval or permits for use of land for specific purposes for which the statutes are made, do not vest general planning powers or control of physical development of land in Lagos State in the 1st defendant. In my opinion, this aspect of the claim is too wide and vague. By the nature of the claim it is not possible to examine the provisions of the unnamed statutes in order to see if the power in

question is non-existent. Consequently, this second arm of the claim in respect of unspecified statutes cannot be granted. (p. 1775 F)

KALGO JSC

5. The power to legislate on planning cannot be implied

It is very clear to me from the above and other provisions of the Decree that it was deliberately dealing with planning policy and development control over land in Nigeria and is not aimed at protecting or improving any environment envisaged by Section 20 of the 1999 Constitution. In saying this, I am not unaware of the provision of items 60(a), 67 and 68 of the E.L.L and the provision's of Section 10(2) of the Interpretation Act (Cap 112 of LFN, 1990). Although Section 20 of the 1999 Constitution gives the National Assembly the legislative jurisdiction on environment generally, it did not give it the power to legislate on planning and development control over land in the States or Local Governments and this cannot in the circumstances of this case be implied. It is not the function of the National Assembly under the 1999 Constitution to exercise any legislative powers of planning and development control of land in the jurisdiction of the States or Local Governments as this is not necessarily incidental or ancillary to effective legislation under Section 20 and item 60(a) of the E.L.L of the said Constitution. (p. 1711 H)

6. State means federal, state or local government

Also the word "State" in Section 20 does not mean Federal Government alone but according to Section 13 applies to "*all organs of government and all authorities and persons exercising legislative, executive or judicial powers*", and makes no distinction between Federal, State or Local Governments as component parts of the federation. See also Section 318(2) of the 1999 Constitution on the definition of "State." (p. 1712 E)

AYOOLA JSC (Dissenting)

7. Concurrent legislative powers arise in three ways

It is evident that concurrent legislative powers can arise in three instances: first, as expressly provided in subsection (4)(a) and subsection (7)(b) of Section 4 of the Constitution; secondly, to the extent that the Constitution may provide that, in terms of subsection 3 of

Section 4, any matter included in the Exclusive Legislative List shall not be to the exclusion of the House of Assembly of States; and thirdly, to the extent that in terms of subsections (4)(b) and (7)(c) of Section 4, the Constitution may have empowered both the National Assembly and the House of Assembly of a State to make laws in accordance with the provisions of the Constitution on the same matter. (p. 1779 F)

8. Federal legislative powers is not confined to the legislative lists

The search for the legislative authority of the National Assembly or of the House of Assembly of a State to make laws cannot rightly be confined to the Legislative Lists. A more accurate definition of a residual matter over which the House of Assembly of a State has exclusive legislative authority must take note of the provisions of subsection (4)(b) of Section 4. This was done by Bello, JSC., (as he then was), in *Attorney-General, Ogun State v. Aberuagba* (1985) 1 NWLR (Pt. 3) 395. Such search of legislative authority outside the Legislative Lists in Schedule II to the Constitution has sometimes led to Section 13 of the Constitution and the fundamental obligations of the State in Chapter II. It seems now generally accepted, though not without some reasonable hesitation, that Section 13 of the Constitution, sometimes read with items 67, 68 and 60(a) of the Exclusive Legislative List, provides the legislative authority of the National Assembly to legislate on matters included in Chapter II of the Constitution if the obligations of the State in regard to them is to be carried to fruition. (p. 1779 H)

9. Legislative powers under chapter II may be concurrent or exclusive

Where the search for legislative authority for enacting a statute leads to Chapter II of the Constitution, a helpful approach I venture to think is first to ascertain the nature of the obligation and then to ask whether it is one which can be discharged by legislative intervention exclusively or concurrently. For instance, the obligations of the State in regard to economic and foreign policy objectives provided for respectively in Sections 16 and 19 of the Constitution cannot be anything but exclusive to the Federation while the educational objectives

in Section 18 can hardly be anything but concurrent. Where any obligation in Chapter II relates to a matter clearly mentioned in the Legislative Lists, these lists cannot be ignored in determining whether the obligation can be carried into legislative effect either exclusively by National Assembly or concurrently, as the case may be, with the House of Assembly of a State. (p. 1780 E) B

10. Invalidity of the Act does not mean absence of legislative powers

At this stage of the enquiry, the need to consider the contents of a particular legislation, such as the Nigerian Urban and Regional Planning Act, does not immediately arise. The total or partial invalidity of that Act will not by themselves lead to a denial of the competence of the National Assembly to make laws in regard to planning matters if that is a rational manner of fulfilling the goals of Section 20. C
D

It is not difficult to conceive of a federal legislation on urban and regional planning that may be protective of the environment without offending the federal structure or be in derogation of the sovereignty of the States. Indeed, several provisions of the Nigerian Urban and Regional Planning Act are of such nature, particularly in Section 2 thereof. The system of co-operative federalism for instance, may enable the federation to initiate urban and regional planning measures and encourage States to subscribe to and comply with them through inducement of grant or by persuasion of agreement. It is not only by coercion and command that federating units can be made to be part of a planning scheme initiated by a federal statute. (p. 1782 F) E
F

11. Planning and environment regulations over lap

Notwithstanding that planning and environment regulation may at their core be distinct activities, it cannot be denied that these activities may overlap and that planning regulation may be used as an instrument of protecting and enhancing the environment. G

The nexus between town and country planning system and the environment does not vary with the type of system of government in a given country, whether unitary or federal. Where in a Federation the Federal Government is empowered to make laws for the protection of environment it cannot be denied that it can employ the H

town and country planning system as one of the instruments for achieving that goal. The only limitation occasioned by the federal structure is that it must not do so in a manner as to impair the State's integrity or take over traditional state governmental functions in regard to details of land use or management of land. (p. 1784 D)

12. Wrongful exercise of a power is not same as its non existence

In the US case of National League of Cities v. Usery 426 US 833, 49 L Ed 2d 245, 253, it was said:

"We have repeatedly recognised that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." (Emphasis mine)

That opinion, in my judgment, applies with equal force to our country and I adopt it.

However, where the question is as to the existence of a general power as is raised in the first declaration, that a wrongful exercise of the power is possible or may have taken place does not lead to a denial of the existence of such power. It is for that reason that the consideration that will lead to a refusal of the first declaration does not necessarily lead to a refusal of the second. (p. 1785 E)

13. Existing enactments is irrelevant to question of possible enactments

As I have said, the Attorneys-General of Lagos State and Anambra State have with considerable industry enumerated several environmental statutes of the Federal Government which they said were more in tune with Section 20 of the Constitution. At the forefront they put the Federal Environmental Protection Agency Act (Cap. 131 LFN 1990) which the Attorney-General of Anambra State described as "the statutory threshold of environmental protection in the country."

No doubt, FEPA Act contains detailed provisions relating to environmental matters. However, I find the enumeration of the enactments on the environment of little or no significance when the question is the range of instruments that may be available to the National As-

sembly for achieving the goal of environmental protection.
(p. 1787 F)

TOBI JSC (Dissenting)

14. Our federal constitution has traces of unitary provisions

The Nigerian Constitution is called a Federal Constitution. But where B
there are unitary provisions contained therein, it is not the role of the
Judge to expunge or jettison the provisions. That will be a clear inter-
ference with the role of the National Assembly under Section 9 of the
Constitution. It is elementary law that a judge has no jurisdiction to C
amend the Constitution by his pronouncements however learned they
may be. The function clearly belongs to the National Assembly.

For the purposes of interpreting or construing the provisions
of our Federal Constitution, neither other Federal Constitutions nor
theories and principles of federalism, will be a substitute to the provi- D
sions of our Constitution. Such Federal Constitutions and theories
and principles can only be aids, and in some cases, useful aids in the
interpretation of our Constitution. (p. 1796 F)

REPRESENTATION

Prof. Y. Osinbajo, SAN, A-G of Lagos State, with A. Ipaye and K.
Jose (Mrs.), Chief State Counsel, for the Plaintiff

P. Erokoro, with O. Anozie, for the 1st Defendant

M. N. Oti (Miss), S.G Abia State, with S. Akuma and I. C. Nwachukwu,
SSC., for the 2nd Defendant

O. W. Dah, A-G Adamawa State, with Y. S. Ngbale, DCL, for the 3rd G
Defendant

4th Defendant absent and unrepresented

Chief Chinwuba, A-G Anambra State, with D.O.C. Amaechina, As- H
sistant CLO, for the 5th Defendant

6th and 7th Defendants absent and unrepresented

V. Y. Ayongur (Mrs.), DCL, Benue State, with S.C. Egede; Assistant DCL, for the 8th Defendant

9th Defendant absent and unrepresented

^B N. Andem-Ewa (Mrs.), A-G Cross River State, with V.J.O. Azinge (Mrs.), J. Efa, DCL, L. Garrick, DDCL, K. Uche and M. Iwonhe, for the 10th Defendant

^C Prof. A. A. Atuama, A-G Cross River State, with G. A. B. Orkhirheyanya, DCL and O. Pedro), for the 11th Defendant

12th, 13th, 14th and 15th Defendants absent and unrepresented

^D H. H. Kereng, Ag. DLD, Gombe State, with J. A. Kere, S.C), for the 16th Defendant

J. T. U. Nnodum, A-G Imo State, with D. O. Ukachukwu, T. E. Chikeka, DCL, and C. N Akwowundu, SSC.), for the 17th Defendant

^E

18th Defendant absent and unrepresented

T. Abubakar, A-G Kaduna State, with Alhaji M. S. Aminu, G. B. Kore, DCL and A. Isiaka, SC), for the 19th Defendant

^F

20th Defendant absent and unrepresented

^G S. I. Shema, A-G Katsina State, with A. Abdu, PSC.), for the 21st Defendant

22nd and 23rd Defendants absent and unrepresented

^H T. O. Ashaolu, A-G Kwara State, with A. K. Fakayode, SSC, and A. Dada), for the 24th Defendant

25th Defendant absent and unrepresented

P. Usoro, with M. O. Liadi and T. Wahab, for the 26th Defendant

Chief O. Oyebolu, A-G Ogun State, with O. V. Osunfisan, DLD, for the 27th Defendant

28th and 29th Defendants absent and unrepresented

B

Alhaji M. A. Lawal, A-G Oyo State, with M. O. Ishola, DCL, and A. I. Raheem, SLO), for the 30th Defendant

J. Y. Pam, A-G Plateau State, with F. B. Lotben (Mrs.) DCL.), for the 31st Defendant

C

33rd, 34th and 36th Defendants absent and unrepresented

CASES REFERRED TO

D

Emelogu v. The State (1988) 19 NSCC (Pt. I) 869

Green v. Green (1987) 3 NWLR (Pt. 61) 480

Melogu v. The State (1988) 19 NSCC (Pt.1) 869

Egwuatu v. A.G of Anambra State (1988) NCLR 472

General Ogun State v. Aberuagba (2002) Vol. 2 WRN 52

E

A.G of Mid-West v. Essi and Anor. (1977) 11 NSCC 178

Uwaifo v. A.G of Bendel State, (1982) 13 NSCC 221

Balogun & Ors. v. A-G Lagos State (1981) 2 NCLR 589

Kaduna State v. House of Assembly, Kaduna State (1981) 2 NCLR 44

F

A-G Osun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395

Fawehinmi v. Babangida (2003) 1 S.C. (Pt. III) 86

Emelogu v. The State (1988) 19 NSCC (Pt.1) 869

A-G Federation v. A.G of Abia State (2002) 6 NWLR (Pt. 764) 1

G

Lebile v. Regd. Trustees of Cherubim & Seraphim Church (2003) 2

NWLR (Pt. 804) 399

A-G Abia State v. A-G Federation (2002) 3 S.C. 106

STATUTES REFERRED TO

H

Constitution of the Federal Republic of Nigeria 1999, s.315

Environmental Impact Decree No. 86 of 1992

Federal Environmental Protection Authority Act Cap 131 LFN 1990

Harmful Wastes Act Cap 165 LFN 1990

National Environmental Regulations 1991

National Urban and Regional Planning Decree No. 88 of 1992

Town Planners (Registration, etc.) Act Cap 431 LFN 1990

BOOKS REFERRED TO

- B Oxford Advanced Learner's Dictionary, 5th Edn.
 Shorter Oxford English Dictionary, 3rd Edn., vol. 11

LEAD JUDGMENT BY UWAIFO JSC

C Until recent times, Lagos was the Federal Capital of Nigeria
 and the seat of the Federal Government. Lagos State with its head-
 quarters in Ikeja served in a dual capacity: as a State and as the Fed-
 eral Capital Territory. In that status, there was a lot of Federal Gov-
 ernment presence. To some extent there still is today. But since the
 D Federal Capital Territory, Abuja became the Capital of the Federation
 and the seat of the Federal Government, Lagos State is now seen as
 any of the other thirty-five States in Nigeria: see Sections 3 and 297
 and Parts I and II of the First Schedule to the Constitution of the
 Federal Republic of Nigeria, 1999 (the 1999 Constitution).

E A dispute of a constitutional nature has arisen between the
 Lagos State Government and the Federal Government. By virtue of
 the original jurisdiction conferred on the Supreme Court under Sec-
 tion 232 of the 1999 Constitution in respect of disputes between the
 F two Governments, the Lagos State Government instituted this suit
 primarily, and initially, against the Federal Government in this court,
 now the 1st defendant, seeking a number of reliefs. The 2nd-36th
 defendants, namely the other thirty-five States in Nigeria, were sub-
 sequently joined because it was thought that their interest or rights
 G might be affected by the outcome of the suit. However, among them
 only the 2nd (Abia), 5th (Anambra), 7th (Bayelsa), 8th (Benue),
 10th (Cross River), 11th (Delta), 14th (Ekiti), 17th (Imo), 19th
 (Kaduna), 21st (Katsina), 24th (Kwara), 26th (Niger), 27th (Ogun),
 30th (Oyo), 31st (Plateau), 32nd (Rivers) and 34th (Taraba) entered
 H appearances and participated in the proceedings.

It is important to narrate at the outset some essential back-
 ground facts bearing on this suit. They concern a law on town and
 country planning intended to have effect throughout the Federation
 which somehow has remained one of the relics of the last military

government. From 31st December, 1983 to 28th May, 1999, Nigeria was under military rule for the second time since independence in October, 1960. By the Constitution (Suspension and Modification) Decree No. 1 of 1984, some sections of the Constitution of the Federal Republic of Nigeria, 1979 were suspended and, where necessary, modified. The Federal Military Government assumed unlimited legislative jurisdiction and exercised the power to make laws for the Federation or any part thereof with respect to any matter whatsoever: see Section 2(1) of the Decree which provided that: “*The Federal Military Government shall have power to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.*” It could therefore make laws for and on behalf of the Federal Government, the State Governments and the Local Governments on any matter as it considered desirable. It was in those circumstances that the Nigerian Urban and Regional Planning Decree No. 88 of 1992 was promulgated for the whole of Nigeria. Added to this was an ouster clause in Section 5 of Decree No. 1 of 1984 which prevented any challenge to the said Decree No. 88 of 1992. As the plaintiff has said in its brief of argument, because of the awesome and wide power of the Federal Military Government, there was no legal basis for challenging the Decree then.

It is necessary to have an idea of the ramifications of that Decree. It confers ultimate responsibilities for town and country planning throughout the Federation of Nigeria on the Federal Government, on behalf of itself and the State and Local Governments (or purported to do so in respect of the State and Local Governments), and spells these out in Sections 2, 3 and 4. In Section 2, the Federal Government has the duty among other things to formulate national policies for urban and regional planning and development; to prepare and implement national physical plan and regional plans on the recommendation of the Minister charged with the responsibility; to formulate urban and regional planning standards for Nigeria on the recommendation of the Minister; to supervise and monitor the execution of projects in urban and regional planning. Section 3 imposes on a State Government the responsibility of making physical plan for the State, but within the framework of the national physical development and subject to Section 2, to ensure consistency in physical development at all levels of planning in Nigeria (a) in the formu-

lation of a State policy for urban and regional planning, (b) in the preparation and implementation of regional, sub-regional, urban and subject plans within the State, and (c) in the provision of technical assistance to Local Governments in the preparation and implementation of local, rural and subject plans. Section 4 places the responsibility on a Local Government, subject to Sections 2 and 3, for the preparation and implementation of a town plan, a rural area plan, a local plan, a subject plan and the control of development within its area of jurisdiction other than over Federal or State lands.

Sections 5 to 12 of the Decree deal with the bodies (Federal, State and Local Governments) which will be responsible for the initiation, preparation and implementation of the physical development plans as well as the composition and functions of those bodies. For the Federal, the body will be the National Urban and Regional Planning Commission ("the Commission"); for a State, the State Urban and Regional Planning Board ("the Board"); and for a Local Government, the Local Planning Authority ("the Authority"). The procedures for the preparation of national physical development plans are stated in Sections 13 to 24, while Section 25(1) says that the procedure for making the national physical plan shall be adopted with necessary modifications in the making of the regional, sub-regional and urban plan. Section 25(2) provides that "*the making of a town plan, a rural plan, a local plan and a subject-plan shall be in line with the State plans.*"

Sections 27 to 46 deal with the setting up of a control department and the powers and functions of the said department. In particular, Section 27 comes under Part II of the Decree which deals with the establishment and jurisdiction of Development Control Department at the Federal, State and Local Government levels. Subsection (3) purports to give the Control Department at the Federal level power over the development control on Federal lands and estates. This implies that even Federal lands in the States would not be subject to town planning laws of the States. Subsection (4) then makes it explicit that the Control Department at the State level shall have power only over the development control on States lands. If one realizes that State lands are generally understood under relevant State Laws to be different from lands owned by private individuals or bodies, this means that even the States would not be able to apply their town

planning laws to private lands. However, it should be recognised that Section 27 raises the larger constitutional question as to the power of the Federal Authorities to decide who exercises town planning control on lands in a State. That aspect will be given full consideration in this judgment.

Sections 47 to 89 deal with enforcement of the physical plans; the process for obtaining approval for land development; the method of application for development permit; the grounds for rejection of such an application; the consideration of the representation by a developer; the enforcement of rights and duties attached to a development permit; the revocation of development permit; appeal against revocation; compensation payable for revocation; service of enforcement notice; issuance of stop-work order for unauthorized development; acquisition of land and compensation therefore; control of outdoor advertising; the setting up of tribunals for appeals by persons aggrieved by development and implementation decisions etc.

It seems to me that the Decree could well be suitable for a unitary system of government. That is because, as is obvious to me, the main prop of the entire conception, formulation and layout of the Decree had as its background, a strong central command structure initiative. It might be argued that that was to be expected of a military government. Such argument would be valid only if it was clear that there had been a political decision to alter the federal system of the country. But it would be intolerably wrong to put it forward as an excuse for such a Decree if what was the general expectation and understanding at least initially, of well-meaning Nigerian political consciousness was that the advent of the military in the administration of this country, even if for the second time, was to be regarded and endured by the generality, as a mere aberration which would be temporary in nature. Upon that lingering psyche, the Federal Military Government ought not to have extended its functions to conceive of an urban and regional planning scheme for Nigeria with the implication that it had intruded into the power of the State Governments to decide the physical planning of their States for which they would bear the financial burden squarely and take full control for its implementation as envisaged in a federal system of government.

Now, the Constitution of the Federal Republic of Nigeria, 1999

came into force on 29th May, 1999. As to be expected, the legislative powers of the Federation and the States of the Federation are regulated by the Constitution. Those of the Federation are stated in Section 4 as follows:

B “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.*

C (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.*

D (3) *The power of the National Assembly to make Laws for the 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.*

E (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-*

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

G There is provision in Section 4(7)(b) in relation to State Houses of Assembly similar to Section 4(4)(b). Neither in the Exclusive legislative List nor the Concurrent Legislative List in the Second Schedule, Parts I and II to the Constitution is power conferred on the Federation acting through the National Assembly to enact a Law on urban and regional planning that would have effect in the States.

H We have heard arguments in this case to the following end: that town and regional planning is a residual matter for the States; that the Constitution does not envisage, and accordingly has not provided for the intrusion of the Federal Authorities into the affairs of the States and vice versa in areas where the vertical separation of legislative power of the different tiers of Government is considered desir-

able. That in national matters power is exclusively given to the Federation while the States are generally entrusted with power in local matters; that Urban and Regional Planning power is one such example. I think that is the essence of federalism. This has long been acknowledged by this court in Attorney-General for Ogun State & Ors. v. Attorney-General of the Federation (1982) 1-2 S.C. 13. I think, generally, physical planning is a local matter for the States and I shall say more on this later.

We have also heard arguments that town and regional planning is a concurrent matter, citing the provisions of Section 4(4)(b) and 4(7)(b) in support. I will at this stage react that it hardly needs be said that when any power to legislate is claimed in Section 4(4)(b) under "any other matter", (1) it must be clear beyond dispute that such power exists in relation to a particular matter; or (2) it must be regarded as the residual legislative power of the National Assembly in respect of the Federal Capital Territory, Abuja, as if it was one of the States of Nigeria by virtue of Section 299(1) of the Constitution. Therefore the provisions of Section 4(4)(b) and 4(7)(b) cannot be read as if they confer concurrent legislative power on the Federation and the States. Concurrent powers are limited to the Concurrent Legislative List. That is what the 1999 Constitution provides for and I have always understood this to be so as a feature of federalism.

The plaintiff complains in this suit that the 1st defendant (i.e. the Federal Government) has been interfering with and has made incursions into the arrangements of the Lagos State Government in town and country planning matters. It says this is done in reliance on Decree No. 88 of 1992 whereas the State has its own Town and Country Planning Laws such as (1) Building Lines Regulation Law of 1936, now Cap. 16, Laws of Lagos State, 1994; (2) Land Development (Provision for Roads) Law, Cap. 110; (3) Town and Country Planning Law No. 1 of 1986, Cap. 188.

Specific complaints are made that in contravention of the 1999 Constitution and the relevant Laws of Lagos State, the 1st defendant through its agencies has been performing acts which are within the authority of the Lagos State Government to do in regard to land in Lagos State. These complains will be set out in greater detail later in

this judgment. The plaintiff accordingly seeks the following reliefs as contained in paragraph 25 of the 2nd amended statement of claim:

B “1. A *DECLARATION* that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the States.

C 2. A *DECLARATION* that the provisions of Sections 1(2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

D 3. A *DECLARATION* that the Federal Highways Act (Cap. 135, Laws of the Federation of Nigeria (LFN), 1990), Nigerian Railway Corporation Act (Cap. 323, LFN, 1990), Civil Aviation Act (Cap. 51, LFN, 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal statutes which vest power in the 1st Defendant to grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.

F 4. A *DECLARATION* that the grant of approvals, permits and licenses for buildings and physical development in Lagos State including under bridges, bridges’ loops and highway set back are the residual responsibility of the Plaintiff.

G 5. A *DECLARATION* that all approvals, permits or licenses granted or issued by the 1st Defendant from the 1st of June, 1999 for building or development of land within the territory of Lagos State without the consent of the Plaintiff and in contravention of the town planning laws and regulations of Lagos State are illegal, null and void.

H 6. AN *ORDER* nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from 1st of June, 1999 for any building or any development of land in Lagos State.

7. A *PERPETUAL INJUNCTION* restraining the Defendant, its servants, agents and privies or otherwise howsoever from further grant-

ing of approvals, permits, licenses for development of any land, highway setback and under bridges, bridges' loops, markets, shops, stalls, mechanic workshops, etc., in Lagos State without the consent of the Plaintiff."

Out of the defendants who participated in these proceedings, only the 11th, 27th and 28th seemed to take the position that urban and regional planning is a concurrent matter for both the Federal and State Governments. The 1st defendant contends that urban and regional planning, "*far from being a residual matter, is in fact covered by several items on the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, 1999.*" The other defendants, namely the 2nd, 5th, 7th, 8th, 10th, 14th, 17th, 19th, 20th, 21st, 24th, 26th, 30th, 31st, 32nd and 34th variously argue that it is a residual matter for the States. It will be a real task, and certainly unprofitable, to refer to and discuss on paper all the arguments presented to this court by counsel in these proceedings. I have, however, taken time to consider all of them. Those canvassed in support of either the plaintiff or the 1st defendant have been broadly laid out by me as above. Other than what use I shall make of some of them individually, I do not intend to detail out the arguments of those defendants. I have to say in a complimentary way that they appear, on the whole, as arguments by amici curiae. I have found them quite interesting, and by and large instructive for mapping out the direction this judgment had had to take. The 5th defendant is a good example of those who came down fully on the side of the plaintiff. I have taken keen interest in the brief of argument filed on its behalf by Chief Ifeoma Chinwuba, the learned Attorney-General of Anambra State. I have found it extremely useful and have felt guided by some important arguments canvassed by her.

The plaintiff raised five issues for determination and they appear to be closely framed along the thrust of the first five reliefs sought. They read as follows:-

"1. *Whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legislative matters.*

2. *If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are*

within the legislative and executive jurisdiction of the Federal Government.

3. *Whether Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution therefore unlawful, null and void.*

B 4. *Whether the ownership rights of the Federal Government over land in state territories include the power to control and regulate town planning and physical development in relation to such land.*

C 5. *Whether all approvals, permits and licenses granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the Plaintiff are not illegal, null and void."*

The 1st defendant makes it three issues as follows:

D "1. *Whether Urban and Regional Planning is a residual matter under the Constitution of the Federal Republic of Nigeria, 1999 and therefore the legislative preserve of the States of the Federation.*

E 2. *Whether the Urban and Regional Planning Act (formerly Decree No. 88 of 1992) is inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 and therefore void.*

F 3. *If the answer to issue 2 above is in the affirmative, whether the Plaintiff has made out a sufficient case for this court to make a blanket order nullifying all approvals, permits and licenses granted by the 1st Defendant or any of its agencies for any construction, building or physical development or use of land owned by the Federal Government but located in Lagos State."*

But the 5th defendant makes it just two thus:

G "i. *Whether it is constitutional for the Federal Government to legislate on Urban and Regional Planning (i.e. Town Planning) and establish Town Planning Bodies or Authorities for the States and Local Government Councils under the Nigerian Urban and Regional Planning Decree (now Act) No. 88 of 1992; or*

H (ii) *In the alternative, whether certain aspects of the said Nigerian Urban and Regional Planning Decree No. 88 of 1992 can be saved for being a concurrent matter under the 1999 Constitution."*

I think issues 1, 2 and 3 together raised by the plaintiff provide a convenient starting point of discussion. A resolution of that will, in my view, show the way on how some of the other issues may be

resolved, and this suit decided. Let me say that the said issues 1, 2 and 3 are directly relevant to issues 1 and 2 by the 1st defendant and issue (i) by the 5th defendant.

The nature of the argument of both the plaintiff and the 5th defendant is that, basically, the matters over which the National Assembly can legislate are enumerated in the Exclusive and Concurrent Legislative Lists as contained in the Second Schedule to the 1999 Constitution. Any matter not named therein, by the system of federalism we have adopted, falls exclusively within the residual legislative power of the State Houses of Assembly. Town planning is such a matter. The National Assembly has similar residual power over town planning only in respect of the Federal Capital Territory, Abuja.

The 1st defendant has argued on the other hand that urban and regional planning such as that covered by the Nigerian Urban and Regional Planning Decree No. 88 of 1992 is not a residual matter but a matter in the Exclusive Legislative List. He relies on Sections 4(2), 4(3), 4(4)(b), 14(2)(b), 17(3)(c), and in particular Section 20 of the 1999 Constitution. I find Sections 14(2)(b) and 17(3)(c) completely irrelevant. Section 14(2)(b) declares that “*the security and welfare of the people (of Nigeria) shall be the primary purpose of government*”, while Section 17(3)(c) says that the Nigerian State shall direct its policy towards ensuring that “*the health safety and welfare of all persons in employment are safeguarded and not endangered or abused.*” I can find no connection between these provisions and the assumed power of the National Assembly to make town and regional planning laws.

Section 20 was considered relevant on the basis of item 60(a) of the 1999 Constitution which was carefully considered and applied by this court in the recent case of Attorney-General Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt.1) 1; (2002) 9 NWLR (Pt. 772) 222. Item 60(a) is an item placed in the Exclusive Legislative List under which the National Assembly may make law for

“*The establishment and regulation of authorities for the Federation or any part thereof -*

(a) *to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.*” (Emphasis mine)

If the said Decree No. 88 of 1992 had been concerned with environmental matters in the sense I understand them from the definitions and other references I shall hereafter advert to, it might reasonably have fitted into item 60(a) since the explanatory note in the Decree says that it was to provide, among other things, “*for a new*
 B *Urban and Regional Planning enactment for Nigeria with the establishment of Federal, State and Local Government Authorities to oversee the implementation of a more realistic and purposeful planning of the country.*” (Emphasis mine)

C The Fundamental Objectives and Directive Principles of State Policy form Chapter II of the 1999 Constitution. The Chapter contains Sections 13 to 24. Section 15 subsection (5) provides as a State Policy that -

D “*The State shall abolish all corrupt practices and abuse of power.*”

Since the whole of Chapter II has, at least in theory, been placed as an item legislation (being item 60(a) reproduced above) under the Exclusive Legislative List, it was possible, in practice, for the National Assembly to enact the Corrupt Practices and Other Related
 E Offences Act No. 5, of 2000 as decided by this court in Attorney-General Ondo State v. Attorney-General of the Federation (supra).

The contention of the 1st defendant is that the National Assembly can make relevant laws by virtue of the provision of Section 20 of the 1999 Constitution through the same process as Act No. 5 of 2000 was made. I have no doubt that that is a tenable contention as it stands. The further argument arising from that is that that same provision in Section 20 makes it possible for the National Assembly to enact a law such as
 F ***the Nigerian Urban and Regional Planning Decree No. 88 of 1992.***
 G The said Section 20 reads:

“*The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.*”

H ***The learned Attorney-General of Lagos State submits that such an argument is a gross misconception. He contends that Section 20 is concerned entirely with environmental objectives under the State Policy and was never intended as a basis for the conception, design and implementation of an urban/town and regional plan for the Federation of Nigeria. He***

argues that no method of interpretation of Section 20 can be good and tenable enough to support the orientation behind Decree No. 88 of 1992 and to bring it within a law the National Assembly can enact for the Federation of Nigeria. I agree entirely with the learned Attorney-General.

Section 20 of the 1999 Constitution is meant to support such laws as the Federal Environmental Protection Agency Act, Cap. 131 Laws of the Federation of Nigeria, 1990, the Harmful Wastes (Special Criminal Provisions) Act, Cap. 165, the Environmental Impact Assessment Decree No. 86 of 1992, the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations, 1991 etc. These laws and regulations are more in tune with Section 20 of the 1999 Constitution (and indeed show that that section is meant only for that purpose) than the said section bear on physical town and regional planning.

As rightly submitted by the learned Attorney-General of Anambra State in support of the plaintiff's position, the Federal Environmental Protection Agency Decree No. 58 of 1988 (the FEPA Act) "*is the statutory threshold of environmental protection in the country.*" She argues that that legislation provided the legal framework for the implementation of policies, goals and objectives pertaining to environmental protection, natural resources conservation and sustainable development. This is because, as she contends, it is concerned with the protection and improvement of the environment and the safeguarding of the water, air and land, forest and wild life of Nigeria. I have endeavoured to use as near as possible the very words which she appropriately and deliberately used for the purpose of capturing the essence - the only essence - of Section 20 of the 1999 Constitution.

This fascinating argument is further projected by reference to some sections of the said FEPA Act. Section 15(1) thereof provides for the establishment of water quality standards "*for the inter-State waters of Nigeria to protect the public health or welfare and enhance the quality of water.*" Section 17 is about establishing the "*criteria, guidelines, specifications and standards to protect and enhance the quality of Nigeria's air resources so as to promote the public health or welfare and the normal development and productive capacity of the nation's human, animal or plant life.*" Section 20(1) prohibits the

discharge of harmful substances upon the nation's land listed in the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations, 1991 by virtue of subsection (5) of the said section. Instructively, and this must be noted with interest, Section 38 of the FEPA Act defines "environment" to include "water, air, land and all plants and human beings or animal living therein and the inter-relationships which exists among these or any of them." This definition and the other relevant sections of the FEPA Act already referred to appear to me, inescapably, to be the *raison d'être* behind Section 20 of the 1999 Constitution.

The matter can be taken further. Again, I shall gratefully feel guided by the inimitable submission of the learned Attorney-General of Anambra State as to how Section 20 of the 1999 Constitution got its inspiration. At the 1994/95 Constitutional Conference held in Abuja, it was decided to insert a provision on "Environment" in the Constitution. Volume II of the Report contains the Resolutions and Recommendations. At pages 171 to 172 there were recommendations under the subhead: "The Environment". It is absolutely important to reproduce some of them as follows:

"(a) *Afforestation and Reforestation*

Concerted efforts should be made in terms of afforestation and reforestation programmes to help fight land degradation. Water should therefore be pumped to desert-prone areas to help combat desertification effectively thereby intensifying efforts in afforestation and reforestation activities.

(b) *Devastation through Mining Activities*

Existing mining regulations should be enforced and adhered to strictly in order to reclaim and rehabilitate the devastated environment due to mining activities.

(i) *At least 50% funds allocated to (OMPADEC) Oil Mineral Producing Areas Development Commission should be devoted to the rehabilitation of the environment of oil producing areas.*

(ii) *Funds should be provided through a commission similar to OMPADEC preferably tagged SOMPADEC (Solid Minerals Producing Areas Development Commission), to co-ordinate the reclamation and rehabilitation of devastated environment.*

(iii) *Efforts should be made to complete the Liquefied Natural Gas (LNG) Project to provide alternative energy source and prevent*

unnecessary depleting of trees for wood-fuel, thereby causing severe erosion and ecological degradation.

(c) Desertification

Water should “be conveyed to desert-prone areas to reforest and afforest and thereby control desertification more effectively, and a Forest, Soil and Coastal Erosion and Desert Control Commission should be established.

(d) Disasters and Emergencies Commission

A relevant Commission should be established to be responsible for handling National Disasters and National Emergencies.

(e) Federal Environmental Protection Agency (FEPA)

The Federal Environmental Protection Agency (FEPA) should be reorganized, rescheduled and be continuously funded to perform its regulatory roles more effectively.”

Flowing from the attention paid to “environment” as a subject as indicated above, the Conference reflected this in Section 21 of the Draft Constitution they proposed at page 17 of Volume I of the Report as follows:

“21. The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country.”

This is what is now Section 20 of the 1999 Constitution verbatim except for the use of the word “Nigeria” in place of the words “the country.” The learned Attorney-General of Anambra State has argued that this is a material which this court ought to use to arrive at the true meaning and intendment of Section 20.

Learned counsel for the 1st defendant in the 1st defendant’s brief of argument made the following bold submission:

“The National Assembly may legislate to protect the Nigerian Environment as provided in Section 20 of the Constitution. This necessarily implies the power to legislate on Regional and Urban Planning. In fact legislation may be regarded as compulsory, if the National Assembly is to fulfil the mandate given by item 60(a) of the Exclusive Legislative List, planning being absolutely necessary for proper environmental protection.” (Emphasis mine)

I have emphasised the portion of the submission which considers that Section 20 of the 1999 Constitution gives the National Assembly power to make planning laws in the nature of the Nigerian Urban and Regional Planning Decree. It seems to me that the provi-

sion of that Section is the main stay of the 1st defendant's defence of its constitutional right to intrude into the authority of the States (in the present case, the Lagos State) to decide which town/urban planning laws and regulations may be allowed to be implemented within their territories. The 1st defendant's learned counsel's argument is that the Decree No. 88 of 1992 applies throughout the Federation of Nigeria. That means, of course, including the States. This court ought, therefore, to refer to and reflect on all relevant circumstances concerning, or that may bear on, that section of the Constitution, and to give them a very close consideration in order to ascertain the real scope of that section.

As has already been said in reviewing the argument of counsel, Section 20 of the 1999, Constitution is one of the sections under Chapter II. That is the chapter containing the Fundamental Objectives and Directive Principles of State Policy. By virtue of item 60(a) of the Second Schedule to the Constitution, the subject-matter of that section comes under the Exclusive Legislative List. It can only be legislated on by the National Assembly on behalf of the Federal Republic of Nigeria. That was decided in *Attorney-General Ondo State v. Attorney-General of the Federation* (supra). The Federal Republic of Nigeria is by Section 2 subsection (1) of the Constitution referred to as a "Sovereign State" which in subsection (2) is described as consisting of States and a Federal Capital Territory; and it is the Federal Republic of Nigeria or the Sovereign State that is referred to in Section 20 as "The State" Section 14 (1) of the Constitution says: "The Federal Republic of Nigeria shall be State based on the principles of democracy and social justice." It is only the National Assembly that is empowered to legislate on behalf of the entity known as the Federal Republic of Nigeria in regard to any of the matters under Chapter II, through item 60(a) in the Exclusive Legislative List by virtue of Section 4 subsections (1), (2) and (3) of the Constitution. One of such matters is "Environment" in Section 20.

I cannot accept the submission by learned counsel for the 1st defendant that the power to legislate on "Environment" as envisaged under Section 20 of the Constitution is one that "necessarily implies the power to legislate on Regional and Urban Planning" even when the meaning of that section is strained to its limits. It depends entirely on what that term is meant to connote, and is capable of being de-

fined as in that section. In the first place, one cannot fail to recognise the clear meaning of words like “environment” and “town planning” as used in some dictionaries, and other sources of definition. The Oxford Advanced Learner’s Dictionary, 5th edn, page 387 defines “environment” as “the natural conditions, for example land, air and water, in which people, animals and plants live: measures to protect the environment. Many people are concerned about the pollution of the environment.” At page 1265, “town planning” is defined as “the control of the growth and development of a town, including its buildings, roads etc, especially by a local authority.” The Shorter Oxford English Dictionary, 3rd edn. Vol. II, at page 2336 gives the definition of “town planning” as: “The preparation and construction of plans in accordance with which the growth and extension of a town is to be regulated, so as to make the most of the natural advantages of the site, and to secure the most advantageous conditions of housing and traffic, etc.” To bring the matter home, in Section 18(1) of the Town Planners (Registration, etc.) Act, Cap. 431, Laws of the Federation of Nigeria, 1990, town planning is defined thus:

“Town planning” means the theory and practice of town and country planning by the ordering and control of the siting and erection of buildings and other structures and the provision of open spaces and similar use of land, as the case may be, for the improvement of the human environment.”

This is an Act for the registration of town planners in the country. How can it be suggested, for instance, that a town planner is an environmentalist and that the latter can be registered as a town planner. The qualifications required for registration are those sufficient to practice town planning as a profession: see Section 9.

It is of significant importance to refer at this stage to the definition of “environment” in the Environmental Impact Assessment Decree No. 86 of 1992. I shall later advert to the objectives for which environmental impact assessment is seen as desirable and the extent it may be relevant to land development or land use. The definition in Section 63(1) reads:

“63. (1) In this Decree, unless the context otherwise provides- ‘environment’ means the components of the Earth, and includes-

(a) land, water and air, including all layers of the atmosphere,

*(b) all organic and inorganic matter and living organisms, and
(c) the interacting natural systems that include components referred to in paragraphs (a) and (b)."*

Secondly, the primary aim of the Federal Government in seeking to protect and develop the environment can be garnered from the FEPA Act it promulgated. Under that Act, the functions of the Agency are stated in Section 4 as follows:

"4. The Agency shall, subject to this Act, have responsibility for the protection and development of the environment in general and environmental technology, including initiation of policy in relation to environmental research and technology; and without prejudice to the generality of the foregoing, it shall be the duty of the Agency to -

(a) advise the Federal Military Government on national environmental policies and priorities and on scientific and technological activities affecting the environment;

(b) prepare periodic master plans for the development of environmental science and technology and advise the Federal Government on the financial requirements for the implementation of such plans;

(c) promote co-operation in environmental science and technology with similar bodies in other countries and with international bodies connected with the protection of the environment.

(d) co-operate with Federal and State Ministries, Local Government Councils, statutory bodies and research agencies on matters and facilities relating to environmental protection; and

(e) carry out such other activities as are necessary or expedient for the full discharge of the functions of the Agency under this Act."

In carrying out these functions, the steps the Agency can lawfully take to achieve them are stated in Section 5. It is unnecessary to reproduce them all but sub-paragraphs (g) and (h) provide that the Agency shall -

"(g) establish such environmental criteria, guidelines, specifications or standards for the protection of the nation's air and inter-State waters as may be necessary to protect the health and welfare of the population from environmental degradation;

(h) establish such procedures for industrial and agricultural activities in order to minimise damage to the environment from such activities."

To the above may be added Sections 15(1) and (2), 17 and 19 which deal with water, air and noise respectively, and they provide as follows:

“15.(1) The Agency shall make recommendations to the Minister for the purpose of establishing water quality standards for the inter-State waters of Nigeria to protect the public health or welfare and enhance the quality of water to serve the purposes of this Act. B

(2) In establishing such standards, the Agency shall take into consideration the use and value for public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial and other legitimate uses. C

17(1) The Agency shall establish more criteria, guidelines, specifications and standards to protect and enhance the quality of Nigeria’s air resources so as to promote the public health or welfare and the normal development and productive capacity of the nation’s human, animal or plant life, and include in particular- D

(a) minimum essential air quality standards for human, animal or plant health;

(b) the control of concentration of substances in the air which separately or in combination are likely to result in damage or deterioration of property or of human, animal or plant health; E

(c) the most appropriate means to prevent and combat various forms of atmospheric pollution;

(d) controls for atmospheric pollution originating from energy sources, including that produced by aircraft and other self-propelled vehicles and in factories and power generating stations; F

(e) standards applicable to emission from any new mobile source which in the Agency’s judgment causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare; and G

(f) the use of appropriate means to reduce emission to permissible levels.

(2) The Agency may establish monitoring stations to networks to locate sources of atmospheric pollution and determine their actual or potential danger. H

19(1) The Agency shall, as soon as practicable after the commencement of this Act, in consultation with or appropriate authorities-

(a) identify major noise sources, noise criteria and noise control technology; and

(b) establish such noise abatement programmes and noise emission standards as it may determine necessary to preserve and maintain public health or welfare.

B (2) Any noise criteria identified under this section shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing qualities and quantities of noise.

C (3) The Agency shall make recommendations to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.”

Then there is Section 20 which prohibits harm being done to the air, land and waters of Nigeria, and provides sanctions for related offences. I shall recite only subsection (1) which reads:

D “20.(1) The discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the joining shorelines is prohibited, except where such discharge is permitted or authorised under any law in force in Nigeria.”

E The Minister charged with the responsibility for the environment, on the advice of the Agency, may make regulations under Section 37 of the Act for (a) water quality; (b) effluent limitations; (c) air quality; (d) atmospheric protection; (e) ozone control; (f) noise control; and (g) control of hazardous substances and removal methods.

Thirdly, to further show the scope of what environmental protection entails, the Harmful Waste (Special Criminal Provisions, etc) Act, 1988 (Cap. 165 Laws of the Federation of Nigeria, 1990) is relevant. The Act is obviously meant to protect the environment, and particularly to safeguard land and territorial waters. Section 1(2)(a) provides that any person who, without lawful authority, carried, deposits, dumps or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways, shall be guilty of a crime under the Act. Section 12(1) provides also for civil liability thus:

“12.(1) Where any damage has been caused by any harmful waste which has been deposited or dumped on any land or territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways, any person who deposited, dumped or imported the harmful waste or caused the harmful waste to be so deposited, dumped or imported shall be liable for the damage except where the damage -

(a) was due wholly to the fault of the person who suffered it; or

(b) was suffered by a person who voluntarily accepted the risk thereof.”

Now, the objectives of the environmental impact assessment as stated in Section 1 of Decree No. 86 of 1992 are to ensure that no project or development or activity which is likely to significantly impact on the environment is undertaken without its effects being first assessed by the Nigerian Environmental Protection Agency (the Agency). A number of mandatory study activities is listed in the Schedule to the Decree including housing development of an area of 50 hectares or more, construction of new townships, expressways, incineration plant, waste water treatment plant, coastal resort facilities or hotels with more than 80 rooms and development of tourist or recreational facilities in specified landmarks. I have taken these items at random. It is compulsory that each of these activities shall be assessed by the Agency as to its environmental impact before it is undertaken by any body or authority, including the Federal, State and Local Governments. The objectives of the impact assessment shall be-

“(a) to establish before a decision taken by any person, authority, corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account;

(b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas, consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realised;

(c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages.”

B As to when environmental assessment of projects intended on certain lands may have to be done, it is provided in Section 15 sub-sections (1) and (2) as follows:

C “15.(1) *Where a project for which an environmental assessment is not required under Section 15 of this Decree is to be carried out in Nigeria and the Agency or the President, Commander-in-Chief of Armed Forces is of the opinion that the project is likely to cause serious adverse environmental effect on Federal lands or on lands in respect of which a State or Local Government has interests, the Agency or the President may establish a review panel to conduct an assessment of the environmental effects of the project on those lands.*

E (2) *Where a project for which an environmental assessment is not required under Section 5 of this Decree, is to be carried out on lands in a Local Government land or on lands that have been set aside for the use and benefit of certain class of persons pursuant to legislation and the Agency is of the opinion that the project is likely to cause serious adverse environmental effects outside those lands, the Agency may establish a review panel to conduct an assessment of the environmental effects of the project outside those lands.*

F I have endeavoured to show from all these laws that it was never the intention that environmental matters could involve the National Assembly in proposing physical planning laws for Nigeria by virtue of a provision like that in Section 20 of the 1999 Constitution.

G It can be seen that the said laws are essentially about how to protect and improve the environment, and to safeguard the water, air and land, forest and wild life of Nigeria. This can by no means include or involve, in respect of land, physical town and regional planning as a means to “safeguard” land. It has been shown in this judgment what

H discussions and considerations led to the formulation of the text of Section 20 which for the first time in the constitutional history of Nigeria came to be inserted in the Constitution under the Principles of State Policy. The Constitutional Conference Committee’s discussion, recommendation and resolution on the subject make it clear

beyond argument that it was after deliberating on such purely environmental matters as afforestation and reforestation, devastation through mining activities, desertification, disasters and emergencies commission and the federal environmental protection etc., that the Committee came up with that provision.

The court is entitled to take account of and use such materials or information which it considers will help it to determine the true intendment of a statutory or constitutional provision in a purposive interpretative approach; or which will lead it to assess the correctness of a meaning it has, through the usual canons of interpretation, given to such a provision. This is particularly so of a provision which is either ambiguous or seems to have become controversial. Chief Ifeoma Chinwuba, the learned Attorney-General of Anambra State, certainly urges on this court that interpretative approach to Section 20 of the 1999 Constitution in the present case. So by her courtesy, for which I again express my gratitude, the relevant proceedings of the Constitutional Committee were made part of her argument on behalf of the 5th defendant, but in support of the plaintiff. I think this is an appropriate case make use of that information. ***In Pepper v. Hart (1993) 1 All ER 42, the House of Lords took that course.*** Lord Bridge of Harwich observed at page 50:

“The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.”

At page 61, Lord Browne-Wilkinson who gave the leading opinion said:

“Although the courts’ attitude to reports leading to legislation has varied, until recently there was no modern case in which the court had looked at parliamentary debates as an aid to construction. However, in Pickstone v. Freemans Plc (1988) 2 All ER 803, (1989) AC 66, this House, in construing a statutory instrument, did have regard to what was said by the minister who initiated the debate on the regulations. Lord Keith after pointing out that the draft regulations were not capable of being amended when presented to Parliament, said that it was ‘entirely legitimate for the purpose of ascertaining

***the intention of the Parliament to take into account the terms in which the draft was presented by the responsible minister and which formed the basis of the acceptance'* (see (1988) 2 All ER 803 at 807, (1989) AC 66 at 112)."**

As already said, Section 20 of the Constitution empowers the National Assembly to enact any appropriate law on matters of environment as a subject item under the Exclusive Legislative List by virtue of the operation of item 60(a) of that List. What qualify as such matters contemplated by that section can be understood from the general perspective and scope of the various laws on environment (FEPA Act, Cap. 131; Harmful Wastes Act, Cap. 165; Environmental Impact Decree No. 86 of 1992; National Environmental Regs., 1991) already referred to in this judgment; the definitions of environment; the deliberation on environment by the Constitutional Conference; and indeed the very aim of Section 20 from the wording - for instance, the desire to safeguard land. Such environmental matters are not directly concerned with the physical developmental planning and implementation of land use conceptions, about which A. A. Utuama made a fitting write-up thus:

"Conceptually, a Town and Country Planning legislation institutionalizes a land use planning system which operates to govern land development and control in a given society along its urban and rural regions. The Law imposes, operationally, a system of regulatory zoning restrictions upon the general right of every landowner to use or develop his land the way he likes based on pre-conceived socio-economic pattern so as to achieve a purposeful utilization of land in the interest of the general welfare of the community to which it relates."

(The book titled Contemporary Issues in Nigerian Law (Essays in honour of Judge Bola Ajibola edited by Professor C. O. Okonkwo, SAN, published in 1992) at pages 345-346).

Professor Osinbajo, SAN, raises the question whether the power to establish and regulate an authority for the protection and improvement of the environment and to safeguard the water, air and land, forest and wild life of Nigeria necessarily puts urban and regional planning on the list of matters over which the National Assembly has legislative jurisdiction. From the trend of this judgment so far, it goes without saying that my reaction is that it does not. The learned Attorney-General argues that even a cursory examination of the FEPA Act

and the Harmful Wastes Act would reveal that, the Urban and Regional Planning Decree No. 88 of 1992 does not relate to environmental protection while the FEPA Act does not relate to Urban and Regional Planning; and that the contention that the said Decree is to protect the environment is clearly unfounded. I am in full agreement with this submission; and I think I have all along in this judgment endeavoured to express views in line with that submission. B

I would, however, have to make the point that town and country planning may be influenced by environmental laws in appropriate circumstances. If, for instance, an environmental law is directed at preserving the beauty of an elegant landscape, or the existing archaeological or architectural works or monuments of historic or artistic interest, relevant town and country planning laws must take account of such a law. It must be expected that the operators of town and country planning will have to comply with such directions given by the appropriate authority in charge of environment to meet the objectives. That is the essence of the Environmental Impact Assessment Decree No. 86 of 1992 whose objectives I have already reproduced in this judgment. C D E

Again, land can be safeguarded by relevant environmental laws which may prohibit any activities on land that could lead to, say landslide or erosion or land pollution with toxic waste with its catastrophic effect. And by similar laws for the purpose of the reclamation and rehabilitation of devastated land and environment; and to safeguard land against desertification and effect of indiscriminate burning activities. ***It is in the light of all these that the scope of Section 20 of the Constitution should be ascertained. When so done, it will be realized that that provision is not concerned with making laws for the physical layout and developmental control of any town or region in any part of Nigeria. The roles of the two types of laws are distinguishable although they could be complementary to each other.*** This was well canvassed in the argument of learned counsel, Mr. Paul Usoro, in the supplemental brief of the 26th defendant as follows: F G H

“Now, in regard to the relationship between urban and regional planning and environment, it is of course correct and imperative that urban and regional planning must take account of environ-

mental factors and seek always to protect and develop Nigeria's environment and conserve its bio-diversity and promote the sustainable development of Nigeria's natural resources. However, it is our submission that the two roles - urban and regional planning and management of the environment - are distinct and separate under the
 B *Constitution and cannot and should not be merged. In particular, while the States have Residual Legislative competence in regard to urban and regional planning, such planning must conform to Federal environmental legislation and byelaws that are made pursuant*
 C *to the exclusive competence of the Federal Government."*

There are certain jurisdictions like the United Kingdom where Parliament is supreme. It can enact any law on any subject-matter. There is no question of the dichotomy of legislative powers between two legislative bodies. It is that system which makes it possible in
 D England and Wales to synchronize the two different concepts of town and country planning and environmental science. These two distinct disciplines are thereby used for the benefit of the socio-cultural milieu of the people. This is easily achieved when the initiation and implementation are under the control of the same agency, as the
 E Department of Environment which succeeded the Ministry of Housing and Local Government in town and country planning and environmental matters under the Secretary of State for the Environment in England and Wales. In that way one concept is aligned with the
 F other where necessary to enhance the beauty and grandeur of human settlement: see Halsbury's Laws of England, 4th edn, Vol. 8(2), paras. 455-458; Vol. 46, para. I where the learned authors comment to the effect that when planning law is infused with environmental law it becomes an 'important instrument for protecting and enhancing the environment in town and country' in order to help to
 G preserve the 'built and natural heritage' of the people. That is laudable. There is no disputing it.

But I do not need to repeat that Nigeria operates a federal system of government. Section 2(2) of the 1999 Constitution re-
 H enacts the doctrine of federalism. This ensures the autonomy of each government. None of the governments is subordinate to the other. This is particularly of relevance between the State Governments and the Federal Government, each being, as said by Nwabueze in his book, *The Presidential Constitution of Nigeria*, pages 39-42, an au-

tonomous entity in the sense of being able to exercise its own will in the conduct of its affairs within the Constitution, free from direction by another government. I think it is significant that shortly before and since the independence of Nigeria in 1960, all the Constitutions that have been enacted have taken the pattern of federalism. Under this system, each tier of government has its legislative competence, or functions conferred on it as the case may be. The National Assembly which legislates for the Federal Republic of Nigeria or any part thereof has power to do so in respect of matters in the exclusive Legislative List set out in Part I of the Second Schedule to the 1999 Constitution: see Section 4 subsections (1), (2) and (3). In addition, it has power to make laws with respect to (a) matters in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution and (b) any other matter with respect to which it is empowered to make laws: see Section 4 subsection (4) paragraphs (a) and (b).

The House of Assembly of a State has power to make laws for the State or any part thereof in respect of (a) any matter not included in the Exclusive Legislative List, (b) any matter included in the Concurrent Legislative List and (c) any other matter with respect to which it is empowered to make laws: see Section 4 subsection (7) paragraphs (a), (b) and (c). Each of these legislative bodies exercise their power to make laws for the peace, order and good government of their respective territories. The functions of a local government council are governed by Section 7 of the Constitution and as enumerated in the Fourth Schedule thereto; and such other functions as may be conferred on the council by the House of Assembly of a State.

By this constitutional arrangement which allocates legislative jurisdiction between the National Assembly and the House of Assembly of a State, it is recognised that any matter not mentioned either in the Exclusive or Concurrent Legislative List becomes a residual matter exclusively for the State House of Assembly by virtue of Section 4 subsection 7(a); and similarly it is a residual matter exclusively for the National Assembly in regard to the Federal Capital Territory, as if it were a State, by virtue of Section 299 of the Constitution: see Attorney-General, Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395; Emelogo v. The State (1988) 19 NSCC (Pt. I) 869; Attorney-

General, Abia State v. Attorney-General of the Federation (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264; Fawehinmi v. Babangida (2003) 3 NWLR (Pt. 808) 604; (2003) 1 S.C. (Pt. III) 86. In Aberuagba's case at page 405, Bello, JSC., (later CJN.), observed thus:

B *"A careful perusal and proper construction of Section 4 (of the 1979 Constitution) would reveal that the residual legislative powers of government were vested in the States. By residual legislative powers within the context of Section 4, is meant what was left after the matters in the Exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation had no power to make laws on residual matters."*

C
D (Note: The parenthesis in brackets supplied by me. The Federation also has residual powers as provided in Section 299 of the 1999 Constitution, formerly Section 263 of the 1979 Constitution. This observation by Bello, JSC., was made at the time that Section 4 of the 1979 Constitution had been suspended by the Federal Military Government when the case came on at the Supreme Court).

E ***If a Decree promulgated by the Federal Military Government for the entire Federation on a subject which ordinarily would have been the exclusive matter for the States remains an existing law after the exit of the military, it becomes a Law deemed enacted by the State Houses of Assembly. This is the effect of an enabling constitutional provision like Section 315(1) of the 1999 Constitution.*** There is argument canvassed by some of the defendants in their briefs of arguments to this effect. In this regard, for instance, the learned Attorney-General of Abia State, Mr. Awa Kalu, SAN, on behalf of the 2nd defendant submits inter alia:

H *"The experience in Nigeria where constitutionalism has often supplemented military rule is that laws made by the military are reclassified soon after the return to constitutionalism with the result that all Decrees touching upon matters either exclusive or concurrent will be claimed to be laws made by the National Assembly. On the other hand, any Decree which touches upon a matter which is residual is then treated as or deemed to be a law made by the House of Assem-*

bly.

Having first submitted that Urban and Regional Planning is a residual matter on which only the House of Assembly can legislate, there is no difficulty in holding the view that the (Nigerian) Urban and Regional Planning Decree No. 88 of 1992 is now to be deemed to be a law made by the State House of Assembly. B

The learned Attorney-General of Ekiti State, Mr. Obafemi Adewale, also submits:

By virtue of the provisions of Section 315(1) of the 1999 Constitution, the Nigerian Urban and Regional Decree No. 88 of 1992 is an existing law which could be deemed to either be an Act of the National Assembly if it conforms with Section 4 of the same Constitution or a law made by the House of Assembly of a State to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by the Constitution to make laws. C D

I accept these submissions as substantially representing the law on the matter.

In *Emelogu v. The State* (1988) 19 NSCC (Pt. 1) 869, after referring to the Armed Robbery Decree promulgated as having effect throughout the Federation, Eso, JSC., observed at page 879: E

“The legislation which was in force immediately before the enactment of the 1979 Constitution became (effective), by virtue of Section 274(1)(b) of the Constitution, (is) deemed to be a Law made by a House of Assembly to the extent that it is a law with respect to any matter (in this case Robbery) on which the House of Assembly of a State (in this case the Imo State) is empowered, by the 1979 Constitution, to make.” F

This view was shared by all the other six learned Justices that formed full court. I consider I should quote from the concurring judgments of two of them. Per Nnamani, JSC., at page 882: G

“Under the Constitution, Robbery is a residual subject, which falls into the State’s legislative domain. The amended Decree No. 47 of 1970 was an existing law by virtue of Section 274(1)(b) and 274(4)(b) of the Constitution. It was therefore State Law ” H

It follows from my views that Decree No. 47 of 1970, as amended, being now State Law, is a law which can be made by the State House of Assembly.”

And per Karibi-Whyte, JSC., at page 890:

B “*The Robbery and Firearms (Special Provisions) Act No. 47 of 1970 as from the 1st October, 1979 by virtue of Section 274(1)(b) of the Constitution 1979 is deemed to have survived as existing law of the House of the States, including Imo State, which by the Constitution of 1979 was empowered to legislate in respect of such matters.*”

In a related situation in *Fawehinmi v. Babangida* (supra), after stating that Tribunals of Inquiry was not a matter in either the Exclusive or Concurrent Legislative List, I said inter alia at pages 651 - 652:

C “*The National Assembly cannot enact a general Law for the establishment of tribunals of inquiry for, and applicable in, the Federation of Nigeria. The power to enact such a Law has become a residual matter for the States in respect of which the Houses of Assembly can legislate for their respective States by virtue of Section D 4(7)(a) of the 1999 Constitution As the Federal Capital Territory (FCT) Abuja is under jurisdiction of the Federal Government, the constitution of tribunals of inquiry for the territory has accordingly become a residual matter over which the National Assembly can legislate as if the FCT Abuja were a State by virtue of Sections 4(4)(b) E and 299 of the 1999 Constitution.....*”

F It may be unnecessary to cite similar relevant pronouncements from other authorities now quite numerous. It can, therefore, be said that the constitutional position is so well recognised that it does not really bear repeating.

In the circumstances, I have to say that Professor Osinbajo is right, in my view, in his submission that urban and regional planning for the Federal Capital Territory, Abuja is within the exclusive legislative function of the National Assembly but only by virtue of Section 299(a) conferring residual power on it and not the controversial Section 20 of the Constitution. Similarly, each State House of Assembly has exclusive function to make planning laws and regulations for the State under its residual power. It must follow that the National H Assembly cannot make a law in the form and to the detail and territorial extent of the present Nigerian Urban and Regional Planning Decree No. 88 of 1992. To do so will be in clear breach of the principles of federalism and an incursion into the legislative jurisdiction of the States. But it can make plan-

ning laws for the Federal Capital Territory, Abuja only on the basis of its residual powers. Again, the National Assembly cannot enact any law, in contravention of the Constitution, imposing any responsibility on a State and expect obedience to such a law. It is a non-controversial political philosophy of federalism that the federal government does not exercise supervisory authority over the state governments. B

Professor Osinbajo has also canvassed this in his submission. In Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 13 NSCC 1, Fatai-Williams, CJN., observed at page 12: C

“Neither the President of the Federal Republic of Nigeria nor the National Assembly can unilaterally confer powers on a State functionary such as the Governor or the Attorney-General of a State and thus bring him within the investigatory or scrutinizing powers conferred upon the National Assembly by Section 82 subsection (1) of the 1979 Constitution.” D

Similarly at page 21, Sir Udo Udoma, JSC., said:

“On the basis of the provisions of the Constitution, and having regard to the autonomy of the State, and realizing that the Governor is bound only to enforce all laws constitutionally made by the State House of Assembly, I accept the submissions made by Chief Williams, learned counsel for the defendants, and I am satisfied that neither the National Assembly nor the President has the constitutional power to impose any new duty on the Governor of a State. Such an imposition would normally meet with resentment and refusal to perform for the enforcement of which there is no constitutional sanction.” E
F

The National Assembly cannot also in the exercise of its powers to enact some specific laws, take the liberty to confer authority on the Federal Government or any of its agencies to engage in, or be concerned with, town planning matters, or to grant permits, licences or approvals which ordinarily ought to be the responsibility of a State Government or its agencies. This is because such pretext cannot be allowed to the Federal Government or its agencies so as to enable them to encroach upon the exclusive constitutional authority conferred on a State under its residual legislative power. A law of that type will be declared unconstitutional to the extent of such encroachment. This is on the authority of Attorney-General Ogun State v. G
H

Attorney-General of the Federation (supra) and similar cases. Once it is established that the power of making planning laws is reserved exclusively by the Constitution for the States under their residual power, the Federal Government cannot be allowed to enact any Act or make any regulation under any Act in any guise in competition
 B with any State in respect thereof no matter the salutary nature of such a law. The court must so decide in an appropriate case. A comparable illustrative situation happened in the United States of America in *Bailey v. Drexel Furniture Co.* 259 U.S. 20 (1922). Congress passed
 C the Child Labour Tax Law. Under it, a furniture manufacturer in the district of Carolina was given notice to pay tax of a certain amount for having employed and permitted a boy under 14 years of age to work in its factory. Child Labour Tax Law came into conflict with the regulation in respect of the employment of child labour which is an
 D exclusive state function under the Constitution of the United States and within the reservation of the 10th Amendment.

The furniture manufacturer filed an action to challenge the constitutionality of the Act passed by Congress. The defence was that it was a mere excise tax levied by the Congress under its broad power
 E of taxation. The Supreme Court rejected that defence, held that the power to make laws to regulate the employment of children belonged to a state government and not Congress, and gave judgment declaring the Act passed by the Congress unconstitutional. Chief Justice Taft of the United States Supreme Court in expressing the opinion of
 F the court observed at 37-38 *inter alia*, in these striking words:

*“It is the high duty and function of this court in cases regularly brought to its bar to decline to recognise or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or
 G committed by the supreme law of the land to the control of the states. We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote
 H it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from the breaking down of recognized standards. In the maintenance of local self-government, on the one hand, and the national power on the other, our country has been able to endure and prosper for near a century and a half....*

Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic wand to the word 'tax' would be to break down all constitutional limitation of powers of Congress and completely wipe out the sovereignty of the states."

I completely accept this statement of principle and will apply it with great faith to the present case.

No argument can defeat or reduce from the general planning legislative power of the House of Assembly of a State, which is a residual constitutional power. It gives the States the exclusive function for the planning, layout and development of their respective areas. Any Act, be it the Federal Highways Act, the Civil Aviation Act, the Nigerian Railways Corporation Act, which tends, or is implemented in a way to tend, to undermine or take away this function of any State, or allows the Federal Government to exercise or assume such function is unconstitutional and in appropriate circumstances will be declared so. I have examined in this regard Laws of the Federation such as the Civil Aviation Act, Cap. 51; the Federal Highways Act, Cap. 135; and the Nigerian Railway Corporation Act, Cap. 323. The Civil Aviation Act has provisions which empower the Minister of Aviation to establish and maintain airports, provide and maintain roads, approaches, equipment, buildings and other accommodation in connection with airports, and to control land in the interest of aviation. As regards the Federal Highways Act, the Minister of Works and Housing has related powers. The Nigerian Railway Corporation Act gives power to the Corporation to make and maintain arches, tunnels, culverts, drains, etc. It could sell, let or otherwise dispose of any property of the Corporation, and provide houses, hotels and similar accommodation for persons employed by it. In my candid view, none of these Acts confers powers capable of enabling those bodies to interfere with the general planning control of land in Lagos State by the Lagos State Government.

I am therefore, with due respect, unable to accept the submission of the learned Attorney-General of Delta State, Professor

Ututama, that the Federal Government or its agencies may, under the Federal Highways Act, authorise the building of petrol stations or the erection of housing project within the vicinity of a Federal Highway without complying with the planning laws and regulations of the state concerned by duly obtaining permits for the projects. Only the Government of the State in whose jurisdiction the land is situated can do so. The power of the Federal Government to authorise development projects in respect of the Acts mentioned above cannot go beyond those matters which are inextricably part of the traditional, operational, technical and all high-tech aspects of the subject-matter of a particular Act. For example, erection of tollbooths in respect of the Federal Highways; control tower and other buildings or stands within the airport in respect of the Civil Aviation Act; station buildings like station platform/staff houses, bus/coach/taxi stands and toilets within railway vicinity in respect of the Nigerian Railways Corporation. These cannot nor are they expected to, affect the general planning power and control of a State. I think in any real dispute as to what amounts to an infringement of the general planning power and control of a State by the Federal Government agencies in a particular instance, it is the court to decide. But it must always be borne in mind that constitutionally town planning and development power belongs to the States. Any Act enacted by the National Assembly on a specific subject-matter must be subject to the said constitutional power of the States so as to reasonably restrict the Act to its main essence.

Again, the argument that the Federal Government has planning power in respect of land owned by it in any State by virtue of the Land Use Act is faulty. Ownership of land in any State by the Federal Government is primarily limited to the question of title and the right to possession and use of it. It gives the Government the right to use it for its purposes. Like any other individual landowner, though obviously with more awesome presence, the Federal Government must respect the planning laws and regulations of the State, or at least act in consultation with the appropriate authorities or agencies with a view to achieving mutual accommodation for the project intended. It must not act in competition with or unwholesome subjugation of the State by superimposing its own planning regulations by whatever method. There is no reason why the

Federal Government should not respect and abide by those laws. After all, it is the State which provides the necessary infrastructures in line with its development plans. Those plans cannot be altered, distorted or superimposed by any other authority on the ground that it is making use of the land which belongs to it in a State. The argument that the Land Use Act allows the Federal Government to impose its planning measures over such land is completely flawed by Nwabueze in his book, *Federalism in Nigeria under the Presidential Constitution*, (Sweet & Maxwell (London) 1983 edn, page 170, where the learned author says inter alia: B

“To begin with, the title, Land Use Act, is a complete misnomer, as the Act has absolutely nothing to do with the use of land or its preservation....” C

It does not regulate town and country planning, or the use of land for Agriculture..... There is a vast mass of existing laws - D relating to town and country planning, etc. Town and country planning, to for example, occupies some 194 printed pages in the 1973 edition of the Laws of Lagos State, not to mention other laws on the subject, such as those regulating buildings lines or the laying out of land into private housing estates..... Since the subject matter of these E laws are not covered by the Land Use Act, they must be deemed to be exclusively state laws, and subject therefore to the executive authority of the state governments. As residual matters, legislation with respect to them remains the exclusive responsibility of the State F Houses of Assembly.”

I unreservedly agree with these views of the learned author so expressed with much clarity.

I have now to face the all-important question whether the Nigerian Urban and Regional Planning Decree No. 88 of 1992 is an existing law. Now, it must be recalled that at the time it was promulgated by the Federal Military Government for the entire Federation of Nigeria, it was done by virtue of the Constitution (Suspension and Modification) Decree No. 1 of 1984 which gave it overriding legislative authority. The legal reality of that cannot be lost on anyone. The said Decree No. 88 of 1992 was not repealed by the time the 1999 Constitution came into force on 29th May, 1999. It is still not repealed or amended. It is an existing law by virtue of Section 315(4)(b) of the Constitution which says: H

“(b) ‘existing law’ means any law and includes 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.”

B Decree No. 88 of 1992 is still a law that exists in Nigeria (and even in the States, at least on paper) in its original form. But is it to be regarded as an Act or a Law, and in what sense?

C As things are, and this I have already made clear in this judgment, it is deemed to be an Act of the National Assembly which by the Constitution it can make, under its residual power, but for the Federal Capital Territory, Abuja only. It is also deemed to be a law of the State House of Assembly which by the Constitution it can make, under its residual power, for the respective State. That is what the D authorities (*Emelogu v. The State* (supra); *Attorney-General Ogun Sate v. Aberuagba* (supra); *Fawehinmi v. Babangida* (supra)) establish and can also be derived from the provision of Section 315 sub-section (1) paragraphs (a) and (b) of the 1999 Constitution which states:

E *“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-*

F *(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*

G *(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.”*

H Being an Act applicable in the Federal Capital Territory, I need not discuss the implications since they are not in issue in this case. As a Law in Lagos State, which is the plaintiff State, that State cannot be concerned with any of the provisions in it relating to the Federal Government. The Governor of Lagos State or any person appointed by any law to revise or rewrite the laws of the State (as the ‘appropriate authority’ per Section 315(4)(a)) can by order make such modifications in the text of that Law (i.e. Decree No. 88 of 1992), as it stands, in the manner he considers necessary or expedient to bring it

into conformity with the provisions of the Constitution. He may do so by only omitting all the provisions relating to the Federal Government or may repeal the entire Law as it applies to Lagos State per Section 315(4)(c): see *Adigun v. Governor of Oyo State* (1987) 1 NWLR (Pt. 53) 678; *Attorney-General of the Federation v. Attorney-General, Abia State* (2002) 4 S.C. (Pt. I) 1, (No. 2) (2002) 6 NWLR (Pt. 764) 542; *Attorney-General, Abia State v. Attorney-General of the Federation* (2002) 3 S.C. 106; (2002) 4 NWLR (Pt. 809) 124.

Let me assume he takes the first alternative. What will be left will be incoherent and incomprehensible because they are not amenable to the 'blue pencil rule'; that is to say, the good is not severable from the bad as the sections relating to the State are invariably tied to the responsibility of the Federal Government under the said Decree. This completely exposes as unrealistic any attempt to save any of the provisions which affect Lagos State. However, Lagos State did not proceed to abolish or repeal the so-called existing Law so as not to have any effect in the State, as it could well have done, after duly accepting it as a Law deemed to have been made by the House of Assembly of Lagos State. What it has done is to seek judicial intervention under Section 315 subsection (3) of the Constitution which says:

"(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 provisions of an existing law on the ground of inconsistency with the provisions of any other law, that is to say -

- (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."*

The plaintiff has complained in so many words that this existing Law (Decree No. 88 of 1992) contravenes and is inconsistent with its own existing Laws on Town and Country Planning activities in the State, and the provisions of the Constitution. It has said so in paras. 11, 12, 13, 14 and 16 (among others) of its 2nd amended statement of claim as follows:

"11. The plaintiff asserts that by virtue of Section 315 of the 1999 Constitution, the Nigerian Urban and Regional Planning Act (Decree No. 88) of 1992 is an existing Law in force as at May 29th 1999 and must conform with the provisions of the 1999 Constitu-

tion.

12. *The said Decree No. 88 of 1992 provides among other things for a new Urban and Regional Planning enactment and administration for the whole of Nigeria with the establishment of Federal, State and Local Government authorities to over see the framework of the National Physical Development of Nigeria.*

13. *Prior to the promulgation of Decree No. 88 and till date the plaintiff has its master plan for each of the Divisions in the State and comprehensive Regional and Sub-regional Plan for the whole State.*

14. *The plaintiff avers that the State has its Planning authority responsible for the execution and administration of all Town and Country Planning activities in the State which include granting of approval, permit, licence for development and for use of land or seabed in the State.*

16. *The plaintiff avers that in contravention of the Constitution of Nigeria and of all existing Laws and regulations on Town Planning matters in the State, the 1st defendant, through his agencies, has been granting planning approvals, permits and licences to individuals and Federal Government agencies for building and development in the State."*

It has adumbrated a number of instances in para. 17 of the 2nd amended statement of claim, which I shall refer to presently, of the objectionable acts of the 1st defendant or its agencies. What more can the plaintiff say or have to say before getting the assistance required under Section 315(3) of the Constitution? Nothing else in my view.

I do not think I need say more myself other than deal individually with the reliefs sought by the plaintiff in this suit. Before doing so, it is necessary to draw attention to the actions of the 1st defendant complained of by the plaintiff in paragraph 17 of its 2nd amended statement of claim thus: (a) development approval granted by the Federal Ministry of Works and Housing for a massive shopping centre and petrol station directly in front of the State's Jubilee Housing scheme at Omole, contrary to the master plan of the area which has earmarked the whole frontage of the housing scheme as greenery of aesthetic beauty of the area along the express way; (b) development approval or permit granted by the Federal Ministry of Works and

Housing for the greenery buffer along Kingsway Road, Ikoyi which has made it possible for it to be turned into car sale depot, row of shops and other illegal structures by Nitel Plc., the Nigeria Police Force and other individuals; (c) development and approval by the Federal Ministry of Works and Housing for the establishment of a market within the Murtala Mohammed Local Airport Ikeja abutting the Agege Motor Road. The activities at the market have continued to impede traffic flow along the Inter-State Highway; (d) the indiscriminate development approval granted for development along Railway Lines within the State without regard to the State Government Planning Policy; (e) development approval granted by the Federal Ministry of Works and Housing to Total Plc., for construction of petrol filling and service stations along Osborne Road, Ikoyi, Lagos, without the permission of the plaintiffs planning authority; (f) development approval granted by the Federal Ministry of Works and Housing and National Inland Water Ways authority to a total of 22 properties (developed and under construction) along Oyinkan Abayomi Drive (former Queen's Drive), Ikoyi, Lagos State having no building plan, permit or approval from the plaintiff's Planning Authority; (g) the illegal and massive destruction of the forest reserve around Ologe Lagoon by the Nigeria Inland Waterways Authority of the 1st defendant without regard for the comprehensive Regional Plan of the area in the State; (h) development approvals and permits granted by the Federal Ministry of Works and Housing for construction of public toilets at places and locations earmarked for other planning purposes in the States such as one located directly opposite Lagos State University at Ojo; (i) approvals and licenses granted by the Federal Ministry of Works and Housing for construction of market stalls and ware points within the Ikeja Airport, Railway Lines at Agege, Oshodi, Yaba, Ebute-Metta and Iddo foreshore contrary to the Planning Regulations and Town/Regional Master Plan of the State; (j) other illegal developments approved by the 1st defendant's agencies for under bridges and bridge's loops in the State.

In addition, it is alleged that when contravention and demolition notices were served by the plaintiff's planning authority on the respective owners/developers concerned, they were met with hostile resistance, threat and embarrassment from officials of the 1st defendant and their ally-developers. On one occasion the Director of Town

Planning Services of the plaintiff was arrested and detained at the Railway Police Command at the instance of the 1st defendant's officials. Further, the channelization of Dolphin Canal project of the plaintiff has been interfered with and disturbed by the Federal Ministry of Works and Housing. Other instances are mentioned. It is said that all
 B correspondence written to and meetings held with the officials of the 1st defendant to advise them to desist from granting approvals, permits or licences for the use and development of land in the State other than as the plaintiff's planning authority may so grant have
 C proved futile. It is unnecessary for me to record any finding as to these allegations except to say that if they ever happened, it is unhealthy for the preservation of allocated authority being the two tiers of government under the Constitution. It is unconstitutional. I will add that, in some of the instances given, it is provocative and can
 D develop into avoidable constitutional crisis.

Relief 1 seeks a declaration that urban and regional planning as well as the physical development of a State is a residual matter within the exclusive legislative and executive competence of the State under the 1999 Constitution. From what I have discussed in this judgment, that declaration is inevitable. Relief 2 is really a declaration that
 E the enumerated sections of the Decree No. 88 of 1992 which seek to apply to Lagos State are unconstitutional, null and void. That follows as a consequence of the declaration in relief 1; and also because
 F none of those sections can rightly be implemented in Lagos State. Reliefs also follows. In regard to relief 4, no law can constitutionally permit the Federal Government to grant such building permits without conflicting with the residual power of the Lagos State under the Constitution. As has been said, that residual power is exclusive and is
 G superior to any power exercised or purportedly exercised under any other law. Reliefs 5 and 6 when granted will affect third party interests. Such parties are not parties to this suit and cannot be made parties except in the court of first instance. In any event no order or judgment affecting their interest can be made in a case to which they
 H are not parties: see *Green v. Green* (1987) 3 NWLR (Pt. 61) 480 at 500; *Lebile v. Registered Trustees of Cherubim and Seraphim Church* (2003) 2 NWLR (Pt. 804) 399 at 424-425. As regards relief 7, the 1st defendant as already shown cannot in law grant such approvals, permits, licences for the development of any land, highway setback

etc., stated therein. It is for the Lagos State authorities to do so.

In the result, I grant reliefs 1, 2, 3 and 4 sought as follows:

“1. *A DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the States.* B

2. *A DECLARATION that the provisions of Sections 1(2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47, to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.* C

3. *A DECLARATION that the Federal Highways Act Cap. 135, Laws of the Federation of Nigeria (LFN), (1990), Nigerian Railway D Corporation Act (Cap. 323, LFN, 1990), Civil Aviation Act (Cap. 51, LFN, 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal statutes which vest power in the 1st defendant to grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st defendant.* E

4. *A DECLARATION that the grant of approvals, permits and licences for buildings and physical development in Lagos State including under bridges, bridges' loops and highway set back are the residual responsibility of the plaintiff.* F

I refuse reliefs 5 and 6 on the grounds that the interests of third parties are involved. They have not been given an opportunity to be heard. The said reliefs cannot be granted against the 1st defendant. G Having granted reliefs 1 to 4, the constitutional and legal position in regard to town and regional planning has been established. The parties are bound by this and have an obligation to observe its consequences. It would be expected that no infringements would be allowed to occur that might call for restraining orders or other redress against defaulters of the relevant planning laws as well as the beneficiaries of such infringements as and when the occasion might demand. In view of this, I do not consider that the grant of an order of H perpetual injunction in this suit against the 1st defendant can be an

effective solution in advance to any dispute between it and the plaintiff as to whether a particular act done by the 1st defendant or its agencies in future amounts to the flouting of the Lagos State town planning laws. It may simply have an overreaching effect which may be difficult to justify in a given situation. Therefore caution dictates

B that relief 7 ought not to be granted. It is accordingly refused.

I make no order for costs. Each party shall bear its own costs.

ONU JSC

C The plaintiff, Lagos State Government, instituted this suit against the 1st defendant in this court in its original jurisdiction by virtue of Section 232(1) of the 1999 Constitution. Later, the 2nd - 36th defendants, that is, the other State Governments in Nigeria, were joined D since their interest might be affected by the decision in the suit. The plaintiff claimed in paragraph 25 of its 2nd amended Statement of Claim as follows:

E “1. A DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the State.

F 2. A DECLARATION that the provisions of Sections 1 (2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

G 3. A DECLARATION that the Federal Highways Act (Cap. 135, Laws of the Federation of Nigeria (LFN), 1990), Nigerian Railway Corporation Act (Cap 323, LFN, 1990), Civil Aviation Act (Cap.51, LFN, 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal Statutes which vest power in the 1st defendant to H grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.

4. A DECLARATION that the grant of approvals, permits, and

licenses for buildings and physical development in Lagos State including under bridges, bridges' loops and highway set back are the residual responsibility of the Plaintiff.

5. A **DECLARATION** that all approvals, permits or licenses granted or issued by the 1st Defendant from the 1st of June, 1999, for building or development of land within the territory of Lagos State without the consent of the plaintiff and in contravention of the Town Planning laws and Regulations of Lagos State are illegal, null and void.

6. An **ORDER** nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from 1st of June, 1999, for any building or other development of land in Lagos State.

7. A **PERPETUAL INJUNCTION** restraining the Defendant, its servants, agents and privies or otherwise howsoever from further granting of approvals, permits, licenses for development of any land, highway set back and under bridges, bridges' loops, markets, shops, stalls, mechanic workshops, etc in Lagos State without the consent of the Plaintiff."

I have had the opportunity to read in advance the draft judgment of my learned brother, Uwaifo, JSC. I entirely agree with his approach to the case and the reasons he has given for the conclusions reached by him. The plaintiff had to come to court because of the manner the 1st defendant or its agencies make use of the Nigerian Urban and Regional Planning Decree No. 88 of 1992 (the Decree No. 88 of 1992) promulgated by the Federal Military Government by virtue of the Constitution (Suspension and Modification) Decree No. 1 of 1984. The Decree permitted the Federal Military Government unlimited powers to promulgate any law on any subject-matter.

But since the coming into effect of the 1999 Constitution on 29th May, 1999, no government in Nigeria can wield such legislative power. This then calls into question whether the Decree No. 88 of 1992 can be deemed to be an Act promulgated by the National Assembly to have effect throughout Nigeria as it had been intended by the Military Government. The 1st defendant takes the position that it does and relies on Section 20 of the 1999 Constitution in the main. The plaintiff has taken a different position saying that town/

urban and regional planning being neither in the Exclusive Legislative List nor the Concurrent Legislative List, is a residual matter for the States. The plaintiff further contends that Section 20 of the 1999 Constitution is concerned with environmental matters, not town and regional planning matters. The said section reads:

B “20. *The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.*”

The State as used here means the Federal Republic of Nigeria.

C The learned Attorney-General of Anambra State, Chief Ifeoma Chinwuba, on behalf of the 5th defendant has taken a very strong position in support of the plaintiff. My learned brother, Uwaifo, JSC., has made copious use of her submissions in the 5th defendant’s brief of argument. I will like to quote a further aspect other argument thus:

D “*I have tried to show that urban and regional planning or development control is a residual matter or local matter which under the Federal Constitution being operated in the USA and Nigeria is entrusted with the States only. I have also shown that the intention of the makers of the Constitutions being (i.e. 1994/95 Constitutional Conference) as shown in their Reports is such that they neither considered the issue of town planning nor regarded it as an environmental matter deserving of the protection for the environment stipulated in Section 20 of 1999 Constitution. What they had in mind relates primarily to land, air and water pollutions, wild life and forestry laws: My position would have been different if the said FEPA Decree or*

F *FEPA itself is under consideration in this Suit for the enforcement of the Objective on the Environment enshrined in Part II of the 1999 Constitution. It is only proper that States which create urban areas under the Land Use Act, and exercise jurisdiction over all persons*

G *and lands within their territories and are closer to the people should be allowed to exercise town planning or development control functions in their territories so as to ensure there is no abuse or distortion of their master plans. It is not a matter that should be left with a distant authority like the Federal Government operating from Abuja.*”

H I cannot agree more with this lucid argument.

I must not forget to remark that with the exception of two or three of the defendants who participated in these proceedings, the rest have, generally, argued in support of the claim of the plaintiff. I have no doubt in my mind that Section 20 of the 1999 Constitution

cannot be of help to the 1st defendant in its contention that the provisions of that section will enable the National Assembly to enact a law on urban and regional planning such as Decree No. 88 of 1992 to have effect throughout Nigeria. That Section 20 must be confined to pure matters of environment and not by extension to matters of pure town and regional planning. Since town and regional planning is not in the Exclusive and Concurrent Lists, it is clearly a residual matter for the States: See Attorney-General Osun State v. Aberuagba (1985) 1 NWLR (Pt.3) 395 at 405 per Bello, JSC., (as he then was); Emelogu v. The State (1988) 19 NSCC (Pt.1) 869 at 879 per Nnamani, JSC., and at 890 per Karibi-Whyte, JSC. In the same manner, town and regional planning as far as the Federal Capital Territory is concerned is a residual matter for the National Assembly by virtue of Sections 4(4)(b) and 299 of the 1999 Constitution. See Fawehinmi v. Babangida (2003) 1 S.C. (Pt. III) 86; (2003) 3 NWLR (Pt. 808) 604 at 651-652 per Uwaifo, JSC.

It follows that Decree No. 88 of 1992 which remains an existing law will, where appropriate, be an Act applicable in the Federal Capital Territory, Abuja, and similarly, mutatis mutandis, it will be a law in the different states of Nigeria. I agree with the submissions of the learned Attorneys-General of Abia and Ekiti States, Mr. Awa Kalu, SAN, and Mr. Obafemi Adewale respectively in this regard. They are in line with the authorities of Aberuagba case, Emelogu case and Fawehinmi case cited above.

The plaintiff has detailed out a number of acts done by the 1st defendant or its agencies to undermine the town planning laws of Lagos State. These acts and actions are in paragraphs 11, 12, 13, 14, 16 and 17 of the 2nd amended statement of claim and are as follows:

“11. The plaintiff asserts that by virtue of Section 315 of the 1999 Constitution, the Nigerian Urban and Regional Planning Act (Decree No. 88) of 1992 is an existing Law in force as at May 29th, 1999, and must conform with the provisions of the 1999 Constitution.

12. The said Decree No. 88 of 1992 provides among other things for a new Urban and Regional Planning enactment and administration for the whole of Nigeria with the establishment of Federal, State and Local Government authorities to oversee the frame-

work of the National Physical Development of Nigeria.

13. Prior to the promulgation of Decree No. 88 and till date the plaintiff has its master plan for each of the divisions in the State and comprehensive Regional and Sub-regional Plan for the whole State.

B *14. The plaintiff avers that the State has its planning authority responsible for the execution and administration of all Town and Country Planning activities in the State which include granting of approval, permit, licence for development and for use of land or seabed in the State.*

C *16. The plaintiff avers that in contravention of the Constitution of Nigeria and of all existing Laws and regulations on Town Planning matters in the State, the 1st defendant, through his agencies, has been granting planning approvals, permits and licences to individuals and Federal Government agencies for building and development in the State.*

17. The plaintiff shall at the trial rely on:

E *(a) development approval granted by the Federal Ministry of Works and Housing for a massive shopping centre and petrol station directly in front of the State's Jubilee Housing scheme at Omole, contrary to the master plan of the area which has earmarked the whole frontage of the housing scheme as greenery of aesthetic beauty of area along the express way;*

F *(b) development approval or permit granted by the Federal Ministry of Works and Housing for the greenery buffer along Kingsway Road. Ikoyi which has made it possible for it to be turned into car sales depot, row of shops and other illegal structures by Nitel Plc., the Nigeria Police Force and other individuals;*

G *(c) development and approval by the Federal Ministry of Works and Housing for the establishment of a market within the Murtala Mohammed Local Airport, Ikeja abutting the Agege Motor Road. The activities at the market have continued to impede traffic flow along the inter-State Highway;*

H *(d) the indiscriminate development approval granted for development along Railway Lines within the State without regard to the State Government Planning Policy;*

(e) development approval granted by the Federal Ministry of Works and Housing to Total Plc., for construction of petrol filling and

service stations along Osborne Road, Ikoyi, Lagos, without the permission of the plaintiffs planning authority;

(f) development approval granted by the Federal Ministry of Works and Housing and National Inland Waterways Authority to a total of 22 properties (developed and under construction) along Oyinkan Abayomi Drive (Former Queens Drive), Ikoyi, Lagos State having no building plan, permit or approval from the plaintiff's planning authority;

(g) the illegal and massive destruction of the forest reserve around Ologe Lagoon by the Nigeria Inland Waterways Authority of the 1st defendant without regard for the comprehensive regional plan of the area in the State;

(h) development approvals and permits granted by the Federal Ministry of Works and Housing for construction of public toilets at places and locations earmarked for other planning purposes in the State such as one located directly opposite Lagos State University at Ojo.

(i) approvals and licences granted by the Federal Ministry of Works and Housing for construction of market stalls and ware points within the Ikeja Airport, Railway Lines at Agege, Oshodi, Yaba, Ebute-Metta and Iddo foreshore contrary to the Planning Regulations and Town/Regional Master Plan of the State;

(j) other illegal developments approved by the 1st defendant's agencies for under bridges, bridges' loops in the State.

(k) The plaintiff avers that all the aforementioned illegal permits or licences granted by the 1st Defendant were purportedly granted pursuant to the Urban and Regional Planning Act (Decree No.88 of 1992), Federal Highways Act (Cap.135, Laws of the Federation of Nigeria (LFN), 1990), Nigerian Railway Corporation Act (Cap 323, LFN, 1990) Civil Aviation Act (Cap.51, LFN, 1990), National Inland Waterways Authority Act (Decree No. 13 of 1997) and some other federal statutes.

(1) The plaintiff shall at the trial contend that while the Urban and Regional Planning Act of 1992 is unconstitutional, the Federal Highways Act, Nigerian Railway Corporation Act, Civil Aviation Act, Nigerian Inland Waterways Act and other Federal Statutes which vest power in the 1st Defendant to grant approvals or permits for use of land are for the specific purposes for which the statutes were made

and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant."

The 1st defendant admitted these acts but attempted to justify them as follows:

B *"7. The 1st Defendant admits paragraph 11 of the Amended Statement of Claim.*

8. The 1st Defendant admits paragraph 12 of the Amended Statement of Claim only to the extent that Decree 88 of 1992 does not in any manner unduly restrict the powers of the Plaintiff to regulate such matters in respect of lands over which it holds title.

C *11. The 1st Defendant denies paragraph 16 of the Amended Statement of Claim. All planning approvals, permits and licenses granted have always been in respect of lands whose title are vested in the Federal Government and that such powers have always been*
D *exercised in conformity with existing laws, rules and regulations.*

12. The 1st Defendant, in response to paragraph 17 of the Amended Statement of Claim, avers that the approvals referred to were in respect of development on properties/lands belonging to the Federal Government, and were thus validly granted."

E I think the 1st defendant has placed unfounded authority on Decree No. 88 of 1992 to commit the acts complained of by the plaintiff. I am of the view that the town planning laws of Lagos State must be observed by the 1st defendant and its agencies as it is in the
F exclusive province of State Houses of Assembly to make town planning laws for their respective States. The plaintiff has every reason to be aggrieved.

Having had the opportunity of reading before now the leading judgment of my learned brother, the Chief Justice of Nigeria, I
G respectfully find myself not at one in arriving at the same conclusion. Rather, I find myself in full agreement with my learned brother Uwaifo, JSC., in granting reliefs 1, 2, 3 and 4. Reliefs 5 and 6 will affect the interests of third parties who have not had any opportunity to be heard in their defence. That will be improper. See: *Green v. Green*
H (1987) 3 NWLR (Pt. 61) 480 at 500; *Ifeanyi Chukwu (Osondu) Co. Ltd. v. Soleh (Nig.) Ltd* (2000) 3 S.C. 42; (2000) 5 NWLR (Pt. 656) 322. I accordingly refuse reliefs 5 and 6. As reliefs 1, 2, 3 and 4 have been granted, there is no reasons for relief 7 as such. I also on that score refuse relief 7. This action therefore succeeds in part.

I make no order as to costs. Each party to bear its own costs.

KALGO JSC

The Attorney-General of Lagos State is the Plaintiff in this action. He instituted the action as the representative of Lagos State Government, one of the States comprising the Federal Republic of Nigeria. The plaintiff originally sued the 1st Defendant, the Attorney-General of the Federation as the representative of the Government of the Federal Republic of Nigeria. On the order of this court, the other 35 State Governments of Nigeria were joined as Defendants and each being represented by its Attorney-General. In his Amended Statement of Claim, the Plaintiff averred paragraphs 4-16 as follows:-

“4. The plaintiff states that the legislative powers of the Federal Government of Nigeria are as provided for under Section 4(1)-(4) of the 1999 Constitution and its executive powers as provided for under Section 5(1) of the same Constitution.

5. The Plaintiff further states that legislative powers of a State of the Federation are as provided for under Section 4(6) and (7) of the 1999 Constitution and its executive powers are as provided under Section 5(2) of the same Constitution.

6. The Plaintiff avers that Urban, Town and Regional Planning as well as Physical development are not matters within the exclusive or concurrent legislative list set out in parts 1 and 11 respectively of the 2nd Schedule to the 1999 Constitution.

7. The Plaintiff avers further that by reason of the above, Urban and Regional Planning and Physical development are residual matters within the legislative and executive competence of the States.

8. The Plaintiff asserts that the 1st Defendant has no Legislative or Executive power over such residual matters within the exclusive competence of the States.

9. The Plaintiff states that the 1999 Constitutional provisions stated above are similar or same with the provisions of the 1979 Constitution.

10. On the 15th December, 1992, in contravention of the provisions of Section 4 of the 1979 Constitution (which provisions are similar to Section 4 of the 1999 Constitution) the 1st defendant promulgated Nigerian Urban and Regional Planning Act (Decree No.88)

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of 1992.

11. *The plaintiff asserts that by virtue of Section 315 of 1999 Constitution, the Nigerian Urban and Regional Planning Act (Decree No. 88) of 1992 is an existing Law in force as at May 29th, 1999, and must conform with the provisions of the 1999 Constitution.*

B 12. *The said Decree No. 88 of 1992 provides among other things for a new Urban and Regional Planning enactment and administration for the whole of Nigeria with the establishment of Federal, State and Local Government Authorities to oversee the framework of the National Physical Development of Nigeria.*

C 13. *Prior to the promulgation of Decree No. 88 and till date the Plaintiff has its master plan for each of the Divisions in the State and comprehensive Regional and Sub-regional Plans for the whole State.*

D 14. *The plaintiff avers that the State has its planning authority responsible for the execution and administration of all Town and Country Planning activities in the State which include granting of approval, permit, licence for development and for use of land or seabed in the State.*

E 15. *The plaintiff avers that all previous and existing Town and Country Planning Laws and Regulations for development control in the State have always protected Federal Government interests in the form of non-infringement of Federal Highway set-backs, non-development of land under bridges, bridges' loop and along Federal Government establishments and institutions.*

F 16. *The plaintiff avers that in contravention of the Constitution of Nigeria and of all existing Laws and Regulations on town planning matters in the State, the 1st Defendant, through his agencies, has been granting planning approvals, permits and licences to individuals and Federal Government agencies for building and development in the State."*

H The main grouse of the plaintiff in this case is against Decree No. 88 of 1992 promulgated by the then Federal Military Government on Urban and Regional Planning. The complaint of the plaintiff was that the said Decree provides inter alia, for a new Urban and Regional Planning development and administration for the whole of Nigeria with the establishment of Federal, State and Local Government authorities charged with supervising the National Physical De-

velopment of Nigeria. The result of this, according to the plaintiff, was to stop and make it impossible for Lagos State Government to carry out and implement the already prepared master plan of Lagos State for each Division of the State and the comprehensive Regional and Sub-regional plan for the whole State. The plaintiff also stated that prior to the promulgation of the said Decree, Lagos State had its own Town and Country Planning Law (Cap. 188 of Laws of Lagos States 1994; Building Lines Regulations of 1936 (Cap. 16 of Laws of Lagos State, 1994) and Land Development (Provision for Roads) Law (Cap 110 of Laws of Lagos State, 1994) which were applicable to all urban and regional plans and development control over all lands within the territory of Lagos State. The said Decree, according to the plaintiff, is an imposition by the Federal Government intended to interfere with the powers of Lagos State under its existing laws stated above and this was the case since 1988 when the Decree was promulgated. As a result of this, the plaintiff said, the Lagos State Government could not and it still cannot execute its master plan according to its existing Town and Country Planning Laws and Regulations regarding all physical development control of land within the state. In his Amended Statement of Claim, the plaintiff claimed the following reliefs:-

“1. A DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the State.

2. DECLARATION that the provisions of Sections 1(2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

3. A DECLARATION that the Federal Highways Act (Cap. 135. Laws of the Federation of Nigeria (LFN), 1990), Nigerian Railway Corporation Act (Cap 323, LFN, 1990), Civil Aviation Act (Cap. 51, LFN, 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal Statutes which vest power in the 1st defendant to grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general

planning powers or physical development control of land in Lagos State in the 1st Defendant.

4. *DECLARATION* that the grant of approvals, permits licenses for buildings and physical development in Lagos State including under bridges, bridges' loops and highway set back are the residual
B responsibility of the Plaintiff.

5. *DECLARATION* that all approvals, permits or licenses granted or issued by the 1st Defendant from the 1st of June, 1999, for building or development of land within the territory of Lagos State without the consent of the plaintiff and in contravention of the Town
C Planning Laws and Regulations of Lagos State are illegal, null and void.

6. *AN ORDER* nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from
D 1st of June, 1999 for any building or other development of land in Lagos State.

7. *A PERPETUAL INJUNCTION* restraining the Defendant, its servants, agents and privies or otherwise howsoever from further granting of approvals, permits, licenses for development of any land, highway setback and under bridges, bridges' loops, market shops, stalls, mechanic workshops, etc in Lagos State without the consent of the
E Plaintiff."

After entering appearance for and on behalf of 18 defendants, only 17 defendants filed Statements of Defence and only the plaintiff
F and the defendants Nos. 1, 2, 5, 7, 8, 10, 11, 14, 17, 19, 21, 24, 26, 27, 30, 31 and 32 filed their respective briefs. It is pertinent to observe at this stage that all the defendants who participated in this case did not contest the case of the plaintiff except defendants Nos. 1, 11
G and 21. Also the plaintiff, 27th and 30th Defendants, filed affidavit evidence in support of their averments. It is however the duty and responsibility of the court to closely examine the claims of the Plaintiff in the light of available evidence and the relevant law including the Constitution of the Federal Republic of Nigeria to arrive at a decision
H in the case.

In the brief of argument, the plaintiff identified 5 issues for the determination of this court as follows:-

"1. *Whether the Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legisla-*

tive matters.

2. If an affirmative answer is given to issue 1, whether Urban and Regional Planning (Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are within the legislative and executive jurisdiction of the Federal Government.

3. Whether the Urban and Regional Planning Decree No. 88^B of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution and therefore unlawful, null and void.

4. Whether the ownership rights of the Federal Government over land in State territories include the power to control and regulate town planning and physical development in relation to such land.^C

5. Whether all approvals, permits and licenses granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the plaintiff are not illegal, null^D and void.”

I have also examined the issues raised by other Defendants who have filed their briefs and found them to be very similar to those identified by the plaintiff. I therefore intend to consider plaintiff's issues in the determination of this case.^E

ISSUE 1

This deals with whether Urban and Regional Planning (or Town Planning and Regulation of physical development are legislative matters. In other words are they matters upon which laws, rules or regulations can be made. I think the obvious answer is yes. This is because they invoke the use of land by the general public in both urban and rural regions and affect the development and control of such land for the benefit of the society. Therefore, in order to ensure purposeful utilization of the community to which it relates, there must be laws, rules and regulations controlling the general right to or the indiscriminate use of the land. It is common knowledge that there were and still are various laws, rules and regulations on town and country planning, building regulations etc in this country, imposing certain regulatory restrictions on the use of land and physical development to ensure good environment for the people. I find that Urban and Regional Planning (or Town Planning) as well as Regulation of Physical Development are legislative matters and I answer issue 1 in the affirmative.^F
^G
^H

ISSUES 2 AND 3

I shall take issues 2 and 3 together. These are the most important issues to be determined in this case and although they fall into two distinct parts, they emanate from the same sources, ie., the legislative competence of the Federal Government on the subject matter
B of this action.

These issues touch on the competence of the Federal Government to legislate on Urban and Regional Planning (or town Planning) and Regional of Physical Development of land in Nigeria.

C It is the most important issue in this case, as it involves the consideration of the legislative powers of the Federal Government through the National Assembly under the 1999 Constitution. Section 4(1) - (4) of the said constitution provides:-

“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 1 of the Second Schedule to this Constitution.*

(3) *The power of the National Assembly to make laws for the 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*

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

By subsection (2) of Section 4 above, the National Assembly has power to legislate on matters in the Exclusive Legislative List (E. L. L.) in Part I of the 2nd Schedule to the Constitution. I have searched

through the items listed in the said schedule but Urban and Regional Planning and Regulation of Physical Development was not found therein.

This means that the National Assembly has no exclusive legislative jurisdiction to make any law on Urban and Regional Planning or on physical development control over any land in Nigeria. B

By subsection (4)(a) of Section 4, the National Assembly had power to legislate on any item in the concurrent legislative list (C.L.L.) as set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column. I have also carefully examined the items listed in the C.L.L. and the relevant columns one and two, and found no mention of Urban and Regional Planning nor physical development control of land therein. This also means that the National Assembly has no legislative jurisdiction in this matter under the C.L.L., as it was not even mentioned in the list. C D

The argument of the plaintiff and a fortiori those of the other Defendants except the 1st Defendant is that since the item in question was not mentioned or listed in the E.L.L. and the C.L.L. in the Constitution, it is a residual matter which is within the exclusive legislative jurisdiction of the State Assemblies. He cited Section 4(7) of the 1999 Constitution and the cases of *A.G. Ogun State v. Aberuagba* (1985) 1 NWLR (Pt.3) 395 and *Emelogu v. The State* (1988) 19 NSCC (Pt.1) 869 at 882. Learned counsel for the plaintiff strongly contends that urban or town planning and the regulation of physical development have historically been and are necessarily local and cultural affairs which should not ordinarily be subjected to control by the Federal Government in a Federal system like ours. He emphasized that in our system of Federalism, the autonomy of our State Governments is paramount subject to any limitations imposed by the Constitution. This, he argued, is intended to ensure unity in diversity so that while the state or local governments are empowered to cater for all local affairs within their area of jurisdiction, the Federal Government caters for issues or matters with national implications. This is recognized, counsel pointed out, by making various relevant provisions in the Constitution. Learned counsel finally submits on this matter that since no specific mention was made in the Exclusive and Concurrent Legislative List of the 1999 Constitution on urban and regional planning and physical development control of land, it is a re- E F G H

sidual matter in which only the State Assemblies have power to legislate and so the National Assembly has no power to legislate over any land in Lagos State.

The 1st Defendant's counsel argued in the brief and before this court that urban and regional planning and physical development control of land is not strictly a residual matter under the 1999 Constitution exclusive to the State Assemblies to legislate. Learned counsel submitted that this is covered by several items on the Exclusive Legislative List of the 1999 Constitution. He referred specifically to the provisions of Section 4 and items 60(a) and 68 of the Exclusive Legislative List and Section 20 of the said Constitution, and asked the court to hold that the National Assembly had legislative competence on urban and regional planning and physical development as set out in the E.L.L.

The 11th Defendant agreed with the 1st Defendant on this but only in respect of the Federal Capital Territory, Abuja under Sections, 297, 298 and 299 of the 1999 Constitution and in respect of any land vested in the Federal Government through its prescribed agency, in any State of the Federation. Under this, learned counsel for 11th Defendant examined the Federal Highways Act (Cap. 135 of Laws of Federation of Nigeria, 1990 (LFN)), Nigerian Railway Corporation Act (Cap. 323 LFN), and Civil Aviation Act (Cap. 51 LFN) and contends that the Federal Government has unlimited powers of planning control over all land vested in it in order to carry out the purposes of those legislations.

The 27th Defendant (A.G. Ogun State) also expressed the view in his brief that:

"Urban and Regional Planning is a concurrent matter over which both the Federal and State Governments can legislate side by side: the Federal Government on general policy guidelines and national standards, and the State Governments on specific planning issues peculiar to their States, within the frame work of National policy/standards set by the Federal Government".

In expressing this view, the learned Attorney-General relies on the provisions of Sections 4(2), (3) and (4), 13, 20, and items 60(a) and 67 of the E.L.L. of the 1999 Constitution. He also relies on the decision of this court in *Attorney-General of Ondo State v. Attorney-General of the Federation & 35 Ors.* (2002) 6 S.C. (Pt. I) 1, (2002)

9 NWLR (Pt.772) 222, and submit that the enforcement and implementation of the powers granted to National Assembly by virtue of the provisions of Section 20 of the 1999 Constitution can only be effective by legislation. But in the case of physical development control, learned Attorney-General submits in his brief that this is the exclusive preserve of the States as it “*admits of only one authority and one uniform plan of action for the even development of a defined urban area or region*”.

All other Defendants do not in principle contradict the plaintiff’s counsel in his arguments in support of the case.

Before considering the submissions of the learned counsel set out above in this matter, it is important to bear in mind that at the time the Nigerian Urban and Regional Planning Decree, 1992, was promulgated, the Federal Military Government which made it, had power to make laws for the whole Federation of Nigeria. With the coming to civilian or democratic regime in 1999, this law must be examined critically to see if it can be applicable to the whole country or any component part of it with or without any amendment. This is what Section 318 of the 1999 Constitution refers to as an existing law and can only be effective “with such modifications as may be necessary to bring it into conformity with the provisions of the Constitution”. See Section 315 of 1999 Constitution and *Ishola v. Ajiboye* (1994) 6 NWLR (Pt.352) 506; *Adigun v. A-G Oyo State* (1987) 1 NWLR (Pt.53) 678; *A-G Lagos State v. Dosunmu* (1989) 6 S.C (Pt.II) 1; (1989) 3 NWLR (Pt.111) 552. It is also pertinent to observe that before the promulgation of the Urban and Regional Planning Act as Decree 88 of 1992, there was in existence the Town and Country Planning Act (Cap 554 of LFN, 1990) and the Town Planners (Registration etc) Act (Cap. 431 of LFN, 1990) but the former was repealed by Decree 88 of 1992.

Nigeria is no doubt a Federal Republic with a Federal Constitution in which the legislative powers of the Federal Government through the National Assembly and the legislative powers of the State Governments through the State Assemblies were clearly defined. These consist of the Exclusive Legislative List on which only the National Assembly can legislate; the Concurrent Legislative List which is shared between the National Assembly and the State Assemblies and the remaining which is called the residual list not included in the Exclu-

sive or Concurrent Legislative List which only the State Assemblies can legislate on. It is therefore the function of the court when any dispute arises on the competence of either of them to legislate on any matter, to ensure that each legislative arm operates within its limits as provided by the Constitution. And in order to determine the competence to legislate as in this case, the interpretation of the relevant provisions of the Constitution must be invoked.

In the interpretation of any provision of the Constitution, it has been well established by this court in its various decisions that a wider and liberal interpretation must be applied unless there is express provision to the contrary and this must be done in order to carry out or give effect to, the intention of the makers of the Constitution. See *Nafiu Rabi v. The State* (1980) 8/11 S.C. 130; (1981) 2 NCLR 293; *A-G Ondo State v. A-G of the Federation & Ors* (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222; *Alegbe v. Oloyo* (1983) 7 S.C. 85.

It is very clear to me in this case and I so find, that the Nigerian Urban and Regional Planning Act now under consideration, (hereinafter referred to as the Act) is an existing law within the meaning of Section 315 of the 1999 Constitution and in order to give effect to its provisions, as a Federal Legislation, the appropriate authority, in this case the President, must make the necessary modifications to it to comply with the provisions of the 1999 Constitution. This has not been done in this case. The plaintiff is asking the court to declare it unconstitutional, null and void but the court has a duty to examine the Act and all its provisions and decide against the provisions of the 1999 Constitution whether it is valid or not.

By virtue of the provisions of Section 4(4)(b) of the 1999 Constitution, and in considering whether the National Assembly has power to enact the Act, Section 20 of the Constitution is relevant. It says:-

"20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria."
(Underlining mine)

This section is under Chapter II on Fundamental Objectives and Directive Principles of State Policy in the 1999 Constitution. It was argued by the 1st Defendant in his brief that the Federal Government by virtue of this section and item 60(a) of the E.L.L is empowered to legislate on urban and regional planning in Nigeria. He stated in his brief thus:-

“It follows that the National Assembly may legislate to protect the Nigerian environment as provided in Section 20 of the Constitution. This necessarily implies the power to legislate on Regional and Urban Planning. In fact, such legislation may be regarded as compulsory if the National Assembly is to fulfill the mandate given by item 60(a) of the Exclusive Legislative List, planning being absolutely necessary for proper environmental protection”. B

He went on to add:-

“The only issue that this court is concerned with in this case is to declare the meaning of the plain and unambiguous words of Section 4 and (sic) of the Constitution and item 60(a) of the Exclusive Legislative List. The court interpreted those words in Attorney-General Ondo v. Attorney-General of the Federation (supra) and we submit that this case is almost on all fours with the earlier case.” C

With due respect to the learned counsel for the 1st Defendant, D this case is not on all fours with the earlier case of A-G Ondo State v. A-G of the Federation mentioned above. In the Ondo State case, this court dealt with the interpretation of Section 15(5) as affected by item 60(a) of the E.L.L. of the 1999 Constitution. Section 15 is under the Fundamental Objectives and Directive Principles of State Policy, E Chapter II, on abolishing of corrupt practices and abuse of power and item 60(a) of the E.L.L. deals with the establishment and regulation of authorities. The authority involved in that case was the Independent Corrupt Practices and Other Related Offences Commission F (I.C.P.C) and so these provisions were relevant and related to each other. In this case, we are concerned with Section 20 of the 1999 Constitution dealing with protection and improvement of the environment and safeguarding water, air and land, forest and wildlife in Nigeria, G We are not dealing with the establishment or regulation of any authority for the Federation. We are talking about planning and development control of land. Therefore item 60(a) of the E.L.L. is not relevant in this case as it was in the Ondo State case, and that it did not therefore give the Federal Government any mandate which H has to be carried out by legislation.

Section 20 of the 1999 Constitution can in my view be subdivided into two: (1) the protection and improvement of the environment in Nigeria and (2) safeguarding the water, air and land, forest and wildlife in Nigeria. Collins English Dictionary (1985 Edition) gives

the meaning of “Environment” as “External conditions or surroundings especially those in which people live or work; the external surroundings in which a plant or animal lives which tends to influence its development and behaviour”. The same Dictionary gives the meaning of “Safeguard” as “a person or thing that ensures protection against danger, damage or injury etc; a document authorizing safe conduct, to defend or protect”. If you separate this word into its component parts, in the Dictionary, “Safe” means “affording security or protection from harm; free from danger, secure from risk; certain, sound, unable to do harm; not dangerous”. And “guard” means “*watch over or shield from danger or harm, protect, to keep watch over, a person or group who keep protecting, supervising or restraining, watch or control over people etc.*”

It is my respectful view that the words underlined above are the operative words in Section 20 of the 1999 Constitution. It appears to me, having regard to the meaning assigned to all of them, nowhere is the question of physical planning or land development mentioned. The main object of Section 20 in my view is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences. This is essentially what the Federal Environmental Protection Agency (FEPA) Decree No. 58 of 1988 did. A close study of FEPA will show that it is more concerned with effective planning, management and protection of environment particularly with how to handle activities which degrade or pollute the air, land or water. It does not appear to involve the way people plan their buildings or develop the land they occupy. It is also my view that the first part of Section 20 which I mentioned earlier is the operative and most important part of that section. It speaks of protecting and improving the environment generally and second part of saying how do you do that? It then gives the answer thus: “by safeguarding the water, air and land, forest and wild life”. Is this what was done in the Nigerian Urban and Regional Planning Act. (Decree No. 88 of 1992)? I will attempt to find out presently.

In its explanatory note to the Decree which does not form part of the Decree, it says that “*the Decree provides, among other things, for a new Urban and Regional Planning enactment for Nigeria with the establishment of Federal, State and Local Government Authori-*

ties to oversee the implementation of a more realistic and purposeful planning of the country". The title of this Decree was Urban and Regional Planning, and going through the Decree from Section 1 to Section 92, it is dealing with responsibilities for planning and development control over land, Federal or State or Local Government; it then appointed Planning Authorities, Boards and Commissions to formulate National Policies for urban and regional planning; it then empowered the Authorities, Boards, and Commissions to establish development control departments with power to exercise development control over Federal, State and Local Governments land in the relevant area of jurisdiction in Nigeria among others. It assigned responsibilities to the Federal, State and Local Governments. Section 2 of the Decree for example provides:-

"2. *The Federal Government shall have responsibility for -*

(a) the formulation of national policies for urban and regional planning and development;

(b) the preparation and implementation of the National physical and regional plans on the recommendation of the Minister;

(c) the formulation of urban and regional planning standards for Nigeria on the recommendation of the Minister;

(d) the promotion and fostering of the education and training of town planners and supports staff;

(e) the promotion of co-operation and co-ordination among States and Local Governments in the preparation and implementation of urban and regional plans;

(f) the promotion and conduct of research in urban and regional planning;

(g) the making of recommendation and dissemination of research and for adoption by user organisations;

(h) the supervision and monitoring of the execution of projects in urban and regional planning;

(i) the development control over Federal lands; and

(j) the provision of technical and financial assistance to States in the preparation and implementation of plans". (Underlining is mine)

It is very clear to me from the above and other provisions of the Decree that it was deliberately dealing with planning policy and development control over land in Nigeria and is not aimed at protecting or improving any environment envisaged by Section 20 of

the 1999 Constitution. In saying this, I am not unaware of the provision of items 60(a), 67 and 68 of the E.L.L and the provision's of Section 10(2) of the Interpretation Act (Cap 112 of LFN, 1990). Although Section 20 of the 1999 Constitution gives the National Assembly the legislative jurisdiction on environment generally, it did not
 B give it the power to legislate on planning and development control over land in the States or Local Governments and this cannot in the circumstances of this case be implied. It is not the function of the National Assembly under the 1999 Constitution to exercise any legislative powers of planning and development control of land in the
 C jurisdiction of the States or Local Governments as this is not necessarily incidental or ancillary to effective legislation under Section 20 and item 60(a) of the E.L.L of the said Constitution. And under the Federal system of Government which we practice in the 1999
 D Constitution, the National Assembly, except where the Constitution so provides, cannot legally impose any responsibility by legislation on a state in respect of any land in the territory of the State as it has no supervisory power or authority to do so under the 1999 Constitution. See *A.G. Ogun State v. A.G. of the Federation* (1982) 13 NSCC
 E 1. Also the word "State" in Section 20 does not mean Federal Government alone but according to Section 13 applies to "all organs of government and all authorities and persons exercising legislative, executive or judicial powers", and makes no distinction between Federal, State or Local Governments as component parts of the federation.
 F See also Section 318(2) of the 1999 Constitution on the definition of "State."

From this and all what I have said earlier in this judgment, I am of the view that Decree 88 of 1992, now Nigerian Urban and Regional Planning Act, is, in its intent and contents, inconsistent with the provisions of the 1999 Constitution except as it applies to the Federal Capital Territory, Abuja, by virtue of Section 299 of 1999 Constitution. I also do not think that the application of the blue pencil rule to it will be of any use particularly as the majority of its provisions relate
 H to national policies on planning and physical development of land in which the National Assembly lack legislative powers. By my judgment, planning and development control of land is a residual matter within the legislative competence of the State Assemblies. I therefore answer issue 2 in the affirmative and issue 3 in the negative.

Issue 4 concerns the position of the land belonging to or vested in the Federal Government or its agencies in the territory of States. In view of my earlier findings on Decree 88 of 1992, it is my view that in respect of the land in the Federal Capital Territory, Abuja, the National Assembly has full legislative powers on urban and regional planning and development control over all land therein by virtue of Section 299 of the 1999 Constitution. In respect of any land vested in the Federal Government or any of its prescribed agencies either in pursuance of an Act made or deemed to have been made by the National Assembly under the 1999 Constitution, such as Federal Highways Act (Cap. 135 LFN, 1990), the Nigerian Railway Corporation Act (Cap.323, LFN, 1990), Civil Aviation Act (Cap.51 LFN, 1990) or National Inland Waterways Authority Act (Decree No. 13 of 1997), the Federal Government or the National Assembly will still not be competent to legislate on or exercise any physical planning or development control over such land without the concurrence of the State Governments concerned.

Finally on issue 5 my view is that all approvals, permits and licenses granted or issued by the 1st Defendant, the Federal Government or any of its agencies for any construction, building or physical development or use of land in the Plaintiff's territory or the territory of any State in the Federation before the delivery of this judgment are valid and proper for all times. Such actions are deemed to be validly done or carried out at the time when the relevant law was in operation and it ceased to be in operation only on the day it was declared invalid or inoperative. See Section 6(1)(b) of the Interpretation Act. (Cap. 192 LFN, 1990) and *Lipede v. Sonekan* (1995) 1 NWLR (Pt.374) 668. For the same reasons, rights which have been acquired or become vested will not be affected by voiding the law under which they were acquired or vested. See: *Afolabi v. Governor of Oyo State* (1985) 2 NWLR (Pt.9) 734; *Uwaifo v. Attorney-General, Bendel State* (1982) 7 S.C. 124, *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt.58) 539. Also since the approvals, permits and licenses were granted to various persons or bodies who are not parties to this case, but who would be affected by any order made by this court, it is unfair and unjust to nullify their respective grants without hearing from them. I also find that relief 7 is rendered ineffective and will appear to be unnecessary in view of my findings on issue 4

above. I answer issue 5 in the affirmative.

Having dealt with the issues raised by the Plaintiff, I now consider and determine the reliefs claimed by the plaintiff as contained in the Amended Statement of Claim. With regards to all what I have said above, I grant reliefs 1, 2, 3 and 4 and refuse reliefs 5, 6 and 7 accordingly. This action therefore succeeds in part. I make no order as to costs.

In the circumstances, I agree with the judgment of my learned brother Uwaifo, JSC., including the reasons and conclusions reached therein.

EJIWUNMI JSC

This action was commenced by the plaintiff, the Lagos State Government initially against the 1st defendant namely, the Attorney General of the Federation. But for reasons best known to the plaintiff, 35 other States of the Federation were joined in the action. These were identified as the 2nd to the 36th defendant. The 1st, 2nd, 5th, 7th, 8th, 10th, 11th, 14th, 17th, 19th, 21st, 24th, 26th, 27th, 30th, 31st, 32nd and 34th defendants, who were served with the 2nd Amended Statement of Claim along with the other defendants not only duly entered their appearances, but they also filed their respective Statements of Defence, Briefs were also filed and exchanged. It is, I think, necessary to note at this stage that though the action was initiated by the plaintiff against the 1st defendant to challenge the application of certain provisions of the Nigerian Urban and Regional Planning Authority Decree No. 88 of 1992, some of the defendants by the position they took in their Statements of Defence appear to be in support of the position of the plaintiff, others took opposite positions. In any event as this action is mainly against the 1st defendant and though the merits of the plaintiff's claim would be considered mainly on the briefs of arguments and materials present by the plaintiff and the 1st defendant, the arguments in the briefs of other defendants, whose arguments in their respective briefs which I consider germane to any of the questions under consideration would be referred to.

Consequently, having regard to the plaintiff's Statement of Claim and the reliefs sought thereof, the following issues were set

down for the determination of the claim by the plaintiff in its brief. They read thus:-

“1. Whether the Urban and Regional (or Town Planning) as well as the Regulation of Physical Development are Legislative matters.

2. If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are within the legislative and executive jurisdiction of the Federal Government.

3. Whether the Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution and therefore unlawful, null and void.

4. Whether the ownership rights of the Federal Government over land in State territories include the power to control and regulate town planning and physical development in relation to such land.

5. Whether all approvals, permits and licenses granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the plaintiff are not illegal, null and void”.

I do not need to set down in seriatim the Statement of Claim of the plaintiff but reference would be made to any of its averments as deemed necessary in the course of this judgment. But in order to appreciate the reliefs sought by the plaintiff, they will be reproduced hereunder as pleaded in paragraph 25 of the Statement of Claim. They are:-

“25. Whereof the plaintiff claims the following reliefs

1. A declaration that by virtue of the provisions Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the States.

2. A declaration that the provisions of Sections 1(2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seeks to control urban and regional planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

3. *A declaration that the Federal Highways Act (Cap. 135, Laws of the Federation of Nigerian LFN 1990). Nigerian Railway Corporation Act (Cap. 323, LFN, 1990), Civil Aviation Act, (Cap.51, LFN, 1990). National Inland Waterways Act (Decree No. 13 of 1997) and other Federal Statutes which vest power in the 1st defendant to grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.*

4. *A declaration that the grant of approvals, permits and licenses for buildings and physical development in Lagos State including under bridges, bridges' loops and highway set back are the residual responsibility of the Plaintiff.*

5. *A declaration that all approvals, permits or licenses granted or issued by the 1st Defendant from the 1st of June, 1999, for building or development of land within the territory of Lagos State without the consent of the plaintiff and in contravention of the town planning laws and regulations of Lagos State are illegal, unlawful, null and void.*

6. *An order nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from 1st of June, 1999, for any building or other development of land in Lagos State.*

7. *A perpetual injunction restraining the 1st Defendant, its servants, agents and privies or otherwise howsoever from further granting of approvals, permits, licenses for development of any land, highway set back and under bridges, bridges' loops, markets, shops, stalls, mechanic workshops, etc., in Lagos State without the consent of the Plaintiff."*

Two briefs were filed for the plaintiff in support of his case by the learned Attorney-General for Lagos State. The first brief dated 20th March, 2002, was filed on the same date. The second brief designated as plaintiff's Reply Brief was dated 13th September, 2002, and filed on the 16th September, 2002. This reply must have been filed by the plaintiff upon receiving the 1st defendant's brief dated 4th July, 2002, and filed on the 5th July, 2002. However another brief dated 20th September and filed on the same date was filed for the 1st defendant with a letter attached thereto appointing a Mr. Paul

Ewekoro to appear for him as the 1st defendant in this action. In that brief, he identified the following issues for determination in the matter.

“1. *Whether Urban and Regional Planning is a residual matter under the Constitution of the Federal Republic of Nigeria 1999, and therefore the legislative preserve of the States of the Federation.* B

2. *Whether the Urban and Regional Planning Act (formerly Decree No. 88 of 1992) is inconsistent with the Constitution of the Federal Republic of Nigerian, 1999, and therefore void.*

3. *If the answer to issue 2 above is in the affirmative, whether the plaintiff has made out a sufficient case for this court to make a blanket order nullifying all approvals, permits and licenses granted by the 1st defendant or any of its agencies for any construction, building or physical development or use of land owned by the Federal Government but located in Lagos State.* C D

At the hearing, Mr. Ewekoro, counsel for the 1st defendant, conceded it that Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legislative matters. I therefore do not consider it necessary to consider the merit of the issue as raised by the plaintiff. That issue is therefore resolved in favour of the plaintiff. E

ISSUE 2

I now turn to the consideration of plaintiff 's Issue 2, which is Issue 1 in the 1st defendant's brief. The question raised on these issues is concerned with whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are within the Legislative and Executive jurisdiction of the Federal Government. In respect of this issue, it is clear from the argument of all the learned counsel in their respective briefs, that the question raised in so many words in this issue is whether the Federal Government is competent to make a law or in any way regulate town planning and physical development within State territory. Learned counsel for the plaintiff contends in his brief that for the proper determination of this question, reference must be made to the relevant Sections of the Constitution of Nigeria, 1999. In this regard, h referred to Section 4(2) and (3) of the 1999 Constitution. These provisions of the Constitution will be set down later in this judgment. But it must be pointed out at this stage that the posi- F G H

tion of the plaintiff is, that having regard to Section 4(7) of the Constitution, any matter that is included in the Exclusive Legislative List and not reserved in the Concurrent Legislative List is necessarily within the legislative authority of the State Houses of Assembly. In other words, it is his submission that matters that are neither in the Concurrent List nor in the Exclusive List are residual matters and they are exclusive within the legislative jurisdiction of the State Houses of Assembly. And in support of this submission, he refers to Attorney-General Ogun State v. Aberuagba (2002) Vol. 2 WRN 52 at 77.

The plaintiff is not alone in the view held that the matter under consideration must be considered as a residual matter for the same reasons that the plaintiff advanced and for reasons almost similar to that which has been advanced for the plaintiff by the Attorney-General of Lagos State. In this respect, I refer in particular to the brief of the 5th, 26th and 27th defendants. The 1st defendant being of the view that the matter is not residual in the brief filed on his behalf by Mr. Ewekoro, which is the submission made for the 1st defendant that Urban and Regional Planning, far from being a residual matter, is in fact covered by several items on the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999, listed several sections of the Constitution which read as follows:

"S.4(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.

S.4(2)(b): The security and welfare of the people shall be the primary purpose of government.

S.4(3): The power of the National Assembly to make laws for the 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.

S.4(4)(b): Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

S.17(3)(c): The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.

S.20: The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

S.32: The National Assembly cannot effectively legislate on many of the matters on the Exclusive List, unless it can, through such legislation, make detailed provisions to regulate such features as the location, physical layout and safety features of any establishment engaged in those matters. The following matters on the Exclusive List must necessarily include planning components, if the legislative power of the National Assembly is to be meaningful or effective:

Item 2 (Arms, Ammunitions, Explosives)

Item 3 (Aviation, including Airports, Safety of Aircraft and Carriage of Passengers)

Item 11 (Construction, Alteration and Maintenance of Federal Roads)

Item 36 (Lighthouses)

Item 37 (Meteorology)

Item 38 (Military)

Item 39 (Mines and Military including Oil fields, Mining, Geological Surveys and Natural Gas)

Item 40 (National Parks)

Item 41 (Nuclear Energy)

Item 48 (Prisons)

Item 55 (Railways)

Item 66 (Wireless, Broadcasting and Television)."

In any event, the crux of the submission of the learned counsel for the 1st defendant is that, it is not every matter that is not mentioned by name in the Exclusive and Concurrent List that is deemed residual. For this submission, he referred to the case of Attorney-General Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222. This argument, he urged, was accepted by this court in the case of Attorney-General Ondo State v. Attorney-General of the Federation (supra) where Item 60(a) of the Exclusive Legislative List confirmed the basis for holding that the National Assembly may make laws for the enforcement of the Fundamental Objectives and Directive Principles of State Policy. He therefore urged this court to hold that the National Assembly may legislate to protect the Nigerian environment as provided in Section 20 of the Constitution.

The learned Attorney-General for Lagos State as previously stated filed a plaintiff's reply brief. In that brief, the argued as follows:-

"Items 60(a) is the establishment and regulation of authorities for the Federation or any part thereof-

B (a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

Interestingly, one of these fundamental objectives is found in Section 20 of the Constitution, which declares that the State shall C protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

This raises the question whether the power to establish and regulate an authority for the protection and improvement of the environment and to safeguard the water, air and land, forest and wild D life of Nigeria necessarily puts urban and regional planning on the list of matters over which the National Assembly has legislative jurisdiction.

The first thing to note here is that environmental protection as a legislative item has never been lumped with Urban and Regional E Planning in Nigeria. This is why the Urban and Regional Planning Decree was made in spite of the fact that Nigeria already had the Federal Environmental Protection Agency Act (Cap. 131, LFN, 1990), Harmful Wastes (Special Criminal Provisions) Act, (Cap. 165, LFN, 1990) etc. Even a cursory examination of the two statutes would F reveal that the Urban and Regional Planning Decree does not relate to environmental protection while the Federal Environmental Protection Act does not relate to Urban and Regional Planning. The contention that the Urban and Regional Planning Decree is to protect G the environment is therefore clearly unfounded. Secondly, the constitution is very specific on the demarcation of legislative powers over the protection and improvement of the environment and safeguarding of the water, air and land, forest and wildlife of Nigeria. It would therefore clearly be wrong to seek the proper determination of the H scope of any of those powers by a convoluted reference to the Fundamental Objectives & Directive Principles of State Policy. For instance, item

3. is on aviation, including airports, safety of aircraft and carriage of passengers and goods by air.

11. is on construction, alteration and maintenance of such roads as may be declared by National Assembly to be Federal Trunk Roads.

29. is on fishing and fisheries other than fishing and fisheries in rivers, lakes, waterways, ponds and other inland waters within Nigeria.

40. is on National Parks being such areas in a State as may, with the consent of the Government of that State, be designated by the National Assembly as national parks

54. is on Quarantine.

64. is on water from such sources as may be declared by the National Assembly to be sources affecting more than one State.

The Concurrent List (Part 2 of Schedule 2 to the Constitution) is equally specific on the demarcation of Legislative powers on particular items. For instance,

Item 17 provides that the National Assembly may make laws for the Federation or any part thereof with respect to

(a) the health, safety and welfare of persons employed to work in factories, offices or other premises on in inter-state transportation and commerce...

18. Subject to the provisions of this Constitution, a House of Assembly may make Laws for that State with respect to industrial, commercial or agricultural development of the State.

In the circumstance, it would be absurd to contend that all matters regarding the protection and improvement of the environment and safeguarding of the water, air and land, forest and wild life of Nigeria are within the exclusive legislative competence of the National Assembly and/or that the scope of this power include urban and regional planning and physical development of land throughout the federation. It is equally wrong to say that, in spite of the specific powers detailed in the Exclusive and Concurrent Legislative Lists, a general and overriding power was conferred on the National Assembly by virtue of Section 60(a) and the fundamental objectives stated in the Constitution. Section 60(a) only confers power to establish and regulate certain authorities on the Federal Government; it does not thereby authorize the National Assembly to confer on such authorities powers which the Assembly itself does not already have."

From a careful reading of the argument of learned Attorney General, it is clear that his view is that item 60(a) cannot confer on

the National Assembly any exclusive or general power to make laws on urban and regional planning and physical development of a state territory. And in order to show the extent of the illegal use to which the 1st defendant had put the provisions of the Urban and Regional Planning Act, No. 88 of 1992 within its territory, an affidavit deposed to by one Victor Olusegun Emdin was filed in this court. The affidavit so sworn to reads thus:-

“That since June, 1999, the 1st defendant through his agencies like Federal Ministry of Works and Housing and National Waterways Authority has continued to involve himself in the following acts:-

(a) Development approval (granted by the Federal Ministry of Works and Housing) for a massive shopping centre and petrol station directly in front of the State’s Jubilee Housing Scheme at Omole, contrary to the master plan of the area which has earmarked the whole frontage of the housing scheme as greenery for aesthetic beauty of the area along the express way,

(b) Development approval or permit (granted by the Federal Ministry of Works and Housing) for the greenery buffer along Kingsway Road, Ikoyi which has been turned into car sales depot, row of shops and other illegal structures by Nitel Plc., the Nigerian Police and other individuals;

(c) Development approval (by the Federal Ministry of Works and Housing) for the establishment of a market within the Murtala Muhammed Local Airport, Ikeja abutting the Agege Motor Road. The activities at the market have continued to impede traffic flow along the inter-state highway;

(d) Grant of indiscriminate development approval granted for development along Railway Lines within the State without regard to the State Government’s Planning Policy.

(e) Development approval granted (by the Federal Ministry of Works and Housing) to Total Plc. for construction of petrol filling and service stations along Osborne Road, Ikoyi, Lagos, without the permission of the plaintiff’s Planning Authority;

(f) Development approval granted by the Federal Ministry of Works and Housing and National Inland Waterways Authority to a total of 22 properties (developed and under construction) along Oyinkan Abayomi Drive (Former Queens Drive), Ikoyi, Lagos State having no building plan, permit or approval from the plaintiff’s Plan-

ning Authority;

(g) *The illegal and massive destruction of the forest reserve around Ologe Lagoon by the Nigerian Inland Waterways Authority of the 1st defendant without regard for the Comprehensive Regional Plan of the area in the State.*

(h) *Development approvals and permits granted by the Federal Ministry of Works and Housing for construction of public toilets at places and locations earmarked for other planning purposes in the State such as one located directly opposite Lagos State University at Ojo.*

(i) *Approvals and licences granted by the Federal Ministry of Works and Housing for construction of markets stalls and ware points within the Ikeja Airport, Railway Lines at Agege, Oshodi, Yaba, Ebute-Metta and Iddo foreshore contrary to the Planning Regulations and Town/Regional Master Plan of the State;*

(j) *Approvals, licenses and permits granted by the 1st Defendant's agencies for development at under bridges, bridges' loops and road set back in the State."*

From all the arguments proffered by learned counsel, the question that must be decided is, whether the Federal government via the National Assembly had the necessary competence or jurisdiction to enact the Urban and Regional Planning Decree, 1988. It is of course not in dispute that by virtue of Section 315(1) of the Constitution, 1999, it qualifies as an existing law.

The provision of Section 315(1) reads:-

"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

(a) *an Act of 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 the National Assembly is empowered by this Constitution to make laws and*

(c) *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, and*

Now, the question that arises from the above is, whether the Constitution of 1999 has made provisions for the determination of whether an inherited law, such as the Urban and Regional Planning Decree (No. 88) of 1992 is a law in respect of which the National Assembly has the power under the Constitution to legislate upon.

B For the determination of that question, I need to refer to the following provisions of the Constitution of Nigeria, 1999.

“4 (2) *The National Assembly has 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.*

C (3) *The power of the National Assembly to make laws for the 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 Constitutions be to the exclusion of the Houses of Assembly of States.*

D (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 Pat II of the Second Schedule to this Constitution to the extent prescribed in the second column apposite thereto; and*

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

It is clear from the above quoted provisions of the Constitution that the National Assembly is empowered to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive List to the exclusion of the Houses of Assembly. It is also manifest that the National Assembly may legislate on any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the extent prescribed in the second column opposite thereto.

H In the case under consideration, it is common ground that Urban and Regional Planning does not feature as a subject matter in either the Exclusive or the Concurrent Lists. Therefore, generally where a matter is not under any of these lists, such a matter is said to be in what is belonging to residual legislative powers. In Attorney-General

Ogun State v. Aberuagba (2002) Vol. 2 WRN 52 at 77, this court considered the effect of such a situation with regard to the legislative powers of the Federation and State Houses of Assembly. In this regard, Bello, JSC., (as he then was), said:-

“a careful perusal and proper construction of Section 4 would reveal that the residual legislative powers of Government were vested in the States. By residual legislative powers’ within the context of Section 4 is meant what was left after matters in the exclusive and concurrent legislative lists and those of matters which the Constitution expressly empowers the Federation and the States to legislate upon have been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation has no powers to make laws on the residual matters.”

There is no doubt that the pronouncement above by Bello, JSC., was made within the context of the provisions of Section 4 of the Constitution of 1979. But a careful reading of the provisions of Section 4 of the 1979 Constitution would be found to be in pari materia with the provisions of Section 4 of the 1999 Constitution. That pronouncement of Bello, JSC., is therefore pertinent when considering the meaning and effect to Section 4 of the 1999 Constitution. But in this case, it has been argued for the 1st defendant that even though Urban and Regional Planning was not placed on either the Exclusive or Concurrent Lists in the Constitution, the National Assembly may still legislate thereon by virtue of the combination of Section 20 of the Constitution and Item 60(a) & 68 of the Exclusive Legislative List. In order to appreciate the argument advanced for the 1st defendant, it is proper to set down the two provisions.

Section 20 is one of those provisions in Chapter II of the 1999 Constitution headed FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY. This Chapter opened by its Section 13 with the following general statement:-

“It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.”

A careful perusal of the above Section 13 appears in my humble view to be a general admonition to all of us in this country to observe and apply the provisions of this Chapter. It is clearly not directed to a

particular set of people, body or organization. Now by Section 20 of Chapter II is found the following provision. It reads:-

“The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.”

Now it is manifest from the argument in their respective briefs B that the plaintiff ‘s contention is that the Act (supra) dealt mainly with Urban and Regional Planning which is by virtue of the Constitution of 1999 a residual matter. And a cursory look at the various paragraphs of the affidavit reproduced above is that the 1st defendant, C by its agents were only interested in granting all kinds of approvals and licenses to build houses and structures without any due regard to the planning and regulatory laws of the plaintiff. Mr. Paul Usoro in the supplementary brief for the 26th defendant put the matter succinctly as follows:-

D *“Now, in regard to the relationship between urban and regional planning and environment, it is of course correct and imperative that urban and regional planning must take account of environmental factors and seek always to protect and develop Nigeria’s environment and conserve its bio-diversity and promote the sustainable*
E *development of Nigeria’s natural resources. However, it is our submission that the two roles - urban and regional planning and management of the environment - are distinct and separate under the Constitution and cannot and should not be merged. In particular*
F *while the States have Residual Legislative competence in regard to urban and regional planning, such planning, must conform to Federal environmental legislation and byelaws that are made pursuant to the exclusive mere competence of the Federal Government.”*

It has been argued for the 1st defendant that by the decision G of this Court in Attorney-General Ondo State v. Attorney-General of the Federation (supra) this court should similarly hold that the National Assembly is possessed of the necessary power to enact this Act. I am however unable to do so. In the instant case, it is clear that the Act of 1988 was promulgated before the 1999 Constitution was promulgated and that Constitution as had been stated severely left Urban and Regional Planning as residual matters in the said Constitution. This is not the position in the case of Attorney-General Ondo State v. Attorney-General of the Federation (supra). I find most helpful on this point, the clear statement of the legal position by the learned H

Attorney-General of Abia State, Mr. Awa Kalu, SAN, on behalf of the 2nd defendant whose submission inter alia, reads thus:-

“The experience in Nigeria where constitutionalism has often supplemented military rule is that the laws made by the military are reclassified soon after the return to constitutionalism with the result that all Decrees touching upon matters either exclusive or concurrent will be claimed to be laws made by the National Assembly. On the other hand, any Decree which touches upon a matter which is residual is then treated as or deemed to be a law made by the House of Assembly.”

Having first submitted that Urban and Regional Planning is a residual matter on which only the House of Assembly can legislate, there is no difficulty in holding the view that the (Nigerian) Urban and Regional Planning Decree No. 88 of 1992 is now to be deemed to be a law made by the State House of Assembly.”

I also take the liberty to refer to the brief of the Attorney-General of Ekiti State, Mr. Obafemi Adewale, whose submission pleads inter-alia:-

“By virtue of the provisions of Section 315(1) of the 1999 Constitution, the Nigerian Urban and Regional Decree No. 88 of 1992 is an existing law which could be deemed to either be an Act of the National Assembly if it conforms with Section 4 of the same Constitution or a law made by the House of Assembly of a State to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by the Constitution to make laws.”

On this point, it is pertinent to refer to *Emelogu v. The State* (1989) 19 NSCC (Pt.1) 869 for the observation of Eso, JSC., on the effect of a Constitution upon an existing Federal Legislation. At page 879, His Lordship said:-

“The legislation which was in force immediately before the enactment of the 1979 Constitution became (effective), by virtue of Section 274(1)(b) of the Constitution, (is) deemed to be a Law made by a House of Assembly to the extent that it is a law with respect to any matter (in this case Robbery) on which the House of Assembly of a State (in this case the Imo State) is empowered, by the 1979 Constitution, to make.”

In the same case *Nnamani, JSC.*, at page 882 had this to say:-

“Under the Constitution, Robbery is a residual subject, which

falls into the State's legislative domain. The amended Decree No 47 of 1970 was an existing law by virtue of Section 274(1)(b) and 274(4)(b) of the Constitution. It was therefore State Law..... It follows from my views that Decree No.47 of 1970, as amended, being now State Law, is a law which can be made by the State House of Assembly."

And also in the same case, Karibi-Whyte, JSC., at page 880 said:-

"The Robbery and firearms (Special Provisions) Act No. 47 of 1970 as from the 1st October, 1979, by virtue of Section 274(1)(b) of the Constitution, 1979, is deemed to have survived as existing law of the House of the States, including Imo State, which by the Constitution of 1979 was empowered to legislate in respect of such matters."

It is also apposite for me to refer to Fawehinmi v. Babangida (2003) 1 S.C. (Pt. III) 86, (2003) 3 NWLR (Pt.808) 604, Uwaifo, JSC., at pages 651-652 said inter alia thus:-

"The National Assembly cannot enact a general law for the establishment of tribunals of inquiry for, and applicable in, the Federation of Nigeria. The power to enact such a Law has become a residual matter for the States in respect of which the Houses of Assembly can legislate for their respective States by virtue of Section 4(7) of the 1999 Constitution... As the Federal Capital Territory (FCT) Abuja is under the jurisdiction of the Federal Government, the constitution of Tribunals of inquiry for the territory has accordingly become a residual matter over which the National Assembly can legislate as if the FCT Abuja were a State by virtue of Sections 4(4)(b) and 299 of the 1999 Constitution ..."

It follows from all I have been saying above that I must uphold the submission of the learned Attorney-General for Lagos State, Prof. Yemi Osinbajo, SAN, that Urban and Regional Town Planing is certainly a residual matter. It therefore follows that I must hold that the National Assembly had no right to legislate on matters affecting Urban and Regional Planning under the Constitution of Nigeria, 1999. It may however legislate on this matter for the Federal Capital Territory, Abuja, by virtue of Section 299(a) of the Constitution. Should the National Assembly legislate on this matter, it would be acting in flagrant breach of the federal nature of the Constitution which gen-

erally accords to each State of the Federation the right to govern in accordance with the jurisdiction granted to it by the Constitution.

That principle that each State of the Federation must not be made subservient to the Federation or come under the supervision and active control of the Federation with all its powers was made clear in Attorney-General Ogun State v. Attorney-General of the Federation (1982) 13 NSCC 1 when Fatayi-Williams observed at p. 12 thus:-

“Neither the President of the Federal Republic of Nigeria nor the National Assembly can unilaterally confer powers on a State functionary such as the Governor or the Attorney-General of a State and thus bring him within the investigatory or scrutinizing powers conferred upon the National Assembly by Section 82 subsection (1) of the 1999 Constitution.”

And also Sir Udo Udoma, JSC., who at p.21 said:-

“On the basis of the provisions of the Constitution, and having regard to the autonomy of the State, and realizing that the Governor is bound only to enforce all laws constitutionally made by the State House of Assembly, I accept the submissions made by Chief Williams, learned counsel for the defendants, and I am satisfied that neither the National Assembly nor the President has the constitutional power to impose any new duty on the Governor of a State. Such an imposition would normally meet with resentment and refusal to perform for the enforcement of which there is no constitutional sanction.”

It is my view that the plaintiff has succeeded in establishing that Urban and Regional Planning is a matter for Lagos State, the Federal government through its agencies must refrain from purporting to grant approvals and permit licenses as had been done in the past. See the affidavit filed in support of the plaintiff's claim by Victor Olusegun Emdin, a Town Planner in the Lagos State Ministry of Environment and Physical Planning.

In conclusion, having had the privilege of reading before now the judgment of my lord, the learned Chief Justice of Nigeria and that of Uwaifo, JSC., I find myself regrettably though, unable to conclude this matter as decided by the learned Chief Justice of Nigeria. This is because the position I have taken in respect of this matter is similar to that of Uwaifo, JSC. In the result I hereby grant reliefs 1, 2,

3 & 4. I refuse reliefs 5, 6 and 7 for the reasons given in the judgment of Uwaifo, JSC. For the avoidance of doubt, reliefs, 1, 2, 3, 4 are reproduced hereunder thus:-

B “1. A DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as Physical Development is a residual matter within the exclusive legislative and executive competence of the States.

C 2. A DECLARATION that the provisions of Sections 1 (2) & (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

D 3. A DECLARATION that the Federal Highways Act (Cap. 135, Laws of the Federation of Nigeria, LFN, 1990), Nigerian Railway Corporation Act (Cap 323, LFN, 1990), Civil Aviation Act (Cap.51, LFN, 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal Statutes which vest power in the 1st defendant to E grant approvals or permits for use of land are for the specific purposes for which those statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.

F 4. A DECLARATION that the grant of approvals, permits and licenses for buildings and physical development in Lagos State including under bridges, bridges’ loops and highway set back are the residual responsibility of the Plaintiff.

I make no order as to costs.

G _____

UWAIS CJN (Dissenting)

H The Nigerian Urban and Regional Planning Authority Decree No. 88 of 1992 was promulgated in December, 1992. The Explanatory Note to it states -

“The Decree provides, amongst other things, for a new Urban and Regional Planning enactment for Nigeria with the establishment of Federal, State and Local Government Authorities to oversee the implementation of a more realistic and purposeful planning of the

country.”

The Decree consists of five parts as follows:-

Part I - consists of Sections 1 - 26 on “*Planning, Preparation and Administration.*”

Part II - consists of Sections 27-63 on “*Development Control.*”

Part III - consists of Sections 64-74 on “*Additional Control in Special Cases.*”

Part IV - consists of Sections 75-78 on “*Acquisition of Land and Compensation*” and

Part V - consists of Sections 79 - 92 on “*Improvement Areas - Rehabilitation, Renewal and Upgrading*” etc.

At the time the Decree was promulgated, there was an existing plan for each of the territorial divisions of Lagos State and a comprehensive regional plan for the whole of the State. The State also had its own Town and Country Planning Law No. 1 of 1986 (Cap. 188 of the Laws of Lagos State, 1994). There had also been the Building Lines Regulation Law, Cap. 16 of the Laws of Lagos State, 1994, and the Land Development (Provisions for Road) Law, Cap. 110 of the Laws of Lagos State, 1994.

By a writ of summons taken out by the Government of Lagos State against the Federal Government, the plaintiff claims against the defendants four declarations, an order to nullify or revoke approvals, permits or licences illegally granted by the Federal Government in respect of any building or development in Lagos State; and in addition, a perpetual injunction to restrain the Federal Government, its servants, agents and privies from further granting approvals, permits and licences for development of any land, etcetera. Later, on application by the plaintiff, all the remaining 35 States of the Federation were by leave of court, joined in the action as 2nd to 36th defendants respectively.

Appearances were entered by the 1st, 2nd, 5th, 7th, 8th, 10th, 11th, 14th, 17th, 19th, 21st, 24th, 26th, 27th, 30th, 31st, 32nd and 34th defendants. The remaining 18 defendants have not done so. The plaintiff has filed and served on all the defendants a Statement of Claim, an Amended Statement of Claim and 2nd Amended Statement of Claim. All the defendants that entered appearance have also filed their respective Statements of Defence.

In paragraphs 1, 2 and 3 of the 2nd Amended Statement of

Claim, the plaintiff avers thus:-

"1. The Plaintiff is the Attorney-General of Lagos State of Nigeria and brings this action as the representative of the Government of Lagos State, one of the States comprising the Federal Republic of Nigeria.

B *2. The 1st Defendant is the Attorney-General of the Federation and is sued as the representative of the Federal Republic of Nigeria.*

C *3. The 2nd - 36th Defendants are the Attorneys-General of their representative States and are sued as representatives of their State Governments whose interest or rights would be affected by the outcome of this suit."*

In paragraphs 12 to 16 and 17 (k) and (l) of the 2nd Amended Statement of Claim, the plaintiff pleads:-

D *"12. The said Decree No. 88 of 1992 provides among other things for a new Urban and Regional Planning enactment and administration for the whole of Nigeria with the establishment of Federal, State and Local Government authorities to oversee the framework of the National Physical Development of Nigeria.*

E *13. Prior to the promulgation of Decree No. 88 and till date the Plaintiff has its master plan for each of the Divisions in the State and Comprehensive Regional and Sub-regional plan for the whole State.*

F *14. The Plaintiff aver (sic) that the State has its Planning Authority responsible for the execution and administration of all Town and Country Planning activities in the State which include granting of approval, permit, license for development and for use of land or seabed in the State.*

G *15. The Plaintiff aver (sic) that all previous and existing Town and Country Planning laws and regulations for development control in the State have always protected Federal Government interest in the form of non-infringement of Federal Highways set-backs, non development of land under bridges, bridges loop and along Federal*
H *Government establishments and institutions.*

16. The Plaintiff aver (sic) that in contravention of the Constitution of Nigeria and of all existing laws and regulations on Town Planning matters in the State, the 1st Defendant, through his agencies, has been granting planning approvals, permits and licenses to

individuals and Federal Government Agencies for building and development in the State.

17. The Plaintiff shall at the trial rely on:

(k) The plaintiff avers that all the aforementioned illegal permits or licences granted by the 1st Defendant were purportedly granted pursuant to the Urban and Regional Planning Act (Decree No. 88 of 1992), Federal Highways Act (Cap. 135, Laws of the Federation of Nigeria (LFN), 1990), National Inland Waterways Authority Act (Decree No. 13 of 1997) and some other Federal Statutes.

(L) The Plaintiff shall at the trial contend that while the Urban and Regional Planning Act of 1992 is unconstitutional, the Federal Highways Act, Nigerian Railway Corporation Act, Civil Aviation Act, National Inland Waterways Act and other Federal statutes which vest power in the 1st Defendant to grant approvals or permits for use of land are for the specific purposes for which the statutes were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.”

The plaintiff pleads further in paragraphs 18 to 24 as follows:-

“18. The Plaintiff aver (sic) that the contravention and demolition notices were served by the Plaintiff’s Planning authority on the owner or/and developer of all aforementioned illegal developments.

19. The Plaintiff further avers that services of such notices were met with hostile resistance, threat and embarrassment from officials of the 1st Defendant and their allies - developers. On one occasion the plaintiff’s Director of Town Planning services was arrested and detained at their instigation at the Railway Police Command at Ebute-Metta Lagos.

20. The Plaintiff avers that the 1st Defendant’s agencies have been interfering with the planning programme and activities of the plaintiff in his State. The Plaintiff shall rely on:

(a) The Federal Ministry of Works and Housing interference and disturbance of the channelization of Dolphin Canal Project of the Plaintiff.

(b) The Federal Ministry of Works and Housing interference, intimidation, harassment and disturbance of developers with the State building plan approval from building on land within the State (e.g. property at No. 4, Lawrence Road, Ikoyi) demanding for additional approval from Federal Ministry of Works and Housing.

21. *The plaintiff avers that his planning policy and programme to save the State from high level of environmental degradation and illegal structures are being hampered by the agencies of the 1st Defendant by their wanton disregard of the Constitution of Nigeria, the Planning Laws and Regulations of the State.*

B 22. *The Plaintiff states that all correspondences and meetings held with the officials of the 1st Defendant to advise them to desist from granting approval, permit or license for use and development of land in the State without first obtaining the permit of the Plaintiff's Planning authority proved futile.*

C 23. *On the 21st of November, 2000, there was a joint meeting of the officials of FMWH (Federal Ministry of Works and Housing) and their State's counter-parts presided over by the Hon. Commissioner for Environment and Physical Planning (of Lagos State) Arch. D I. K. Anibaba to resolve the dispute between the parties over physical planning and development in Lagos State but the meeting ended in a deadlock.*

E 24. *The 1st Defendant's agencies in Lagos State threatened and intend, unless restrained by this Honourable Court, to continue to unlawfully exercise power and control over physical planning development matters and activities in Lagos State."*

In paragraph 25 of the 2nd Amended Statement of Claim, the plaintiff claims the following reliefs:-

F "1. A DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the States.

G 2. A DECLARATION that the provisions of Sections 1(2) & (3), 2(i), 3, 4, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.

H 3. A DECLARATION that the Federal Highways Act (Cap. 135, Laws of the Federation of Nigeria (LFN), 1990), National Inland Waterways Act (Decree No. 13 of 1997) and other Federal Statutes, which vest power in the 1st Defendant to grant approvals or permits for use of land, are for the specific purposes for which those statutes

were made and do not vest general planning powers or physical development control of land in Lagos State in the 1st Defendant.

4. A **DECLARATION** that the grant of approvals, permits and licences for buildings and physical development in Lagos State including under bridges, bridges' loops and highway set-back are the residual responsibility of the Plaintiff. B

5. A **DECLARATION** that all approvals, permits or licenses granted or issued by the 1st Defendant from the 1st of June, 1999 for building or development of land within the territory of Lagos State, without the consent of the Plaintiff and in contravention of the town planning laws and regulations of Lagos State, are illegal, null and void. C

6. AN **ORDER** nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from 1st of June, 1999, for any building or other development of land in Lagos State. D

7. A **PERPETUAL INJUNCTION** restraining the Defendant, its servants, agents and privies or otherwise however from further granting of approvals, permits, licenses for development of any land, highway setback and under bridges, bridges' loops, markets, shops, stalls, mechanic workshops, etc. in Lagos State without the consent of the Plaintiff." E

In his Statement of Defence, which was filed before the plaintiff's 2nd Amended Statement of Claim was filed, the 1st defendant pleaded in paragraphs 8 and 10 -19 thus:- F

"8. The Defendant admits paragraph 11 of the Statement of Claim only to the extent that Decree 88 of 1992 does not in any manner unduly restrict the powers of the Plaintiff to regulate such matters in respect of lands over which it holds title." G

"10. In response to paragraph 14 of the Statement of Claim, the Defendant states that the Federal Ministry of Works and Housing, and other Federal Government Agencies charged with the management of Federal Lands have often times encountered hostile and uncooperative attitude from the agents of the Plaintiff in matters relating to the management of Federal Lands in Lagos State. It is accordingly untrue that the Plaintiff has always protected the interest of the Defendant in this regard." H

11. The Defendant denies paragraph 15 of the Statement of

Claim. All planning approvals, permits and licenses granted have always been in respect of lands whose title are vested in the Federal Government and that such powers have always been exercised in conformity with existing laws, rules and regulations.

B 12. *The Defendant, in response to paragraph 16 of the Statement of Claim, avers that the approvals referred to were in respect of development on properties/lands belonging to the Federal Government, and were thus validly granted.*

C 13. *The Defendant denies paragraph 17 (referred to as 13) of the Statement of Claim and avers that, such developments, in any case, cannot be described as illegal in so far as approval has been granted by the to Federal Government.*

D 14. *The Defendant denies paragraph 18 (referred to as 14) of the Statement of Claim, and puts the Plaintiff to the strictest proof thereof.*

15. *The Defendant denies paragraph 19 (referred to as 15) of the Statement of Claim, and avers that the contrary is the case as it is the plaintiff that has been interfering and encroaching on the lands of the Defendant.*

E 16. *The Defendant denies paragraph 20 (referred to as 16) of the Statement of Claim, and will at the trial of this suit put the Plaintiff to the strictest proof thereof.*

F 17. *In response to paragraphs 21 and 22 (referred to as 17 and 18) of the Statement of Claim, the Defendant avers that all such meetings and contacts between the Plaintiff and officials of the Defendant have proved fruitless due to the insistence of the Plaintiff to assert control and supervision over developments on the land lawfully held by the Federal Government.*

G 18. *The Defendant denies paragraph 23 (referred to as 19) of the Statement of Claim and avers that there is no threat whatsoever by the Defendant to curtail or fetter the Plaintiff's exercise of power and control over physical planning development of lands held by the Lagos State Government.*

H 19. *The Defendant, in response to paragraph 24 (referred to as 20) of the Statement of Claim avers that the Plaintiff is not entitled to any of the reliefs sought, and the Defendant further urges this Honourable Court to dismiss the Plaintiff 's claims in their entirety."*

Other Statements of Defence have been filed by the 8th, 10th,

11th, 14th, 17th, 19th, 21st, 24th, 26th, 27th, 30th, 31st and 32nd defendants. Apart from the 1st, 11th, 21st defendants, all the defendants support the plaintiff's case in their respective Statements of Defence and do not, therefore, contest the plaintiff's claims. In paragraphs 4 and 9 of the 11th defendant's Statement of Defence, it is averred:-

"4. The 11th Defendant denies paragraphs 9, 10, 16, 18, 19, 20, 21, 23, 24 and 25 of the Plaintiff's Amended Statement of Claim.

9. Further to paragraph 8 above and in answer to paragraph 25 of the Plaintiff's Amended Statement of Claim, the 11th Defendant states that the acts of the 1st Defendant of granting approvals, permits and licences complained of by the Plaintiff are not incompetent if done pursuant to the enabling laws aforementioned and relevant provisions of the Decrees."

The 21st defendant pleads in paragraph 8 of his Statement of Defence as follows:-

"8. The 21st defendant shall contend that both Federal and State Government (sic) can legislate on the issue of Urban and Regional Planning because they (sic) are neither in the Exclusive Legislative List nor Concurrent Legislative List."

Affidavit evidence have been filed by the plaintiff, the 27th and 30th defendants, in support of their respective pleadings. In the plaintiff's affidavit evidence, which was sworn to by Mr. Victor Olusegun Emdin, it is deposed in paragraphs 1, 4, 8, 9, 14-20 inclusive, as follows:-

"1. I am a Director of Town Planning Services in the Ministry of Environment and Physical Planning of Lagos State Government represented in this action by the Plaintiff.

4. That since the present Lagos State Government came into office on the 28th of May, 1999, in Lagos State. I have been charged with the responsibility of seeing to the Town Planning, Environment and Physical Development of Lagos State, which responsibility I have been carrying out.

8. That the Plaintiff also has its Master plan for each of the Divisions in the State and a Comprehensive Regional and Sub-Regional Plan for the whole State.

9. That the Plaintiff has its Planning Authority responsible for the execution and administration of all Town Planning activities in the

State which include granting of approvals, permits, licenses and consents for development and use of any land or seabed in the State.

14. That since June, 1999, the 1st Defendant through his agencies like Federal Ministry of Works and Housing and National Waterways Authority has continued to involve himself in the following acts:-

B (a) Development approval (granted by the Federal Ministry of Works and Housing) for a massive shopping centre and petrol station directly in front of the State's Jubilee Housing Scheme at Omole, contrary to the master plan of the area which has embarked the whole frontage of the housing scheme as greenery for aesthetic beauty
C of the area along the express way.

(b) Development approval or permit (granted by Federal Ministry of Works and Housing) on the greenery buffer along Kingsway Road, Ikoyi which has been turned into car sales depot, row of shops
D and other illegal structures by Nitel Plc., the Nigeria Police and other individuals.

(c) Development approval (by Federal Ministry of Works and Housing) for establishment of market within the Murtala Muhammed Local Airport, Ikeja, abutting the Agege Motor Road. The activities at
E the market have continued to impede traffic flow along the Inter State Highway.

(d) Grant of indiscriminate development approval for development along Railway Lines within the State without regard to the State Government's Planning Policy.

F (e) Development approval granted (by the Federal Ministry of Works and Housing) to Total Plc, for construction of a petrol filling and service stations along Osborne Road, Ikoyi, Lagos, without the permission of the Plaintiff's Planning Authority.

G (f) Development approval granted by Federal Ministry of Works and Housing and National Inland Waterway Authority to a total of 22 properties (developed and under construction) along Oyinkan Abayomi Drive (former Queens Drive) Ikoyi, Lagos State, having no building plan, permit or approval from the Plaintiff's Planning
H Authority.

(g) The illegal and massive destruction of the forest reserve around Ologe Lagoon by the Nigeria Inland Waterways Authority of the 1st Defendant without regard for the Comprehensive Regional plan of the area in the State.

(h) Development approvals and permits granted by Ministry of Works and Housing for construction of public toilets at places and locations earmarked for other planning purposes in the State such as one located directly opposite Lagos State University at Ojo.

(i) Approvals and licenses granted by Federal Ministry of Works and Housing for construction of markets, stalls and ware points within the Ikeja Airport, Railway Lines at Agege, Oshodi, Yaba, Ebute-Metta and Iddo foreshore contrary to the Planning Regulations and Town/Regional Master Plan of the State. B

(j) Approvals, licenses and permits granted by the 1st Defendant's agencies for development at under bridges, bridge's loops and road set back in the State. C

15. That contravention and demolition notices were served by the Plaintiff's Planning Authority on the owners or/and developers of all aforementioned illegal developments. D

16. That services of such notices were met with hostile resistance, threat and embarrassment from officials of the 1st Defendant and their allies - developers. On one occasion of the Plaintiff's Director of Town Planning Services was arrested and detained at their instigation at the Railway Police Command at Ebute-Metta, Lagos. E

17. The Plaintiff avers that the 1st Defendant's agencies have been interfering with the town planning programme and activities of the Plaintiff in his State.

For example:-

(a) The Federal Ministry of Works and Housing's interference and disturbance of the Canalization of Dolphin Canal Project of the Plaintiff. F

(b) The Federal Ministry of Works and Housing's interference, intimidation, harassment and disturbance of developers who were granted building plan approval by the State has prevented them from building on land within the State (e.g. property at No. 4, Lawrence Road, Ikoyi) instead the Federal authorities have been requesting the developers to obtain another approval from the Federal Ministry of Works and Housing. G H

18. That all correspondences and meeting with the Officials of the Federal Ministry of Works and Housing of the 1st Defendant to advice them to desist from granting approvals, permits or licences for use and development of land in the State without first obtaining the

permit of the Plaintiff 's Planning Authority proved futile.

19. *That on the 21st of November, 2000, there was a joint meeting of the officials of Federal Ministry of Works and Housing and their State's counter-parts presided over by the Hon. Commissioner for Environment and Physical Planning, Arch. I. K. Anibaba to resolve the dispute between the parties over physical planning and development matters in the Lagos State but the meeting ended in a deadlock.*

20. *The 1st Defendant's agencies in Lagos State threatened and intend unless restrained by this Honourable Court to continue to unlawfully exercise power and control over physical planning, development matters and town planning activities in Lagos State."*

The 27th defendant, who is not contesting the claim by the plaintiff, has also filed an affidavit evidence sworn to by Mr. Oluwagboyega Ogunfowora, an Assistant Director of Civil Litigation, in the Ministry of Justice of Ogun State, stating inter alia the following in paragraphs 8 to 10 inclusive as follows:-

"8. *That acting pursuant to the purported powers conferred on it by the Urban and Regional Planning Act, the 1st Defendant working principally through the State Office of the Federal Ministry of Works and Housing, has been truncating, at will, the master plans already put in place for the physical development of Ogun State.*

9. *That specifically, the 1st Defendant has been granting indiscriminate approvals for the physical development of its lands and estates within the territory of Ogun State without regard for road setbacks, specialized use of land and other salient aspects of the master plans for each zone of Ogun State.*

10. *That I was informed by the Ogun State Director of Town Planning Services, Mr. Dele Daini, and I verily believe him, that till date, extensive developments have been or are still being carried out on land acquired for the following Federal Agencies and Institutions, without the approval of the State Planning Authority:-*

- (a) *Nigerian Television Authority (NTA), Ijebu Ode;*
- (b) *Federal Radio Corporation of Nigeria (FRCN), Abeokuta;*
- (c) *Iwopin Paper Mill Iwopin via Ijebu-Ode;*
- (d) *Federal Secretariat, Kobape Road, Abeokuta;*
- (e) *Federal College of Education, Osiele via Abeokuta;*
- (f) *Federal University of Agriculture, Alabata via Abeokuta; and*

(g) Ogun/Osun River Basin Development Authority, Abeokuta.”

The 30th defendant, who does not oppose the plaintiff’s action, also adduces affidavit evidence, sworn to by Mr. Adesina Ishola Raheem, who is a Senior Legal Officer in the chambers of the Attorney-General of Oyo State. The affidavit states in paragraphs 10 to 15 thus:-

10. *That ownership of a land in a State by the Federal Government does not include the power to grant licenses, approvals and permits to Federal agencies, individual and corporate bodies without the consent of a State.*

11. *That the habit on the part of the Federal Government to grant approvals, licenses and permits to agencies and individuals without the consent of a State is denying the State and Local Governments legitimate sources of revenue and is also distorting the master piece, Urban and Regional Planning policy of the State.*

12. *That it is not only in Lagos State the Federal Government is granting approvals, permits and licenses to agencies and individuals without the consent of the State.*

13. *That one Queen Babalola a Co-ordination (sic) of “Operation Farewell to Poverty” programme organised in favour of Federal Government, is developing a large piece or parcel of land at Monatan in Egbeda Local Government of Oyo State in a manner infringing the Urban and Regional Planning Law of Oyo State and Bye-Law of Egbeda Local Government by refusing to create easement, right of way, set-back etc.*

14. *That the said Queen Babalola refused to obtain planning approval from the State or Egbeda Local Government of Oyo State or to comply with the Urban and Regional Planning Law of Oyo State and Local Government Bye Law (sic) despite repeated demands claiming she got planning approval from the Federal Government and therefore is responsible to Federal Government.*

15. *That officials of the State and Local Government who visited the land on inspection were assaulted by the agent of Queen Babalola.”*

It is apposite to mention here that the controversy between the parties in this case cannot be resolved by relying merely on the affidavit evidence adduced, but rather on the interpretation and application of the Constitution, the 1992 Decree and other legislations

being relied upon by the parties.

By the order of the court, briefs of argument have been filed by the plaintiff and the following defendants - 1st, 2nd, 5th, 7th, 8th, 10th, 11th, 14th, 17th, 19th, 21st, 24th, 26th, 27th, 30th, 31st, 32nd and 34th. In addition, the plaintiff has filed an Amended Brief
B and the 26th defendant has filed a supplementary brief.

The plaintiff formulated five issues in his Amended Brief for the court to determine. They are:-

C “1. *Whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legislative matters.*

D 2. *If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are within the legislative and executive jurisdiction of the Federal Government.*

E 3. *Whether the Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution and therefore unlawful, null and void.*

F 4. *Whether the ownership rights of the Federal government over land in state (sic) territories include the power to control and regulate town planning and physical development in relation to such land.*

G 5. *Whether all approvals, permits and licenses (sic) granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the Plaintiff are not illegal, null and void.’*

H On his part, the 1st defendant formulated three issues in his Amended Brief to be determined. They read:-

“1. *Whether Urban and Regional Planning is a residual matter under the Constitution of the Federal Republic of Nigeria, 1999, and therefore the legislative preserve of the States of the Federation.*

H 2. *Whether the Urban and Regional Planning Act (formerly Decree No. 88 of 1992 is inconsistent with the Constitution of the Federal Republic of Nigeria, 1999, and therefore void.*

3. *If the answer to issue 2 above is in the affirmative, whether the Plaintiff has made out a sufficient case for this court to make a*

blanket order nullifying all approvals, permits and licenses (sic) granted by the 1st Defendant or any of its agencies for any construction, building or physical development or use of land owned by the Federal Government but located in Lagos State.”

While the 11th defendant has proposed in his brief, four issues for our determination. These are- B

“1. *Whether the primary source of governmental powers of land use planning and development control is statutory or administrative;*

2. *Whether the Nigerian Urban and Regional Planning Decree No. 88 of 1992 is a valid and an existing law;* C

3. *Whether the Nigerian Urban and Rural Planning Decree No. 88, 1992, is by operation of Section 315 of the 1999 Constitution of the Federal Republic of Nigeria an Act of the National Assembly or Law made by House of Assembly or both; and* D

4. *Whether the first defendant; through its agent is competent to control development over Federal land within the territory of any State, including the Plaintiff’s State.”*

The 21st defendant adopted, in his brief of argument, the five issues which the plaintiff has formulated. E

I do not deem it necessary to advert to the issues formulated in the briefs of argument which have been filed by the other defendants, since they are in support of and do not contest the claims by the plaintiff. In other words, since they have not joined issues with the plaintiff. F

In arguing plaintiff’s issue no. 1, learned Attorney-General of Lagos State, Professor Osinbajo, SAN, canvasses that the issue ought to be decided by reference to the nature of town planning and physical development and the evolution of legislation on the subject. He submits that Urban and Regional or Town Planning as well as the regulation of physical development have always been and are still legislative matters. To buttress the submission, he made reference to the Township Ordinance, 1917, which applied to Lagos, the Lagos Town Planning Ordinance, 1928, and the Nigeria Town and Country Planning Act, 1946 to show that as at the time that the 1988 Decree was promulgated. Lagos State had in existence its own laws on the subject as aforementioned. He also made reference to the article by A. A. Utuama in the book titled Contemporary Issues in Nigerian G H

Law (Essays in Honour of Judge Bola Ajibola) edited by Professor C. O. Okonkwo, SAN, and which was published in 1992) on pages 345 - 346 of which it is stated thus:-

“Conceptually, a Town and Country Planning legislation institutionalizes a land use planning system which operates to govern land development and control in a given society along its urban and rural regions. The law imposes, operationally, a system of regulatory zoning restrictions upon the general right of every landowner to use or develop his land the way he likes based on pre-conceived socio-economic patterns so as to achieve a purposeful utilization of land in the interest of the general welfare of the community to which it relates.”

Consequently, learned Attorney-General canvasses that urban and regional planning (or Town Planning) as well as the regulation of physical development are legislative and not administrative matters as contended by the 1st defendant.

Arguing his issue No. 2, he states that the issue is concerned with whether the Federal Government is competent to make law or in any way regulate town planning and physical development within the territory of a State. He argued that under Section 4 subsections (2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999, the National Assembly has the exclusive power to make laws for the peace, order and good government of the Federation or any part thereof with regard to any matter included in the Exclusive Legislative List (ELL) set out in Part 1 of the Second Schedule to the 1999 Constitution. By virtue of this arrangement and having regard to the provisions of Section 4 subsection (7) of the Constitution, he submitted that any matter that is not included in the ELL or the CLL is, therefore, within the legislative authority of State Houses of Assembly. In other words, such subjects are residual matters within the exclusive competence of State Houses of Assembly. Learned Attorney-General cited in support the case of A.G. of Ogun State v. Aberuagba (2002) 2 WRN 52 at p. 77.

With regard to issue No. 3, it is argued by him that the 1988 Decree is an “existing law” by virtue of the provisions of Section 315 subsection (4) (b) of the 1999 Constitution. He refers to Section 4 subsections (2), (3) and (4) of the Constitution and submits that the combined effect of the provisions is that for an existing law to qualify as an Act of the National Assembly, it must be a law with respect to

any matter on which the National Assembly is empowered by the Constitution for it to make laws. Since it has been shown that urban and regional planning and the regulation of physical development are residual matters, then, he contends, the 1992 Decree is inconsistent with the provisions of the Constitution. To this extent, reference has been made to the provisions of Sections 3 to 12 of the 1992 Decree which purport to create authorities and to stipulate guidelines for planning and physical development in every local government area and every State territory throughout the Federation. The Decree also confers functions and imposes duties on States and Local Government employees. This, it is submitted, on the authority of A-G of Ogun State & Ors. v. A-G of the Federation & Ors. (1982) 2 NCLR 116 per Udoma, JSC., is unconstitutional. To this extent, it is argued that the 1992 Decree is not amenable to modification as envisaged by Section 315 subsection (2) of the Constitution. It is therefore submitted that unless the Decree is repealed or nullified in its entirety by virtue of the provisions of Section 315 (3) (d) of the Constitution, it is not feasible or practicable to bring it into conformity with the Constitution.

On issue No. 4, reference is made to the provisions of Sections 5, 11, 12, 17, 28, 49(1) and 51(2) of the Land Use Act, Cap. 202 of the Laws of the Federation, 1990, and the book *Federalism in Nigeria Under the Presidential Constitution* by B. O. Nwabueze at p. 170. It is contended that the powers exercisable by the President of the Federal Republic of Nigeria under the sections do not apply to town and country planning and do not include the power to grant permit and licences or to regulate physical developments in any area of locality within the territory of a State.

It is submitted, with regard to issue No. 5, that if issues Nos. 1-4 are decided in favour of the plaintiff, it will necessarily follow that all building approvals, permits and licences granted by the Federal Government or any of its agencies for any construction or physical development in Lagos State, without the approval of the relevant State authorities or in contravention of relevant State legislation and planning regulations, are unconstitutional, illegal, null and void. It is, therefore, contended that it will be proper for this court to revoke all such approvals, permits and licences.

In conclusion, learned Attorney-General urges the court to grant

all the declarations being sought by the plaintiff, and to issue a perpetual injunction restraining the Federal Government, its servant agents and privies or otherwise howsoever from further granting approvals, permits and licences for the development of any land, highway set-back and under bridges, bridge's loops, markets, shops, stalls, mechanic workshop etc., in Lagos State, without the consent of the plaintiff.

In his argument, learned counsel for the 1st defendant, Mr. P. Erokoro, states in general that the subjects - urban, town and regional planning as well as physical development, are not residual matters under the 1999 Constitution. He submits that subjects which are not under either the ELL or CLL may not be residual. He refers to item 68 of the ELL and the case of *A-G Ondo State v. A-G Federation* (2002) 6 SC (Pt. I) 1, (2002) 9 NWLR (Pt. 772) 222. That Decree No. 88 of 1992 does not in any manner unduly restrict the powers of the plaintiff to regulate town and regional planning and physical development in respect of land for which the plaintiff has title. That planning approvals, permits, and- licences granted by the 1st defendant, had always been in respect of land, whose title is vested in the Federal Government. He submits that planning power is incidental to many of the items under the ELL and refers to items 2, 3, 11, 36, 37, 38, 39, 40, 41, 48 and 55 thereof. He contends that item 60 (a) thereof empowers the Federal Government to legislate on Fundamental Objectives and Directive Principles of State Policy.

Responding to plaintiff's argument on the plaintiff's issue No. 1, learned counsel canvassed that the National Assembly can legislate on Urban and Regional Planning and also physical development of land. He refers, in support to the argument, to Sections 4 subsections (2), (3), (4) (b); 14 subsection (2), (b); 17 subsection (3), (c); 20 of the 1999 Constitution. He submits that the objectives of the various provisions cannot be achieved without the appropriate legislations enacted, and this would defeat the purpose for which the provisions under Chapter II of the 1999 Constitution are made. He refers to Section 2 of the Decree, the emphasis of which, he submits, is the control by the 1st defendant over Federal lands. He argues that nowhere in the Decree can be found any provision enabling or empowering the 1st defendant to exercise control over State Land. He therefore submitted that legislation on urban, regional planning and

physical development are merely incidental to the powers conferred on the National Assembly to legislate on matters under item 60(a) of the Exclusive Legislative List. He refers to the definition of “incidental power” in Black’s Law Dictionary, 7th Edition, which states that the phrase means power, which though not expressly granted but exists, because it is necessary in order to accomplish the express power. He alludes also to Section 10 subsection (2) of the Interpretation Act, Cap. 192 (of the Laws of the Federation of Nigeria, 1990) which provides that “an enactment which confers power to do any act shall be construed as also conferring all such powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it”, to submit that Section 4 and item 60 of the 1999 Constitution, which confer on the National Assembly the power to make laws to protect and improve the environment and to ensure the safety and welfare of all persons, must necessarily carry with it other powers not expressed but which are vital to their existence.

On Section 315 of the Constitution, learned counsel submits that the 1992 Decree is an “existing law” as conceded by the plaintiff. He cites in support the decision of this Court in the case of Attorney-General of Ondo State v. Attorney -General of the Federation & 35 Ors. (2002) 6 S.C. (Part 1) 1 at pp. 27 line 40-28 lines 15. He urges the Court to hold that urban and regional planning, as well as the regulation of physical development in relation to land belonging to the Federal Government in Lagos State, are within the legislative and executive jurisdiction of the Federal Government.

On Plaintiffs issue no. 2, learned counsel for the 1st defendant submits that the 1992 Decree is not inconsistent with the provisions of the 1999 Constitution. He states that it is possible to contend that the Decree is inconsistent with the provisions of the Town and Country Planning Law, the Land Development (Provisions for Roads) Law and other domestic laws enacted by the Lagos State or any other State. He, however submits that if such conflict occurs, the Laws enacted by the State must give way to the enactment by the National Assembly (i.e., the 1992 Decree) in accordance with the provisions of Section 4 subsection (5) of the 1999 Constitution. He argues further that the provisions of the Decree on control by the Federal Government over Federal Lands are clear. That the Decree only makes provisions for technical and financial assistance to as well as the pro-

motion of co-operation and coordination amongst States and Local Governments. Learned counsel submits, that although the Decree provides for the establishment of National Urban and Regional Planning Commission, State Urban and Regional Development Board and Urban and Regional Planning Authority of Local Governments; B these bodies are meant to perform separate and distinct duties with no measure of control whatsoever from one body on the other. He contends that the provisions of the Decree accord with those of the 1999 Constitution and where the Decree is in conflict with any State C law then the provisions of the Decree prevail.

On Plaintiff's issue no. 3, learned counsel for the 1st defendant, submits that the rights of ownership of land by the Federal Government in State territories include the power to control and regulate town planning and physical development in relation to such D land. He refers to the preamble to the Land Use Act, Cap. 202 (of the Laws of the Federation of Nigeria, 1990) and Section 49 subsection (1) thereof, which provides:-

"49(1) Nothing in this Act shall affect any title to land whether developed or undeveloped held by the Federal Government or any E agency of the Federal Government at the commencement of this Act and, accordingly, any such land shall continue to vest the Federal Government or the agency concerned."

and submits that these provisions of the Land Use Act are complemented by the provisions of the 1992 Decree. Relying on his F earlier submissions on incidental powers, learned counsel contends that the regulation of physical development and town planning is incidental to the powers of the Federal Government to exercise absolute control over its land in State territories in consonance with the G provisions of items 60(a) and 68 of the Exclusive Legislative List in Part 1 of the Second Schedule to the 1999 Constitution. He refers to the provisions of Section 5 of the Land Use Act, Cap. 202, and submits that the powers of the Governor of a State thereunder, which relate to land, are limited to State Land and do not extend to or H affect lands which belong to the Federal Government. Therefore, learned counsel urges the Court to hold that the ownership rights which accrue to the Federal Government over its lands in a State territory include the powers to control and regulate town planning and physical development in relation to such land.

On Plaintiff's issue no. 4, learned counsel argues, relying on his earlier submissions under plaintiff's issues nos, 1, 2 and 3, that all the approvals, permits and licences granted by the 1st defendant or any of its agencies in respect of construction, building or physical development or use of Federal land in Lagos State without the consent of the plaintiff are not illegal but valid. B

The 11th defendant, as seen earlier, formulated, in his brief of argument, issues for determination which are at variance with those postulated by the plaintiff. As this is a civil case, in our original jurisdiction, it is different from an appeal before us. It is, therefore doubtful if a defendant in a civil action can pursue the issues in the plaintiff's case differently by creating his own issues which are at variance with the plaintiff's. The danger in doing so is that the defendant stands the risk of not precisely meeting the plaintiff's case. Be that as it may, learned Attorney-General - Professor (A. A. Utuama for the 11th defendant, has referred to the nature of Land Use Planning and Development Control to submit that an operating, approved planning scheme, masters-plan or development plan, is a legal device which authorises government to plan and control development in an area or region where such relates. He states that where an arrangement does not exist, government cannot rely on its administrative authority to control development. He argues that the 1992 Decree was promulgated pursuant to the Constitution (Suspension and Modification) Decree, No. 1 of 1984, from which the then Federal Military Government derived its legislative and executive powers. He refers to Sections 2 subsection (1) and 3 subsection (1) of the 1984 Decree and the cases of *Uwaifo v. A.G of Bendel State*, (1982) 13 NSCC 221 at pp. 247-248 and *A.G of Mid-West v. Essi and Anor.* (1977) 11 NSCC 178 at p. 190 lines 10-29. He also refers to Section 315 subsection (4) of the 1999 Constitution to submit that the 1992 Decree is an "existing law." He cited in support the cases of *Egwuatu v. A.G of Anambra State* (1988) NCLR 472 at p. 485 and *A.G of the Federation v. A.G of Abia State and 35 ors.*, (2002) 6 NWLR (Pt. 764) 1 at p. 660 C-D. F H

Learned Attorney-General contends that a careful study of Section 4 of the 1999 Constitution and the Exclusive and Concurrent Legislative Lists thereunder will show that Nigerian Urban and Regional Planning does not fall under the Exclusive or Concurrent

Legislative List. He, therefore, submits in agreement with the plaintiff, that it is a residual subject upon which only a State House of Assembly has the power to legislate pursuant to Section 4 subsection (7) (c) of the 1999 Constitution. He cites, in support, the cases of Governor of Kaduna State v. House of Assembly, Kaduna State (1981) 2 NCLR 44 at p. 524, Balogun & Ors. v. A-G Lagos State (1981) 2 NCLR 589 at pp. 590-592 and A.G of Abia State v. AG of the Federation & Ors. (2002) 4 S.C. (Pt. I) (2002) 95 LRCN 407 at pp. 427, 524, 531 and 532. He argues further, that this notwithstanding, the 1992 Decree appears to come under matters on which the Federal Government has legislative and executive competence by virtue of Sections 4 and 5 of the 1999 Constitution. He makes reference in this connection to Sections 297, 298 and 299 of the Constitution in relation to the Federal Capital Territory, the Federal Highways Act, Cap. 135, the Nigerian Railway Act, Cap. 333 and the Civil Aviation Act, Cap. 51 in relation to land in any State which is vested in the Federal Government. He, therefore, urges this court to hold that both the Federal Government and State Governments have the competence to legislate on land-use planning and development control in their respective legislative spheres under the Constitution and as such the 1992 Decree qualifies as an “existing” Federal and State law.

He made reference to Section 49 subsection (1) and (2) and Section 51 subsection (2) of the Land Use Act, Cap. 202 to submit that the Land Use Act does not make provisions on planning but that it has provisions which by implication can be applied to planning and development control.

Finally, Learned Attorney-General, drew our attention to the fact that the 1992 Decree has been redesignated as an “Act” by virtue of the Adaptation of Laws (Redesignation of Decrees, Edict etc.) Order, 1999 (Nos. 3 of 1999).

In his reply brief, learned Attorney-General of Lagos State argues that environmental protection as a legislative item has never been lumped with urban and regional planning in Nigeria. He says this is why the 1992 Decree was made in spite of the fact that Nigeria already had the Federal Environment Protection Agency Act, Cap 131 and the Harmful Wastes (Special Criminal Provisions) Act. Cap. 165. In view of these Acts, he contends that the 1992 Decree does not relate to environment protection while the Federal Environment

Protection Agency Act Cap. 131 does not relate to Urban and Regional Planning. Therefore, he submits that the contention that the 1992 Decree is to protect the environment is clearly unfounded.

Still replying to the argument of the 1st defendant, learned Attorney-General contends that it would be absurd to argue that all matters regarding the protection and improvement of the environment and safeguarding of the water, air and land, forest and wild life in Nigeria are within the exclusive legislative competence of the National Assembly and/or that the scope of this power includes urban and physical development of land throughout the Federation. He submits that it is equally wrong to say that in spite of the specific powers detailed in the ELL and CLL, a general and overriding power was conferred on the National Assembly by virtue of Item 60 (a) and the Fundamental Objectives and Directive Principles of State Policy in the Constitution. He argues that item 60 (a) of the ELL cannot confer on the National Assembly any exclusive or general power to make laws on urban and regional planning and physical development within a State territory. He emphasised that the plaintiff's case is that Chapter II of the Constitution confers no additional power on the National Assembly. Its provisions, he argues, are merely to give the general purpose for which legislative powers already conferred elsewhere should be used. He argued in the alternative, but without conceding, that even if the power to legislate on urban and regional planning is concurrent to both the Federal and State legislatures, that would not give the National Assembly the authority or competence to establish and impose planning authorities on State and Local Government authorities throughout the Federation as the 1992 Decree has done. He cites in support the case of A-G of Ogun State v. AG of the Federation (1982) NSCC 1 at p. 12 per Fatayi -Williams, CJN., and Udoma, JSC.

Whilst replying the submissions by the 11th defendant, learned Attorney-General of Lagos State conceded that urban and regional planning in the Federal Capital Territory is within the ELL and executive power of the Federal Government, but argues that that is only by virtue of Section 299 subsection (a) of the 1999 Constitution, which confers the powers of a State on the Federal Government, in so far as the powers relate to the Federal Capital Territory. He submits that the 11th defendant was erroneous to argue that urban and

regional planning in the Federal Capital Territory is a Federal matter by virtue of Sections 297 and 298 of the Constitution. He states that Section 297 merely creates the Federal Capital Territory, while Section 298 makes the Federal Capital Territory the seat of the Federal Government.

B Learned Attorney-General further contends that the 11th defendant was in error to assume that title to land necessarily includes planning control or legislative control.

C Now by virtue of the provisions of Section 4 subsections (2) and (4) of the 1999 Constitution, the National Assembly has the power to make laws, as follows:-

D “4(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 1 of the Second Schedule to this Constitution.*”

“4(4) *In addition, and without prejudice to the powers conferred by subsection (2); the National Assembly shall have power to make laws with respect to the following matters, that is to say -*

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

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

This case is concerned with the subject - “Nigerian Urban and Regional planning.” When both the Exclusive Legislative List and the Concurrent Legislative List of the 1999 Constitution are examined, there is no specific item to be found therein on “Urban and Regional Planning.” Therefore, the remaining provisions of the Constitution under which the National Assembly could legislate on the subject are those of Section 4 subsection 4 (b) and Section 12 subsection (b) both of the 1999 Constitution. However, the latter Section which provides as follows:-

H “12(2) *The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.*”

is not applicable, since the 1992 Decree (now Act) was not expressed as intended nor enacted for the purpose of implementing

any treaty. I shall defer, for the moment, any comment on the applicability of the former section of the Constitution until a later stage in this judgment.

Now, since the 1992 Decree was in existence before the 1999 Constitution was promulgated, it seems to me to be an “existing law” as prescribed under Section 315 subsection (1) of the 1999 Constitution, which provides as follows:-

“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 -

(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.”

It is conceded by the plaintiff, 1st defendant and 11th defendant that the 1992 Act is an existing law and I agree with them. What remain to be determined in this regard are the provisions of subsection 1 (a) of Section 315. That is, whether the 1992 Act is a law in respect of any matter on which the National Assembly is empowered by the Constitution to make laws. As stated earlier, “Urban and Regional Planning,” as a subject, cannot be found directly under the Exclusive Legislative list. We, therefore, have to examine the provisions of the Constitution, specifically those of Chapter II thereof which deal with the Fundamental Objectives and Directive Principles of State Policy, as submitted by learned Counsel for the 1st defendant.

Section 13 in the said Chapter of the Constitution provides:-

“13. It shall be the duty and the responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of the Constitution.”

Therefore, the National Assembly is obliged to legislate in respect of Section 20 (in Chapter II of the Constitution) which reads:-

“20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.”

The word “State” is defined in Section 318 subsection (1) of

the 1999 Constitution and has been held by this court to mean ‘all the three tiers of government, namely, the Federal Government, State Government and Local Government’ - see A-G of Ondo State v. A-G of the Federation & 35 Ors. (supra) at pp. 29-30; 114; (2002) 6 S.C. (Pt. I) 1, (2002) 9 NWLR (Pt. 772) 22 at pp. 306-308 and 392, and (2002) 1 FWLR (Pt. III) 2071 where I stated thus:-

“It has been argued by the plaintiff that the reference to “State” in Section 15 (5) can be ascertained by reference to the definition in Section 318 subsection (1) of the Constitution. The latter Section provides that the word “when used other than in relation to one of the component parts of the Federation, includes government.” The same section of the Constitution has defined “government” to include “the government of the Federation, or of any State or, of a Local Government Council or any person who exercises power or authority on its behalf.” Going by these definitions the directive under Section 15 subsection (5) of the Constitution will apply to all the three tiers of Government, namely, the Federal Government, State Government and Local Government. In that case the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the Federal and State Governments by virtue of the provisions of Section 4 subsections (2), (4) (b), and (7) of the Constitution.

It has been argued also that the word “State” in Section 15 subsection (5) means the Federal Government alone, because if the whole of the provisions of Chapter II of the Constitution on Fundamental Objectives and Directive Principles of State Policy are read together, it will be seen that only the Federal Government is in a position to carry out the principles and objectives. With respect, I do not accept this argument, because the provisions of Section 13 thereof apply to “all organs of government and all authorities and persons exercising legislative, executive or judicial powers.” The provisions do not distinguish between Federal, State or Local Governments. Again the provisions of Section 14 subsection (4) specifically apply to the “Government of a State, a Local Government council or any agencies of such Government or Council, and the conduct of the affairs of the Government or Council or such agencies.” (Underlining mine).

What then is the meaning of the phrase in Section 20 of the Constitution which reads, “The State shall ... safeguard ...land?” The

earlier words “protect and improve the environment and” therein have to be read by implication disjunctively from the latter words of the section in view of the use of the word “and” which I underline. Does the word “safeguard” embrace “Urban and Regional Planning?” The Concise Oxford Dictionary. Seventh edition, defines the word as - “*safe conduct, proviso, stipulation, quality or circumstance, that tends to prevent something undesired; guard or protect (rights etc.) by precaution or stipulation.*” The Chambers 20th Century Dictionary, New Edition, 1983, defines “safeguard” as “*keeping safe, protection; safety; a guard; a contrivance, condition or provision to secure safely to protect.*”

Halsbury’s Laws of England, Volume 46, Fourth Edition, describes “Town and Country Planning” (which connotes urban and regional planning) in paragraph 1 page 16 thereof, as follows:-

“The town and country planning system is designed to regulate the development and use of land in the public interest; and it is an important instrument for protecting and enhancing the environment in town and country, preserving the built and natural heritage, conserving the rural landscape and maintaining Green Belts.

The planning system has a positive role to play in guiding the appropriate development to the right place as well as preventing development and at the same time take account of the need to protect the natural and built environment. It must also take account of international obligations. In this way, properly used, the planning system can secure economy, efficiency and amenity in the use of land.”

It is trite canon that in interpreting the Constitution narrow meaning should not be given to it unless it becomes necessary to do so - see *Nafiu Rabi v. State* (1982) 2 NCLR 117; (1980) 8-9 S.C. 130; *Tukur v. Government of Gongola State* (1989) 9 S.C. 1; (1989) 4 NWLR (Pt. 117) 517; *Aqua Ltd. v. Ondo State Sports Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622; *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506 and *A-G of Ondo State v. A-G of the Federation & 35 Ors.* (supra) p. 28. I am, therefore, satisfied that the word “safeguard”, when liberally interpreted, means the regulation of development and the use of land in the public interest, and also the protection and enhancement of the environment in town and country.

Items 67 and 68 of the Exclusive Legislative List of the 1999

Constitution read:-

“67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution.”

68. Any matter incidental or supplementary to any matter mentioned elsewhere in this list.”

Furthermore, in the case of A-G of Ondo State v. A-G of the Federation & 35 Ors. (supra) Uwaifo, JSC., observes as follows on page 114 thereof:-

“Matters concerning the Fundamental Objectives and Directive Principles of State Policy in Chapter II of the Constitution are placed under item 60 (a) of the Exclusive Legislative List. It may be argued, as has indeed been done, that that is very wide or perhaps unrealistic. But it cannot be argued that that is what the Constitution has done. The Constitution must be followed.”

It is clear then that the power of the National Assembly to legislate in respect of Chapter II, and in particular under Section 20 of the Constitution, is both Concurrent and exclusive, in the context of this case; but I prefer, with respect, to hold that it is concurrent in view of the definition of the word “State” in Section 318 of the Constitution. No matter whichever way one looks at it, there is no gain-saying that the National Assembly has the power to legislate on safeguarding land and therefore by extension on the subject of Urban and Regional Planning. It follows then that the submission by the plaintiff and the 11th defendant that the power to legislate on “Urban and Regional Planning” is residual under Section 4 subsection (7) of the Constitution is clearly untenable.

It then follows that the National Assembly has the power to enact an Act to protect and safeguard land. Therefore, in general, the 1992 Act is not inconsistent with the Constitution. The power to protect and safeguard land is concurrent with that of State Houses of Assembly - see A-G of Ondo State v. A-G of the Federation & 35 Ors. (supra) at pp. 29; 306-307 and 2071, as such both the National Assembly and State Houses of Assembly therefore stand. However, there is the need to examine the reliefs which the plaintiff is seeking vis-à-vis the provisions of the Constitution. If these are in conflict or are inconsistent with any of the provisions of the Constitution, they will be liable to be struck down under the “blue pencil rule” in accor-

dance with the provisions of Section 1 subsection (3) of the 1999 Constitution, which provides-

“(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.”

- see *Balewa v. Doherty*, (1963) 1 WLR 949; *A-G of Abia State & 35 Ors. v. A-G of the Federation* (2002) 6 NWLR (Pt. 763) 264 at p. 436; (2002) 4 S.C. 106 at pp. 199 - 200; and *A-G of Ondo State v. A-G of the Federation* (2002) 6 S.C. (Pt. I) 1 at p. 33.

CLAIM NO. 1

The plaintiff asks, as a relief, for a declaration that by virtue of the provisions of Sections 4 and 5 of the constitution urban and regional planning as well as physical development are “residual matters” within the exclusive legislative and executive competence of States. The claim cannot be granted because I have already held earlier in this judgment that in view of the effect of the provisions of Section 4 subsections (2), (3) and (4) (b), Section 20, items 67 and 68 of the ELL, all of the Constitution, when read together, the National Assembly as well as State Houses of Assembly have concurrent power to legislate on the subjects of urban and regional planning and also physical development.

CLAIM NO. 2

The plaintiff asks for a declaration that the provisions of Sections 1(2) and (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the 1992 Act are inconsistent with Section 4 of the Constitution and to that extent are null and void.

Section 1 subsection (2) of the 1992 Act, which makes provisions on types and levels of physical plans, provides that at State level there shall be - a regional plan; a sub-regional plan; an urban plan; a local plan and a subject plan. The provisions place duty on State Governments with regard to physical developments in their territories. By Section 2(2) of the 1999 Constitution, Nigeria shall be a federation and by the doctrine of federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the federal government, is essential to federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense

of being able to exercise its own will in the conduct of its affairs, free from direction by another government - see *The Presidential Constitution of Nigeria* by B. O. Nwabueze at pp. 39 - 42 and the case of *A-G of Ogun State & Ors. v. A-G of the Federation & Ors.* (1982) 1-2 S.C 13 at pp. 72 - 73 per Udoma, JSC.,; (1982) 2 NCLR 116.

B It follows, therefore, that the National Assembly cannot impose on the plaintiff in this case, or determine for the plaintiff the types and levels of the physical plans the plaintiff or any State of the Federation should have. It is only in the context of the Federal Capital Territory that the National Assembly could make such enactment by virtue of the provisions of Section 299 of the 1999 Constitution. C Consequently, I hold that Section 1 subsection (2) of the 1992 Act is unconstitutional, and therefore null and void.

Similarly, Section 1 subsection (3) which provides that at the D Local (Government) level there shall be a town plan, a rural area plan, a local plan and subject plan, wrongly imposes duties on Local Government Councils. The provisions offend against the principles of Federalism. Accordingly, I hold that Section 1 subsection (3) of the 1992 Act is unconstitutional and therefore null and void.

E Section 2 of the Act provides as follows:-

"2. The Federal government shall have responsibility for -

(a) the formulation of national policies for urban and regional planning and development;

F *(b) the preparation and implementation of the national physical plan and regional plans on recommendation of the Minister;*

(c) the formulation of urban and regional planning standards for Nigeria on the recommendation of the Minister;

G *(d) the promotion and fostering of the education and training of town planners and support staff;*

(e) the promotion of co-operation and co-ordination among States and Local Governments in the preparation and implementation of urban and regional plans;

H *(f) the promotion and conduct of research in urban and regional planning;*

(g) the making of recommendation and dissemination of research results for adoption by user organisations;

(h) the supervision and monitoring of the execution of projects in urban and regional planning;

(i) the development control over Federal lands; and
(j) the provision of technical and financial assistance to States
in the preparation and implementation of plan.”

These powers apply to the Federal Government only. Any provision therein that the Federal Government shall tender advice to the States or promote cooperation or co-ordination, or share research results with the States or the providing of technical and financial support where needed, does not, in my opinion, offend the principles of separation of powers between the Federation and the States. In any event, I have already held that the power of the National Assembly and a State House of Assembly to legislate on urban and regional planning as well as development is concurrent; and so the National Assembly has the power to enact the provisions of Section 2 of the 1992 Act. It is only with regard to the provisions of subsection (h) of the section that I am of the opinion that the National Assembly cannot legislate, as the supervision and monitoring of the execution of projects in the States, if undertaken by the Federal Government, will breach the principles of federalism, as it will amount to unnecessary interference with the affairs of the States. However, it appears that the plaintiff has no grouse with the provisions but those of Section 2 (i) which appear to me to be *intra vires* the 1st defendant and therefore constitutional.

Section 3 of the 1992 Act, imposes on the State Governments duties and responsibilities. This goes against the principles of Federalism. I, therefore, hold that the section, which provides as follows; is unconstitutional, null and void:-

“3(1) A State Government shall exercise its physical planning responsibilities within the frame work of the National Physical Development Plan to ensure consistency in physical development at all levels of planning in Nigeria.

(2) Subject to the provisions of Section 2 of this Decree, a State Government shall exercise the following functions, that is -

(a) the formulation of a State Policy for urban and regional planning within the framework of national policies;

(b) the preparation and implementation of regional, sub-regional, urban and subject plans within the State;

(c) the promotion and conduct of research in urban and regional planning;

(d) the dissemination of research results for adoption by user organizations; and

(e) the provision of technical assistance to Local Governments in the preparation and implementation of local, rural and subject plans.”

B Similarly, Section 4, which reads thus:-

“S4. Without prejudice to provisions of Sections 2 and 3 of this Decree. A local government shall have responsibility for the preparation and implementation of -

C *(a) a town plan;*

(b) a rural area plan;

(c) a local plan;

(d) a subject plan; and

(e) the control of development within its area of jurisdiction

D *other than over Federal or State lands.”*

imposes duties and responsibilities on Local Governments. The Section offends the principles of federalism and therefore is unconstitutional, null and void.

Section 5 of the 1992 Act provides:-

E *“5. For the purposes of the initiation, preparation and implementation of the National Physical Development Plans, the Federal, State and Local Governments shall establish and maintain respectively -*

F *(a) a National Urban and Regional Planning Commission (hereafter in this Decree referred to as “the Commission”).*

(b) a State Urban and Regional Planning Board (hereafter in Decree referred to as “the Board”) in each of the States of the Federation and the Federal Capital Territory, Abuja; and

G *(c) a Local Planning Authority (hereafter in this Decree referred to as “the Authority”) in each of the Local Government Area and the Area Councils of the Federation.”*

H It is clear that the provisions in subsection (a), with regard to the Federal Government, are constitutional. However, the provisions of subsections (b) and (c) thereof which impose duties on States and Local Governments, except the Federal Capital Territory, infringe on the principles of federalism and are, therefore, unconstitutional, null and void.

Sections 8-11 inclusive provide:-

“8.(1) *The Board shall comprise the following members-*

(a) *a chairman;*

(b) *one representative each of the following professions who shall be a registered member of the relevant profession, that is -*

(i) *Town Planning,*

(ii) *Architecture,*

(iii) *Civil Engineering,*

(iv) *Land Surveying.*

(v) *Law, and*

(vi) *Estate Surveying,*

(c) *one representative each of the following, that is -*

(i) *the State Environmental Protection Agency;*

(ii) *the National Electric Power Authority; and*

(d) *one representative each of the -*

(i) *Ministry of Works and Housing;*

(ii) *Ministry of Agriculture;*

(iii) *Ministry of Finance and*

(e) *five representatives from the Local Government in the State in rotation; and*

(f) *a Secretary appointed by the Board who shall be the chief executive of the Board.*

(2) *The Chairman referred to in subsection 8(1)(a) of this section shall have been in professional practice for a minimum of five years and shall have been registered with the Town Planners Registration Council.*

(3) *The Secretary referred to in subsection 8(1)(f) of this section shall be a registered Town Planner with a minimum of five years professional practice.*

(4) *The post of the Secretary shall be a pensionable one.*

(5) *The Chairman, Secretary and members of the Board shall be paid such remuneration, fees and allowances as the Board may, from time to time determine.*

9. *The Board shall perform the following functions -*

(a) *the formulation of States Policies for urban and regional planning;*

(b) *the initiation and preparation of regional, sub-regional and urban/master plans;*

(c) *the development control on State lands;*

(d) *the conduct of research in urban and regional planning;*
(e) *the provisions of technical assistance to Local Governments;*
(f) *the constitution and co-ordination with the Federal Government and Local Governments in the preparation of physical plans;*
(g) *the preparation and submission of annual progress report*
B *on the operation of the National Physical Plan as it affects the State;*
and

(h) *the review of the annual report submitted to it by the authority.*
C *10(1) The Authority shall comprise the following members that*
is -

(a) *a chairman;*
(b) *not more than five representatives of the wards in the Local Government area;*
D (c) *one representative each of the following professions who shall be a registered member of the relevant profession -*
(i) *Architecture*
(ii) *Civil Engineering,*
E (iii) *Land Surveying,*
(iv) *Law, and*
(v) *Town Planning;*
(d) *the works supervisor of the Local Government;*
(e) *the Education Supervisor of the Local Government; and*
F (f) *a Secretary appointed by the Authority who shall be the chief executive of the Authority.*

(2) *The Chairman referred to in subsection 10(1)(a) of this section shall have been a professional for a minimum of five years and shall have been registered with the Town Planners Registration*
G *Council.*

(3) *The Secretary referred to in subsection 10(1)(f) of this section shall be a registered town planner with a minimum of five years professional practice.*

(4) *The post of the Secretary shall be a pensionable one.*
H (5) *The Chairman, Secretary and members of the Authority shall be paid such remuneration, fees and allowances as the Authority may, from time to time, approve.*

11.(1) *The Authority shall be charged with the responsibilities for preparing town, rural, local and subject plans.*

(2) The Authority shall prepare and submit to the Board an annual report on the implementation of the National Physical Development Plan and State Regional Plan.

(3) The Authority shall undertake development control within its area of jurisdiction.”

Since I have held earlier that the National Assembly cannot impose any duty or responsibility on State and Local Government with regard to the establishment of the Boards and Authorities, it follows that all the provisions of Sections 8 to 11 violate the principles of federalism. They are respectively unconstitutional, null and void.

Section 12 of the Act provides:-

“12. -(1) Subject to subsection (2) of this section, the duty assigned to the Commission, the Board or the Authority by Sections 7, 9 and 11 of this Decree may in each case be delegated to a person registered under the relevant profession as the Commission, Board or the Authority, may deem fit in each circumstance.

(2) Notwithstanding the provisions of subsection (1) of this section, the Commission, the Board or the Authority, may perform any duty assigned under subsection (1) of this section.”

The provisions of subsection (1) thereof are constitutional in so far as they apply to Commission set up by the Federal Government but unconstitutional as they apply to the “Board and Authority” which establishment, as shown above, is unconstitutional.

Section 28 of the 1992 Act states:

“28.(1) Approval of the relevant Development Control Department shall be required for any land development.

(2) A developer shall submit a development plan for the approval of the Development Control Department.”

These provisions are, for the reasons aforementioned unconstitutional as far as they apply to a State or a Local Government of a State. However, they are valid and constitutional with regard to the Federal Government or the Federal Capital territory.

Sections 30 to 46 of the 1992 Act read:

“30-(1) A developer (whether private or government) shall apply for a development permit in such manner using such forms and providing such information including plans, designs, drawings and any other information as may be prescribed by regulation made pursuant to this section.

(2) No development shall be commenced by any Government or its agencies without obtaining an approval from the relevant Development Control Department.

(3) A plan required to be made under this Decree shall be prepared by a registered Architect or Town Planner or Engineer and shall be in accordance with the provisions of this Decree.

31. An application for a development permit may be rejected if-

(a) the plan is not in accordance with an approved plan; or
(b) the plan is in the course of preparation; or
(c) in the opinion of the Control Department, the development is likely to have major impact upon the environment, facilities, or inhabitants of the community or contains such auctioned facilities which are not within the estimation of the Physical Development Plan for that community; or

(d) in the opinion of the Control Department, the development is to cause a nuisance to the inhabitants of the community or contains such additional facilities that are not within the estimation of the physical Development Plan for that community; or

(e) the development is not in accordance with any other condition as may be specified under any regulation made pursuant to this Decree.

32. The Control Department may consider representations made to it by a person, body or organisation to be affected by an intended development.

33. A developer shall at the time of submitting his application for development submit to an appropriate Control Department a detailed environmental impact statement for an application for-

(a) a residential land in excess of 2 hectares; or
(b) permission to build or expand a factory or for the construction of an office building in excess of four floors or 5,000 square meters of a lettable space, or
(c) Permission for a major recreational development.

34 (1) The Control Department may approve or reject an application for development permission.

(2) The Control Department may delay the approval of an application for development permit if circumstances so require that -

(a) the developer at his own expense -

- (i) shall provide public infrastructure and facility; or*
- (ii) shall provide necessary commercial facility; or*
- (iii) shall provide necessary social, recreational, communal facility; or*
- (iv) shall pay a sum of money in lieu to the Control Department for providing (i) and (ii) of this paragraph;* B
- (b) the developer enters into an agreement with an individual, corporate or unincorporated body in respect of any matter the Control Department deems to be necessary for the development.*
- (c) the developer pays such fee or other charges imposed by the Control Department; and* C
- (d) the developer shall comply with any other condition stipulated by regulation made under this Decree.*
- (3) In reaching its decision under Subsections (1) and (2) of this section the Control Department shall comply with -* D
 - (a) the policy and proposal of an approved plan applicable to a locality within its area of jurisdiction;*
 - (b) a proposed plan or an approved plan under review; and*
 - (c) any other consideration made particular and applicable to a locality by a regulation made by or pursuant to the provisions of this Decree.* E
- (4) Subject to such directives as may be given by the Federal, State or Local Governments, a Control Department may delay the approval of an application for development permission for a period of time not exceeding 3 months.* F
- (5) The Control Department's decision on an application for development permit shall be communicated to the applicant in writing.*
- (6) The Control Department's decision shall be conclusive evidence of information stated therein.* G
- (7) Where the Control Department decides not to approve an application it shall give reasons for its decision.*
- (8) The refusal or rejection of an application for development permit shall not confer on a developer any legal or other rights until it has been communicated to the applicant in writing.* H
- 35. (1) The Control Department shall enforce all the rights and duties attached to a development permit against a developer. Provided that where a developer transfers or assigns his inter-*

est, the Control Department shall enforce all the rights and duties attached to a development permit against a holder or occupier for the time being.

(2) A development permit granted to a developer shall -

B *(a) remain valid for two years from the date of communication of the approval of a development permit to a developer; and*

(b) where a developer fails to commence development within two years the development permit shall be subject to re-validation by the Control Department which issued the original permit.

C *36. The conditions attached to the grant of a development permit by a Control Department shall not conflict with the conditions attached to a grant of a certificate of occupancy or a customary right of occupancy.*

D *37. (1) Conditions attached to the grant of a development permit may be altered, amended, varied or revoked by a Control Department which shall serve a notice of its intention on the holder for the time being of a development permit.*

E *(2) The notice required to be served by subsection (1) of this section shall state the reasons for the proposed action of the Development Control Department.*

(3) The Control Department shall consider any representation made to it by the developer or the holder for the time being of a development permit.

F *(4) The Control Department's decision on sub-section (1) of this section shall be communicated in writing to a developer or a holder for the time being of a development permit.*

G *38. A dissatisfied developer or holder for the time being of a development permit may appeal to a tribunal set up to hear appeals within 28 day of service of a notice under this section by the Control Department.*

H *39 (1) A development permit already granted and communicated to a developer or holder for the time being may be revoked by the Control Department which shall serve a notice of its intention to revoke the development permit.*

(2) The notice in subsection (1) of this section shall state the reasons for the revocation of the development permit.

(3) The Control Department shall consider any representation made by a developer to it.

40.(1) *A dissatisfied developer or holder for the time being of a development permit may appeal against the decision of the Control Department in the first instance to the Minister or Commissioner charged with responsibilities for matters relating to planning.*

(2) *An appeal against the decision of the Minister or Commissioner shall be to a tribunal set up to hear appeals within 28 days of service of a notice under this section by a Control Department.* B

41. *In the exercise of its functions under Section 34 of this Decree the Control Department shall -*

(a) *have regard to all matters and conditions specified by the provisions of this Decree prior to granting a development permit; and* C

(b) *take into account matters of over-riding public interest as provided for in Section 27 (2), (3) of the Land Use Act.*

42. *Compensation shall be payable for the revocation of a development permit to a developer or the holder for the time being of a development permit if -*

(a) *development has commenced; or*

(b) *the developer or holder is liable under an existing contract to a third party to damages for a breach of contract; or* E

(c) *the developer has incurred any expense or has suffered a loss during the process of obtaining the development permit.*

43.-(1) *The amount of compensation payable under Section 43 of this Decree shall be such as to reimburse the developer or holder for the time of a development permit of the losses incurred as a result of the revocation and shall not be in the form of payment of damages or in excess of the sum incurred by the developer.* F

(2) *No compensation shall be payable under this section if -*

(a) *a development is not in accordance with the terms and conditions under which the development permit was granted; or* G

(b) *the right of occupancy of the land on which a development was to take place has been cancelled or revoked on the ground that the applicant did not comply with the requirements of the Land Use Act; or* H

(c) *a claim for compensation is made 28 days after a notice of revocation is served on the developer or the holder for the time being of a development permit.*

44. *Compensation payable under this section shall be paid not*

later than 90 days after a claim for compensation had been made.

45. *In the event of a dispute arising as to the amount of compensation payable to a developer, the dispute may be referred to a Planning Tribunal.*

B 46. *An appeal against the decision of a Planning Tribunal in respect of an amount payable to a developer shall lie as of right to the High Court in the State or the Federal Capital Territory, Abuja, as the case may be."*

C These provisions deal with applications for development permits. For as far as the provisions apply to the Federal Government and the Federal Capital Territory, they are constitutional. However, the contrary is the case if they apply to applications to State Governments and their agencies since the sections impose the duties on them.

Sections 47 to 63 of the Act provide as follows:-

D "47.(1) *The Control Department may serve an enforcement notice on the owner of a private residential, commercial, industrial or any other land wherever any development is commenced without its approval.*

E (2) *An enforcement notice may be issued pursuant to subsection (1) of this section notwithstanding that the unauthorized development took place before the commencement of this Decree.*

48.(1) *An enforcement notice served pursuant to subsection (1) of Section 47 may direct the developer to alter, vary, remove, discontinue a development.*

F (2) *The Control Department may impose additional conditions as it may deem fit in each circumstance.*

G (3) *Before issuing or serving an enforcement notice in accordance with the provisions of subsection (1) of this section, the Control Department shall -*

(a) *have regard to the existing conditions for granting a development permit;*

(b) *have regard to the likely environmental degradation or impact of a development carried out or being carried out;*

H (c) *consider the over-riding public interest without prejudice to paragraph (b) of this section.*

49. *Where there is no existing operative development plan and a developer has already developed a residential building, the Control Department may assist the developer of such residential build-*

ing by re-locating him on another site.

50-(1) An enforcement notice served under Section 47 of this Decree by the Control Department shall -

(a) be in writing and communicated to the developer;

(b) state the reasons for the proposed action of the Control Department;

(c) consider any representation made by a developer or on behalf of a developer.

(2) An enforcement notice may require a developer to alter, remove, or discontinue a development to ensure that the development becomes a lawful development or becomes compatible with the use to which an adjoining land has been put.

51. Control Department or its authorized agent shall enforce an order of the Planning Tribunal or High Court against a developer or holder for the time being of a development permit who fails to comply with such an order.

52. A developer or holder for the time being of a development permit shall be liable for all expenses reasonably incurred by a Control Department or any of its officers or agents, as the case may be, in enforcing the provisions of Section 51 of this Decree.

53. Where it appears to the Control Department that -

(a) an unauthorized development is being carried out;

(b) where a development does not comply with a development permit issued by the Control Department.

The Control Department shall issue a stop-work order pending the service of an enforcement notice on the owner, occupier or holder as specified in Section 50 of this Decree:

Provided that where the development or use is a minor development or use, the Control Department shall have the power to order the developer to alter, remove or discontinue the development or use without reference of the matter to a court of law.

54. A stop-work shall take immediate effect upon service on a developer or the occupier of the development for the time being.

55. A stop-work order shall comply with the provisions of Section 53 of this Decree and shall in addition inform the developer or occupier of -

(a) the development which is required to be stopped; and

(b) the work to be done on the site to conform with the devel-

opment permit issued thereto.

56. The Control Department shall give a reasonable time not exceeding 21 days within which the developer shall be required to comply with the provisions of Section 53 of this Decree.

57. A stop-work order shall cease to have effect if within 21 days of its issue the enforcement notice is not served on a developer.

58. Where an enforcement notice is served in respect of a development to which a stop-work order is served, a planning tribunal may on the application of the Control Department extend the period of time during which a stop-work order shall remain in force.

59. A person who fails to comply with the terms of an enforcement notice or disregards a stop-work order issued and served pursuant to this Decree is to be guilty of an offence and liable on conviction to a fine of not exceeding N10,000 in the case of an individual and in the case of a corporate body to a fine not exceeding N50,000.

60. Where a developer contravenes the provisions of a planning law or any regulation made pursuant to a law, the Control Department shall have power to require the developer to -

- (a) prepare and submit his building plan for approval; or*
- (b) to carry out such alterations to a building as may be necessary to ensure compliance; or*
- (c) to pull down the building; or*
- (d) to re-instate a piece of land to the state in which it was prior to the commencement of building.*

61.(1) The Control Department shall have the power to serve on a developer a demolition notice if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the occupier and the public.

(2) Notice served pursuant to subsection (1) of this section shall contain a date not later than 21 days on which the Control Department shall take steps to commence demolition action on the defective structure.

62. After the expiration of the time specified in the notice served under subsection (1) of Section 61 of this Decree, the Control Department shall take such necessary action to effect the demolition of the defective structure.

63. A developer shall reimburse the Control Department for all expenses reasonably incurred in exercise of its powers under Sec-

tion 62 of this Decree.”

All the provisions of the sections, which apply to the States and the Local Governments of a State, impose duties and responsibilities contrary to the principles of federalism. As such, they are unconstitutional, but not to the extent of their application to the Federal Government and the Federal Capital Territory.

Section 75 of the Act, provides:-

“75. (1) Where it appears to the Commission, the Board or Authority that it is necessary to obtain any land in connection with planned urban or rural development in accordance with the policies and proposals of any approved plan, any right of occupancy subsisting on that land shall be revoked on the recommendation of the appropriate authority.

(2) Any right of occupancy held in pursuance to subsection (1) of this section shall be revoked in accordance with the relevant provisions of the Land Use Act.”

The provisions as far as they apply to the “Commission” are constitutional but not so where they apply to the “Board and Authority” for the reasons aforementioned.

Section 76 subsection (3) of the Act, provides:-

“(3) Where in the opinion of the Control Department any person has committed a gross contravention of an existing scheme, the land together with any building and any goods or furniture therein may be requisitioned or forfeited for the breach of the scheme under this Decree without the payment of any compensation.”

The provisions are constitutional in so far as they apply to the Federal Government and the Federal Capital Territory Control Department. But not so if they are read to apply to a State or Local Government Control Department.

Section 86 to 88 of the Act provides thus:-

86. There is hereby established, in each State of the Federation and the Federal Capital Territory, Abuja, a tribunal to be known as the Urban and Regional Planning Tribunal (in this Decree referred to as “the Tribunal”) which shall have the jurisdiction, power and authority conferred on it by this Decree and by any regulations made thereunder.

87.-(1) The Tribunal shall consist of -

(a) a Chairman who shall be a registered town planner with 15

years post-qualification experience;

(d) an Architect;

(e) an Engineer; and

(f) a Land Surveyor

(2) The Minister or Governor, as the case may be, shall appoint -

(a) Chairman of the Tribunal, on the recommendation of the Town Planners Registration Council;

(b) the other members of the Tribunal, on the recommendation of the professional body concerned;

(c) the Secretary to the Tribunal who shall be a town planner with at least 5 years post qualification experience.

88.(1) The Chairman and members of the Tribunal shall hold office for three years and shall be eligible for re-appointment for such further terms as the Minister or Governor may, from time to time, determine.

(2) The office of Chairman or a member of the Tribunal shall become vacant if-

(a) he has completed his tenure of office; or

(b) he resigns his appointment in writing under his hand to the Minister or Governor; or

(c) without good cause, declines to hear a case during session of the Tribunal on three consecutive occasions;

(d) he adjudged bankrupt; or

(e) he is found insane; or

(f) his appointment is revoked by the Minister or Governor; or

(g) he dies.

(3) For purposes of subsection (2) (c) of this section, "good cause" means -

(a) illness certified as such by a qualified medical practitioner;

(b) a professional involvement in the case before the Tribunal at its earlier or prior stages;

(c) having an interest of a proprietary or pecuniary nature in the case, directly or indirectly.

(4) The Chairman and members of the Tribunal shall be paid such remuneration, fees and allowance as the Minister or Governor shall from time to time approve."

These provisions are constitutional only to the extent that they

apply to the Federal Government and the Federal Capital Territory but not if they relate to the States as they impose duties and responsibilities on the latter contrary to the principles of federalism.

CLAIM NO. 3

The plaintiff asks for a declaration that the Federal Highway Act, Cap. 135; the Nigerian Railway Corporation Act, Cap. 323; the Civil Aviation Act, Cap. 51; the National Inland Waterways Act, (Decree No. 13 of 1997) and other federal statutes which vest power in the 1st defendant to grant approvals or permits for use of land, are all for the specific purposes for which they were enacted and that they do not vest in the 1st defendant general planning powers or physical development control of land in Lagos State.

Now, Sections 6 to 8 of the Civil Aviation Act, Cap. 51, deal with the powers of the Minister of Aviation to establish and maintain airports, to provide and maintain in connection with airports - roads, approaches, apparatus, equipment, buildings and other accommodation and to control land in the interest of aviation.

Section 1 of the Federal Highways Act, Cap. 135, confers on the Minister of Works and Housing the responsibility of planning including research and designing of Federal Highways, their construction and maintenance, supervision of the user thereof and the regulation of the traffic thereon. While Sections 21 to 24 of the Act provide the Minister with the powers - incidental to intention to acquire land; to acquire land, in relation to obstruction of view on Federal Highway; to enter land adjacent to Federal Highway and to acquire land compulsorily or otherwise.

Amongst the general powers conferred on the Nigerian Railway Corporation under Sections 16 and 17 of the Nigerian Railway Corporation Act, Cap. 323, are the powers of the Corporation to make and maintain for the occupiers and owners of lands adjoining a railway - convenient crossings, bridges, arches, culverts etc, for the purpose of making any good any interruptions caused by the railway to the use of the lands through which such railway is made. The Corporation is also empowered to make and maintain arches, tunnels, culverts, drains, water-courses or other passages over or under, or by the sides of, the railway for the purpose of conveying water at all times as freely from or to such lands as before the making of the railway or as nearly as may be. It is also empowered to sell, let or

otherwise dispose of any property of the Corporation, movable or immovable, to supply, construct, repair its movable or immovable property, to provide houses, hostels and other like accommodation for persons employed by the Corporation.

B Under Section 23 of the Act the Corporation has the power to temporarily enter upon any lands adjoining the railway for the purpose of preventing accident or repairing any damage caused by slip or accident. It also has the power under Section 26 thereof to fell trees which obstruct the working of railway. Whether on railway land or on land other than railway land.

C Sections 31 to 34 of the Act, deal with the powers of the Corporation in relation to land. These include preliminary investigation of land required for railway purposes and compulsory acquisition of land as well as restriction on the Corporation on alienation of lands D on which rights of occupation have been granted to it.

By Section 8 of the National Inland Waterways Act, 1977 (No. 13 of 1977) it is the function of the National Inland Waterways Authority to inter alia ensure the development of infrastructural facilities for a national inland waterways network connecting the creeks and E rivers with the economic centres using the river ports as modal points for inter model exchange. Section 9 of the Act provides for other functions and powers of the Authority. These include the undertaking of capital and maintenance dredging; hydrological and hydro- F graphic surveys; designing of ferry routes, installation and maintenance of lights, buoys and all navigational aids along water channels and banks; issuance and control of licences for inland navigation, piers, jetties and dockyards; granting of permits and licences for sand dredging, pipeline construction, dredging of slots and crossing of G waterways by utility lines, water intake, rock blasting and removal; granting of licences for inland waterways operators; approval and control of all jetties, piers, dockyards within the inland waterways; reclamation of land within the right-of-way; construction, administration and maintenance of inland river-ports and jetties, providing H hydraulic structures for rivers and dams, bed and bank stabilization, barrages and groynes; acquisition, leasing and hiring of properties, and clearance of water hyacinth and other aquatic weeds. Furthermore, the Authority, by Section 11 of the Act, has the exclusive management, direction and control of up to 250 metres beyond the edge

of the quay of all navigable waters, inland waterways, river ports and internal waters of Nigeria, but excluding the direct approaches to the ports listed in the Third Schedule to the Act and all other waters declared to be approaches to ports under or pursuant to the Nigerian Ports Act, 1993.

Finally, Section 13 of the National Inland Waterways Authority Act, 1997, provides:-

“13.(1) Notwithstanding the provisions of the Land Use Act 1978 or any other enactment, but subject to the provisions of the Land (Title Vesting, etc.) Decree 1993, the Authority shall have right to all land within the right - of - way of declared waterways and shall use such land in the interest of navigation.

(2) No person including a state shall -

(a) obstruct a declared waterway; take sand, gravel or stone from any declared waterway; or

(b) erect permanent structures within the right-of-way or divert water from a declared waterway;

(c) carry out any of the activities as specified in Section 9 of this Decree, without the written consent, approval or permission of the Authority.”

As can be seen from all the foregoing, none of the authorities concerned under the Civil Aviation Act, Federal Highways Act, Nigerian Railway Corporation Act and the National Inland Waterways Authority Act, is vested with general planning powers or physical development control of land in Lagos State. It follows that the 1st defendant does not possess such powers and control.

Under this claim the plaintiff prays for the declaration to be granted in respect of other federal statutes, which vest power in the 1st defendant to grant approval or permits for use of land for specific purposes for which the statutes are made, do not vest general planning powers or control of physical development of land in Lagos State in the 1st defendant. In my opinion, this aspect of the claim is too wide and vague. By the nature of the claim it is not possible to examine the provisions of the unnamed statutes in order to see if the power in question is non-existent. Consequently, this second arm of the claim in respect of unspecified statutes cannot be granted.

CLAIM NO. 4

The claim here is for a declaration that the grant of approvals,

permits and licences for buildings and physical developments in Lagos State including under bridges, bridges' loops and highways setback are the residual responsibility of the Plaintiff.

This claim is of a general nature and does not mention any legislation or enactment relevant to the claim. The granting of approvals, permits and licences for building and physical developments under bridges, bridges' loops and highway set-back is within the powers of the Federal Government under Section 3 subsection (5) of the Federal Highways Act, Cap. 135, which provides thus:-

“3(5) The acquisition of land for the purposes of this Act includes the right to obtain control over the land and to use the land for the erection of buildings and for the supervision of the user by the public.”

It follows that this claim has no merit and the declaration sought cannot be granted.

CLAIMS NO. 5

The claim concerns the request to grant a declaration that all approvals, permits or licenses granted or issued by the 1st defendant from the 1st of June, 1999, for building or development of land within the territory of Lagos State, without the consent of the plaintiff and in contravention of the town planning laws and regulations of Lagos State, are illegal, null and void. It is to be observed that the claim is general in nature; no specific beneficiaries of the grant of the approvals, permits or licences by the 1st defendant have been mentioned or joined as co-defendants. Since the grant of the declaration sought will affect the interests of the beneficiaries, they cannot be condemned without being heard or given the opportunity to be heard. As the beneficiaries are necessary parties and they are not before us, we cannot grant the claim - see *Oloriode v. Oyebe* (1984) 1 SCNLR 390 at pp. 400 and 407, and *Green v. Green* (1987) 3 NWLR (Pt. 61) 480.

CLAIM NO. 6

The claim asks for an order to nullify or revoke all the approvals, permits or licences illegally granted by the 1st defendant with effect from 1st June, 1999, for any building or other development of land in Lagos State.

As already shown above the 1st defendant has the right to grant approvals, permits and licences for building or development in

some cases It is not shown that such cases are excluded in this claim. Furthermore, since such an order will affect the rights and interests of the beneficiaries of the approvals, permits and licences and they are not joined in the case, the order prayed cannot be granted - see Oloriode's case (supra) and Green v. Green (supra).

CLAIM NO. 7

B

A perpetual injunction is being sought to restrain the 1st defendant, its servants, agents and privies from further granting approvals, permits, licences for development of any land, highways, set-back and under bridges, bridges loops, markets, shops, stalls, mechanic workshops, etc, in Lagos State without the consent of the plaintiff.

C

What is being urged under this claim is rather too wide and general in nature. If the injunction were to be granted, it would affect the powers of the 1st defendant under the Federal Highways Act, Cap. 135. Consequently, the claim cannot succeed.

D

Perhaps it is pertinent to state that the aim of the 1992 Act is not to transfer to the Federal Government the power to control development over state lands. That power is vested by the 1992 Act in the States and Local Governments, for Section 27 subsections (4) and (5) of the Act, provides:-

E

(4) The Control Department at the State level shall have power over the development control on State lands.

(5) The Control Department at the Local Government level shall have power over control of development on all land within the jurisdiction of the Local Government."

F

Section 91 of the 1992 Act, defines "development" as follows:-
"*Development*" means the carrying out of any building, engineering, mining or other operations in, on, over or under any land, or the making of any environmentally significant change on the use of any land or demolition of buildings including the felling of trees and the placing of free-standing erections used for the display of advertisements on the land and the expression "develop" with its grammatical variations shall be construed accordingly;"

H

In summary, this action succeeds only in part. The reliefs being sought are either granted or refused as follows:-

Relief No. 1 - the declaration is refused.

Relief No. 2 - the declaration is granted in part. That is in re-

spect of sections -1 (2), 1 (3), 3, 4, 5(b), 5(c), 8, 9, 10, 11, 12(2), 28, 30 to 46 inclusive, 47 - 63 inclusive, 75, 76(3) and 86 to 88 inclusive.

Relief No. 3 - the declaration is granted in respect of only the Acts categorically specified but not those unstated.

B Relief No. 4 - the declaration is refused.

Relief No. 5 - the declaration is refused.

Relief No. 6 - the declaration is refused.

Relief No. 7 - the perpetual injunction is refused.

C There is no order as to costs. Each party shall bear its costs.

AYOOLA JSC (Dissenting)

D I have read in draft the judgment delivered by my learned brother, Uwais, CJN. I agree with him that the plaintiff's case succeeds in part, with the conclusions he arrived at and the reliefs he granted. I make a few comments of my own, particularly in regard to the first declaration sought by the plaintiff, Lagos State.

E This case raises once again the question of the extent of the legislative powers of the federation generally and in particular in relation to the Fundamental Objectives and Directive Principles of State Policy enacted in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 ("the Constitution"). The ambit of the legislative powers of the Federal Republic of Nigeria vested in the National Assembly is defined in subsections (2), (3) and (4) of Section 4 of the Constitution as follows:

G *"(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 1 of the Second Schedule to this Constitution.*

H *(3) The power of the National Assembly to make laws for the 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

powers 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) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.”^B
(Emphasis mine)

The legislative powers of the Federal Republic of Nigeria thus consists of powers to make laws with respect to any matter included in the (i) Exclusive Legislative List set out in Part I of the Second Schedule of the Constitution and, (ii) Concurrent Legislative List set out in the first column of Part II of the Second Schedule of the Constitution to the extent prescribed in the second column; and with respect to any matter to which it is empowered to make laws in accordance with the provisions of the Constitution.^C^D

The ambit of the legislative powers of a State of the Federation is, on the other hand, defined by subsection 7 of Section 4 of the Constitution. These are the powers to make laws with respect to any matter not included in the Exclusive Legislative List, and with respect to any matter included in the Concurrent Legislative List to the extent prescribed in the List; and the power to make laws with respect to any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.^E

It is evident that concurrent legislative powers can arise in three instances: first, as expressly provided in subsection (4)(a) and subsection (7)(b) of Section 4 of the Constitution; secondly, to the extent that the Constitution may provide that, in terms of subsection 3 of Section 4, any matter included in the Exclusive Legislative List shall not be to the exclusion of the House of Assembly of States; and thirdly, to the extent that in terms of subsections (4)(b) and (7)(c) of Section 4, the Constitution may have empowered both the National Assembly and the House of Assembly of a State to make laws in accordance with the provisions of the Constitution on the same matter. It must be observed that as the Constitution stands at present it has not provided that any matter included in the Exclusive Legislative List shall not be to the exclusion of the Houses of Assembly.^F^G^H

The search for the legislative authority of the National Assem-

bly or of the House of Assembly of a State to make laws cannot rightly be confined to the Legislative Lists. A more accurate definition of a residual matter over which the House of Assembly of a State has exclusive legislative authority must take note of the provisions of sub-section (4)(b) of Section 4. This was done by Bello, JSC., (as he then was), in *Attorney-General, Ogun State v. Aberuagba* (1985) 1 NWLR (Pt.3) 395. Such search of legislative authority outside the Legislative Lists in Schedule II to the Constitution has sometimes led to Section 13 of the Constitution and the fundamental obligations of the State in Chapter II. It seems now generally accepted, though not without some reasonable hesitation, that Section 13 of the Constitution, sometimes read with items 67, 68 and 60(a) of the Exclusive Legislative List, provides the legislative authority of the National Assembly to legislate on matters included in Chapter II of the Constitution if the obligations of the State in regard to them is to be carried to fruition. (See, for instance: *Attorney-General, Ondo State v. Attorney-General of the Federation* (2002) 6 S.C. (Pt.1) 1; (2002) 9 NWLR (Pt. 772) 222). The only legislative authority that can be found for any environmental legislation is Section 20 of the Constitution.

Where the search for legislative authority for enacting a statute leads to Chapter II of the Constitution, a helpful approach I venture to think is first to ascertain the nature of the obligation and then to ask whether it is one which can be discharged by legislative intervention exclusively or concurrently. For instance, the obligations of the State in regard to economic and foreign policy objectives provided for respectively in Sections 16 and 19 of the Constitution cannot be anything but exclusive to the Federation while the educational objectives in Section 18 can hardly be anything but concurrent. Where any obligation in Chapter II relates to a matter clearly mentioned in the Legislative Lists, these lists cannot be ignored in determining whether the obligation can be carried into legislative effect either exclusively by National Assembly or concurrently, as the case may be, with the House of Assembly of a State.

It is where the Legislative Lists are silent as to a particular matter in respect of which an obligation is created by a provision of Chapter II that the question is left to judicial interpretation, whether the legislative authority to carry the objectives of the Chapter in that particular regard into effect is exclusive or concurrent. In exercising that

interpretive jurisdiction, the court cannot ignore the basic structure of our Constitution, one of the pillars of which is federalism.

The Legislative Lists in Schedule II are silent as to the matters provided for in Section 20 of the Constitution, which are as follows:

“The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.” B

This is the environment clause. Since “The State” referred to in Section 20 is not restricted to the Federal Republic but also its component units, environment becomes a concurrent subject over which the National Assembly as well as a House of Assembly of a State can legislate subject of course, to the territorial restriction of legislation of a House of Assembly; the doctrine of covering the field; and to due regard paid to the inherent attributes of a State in a Federation as an autonomous political unit. By its nature, not all matters of environment can be confined within state boundaries so as to make such a matter of exclusive legislation by a State. When consequences of activities are capable of manifesting both within and across state boundaries, it is hardly rational to expect functions in relation thereto to be ordered exclusively as state matters rather than matters that could be either exclusive to the Federation in regard to trans-border consequences or concurrently with the States. C D E

The competence of the National Assembly to make laws on environmental matters is beyond question. Such competence derives from a communal reading of Sections 13 and 20 of the Constitution and items 60(a), 67 and 68 of the exclusive Legislative List. F

Although the issues raised in this case in regard to the first declaration sought by the Lagos State must be considered against the background of the acknowledged competence of the Federation to make laws on environmental matters, the real issue, however, is whether its power to make laws on such matters also empowers the National Assembly to make laws on urban and regional planning. The declaration sought by Lagos State that brought that question to the fore is in the following terms: G

“a DECLARATION that by virtue of the provisions of Sections 4 and 5 of the 1999 Constitution of Nigeria, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative and executive competence of the State.” H

It is to be noted that Lagos State has been careful in its choice

of declaration. It did not, no doubt for good reason, seek by the first declaration to annul the Nigerian Urban and Regional Planning Act (Decree No. 88 of 1992) in its entirety. The Act is an existing law in terms of Section 315 of the Constitution covering in its provisions several matters about which Lagos State has no cause to feel aggrieved. It is for this reason that the focus of the second declaration sought by Lagos State is specific as to the provisions of the Act that it considered offensive to its rights as a sovereign political entity within the Federation. The second declaration sought by Lagos State is in the following terms:

“A DECLARATION that the provisions of Sections 1(2) and (3), 2(2), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30 to 46, 47 to 63, 75, 76(3) and 86 to 88 of the Urban and Regional Planning Act (Decree No. 88 of 1992) which seek to control Urban and Regional Planning as well as physical development of land in Lagos State are inconsistent with Section 4 of the 1999 Constitution and to that extent null and void.”

It being common cause that the National Assembly is competent to legislate in terms of Section 20 of the Constitution “to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”, the question raised by the first declaration falls to be answered by examination and application of the principle of relative connection between goal of that section and the means adopted to achieve it, in this case, the regulation of the system of planning. At this stage of the enquiry, the need to consider the contents of a particular legislation, such as the Nigerian Urban and Regional Planning Act, does not immediately arise. The total or partial invalidity of that Act will not by themselves lead to a denial of the competence of the National Assembly to make laws in regard to planning matters if that is a rational manner of fulfilling the goals of Section 20.

It is not difficult to conceive of a federal legislation on urban and regional planning that may be protective of the environment without offending the federal structure or be in derogation of the sovereignty of the States. Indeed, several provisions of the Nigerian Urban and Regional Planning Act are of such nature, particularly in Section 2 thereof. The system of co-operative federalism for instance, may enable the federation to initiate urban and regional planning

measures and encourage States to subscribe to and comply with them through inducement of grant or by persuasion of agreement. It is not only by coercion and command that federating units can be made to be part of a planning scheme initiated by a federal statute. Besides, it seems to me misconceived to hold the view that there cannot be a situation in which a scheme of regional planning may legitimately transcend whatever may be State rights for purpose which the Constitution permits the federation to pursue and achieve. B

However, the position trenchantly taken by the Attorney-General of Lagos State is that town planning is necessarily a local affair. That submission was clearly put in the clear and helpful brief filed by Professor Osinbajo, SAN, the Attorney General of Lagos State and finds strong support in the argument in the brief of Anambra State, drawing on the definition of “land use planning” in Black’s Law Dictionary 6th Ed as relating to such “*activities such as zoning, control of real estate, development and use, environmental impact studies and the like*”, it was argued that town planning being a land use matter is a land matter. Anambra State went further to argue that the framers of the 1999 Constitution did not contemplate town or physical planning as environmental matter within the objectives of Section 20 of the Constitution. The Attorneys-General of Lagos State and Anambra State in their briefs recounted a host of legislation which they argued as I understand it, are examples of environmental legislation, none of which dealt with town or regional planning. Mr. Paul Usoro, counsel for Niger State, also argued cogently in his brief as follows: C D E F

“Now, in regard to the relationship between urban and regional planning and environment, it is of course correct and imperative that urban and regional planning must take account of environmental factors and seek always to protect and develop Nigeria’s environment and conserve its bio-diversity and promote the sustainable development of Nigeria’s natural resources. However, it is our submission that the two roles - urban and regional planning and management of the environment - are distinct and separate under the Constitution and cannot and should not be merged.” G H

What appears to me to be a somewhat similar view was expressed in the US case *California Coastal Commission v. Granite Rock Co.* 480 US 572 as follows:-

“The line between environmental regulation and land use plan-

ning will not always be bright; for example, one may hypothesize a state environmental regulation so severe that a particular land use would become commercially impracticable. However, the core activity described by each phrase is undoubtedly different. Land use planning in essence chooses particular uses for the land; environmental
B regulation, at its core, does not mandate particular uses of the land, but requires only that, however the land is used, damage to the environment is kept within prescribed limits.”

However, there is the passage in Halsbury’s laws of England
C (4th Edition) Vol. 46, para 1, that:

“The town and country planning system is designed to regulate the development and use of land in the public interest; and it is an important instrument for protecting and enhancing the environment in town and country...” (Emphasis mine)

A stronger statement of the relationship between planning and the environment than that can hardly be found. Notwithstanding that planning and environment regulation may at their core be distinct activities, it cannot be denied that these activities may overlap and that planning regulation may be used as an instrument of protecting and enhancing the environment.
E

The nexus between town and country planning system and the environment does not vary with the type of system of government in a given country, whether unitary or federal. Where in a Federation the Federal Government is empowered to make laws for the protection of environment it cannot be denied that it can employ the town and country planning system as one of the instruments for achieving that goal. The only limitation occasioned by the federal structure is that it must not do so in a manner as to impair the State’s
F integrity or take over traditional state governmental functions in regard to details of land use or management of land.
G

Once the conclusion is arrived at that urban and regional planning laws can be used as an instrument of protecting the environment, the general competence of a legislature empowered to make
H laws for the protection of the environment to employ such instrument is beyond question. In the US Supreme Court case of *M’Culloch v. Maryland* (1819) 4L Ed 579 it was said:

“Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly

adopted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

The only question that would remain is whether from the provisions of the particular urban and regional planning enactment such an enactment is rationally referable to that objective or is one that derogates in a substantial manner from the attributes of sovereignty attaching to a State within our constitutional arrangement. That stage of the enquiry would involve an examination of the provisions of the enactment, as Lagos State has asked us to do by the second declaration it sought.

In determining the validity of an Act claimed to be employed by the federation as an instrument of achieving a goal such as is enacted in Section 20 of the Constitution (the principal goal) a useful two-stage approach is to ascertain whether the Act is rationally referable or related to the goal. If it does not, the enquiry should terminate at that stage. If it does, then the next and I daresay rather delicate stage is to ascertain whether its provisions go beyond what is consistent with a fundamental constitutional arrangement of our political union which is federalism. If it does not, in my judgment the Act would fail. In the US case of *National League of Cities v. Usery* 426 US 833, 49 L Ed 2d 245, 253, it was said:

“We have repeatedly recognised that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner.” (Emphasis mine)

That opinion, in my judgment, applies with equal force to our country and I adopt it.

However, where the question is as to the existence of a general power as is raised in the first declaration, that a wrongful exercise of the power is possible or may have taken place does not lead to a denial of the existence of such power. It is for that reason that the consideration that will lead to a refusal of the first declaration does not necessarily lead to a refusal of the second.

The courts are not shy to defer to judgment of the legislature in the choice of instrument to achieve a valid goal. In the case of *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*

452 US 264; 69 L Ed 2d 1, one of the questions was whether an Act was beyond the scope of congressional power under the Commerce Clause. The appellant in the case insisted that the Act's principal goal was regulating the use of private lands within the borders of the States and not, as the District Court found, regulating the interstate commerce effects of surface coal mining. The appellants argued that land as such could not be subject to regulation under the Commerce Clause and that the Supreme Court has recognized that land use regulation is within the inherent police powers of the States and their political subdivisions. Rejecting that argument, the Supreme Court of the US said (per Marshall, J.), at 69 L Ed 2d 15:

"The task of a court that is asked to determine whether a particular exercise of congressional power is valid under the Commerce Clause is relatively narrow. The court must defer to a congressional finding that a regulated activity affects interstate commerce, if there is any rational basis for such a finding. Heart of Atlanta Motel, Inc. v. United States, 379 US 241, 258 (1964); Katzenbach v. McClung, 379 US 294, 303-304 (1964). This established, the only remaining question for judicial inquiry is whether "the means chosen by (Congress) must be reasonably adapted to the end permitted by the Constitution." Heart of Atlanta Motel, Inc. v. United States, supra at 262. See United States v. Darby. 312 US 100, 121(1941); Katzenbach v. McClung, 379 US. at 304. The Judicial task is at an end once the court determines that Congress acted rationally in adopting a particular regulatory scheme. Ibid."

Further, he said: (at p.16)

"Moreover, this court has made clear that the commerce power extends not only to 'the use of channels of interstate or foreign commerce' and (452 US 277) to 'protection of the instrumentalities of interstate commerce. or persons or things in commerce,' but also to 'activities affecting commerce.' Perez v. United States. 402 US 146, 150 (1971). As we explained in Fry v. United States, 421 US 542, 547 (1975).

'even activity that is purely intrastate in character may be regulated by Congress, where the activity combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations.

See National League of Cities v. Usery, 426 US at 840; Heart

of Atlanta Motel, Inc. v. United States, (supra), at 255; Wickard v. Filburn., 317 US 111, 127-128 (1942); United States v. Wrightwood Dairy Co., 315 US 110, 119 (1942); United States v. Darby, (supra) at 120-121.

Thus, when Congress has determined that an activity effects interstate commerce, the courts need inquire only whether the finding is rational.” B

The power to make laws to fulfill an objective, such as the promotion and protection of the environment, implies a power to make laws on any matter that, rationally viewed, would further that objective or are properly regarded instruments for the achievement of the goal. The legislative authority to achieve that end through the instrumentalities of planning laws derives from the authority to make laws for the achievement of the objective. C

It bears emphasis that the competence of the National Assembly to use planning regulation as an instrument of protecting the environment does not open the door to random interference by the federation with state planning functions by directly regulating planning beyond what may be related to the protection of the environment. Where the Constitution itself empowers the National Assembly to make laws that would achieve the goal of protecting the environment, the choice of planning laws as a means of achieving that goal is tested, as has been earlier said, by the objective rationality of the chosen means as an instrument of achieving the goal, the relativity of the means to the goal and the demands of federalism as a basic and fundamental structure of our Constitution which must be met. E F

As I have said, the Attorneys-General of Lagos State and Anambra State have with considerable industry enumerated several environmental statutes of the Federal Government which they said were more in tune with Section 20 of the Constitution. At the forefront they put the Federal Environmental Protection Agency Act (Cap. 131 LFN 1990) which the Attorney-General of Anambra State described as “the statutory threshold of environmental protection in the country.” No doubt, FEPA Act contains detailed provisions relating to environmental matters. However, I find the enumeration of the enactments on the environment of little or no significance when the question is the range of instruments that may be available to the National Assembly for achieving the goal of environmental protec- G H

tion. In a slightly similar challenge to an Act of the US Congress on ground that as a means towards the goal it was designed to achieve, it was redundant or unnecessary, the US Supreme Court in *Hodel v. Virginia Surface Mining & Reclamation Association. Inc.* (supra) (at p.20) had this to say:

B “Appellees’ essential challenge to the means selected by the Act is that they are redundant or unnecessary. Appellees contend that a variety of federal statutes such as the Clean Air Act, 42 U.S.C. 7401 et seq. (1976 ed., Supp. 111), the Food Control Acts, 33 U.S.C. 701 et seq. (1976 ed., Supp. 111), and the Clean Water Act, 33 C U.S.C 1251 et seq. (1976 ed., Supp. 111), adequately address the federal interest in controlling the environmental effects of surface coal mining without need to resort to the land use regulation scheme of the Surface Mining Act. The short answer to this argument is that the D effectiveness of existing laws in dealing with a problem identified by Congress is ordinarily a matter committed to legislative judgment. Congress considered the effectiveness of existing legislation and concluded that additional measures were necessary to deal with the interstate commerce effects of surface coal mining. See H.R. Rep. No. E 95-218 at 58-60; S. Rep. No. 95-128, at 59-63. And we agree with the court below that the Act’s regulatory scheme is reasonably related to the goals Congress sought to accomplish.”

I am of the same view in this case as far as broad principles go. F The opposition to the use of planning laws by the federation as an instrument of protection of the environment emanates, it appears to me, from a rather narrow view of the range of systems of federalism that is possible; and, from an equally narrow view of the extent to which planning legislation can be utilized, with imagination and per- G spicacity, as an instrument of environmental protection in a federation without impairing the sovereignty of the federating units. There are, no doubt, several aspects to urban and regional planning. It will be mistaken to decide this case on a misconceived notion that a planning statute essentially addresses only one aspect. I venture to think H that there may be health aspects, environmental aspects, aesthetic aspects and so on and so forth. Where environmental aspects are in issue I do not see any constitutional objection to the federation making planning legislation, provided the pith and substance of such is not about the details of policing the use of land or physical develop-

ment and layout of land, but is, for instance, about the assessment of environmental impact or ensuring planning practice and guidelines that ensure that the environment is protected. Indeed the federation may in instances be obliged to do so in order to fulfill an international obligation. Besides, that the federation and the States have concurrent law-making powers over urban and regional planning or any matter, does not translate to a power of both to legislate on all aspects of the matter. As the Concurrent Legislative List shows, even within a matter in the Concurrent Legislative List, each tier of government sometimes still has its area of legislative competence. To grant the first declaration sought by the plaintiff in such wide terms as claimed will stifle the legislative power of the federation in a manner not envisaged by the Constitution.

I have said enough to show that I feel no hesitation in agreeing with the decision of the Chief Justice of Nigeria that the first relief sought by Lagos State must be refused.

In regard to the impugned provisions of the Nigerian Urban and Regional Planning Act that forms the subject of the second declaration, it is not difficult to see that those provisions failed all the tests of validity that I have hitherto tried to set out. Those provisions were unrelated to protection and development of environment. It is an unwarranted post facto rationalization to attempt to argue that any of those provisions were there as instruments of protecting the environment. Provisions generally regulating land use, unrelated to a goal which the federation can legitimately aim to achieve by legislation, is an unwarranted and unconstitutional intrusion into a sphere reserved to the States. Were the federation permitted to exercise a bare and naked power to regulate and plan the development of towns and cities in the States (other than the Federal Capital Territory) and take over the regulation of location for example, of roads, schools, playgrounds and such other things, we could as well forget about federalism. A court charged with the guardianship of the Constitution must not allow that to happen. I entirely agree with the Chief Justice that the second declaration should be granted in the terms ordered by him.

In regard to the other reliefs, I make just two observations. First, the grant of the third relief is adequate to indicate the limited extent and nature of approvals, permits and licences which the 1st

defendant could grant. Secondly, whatever approvals, permits and licences may be granted by the Federal Government as specified in the third relief, must be subject to and exercised within the powers conferred by the relevant statute of the Lagos State to regulate planning and physical development within that State. Other than these
 B two comments, I have nothing to add to the reasons given by the Chief Justice for the decision he arrived at. I adopt those reasons and the orders he made. In sum, I too would refuse all the reliefs sought by the plaintiff except the second and third reliefs which are granted
 C in terms specified in the order made by the Chief Justice. I too order that each party should bear his costs.

TOBI JSC (Dissenting)

D I have read in draft the judgment of my learned brother, Uwais, CJN., and I entirely agree with him. The plaintiff, the Attorney-General of Lagos State in his 2nd Amended Statement of Claim, asked for five declaratory reliefs, one order of nullification of approvals, permits or licences illegally granted by the 1st defendant and perpetual injunction against the 1st defendant. All the Attorneys-General of the States were joined as defendants in the suit. A large number of them took sides with the plaintiff. A few took sides with the 1st defendant. Their different briefs of argument reflected the trend. It is
 E not my intention in this judgment to go into the arguments of the learned Attorneys-General of the States, learned as they are.
 F

The plaintiff formulated five issues for determination as follows:

G *"1. Whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development are legislative matters.*

*2. If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning) as well as the Regulation of Physical Development in relation to any land in Lagos State are
 H within the legislative and executive jurisdiction of the Federal Government.*

3. Whether the Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution and therefore unlawful, null and void.

4. *Whether the ownership rights of the federal government over land in state territories include the power to control and regulate town planning and physical development in relation to such land.*

5. *Whether all approvals, permits and licenses granted by the 1st Defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the Plaintiff are not illegal, null and void.”*

The 1st defendant, the Attorney-General of the Federation, formulated the following three issues for determination:

“1. *Whether Urban and Regional Planning is a residual matter under the Constitution of the Federal Republic of Nigeria 1999 and therefore the legislative preserve of the States of the Federation.*

2. *Whether the Urban and Regional Planning Act (formerly Decree No. 88 of 1992) is inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 and therefore void.*

3. *If the answer to issue 2 above is in the affirmative, whether the Plaintiff has made out a sufficient case for this court to make a blanket order nullifying all approvals, permits and licences granted by the 1st Defendant or any of its agencies for any construction, building or physical development or use of land owned by the Federal Government but located in Lagos State.”*

Learned Senior Advocate, Professor Osinbajo, the A-G of Lagos State, submitted on Issue No. 1 that Urban and Regional Planning as well as the Regulation of Physical Development have always been and are still legislative matters in Nigeria. He traced the history from 1917 in some admirable detail to support his contention that urban and regional planning is a legislative matter. It does not appear that the 1st defendant joined issues with plaintiff on this.

I do not think I should deal with this straightforward issue at any length. It is clear from the Township Ordinance of 1917 to the Urban and Regional Planning Decree No. 88 of 1992 (now Act), the cynosure of this action, that urban and regional planning has been and is still a legislative matter. It cannot be otherwise.

On Issue No.2, learned Senior Advocate submitted that the 1st defendant is not competent to make law or in any way regulate town planning and physical development within a state territory. He cited Section 4(2) and (3) of the 1999 Constitution and the following cases:

Attorney-General Ogun State v. Aberuagba (2002) Vol 2 WRN 52 at 77; L.T.C. v. Soule and Chief Aromire (1939) 15 NLR 72; Aregbe v. Adeoye (1924) 5 NLR 53; Emelogu v. The State (1988) 19 NSCC (Pt.1) 869 at 882; Federal Minister of Internal Affairs v. Shugaba (1982) 3 NCLR 915 and Senator Adesanya v. President of the Federal Republic of Nigeria (1981) NCLR 358 at 374. He submitted that the power to make laws for the regulation of urban and regional planning, town planning and physical development is a residual matter and that as it has no specific mention in the exclusive and concurrent legislative lists in the 1999 Constitution, that subject is necessarily within the exclusive jurisdiction of the State Houses of Assembly.

Learned counsel for the 1st defendant, Mr. Erokoro submitted that urban and regional planning, far from being a residual matter, is in fact, covered by several items on the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, 1999. He referred to Sections 4(2), 4(2)(b), 4(3), 4(4)(b), 17(3)(c), 20, and items 2, 3, 11, 36, 37, 38, 39, 40, 41, 48, 55 and 66 of the Exclusive List. He also referred to the Minerals Act, (Cap. 226), the Nigerian National Petroleum Corporation Act (Cap.320), the Nigerian Atomic Energy Commission Act (Cap. 295) Laws of the Federation of Nigeria, 1990. He also cited Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt.I) 1.

The only way to resolve this issue is to go to the 1999 Constitution and the relevant case law. The general legislative powers of the National Assembly are contained in Section 4 of the Constitution. By the Section 4(1), the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly which consist of the Senate and the House of Representatives. By Section 4(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 regard to any matter included in the inclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution. By Section 4(3), the power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the inclusive Legislative List, shall, save as otherwise provided in the Constitution, be to the exclusion of the Houses of Assembly of States. The Constitution does not provide for the sharing of legislative powers between the National Assembly and the

Houses of Assembly of States in respect of matters in the Exclusive Legislative List. That is one clear essence of federalism.

Section 20 of the Constitution provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. Items 60 and 67 of the Exclusive Legislative List of the Second Schedule to the Constitution provides as follows:

“60. The establishment and regulation of authorities for the Federation or any part thereof:

(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

67. Any other matter with respect to which the National Assembly has power to make law in accordance with the provisions of this Constitution.

In Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222, this court examined the provisions of Section 15(5) of the 1999 Constitution and items 60, 67 and 68 of the Exclusive Legislative List of the Second Schedule to the Constitution. Construing the provisions of Section 15(5) of the Constitution and items 60, 67 and 68 of the Exclusive Legislative List of the Second Schedule to the Constitution, this court gave teeth to Chapter 2 of the Constitution on Fundamental Objectives and Directive Principles of State Policy, a chapter which is ordinarily or normally non-justiciable.

In his concurring judgment, Uwaifo, JSC., said at page 382:

“As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of the our Constitution, Section (6)(c)(sic) say so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them, the nature of the consequences of which having to depend on the aspect of the infringement and in some cases the political will of those in power to redress the situation. But the Directive Principles (or some of them) can be made justiciable by legislation.”

In coming to the conclusion that the Corrupt Practices and Other Related Offences Act, 2000 is constitutional, the court correctly relied on Section 15(5) of the Constitution and items 60, 67

and 68 of the Exclusive Legislative List of the Second Schedule to the Constitution. Delivering the leading judgment of the court, Uwais, CJN., said at page 305 and I quote him in extenso;

“*Since the subject of promoting and enforcing the observance comes under the Exclusive Legislative List it seems to me that the provisions of item 68 of the Exclusive Legislative List come into play. Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the Fundamental Objectives and Directive Principles of State Policy. Hence the enactment of the Act which contains provisions in respect of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provisions of Section 15 subsection (5) of the Constitution. To hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever.*”

In the concurring judgment, Ogwuegbu, JSC., said at pages 334 and 335:

“*Since item 60(a) confers on the National Assembly exclusive power to establish and regulate the authorities for the Federation or any part of Nigeria to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in Chapter II, the ICPC Act was enacted pursuant to that exclusive power and items 67 and 68 on the Exclusive Legislative List empowers the National Assembly to establish a Commission, create offences which make provisions for sanctions against offenders.*”

The difference between the case of Attorney-General of Ondo State v. Attorney-General of the Federation and the present matter is that while this court was involved in the interpretation of Section 15(5) of the Constitution, the present matter involves the interpretation of Section 20 of the Constitution. In all other instances, both cases, apart from the facts, involve generally similar constitutional provisions. It must be mentioned that both Sections 15(5) and 20 are Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution.

The next issue I should examine is whether Section 20 has nexus or relationship with urban and regional planning. Let me reproduce the provisions of the section:

“*The State shall protect and improve the environment and*

safeguard the water, air and land, forest and wild life of Nigeria.”

Black’s Law Dictionary defines environment as “the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property and which also affects the quality of peoples lives. The surroundings, conditions, influences or forces which influence or modify”. See Black’s Law Dictionary Sixth edition, page 534. Longman Dictionary of English Language and Culture defines “safeguard” as a means of protection against possible dangers. It also means “protect” simplistically. If one synonym of the word “safeguard” is protect, then Section 20 could alternatively be read as follows:

“The State shall protect and improve the environment and protect the water, air and land, forest and wild life of Nigeria.”

Since the sentence will not be elegant with a repetition of the word “protect”, the word “safeguard”, being a synonym in used. That apart, the dictionary definition of “environment” in its total context reflects the provisions of the Urban and Regional Planning Decree No. 88 of 1992. The effect or result of town planning qualifies as physical and economic development within the meaning of environment as it enhances the value of land, being property. In my humble view, the Urban and Regional Planning Decree No. 88 of 1992 is designed to improve the environment by protecting the land, thus coming within the purview of Section 20 of the Constitution. It is not my understanding of the Decree that any planning scheme carried out within the Decree will destroy or abuse the environment; on the contrary, such a scheme will protect and carry out improvements on the environment.

What is the meaning of “State” in Section 20 of the Constitution. In Attorney-General of Ondo State v. Attorney-General of the Federation (supra), this court defined State in Section 15(5) of the Constitution to include a State Government. It is my view that it conveys the same meaning in Section 20.

In the light of the above, it is my view that town planning and physical development is not a residual matter but a matter on the concurrent legislative list which both the National Assembly and the State Houses of Assembly have legislative powers within the meaning of Section 4 of the Constitution.

The duty of a Judge in the interpretation of a statute, including

the Constitution is to give the literary meaning of the words as used by the lawmaker. Where the words are clear and unambiguous, the Judge has to give the ordinary meaning without more. The Judge has no right to give a convenient interpretation to the words. We may have our own aversions and prejudices on the unitary context
 B of some provisions of our Federal Constitution but there is nothing we can do as Judges. We cannot through the exercise of our interpretative jurisdiction, change an apparently unitary provision or one with a unitary disguise to a federal one merely because we feel that
 C there should be no trace of unitarism in our Constitution.

In *Attorney-General of Ondo State v. Attorney-General of the Federation* (supra), Uwais, CJN., properly got the point when he said at page 308:

*"It has been pointed out that the provisions of the Act impinge
 D on the cardinal principle of federalism, namely, the requirement of equality and autonomy of the State government and non-interference with the functions of State governments. This is true, but as seen above, both the Federal and State Governments share power to legislate in order to abolish corruption and abuse of office. If this is
 E 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 be rightly argued that an illegality
 F has occurred by the failure of the Constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation."*

The Nigerian Constitution is called a Federal Constitution. But where there are unitary provisions contained therein, it is not the role
 G of the Judge to expunge or jettison the provisions. That will be a clear interference with the role of the National Assembly under Section 9 of the Constitution. It is elementary law that a judge has no jurisdiction to amend the Constitution by his pronouncements however learned they may be. The function clearly belongs to the National
 H Assembly.

For the purposes of interpreting or construing the provisions of our Federal Constitution, neither other Federal Constitutions nor theories and principles of federalism, will be a substitute to the provisions of our Constitution. Such Federal Constitutions and theories

and principles can only be aids, and in some cases, useful aids in the interpretation of our Constitution. Accordingly, where there is any conflict between arrangements in other Federal Constitutions or theories and principles of federalism, with our Constitution, the provisions of our Constitution will prevail.

The next issue is whether the Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of Section 4 of the 1999 Constitution and therefore unlawful, null and void. Professor Osinbajo submitted that the provisions of the Act are inconsistent with the Constitution and therefore null and void. While agreeing that the Act qualifies as an existing law within the meaning of Section 315 of the Constitution, he contended that the Act is not amenable to modifications as envisaged by Section 315(2) of the Constitution, as most of its provisions are widely couched and expressed to have effect on all governments in Nigeria; Federal, State and Local. To learned Senior Advocate, except the Act is totally repealed or nullified, it is not feasible or practicable for the appropriate authority to rewrite its contents so as to bring it into conformity with the Constitution. He called in aid Sections 1(3) and 315(3) of the Constitution. Learned Senior Advocate submitted in the alternative that assuming a supervisory role for the Federal Government in the establishment, maintenance and operation of a national plan is necessary, the following sections of the Act, would still be ultra vires the Federal Legislature: Sections 1(2) and (3), 2(i), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30-46, 47-63, 75, 76(3) and 86-88.

Learned counsel for the 1st defendant did not see the Act in that light. He reasoned that there is nothing in the Act which has been shown to be in conflict with the Constitution. He argued that the Act will, in any case, remain valid and applicable in the Federal Capital Territory by virtue of Sections 297 to 298 of the 1999 Constitution. Relying on Section 2 of the Act, Section 315(1) of the Constitution and the case of Attorney-General of the Federation v. Attorney-General of Abia State (2002) 4 S.C. (Pt.I) 1; (No.2) (2002) 6 NWLR (Pt. 764) 542, learned counsel urged the court to declare the Act valid.

The Constitution is the barometer on which the constitutionality or otherwise of a statute is measured. Where a statute is inconsistent or in conflict with any provision of the Constitution, the provi-

sion of the statute will be null and void. This is essentially the language of Section 1(3) of the Constitution.

Before a court of law can declare a whole statute as inconsistent with the Constitution and therefore a nullity, the court must examine the totality of the statute very carefully. This is important because a court of law has no jurisdiction to declare a whole statute a nullity if some provisions are not inconsistent with the Constitution. In this respect, I make bold to say that even if one section of a statute is consistent with the Constitution, a court of law cannot hold that the whole statute is unconstitutional. By and large, the duty of the court is to carefully examine the provisions of the Act and remove the chaff from the grain and arrive at a proper decision in the light of the provisions of the Act. And in this exercise, the court must closely examine the language or wordings of the Act in the light of the constitutional provisions.

The Nigerian Urban and Regional Planning Act, 1992 is a fairly long Act with 88 sections. The explanatory Note reads:

“The Decree provides, among other things, for a new Urban and Regional Planning enactment for Nigeria with the establishment of Federal, State and Local Govt Authorities to oversee the implementation of a more realistic and purposeful planning of the country.”

Although an Explanatory Note does not have the force of law and can be vaguely described as the “politics” of the statute, it maps out, though not in a legalistic law, the ambit of the statute. It tells the reader at a glance the purport of the statute. It is necessary to say in this respect, that the Act establishes Federal, State and Local Government Authorities. And that quickly instigates a question: what has a Federal Act to do with States and Local Government in a federal set up or in a federalism?

Whether an Act is an encroachment of the functions of a State Legislature will depend largely on the wordings of the Act. Where an Act is couched in general language without encroaching on the powers of a State Legislature to make laws, such an Act cannot be declared as unconstitutional. Accordingly, the mere mention of the words “State” or “Local Government” in an Act does not lend support to the contention that an Act has moved outside its legislative authority to encroach on the legislative authority of a State or Local Govern-

ment, as the case may be.

The point I have been struggling to make is exemplified in Section 2 of the Act which provides as follows:

- “*The Federal Government shall have responsibility for*
- (a) the formulation of national policies for urban and regional planning and development;* B
 - (b) the preparation and implementation of the National physical plan and regional plans on the recommendations of the Minister;*
 - (c) the formulation of urban and regional planning standards for Nigeria on the recommendation of the Minister;* C
 - (d) the promotion and fostering of the education and training of town planners and support staff;*
 - (e) the promotion of co-operation and co-ordination among States and Local Governments in the preparation and implementation of urban and regional plans;* D
 - (f) the promotion and conduct of research in urban and regional planning;*
 - (g) the making of recommendations and dissemination of research results for adoption by user organisations;*
 - (h) the supervision and monitoring of the execution of projects in urban and regional planning;* E
 - (i) the provisions of technical and financial assistance to States in the preparation and implementation of plans.”*

In my humble view, there is no provision in Section 2 that is against the concept of federalism whatever dimension or length we stretch it. The provision of Section 2 is mere tall and loud declarations similar to the prototype of Chapter II of the Constitution and they do no harm to the federal concept in our Constitution. Let me single out one of the responsibilities of the Federal Government provided for in Section 2 and it is Section 2(i), which is repeated for emphasis: F

- i. “*The Federal Government shall have responsibility for the provision of technical and financial assistance to States in the preparation and implementation of plans.*” H

My question is this: will any State really refuse what flows from Section 2(1)? To be precise, will any State really refuse technical and financial assistance to States in the preparation and implementation of plans? I think not. And Section 2 is one of the sections that the

plaintiff submits that the axe of this court must destroy. No, I will not do that because Section 2 will benefit not only Lagos State, but all other States. It is most unlikely that States, including Lagos, will reject any “gift” arising from Section 2. After all, States cry to the rooftop everyday for federal aid. Why not the Section 2 gift?

B It is not my understanding of the law of federalism that there is a clear and clean border or bifurcation between the Federal and State Governments in the field of mutual co-operation and assistance flowing from the Federal Government to the State Governments. It is not
C also my understanding of the law of federalism that the Federal Government should leave for the State Government matters which are of concurrent nature. That will be rendering nonsense the well-established principle of covering the field in international jurisprudence which we apply everyday in the courts. I say this because if there was
D such a sacred border between the Federal Legislature and the State Legislature, then one cannot talk about covering the field because at the end of the day there should be no field for the Federal Government to cover. We should remind ourselves that the Federal Government and the State governments are in one big “umbrella” of Nigerian State where both can shop for legislation in the Concurrent Legislative List. After all, Nigeria is a not a confederation. Let us not blow the Federal concept in our Constitution outside the parameters of the 1999 Constitution. The federal nature and content of our federalism is to be found in no other document other than the 1999 Constitution.
F

After a very careful examination of the sections presented by learned Senior Advocate and Attorney-General of Lagos State, I declare the following sections as unconstitutional. They are Sections 5(b)
G and (c), 8, 9, 12 (as it includes Board or Authority), 28 (as it applied to a State), 75 (as it includes Board and Authority), 86, 87 and 88 (as they apply to States).

Learned Senior Advocate and Attorney-General of Lagos State in Issue No. 4, citing Professor Nwabueze’s book on Federalism in
H Nigeria Under the Presidential Constitution (1983), page 170, Sections 5, 49(1) and 51(2) of the Land Use Act, submitted that the powers exercisable by the President by virtue of Sections 49(1) and 51(2) of the Act do not relate to town and country planning and do not include the power to grant permits and licenses or to regulate

physical development in any area or locality within the territory of a State. Learned Senior Advocate urged the court to hold that the ownership rights of the Federal Government over land in state territory do not include or entail the power to control and regulate town planning and physical development in relation to such land.

Section 49(1) of the Land Use Act, which learned Senior Advocate cited, provides in the following terms:

“Nothing in this Act shall affect any title to land whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act and accordingly, such land shall continue to vest in the Federal Government or the agency concerned.”

Title to land is the highest form of land ownership in our land tenure system. Ownership is a complete and total right over a property. The owner of the property is not subject to the right of another person, as long as he remains the allodial owner. Because he is the owner, he has the full and final rights to put the property or make use of it in anyway, including planning of the land, if the need arises. The owner of a property can use it for any purpose, material or immaterial, substantial or non-substantial, valuable or invaluable, beneficial or even for a purpose which is detrimental to his personal or proprietary interest. In so far as the property inheres in him, nobody can say anything. This is because the property begins with him and ends with him.

Professor Nwabueze in his book entitled, *Nigerian Land Law* (1972) at page 9, defined ownership as follows:

“Ownership is the most comprehensive and complete relation that can exist in respect of anything. It implies the fullest amplitudes of rights of enjoyment, management and disposal over property. To put it the other way round, it implies that the owner’s title to these rights is superior and paramount over any other rights that may exist in the land in favour of other persons.”

Professor Nwabueze’s definition includes two key words: enjoyment and management. The learned professor shares with Black’s Law Dictionary the word “enjoyment”. Black’s definition is as follows:

“A collection of rights to use and enjoy property, including the right to transmit it to others. The complete dominion, title or propri-

etary right in a thing or claim The exclusive right of possession, enjoyment and disposal; involving as an essential attribute the right to control, handle and dispose.”

Institutional development is defined under Section 91 of the 1992 Act as follows:

- B “(a) social welfare and community development, i.e., education, health care, religion and charity, etc.,
 (b) offices for party political organisations, trade unions, employees, association and other organisations whose principal purpose
 C is participating in public affairs,
 (c) sports and social clubs but not clubs offering overnight accommodation for a charge for more than twenty persons,
 (d) museums and art galleries,
 (e) swimming pools available for use by members of the public
 D with or without payment of a charge, and
 (f) any development or use of land for any purpose incidental to any of the above purposes.”

It is my humble view that the above definition covers enjoyment of land by the owner. How else will one interpret Section 91(c),
 E (d) and (e), which provide social services to the immediate community. Such is tantamount to enjoyment used both by Professor Nwabueze and Black’s Law Dictionary in their separate definitions of ownership.

F That is not the end of the matter. While Professor Nwabueze’s definition includes management, Black’s Law Dictionary’s definition includes control. Town planning, as a social and economic service, covers both expressions in its practical execution. A person involved in planning a town or community is involved in the management
 G and control of property. And that qualifies as a development which is defined in Section 91 of the Act as “*the carrying out of any building, engineering, mining or other operations, in, on, over or under any land, or the making of any environmentally significant change in the use of any land*” The position becomes clearer when it is tied up
 H with the definition of plan in Section 91 as “*land use proposal expressed in words and graphics.*”

Assuming that I am wrong, there is the alternative argument and it rests on the constitutional provision of Section 20 as interpreted above jointly with items 60 and 67 of the Exclusive Legislative

List of the Second Schedule to the Constitution. While the word “agency” in Section 49(1) of the Land Use Act is vindicated by the expression “authorities for the Federation” in the first leg of item 60, the provision of Section 20 is vindicated by item 60(a) of the Exclusive Legislative List of the Second Schedule to the Constitution. In other words, by Section 49(1), the Federal Government or any of its agencies has title to land, whether developed or undeveloped and such land in the language of the subsection shall continue to vest in the Federal Government or the agency concerned. And the Federal Government or its agency, as owner of the land, is entitled to use it in anyway. B
C

On Issue No. 5, learned Senior Advocate and Attorney-General submitted that if Issues 1 to 4 are decided in favour of the plaintiff, it will necessarily follow that all building approvals, permits and licenses granted by the Federal Government or any of its agencies for any construction or physical development in Lagos State without the approval of relevant State authorities or in contravention of relevant State legislation and planning regulations are unconstitutional, illegal, null and void. To learned Senior Advocate, it will therefore be right for this court to revoke all such approvals, permits and licences. It is settled beyond conjecture that one cannot put something on nothing and expect it to remain there, learned Senior Advocate argued. D
E

Learned counsel for the 1st defendant submitted that since many of the approvals issued by the 1st defendant and its agencies derive their validity from other statutes, such as the Federal Highways Act (Cap. 135), Nigerian Railway Corporation Act (Cap.333), Minerals Act (Cap.266), Nigerian Coal Corporation Act (Cap.299) and Civil Aviation Act (Cap. 51) to mention some, most of which have nothing to do directly with the 1992 Act, the relief should not be granted. F
G

Learned counsel also submitted that in view of the fact that the declaration sought is wide and general, giving no particulars of specific permits or licenses sought to be annulled or revoked, and the fact that the beneficiaries of such permits and licenses are not joined as parties to this suit, as necessary parties, the relief should not be granted. He cited *Awoniyi v. Reg. Trustees of AMORC* (2002) 6 S.C. (Pt.I) 103, (2002) 10 NWLR (Pt. 676) 552; *Attorney-General of the Federation v. Attorney-General of Abia State* (2002) 4 S.C. (Pt. 1) 1, H

(2002) 6 NWLR (Pt.764) 542; *Green v. Green* (1987) 3 NWLR (Pt.61) 480; *Owodunni v. Reg. Trustees of CCC* (2000) 6 S.C. (Pt. III) 60, (2000) 10 NWLR (Pt.675) 313; *Rossek v. ACB Ltd.* (1993) 5 NWLR (Pt.312) 382 and *Peanok Investment Ltd. v. Hotel Presidential Limited.* (1983) 4 NCLR 122 at 164.

B Let me reproduce the ipisissima verba of the relevant reliefs. They are reliefs 5, 6 and 7:

C “5. A *DECLARATION* that all approvals, permits or licenses granted or issued by the 1st Defendant from 1st of June, 1999 for building or development of land within the territory of Lagos State without the consent of the Plaintiff and in contravention of the town planning laws and regulations of Lagos State are illegal, null and void.

D 6. AN *ORDER* nullifying or revoking all such approvals, permits or licenses illegally granted by the 1st Defendant with effect from 1st June, 1999 for any building or other development of land in Lagos State.

E 7. A *PERPETUAL INJUNCTION* restraining the Defendant, its servants, agents and privies or otherwise howsoever from further granting of approvals, permits, licenses for development of any land, highway set-back and under bridges, bridges’ loop, markets, shops, stalls, mechanic workshops, etc., in Lagos State without the consent of the Plaintiff.”

F I have the feeling that granting the above reliefs will affect parties who are not before the court and that will go against the principle of law that a judgment or order of court cannot be given against a person who is not a party to the action or who is not heard. It is a principle of law that before a person is condemned to relief or reliefs by a plaintiff, he must be heard. The reliefs seek for the declaration, G nullification or revocation of approvals, permits or licenses illegally granted by the 1st defendant for any building or other development of land in Lagos State and perpetual injunction. The reliefs, if granted, will affect third parties who are not before the court and who will be affected adversely by any order or orders of this court without a H hearing. I think learned counsel for the 1st defendant is right in his submission that since the beneficiaries of the permits and licenses are not joined as parties to the suit, the reliefs should not be granted.

In *Awoniye v. The Registered Trustees of the Rosicrucian Order*, AMORC (Nigeria) (2000) 6 S.C. (Pt. I) 103; (2000) 10 NWLR

(Pt.676) 522, Mohammed, JSC., said at page 533:

“It is an elementary procedure in prosecuting civil claims that all parties necessary for the invocation of the judicial process of the court must come before it so as to give the court jurisdiction to grant the reliefs sought.... The failure of the applicants to make the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police as necessary parties has rendered the applicants’ motion incompetent.”

See also Okafor v. Nnaife (1973) 3 S.C. 85; Oloriode v. Oyebe (1984) 1 SCNLR 390.

The above apart, it is trite law that a relief seeking language must be specific, precise or concise. A relief seeking language should not be rigmorale, vague or casual. It should not leave the defendant in a state of speculation or conjecture as to the real relief sought by the plaintiff. I see the reliefs couched in most generous language for the plaintiff. I do not question that aspect of the reliefs. The aspect I question is the vagueness and lack of precision or preciseness of the reliefs.

Let me pause here and take specific Acts examined by both counsel for the plaintiff and the 1st defendant and some others in their briefs. They are the Federal Highways Act (Cap. 135); Nigerian Railway Corporation Act (Cap. 323), Civil Aviation Act (Cap. 51), National Inland Waterways Act (Decree No. 13 of 1997), Minerals Act (Cap. 226), Nigerian National Petroleum Corporation Act (Cap. 320), Nigerian Atomic Energy Commission Act (Cap 295), all Acts promulgated in the Law of the Federation of Nigeria, 1990.

Learned counsel for the 1st defendant submitted that some of the above legislation deal with matters that can properly be termed ‘regional and urban planning’. He specifically examined the Minerals Act, the Nigeria National Petroleum Act and the Nigerian Atomic Energy Commission Act.

Learned Senior Advocate and Attorney-General, in the Reply Brief, dealt specifically with the Nigerian Railway Corporation Act, 1990 and the Civil Aviation Act, 1990 and the Federal Highways Act, 1990. It was the submission of learned Senior Advocate that the 11th defendant illegitimately extended the scope of planning and development which is so placed outside the control of state governments. To learned Senior Advocate, it is wrong to contend that the Acts con-

fer general or unlimited powers of planning control over all land acquired pursuant to the main purpose of those legislation.

I do not think I will go into the submissions on the above Acts as they are not, in my view, directly relevant or material to the live issues in this matter. If I understand the matter before us, and I think
 B I do, this court is concerned with the constitutionality or otherwise of the Urban and Regional Planning Act, 1992. In the circumstances, I do not see the direct relevance of the Acts. The impression is created that the Nigerian Urban and Regional Planning Act, 1992 has an
 C essentially unitary feature as it vests most powers on the Federal Government. With respect, I do not agree with that contention as it is not borne out from the totality of the provisions of the Act. Perhaps, I can give one example to drown that contention and it is Section 27(4) of the Act. It provides:

D “*The Control Department at the State level shall have power over the development control on State lands.*”

I should mention that while Section 27(3) of the Act vests in the Control Department at the federal level, power over the development control on Federal lands and estates, Section 27(4), which I
 E have quoted above, vests power over development control on state lands. In my opinion, Section 27(3) and Section 27(4) clearly vindicate the division of power between the Federal and State governments, respectively. In the light of the above reasons and the more
 F comprehensive reasons given by my learned brother, Uwais, CJN., I make the following orders:

Relief No. 1 - declaration is refused.

Relief No. 2 - declaration is granted only in part. That is in respect of Sections 1(2), 1(3), 3, 4, 5(b), 5(c), 8, 9, 10, 11, 12(2),
 G 28, 30, 47- 63 inclusive, 75, 76(3) and 86 to 88 inclusive.

Relief No. 3 - declaration is granted in respect of the statutes specified but not in respect of statutes not specified.

Relief No. 4 - declaration is refused.

Relief No. 5 - declaration is refused.

H Relief No. 6 - declaration is refused.

Relief No. 7 - perpetual injunction is refused.

There is no order as to costs. Each party shall bear its costs.