

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH JUNE, 2003. SC. 139/1999  
**CORAM:- M. E. OGUNDARE, U. MOHAMMED,**  
**S. U. ONU, U. A. KALGO, A. O. EJIWUNMI, JJSC**

GOLDEN VICTOR NANGIBO ..... APPELLANT  
AND  
1. UCHE OKAFOR  
2. OBI EZE ..... RESPONDENTS  
3. OKEKE OZOEMENE  
4. OKONKWO NZEDINMA  
5. THE ATTORNEY-GENERAL  
OF RIVERS STATE

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JURISDICTION - Ouster clause - Scope - S.6(6)(d) of 1979 Constitution did not prohibit any court from questioning the validity of any law - It only prohibits questioning the competence of the lawmaker (H1)

LAND LAW - Acquisition - Compulsory acquisition - Right of action - Decree No.1 of 1966 gave right of action - And payment of compensation - To person whose interest in land was compulsorily acquired (H2)

COURTS - Jurisdiction - Edict - Status - Determination - Court can pronounce any edict which conflicts with a decree - As void to the extent of its inconsistency (H3)

LAND LAW - Deed of Assignment - Cancellation of - Governor cannot cancel deed of assignment - As it is only parties thereto - That can go to court for such cancellation (H4)

STATUTES - Ouster clauses - Interpretation of - Principle - Statutes purporting to deprive citizens of their acquired rights - Are always interpreted strictly (H5)

LAND LAW - Leases - Property - Disposition of - Having failed to effectively cancel the subsisting lease of respondent - The Government could not have validly disposed the property to appellant (H6)

LAND LAW - Sale - Validity - State Lands Edict 1972 - Since the Edict has been declared unconstitutional - Sale of the property to appellant is invalid (H7)

### **FACTS**

By a deed of lease made and registered at the Land Registry, Enugu, the Eastern Nigeria authorities granted to one Marcus E. Nwaokenta for a term of 99 years. By a subsequent deed of assignment, the said Marcus assigned the residue of his lease to plaintiffs/respondents with the consent of the governor of Eastern Nigeria. Respondents thus exercised acts of ownership over the land between 1970 and 1983. However in 1972, the Rivers State Government promulgated the State Lands (cancellation of leases) Edict No. 15 of 1972 which empowered the Military Governor to cancel the lease of any plot of State land by notice published in the gazette. It was under this Edict that the Government made a notice in the gazette purportedly canceling respondents' leasehold interest in the land.

The Government thereafter made a disposition of the property to 2<sup>nd</sup> defendant/appellant. Hence, respondents instituted this action at the High Court of Rivers State, Port Harcourt. Respondents were seeking for a declaration as illegal, the purported sale of the property to appellant. After hearing, the court gave judgment for appellant and dismissed their claims. Aggrieved, respondents appealed to the Court of Appeal, Port Harcourt which allowed the appeal. The court held that the notice was not competent to divest respondents of their interests. It further held that in view of the inaccurate reference to registration particulars of the interest purportedly cancelled in the notice, the contra proferentes rule should apply to avoid the effect thereof. Dissatisfied, appellant filed appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

1. If the Agreement between the Appellant and the Government of Rivers State was made on 26th November, 1982, as shown on Exhibit G, was the Court of Appeal correct in holding that the validity of the Edict No. 15 of 1972 of the Rivers State Government could be challenged by the Plaintiffs/Respondents?

2. Was the Court of Appeal correct in holding that the agreement to sell the property in dispute by the Government of Rivers

State to the Appellant was concluded on 9th December, 1982, and not on 26th November, 1982, as pleaded, and found by the learned trial Judge?

3. If, and only if, the answers to the above questions are in the affirmative, was the Court of Appeal correct in holding that the Appellant herein did not acquire a good title to the property in question, having regard to the proved facts before the learned trial Judge?

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

*JURISDICTION - Ouster clause - Scope*

**1. It ought to be emphasized here, that what Section 6(6)(d) of the 1979 Constitution was meant to do or achieve was to oust the jurisdiction of the courts in determining any issue or question as to the legislative competence of any authority or person to promulgate any law. The section had not the effect of prohibiting any court from determining any issue or question as to the validity of any such law. Indeed, nowhere in Section 6(6)(d) (*ibid*) was the prohibition extended to the question of determining the validity of any law. The prohibition was only as to the issue or question of the competence of the law-maker to make the law in question.**

**See also the decision of Nnamani, JSC., in Peenok's case (*supra*) in (1982) 8 NSCC 477 at page 521 where His Lordship said:**

***"This Court has held that the courts are merely precluded from inquiring as to the legislative capacity to make Decree or Edict but can inquire into whether an Edict is inconsistent with the provisions of the Constitution of the Federation.***

(p. 1997 B)

*LAND LAW - Acquisition - Compulsory acquisition - Right of action*

**2. It is further submitted that for the sake of emphasis, Section 31 of the 1963 Constitution of Nigeria had clearly made provision against the compulsory acquisition of land in Nigeria.**

**It should also be more specifically pointed out that the Constitution (Suspension and Modification) Decree, 1966, otherwise known as Decree No. 1 of 1966, retained after the Military take over of the government of the Country in January, 1966, all the provisions of the said Section 31 of the 1963 Constitution of Nigeria. Hence, the position, up to the time that the Rivers State Government purported to have cancelled the Respondents' lease, was that no property, moveable or immovable could be taken possession of compulsorily in any part of Nigeria without payment of adequate compensation and under a law that gave the affected person right to the High Court for the determination of his interest in the property and the amount of compensation payable to him. (pp. 1997 F & 1998 A)**

**COURTS - Jurisdiction - Edict - Status - Determination**  
**3. In effect therefore, a court has jurisdiction to pronounce any edict or law of the State Government, which is inconsistent with a law made by the Federal Military Government, as void to the extent of its inconsistency with a law made by Parliament or the Federal Military Government. (p. 1998 G)**

**LAND LAW - Deed of Assignment - Cancellation of - Propriety**  
**4. Furthermore, I agree with Respondents' submission that it is not competent for the Rivers State Government to cancel the Deed of Assignment of which it was not a party - the parties thereto being Marcus E. Nwaokenta and the Respondents (Uche Okafor, Obi Eze, Okeke Ozoemena and Okonkwo Nzedinma).**

**In the case under consideration, all that the Governor could do as far as a Deed of Assignment is concerned, if it is possible, so to do, is to withdraw his consent once he had assented to the assignment of the lease. He could certainly do no more than the withdrawal of his consent, if that is possible, with respect to the Deed of Assignment. Indeed, it is elementary that only the parties to a Deed of Assignment can go to court for a cancellation of the Deed. The grantor's rights under the lease are not derived from a Deed of Assignment of**

**which he is not a party, but from the head lease. Thus, it is not competent for the Governor to cancel the Deed of Assignment as was attempted in the instant case. Only the Courts have competence in law to do so and this, after hearing the parties to the Deed of Assignment.** (p. 2003 D/ G)

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*STATUTES - Ouster clauses - Interpretation of - Principle*

**5. A recognised and acceptable canon of interpretation of statutes is that statutes, which purport to deprive citizens of their proprietary interest as well as acquired rights, are always interpreted strictly.**

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**The court below, per Uwaifo, JCA., agreed as much that the principle of fortissime contra proferentes should have been applied by the learned trial Judge in this case. This accounts for the reason why I firmly endorse and confirm the decision of that court wherein Uwaifo, JCA., (as he then was), concluded his judgment on the point by saying:**

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**“What I see is that certain citizens (the Appellants) are alleged to have been deprived of their property by the Government which issued a Notice in a Gazette that the property was required for a public purpose. No public purpose of any kind was thereafter known for that deprivation. Rather another private citizen is in possession of the property claiming to be the owner. What was alleged to have been cancelled by the said Notice was a lease but the registration number indicated is that of an assignment. The name of the owner (given as the lessee) is one other than the Appellants supposed to be beneficiaries of the assignment. The said citizens are not only deprived of their proprietary rights but also have obstacles created in their way of getting compensation since the compensation will be paid to the lessee within six weeks upon an ambiguous notice tucked away in an Extra-Ordinary Gazette - nothing at all to indicate that the Appellants were sent any relevant notice, or any posted on the premises in question. I cannot in good conscience accept that the proper procedure capable of leading to the expropriation was followed. Therefore, I must hold that Exhibit A. did not and could not achieve its aim.”** (p. 2005 A/ H)

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*Leases - Property - Disposition of - Validity*

**6. But one may ask, what should have been cancelled, if the intention was to cancel the lease in respect of the disputed property. What ought to have been cancelled, in my view, was the head lease which was registered as 22/22/233, and not the Deed of Assignment registered as 44/44/366 which did not contain the terms and conditions of the lease but was merely an agreement to assign the residue of the terms of years to the Respondents.**

**I agree with the Respondents' submission that if there had been an effective cancellation of the lease, the question as to whether the sale of the disputed property to the Appellant is valid would not arise, as the maxim is "nemo dat quod non habet." Certainly, as the ownership had remained with the Respondents, the Rivers State Government could not have made a valid disposition of the property to the Appellant; this the moreso, notwithstanding the point being canvassed that the sale transaction was concluded on 26th November, 1982, before the judgment in Peenok's Case on 3rd December, 1982.**  
(p. 2007 A/ H)

*LANDLAW - Sale - Validity*

**7. In respect of the issue of the sale of State Land, this was considered in the identical case of Gregory Ude v. Clement Nwara & Anor. (1993) 2 NWLR (Pt. 278) 638 where Nnaemeka-Agu, JSC., said at page 664 of the Report:**

**"State lands in Nigeria invariably originate from compulsory acquisition of such lands from individuals or communities for use for the public purpose for which the land was acquired and in accordance with the public policy of the State as enshrined in the laws of the State. Now it has been conceded that there is no law which authorises the reconversion of such lands into private lands nor any to support the selling of such lands as fee simple absolute in possession. I am of the clear view that the 2<sup>nd</sup> Respondent required express authorisation from a statute before they could have sold any State land as fee simple absolute in possession.**

***The State Lands (Cancellation of Lease) Edict, 1972, did not give the State Government any such power. The sale of the disputed property could not even be said to be an action rightly taken under the Edict before the decision in Peenok's. Case (supra), as was said in Abaye's case (supra), so that the sale could then be said to have remained valid after the Edict had been declared to be unconstitutional, as was erroneously argued by the Appellant. The said outright sale of the disputed property to the Appellant should also be declared to be null and void as well as invalid and I so hold.*** (p. 2008 B)

## NOTABLE POINT OF INTEREST

### **OGUNDARE JSC**

#### ***1. Question of when the sale was made does not arise***

Having held that Edict No. 15 of 1972 of Rivers State was inconsistent with the unsuspended provisions of the 1963 Constitution the question when the agreement between the Rivers State Government and the 2nd Defendant was made petered into insignificance. The Legal Notice No. 452 made by the Rivers State Military Governor under the Edict would be void and of no effect since the enabling law itself was void. Consequently, the plaintiffs still retain their interest in the property in dispute. (p. 2014 A)

### **REPRESENTATION**

I.A. Adedipe, for the Appellant/Cross-Respondent

Chief C. Uche, with G.C. Obey & C.A. Chuks-Nnadi, for the Plaintiff/ Respondents/ Cross-Appellants

No appearance for 2nd set of Respondents in Cross-Appeal

### **CASES REFERRED TO**

Ikpeazu v. ACB Ltd. (1965) NMLR 374

Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134

Ibadan v. Adamolekun (1967) 1 All NLR 213

Abioye v. Yakubu (1991) 5 NWLR (Pt. 190) 130

Negbenebor v. Negbenebor (1971) 1 All NLR 210

Savannah Bank Plc, v. Ibrahim (2000) 6 NWLR (Pt. 662) 601

University of Ibadan v. Adamolekun (1967) 1 All NLR 213

- Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638  
Din v. A.G. of the Federation (1988) 4 NWLR (Pt. 87) 147  
Erastus Obioha v. Iyibo Kio Dafe (1994) 2 NWLR (Pt. 325) 157  
Uwaifo v. A-G Bendel State (1982) 7 S.C. 124  
Bello v. Diocesan Synod of Lagos (1973) 1 All NLR (Pt. 1) 247  
B A.G. Bendel State v. Aideyan (1989) 9 S.C. 127

### **STATUTES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1979, s. 6(6)(d)  
C Abandoned property (Management and Custody) Edict 1969  
State Lands (Cancellation of Leases) Edict No. 15 1972, s. 3  
Constitution of the Federal Republic of Nigeria, 1963

### **BOOK REFERRED TO**

- D Maxwell on Interpretation of Statutes 12<sup>th</sup> Edition, p. 258

### **LEAD JUDGMENT BY ONU JSC**

- This appeal, brought at the instance of the Defendant/Appellant herein is sequel to the decision of the Court of Appeal sitting in  
E Port Harcourt, coram: A.I. Katsina-Alu and S.O. Uwaifo, JJCA., (as they then were), and S.A. Nsofor, JCA., dated the 9th day of April, 1998, wherein they allowed the appeal against the judgment of S.E. Charles-Granville, J., who on 24th January, 1995, had dismissed the  
F Plaintiffs/Respondents' case in Suit No. PHC/125/84.

A review of the facts and background of the case is first necessary for a clearer appraisal of the case as follows:

2. The Plaintiffs, now Respondents, sued the Defendant, now Appellant, claiming the following reliefs before the Port Harcourt High  
G Court:

- “(a) A declaration that the purported sale of Plaintiff's building situate at Plot 99 Borokiri Layout, Port Harcourt, Rivers State, and registered as No. 44 at page 44 in Volume 366 at the Land Registry, Enugu, now kept at Port Harcourt, (Rivers State) by the Rivers State  
H Government (1st Defendant) to the 2nd Defendant is unconstitutional, null and void.

(b) A declaration that the Plaintiffs are entitled to the grant of Statutory Right of Occupancy of the said premises.

(c) A perpetual injunction restraining the Defendants by them-



*selves, their servants and or agents from dealing in the said property.*

*(d) An order of court setting aside the agreement dated the 26th day of November, 1982, between the Secretary to the Government (on behalf of the Government of Rivers State) as Vendor, and the 2nd Defendant as Purchaser registered as No. 86 at page 86 in Volume 95 of the Land Registry in the Office at Port Harcourt.* B

**OR IN THE ALTERNATIVE**

*(e) Against the Defendants jointly and severally the sum of Two Hundred and Fifty Thousand Naira (N250,000.00) being the market value of the property situate at Plot 99 in Borokiri Layout, Port Harcourt, popularly called No. 4 Rex Lawson Street, Port Harcourt, and registered as No. 44 at page 44 in Volume 366 at the Land Registry, Enugu, now kept at Port Harcourt, Rivers State.”* C

The alternative claim (e) was withdrawn in the course of the proceedings. D

3. It was common ground that by a deed of lease made on the 25th of March, 1960, and registered as No. 22 at page 22 in Volume 233 at the Land Registry at Enugu, now kept at Port Harcourt, the piece and parcel of land the subject matter of this case, was granted by the Minister of Town Planning, Eastern Nigeria to one Marcus Ezeuba Nwaokenta for a term of 99 years. The said Marcus Ezeuba Nwaokenta later by a Deed of Assignment dated the 9th day of August, 1963, and registered as No. 44 at page 44 in Volume 366 at the Land Registry at Enugu now kept at Port Harcourt assigned the residue of his lease to the Plaintiffs/ Respondents with the consent of the Governor of Eastern Nigeria vide Exhibit B. It was also common ground that the said piece and parcel of land, which was originally known as No. 4, J.N. Kanu Street, then renamed 4 Rex Lawson Street, had been developed before the outbreak of the civil war. It was the Respondents' case, for which they called only one witness, that at the end of the civil war they continued to deal with the property as owners and let same to tenants. They further demonstrated that in May, 1983, Messrs. Knight, Frank and Rutley who were estate agents for the Rivers State Government sent to them a demand notice for payment of property rates in respect of the property for the period between 1970 and 1983 which were admitted in evidence as Exhibits C and C1. According to the Respondents, when they went to pay the said property rates they learned for the first time that the E F G H

Appellant was claiming to have bought the property.

It was the Appellant's case that the said property became an abandoned property during the period of the civil war within the meaning of the Abandoned Property (Management and Custody) Edict, 1969, and that the Respondents had been divested of what-  
B ever interest they might have had in the property. The Appellant further maintained that the Rivers State Government on November 26, 1982, had sold the property to him.

The Appellant thereupon tendered a letter of offer admitted in  
C evidence as Exhibit E, and another letter, Exhibit F, in which he was asked property with the buildings thereon. The Deed of Sale was admitted in evidence as Exhibit G.

The 1st Defendant/Respondent's case on the other hand was that the Rivers State Government had by an instrument dated Octo-  
D ber 29, 1972, and published in the Extra-Ordinary Gazette No. 56 Vol. 4 Notice No. 452, cancelled the lease in respect of the property and had sold same to the Appellant.

The parties addressed the trial Court on the 24th of January, 1995.

E In a considered judgment wherein the learned trial Judge made his primary findings of fact mostly in favour of the Respondents, he held inter alia, that Abandoned Property (Management and Custody) Edict, 1969, did not divest the Respondents of their interest in  
F the property. He also proceeded to hold that the Rivers State Government had by virtue of the Extra-Ordinary Gazette No. 56 Vol. 4 cancelled the lease of the property. He dismissed the Respondents' case, relying on the case of Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134 and Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982)  
G 12 S.C. 1; (1982) 13 NSCC 477.

Dissatisfied with the said judgment, the Respondents appealed to the Court of Appeal, Port Harcourt Division, (hereinafter in this judgment referred to as the court below).

H On the 9th of April, 1998, the court below in a unanimous judgment per S.O. Uwaifo, JCA and concurred in by Katsina-Alu and Nsofor, JJCA., upheld the appeal and entered judgment for the Respondents. The learned Justices in addition were of the firm view that the extra-ordinary gazette could have cancelled not the lease of the property to the Respondents and had not the effect of divesting them

(Respondents) of their interest in the property. The court below further held that contrary to the finding of the learned trial Judge, there was no concluded transaction between the Appellant herein and the Government of Rivers State until 9th December, 1982, when the sales agreement was registered. The court also further held that the sale of the property in dispute to the Appellant by the Government of Rivers State on the basis of Edict No. 15 of 1972 was quite open to contest. It was the court's opinion also that the High Court should have applied the fortissime contra proferentes rule of interpretation to find for the Respondents. Relying on the decision of the court in the Peenok Investment case (*supra*) the court below finally held, while allowing the appeal of the Respondents, that the sale to the Appellant of the property, founded on the whole, on the basis of Edict No. 15 of 1972, was wrong and illegal.

This appeal, as earlier pointed out, is against the said judgment. Arising from the grounds of appeal as well as the additional grounds, the Appellant has submitted the following issues as arising for determination, to wit:

1. If the Agreement between the Appellant and the Government of Rivers State was made on 26th November, 1982, as shown on Exhibit G, was the Court of Appeal correct in holding that the validity of the Edict No. 15 of 1972 of the Rivers State Government could be challenged by the Plaintiffs/Respondents?

2. Was the Court of Appeal correct in holding that the agreement to sell the property in dispute by the Government of Rivers State to the Appellant was concluded on 9th December, 1982, and not on 26th November, 1982, as pleaded, and found by the learned trial Judge?

3. If, and only if, the answers to the above questions are in the affirmative, was the Court of Appeal correct in holding that the Appellant herein did not acquire a good title to the property in question, having regard to the proved facts before the learned trial Judge?

The Respondents, for their part, similarly formulated three issues for determination having regard to the Original and the Additional Grounds of Appeal as well as the Cross-Appeal, to wit:

*“(i) Whether the court of first instance was right in entertaining the case having regard to the provisions of Section 6(6)(d) of the 1979 Constitution of Nigeria?”*

(ii) *Whether the learned Justices of the Court of Appeal were right in holding that there had not been an effective cancellation of the Respondents' lease by the Rivers State Government and that the Rivers State Edict did not achieve its intended objective?*

B (iii) *Whether the learned Justices of the Court of Appeal were right when they held that the case of Abaye v. Ofili only, limited the effect of the case of Peenok Investment Nig. Ltd. v. Hotel Presidential Ltd., and whether they were equally right when they failed to apply fully the decision in Peenok's case in their judgment?*

C The parties filed and exchanged Briefs of Argument with the Appellant's being dated and filed on 16th October, 2000, while the Respondents' was dated the 11th day of July, 2001, and filed on 13th July, 2001.

D At the hearing of the appeal on 1st April, 2003, the learned leading counsel for the Respondents and Cross-Appellants in the main appeal, Chief Uche, after submitting that since their cross appeal raised the case of Abaye v. Ofili (supra) which is more of an academic exercise and did not arise strictly for consideration in this appeal, he was therefore applying to withdraw the cross-appeal. The learned counsel  
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F for the Appellant having raised no objection to the application, the cross-appeal was accordingly struck out with an order for costs made to be in the cause.

In my consideration of this appeal, it is my intention to take the Appellant's three issues and consider them in their order of sequence  
F as follows:

#### ISSUE NO.1

G For the argument of this issue which covers grounds 2 and 3 of the original grounds of Appeal as well as ground 1 of the additional  
G grounds, learned counsel for the Appellant submitted through oral expatiation and argument of the issue proper as contained in his Brief, that two important areas call for consideration, viz, (i) whether, as at 26th November, 1982, when the agreement to sell the property in dispute between the Rivers State Government and the Appellant  
H and the 1st set of Respondents, the sale could validly be challenged under the States Lands Cancellation of Leases Edict No. 15 of 1972 before the High Court? and (ii) whether the learned trial Judge had the jurisdiction as at the time the cause of action arose, to entertain the suit having regard to the provisions of Section 6(6)(d) of the

1979 Constitution of Nigeria?

Simply put, it is contended, whether on a careful perusal of the whole of the Appellant's Brief, one issue and one issue only, had been raised by the Appellant for our consideration, to wit: that, as the agreement between the Rivers State Government and the Appellant for the sale of the disputed property was concluded on November 26, 1982, before the judgment in Peenok's case of December 3, 1982, whether the High Court had jurisdiction to determine the validity of the States Lands (Cancellation of Leases) Edict No. 15 of 1972?

The above is the gist of the Appellant's complaint in this court wherefore November 26, 1982, and December 3, 1982 - the latter being the day when this court invalidated the Cancellation of Leases Edict No. 15 - are the dates on which the whole case revolves. For, as the sale was concluded before December 3, 1982, the question is whether the Appellant had acquired a good title thereby and no court has the competence to question the validity of the transaction. However, if the sale was made after December 3, 1982, that is after this court had pronounced on the invalidity of the Edict, then the question is whether the sale transaction would be void and of no effect. As these dates of November 26, 1982, and December 3, 1982, literally permeate almost every page of the Appellant's Brief by reason of the delay of about one week which afforded the Appellant the opportunity to complete the purported purchase of the disputed land on November 26, 1982, the pronouncement of the judgment much earlier, the invalidation of the Edict as affecting the purchase of the property would have been in order thus rendering the argument as being devoid of merit.

To arrive at such a conclusion, the Appellant relied on Section 6(6) (d) of the 1979 Constitution of Nigeria which came into operation on 1<sup>st</sup> October, 1979, and which provided as follows:

*"6. The judicial powers vested with the foregoing provisions of this section:-*

*(d) Shall not as from the date when the Section comes into force, extend to any action or proceeding relating to any existing law made on or after 15th January, 1966, for determining any issue or question as to the competence of any authority or person to make any such law.' (Underlining is for emphasis).*

The Appellant proceeded to cite the case of Uwaifo v. Attorney-General of Bendel State and Ors. (1982) 7 S.C. 124 in which Idigbe, JSC., dealt at length on the construction of the above section to the following effect:

- “Section 6(6)(d) aforesaid provides in very clear terms that*
- B *judicial powers of the courts - which are neatly set out in sub-paragraphs (a), (b) and (c) of sub-section (6) of Section 6 of the 1979*
- Constitution - shall not extend to any action or proceeding relating to*
- any existing law made on or after 15th January, 1966, (the date, be*
- C *it noted, when the Military seized power and took over the govern-*
- ment of this country) for determining any issue or question as to the*
- competence of any authority or person to make any such law. What*
- exactly does the expression “for determining any issue or question as*
- to the competence of any authority ..... to make any such law”*
- D *mean? What exactly does the expression “existing law” in the context*
- of Section 6 (6)(d) aforesaid mean? Is it really open to courts in the*
- country, by virtue of this sub-section to pronounce on the validity of*
- an existing law? If so, is there any limitation on the area or scope of*
- any such inquiry? In my view, the expression “existing law” in Section*
- E *6(6)(d) aforesaid means “any law and includes any rule of law or any*
- enactment or instrument whatsoever which is in force immediately*
- before the date when the Constitution aforesaid came into force.*
- (See Sections 277 (7) and 274 (4)(b) of the 1979 Constitution.....*
- However, it does seem to me that notwithstanding the provisions of*
- F *Section 6(6)(a), 6(6) (b) and 4(8) aforesaid, the Constitution afore-*
- said makes special reservations with respect to a class of legislation i.e.*
- those laws which were made “on or after 15<sup>th</sup> January, 1966” (in*
- other words, those laws which came into existence during the period*
- G *when this country was governed under the Military regime). In re-*
- spect of such laws, the courts are specifically precluded from “deter-*
- mining any issue or question as to the competence of any authority*
- or person to make such laws.” I found it considerably difficult - in the*
- fact of the clear and unambiguous language of Section 6(6)(d) afore-*
- H *said - to accede to the ingenious contention and submission on be-*
- half of the Appellant that while sub-section 6(6)(d) means that the*
- validity of a Decree cannot be challenged on “the ground of the*
- competence of the lawmaker to make the law” (which means, on*
- ground of his authority or want of it to make such law), “it ought not*

to be construed as saying that the court has no jurisdiction to pronounce on its validity.” Again with much respect to learned counsel for the considerably narrow interpretation of the word “competence” in the relevant sub-paragraph of the sub-section under consideration. When one questions the validity of a law, one questions its competence on any acceptable principle of law.” B

**It ought to be emphasized here, that what Section 6(6)(d) of the 1979 Constitution was meant to do or achieve was to oust the jurisdiction of the courts in determining any issue or question as to the legislative competence of any authority or person to promulgate any law. The section had not the effect of prohibiting any court from determining any issue or question as to the validity of any such law. Indeed, nowhere in Section 6(6)(d) (ibid) was the prohibition extended to the question of determining the validity of any law. The prohibition was only as to the issue or question of the competence of the law-maker to make the law in question.** See University of Ibadan v. Ademolekun (1976) 1 All NLR 213. **See also the decision of Nnamani, JSC., in Peenok’s case (supra) in (1982) 8 NSCC 477 at page 521 where His Lordship said:** C D E

***“This Court has held that the courts are merely precluded from inquiring as to the legislative capacity to make Decree or Edict but can inquire into whether an Edict is inconsistent with the provisions of the Constitution of the Federation. (See University of Ibadan v. Adamolekun (1967) 1 All NLR 213 at 234”*** F

**It is further submitted that for the sake of emphasis, Section 31 of the 1963 Constitution of Nigeria had clearly made provision against the compulsory acquisition of land in Nigeria** when it more specifically provided that: G

***“No property, moveable or immovable, shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that:***

***(a) requires the payment of adequate compensation therefore; and*** H

***(b) gives to any person claiming such compensation a right of the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.***

**It should also be more specifically pointed out that the Constitution (Suspension and Modification) Decree, 1966, otherwise known as Decree No. 1 of 1966, retained after the Military take over of the government of the Country in January, 1966, all the provisions of the said Section 31 of the 1963 Constitution of Nigeria. Hence, the position, up to the time that the Rivers State Government purported to have cancelled the Respondents' lease, was that no property, moveable or immovable could be taken possession of compulsorily in any part of Nigeria without payment of adequate compensation and under a law that gave the affected person right to the High Court for the determination of his interest in the property and the amount of compensation payable to him.** For this purpose, it is pertinent to highlight the fact that the Constitution (Suspension and Modification) Decree No. 1 of 1966 provides under sub-sections (3) and (4) of Section 6 as follows:

*"6(3) Subject to sub-section (2) above and to the Constitution of the Federation, the Military Governor of a State shall have power to make laws for the peace, order and good government of that State.*

*(4) If any law:-*

- a. Enacted before 16th January, 1966, by the legislature of a Region having effect as if so enacted, or*
- b. Made after that date by the Military Governor of a Region or State is inconsistent with any law:-*
  - (i) Validly made by Parliament before that date or having effect as if so made.*

*(ii) Made by the Federal Military Government on or after that date the Law as mentioned in paragraphs (i) or (ii) above shall prevail and the regional law or state law shall, to the extent of the inconsistency be void."*

**In effect therefore, a court has jurisdiction to pronounce any edict or law of the State Government, which is inconsistent with a law made by the Federal Military Government, as void to the extent of its inconsistency with a law made by Parliament or the Federal Military Government.**

Albeit, the Rivers State Government proceeded to promulgate Edict No. 15 of 1972 on October 16th, 1972, under which it pur-



ported (or rather claimed) to have cancelled the Respondents' leasehold interest in the disputed property under Gazette Notice No. 452 of November, 1972, or more specifically Section 3 (i) of the State Lands (Cancellation of Leases) Edict No. 15 of 1972 which states as follows:

*“Notwithstanding the provisions of the State Lands Law or any other law in force in the State and subject to the succeeding provisions of this Edict, the Military Governor may by notice published in the Gazette cancel the lease of any plot of State Land required for public purpose and upon the publication of such notice, such plot shall therefore revert to the State.”*

It is under this Edict the Rivers State Government purported to have made the Gazette Notice No. 452 cancelling the Respondent's leasehold interest in the disputed property. Without doubt, this Edict is in conflict with the provisions of Section 31 (1) and (2) (a) and (b) of the 1963 Constitution of Nigeria as was rightly held by this court in the Peenok's Case (supra).

It is significant to note that the Appellant did not argue in his Brief that the Cancellation of Leases Edict No. 15 is not in conflict with the Constitution of 1963. Rather, he submitted, quite erroneously in my view, that Section 6(6) (d) of the 1979 Constitution of Nigeria ousted the jurisdiction of the High Court to entertain the claim. He rather made the following submission at page 13 of his Brief:

*“Now Edict No. 15 of 1972 was declared void by the Supreme Court on 3rd December, 1982, for being inconsistent with certain provisions of the 1963 Republican Constitution. However, between 1972 and December 3rd of 1982, when it was declared null and void by the Supreme Court, it is the submission of the Appellant that the Rivers State High Court was without jurisdiction to void same by reason of the provisions of the 1979 Constitution earlier on referred to. If the above submission is accepted by the Supreme Court, it follows that since the lease of the Respondents was cancelled by Edict No. 15, the cancellation cannot be challenged, as the Respondents did in the proceedings leading to this appeal. And it follows that the Rivers State High Court was without jurisdiction to entertain the claim of the Respondents, it being a challenge to Edict No. 15 of 1972. This must necessarily be so because of the ouster of jurisdiction which is contained in Section 6(6) (d) of the 1979 Constitution of the Fed-*

eration.”

Pertinently, it had earlier been submitted in the Appellant’s Brief that Section 6(6) (d) of the 1979 Constitution only ousted the jurisdiction of the courts in determining any issue or question as to the competence of any authority or person to make any law after January 15th, 1966, when the Military Government took over power. It neither ousted the jurisdiction of the courts in determining any question or issue as to the validity of any edict that is in conflict with the Constitution, nor of any law made by Parliament nor made by a Decree. A fortiori, it must also be said that the Appellant merely attempted in his Brief to mis-interpret the opinion of Idigbe, JSC., in Uwaifo’s case (supra). Going through the said opinion of Idigbe, JSC., earlier set out herein from Appellant’s Brief, there is no passage therein from where one could get the faintest idea that Idigbe, JSC., had put up the suggestion that Section 6(6)(d) of the 1979 of Constitution of Nigeria had ousted the jurisdiction of the courts in determining any issue or question as to the validity of any law that had been shown to be in conflict with the Constitution. Be it noted that the judgment, Uwaifo’s case (supra) was delivered on 16th July, 1982.

Incidentally, Idigbe, JSC., was one of the seven Justices in the full Court of this Court in Peenok’s case (supra), the judgment of which was delivered on 3rd December, 1982. In that case (Peenok), Idigbe, JSC., had this to say among others:

“*There is no doubt whatsoever that such exercise as was carried out in the said Edict No. 15 of 1972 and the amendment carried out in Edict No. 17 of 1972 are clearly in conflict with the provisions of sub-paragraphs (a) and (b) of sub-section (2) of Section 31 of the 1963 Constitution of the Federation, Act No. 20 of 1963 as modified by Decree No. 1 of 1966. In the event, both Edicts (that is Nos. 15 and 17 of 1972, and the Legal Notice No. 412 of 26th of September, 1972 thereon) are unconstitutional and invalid each being null and void.*” (Underlining is for emphasis).

Surely, if Idigbe, JSC., had stated in the Uwaifo’s Case on 16th July, 1982, that Section 6(6) (d) of the 1979 Constitution of Nigeria had ousted the jurisdiction of the courts in determining any issue or question as to the validity of an Edict, he would not have come on 3rd December, of the same year (1982) to hold a contrary view in Peenok’s Case without saying that he had since changed his view on

the subject matter.

What the Appellant had done was to quote out of context a portion of Idigbe's, JSC., opinion whilst developing his very forceful opinion without reference to his conclusion; for so soon after the portion cited by counsel in his Brief, the learned Justice was shown as proceeding to hold: B

*"it seems to me that while the Constitution empowers the courts to inquire into the validity of any existing law, it clearly intends that the courts should not inquire into proceedings which seek to determine issues or questions as to the competence of any authority or person (that is the legal authority or person) to make any existing law promulgated between 15th January, 1966, and 1st October, 1979; in other words, the courts are precluded from inquiring into the validity of any such Laws. Indubitably, the provisions of Section 6(6)(d) aforesaid are aimed at proceedings which seek to detract from the binding force and or authority of any unrepealed law made by the Military regime between 15th January, 1966, and 1st October, 1979, when the new Constitution came into force."* C

Rounding up his opinion, Idigbe, JSC., in Uwaifo's Case referred to what Ademola, CJN., had said in the case of University of Ibadan v. Adamolekun (1967) 1 All NLR 213 at 224, to wit:- E

*"Reading the decree as a whole we are in no doubt that Section 6 does not preclude the Courts from inquiring into any inconsistency that may arise, but merely bars the courts from questioning the validity of the making of a Decree or an Edict on the ground that there is no valid legislative authority to make one. In other words, the court is not inquiring into whether the Military Government of a Region could legislate by Edict, but only whether Section 36 of the Edict is inconsistent with the Constitution of the Federation."* F

Indeed, the issue or question as to whether the Military Government had the legislative competence to promulgate the State Lands (Cancellation of Leases) Edict No. 15 of 1972 never arose in this case now before this court. The issue or question that arose in this case is the determination of the inconsistency of the Edict with the Constitution of Nigeria. No one ever questioned the competence of the Military Governor of Rivers State to promulgate Edict No. 15 of 1972. G

In the result, Issue No. 1 be and is accordingly resolved against the Appellant and so answered in the positive. The appeal is there- H

fore dismissed.

The matter does not terminate there as I intend to consider Issues 3 Nos. 2 and 3 hereafter to give the appeal the cap of finality and conclusiveness it deserves.

ISSUE NO. 2

B This issue which enquires whether the Court of Appeal was correct in holding that the Agreement to sell the property in dispute by the Government of Rivers State to the Appellant was concluded on 29th December, 1982, and not on 26th November, 1982, as pleaded by the Plaintiffs as found by the learned trial Judge is to be  
C treated next.

On this issue, which covered the Appellants' Issue No. 2 as well as the original grounds of Appeal 1 and 4 and grounds 2 and 3 of the additional grounds of Appeal, the point being canvassed goes thus:

D That the learned Justices of the Court of Appeal were perfectly right in coming to the decision that the Rivers State Government had not been able to cancel the Respondents' lease by virtue of Exhibit H, that is Notice No. 452 published under the State lands (Cancellation of Leases) Edict No. 15 of 1972, and therefore, that the Appel-  
E lant could not have acquired any valid title to the disputed land.

It has been admitted on all sides that by a Deed of Lease dated the 25th of March, 1960, and registered as No. 22 at page 22 in Volume 233 of the Land Registry at Enugu, and now kept at Port  
F Harcourt, the Governor of Eastern Nigeria demised the disputed property to one Marcus Ezeuba Nwaokenta for a term of 99 years. It was also admitted that by a Deed of Assignment dated 5th day of August, 1963, and registered as No. 44 at page 44 in Volume 366 in the Land Registry at Enugu, and now kept in Port Harcourt that Marcus  
G Ezeuba Nwaokenta, assigned, with the consent Governor, the residue of the term of lease to the Respondents. This Deed of Assignment was admitted in evidence as Exhibit B but in the Notice No. 452 published on the 1st of November, 1972 - State Lands (Cancellation of Leases) Edict No. 15 of 1972 in the extra-ordinary gazette  
H No. 56 Volume 14 and received in evidence as Exhibit H the name of the Lessee, whose lease was being cancelled, was stated as Marcus E. Nwaokenta and not the Respondents, the assignees in the Deed of Assignment. Then again, under the column of the "date and registration Number of Lease" in the said Gazette publication would be seen

“44/44/336 866 dated 5/8/63.”

As the Instrument registered as No. 44 at page 44 in Volume 366 of the Land Registry at Enugu, now kept at Port Harcourt, is the Deed of Assignment (Exhibit B) made between Marcus E. Nwaokenta and the Respondents, this is a mere private agreement between Marcus E. Nwaokenta and the Respondents which only required the Governor's consent for purposes of registration. In the light of the foregoing, I agree with the Respondents' submission that the cancellation of the Deed of Assignment, as that was what had ostensibly been done by the Gazette publication, had nothing to do with the head lease that was registered as No. 22 at page 22 in Volume 233 of the Land Registry at Enugu, now at Port Harcourt which remained un-cancelled. Indeed, the Deed of Assignment could not exist without the head lease; whilst the head lease did not need any Deed of Assignment to operate in law.

***Furthermore, I agree with Respondents' submission that it is not competent for the Rivers State Government to cancel the Deed of Assignment of which it was not a party - the parties thereto being Marcus E. Nwaokenta and the Respondents (Uche Okafor, Obi Eze, Okeke Ozoemena and Okonkwo Nzedinma).*** Thus, while the Governor of Eastern Nigeria was a party to the Deed of Assignment, his consent only was what was needed as mere formality for purposes of registration. It needs to be stressed in this respect that one cardinal principle of the law of contract is that it is only a party to a contract that can seek a cancellation of it for one cause or the other. See *Savannah Bank Plc, v. Ibrahim* (2000) 6 NWLR (Pt. 662) 601 though of persuasive authority, being the decision of the Court of Appeal. See also *Negbenebor v. Negbenebor* (1971) 1 All NLR 210 at 270-271 and *Ikpeazu v. ACB Ltd.* (1965) NMLR 374. A non-party to a contract cannot ask for its cancellation or abrogation. ***In the case under consideration, all that the Governor could do as far as a Deed of Assignment is concerned, if it is possible, so to do, is to withdraw his consent once he had assented to the assignment of the lease. He could certainly do no more than the withdrawal of his consent, if that is possible, with respect to the Deed of Assignment. Indeed, it is elementary that only the parties to a Deed of Assignment can go to court for a cancellation of the Deed. The grantor's rights un-***

**der the lease are not derived from a Deed of Assignment of which he is not a party, but from the head lease. Thus, it is not competent for the Governor to cancel the Deed of Assignment as was attempted in the instant case. Only the Courts have competence in law to do so and this, after hearing the parties to the Deed of Assignment.**

The position is well put by Uwaifo, JCA., in his leading judgment when he said:

*“The question is, how does Marcus E. Nwaokenta move out of the divesting Government Notice under the Edict and where do the Appellants come in? Marcus E. Nwaokenta is stated as the lessee in the said Edict and paragraph 2 of the said Government Notice states:- Lessees whose leases have been cancelled are entitled to compensation and any person claiming a right to such compensation may within six weeks from the date of this notice file his claim with the Chief Land Officer, Ministry of Lands and Housing, Port Harcourt, as required by Section 4 (1) and (2) of this Edict.”* (Underlining is for emphasis)

The question then may be asked, how would the Respondents claim any right to such compensation when the Government Notice had not shown them to be the Lessees? Would they have to obtain written authority from Marcus E. Nwaokenta, who had been shown as the Lessee before claiming the compensation? It may be further asked how the Respondents would be expected to put up their claim to such compensation within six weeks from the date of the Government Notice as required by Section 4(1) and (2) when no notice whatsoever had been directed to them? No one could surmise whether Marcus E. Nwaokenta did indeed survive the civil war. It may be further asked, how would notice to Marcus E. Nwaokenta be notice to the Respondents?

Uwaifo, JCA., (as he then was), then went on to elucidate how the Government Notice could not have been said to be directed at the Respondents when he observed thus:

*“It is not merely matter of argument that there is difficulty in ascertaining what Exhibit H was really aimed at achieving. It appears to be the lease granted to Marcus E. Nwaokenta by the Government that was intended to be cancelled. That lease was registered as No. 22 at page 22 in Volume 233. There Marcus E. Nwaokenta was stated as the lessee. But a different instrument registered as No. 44 at page*

44 in Volume 366 was named. However, the appellants are therein known as the purchasers. They purchased the residue of the lease. Another name they can possibly be called is Assignees. Their names were not stated in the Government Notice in question.”

**A recognised and acceptable canon of interpretation of statutes is that statutes, which purport to deprive citizens of their proprietary interest as well as acquired rights, are always interpreted strictly.** In effect, such statutes are construed fortissime contra proferentes. See Maxwell on Interpretation of Statutes, 12th Edition page 258 where it was said:

“Where a statute confers a power, and particularly one which may be used to deprive the subject of proprietary rights, the courts confine those exercising the power to the strict letter of the statute.”

See also Bello v. Diocesan Synod of Lagos & Ors. (1973) 3 S.C. 103 at 130; (1973) 8 NSCC 137 at page 149 where Coker, JSC, held:

“The principle on which the courts have acted from time immemorial is to construe fortissime contra proferentes any provision of law which gives them extra-ordinary powers of compulsory acquisition of the properties of citizens.”

Continuing, Coker, JSC., referred to the case of Bowman South Shields v. (Thames Street) Clearance Order (1932) 2 KB 621 where Swift, J., was quoted as saying at page 633:

“When an owner of property against whom an order has been made under the Act comes into this Court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right I think, that his case should be entertained sympathetically and that a statute under which he is being deprived of his rights to property should be construed strictly against the applicant, in as much as he for the benefit of the community is undoubtedly suffering a substantial loss, which in my view must not be inflicted upon him unless it is quite clear that parliament has intended that it shall.”

See also A.G. Bendel State v. Aideyan (1989) 9 S.C. 127; (1989) 4 NWLR (Pt. 118) 646 at 675, 676; Abioye v. Yakubu (1991) 5 NWLR (Pt. 190) 130 at 205; Din v. A.G. of the Federation (1988) 4 NWLR (Pt. 87) 147 at 184 - 185 and Peenok Investment Ltd. v. Hotel Presidential Ltd. (supra) at pages 25-26. **The court below,**

per Uwaifo, JCA., agreed as much that the principle of fortissime contra proferentes should have been applied by the learned trial Judge in this case. This accounts for the reason why I firmly endorse and confirm the decision of that court wherein Uwaifo, JCA., (as he then was), concluded his judgment on the point by saying:

“What I see is that certain citizens (the Appellants) are alleged to have been deprived of their property by the Government which issued a Notice in a Gazette that the property was required for a public purpose. No public purpose of any kind was thereafter known for that deprivation. Rather another private citizen is in possession of the property claiming to be the owner. What was alleged to have been cancelled by the said Notice was a lease but the registration number indicated is that of an assignment. The name of the owner (given as the lessee) is one other than the Appellants supposed to be beneficiaries of the assignment. The said citizens are not only deprived of their proprietary rights but also have obstacles created in their way of getting compensation since the compensation will be paid to the lessee within six weeks upon an ambiguous notice tucked away in an Extra-Ordinary Gazette - nothing at all to indicate that the Appellants were sent any relevant notice, or any posted on the premises in question. I cannot in good conscience accept that the proper procedure capable of leading to the expropriation was followed. Therefore, I must hold that Exhibit A. did not and could not achieve its aim.”

while the Appellant accepted the fortissime contra proferentes rule, for which see page 25 of the Brief - at the same page 25, he added,

“that expropriatory legislations are construed strictly against the acquiring authority, person or body. Such construction will only arise if there is an ambiguity in the legislation.”

At page 26 of his Brief the Appellant said:

“This is the case now under the appeal. It is patently clear that the lease which was sought to be cancelled was that registered as No. 44/44/366. The situation, it is submitted, would have been completely different if Exhibit H had purported to cancel the lease registered as



22/22/233, in which case the principle would have applied.”

**But one may ask, what should have been cancelled, if the intention was to cancel the lease in respect of the disputed property. What ought to have been cancelled, in my view, was the head lease which was registered as 22/22/233, and not the Deed of Assignment registered as 44/44/366 which did not contain the terms and conditions of the lease but was merely an agreement to assign the residue of the terms of years to the Respondents.** However, the court below considered the question of ambiguity as a condition for the rule to apply by saying:

“The 1st Respondent concedes the rule that expropriatory statute’s should be construed fortissime contra proferentes but argued that that can only arise when there is ambiguity, citing *Din v. Attorney - General of the Federation* (1988) 4 NWLR (Pt. 87) 147 at 184; *Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130 at 205. I do not know if one can run away from the fact that if ambiguity is a condition for the rule in question to be applicable, that there is ambiguity in the Government Notice No. 452 which purported to expropriate the premises in question having regard to what I have pointed out above. It seems to me, this is an appropriate case for applying the authority of *Attorney- General Bendel State. v. P.L.A. Aideyan* (1989) 9 S.C. 127; (1989) 4 NWLR (Pt. 118) 648 where *Nnaemeka-Agu, JSC.*, said at pages 675-676:

“I believe that the law is still as stated in the case of *Bello v. Diocesan Synod of Lagos & Ors.* (1973) 1 All NLR (Pt. 1) 247 at page 268; and reiterated in *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (1983) 4 NCLR 122 at page 165. It is that such expropriatory statutes which encroach on a person’s proprietary rights must be construed fortissime contra proferentes, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. As against the acquiring authority there must be strict adherence to formalities prescribed for the acquisition.”

In consequence, **I agree with the Respondents’ submission that if there had been an effective cancellation of the lease, the question as to whether the sale of the disputed property to the Appellant is valid would not arise, as the maxim is “nemo dat quod non habet.” Certainly, as the ownership had remained**

*with the Respondents, the Rivers State Government could not have made a valid disposition of the property to the Appellant; this the moreso, notwithstanding the point being canvassed that the sale transaction was concluded on 26th November, 1982, before the judgment in Peenok's Case on 3rd December, 1982.*

*In respect of the issue of the sale of State Land, this was considered in the identical case of Gregory Ude v. Clement Nwara & Anor. (1993) 2 NWLR (Pt. 278) 638 where Nnaemeka-Agu, JSC., said at page 664 of the Report:*

*"State lands in Nigeria invariably originate from compulsory acquisition of such lands from individuals or communities for use for the public purpose for which the land was acquired and in accordance with the public policy of the State as enshrined in the laws of the State, Now it has been conceded that there is no law which authorises the reconversion of such lands into private lands nor any to support the selling of such lands as fee simple absolute in possession such as the respondents tried to do by Exhibit M.... It is also a necessary implication of the rule of law that excepting where the law gives a discretion to a public functionary he can only act in accordance with law, as to do otherwise may enthrone arbitrariness. I am of the clear view that the 2<sup>nd</sup> Respondent required express authorisation from a statute before they could have sold any State land as fee simple absolute in possession to the 1st Respondent. As there was no such authorization, the purported sale by Exhibit M is invalid."*

*See also the Court of Appeal decisions of Erastus Obioha v. Iyibo Kio Dafe (1994) 2 NWLR (Pt. 325) 157 at 172, 176 and Savannah Bank v. Ibrahim (supra). The State Lands (Cancellation of Lease) Edict, 1972, did not give the State Government any such power. The sale of the disputed property could not even be said to be an action rightly taken under the Edict before the decision in Peenok's. Case (supra), as was said in Abaye's case (supra), so that the sale could then be said to have remained valid after the Edict had been declared to be unconstitutional, as was erroneously argued by the Appellant. The said outright sale of the disputed property to the Appellant should*

***also be declared to be null and void as well as invalid and I so hold.***

Issue No. 2 ought to and it is hereby accordingly resolved by me in favour of the Respondents.

Following my earlier treatment of issues 1 and 2 above, I do not consider it expedient or necessary to delve into issue 3 which, in my view, becomes otiose. This is the moreso, that I had earlier held that the said outright sale of the disputed property to the Appellant should be declared null and void. B

I wish to add in conclusion, that this court not having been invited to overrule our decision in *Abaye v. Ofili* (supra), I deem it unnecessary to pronounce on that case. It remains binding on us until set aside or overruled. Accordingly, I dismiss this appeal with costs assessed at N10,000.00 to the Respondents. C

D

### **OGUNDARE JSC**

I have read in advance the judgment of my learned brother, Onu, JSC., just delivered. I agree with him that the appeal lacks merit. I too have no hesitation in dismissing it. I, however, wish to add a few comments of my own. E

The facts are not in dispute: that a deed of lease made on the 25th of March, 1960, and registered as No. 22 page 22 in volume 233 at the Land Registry Enugu (now kept at Port Harcourt) by which the piece of parcel of land the subject matter of this case was granted by the Ministry of Town Planning Eastern Nigeria to one Marcus Ezeuba Nwaokenta for a term of 99 years the latter by a Deed of Assignment dated 9th day of August, 1963, and registered as No. 44 at page 44 in Vol. 366 at the Land Registry, Enugu (now kept at Port Harcourt) assigned, with the consent of the Governor of Eastern Nigeria, the residue of his lease to the Plaintiffs who are Respondents in this appeal. Both the original deed of lease and the subsequent deed of assignment were tendered in argument at the hearing of this case in the trial High Court. The land originally known as No. 4, J.N. Kanu Street was later renamed 4, Rex Lawson Street and was fully developed before the outbreak of the civil war in 1967. It is Plaintiffs' case that at the end of the civil war they continued to deal with the property as owners and let same to tenants. In May, 1983, Messrs. Knight, F G H

Frank and Rutley who were Estate agents to the Rivers State Government sent to the Plaintiffs a demand notice for payment of property rates in respect of the property in dispute for the period 1970 to 1983. It was when they went to pay the sum demanded that they learnt for the first time that the property had been sold to one Golden Victor Nangibo. The Plaintiffs later sued the said Nangibo and the Attorney-General of Rivers State claiming as per paragraph 10 of their further, further amended statement of claim as hereunder:

“(i) A declaration that the purported sale of the plaintiff’s buildings situate at Plot 99 in Borokiri Layout, Port Harcourt, Rivers State and registered as No. 44 at Page 44 in Volume 366 at the Land Registry, Enugu, now kept at Port Harcourt, Rivers State by the Rivers State Government (1st Defendant) to the Second Defendant is unconstitutional and null and void.

(ii) A declaration that the Plaintiffs are entitled to the grant of Statutory Right of Occupancy of the said premises.

(iii) A perpetual injunction restraining the Defendants by themselves, their servants, and or agents from dealing in the said property.

(iv) An order of court setting aside the Agreement dated the 26th day of November, 1982, between the Secretary to the Government (on behalf of the Government of Rivers State) as Vendor and the second Defendant as Purchaser registered as number 86 at page 86 in Volume 95 of the Land Registry in the office at Port Harcourt.

#### OR IN THE ALTERNATIVE

(v) Against the Defendants jointly and severally the sum of Two Hundred and Fifty Thousand Naira (N250,000.00) being the market value of the property situate at plot 99 in Borokiri Layout, Port Harcourt, Rivers State, popularly called 4, Rex Lawson Street, Port Harcourt, and registered as No. 44 at page 44 in Volume 366 at the Land Registry, Enugu, now kept at Port Harcourt, Rivers State.”

The alternative claim (v) was withdrawn in the course of the proceedings.

On completion of pleadings, the case went to trial at which evidence was led on both sides. The case of the 2nd Defendant was that the said property became an abandoned property during the period of the civil war within the meaning of Abandoned Property (Management and Custody) Edict, 1969, and that the Plaintiffs have been divested of whatever interest they might have had in the prop-

erty. The Rivers State Government sold the property to him on November 26th, 1982. The 1st Defendant's case, however, was that the Rivers State Government had by an instrument dated October 29th, 1972, and published in the extra-ordinary gazette No. 56 Vol. 4 Notice No. 452, cancelled the lease in respect of the property and had sold the same to the 2nd Defendant. B

The learned trial Judge after a review of the evidence adduced at the trial and addresses of learned counsel for the parties, held that the Abandoned Property (Management and Custody) Edict, 1969, did not divest the Plaintiffs of their interest in the property in dispute. C He, however, found that the Rivers State Governor had by virtue of the extra-ordinary gazette No. 56 Vol. 4 cancelled the lease of the property and purportedly relying on *Abaye v. Ofili* (1986) 1 NWLR 134 and *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (1982) 12 S.C. 1; (1982) 13 NSCC 477, dismissed Plaintiffs' case. The Plaintiffs being dissatisfied with this judgment appealed to the Court of Appeal which latter court allowed the appeal, holding that the extra-ordinary gazette could not have cancelled the lease of the property and had not the effect of divesting the Plaintiffs of their interest in the property. It is against this latter judgment that the 1st Defendant had appealed to the Court of Appeal which stated that there is no conflict between the decision in *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (supra) and *Abaye v. Ofili* (supra). The cross-appeal was, however, abandoned at the trial before us and was dismissed on the 1st of April, 2003. D E F

As regards the appeal of the 2nd Defendant, three questions have been raised for determination. These three questions are:-

*"1. If the Agreement between the Appellant and the Government of Rivers State was made on 26th November, 1982, as shown on Exhibit G, was the Court of Appeal correct in holding that the validity of the Edict No. 15 of 1972 of the Rivers State Government could be challenged by the Plaintiffs/Respondents?"* G

*2. Was the Court of Appeal correct in holding that the agreement to sell the property in dispute by the Government of Rivers State to the Appellant was to concluded on 9th December, 1982, and not on 26th November, 1982, as pleaded, and found by the learned trial Judge?"* H

*3. If, and only if, the answers to the above operation are in the*

*affirmative, was the Court of Appeal correct in holding that the Appellant herein did not acquire a good title to the property in question, having regard to the proved facts before the learned trial Judge?"*

Question 1

B The thrust of the argument of learned counsel for the 2nd Defendant on this issue is that having regard to Section 6 (6)(d) of the 1979 Constitution of the Federal Republic of Nigeria, the Court of Appeal had no jurisdiction to pronounce on the validity of Edict No. 15 of 1972 of Rivers State titled "State Lands (Cancellation of C Leases) Edict, 1972." The validity or otherwise of this edict is crucial to the case before the court below. Uwaifo, JCA., (as he then was), in his lead judgment in the Court of Appeal had this to say:-

D *"Added to this, if I may say at this stage, is the fact that the validity of the Edict in question was directly in issue in this case. So that, in any event, the validity in law of the agreement to sell the premises of the appellants concluded on 9 December, 1982, in reliance upon a purported Instrument of cancellation of which instrument was declared void by the Supreme Court on 3rd December, 1982, is open to contest for a decision in this present case."*

E Section 6(6)(d) of the 1979 Constitution provided

*"Judicial powers vested in accordance with the foregoing provisions of this section-*

F *(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966, for determining any issue or question as to the competence of any authority or person to make any such law."*

G The contention of the learned counsel for the 2nd Defendant is that this provision of the Constitution ousted the jurisdiction of the Court to pronounce on the validity or otherwise of a decree as well as an edict made between 1966 and 1979 which will include Edict No. 15 of 1972 of Rivers State. Learned counsel relied on the dictum of Idigbe, JSC., in Uwaifo v. Attorney-General Bendel State & Ors. H (1982) 7 S.C. 124, 206-211. As it is a long dictum I do not intend to set it out in this judgment but suffice it to say that after a careful consideration of what Idigbe, JSC., said in the passage I do not think it supports the submission of learned counsel in this case. The court has always had jurisdiction to pronounce not on the power of a Mili-

tary Governor to make an edict, but on whether an edict so made is inconsistent with a Decree, the unsuspended provisions of the Constitution of 1963 and any Act of the National Parliament. See *University of Ibadan v. Adamolekun* (1967) 1 ANLR 225, 236 where this Court, per Sir Ademola, CJN., laid the law down as follows:

*“Dr. Ajayi (Attorney-General, Western State) has submitted that even if this section is void the Supreme Court cannot make any pronouncement that it is void. For this proposition Dr. Ajayi sought the aid of Section 6 of Decree No. 1 of 1966 which states that ‘no question as to the validity of this or any other Decree or of any Edict shall be entertained by any court of law in Nigeria.’ We feel unable to accept this submission. This submission creates the situation that the Supreme Court cannot decide on an application before it whether an appeal lies to the court or not and whether or not the court can entertain the application before it. In effect the court is reduced to the position that if an Edict is itself inconsistent with a decree or with the Decree No. 1 of 1966 the court cannot make a pronouncement. This, in our view, will not be giving effect to Section 3 (4) of Decree No. 1 of 1966 and it becomes a dead letter. We feel that Dr. Ajayi’s reference to Section 6 of the Decree is inept and the flaw in Dr. Ajayi’s argument lies in the fact that he has read Section 6 in isolation. Reading the Decree as a whole we are not in doubt that Section 6 does not preclude the courts from enquiring into any inconsistency that may arise, but merely bars the courts from questioning the validity of making of a Decree or an Edict on the ground that there is no valid legislative authority to make one. In other words, the court is not enquiring into whether the Military Governor of a Region could legislate by Edict, but only whether Section 35 of the Edict is inconsistent with the Constitution of the Federation.”*

What in effect Idigbe, JSC., was saying in the passage relied upon by learned counsel for the 2nd Defendant is that the court could not question the power of a Military Governor to make an Edict but, on the state of the authorities the court could pronounce on whether an Edict or a provision thereof is inconsistent with either the unsuspended provisions of the Constitution, a Decree or an Act of the National Assembly. It is significant to note that Idigbe, JSC., was a member of the panel of this Court that nullified Edict No. 15 of 1972 of Rivers State in question in *Peenok Investments Ltd. v. Hotel*

Presidential Ltd. (supra). I, therefore, see no substance in the submission of learned counsel and resolve Question 1 in the affirmative.

Question 2:

Having held that Edict No. 15 of 1972 of Rivers State was inconsistent with the unsuspended provisions of the 1963 Constitution the question when the agreement between the Rivers State Government and the 2nd Defendant was made peters into insignificance. The Legal Notice No. 452 made by the Rivers State Military Governor under the Edict would be void and of no effect since the enabling law itself was void. Consequently, the plaintiffs still retain their interest in the property in dispute.

We have not been invited in this case to overrule our decision in Abaye v. Ofili (supra). Consequently, I do not consider it necessary to make a pronouncement on that case; it remains binding on this court until set aside or overruled. However, I do not see how that case applies to the fact of the case on hand. Legal Notice 452 under which the lease affecting the property in dispute was purportedly cancelled having been made under a void law is itself void as one cannot build something on nothing. So whether the agreement between the 1st defendant and the 2nd Defendant was made on the 26th of November, 1982, and/or concluded on the 9th of December, 1982, would make no difference to this case.

The finding of the Court of Appeal that the agreement between the Defendants was concluded on the 9th December, 1982, is a finding based on the evidence adduced at the trial court. I have no reason to disturb it as I am not satisfied that the finding was wrong. That Court did not say that the agreement was made on 9th December, 1982, but that it was concluded on that date.

In view of my comments on Issues 1 and 2, I consider it unnecessary to go indepth into Question 3. Edict No. 15 of 1972 of Rivers State allowed for compulsory acquisition of leasehold titles of various citizens for public purpose. The Plaintiffs were never served with any notice of the acquisition of their interest nor could the subsequent sale of the property to the 1st Defendant be described as public purpose. Thus, apart from the invalidity of Edict 15 of 1972, there are other factors in the case that rendered the purported sale to the 2nd Defendant invalid.

It is for the reasons stated herein and the other reasons given



in the lead judgment of my learned brother, Onu, JSC., that I too dismiss this appeal. I abide by the order for costs made by my learned brother.

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**MOHAMMED JSC**

B

I entirely agree that this appeal should be dismissed. My learned brother, Onu, JSC., has considered all the salient issues raised by both parties in this appeal and has reached a conclusion which I will adopt as mine in dismissing this appeal. I therefore dismiss the appeal and award N10,000.00 costs in favour of the Respondents.

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**KALGO JSC**

I have had the advantage of reading in draft the leading judgment of my learned brother, Onu, JSC., just delivered in this appeal. I entirely agree with the reasoning and conclusions reached therein which I respectfully adopt as mine. I also find no merit in the appeal and I dismiss it with costs as assessed in the leading judgment.

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E

**EJIWUNMI JSC**

I have had the privilege of reading before now the judgment just delivered by my learned brother, Onu, JSC., dismissing the appeal. For the reasons amply set out in his judgment, I will also dismiss the appeal. It is manifest from the argument of learned counsel for the appellant that his contention that the provision of Section 6(6)(d) of the Constitution ousted the jurisdiction of the court to pronounce on the validity or otherwise of a decree as well as an edict made between 1966 and 1976, including Edict No. 15 of 1972 of Rivers State does not represent the state of the law.

F

For a categorical statement of the law in this regard, see *University of Ibadan v. Ademolekun* (1967) 1 ANLR 225, 236. For the above reasons and the fuller reasons given in the lead judgment of Onu, JSC., I also dismiss the appeal with N10,000.00 as costs.

H