

SUPREME COURT OF NIGERIA
17TH DECEMBER, 2004. SC. 211/1999
CORAM:- S. U. ONU, A. I. KATSINA-ALU, A. O. EJIWUNMI, N.
TOBI, D. O. EDOZIE, JJSC.

PROFESSOR A. D. OLUTOLA APPELLANT

AND

UNIVERSITY OF ILORIN RESPONDENT

JURISDICTION - Courts - Issue of jurisdiction - Being a threshold issue
- Should be taken by the court at any point (H1)

COURTS - Actions - Competence to adjudicate - Includes having jurisdiction over the subject matter (H2)

COURTS - Jurisdiction - Federal High Court - Declaratory action against federal agencies - Jurisdiction became vested upon Federal High Court - Instead of State High Court where this case was commenced (H3)

JUDICIAL PRECEDENTS - Stare decisis - Courts of similar jurisdiction
- Are not bound by each others decision (H4)

JUDICIAL PRECEDENTS - Stare decisis - Supreme Court case of Mustapha - Is not applicable here (H5)

APPEALS - Retrial - Jurisdiction - Where trial High Court lacked jurisdiction - The action will be commenced de novo - Before the Federal High Court (H6)

FACTS

The plaintiff/appellant was a Professor of Educational Manage-

ment and Planning at the University of Ilorin (the defendant/respondent). An allegation of plagiarism was made against the appellant and two others. The authorities of the respondent found the appellant guilty of the allegation and removed him forthwith from his office as Dean of Faculty. He was also banned from ever holding any other elective office throughout his tenure of service at the University. Appellant filed this action before the Kwara State High Court seeking that the decision be declared null and void. He also claimed general damages and injunction. The trial Judge gave judgment in favour of the appellant. Dissatisfied the respondent appealed. The Court of Appeal raised suo motu the issue of the trial court's jurisdiction.

As at the time the action was commenced, the State trial High Court had unlimited jurisdiction. But before hearing commenced jurisdiction has become vested in the Federal High Court vide s. 230 (1) of Decree No. 107 of 1993. Jurisdiction in actions for declaratory reliefs against the Federal Government and its agencies became vested in the Federal High Court, thereby removing the trial of such actions from State High Courts. Counsel in the matter filed briefs and addressed the Court of Appeal on the said issue of jurisdiction. Thereafter, the case was struck out for trial court's lack of jurisdiction. Being aggrieved, appellant has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

Whether the lower court lacked jurisdiction as a result of the promulgation of Decree 107 of 1993 on 17th November, 1993, when the cause of action had arisen in 1989 and action on it filed before the trial court on 13th January, 1993.

Whether under the doctrine of judicial precedent or stare decisis, the Court of Appeal can refuse to follow its earlier decision, as done in this case, without setting it aside, when the issue for consideration and rationes decidendi are in pari materia.

Whether or not the appropriate remedy by the lower court should be setting aside the judgment of the lower trial court and striking out the appeal."

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

Courts - Issue of jurisdiction

1. There can be no doubt that the issue of jurisdiction is a threshold issue which may be considered at any stage in the course of proceedings. This question has been determined in a long line of cases that at any stage of the proceedings, be it at the pre-stage trial of the case, during the trial, or during the hearing of the appeal by the Court of Appeal and even in the Supreme Court. On this point, I think it is desirable to quote the dictum of Obaseki, JSC., as propounded in *Oloba v. Akereja* (1988) 7 S.C. (Pt. 1) at pp. 11 & 12, which reads:

“The issue of jurisdiction is very fundamental as it goes to the competence of the court or tribunal. If a court or tribunal is not competent to entertain a matter or claim or suit, it is a waste of valuable time for the court to embark on the hearing and determination of the suit, matter or claim. It is therefore an exhibition of wisdom to have the issue of jurisdiction or competence determined before embarking on the hearing and determination of the substantive matter. The issue of jurisdiction being a fundamental issue, it can be raised at any stage of the proceedings in the court of first instance or in the appeal courts. This issue can be raised by any of the parties or by the court itself suo motu.

Having regard to the settled principles enunciated so very clearly in the above dictum with regard to the attitude of the courts to the question as to whether there is jurisdiction in a court to try and determine a matter, the question then is, whether the court below should have closed its eyes to it when the appeal came before it. I think not. It is clearly the duty of a court that is well seised of the law to seek to apply it to the facts before it. (p. 2535 F)

COURTS - Actions - Competence to adjudicate

2. I think it is pertinent to the principles by which a court ought to be guided to determine whether the court has the necessary competence to adjudicate upon a cause or matter brought before it. On this point, I must refer to *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, at 348, where

Bairamian, FJ., enunciated the principles. But two of them, which I consider relevant to my consideration of this appeal, are as reproduced thus:-

"(2) *The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its*

B jurisdiction; and

(3) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction."

C It follows from the above principles that a court inter alia will have the necessary competence to hear and determine a matter before it if the subject matter is within its jurisdiction, and there is no feature in the case, which prevents the court from exercising its jurisdiction. (p. 2539 G)

D

Jurisdiction - Federal High Court

3. It is manifest from the provisions of Section 230(1) of Decree No. 107 of 1993 and which I have already set out in this judgment that the
E Federal High Court became vested with jurisdiction to hear and determine causes and including actions for declaratory reliefs against the Federal Government and its agencies, thereby removing the trial of such actions by State High Courts, which, of course, included the High Court
F of Kwara State from the 17th of November, 1993.

In this respect, I need to refer to the case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 32, to which I had referred to earlier in this judgment when discussing the principles that should guide a court in its determination of whether a court was vested with the jurisdiction to determine a
G cause or matter before it. One of the principles that is very apposite to the instant case is, whether there are any features in the case which affect the competence of the court. In the case in hand, it is not in doubt that Decree No. 107 of 1993 had removed the jurisdiction of State High Courts
H to hear and determine causes and matters including declaratory actions against the Federal Government or its agencies. It is also common ground that the respondent in the appeal, defendant in the trial court, is an agent of the Federal Government. It is therefore not arguable that the court

below seised of an appeal with those features and viewed from the background of the law cannot help but hold that the trial court was not vested with the jurisdiction to try the cause presented to it by the appellant. (p. 2543 D)

B

Stare decisis - Courts of similar jurisdiction

4. This case was duly considered by the lower court and the court having decided that it was wrongly decided, felt that it does not have to follow it. It is therefore not right for learned counsel to the appellant to contend as if the court below deliberately failed to follow that decision. And in any event, courts that are of similar or concurrent jurisdiction are not bound to follow the decision of each other. Where courts of similar jurisdiction fail to follow the previous decision of the court, the remedy for that situation is for the party aggrieved by it to appeal to a superior court. This appeal is not in any event aimed against the decision of the Court of Appeal in 7UP Bottling Co. Ltd. & Ors. v. Abiola & Sons (supra). And I need say no more. (p. 2544 G)

C

D

E

Stare decisis - Supreme Court case of Mustapha

5. I have deliberately set out in so much detail the facts and the decision reached by this court to show that the learned counsel was obviously in error to have argued that the decision in Mustapha's case (supra) is applicable to the instant appeal. A close reading of the facts and the decision thereon should have revealed to learned counsel that the issues canvassed in that case simply bear no correlation to the appeal in hand. (p. 2547 F)

F

G

APPEALS - Retrial

6. There can be no doubt that the trial of the action must be commenced de novo before the appropriate court of the Federal High Court. Since the trial court lacked the competence to adjudicate upon the matter the court below was right to have struck out the case. As the appeal against that judgment is devoid of any merit, this appeal must be dismissed and the judgment of the court below striking out the case is hereby affirmed. (p. 2549 E)

H

NOTABLE POINTS OF INTEREST

TOBI JSC

1. Subsequent statute can terminate court's initial jurisdiction

- B It is common ground that the cause of action arose in October, 1989, and the appellant filed the action on 13th January, 1993. The Decree which vested in the Federal High Court the jurisdiction to entertain the matter in this appeal came into effect on 17th November, 1993. Although the action was properly filed at the Kwara State High Court in January, C 1993, that court had no jurisdiction to entertain the matter as from 17th November, 1993 when Decree No. 107 was promulgated. Accordingly the Kwara State High Court had no jurisdiction to deliver judgment. The judgment which that court delivered on 18th May, 1996 some thirty months D after the cesser of its jurisdiction is a nullity ab initio. (p. 2556 G)

EDOZIE JSC

2. Law in force at trial time determines the court that has jurisdiction

- E The correct position of the law is that while the existing substantive law at the time a cause of action arose governs the determination of the action, it is the law in force at the time of the trial of the action based on the cause of action that determines the court that is vested with the jurisdiction to try the case. F

The Decree, which has, as its effective date, 17th November, 1993, divested from the State High court and vested on the Federal High Court exclusive jurisdiction over the subject matter in dispute between the parties. Although a statute is prospective and not retrospective, since G Decree No. 107 of 1993 made no special provision for cases already pending in court on its effective date of 17th November, 1993, those cases such as the one that gave rise to the instant appeal were caught by the Decree thereby rendering the decision of the trial court on 8th May, H 1996 in the instant case a complete nullity. (p. 2560 H)

REPRESENTATION

T. O. S. Gbadeyan, (with him, Rotimi Ogunjiola and Tunde Abegunde),

for the Appellant.

Chief Olatunji Arosanyi, (with him, Ayodele John) for the Respondent.

CASES REFERRED TO

- Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 146 at 201 B
Falaye v. Otapo (1995) 3 NWLR (Pt. 381) 1
Madukolu v. Nkemdilim (1962) 2 SCNLR 32
Oloba v. Akereja (1988) 7 S.C. (Pt. 1) at pp. 11 & 12
Mustapha v. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539 C
7UP Bottling Co. Ltd. & Ors. v. Abiola & Sons & Ors. (1992) 7 NWLR
(Pt. 463) 714
Westminster Bank Ltd v. Edwards (1942) AC 529 at 536, (1941) 1 All ER
470 at 474
City of London Corporation v. Cox (1986) LR. 2 HL 239, 283 D
Onyeama & Ors. v. Oputa & Ors. (1987) 2 NSCC 900
Flannagan v. Shaw (1929) 3 KB 96 at 105

STATUTES REFERRED TO

- Constitution of Nigeria 1979 s. 230 E
Constitution, Suspension and Modification Decree (No. 107) of 1993 s.
230(q), (r) & (s)
Federal High Court Amendment Decree No. 60 of 1991 F
Federal High Court Amendment Decree No. 16 of 1992
Court of Appeal Act 1976 s. 16
Supreme Court Act s. 22

LEAD JUDGMENT BY EJIWUNMI JSC

Appellant commenced this action against the respondent. In view of the issues raised in the appeal, it is considered necessary to state in this judgment the nature of the action that was commenced against the respondent filed on the 13th day of January, 1993, in the Kwara State High Court. Suffice it to say that during the pendency of the trial, the Decree No. 107 of 1993 was promulgated to take effect from 17th November, 1993. Despite the enactment of this Decree which affected the jurisdic- H

tion of State High Courts to hear and determine actions filed against agencies and parastatals of the Federal Government, the trial of the matter before the Kwara State High Court continued unabated until judgment was delivered by the trial Judge on the 8th of May, 1996. Now it is manifest from the printed record that none of the parties, and also the trial court adverted to the changes brought about by Decree No. 107 with regard to the jurisdiction of the trial court to hear and determine this action. At the end of the hearing, the learned trial Judge, following the addresses of learned counsel, delivered a considered judgment wherein the claims of the plaintiff were upheld. As the respondent to this appeal was dissatisfied with the judgment of the trial court, it appealed to the Court of Appeal sitting at Kaduna. The appellant in couching its grounds of appeal touched upon and or raised the question as to the jurisdiction of the trial court to hear and determine the action before it.

However, when the appeal was set up for hearing, briefs having been filed and exchanged, the Court of Appeal (Coram, Umaru Abdullahi PJ., (as he then was), Ogebe and Ige, JJCA.), directed the attention of counsel to the question with regard to the jurisdiction of the trial court to determine the matter on appeal. The court then ordered as follows: -

“There is an issue that needs to be considered. It is an issue of jurisdiction which needs to be addressed by both counsel. The parties should go and consider the provisions of Decree No. 107 of 1993 as well as the provisions of the Federal High Court Act. We need to be addressed on this important issue.”

The appeal was accordingly adjourned to the 23rd of February, 1998, for counsel to address the court. On the adjourned date, learned counsel for the parties duly addressed the court as directed. After hearing counsel, who also filed briefs of argument on the issue raised, the court below delivered a considered judgment. Ige, JCA., who delivered the lead judgment after a careful review of the relevant cases and the provisions of Decree No. 107 of 1993. Decree No. 60 of 1991 and Decree No. 16 of 1992, in conjunction with the provisions of the Federal High Court Act, concluded that the proceedings and judgment delivered by the learned trial Judge in respect of the action must be struck out as the trial

court lacked jurisdiction to hear and determine the action. It is against this judgment that the appellant has filed this appeal. Pursuant thereto he filed three grounds of appeal. In accordance with the Rules of this court, briefs were also filed and exchanged between the parties. In the brief filed on behalf of the appellant by his learned counsel, T. O. S. Gbadeyan Esq., three issues were identified for the determination of the appeal. They read thus

“2.01 Whether the lower court lacked jurisdiction as a result of the promulgation of Decree 107 of 1993 on 17th November, 1993, when the cause of action had arisen in 1989 and action on it filed before the trial court on 13th January, 1993.

2.02 Whether under the doctrine of judicial precedent or stare decisis, the Court of Appeal can refuse to follow its earlier decision, as done in this case, without setting it aside, when the issue for consideration and rationes decidendi are in pari materia.

2.03 Whether or not the appropriate remedy by the lower court should be setting aside the judgment of the lower trial court and striking out the appeal.”

In my humble view, the issues set down above for the appellant to this appeal correctly identified the complaint of the appellant against the judgment of the court and they also correctly reflect the grounds of appeal filed against the said judgment. In the course of the judgment, I will where necessary consider also the issues raised by the respondent.

From a very careful perusal of the argument in respect of the first issue in the appellant's brief, it became manifest that the thrust of the complaint of the appellant appears to be that a person's vested right falls to be determined by the law applicable when the cause of action arose. It is therefore submitted for the appellant that in the instant appeal the vested rights of the appellant took effect when the action was commenced at the Ilorin High Court, by virtue of the provisions of Section 230 of the 1979 Constitution. It is therefore the submission of learned counsel for the appellant that the jurisdiction vested in the High Court of Ilorin to try and determine the action before it cannot be taken away by any of the provisions of Decree No. 107 of 1993. In support of this submission, he re-

ferred to decisions of this court namely: *Amavo Ltd. v. Bendel Textiles Mills* (1991) 8 NWLR (Pt. 207) 37 at 51; *Osadebay v. A-G Bendel State* (1991) 1 NWLR (Pt. 169) 525 at 574; *A-G Federation v. Sode* (1990) 1 NWLR (Pt. 128) 500 at pages 52'6 and 534; *Tukur v. Government of Gongola State* (1989) 9 S C. I; (1989) 4 NWLR (Pt: 117) 517 at 381; *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 539; *Garba v. Federal Civil Service Commission* (1988) 1 NWLR (Pt 71) 449.

After the submission so made by learned counsel for the appellant that the court below erred in holding that the provisions of Decree No. 107 of 1993 had the effect of abrogating the jurisdiction of the Ilorin High Court to continue with the hearing of the action, also submitted that the court below did not advert nor did it consider what is meant by “*action*” before it arrived at its decision. In respect of this aspect of his submission, learned counsel made reference to cases where in decisions of this court, the meanings of “*action*” and proceedings were stated. See *Udoh v. Orthopaedic Hospitals Management Board* (1993) 7 NWLR (Pt. 304) 139 at 148. And he went on to refer to the different kinds of proceedings recognized within the jurisdiction of the Ilorin High Court. Also reference was made to the High Court (Civil Procedure) Rules of Kwara State. After these references, it is the contention of learned counsel for the appellant that the court below did not seek to distinguish between “*action*” and proceedings before striking out the action before it.

The respondent in the brief filed on its behalf by its learned counsel commenced his arguments against that of the appellant by submitting that the court below was right to have raised *sup, motu* the issue of jurisdiction when the appeal came before it. And in support of that contention, he referred to *Oloba v. Akereja* (1988) 7 S.C. (Pt. I) 1; (1988) 3 NWLR (Pt. 84) 508 and *Western Steel Works Ltd v. Iron and Steel Workers Union* (1986) 3 NWLR (Pt. 30) 617. With regard to whether the trial court had jurisdiction or not in view of the provisions of Decree No. 107 of 1993, particularly Section 230(l)(q), (r) & (s) thereof, the thrust of the submission of learned counsel for the respondent is that, the lower court was right to have held that the trial court no longer had jurisdiction to continue with the hearing of the matter upon the promulgation of De-

cree No. 107 of 1993. On this point, which he concedes that there is a general presumption against retrospectivity, yet he submits that such presumption must be applied in the light of the language of the statute and the subject matter with which the statute is dealing or the circumstances of the case. In support of this proposition, reference was made to Ojokolobo v. Alamu (1987) 3 NWLR Vol. 18(1987) (PC11) (Pt. 67) 377; Utih v. Onoyivwe (1991) 11 NWLR (Pt. 166) 166; Egolum v. Obasanjo (1999) 5 S.C. (Pt. 1) 1; 5 SCNJ 92. B

With the above summaries of the arguments contained in the briefs of argument filed on behalf of the parties by their respective learned counsel, I will now consider issue (1) raised in the respondent's brief and thereafter issue (1) in the appellant's brief would be considered. The point that falls to be considered is, whether the court below was right to have raised suo motu the question as to whether the trial court had vested in it the power to continue with the trial of the action with the promulgation of Decree No. 107 of 1993. Regardless of what my conclusion would be on this first issue raised in the respondent's brief, I think that this issue deserves to be considered before considering the other issues raised in this appeal. It is manifest from the arguments of counsel that the appellant's position is that the court below was wrong to have raised the issue suo motu. The respondent on the other hand, has argued, that the court below was right to have raised the issue as it did. D E

There can be no doubt that the issue of jurisdiction is a threshold issue which may be considered at any stage in the course of proceedings. This question has been determined in a long line of cases that at any stage of the proceedings, be it at the pre-stage trial of the case, during the trial, or during the hearing of the appeal by the Court of Appeal and even in the Supreme Court. On this point, I think it is desirable to quote the dictum of Obaseki, JSC., as propounded in Oloba v. Akereja (1988) 7 S.C. (Pt. 1) at pp. 11 & 12, which reads: F G H

“The issue of jurisdiction is very fundamental as it goes to the competence of the court or tribunal. If a court or tribunal is not competent to entertain a matter or claim or suit, it is a waste of valuable

time for the court to embark on the hearing and determination of the suit, matter or claim. It is therefore an exhibition of wisdom to have the issue of jurisdiction or competence determined before embarking on the hearing and determination of the substantive matter. The issue of jurisdiction being a fundamental issue, it can be raised at any stage of the proceedings in the court of first instance or in the appeal courts. This issue can be raised by any of the parties or by the court itself suo motu. When there are sufficient facts ex facie on the record establishing a want of competence or jurisdiction in the court it is the duty of the judge or justices to raise the issue suo motu if the parties fail to draw the court's attention to it, see Odiase v. Agho (1972) 1 All NLR (Pt. 1) 170. There is no justice in exercising jurisdiction where there is none. It is injustice to the law, to the court and to the parties so to do. I am therefore unable to accept appellant's counsel's submission that the Court of Appeal should not have entertained ground 1 (b) which raised the issue of jurisdiction simply because it was not so raised in the High Court. Once an issue of jurisdiction is raised, it should be examined in all its ramifications. It should not be compartmentalized and subjected to piecemeal examination and treatment. The very many faces of jurisdiction should come under the searchlight and pronounced upon."

Having regard to the settled principles enunciated so very clearly in the above dictum with regard to the attitude of the courts to the question as to whether there is jurisdiction in a court to try and determine a matter, the question then is, whether the court below should have closed its eyes to it when the appeal came before it. I think not. It is clearly the duty of a court that is well seised of the law to seek to apply it to the facts before it. Indeed it should have been the duty of counsel in the matter to have raised this question having regard to the facts of the case and the state of the law at the time. This is a case which was commenced by a writ of summons that was taken out by the appellant against the respondent on the 13th day of January when he claimed as follows:-

"i. An order that the decision of the defendant through its council communicated to the plaintiff vide letter Ref. No. VI/RO/S.32 on 23rd

October, 1989 as follows: ‘I am directed to inform you that, after due consideration, the Council has found you guilty of the said charges as communicated to you and indicated in the first paragraph above. The Council after taking into account all the relevant facts and circumstances, as well as your plea for mitigation, has decided that you be removed B forthwith from the office of the Dean of the Faculty and that you are barred from holding that or any other elective office or the office of head of Department, throughout your service tenure at the University of Ilorin’, is ultra vires the powers of the defendant and the said decision made in error is illegal, arbitrary, unconstitutional, null and void. C

ii. A sum of two million (N2,000,000) Naira only as general damages for wrongful and unjustifiable trial of the plaintiff by the defendant which has no standing and or competence to do so.

iii. A perpetual injunction restraining the defendant and its agents D or servants from ever using paragraph 570 of council minutes of 19th October, 1989 as basis for trying plaintiff for the offence of plagiarism.”

The trial, after pleadings have been ordered then proceeded before the trial Judge sitting at Ilorin in the High Court of Kwara State until it was concluded with the judgment of the learned trial Judge, which was delivered on the 8th of May 1996. Meanwhile, the Federal Military Government promulgated on the 17th of November, 1993, Decree No. 107 of 1993. By 10 this enactment, the unlimited jurisdiction vested in State F High Courts to hear and determine both civil and criminal causes had by virtue of the new Section 230(1) of Decree No. 107 of 1993 been modified by removing the State High Courts and vesting in the Federal High Courts the jurisdiction to hear and determine causes and matters including declaratory actions against the Federal Government and or its agencies. G And the respondent, undoubtedly, is one of such agencies. I also need to refer to Decree No. 16 of 1992 which was enacted by the Federal Government and which has the title “*THE FEDERAL HIGH COURT AMENDMENT DECREE 1992*”. The provisions of this Decree, which H were brought to the attention of the court below, also led to the decision of that court that the trial court had no jurisdiction to try the case. In coming to that conclusion, the relevant provisions of the Decree are quoted

thus:-

“I. The Federal High Court (Amendment) Decree 1991 is hereby amended as set out in this Decree, that is -

(a) By substituting for sub-paragraph (i) of paragraph (ii) of Section 7(i) as amended, the following new sub-paragraph, that is -

(i) Relate to any matter (excluding the formation, annulment and dissolution of marriages other than marriages under Islamic and Customary law including matrimonial causes relating thereto) with respect to which the Federal Military Government has power to make laws: or;
C and

(b) By substituting for the existing Section 4 the following new section, that is -

4. This Decree may be cited as the Federal High Court (Amendment) Decree 1992 and shall come into force on such a date as the President, Commander-in-Chief of the Armed Forces, after consultation with the Armed Forces Ruling Council, may by Order published in the Gazette specify.

2. Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree and made pursuant to the Federal High Court (Amendment) Decree 1991 shall by virtue of this Decree be made null and void and of no effect whatsoever.

3. This Decree may be cited as the Federal High Court (Amendment) Decree 1992 and shall be deemed to have come into force on 1st January, 1992.

MADE at Abuja this 11th day of May, 1992.”

From the above resume of the facts and the law, I cannot help but hold that the court below was right in all the circumstances of the case to have raised suo motu the issue of jurisdiction. It is therefore my view that there is no merit in respect of this issue and it is resolved against the appellant.

I will now consider the merits of the contention made for the appellant that the court below was wrong to have held that the trial court lacked the jurisdiction to continue with the hearing and determination of the suit following the promulgation of Decree No. 107 of 1993. The

argument of counsel in respect of this contention have already been reviewed and I do not need go over them again. It is, however sufficient to refer to the two principal arguments of counsel. The first is that by holding as it did, the court denied the appellant the existence of the vested rights he had to prosecute his case to determination by the High Court, Ilorin. He went on to argue that the reasoning of this in *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 539 should apply in the determination of this issue. His other argument is to the effect that the provision of Section 230(1) of Decree No. 107 of 1993 takes effect from the time of its promulgation on 17th November, 1993 and should not have been interpreted retrospectively as was done by the court below. The 2nd major argument of the learned counsel for the appellant relate to his view that the court below should not have departed for the decision of that court in *7UP Bottling Company Ltd. v. Abiola & Sons* (1996) 2001 6 S.C. 73 NWLR (Pt. 463) 714, whose facts are in pari material with the case under consideration. Before I consider the question as raised in the first issue in the appellant's brief, it is necessary to bear in mind that the question is primarily concerned with the jurisdiction of court to hear and determine cases brought before them. There can therefore be no doubt that the issue of jurisdiction is fundamental to the question of the competence of the court adjudicating. See *Kalio v. Daniel Kalio* (1975) 2 S.C. (Reprint) 14; (1975) 2 S.C 15. Hence it is crucial for any court adjudicating to first determine that issue. See *Barclays Bank v. Central Bank* (1976) 6 S.C. (Reprint) 115; (1976) 6 S.C. 175. And as I have held earlier in this judgment, the court below was right to have raised the issue and determined that question when the appeal came before it.

Now, the question that was further agitated in this appeal was, whether the Court of Appeal was right to have held that the Ilorin High Court in Kwara State lost its competence to continue with the trial of the case on appeal with the promulgation of Decree No. 107 of 1993. **I think it is pertinent to the principles by which a court ought to be guided to determine whether the court has the necessary competence to adjudicate upon a cause or matter brought before it. On this point, I must refer to *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, at**

348, where Bairamian, FJ., enunciated the principles. But two of them, which I consider relevant to my consideration of this appeal, are as reproduced thus:-

"(1)

B (2) *The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and*

C (3) *The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction."*

It follows from the above principles that a court inter alia will have the necessary competence to hear and determine a matter before it if the subject matter is within its jurisdiction, and there
D is no feature in the case, which prevents the court from exercising its jurisdiction. It is an observable point that when the case commenced, the court, by virtue of the provisions of Section 236(1) of the Constitution of the Federal Republic of Nigeria 1979, which vested unlimited
E jurisdiction in State High Court to hear and determine civil and criminal causes thus:-

"236 (1) *Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the*
F *High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, 'liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect*
G *of an offence committed by any person.*

(2) *The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt*
H *with by the court in the exercise of its appellate or supervisory jurisdiction."*

But by the 17th November, 1993, Decree No. 107 had been promulgated where changes were made with regard to the jurisdiction of the

Federal High Court by virtue of Section 230(1) of the said Decree and it reads: -

“230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from -

(a)

(b)

(c)

(d)

(q) The administration or the management and control of the Federal Government or any of its agencies;

(r) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; and

(s) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

(1A) The Federal High Court shall also have and exercise jurisdiction and powers in respect of treason and the criminal causes or matters in respect of which jurisdiction is conferred by subsection (1) of this section.”

It is therefore manifest that by reason of the above quoted provisions of Section 230(1) of Decree No. 107 the jurisdiction of the Federal High Court to hear and determine causes and matters had been enlarged. Hitherto, the jurisdiction of the Federal High Court was limited to that which was given to its predecessor, The Federal Revenue Court Act, Cap. 134 of the Laws of Nigeria when that court was instituted and kept

intact by the provisions of Section 230(1) of the 1979 Constitution. But by reason of the new provision of Section 230(1) subsection (q), (r), (s), of Decree No. 107, the jurisdiction of the court was increased to vest in the Federal High Court causes and matters concerning the Federal Government and or any of its agencies.

Now, as it is common ground between the parties that the respondent to this appeal is an agent of the Federal Government, I will not therefore dwell any further on that point. As I have said above, one of the complaints of the appellant against the judgment of the court below is that the court did not take into consideration the fact that the cause of the action commenced on 23rd October, 1989, when the respondent's counsel informed by a letter that the appellant had been removed from the Office of Dean of Faculty and barred from holding that or any other elective office or the office of Head of Department throughout his service tenure with the University of Ilorin. It is also contended for the appellant that the court below did not take into account the fact that by the proceedings on record, the action had commenced before the promulgation of Decree No. 107 of 1993.

I will deal with the second complaint first. And in order to deal with that complaint, it is desirable to refer howbeit briefly to the facts as can be gathered from the printed record. Now, it is clear from the printed record that the appellant commenced his action by a writ of summons on the 13th January, 1993. Although it would appear that before that date appellant had apparently filed an earlier writ of summons against the defendant dated 11th December, 1989. It does also appear that probably because the writ was not served within the prescribed period to effect service, the appellant sought and obtained the leave of court to file the writ of summons upon which the action was tried. Be that as it may, the trial proper of the case did not commence until the 31st of March, 1994, when the applicant started it with his own evidence. The trial then continued on various dates until it was concluded by the trial Judge on the 8th of May, 1996, when the learned trial Judge, Ibiwoye, J., delivered his judgment. It is clear that throughout the trial of the case that culminated with the judgment of the trial Judge, and it is also manifest that

none of the learned counsel for the parties and also the trial Judge questioned the jurisdiction of the trial court to try the case. Whereas, by virtue of Decree No. 107 of 1993, the trial court no longer had the jurisdiction to try and determine such matters as were raised in this case on appeal. As the relevant provisions of this Decree have been set out earlier in this judgment, it is not necessary to set them down here. It is sufficient to state that the fact that the court below did not advert to the proceedings of the trial court cannot fault the judgment of that court. What is not he noted however, is that while the proceedings that took place in the trial court may amount t& nothing if the trial court had no competence to hear the case, it must be borne in mind as I have stated above that the trial court commenced on the 31st of March, 1994, long after Decree No. 167 of 1993 was promulgated. What therefore fell squarely for the determination of the court below was whether the trial court, having regard to the provisions of Decree No. 107 of 1993, had the competence to try the case. **It is manifest from the provisions of Section 230(1) of Decree No. 107 of 1993 and which I have already set out in this judgment that the Federal High Court became vested with jurisdiction to hear and determine causes and including actions for declaratory reliefs against the Federal Government and its agencies, thereby removing the trial of such actions by State High Courts, which, of course, included the High Court of Kwara State from the 17th of November, 1993.**

In this respect, I need to refer to the case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 32, to which I had referred to earlier in this judgment when discussing the principles that should guide a court in its determination of whether a court was vested with the jurisdiction to determine a cause or matter before it. One of the principles that is very apposite to the instant case is, whether there are any features in the case which affect the competence of the court In the case in hand, it is not in doubt that Decree No. 107 of 1993 had removed the jurisdiction of State High Courts to hear and determine causes and matters including declaratory actions against the Federal Government or its agencies. It is also common ground

that the respondent in the appeal, defendant in the trial court, is an agent of the Federal Government. It is therefore not arguable that the court below seised of an appeal with those features and viewed from the background of the law cannot help but hold that the trial court was not vested with the jurisdiction to try the cause presented to it by the appellant.

Before concluding, I wish to advert to the argument of the appellant that the court below ought to have determined this case as decided by the Court of Appeal in 7UP Bottling Co. Ltd. & Ors. v. Abiola & Sons & Ors. (1992) 7 NWLR (Pt. 463) 714. In that case, the Court of Appeal, (Coram, Umaru Abdullahi, Mahmud Mohammed and Opene, JJCA.), had in its lead judgment per, Opene, JCA., and in answer to one of the questions raised before it. referred to the Federal High Court (Amendment) Decree No. 16 of 1992 and Decree No. 60 of 1991 thus: -

“The Federal High Court (Amendment) Decree No. 16 of 1992 which came into force on 1st January, 1992, suspended the operations of the Federal High Court (Amendment) Decree No. 60, 1991, and also all the decisions taken pursuant to the Decree No. 60 of 1991. Section 2 of Decree No. 16 of 1992 states: - Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree and made pursuant to the Federal High Court (Amendment) Decree 1991, shall by virtue of this Decree be made null and void and of no effect whatsoever.”

And then went on to hold that

“This no doubt restores the jurisdiction of the State High Court as it was before promulgation of Decree No. 60 of 1991.”

This case was duly considered by the lower court and the court having decided that it was wrongly decided, felt that it does not have to follow it. It is therefore not right for learned counsel to the appellant to contend as if the court below deliberately failed to follow that decision. And in any event, courts that are of similar or concurrent jurisdiction are not bound to follow the decision of each other. Where courts of similar jurisdiction fail to follow the previous decision of the court, the remedy for that situation is for the

party aggrieved by it to appeal to a superior court. This appeal is not in any event aimed against the decision of the Court of Appeal in 7UP Bottling Co. Ltd. & Ors. v. Abiola & Sons (supra). And I need say no more.

Appellant has also sought to contend that this court should follow B the decision of the Supreme Court in *Mustapha v. Government of Lagos State* (1987) 1 NSCC 632. Briefly stated, the facts of the suit that led to the appeal arose out of the contest for the chieftaincy stool of the Oloja of Igbogbo in the Ikorodu area of Lagos State. On the 29th of November, 1977, the last holder of the Oloja of Igbogbo stool died. The stool thus C became vacant. The present appellant and the 3rd respondent were the main contestants for the vacant stool.

By Legal Notice No. 6 of 1979 dated 26th July, 1979, the Military D Governor of Lagos State approved the appointment of Johnson Olatunji Fatola, the 3rd respondent, as the new Oloja of Igbogbo. An instrument of appointment made under the Hand and Seal of the Military Administrator of Lagos State dated 29th August, 1979, and published in the Lagos State Official Gazette No. 35 Vol. 12 of 30/8/79 was given to the said 3rd E respondent.

Following these developments, the plaintiff contended that the 3rd respondent was not a member of the Rademo Ruling House whose turn it was to produce the next Oloja and that the 3rd respondent was never F presented to the Kingmakers and that his appointment was not only contrary to the Registered Declaration on Igbogbo chieftaincy title but was ultra vires some sections of the Chiefs Law, Lagos State. The main defence of the 3rd respondent was that the High Court of Lagos State had G no jurisdiction to try the case as he had been properly appointed as the Oba within the meaning of the applicable law before the action commenced. This plea was found unacceptable by the trial court. The 3rd respondent then appealed to the Court of Appeal and the judgment of the H trial court was reversed. 'The appellant then appealed to the Supreme Court. His appeal was dismissed unanimously by this court and I would wish to refer to the judgment of Obaseki, JSC.. who dismissing the appeal said thus: -

B “The issues raised in the action commenced in the High Court which has led to the appeal first to the Court of Appeal and now to this court being chieftaincy questions were not justiciable or could not have been entertained in any court of law on the 28th of June, 1979, when the cause of action arose that being the date the appointment of the 3rd respondent as Oloja of Igbogbo was approved by the Executive Council. The action in the High Court of Lagos State was filed in Ikeja Judicial Division on the 19th day of October, 1982 about 3 years after the 1963 Constitution ceased to have effect. The question that therefore arises to be considered is whether an issue which could not be entertained by any court of law in Nigeria when the cause of action arose became justiciable and entertainable by the courts of law when the 1963 Constitution ceased to have effect.

D The answer to this question is not hard to find. It lies embedded in the Interpretation Act 1964 and in Section 6(6) of the Constitution of the Federal Republic of Nigeria 1979. The provisions of Section 6(6)(d) and its all embracing power to deprive all the courts in Nigeria of any jurisdiction to deal with the matters covered by the section has received judicial interpretation in the case of Uwaifo v. Attorney-General of Bendel State and Ors. (1982) 7 S.C. 124 and Attorney-General of Imo State v. Attorney-General of Rivers State (1983) 2 SCNLR 108. The said Section 6(6)(d) of the 1979 Constitution reads:-

F The judicial powers vested in accordance with the foregoing provisions of this section:

- (a)
- (b)
- G (c)
- (d) Shall not, as from the date when this section comes into force, extend 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.

H “What is an “existing law”? “Existing law” is defined in Section 274 (4) (b) to mean 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. The Instrument of Appointment of the 3rd respondent as Oloja of Igbogbo Exhibit 'D3/B' therefore comes within the definition of an existing law. It was signed and sealed with the Public Seal of Lagos State by Captain Okoh Ebitu Ukiwe (N.N.) Military Administrator of Lagos State to promulgate and sign Edicts into law. See Section 1(1) Constitution (Basic Provisions) (Transitional Measures) Decree 1978 No. 15. See also Section 1(3) and Section 2(2) Constitution (Basic Provisions) (Transitional Measures) Decree 1978 No. 15. See also Section 1(3) and Section 2(2) Constitution (Basic Provisions) Decree 1975 No. 32. The declarations sought by the appellant raise the issue of the competence of the Executive Council to approve the appointment of the 3rd respondent as Oloja of Igbogbo and of the Military Administrator to sign the Instrument of Appointment of Oloja of Igbogbo Exhibit D3/B.

The judicial power to determine this issue was not given to the courts. It was expressly excepted from the judicial power conferred by Section 6(1) and (2) of the Constitution by Section 6(6)(d) of the Constitution."

One of the several issues raised in that appeal before the Supreme Court was whether the law applicable to an action is that existing when the cause of action arose or that existing when the court's jurisdiction is invoked. In its response to that question, this court held that it was applicable law when the cause of action arose. **I have deliberately set out in so much detail the facts and the decision reached by this court to show that the learned counsel was obviously in error to have argued that the decision in Mustapha's case (supra) is applicable to the instant appeal. A close reading of the facts and the decision thereon should have revealed to learned counsel that the issues canvassed in that case simply bear no correlation to the appeal in hand.** The fulcrum of the case for the appellant in the Mustapha case (supra) is that his claim against the 3rd respondent can be heard by the High Court of Lagos State, whereas the 3rd respondent whose rights had become vested before the coming into force of 1979 Constitution, and

that the right so vested cannot be challenged in any court of law by virtue of Section 6 (6)(d) of the said Constitution. But in the case in hand, there was nothing that can be described as vested in the appellant in terms of what the court accepted as the vested rights of the 3rd respondent to remain as the Oloja of Igbogbo.

The question under consideration in Musdapha's case (supra) is, whether there is jurisdiction in the High Court of Lagos State to try causes or matters including declaratory actions against the Federal Government and its agencies. I do not think it needs any authority to that upon the coming into force of Decree No. 107 of 1993 whose long title "*CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE: 1993*", that Decree which came into operation was endowed with the force of law as the only Constitution of the Federal Republic of Nigeria. In that Decree No. 107 of 1993, Section 230 (1) of the 1979 Constitution was duly modified as stated above earlier in this judgment. What this means is that provision of the 1979 Constitution, which gave unlimited jurisdiction to State High Courts to hear and determine both civil and criminal causes automatically lapsed or ceased to have effect or are impliedly repealed and abrogated by Decree No. 107 of 1993. See Onyeama & Ors. v. Oputa & Ors. (1987) 2 NSCC 900 and Flannagan v. Shaw (1929) 3 KB 96 at 105 where Scrutton, LJ., stated the principle of implied repeal by plain repugnancy. The provisions of Decree No. 107 of 1993 and those of the 1979 Constitution cannot stand together. I therefore must hold that Mustapha's case is not of any assistance to the appellant.

The question has however been posed as to whether the order made by the trial court was right in the circumstances. I think in order to answer this question, it would be profitable to refer to the case of Western Steel Works Ltd. v. Iron and Steel Workers Union (supra) where, in the course of his judgment, Obaseki, JSC., said that any defect in competence is fatal for the proceedings are a nullity however well conducted and decided. He then quoted with approval the observation of Lord Wright in Westminster Bank Ltd v. Edwards (1942) AC 529 at 536, (1941) 1 All ER 470 at 474 thus:-

"Now it is clear that a court is not entitled but bound to put an end

to its proceedings if at any stage and by any means it becomes manifest that they are incompetent. It can do so on its own initiative, even though the parties have consented to the irregularity, because, as Willes, J., said in City of London Corporation v. Cox (1986) LR. 2 HL 239, 283, in the course of giving answers of the judges to the House, 'mere acquiescence does not give jurisdiction'. In Farguharson v. Morgan (1894) 1 QB 552, 556 Lord Halsbury states the principles thus: 'It has long been settled that, where an objection to the jurisdiction of an inferior court appears on the face of the proceedings, it is immaterial by what means and by whom the court is informed of such objection. The court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior court from proceeding in matters as to which it has no jurisdiction.' That was a case of prohibition, but I think the general principle applies to the duty of the court to take the objection when it becomes apparent in the course of proceedings before it in an appeal. This was the view of a Divisional Court, composed of Bray and Lush, JJ., in Simpson v. Crowle (1921) 3 KB 243, and I agree with it. These two authorities last cited were county court cases but it is clear that the same principle applies on appeals from the High Court or from any court."

Having regard to the principles lucidly elucidated above, **there can be no doubt that the trial of the action must be commenced de novo before the appropriate court of the Federal High Court. Since the trial court lacked the competence to adjudicate upon the matter the court below was right to have struck out the case. As the appeal against that judgment is devoid of any merit, this appeal must be dismissed and the judgment of the court below striking out the case is hereby affirmed.** This appeal having failed in its entirety, the respondent is therefore entitled to costs in the sum of N10,000.00 only.

ONU JSC

Having been privileged to read in draft the judgment just delivered by my learned brother, Ejiwunmi, JSC., I agree with his reasoning and conclusion. I adopt the same as mine and have nothing further to add thereto.

KATSINA-ALU JSC

My Lords, I have had the advantage of reading in draft the judgment delivered by my learned brother, Ejiwunmi, JSC. I agreed with it and for the reasons which he gives, I too dismiss the appeal with costs as ordered in the said judgment.

TOBI JSC

The appellant was a Professor of Educational Management and Planning at the University of Ilorin. He was in the Faculty of Education. Dr. Segun Ogunsaju made an allegation of plagiarism against the appellant and two others. The authorities of the respondent found the appellant guilty of the allegation of plagiarism. By a letter Ref. No. VI/RO/S. 32 of October, 1989, the appellant was removed forthwith from the office of the Dean of the Faculty. He was also banned from holding the office of Dean or any other elective post or the office of Head of Department throughout his tenure at the university.

The appellant sued. He sought for a declaration that the decisions of the university was ultra vires its powers, illegal, arbitrary, unconstitutional, null and void. He also claimed general damages and perpetual injunction against the university.

The learned trial Judge gave judgment to the appellant, “*as per his claim.*” Dissatisfied, the respondent, the University of Ilorin, appealed. The Court of Appeal raised suo motu the issue of jurisdiction of the trial Judge. Counsel on both sides reacted to the issue of jurisdiction. This

they did by filing and exchanging briefs. The Court of Appeal, after considering the briefs, came to the conclusion that the learned trial Judge had no jurisdiction to entertain the matter at the time he did. Ige, JCA., gave the ruling. She said in her concluding paragraph.

“On a final analysis, I rule that the lower court, i.e. the Kwara State High court had no jurisdiction to hear and determine the case in Suit No. KWS/6/93 hence this court cannot take the appeal of nullity proceedings”

Dissatisfied, the appellant has come to this court. Briefs were filed and duly exchanged. I do intend to summarize the arguments in the briefs. This has been adequately undertaken in the leading judgment. I shall only take them as they relate to the issues I shall raise in this judgment.

The first issue raised by learned counsel for the appellant is whether the trial court lacked jurisdiction to entertain the matter as a result of the promulgation of Decree No. 107 of 1993. Learned counsel for the appellant submitted that the court had jurisdiction to hear the matter. Learned counsel for the respondent submitted that the court lacked the jurisdiction to hear the matter. Who is correct? And that takes me to the examination of the position of the law, and I will permit myself to go into some history surrounding Decree No. 107 of 1993.

The full nomenclature of Decree No. 107 of 1993 is the Constitution (Suspension and Modification) Decree, 1993. It was promulgated by the late General Sani Abacha to confer legality on his regime. Although the Explanatory Note does not add legality to the Decree in the interpretation of the wording of the Decree, I should state it here for the purpose of explaining the contents of the Decree qua expatiation:

“The Decree restores the Constitution of the Federal Republic of Nigeria 1979 and amends and modifies it to provide, among other things for the establishment, membership and function of Provisional Ruling Council, the National Council of State and Federal Executive Council.”

The Decree was made on 17th day of November, 1993. That was the day the late General Sani Abacha took over the Government of Nigeria as Military Head of State, Commander-in-Chief of the Armed Forces.

For our purpose, the relevant portion of the Decree is the amend-

ment to Section 230 of the 1979 Constitution which vested original jurisdiction in the Federal High Court. By the amendment in Decree No. 107 of 1993, Section 230 of the 1979 Constitution conferred far reaching additional jurisdiction on the court. And the additional jurisdiction was
B exclusive to the court. The opening words of Section 230(1) of the 1979 Constitution, as amended, provided as follows:

*“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred
C upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from.....”*

The amendment vested jurisdiction on the court in 18 major items, so to say. They number from (a) to (s). It cannot be argued that Decree
D No. 107 of 1993 materially expanded the frontiers of the jurisdiction of the Federal High Court far beyond the original content of Section 230 of the 1979 Constitution.

For the purpose of this appeal, it is the amendment in Section
E 230(1)(s) that is important. Let me read it quickly:

*“Notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred
F upon it by an Act of the National Assembly or a Decree the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from any action or proceeding for a declaration for injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies:*

*Provided that nothing in the provisions of paragraphs (q), (r) and
G (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any
H enactment, law or equity”*

It is my view that the action commenced by the appellant comes within the purview of the above provision. And the case law is in great proliferation. Let me take a few of them. In Universal Trust Bank of

Nigeria Ltd, v. Ukpabia (2000) 8 NWLR (Pt. 670) 570, it was held that by virtue of Section 231(1) of the Constitution (Suspension and Modification) Decree No. 107 of 1993 and in spite of the provision thereto, only the Federal High Court has jurisdiction to the exclusion of any other court to entertain a suit for declaration or injunction challenging the executive action or decision of the Nigeria Police. B

In Zakari v. Inspector General of Police (2000) 8 NWLR (Pt. 670) 666, it was held that by virtue of Section 230 (1)(r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993, notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court has and exercises jurisdiction to the exclusion of any other court in civil causes and matters arising from the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies and any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies. C D E

In University of Agriculture, Makurdi v. Jack (2000) 11 NWLR (Pt. 679) 658, it was held that the provision of Section 230(1)(s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree, No. 107 of 1993 requires the following conditions precedent before any action or proceedings could come under its operation. F These are: (a) the action or proceedings must be brought against the Federal Government or any of its agencies; (b) the action or proceedings must be for a declaration or injunction; (c) the action or proceedings must affect the validity of any executive or administrative action or decisions of the Federal Government or any of its agencies. See also Akegbejo v. Dr. Ataga (1998) 1 NWLR (Pt. 534) 459; Inspector - General of Police v. Aigbiremolen (1999) 13 NWLR (Pt. 635) 443. The above apart, the courts have held that a High Court of a State has no Jurisdiction in such H matters. In Aveni v. University of Ilorin (2000) 2 NWLR (Pt. 644) 290, it was held that Section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993 divested the State High Court of jurisdiction to G

entertain or adjudicate on matters which touch on the administration or management and control of the Federal Government or any of its agencies and vested the same exclusively in the Federal High Court.

In the earlier case of *University of Agriculture, Makurdi v. Jack B* (supra) it was held that the effect of Section 230(1) (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 is to oust the jurisdiction of the State High Courts in actions and proceedings in which the reliefs sought are for declarations or injunction affecting the validity of any executive or administrative action or decision of the Federal Government or any of its agencies.

The issue raised by learned counsel for the appellant is that in view of the fact that the cause of action arose before Decree No. 107 of 1993 came into operation, the applicable law is that which was in force at the time the cause of action arose. He cited a number of cases, including decisions in respect of what is an action.

The position of this case is different from the decision of this court in *Mustapha v. Government of Lagos State* (1987) 2 NWLR (Pt. 58) 539 and the group of cases. The issue here arose in the recent decision of this court in *Adah v. National Youth Service Corps* (2004) 13 NWLR (Pt. 891) 639. The appellant was employed by the respondent in 1977 as a driver in their Makurdi Office. In the course of his official duty in December, 1990, he was involved in an accident and was issued with a query and suspended from duty. On 28th June, 1991, his employment was terminated. Thereafter, on 28th July, 1995, the appellant sued the respondent at the High Court of Benue State, Makurdi, seeking declaration that his suspension from duty, the subsequent termination of his employment were null and void and thereby he was still in the respondent's employment and that the court should order that he be reinstated as a driver and paid all of his entitlements and allowances. At the trial the main thrust of the appellant's case was that the proper procedure was not followed before his employment was brought to an end. The trial court, in a considered judgment, held that the proper procedure was observed in terminating the appellant's employment. Aggrieved by the decision, the

appellant appealed to the Court of Appeal. At the Court of Appeal, the issue of jurisdiction of the High Court of Benue State to entertain the suit was raised suo motu, on the basis of the Constitution (Suspension and Modification) Decree No. 107 of 1993 which amended Section 230 (1) of the 1979 Constitution. The Court of Appeal in its ruling declared the proceedings and the judgment of the trial court, having been embarked upon without jurisdiction, null and void.

On appeal to this court it was held (per Uwaifo, JSC.), that the law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard.

In his concurring judgment, Pats-Acholonu, JSC., said at page 651:

“The argument of the appellant that because the cause of action arose at the time when the State High Court where the action was later instituted had the jurisdiction therefore, regardless of the fact that before the action was taken that court like all State High Courts had been divested of the jurisdiction by reason of the amendment of Section 230(1) of the 1979 Constitution by Constitution (Suspension and Modification) Decree No. 107 of 1993, could still entertain the case, is rather skewed and puerile. I find the unlikely event or hypothetical situation of the State High Court having been abolished by the Military Government, would the abolished courts have been resurrected because the appellant had instituted an action the cause of action which arose when that court was still in existence? The answer is of course in the negative. It is essential to differentiate the application of the law when the cause of action arose and the jurisdiction exercisable by the court when the proponent of an action decides to institute an action.”

I also said in my concurring judgment at page 650:

“The principle of law that the jurisdiction of a court is determined

by the law existing at the time the cause of action arose, cannot be invoked to vest jurisdiction in a court that lacks it. If a court lacks jurisdiction in a matter, no amendment of law can vest jurisdiction on it.”

In the case under reference, Uwaifo, JSC, called in aid the decision of this court in Chief Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166, where Bello, CJN., held that the relevant law applicable in respect of a cause or matter is the law in force at the time the cause of action arose and in the case of the law relating to jurisdiction when the action was instituted.

Learned counsel for the appellant would appear to have used cause of action and jurisdiction as interchangeable terms in this appeal. That explains why he took the definition of an action in great details in Issue No. 1 at pages 6 to 10 of his brief. The principle of law that the relevant law applicable in respect of a cause or matter is the law in force at the time the cause of action arose can only be extended to the purview of jurisdiction if at the same time the court had jurisdiction in the matter.

In other words, the principle can only apply if the jurisdiction of the court coincides with the law in force at the time the cause of action arose which vested the court with jurisdiction.

I can still fall back on Chief Utih v. Onoyivwe (supra), where Bello, CJN., said at page 201:

“The cause of action in this case on appeal may be said to have arisen from 7th June, 1997, when the 1st defendant was appointed as the Ovie of Evwreni. As shown earlier, the claim was filed on 18th July, 1978. It follows therefore the applicable laws on the issue of jurisdiction were the laws in force on 18th July, 1978, to wit, Sections 161(3) and 161(1) of the 1963 Constitution and Section 36 of the Chiefs Law which have been set out in this judgment.”

Let me apply the above principle to the raw figures in this matter by way of dates as done by Bello, CJN. It is common ground that the cause of action arose in October, 1989, and the appellant filed the action on 13th January, 1993. The Decree which vested in the Federal High Court the jurisdiction to entertain the matter in this appeal came into effect on 17th November, 1993. Although the action was properly filed at

the Kwara State High Court in January, 1993, that court had no jurisdiction to entertain the matter as from 17th November, 1993 when Decree No. 107 was promulgated. Accordingly the Kwara State High Court had no jurisdiction to deliver judgment. The judgment which that court delivered on 18th May, 1996 some thirty months after the cesser of its jurisdiction is a nullity ab initio. B

Normally, I should have stopped here. Since no harm will be done by taking the second issue, I should do just that. It is in respect of the decision of the Court of Appeal in 7UP Bottling Co. Ltd, v. Abiola & Sons. Ltd. (1996) 7 NWLR (Pt. 463) 714. It is the submission of counsel for the appellant that the Court of Appeal ought to have followed its earlier decision, going by the doctrine of stare decisis. Counsel relied on the following dictum of the court: C

“However if one goes through the whole breadth of the new Section 1 (sic) of Section 230 of the Constitution, it can be seen that quite unlike Decree 60 of 1991 that it did not make any provision for the pending cases. The present action was filed on 1st July, 1991 while Decree No. 107 of 1993 Constitution (Suspension and Modification) Decree E came into force on 17th November, 1993 while the present action has been pending in the High Court of Kwara State. In view of the fact that Decree No. 107 of 1993 does not make any provision for pending cases, it is deemed not to affect any pending case. I am of the view that the present suit being a pending case before the commencement of Decree F No. 107 of 1993 is not affected by the said Decree.”

Learned counsel argued in his brief that the Court of Appeal as an intermediate court between the High Court and the Supreme Court is bound by its own decision except in any of the three situations, which he enumerated at page 12 of the brief. Counsel correctly cited Usman v. Umaru (1992) 7 NWLR (Pt. 254) 377; Osumanu v. Amadu (1949) 12 WACA 437 and UBA v. Taon (1993) 4 NWLR (Pt. 287) 368. G

The second situation where the Court of Appeal will not follow its own decision, counsel submitted, is when the decision cannot stand with the decision of the Supreme Court. That is the correct legal position and counsel has very well stated it. In other words, where a previous deci- H

sion of the Court of Appeal is in conflict with a decision of the Supreme Court, the Court of Appeal is not bound to follow the decision. As a matter of law, the court must follow the decision of the Supreme Court.

What is the legal position in the light of the decisions of this court vis-a-vis the decision of the Court of Appeal in 7 UP Bottling Co. Ltd, v. Abiola & Sons Co. Ltd, (supra)? Was the Court of Appeal in a position to follow the decision of 7 UP Bottling Co.? Was that court wrong for taking the position it took, a position which is consistent with decisions of this court? In my humble view, the Court of Appeal was not in a position to follow the decision of 7 UP Bottling Co. This is because the decision is, with the greatest respect, not correct, vide the decisions of this court considered above. The most current one of Adah v. National Youth Service Corps, (supra) dealt with pending matter as was in 7UP Bottling Co, but this court did not see its way clear in saving the action in the High Court.

Learned counsel pointed out that the Court of Appeal did not indicate whether the decision in the 7UP Bottling Co. case was overruled or otherwise. He said that the court left them to grope in the dark. I think counsel has a point here. The Court of Appeal had a duty to pronounce on the decision in 7 UP Bottling Co., as that court did not follow the decision in that case.

But where does that take the appellant? Will such a procedural error give rise to allowing the judgment of the Court of Appeal, which is not correct in law to stand? No. It cannot be. I think I can invoke Section 22 of the Supreme Court Act which empowers this court to act as if it is the court below in determination of the real question in controversy in the appeal.

See Adeleke v. Cole. (1961) 1 All NLR 35; Ode v. The Diocese of Ibadan (1966) 1 All NLR 287; Obiyan v. Military Governor of Mid-West (1972) 1 AII NLR 422; Ediaibonyia v. Dumez (Nig.) Ltd. (1986) 3 NWLR (Pt. 31) 753. And in the determination of that controversy, I come to the conclusion that the decision of 7UP Bottling Co. is bad law as it conflicts with all known decisions of this court.

And that takes me to the third and final issue. Learned counsel

submitted that the Court of Appeal was wrong in striking out the matter and that the court ought to have ordered a retrial. He relied on Section 16 of the Court of Appeal Act and the case of *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt. 61) 523. I have taken Section 22 of the Supreme Court Act, the counterpart of Section 16 of the Court of Appeal, which learned B counsel has cited. I shall take first the case cited. It had to do with land. The matter involved the doctrine of estoppel per rem judicatam as the doctrine related or affected Exhibits D1- D4. This court held that the general power of the Court of Appeal conferred on it by Section 16 of the C Court of Appeal Act, 1976. gives the court the jurisdiction to order the case on appeal to it to be heard by a court of competent jurisdiction and that the Court of Appeal —ad the jurisdiction to order retrial but exercised the jurisdiction wrongly. Oputa, JSC, said at page 530:

“Even though I held that in peculiar circumstances of this case an D order for retrial was wrong, it is certainly going too far to contend that an appellate court cannot order a retrial unless same was specifically asked for.”

I ask: Why *Iyaji*? In my view, *Iyaji* is not a straight authority for the E appellant. I say this because this court held that the Court of Appeal ordered a retrial wrongly. There are a plethora of cases on retrial and I expected counsel to cite them, if they were relevant. From the facts of the case, the decision of this court in *Iyaji* on retrial will be at best obiter F dictum.

And that takes me to a novel point, and it is this. It is curious law, if it is law at all, to expect the Court of Appeal Act to order a retrial in a matter in which the trial court has no jurisdiction in the first place to G entertain. And that takes me to Section 16 of the Court of Appeal which learned counsel cited along with *Iyaji*. In my humble view, the Court of Appeal can exercise its Section 16 jurisdiction if only the court below has Jurisdiction in the matter. Accordingly, jurisdiction of the court below is a precondition for the invocation of the provision of Section 16 of the H Court of Appeal Act.

In *National Insurance Corporation of Nigeria v. Power and Industrial Engineering Company Ltd.* (1990) 1 NWLR (Pt. 129) 697, where

the High Court of Lagos State lacked the jurisdiction to interpret the judgment of the Federal High Court, the Court of Appeal held that it cannot invoke Section 16. Akpata, JCA., (as he then was), said at page 708:

B *“The Lagos State High Court lacked jurisdiction. This court cannot therefore exercise its power under Section 16 of the Court of Appeal Act, 1976 as prayed by the appellant to construe and interpret the orders of the Federal High Court.”*

C See also *Faleye v. Otapo* (1995) 3 NWLR (Pt. 381) 1.

It is in the light of the above reasons and the fuller reasons given by my learned brother, Ejiwunmi, JSC., that I too dismiss the appeal and I also award N 10,000.00 costs against the appellant in favour of the respondent.

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EDOZIE JSC

I was privileged to have read the draft of the leading judgment just delivered by my learned brother, Ejiwunmi, JSC. I am in agreement with his reasoning and conclusion in dismissing the appeal.

The appeal has again brought into focus the perennial question of the jurisdiction of the State High Court vis-a-vis the Federal High Court, a problem that has inundated our courts in recent times.

F Unarguably, it is still a valid and correct statement of law that the substantive law existing at the time a cause of action arose governs the determination of the action and the rights and obligations of the parties must be determined in accordance therewith: see *A.G. of Lagos State v. Dosunmu* (1989) 6 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 111) 552; *Alao v. Akano* (1988) 1 NWLR (Pt. 71) 431; *Uwaifo v. Attorney-General of Bendel State* (1982) 7 S.C. (Reprint) 58; (1982) 7 S.C. 124; *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382 at 474. But it is a misconception to think, as the learned appellant’s counsel in the present appeal has erroneously thought, that it is the same existing law at the time a cause of action accrued that determines the jurisdiction of the court at the time that jurisdiction is invoked. The correct position of the law is that while

the existing substantive law at the time a cause of action arose governs the determination of the action, it is the law in force at the time of the trial of the action based on the cause of action that determines the court that is vested with the jurisdiction to try the case. This distinction was vividly expounded recently in the case of *Dah v. N.Y.S.C.* (2004) 13 NWLR (Pt. B 891) 639 at 648, where Uwaifo, JSC., observed:-

“It ought to be understood that the law which supports a cause of action is not necessarily coextensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was constituted and heard: see Utihi v. Onoyivwe (1991) 1 NWLR (Pt. 166) 146 at 201 per Bello, CJN.”

Thus, a State High Court may have the jurisdiction to entertain a suit at the time the cause of action founded on that suit arose but at the time of the actual trial it is divested of that jurisdiction. That was exactly what happened in the present appeal. The appellant’s cause of action arose in 1989 when the respondent by its council’s letter Ref, VI/RO/5032 removed the appellant from, inter alia, the office of the Dean of the Faculty. As at that point in time and even as at the time he commenced action in January 1993 before the High Court of Justice, Kwara State, the existing substantive law then was the 1979 Constitution which by Section 236 thereof conferred unlimited jurisdiction on State High Courts. By virtue of that, the Kwara State High Court rightly assumed the jurisdiction to entertain the appellant’s claims. But the trial continued till 8th May, 1996, when judgment was delivered. Before then, the unlimited jurisdiction conferred on the State High Court had been curtailed by the Constitution (Suspension and Modification Decree) No. 107 of 1993 which amended Section 230(1) of the 1979 Constitution. The Decree, which has, as its effective date, 17th November, 1993, divested from the State High court and vested on the Federal High Court exclusive jurisdiction over the subject matter in dispute between the parties. Although a statute

is prospective and not retrospective, since Decree No. 107 of 1993 made no special provision for cases already pending in court on its effective date of 17th November, 1993, those cases such as the one that gave rise to the instant appeal were caught by the Decree thereby rendering the decision of the trial court on 8th May, 1996 in the instant case a complete nullity. The court below was right in declaring the proceedings in the trial court a nullity as it had lost the jurisdiction to entertain the matter.

It is for the above reasons, and those elaborated in the leading judgment, that I also dismiss the appeal with costs as ordered in the said judgment.

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