

SUPREME COURT OF NIGERIA
23RD JANUARY, 2004. S. C. 17/2002
CORAM:- S. M. A. BELGORE, U. MOHAMMED, A. I.
IGUH, A. O. EJIWUNMI, D. MUSDAPHER, JJSC

NATIONAL ELECTRIC POWER AUTHORITY APPELLANT
AND
J. A. OSOSANYA & ORS. RESPONDENTS

APPEALS - Decisions - Where a decision is found to be perverse - The appellate court is bound to interfere with such a decision - And to set it aside (H9)

APPEALS - Error of lower court - Public servant - Court of Appeal was in error to hold that the respondents' letter of termination - Were not linked with the exercise of the powers of the Head of State - Under Decree No. 17 of 1984 (H8)

JURISDICTION - Ouster of - Public Officers Decree No. 17 of 1984 - Once it is established that the officer was dismissed or retired under this Decree - A trial Court would have no jurisdiction to enquire into such dismissal, retirement or termination (H2)

MASTER & SERVANT - Dismissal of a public officer summarily - Public Officers (Special Provisions) Decree No. 17 of 1984 - The Military Governor of a state or Head of State of the Federal Republic of Nigeria - Has power to summarily dismiss a public officer or remove him from public service compulsorily (H1)

MASTER & SERVANT - Dismissal of public officer - Jurisdiction - Public officers Decree No. 17 of 1984 - Where dismissals were established to be issued on the authority of the appropriate authority - Trial court had no jurisdiction to entertain the suits (H7)

MASTER & SERVANT - Dismissal of public officer - Public officers Decree No. 17 of 1984 - In deciding whether a public officer was dismissed on the authority of the appropriate authority - Court must go beyond the four walls of the letter of dismissal (H6)

MASTER & SERVANT - Dismissal of public officer - Public officers Decree No. 17 of 1984 - The letter of termination or dismissal - Must not show ex facie that it was issued pursuant to the Decree (H5)

MASTER & SERVANT - Dismissal of public officer - Public Officers Decree No. 17 1984 - What determines whether termination is in accordance with the Decree - Is evidence that the decision to terminate - Was taken by the appropriate authority (H4)

MASTER & SERVANT - Dismissal of public officer - Where it is established that the appropriate authority or its delegate acted under the Decree - Or that the procedure adopted in putting the service to an end - Complies with the Decree - The court is precluded from going into the question of the validity of the action (H3)

FACTS

The plaintiffs/applicants, 271 in all, had filed two actions in representative capacities challenging their respective termination/dismissal from the defendant's employment. The claims in substance are for the reinstatement of the plaintiffs and the nullification of their respective termination/dismissal. Both sets of plaintiffs had claimed a declaration that the purported termination of their appointment by a letter dated 10th of August 1994 is wrongful, null and void and of no effect whatsoever, an order reinstating them as bona fide staff of National Electric Power Authority and an order of perpetual injunction restraining the respondent from implementing the contents of the letter dated 10th of August 1994. The main ground for there actions is that the plaintiffs' fundamental right to fair hearing was alleged to have been breached by the defendant in the matter of their termination/dismissal from the employment of the defend-

ant authority.

In response to both suits, the defendant filed Notices of preliminary objection contending, inter alia, that the termination/dismissal of the plaintiffs were carried out pursuant to the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 which at all material times ousted the jurisdiction of the trial Federal High Court to entertain the suit. In the affidavit in support of its Notices of preliminary objection, the defendant deposed that the plaintiffs formed an illegal workers association, embarked on an illegal strike, damaged some of the defendant's equipment in the process and thereby threw some parts of the country into total darkness. It asserted that the illegal activities of the plaintiffs were reported to the Head of State and Commander in Chief of the Armed forces of Nigeria who directed by his letter of 8th. August 1994 that the plaintiffs, appointments with the defendant be terminated/dismissed forthwith pursuant to his powers under Decree No. 17, of 1984.

Arguments were duly heard by the trial court from learned counsel for both parties. In a considered ruling, Jinadu, J. dismissed the preliminary objections and held that the termination/dismissal of the plaintiffs were not in accordance with the provisions of the said decree No. 17 of 1984. Dissatisfied with this decision of the trial court, the defendant lodged appeals against the same to the Court of Appeal, Lagos division. The Court of Appeal in a unanimous judgment on 28th September 2000, dismissed the appeals and affirmed the decision of the trial court. The defendants have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the learned justices of Court of Appeal were right in holding that the dismissal/termination letters of the Respondents did not emanate from the appropriate authority, in this case the then Head of State, Gen. Sani Abacha.

2. Whether the learned Justices of Court of Appeal were right in holding that the letters of dismissal/termination of the Respondents were not written pursuant to Decree No. 17 of 1984."

HELD (Unanimously allowing the appeal per lead judgment of **IGUH**

JSC)

Head of State has power to summarily dismiss a public officer

1. Now, there can be no doubt that under the public Officers (Special Provisions) Decree No. 17, of 1984, the Military Governor of any State or the Head of State of the Federal Republic of Nigeria or any person authorised by them had power to dismiss or remove a public officer from office summarily or to retire him from public service compulsorily. (p. 237 H)

C

Jurisdiction - Ouster of

2. Once it is established that the officer was dismissed or retired and/or that his appointment was terminated under Decree No. 17, of 1984, a trial court pursuant to the provisions of Section 3(3) of that Decree would have no jurisdiction to enquire into such dismissal, retirement or termination. But if, on the other hand, it is not established that the dismissal, termination or retirement is under the Decree, then the ouster of jurisdiction clause cannot be invoked or avail the terminating authority. See Ebohon v. Attorney-General, Edo State and others (1997) 5 N.W.L.R. (part 505) 298 at 310.(p. 238 B)

F

Where appropriate authority or its delegate acted under the Decree

3. Once it is established that the appropriate authority or its delegate acted under Decree No. 17, of 1984 in a particular case or that the procedure adopted in putting an end to the services of a public officer conforms strictly with the provisions of the Decree, that ipso facto puts an end to the matter as no other thing should be enquired into. In such circumstance, the court is precluded from going into the question of the validity of the action. See Wilson v. Attorney-General of Bendel State (1985) 1 N.W.L.R. (Part 4) 572 or (1985) 2 S.C. 191. (p.239 B)

Whether termination is in accordance with the Decree

4. I think I ought to stress that the reference or non reference to

Decree No. 17, of 1984 in the instrument terminating the appointment of a public officer or removing him from office is not conclusive on the question of whether the act of termination or dismissal had indeed been carried out in accordance with the provisions of the Decree. What is decisive is that there must be evidence to satisfy the court that the decision to terminate or dismiss the public officer was taken by the appropriate authority. See Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 N.W.L.R. (Part 135) 688 at 733 and 739.(p. 239 D)

Letter of termination or dismissal - Ex facie show

5. The law, therefore, is not that the letter of termination or dismissal must show ex facie that it was issued pursuant to the Decree No. 17, of 1984. There must, however, be evidence to satisfy the court that the decision to terminate or dismiss the public officer was taken by the appropriate authority and that the said letter was signed by the appropriate authority or by a person duly authorised by him. See F.C.D.A. V. Sule (1994) 3 N.W.L.R. (Part 332) 286 at 287. (p. 239 G)

Court must go beyond the four walls of the letter of dismissal

6. In deciding whether a public officer was dismissed or terminated on the authority or directive of the appropriate authority, the court must go beyond the four walls of the letter of dismissal. This is because it cannot be ruled out that an officer in a Ministry may write a letter of dismissal or retirement, purportedly acting on the authority or directive of the appropriate authority when, in fact, there was no such authority or directive given or, where such authority had, in fact, been given, he might not have recited it in the ultimate letter of dismissal/retirement due, perhaps, to faulty draftsmanship. The crucial issue is that there must be clear evidence before the court to establish that the decision to dismiss, terminate or retire the public officer concerned was taken on the authority or directive of the appropriate authority. See

E.C.D.A. v. Sule (supra). Once this is established, it would not matter how seemingly poor the draftsmanship of the letter of dismissal, retirement or termination is or how inelegantly or negligently it had been drafted; the court ought to give effect to the same. (p. 240 A)

Where dismissals were on the authority of appropriate authority

7. These dismissals/terminations having been established to have been issued on the authority or directive of the appropriate authority, to wit, the then Head of State, Commander-in-Chief of the Armed Forces, the trial court had no jurisdiction to entertain the suits in the light of the provisions of Section 3(3) of Decree No. 17, of 1984. Issue 1 is accordingly answered in the negative. (p. 244 B)

Appeals - Error of lower court

8. "In the instant case apart from the letter of termination the contents of which I have reproduced above, there is no other material linking the termination with the exercise of any power under Decree No. 17, of 1984."

With the greatest respect to the Court of Appeal, this observation seems to me totally unjustifiable for various reasons, some of which I have dealt with earlier on in this judgment. These indisputable facts were before the court and it is absolutely difficult to accept that the respondents' letters of termination/dismissal were not linked with the exercise of the powers of the Head of State under Decree No. 17, of 1984 as suggested by the court of Appeal. (p. 244 E/ 245 C)

Appeals - Where a decision is found to be perverse

9. A decision of a court is perverse when it ignores the facts or evidence before it and, when considered as a whole, amounts to a miscarriage of justices. In such a case, an appellate court is bound to interfere with such a decision and to set it aside. See

Agbomeji v. Bakare (1998) 9 N.W.L.R. (part 564) 1 at 8. I think the court below in the present case clearly ignored relevant facts before it as a result of which it erred by holding that apart from the letters of termination/dismissal, there is no other evidence linking the termination and/or dismissal of the respondents with the exercise of any power under Decree No. 17 of 1984. Issue 2 must also be answered in the negative. In the final result and for all the reasons that I have given above, this appeal accordingly succeeds and it is hereby allowed. (p. 245 D)

C

REPRESENTATION

Dr. B. A. M. Ajibade, with him, T. Nwogu Esq. for the appellant. J. Ogunye Esq. with him, M. Ukpebor Esq. O. Fatoki Esq. and P. Akpakpan Esq. for the respondents.

D

CASES REFERRED TO

Ebohon v. Attorney-General Edo State (1997) 5 N.W.L.R. (part 505) 298, (1997) 5 KLR (pt 51) 1023

E

Anyanwu v. Iyayi (1993) 7 N.W.L.R. (Part 305) 290, (1993) 10 KLR 121

Ulegede v. Military Administrator Benue State (1996) 6 N.W.L.R. (Part 457) 717

F

Wilson v. Attorney-General of Bendel State (1985) 1 N.W.L.R. (Part 4) 572 or (1985) 2 S.C. 191

Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 N.W.L.R. (Part 135) 688 at 733 and 739

F.C.D.A. V. Sule (1994) 3 N.W.L.R. (Part 332) 286 at 287, (1994) 4 KLR 109

G

Agbomeji v. Bakare (1998) 9 N.W.L.R. (part 564) 1 at 8. I, (1998) 1 KLR (pt 68) 1687

H

STATUTE REFERRED TO

Public Officers (Special Provisions) Decree No. 17 of 1984 ss. 1 (1), 4 (2), 3 (3) and (4)

LEAD JUDGMENT BY IGUH JSC

This is an appeal against the judgment of the court of Appeal, Lagos Division, which had on the 28th day of September, 2000 dismissed two consolidated appeals by the defendant from the decisions of Jinadu, J. of the Federal High Court, Lagos delivered on the 2nd day of February, 1996 and the 23rd day of April, 1997 respectively. The court of Appeal had affirmed the decisions of the trial court and held that the Federal High Court had jurisdiction to hear and determine the two suits instituted by the respondents, as plaintiffs/applicants, against the defendant, herein the appellant. The suits challenged the termination/dismissal of the appointments of the respondents by the appellant pursuant to the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984, hereinafter referred to as "Decree No. 17 of 1984."

The plaintiffs/applicants, 271 in all, had filed two actions in representative capacities challenging their respective termination/dismissal from the defendant's employment. The claims, in substance, are for the reinstatement of the plaintiffs and the nullification of their respective termination/dismissal. In the first action, the first set of plaintiffs claimed as follows:-

"(1) A declaration that the purported termination of the applicants' appointment, conveyed by the respondents' letters dated the 10th day of August 1994 or sometime thereafter is wrongful, null and void and of no effect whatsoever and howsoever.

(2) An order reinstating the applicants herein as bona fide staff of the National Electric Power Authority.

(3) An order of perpetual injunction restraining the respondent whether by itself, servants, agents and/or privies from further acting and/or implementing the contents of the letters dated the 10th of August 1994 or sometime thereafter in any manner whatsoever and howsoever."

In the second action, the rest of the plaintiffs claimed against the defendant thus:-

"(1) A declaration that the purported dismissal of the ap-

plicants conveyed by the respondent's letters dated 10th of August 1994 or sometime thereafter is wrongful, null and void and of no effect whatsoever or howsoever.

(2) *An order reinstating the applicants herein as bona fide staff of the National Electric Power Authority.*

(3) *An order of perpetual injunction restraining the respondent whether by itself, servants, agents and/or privies from further acting and/or implementing the contents of the letters dated 10th August 1994 or sometime thereafter in any manner whatsoever."*

The main ground for these actions is that the plaintiffs' fundamental right to fair hearing was alleged to have been breached by the defendant in the matter of their termination/dismissal from the employment of the defendant Authority.

In response to both suits, the defendant on the 6th day of February, 1995 filed Notice of preliminary Objection contending, inter alia, that the termination/dismissal of the plaintiffs were carried out pursuant to the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 which at all material times ousted the jurisdiction of the trial Federal High Court to entertain the suits. In the affidavit in support of its Notice of Preliminary Objection, the defendant deposed that the plaintiffs were employed by the defendant Authority at various times between 1977 and 1994. As a result of some trade dispute, the plaintiffs organised themselves and formed what they called Workers Welfare Association, (WWA) for short. When they were poised for a strike action, the Ministry of Labour and Productivity pointed out to them that any strike action would be illegal as the Union was not registered. When it became clear that the WWA were not ready to yield any ground, the defendant mobilised its top Management staff to man key positions in all the defendant's Power Stations. On the 5th August, 1994, the defendant claimed that members of the WWA called out workers on strike, forced their way into some of the defendant's Power Stations, damaged some of the defendant's equipment in the process and thereby threw some parts of

the country into total darkness. It asserted that the illegal activities of the plaintiffs were reported to the then Head of State, Commander-in-Chief of the Armed Forces of Nigeria who directed by his letter of the 8th August, 1994 that the plaintiffs' appointments with the defendant be terminated/dismissed forthwith pursuant to his powers under Decree No. 17 of 1984. The defendant in its Notices of preliminary Objection exhibited the letters signed by the then Head of State, Commander-in-Chief of the Armed Forces as Nigeria, General Sani Abacha by which he authorised the termination/dismissal of the plaintiffs and mandated the Hon. Minister of Power and steel or any officer of the defendant Authority to sign the appropriate termination/dismissal letters. The names of all the plaintiffs were set out in the termination/dismissal list.

Arguments were duly heard by the trial court from learned counsel for both parties. For the defendant, it was argued that the jurisdiction of the trial Federal High Court was ousted by the said Decree No. 17 of 1984 under which the appointments of the plaintiffs were terminated/dismissed. In opposing the application, learned counsel for the plaintiffs submitted that the appointments of the said plaintiffs were not terminated pursuant to Decree No. 17 of 1984 and that the invocation of the Decree was an after thought.

In a considered ruling, Jinadu, J., dismissed the preliminary Objections and held that the termination/dismissal of the plaintiffs were not in accordance with the provisions of the said Decree No. 17 of 1984.

He observed:-

"But the crux of the matter is - did the writer of the dismissal/termination letter write the letter, exhibit JA.06, in strict compliance with the provisions of Decree No. 17 of 1984. I am afraid the answer is in the negative. Although Mr. Kida is an officer of NEPA to whom the Head of State's power under the Decree was delegated, he chose not to act under the Decree. In-

stead paragraph 1 of exhibit JA 06 clearly shows that he acted on behalf of the "management" of the Authority, NEPA. Clearly, management of NEPA is not an appropriate authority under section 4(2) (b) of Decree No. 17 of 1984. This is the only reasonable interpretation that can be given to the contents of exhibit JA 06 in the circumstances." B

He then concluded:-

"Having regard to all the above, I find and hold that the plaintiffs herein have not been dismissed or their appointments terminated under the provisions of Decree No. 17 of 1984. Therefore this court is not divested of its jurisdiction to hear and determine this matter on its merits. This court therefore has jurisdiction to hear and determine this case and the application of the respondent is hereby dismissed." C D

Dissatisfied with this decision of the trial court, the defendant lodged appeals against the same to the Court of Appeal, Lagos Division. The Court of Appeal in a unanimous judgment on the 28th day of September, 2000 dismissed the appeals and affirmed the decisions of the trial court. It stated:- E

"In the instant case, apart from the letter of termination the contents of which I have reproduced above, there is no other material linking the termination with the exercise of any power under Decree No. 17 of 1984. Can I therefore hold that there was evidence to satisfy the court that the decision to terminate the appointments of the plaintiffs/respondents was that of the appropriate authority? While I have no hesitation in saying that the Honourable Minister of Power and Steel could lawfully delegate the signing of the letters of termination/dismissal to any officer of NEPA by virtue of Exhibit PE1, there must be clear evidence that such an officer in signing the letter of termination was acting under the authority and directive of the appropriate authority. There is no such evidence here. The letter of termination referred to cannot be linked with the Minister." F G H

Aggrieved by this decision of the Court of Appeal, the de-

fendant has further appealed to this court. I shall hereinafter refer to the defendant and the plaintiffs in this judgment as the appellant and the respondents respectively.

Two grounds of appeal were filed by the appellant against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the Rules of this court filed and exchanged their written briefs of argument.

The two issues distilled from the appellant's grounds of appeal set out on its behalf for the determination of this court are as follows:-

"1. Whether the learned justices of Court of Appeal were right in holding that the dismissal/termination letters of the Respondents did not emanate from the appropriate authority, in this case the then Head of State, Gen. Sani Abacha.

2. Whether the learned Justices of Court of Appeal were right in holding that the letters of dismissal/termination of the Respondents were not written pursuant to Decree No. 17 of 1984."

The respondents, for their part, also submitted two issues for the determination of this appeal. These are as follows:-

"1. Whether the Respondents' employment were terminated by the Appellant pursuant to the Public Officers (Special Provisions) Decree No. 17 of 1984.

2. Whether the learned Justices of the Court of Appeal were right in holding that the dismissal/termination letters issued to the Respondents were not written pursuant to public Officers (Special Provisions) Decree No. 17 of 1984 and that as such the trial court had jurisdiction to entertain the Respondents' claim."

I think both sets of issues are substantially identical and cover the same filed that it would make no difference which of them is considered in the resolution of this appeal. For the avoidance of doubt however, I shall adopt the issues formulated by the appellant in my determination of this appeal.

At the oral hearing of the appeal, both learned counsel for

the parties adopted their respective briefs of argument and briefly proffered additional submissions in amplification thereof.

The main argument of learned leading counsel for the appellant, Dr. B. A. Ajibade is that when the termination or dismissal of a public officer is shown to have been done with the approval of the appropriate authority or any person authorised by him, the court will have no option but to decline jurisdiction in the light of the provisions of Section 3(3) of Decree No. 17 of 1984. In this regard he relied on the decisions of this court in Ebohon v. Attorney-General Edo State (1997) 5 N.W.L.R. (part 505) 298 and Anyia v. Iyayi (1993) 7 N.W.L.R. (Part 305) 290. He urged the court to allow this appeal and to uphold the appellant's preliminary objection, set aside the decisions of the trial court and the court below and hold that the trial court lacks jurisdiction to entertain the respondents' suits.

Learned leading counsel for the respondents, Mr. J. Ogunye, on the other hand, submitted that it was Management of the appellant that terminated/dismissed the respondents and not the Appropriate Authority under Decree No. 17, of 1984. He contended that the respondents' letters of termination and/or dismissal are clear on the point. He referred the court to the decision in Ulegede v. Military Administrator Benue State (1996) 6 N.W.L.R. (Part 457) 717 and argued that in-as-much-as it was the Management of the respondent that carried out the termination/dismissal exercise, the invocation of Decree No. 17, could hardly arise. He therefore submitted that both courts below were right in holding that they had jurisdiction to entertain the suits.

A careful study of the two issues formulated by the parties respectively for the resolution of this appeal does clearly disclose that they are closely interrelated and that they revolve entirely on the provisions of the Public Officers (Special provisions) Decree No. 17, of 1984. As the court below rightly put it:-

"The simple and narrow point for determination in this appeal is whether in dispensing with the employment of the plain-

tiffs/respondents under Decree No. 17, of 1984, there is clear evidence of full compliance with the provisions of that Decree."

It then went on:-

"Once there is an incontrovertible evidence of compliance with the provisions of Decree No. 17, of 1984 in the exercise of the power to dispense with the services of a public Officer in a particular case, the court is precluded from delving into the reasons that underlined the exercise of the powers or from examining the validity of the action..... In effect, once the procedure adopted in putting an end to the services of a Public Officer conforms strictly with the provisions of Decree No. 17, of 1984 that puts an end to the matter as no other thing should be enquired into."

I will now proceed to consider the issues for resolution in this appeal.

It seems to me desirable for easy reference to set out the more relevant of the provisions of Decree No. 17 of 1984 in so far as the present appeal is concerned. Section 1(1) thereof provides as follows:-

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

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

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

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

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

The appropriate authority may at any time after 31st December 1983-

- (i) dismiss or remove the public officer summarily from his office, or*
- (ii) retire or require the public officer to compulsorily retire from the relevant public service."* B

The term "Appropriate Authority" is defined in section 4(2) of the Decree thus-

"(2) In the operation of this Act, the appropriate authority- C

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

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

It is crystal clear to me, and both parties have joined no issue on the point, that the Head of State under Section 2(b) of the Decree was at all material times the appropriate authority envisaged there- E under.

There are next the provisions of Section 3(3) and 3(4) of the Decree which in no uncertain terms stipulate as follows-

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

3(4) Chapter IV of the Constitution of that Federal Republic of Nigeria is hereby suspended for the purposes of this Decree and the question whether any provision thereof has been, is being or would be contravened by anything done or purported or proposed to be done in pursuance of this Decree shall not be enquired in any court of Law." H

Now, there can be no doubt that under the public Offic-

ers (Special Provisions) Decree No. 17, of 1984, the Military Governor of any State or the Head of State of the Federal Republic of Nigeria or any person authorised by them had power to dismiss or remove a public officer from office summarily or to retire him from public service compulsorily. Once it is established that the officer was dismissed or retired and/or that his appointment was terminated under Decree No. 17, of 1984, a trial court pursuant to the provisions of Section 3(3) of that Decree would have no jurisdiction to enquire into such dismissal, retirement or termination. But if, on the other hand, it is not established that the dismissal, termination or retirement is under the Decree, then the ouster of jurisdiction clause cannot be invoked or avail the terminating authority. See Ebohon v. Attorney-General, Edo State and others (1997) 5 N.W.L.R. (part 505) 298 at 310.

In the present case, it is the contention of the appellant that the respondents' letters of dismissal/termination signed by one S.A. Kida, General Manager (Personnel/Administration) in the employment of the appellant's Authority were issued pursuant to the written directive of the 8th August 1994 from the then Head of State. By that letter, the said Head of State delegated his powers under section 1 of this Decree to his Minister of power and Steel or to any officer of the appellant to sign and serve the relevant letters of dismissal/termination to the respondents. The appellant stressed that the Head of State lawfully exercised his authority under Decree No. 17, of 1984 by delegating his powers as aforesaid and that both courts below were wrong to have held that the trial court had jurisdiction to entertain the present actions.

The respondents, on the other hand submitted that it was the Management of the appellant Authority and not the Head of State that carried out the dismissal/termination of the respondents. They therefore argued that no question of ouster of jurisdiction arises in these cases as the respondents were not dis-

missed under Decree No. 17, of 1984.

It seems to me that the real question for determination is whether or not from the entire facts of this case, both courts below were right in holding that the respondents were not dismissed/terminated pursuant to the provisions of Decree No. 17 B of 1984 and that the trial court therefore had jurisdiction to entertain the suits. **Once it is established that the appropriate authority or its delegate acted under Decree No. 17, of 1984 in a particular case or that the procedure adopted in putting C an end to the services of a public officer conforms strictly with the provisions of the Decree, that ipso facto puts an end to the matter as no other thing should be enquired into. In such circumstance, the court is precluded from going into the question of the validity of the action. See Wilson v. Attorney-General of Bendel State (1985) 1 N.W.L.R. (Part 4) D 572 or (1985) 2 S.C. 191.**

I think I ought to stress that the reference or non reference to Decree No. 17, of 1984 in the instrument terminating the appointment of a public officer or removing him from office is not conclusive on the question of whether the act of termination or dismissal had indeed been carried out in accordance with the provisions of the Decree. What is decisive F is that **there must be evidence to satisfy the court that the decision to terminate or dismiss the public officer was taken by the appropriate authority. See Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 N.W.L.R. (Part 135) G 688 at 733 and 739. The law, therefore, is not that the letter of termination or dismissal must show ex facie that it was issued pursuant to the Decree No. 17, of 1984. There must, however, be evidence to satisfy the court that the decision to terminate or dismiss the public officer was taken by the appropriate authority and that the said letter was signed by the appropriate authority or by a person duly authorised by him. See F.C.D.A. V. Sule (1994) 3 N.W.L.R. (Part 332) 286**

at 287.

In deciding whether a public officer was dismissed or terminated on the authority or directive of the appropriate authority, the court must go beyond the four walls of the letter of dismissal. This is because it cannot be ruled out that an officer in a Ministry may write a letter of dismissal or retirement, purportedly acting on the authority or directive of the appropriate authority when, in fact, there was no such authority or directive given or, where such authority had, in fact, been given, he might not have recited it in the ultimate letter of dismissal/retirement due, perhaps, to faulty draftsmanship. The crucial issue is that there must be clear evidence before the court to establish that the decision to dismiss, terminate or retire the public officer concerned was taken on the authority or directive of the appropriate authority. See F.C.D.A. v. Sule (supra). Once this is established, it would not matter how seemingly poor the draftsmanship of the letter of dismissal, retirement or termination is or how inelegantly or negligently it had been drafted; the court ought to give effect to the same.

Turning now to issue I, the question raised is whether the Court of Appeal was right in holding that the dismissal/termination letters of the respondents did not emanate from the appropriate authority, in this case, the then Head of State, Commander-in-Chief of the Armed Forces, General Sani Abacha. In this regard, it ought to be recounted that following some industrial action in which the respondents, were involved, a report was made by the Honourable Minister of power and Steel to the then Head of State, General Sani Abacha, reporting various acts of economic sabotage and wilful damage to NEPA installations by identified NEPA employees which were said to include the respondents. The Head of State after a close consideration of this report by his letter, Exhibit PE1, to the said Minister of Power and Steel directed as follows-

"State House

Abuja

8th August, 1994

The Honourable Minister

Ministry of Power and Steel

Federal Secretarial

Phase 1

Ikoyi - Lagos

CASE OF SABOTAGE TO NEPA INSTALLATIONS

Upon giving due consideration to the report you submitted concerning various acts of economic sabotage and wilful damage to NEPA installation by identified NEPA employees, I hereby invoke and delegate to you my powers under public Officer (Special provisions Decree) No. 17, of 1984 to terminate and/or dismiss the 264 persons whose names appear on the termination/dismissal list. It is deemed that their continued employment with NEPA would not be in the public interest. The termination or dismissal letters may be signed by yourself or any officer with the National Electric Power Authority and that this be done immediately.

SGD. SANI ABACHA

General

*Head of State, Commander-in-Chief
of the Armed Forces of Nigeria."*

The names of all the respondents were duly reflected in the termination/dismissal list referred to and attached to the Head of State's said letter, Exhibit PE1 which speaks for itself. It was pursuant to the directives therein contained that the Honourable Minister of Power and Steel wrote his letter of the 9th August, 1994 to the Managing Director/Chief Executive of the appellant conveying the directive of the Head of State to the Management of NEPA as follows-

"FEDERAL MINISTRY OF POWER AND STEEL

*FEDERAL SECRETARIAT, PHASE 1, FIRST FLOOR,
IKOYI, LAGOS*

P.M.B. 12674

Lagos, Nigeria

Tel. 01-2090815

01:015461

FMP & S/5294/T/90 August 9, 1994

Managing Director/Chief Executive

National Electric Power Authority

P.M.B. 12030

Marina

Lagos

CASE OF SABOTAGE OF NEPA INSTALLATIONS

I refer to your letter reference NEPA/01/002.1/Vol.51/38-/00345 of 8th August, 1994 on the above-named subject and note with dismay, the wilful damage to power supply by some unpatriotic employees of the Authority. This development becomes more disheartening when it is considered that those who perpetrated the act did so despite Government's Intervention through the Ministry of Labour and Internal Administrative Circulars calling on workers to shun any act of sabotage.

Government views with concern, the illegal activities of the group and in that regard approval is hereby given for the dismissal/termination of the appointments of the two hundred and eight members of staff as shown in the attached list.

This approval is given under the Public Officers (Special Provisions) Decree No. 17, of 1984. The general conduct of the persons concerned in relation to the performance of their duties is such that their further or continued service would not be in the public interest.

*Sgd. Alhaji Bashir Mohammed Dalhatu
(Walin Dutse)*

Honourable Minister."

Now, as a result of the above letter of the Honourable Min-

ister of Power and Steel to the Management of the appellant following the directives of the Head of State as per Exhibit PE1, letters of dismissal/termination were accordingly served on the respondents by the Management of the appellant. There can be no doubt that the said letters of dismissal/termination dated the 10th August, 1994 were unquestionably written in execution of and in compliance with the directive of the Head of State contained in Exhibit PE1.

The court below in dealing with whether there was evidence to satisfy the court that the decision to terminate/dismiss the respondents was that of the appropriate authority stated thus-

"While I have no hesitation in saying that the Honourable Minister of Power and Steel could lawfully delegate the signing of the letter of termination/dismissal to any officer of NEPA by virtue of Exhibit PE1, there must be clear evidence that such an officer in signing the letter of termination was acting under the authority and directive of the appropriate authority. There is no such evidence here."

With profound respect, I think the Court of Appeal was in definite error by holding that there was no evidence that the letters of termination/dismissal were issue under the directive of the appropriate authority. As I observed earlier on in this judgment, what is decisive in these matters is that there must be cogent evidence to satisfy the court that the decision to terminate/dismiss the public officer concerned was taken by the appropriate authority. It is clear to me that had the letters from the then Head of State dated the 8th August 1997 to the Minister of Power and Steel and the one from the Minister dated the 9th August, 1994 conveying the directive of the Head of State to the Management of NEPA received due attention and probative value from the Court of Appeal, that court would certainly have reached the inescapable conclusion that the letters of termination/dismissal of the respondents` signed by Mr. S. A. Kida, Personnel Officer of the appellant were issued in execution of the express directive

of the then Head of State made pursuant to the provisions of Decree No. 17, of 1984. In my view, the respondents' letters of termination/dismissal did not need to make reference in any way to the exercise of power by the appropriate authority under the provisions of Decree No. 17, of 1984 so long as it is established that they were written, as in the present case, pursuant to the directive of the appropriate authority to dismiss and/or terminate the appointments of the respondents. **These dismissals/terminations having been established to have been issued on the authority or directive of the appropriate authority, to wit, the then Head of State, Commander-in-Chief of the Armed Forces, the trial court had no jurisdiction to entertain the suits in the light of the provisions of Section 3(3) of Decree No. 17, of 1984. Issue 1 is accordingly answered in the negative.**

Issue 2 is closely related to issue 1 and poses the question whether the court of Appeal was right to have held that the letters of dismissal/termination of the respondents were not written pursuant to Decree No. 17, of 1984. In this regard, the Court of Appeal held thus-

"In the instant case apart from the letter of termination the contents of which I have reproduced above, there is no other material linking the termination with the exercise of any power under Decree No. 17, of 1984."

With the greatest respect to the Court of Appeal, this observation seems to me totally unjustifiable for various reasons, some of which I have dealt with earlier on in this judgment. There can be no doubt that there was abundant evidence before the court which linked the letters of termination/dismissal to the appropriate authority, acting under the provisions of Decree No. 17, of 1984. By Exhibit PE1, the then Head of State, General Sani Abacha, in his letter to the Honourable Minister of Power and Steel dated 8th August, 1994 invoked and delegated his powers under the Public Officers (Special provisions)

Decree No. 17, of 1984 to the latter to terminate and/or dismiss the respondents with, immediate effect. This letter also authorised the Minister or any officer of the appellant to sign the termination or dismissal letters of the respondents. Following Exhibit PE1, the Honourable Minister of Power and Steel by his letter of the 9th August 1994 conveyed to the appellant the approval and/or directive of the Head of State to terminate and/or dismiss the respondents pursuant to the provisions of Decree No. 17, of 1984. It is pursuant to these two letters that the respondents were terminated and/or dismissed by the appellant's letters of the 10th August, 1994 duly signed by their S. A. Kida, the Personnel Officer of NEPA. **These indisputable facts were before the court and it is absolutely difficult to accept that the respondents' letters of termination/dismissal were not linked with the exercise of the powers of the Head of State under Decree No. 17, of 1984 as suggested by the court of Appeal.**

A decision of a court is perverse when it ignores the facts or evidence before it and, when considered as a whole, amounts to a miscarriage of justices. In such a case, an appellate court is bound to interfere with such a decision and to set it aside. See Agbomeji v. Bakare (1998) 9 N.W.L.R. (part 564) 1 at 8. I think the court below in the present case clearly ignored relevant facts before it as a result of which it erred by holding that apart from the letters of termination/dismissal, there is no other evidence linking the termination and/or dismissal of the respondents with the exercise of any power under Decree No. 17 of 1984. Issue 2 must also be answered in the negative.

In the final result and for all the reasons that I have given above, this appeal accordingly succeeds and it is hereby **allowed**. The decisions of both courts below to the effect that the trial court has jurisdiction in this matter are hereby set aside. In my view, the trial court lacks jurisdiction to entertain the suits. The costs of N5,000.00 awarded by the court of Appeal to the

respondents against the appellant are hereby set aside. The appellant is entitled to the costs of these proceedings which I assess and fix at N1,000.00 in the trial court, N5,000.00 in the Court of Appeal and N10,000.00 in this court.

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BELGORE JSC

The two courts below apparently failed to advert to the facts before them and thereby fell into error in their decisions. Decree No. 17 of 1984, fully explained in my learned brother, Iguh JSC's judgment, is clear as to its intendment. Issue 2 in this appeal is therefore answered in the negative. This appeal therefore has great merit, and for the full reasons in the judgment of Iguh JSC with which I am in total agreement, I allow it. I set aside the decision of Court of Appeal which upheld trial court's decision. The trial court had no jurisdiction to hear the case. There was clear evidence of delegation by the appropriate authority (Nwosu V Imo State Environmental Sanitation Authority) (1990) 2 NWLR (pt.135) 688, 733, 739, F.C.D.A. vs Sule (1994) 4 NWLR (pt.332) 258, 287. Having held that issue 2 must be answered in the negative, Issue 2 has no better merit. It is also answered by the negative.

I award costs as awarded by Iguh JSC

MOHAMMED JSC

I entirely agree that the two courts below are in error to find jurisdiction for the determination of the suits filed by the respondents against the appellant before Jinadu J., of the federal High Court.

It is abundantly clear that the Head of State, in his letter, Exhibit PE1, before the Federal High Court, had delegated his powers to the Hon. Minister of Power and Steel, under the provisions of public Officers (Special Provisions Decree) No. 17, of

1984, to terminate and dismiss the appointment of the respondents. The Minister on receipt of the Head of State's letter conveyed the directive to the Managing Director and Chief Executive of NEPA. The respondents were therefore all served with letters of dismissal and termination. B

With these stark facts, the Court of Appeal was in error to say that there was no evidence that the letters of termination served on the respondents were not issued under the directive of the appropriate authority.

I agree therefore with the opinion of my learned brother, Iguh, JSC, in the judgment just read, that this appeal ought to succeed. I allow it. I set aside the judgments of both Federal High Court and the Court of Appeal. The Federal High Court has no jurisdiction to determine the actions filed against the appellant by the respondents. I abide by all the consequential orders made in the lead judgment including the assessment and award of costs. C D

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EJIWUNMI JSC

I was privileged to have read in advance the lead judgment of my learned brother, Iguh JSC in respect of this appeal. In that judgment, the issues raised in this appeal and the facts that were canvassed including the applicable law having been carefully considered, I do not therefore need to dwell upon them. As I agree with the reasoning that led to the conclusion upholding this appeal, I also uphold the appeal. I also agree with the orders made as to costs. F G

MUSDAPHER JSC

I have had the honour to read before now, the judgment of my Lord Iguh JSC just delivered, with which I agree. His Lordship has exhaustively dealt with all the relevant issues submitted for the determination of the appeal and I am not prepared to re-

peat them here. Suffice it for me to adopt all the reasonings as mine and allow the appeal. Accordingly the decisions of both lower courts to the effect that the trial court has jurisdiction to entertain the matter is set aside. The trial court has no jurisdiction in B the matter and the preliminary objection succeed. I allow the appeal and abide by the consequential orders as to costs proposed in the aforesaid judgment.

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