

SUPREME COURT OF NIGERIA

23RD APRIL, 2004. SC. 92/2003

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU,
U. A. KALGO, S. O. UWAIFO, A. O. EJIWUNMI,
D. MUSDAPHER, I. C. PATS-ACHOLONU, JJSC**

NIGERIA DEPOSIT INSURANCE
CORPORATION
(LIQUIDATOR OF ALLIED BANK
OF NIGERIA PLC)

..... APPELLANT

AND

1. OKEM ENTERPRISES LIMITED

2. CHIEF M. O. MLEMIGBO

..... RESPONDENTS

JUDICIAL PRECEDENTS - Banking - Jurisdiction of Federal Revenue Court - As considered in Jammal and Bronik cases - Was misconceived by the Court of Appeal in this case (H1)

JUDICIAL PRECEDENTS - Banking - Stare decisis - Jurisdiction of Federal High Court - Court of Appeal's decisions in Bi Zee Bee Hotels & Fembo cases - Being wrongfully decided - Were erroneously followed by the lower court (H2)

COURTS - Jurisdiction - Banking - Federal High Court - S. 251(1) (d) of the 1999 Constitution - Gives that court exclusive jurisdiction - In all banking transactions - Subject to the proviso in that section (H3)

CONSTITUTIONAL LAW - “Notwithstanding anything to the contrary” - Used in s. 251(1) of the 1999 Constitution - Is to ensure that no other provision - Shall undermine that section (H4)

CONSTITUTIONAL LAW - “Subject to” - Used in S. 272 of the 1999 Constitution - Means subordinate, inferior to - Implying that what the section is subject to - Shall govern, control and prevail (H5)

COURTS - Jurisdiction - Banking - Federal High Court - Constitution - Proviso to S. 251(1) (d) of the 1999 Constitution - Grants concurrent jurisdiction to State High Courts - In individual customer & bank, transaction - Without taking away Federal High Court's jurisdiction (H6)

STATUTES - Interpretation of - First step - Is to interpret the language of the statute - And not to seek help of earlier authorities - In a manner that distorted a true interpretation (H7)

LEGISLATION - Legal drafting - Proviso - Qualifies the ambit of the section - But not in a manner - That will neutralize powers conferred within the enactment (H8)

COURTS - Jurisdiction - Banking - Federal High Court - Failed bank matters - Supremacy of the Constitution - Renders Decrees that give that court - Exclusive jurisdiction in all failed bank cases - Inconsistent to an extent (H9)

CONSTITUTIONAL LAW - Conflict of laws - Supremacy of the constitution - Jurisdiction of Federal High court - Decrees that are in conflict with the Constitution - Are not void - But should be read in the light - Consistent with the Constitution (H10)

APPEALS - Ground of appeal - Not arising from lower court's decision - Was rightly objected to - As no leave was obtained (H11)

FACTS

The 1st respondent was a customer of the Allied Bank of Nigeria PLC, and maintained various accounts with the bank. As at 31st January, 1999, the 1st respondent had obtained credit facilities or loans from the bank totalling the sum of N284,109,459.59. As the bank's license was revoked by the Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation (NDIC) became the liquidator of the bank. The NDIC

filed an application for recovery of the debt before the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal Lagos Zone, on 29 – 3 – 1999 against the 1st respondent and 5 others. The action was filed pursuant to Decree No. 18 of 1994 as amended by Decree No. 62 of 1999, which substituted Federal High Court for the Tribunal. The Tribunal having been abolished, the suit was accordingly taken over by the Federal High Court Lagos.

On 16th April, 2000, respondents filed a notice of objection to the jurisdiction of the Federal High Court to entertain the suit, and sought to have the suit struck out. This objection was based on the contention that by the proviso to S. 251(1)(d) of the 1999 Constitution now applicable, the Federal High Court has no jurisdiction to determine matters relating to transactions between an individual customer and his bank. The trial court overruled the objection, holding that in such matters, Federal High Court and State High Courts have concurrent jurisdiction. Respondents' appeal to the Court of Appeal was upheld as that court held that the Federal High Court has no jurisdiction in such matters. Being dissatisfied, appellant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in its interpretation of the Proviso to section 251(1)(d) of the 1999 Constitution and the effect to be given to Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 in reaching the conclusion that the State High Courts have exclusive jurisdiction in disputes between an individual customer and his bank.”

HELD (Unanimously allowing the appeal per lead judgment of **UWAIFO JSC**)

Banking - Jurisdiction of Federal Revenue Court

1. It is plain to me that the court below missed the essence of the judgment of this court in the Jammal case. The ratio decidendi of it was the result of the canon of interpretation adopted in respect of section 7(1)(b)(iii) of the Decree. It construed “banking” as meaning ‘banking measures’ by the application of the ejusdem generis rule. This was a restricted meaning bringing it within the Federal Government fiscal mea-

asures on banking - a pure concept of the Federal Government revenue policy considered in Jammal and Bronik to be in line with the Federal Revenue Court objective. While it gave exclusive jurisdiction in such fiscal measures to the Federal Revenue Court, the interpretation excluded B banker and individual customer relationship. Matters and causes concerning that remained under the jurisdiction of State High Courts.
(p. 1041 A)

C ***Banking - Stare decisis***

2. It is obvious that section 230(1)(d) was not considered as part of the case before the court and a decision reached on it in the Bi Zee Bee Hotels case. What was said was a comment in passing after the appeal before the Court had been struck out for being incompetent. That cannot constitute a binding authority. D

As for Fembo Nigeria Ltd (supra), only three issues were before the court, one of which was: “Whether or not the lower court has jurisdiction to adjudicate on the plaintiff’s case.” The other two had no relevance remotely with section 230(1)(d). The contention as reported at E page 563 of the report was in regard to whether a company whose shares are wholly owned by the Federal Government was a Federal Government agency under section 230(1)(q)(r) and (s), the pronouncement at F page 564 on section 230(1)(d) was simply by the way in reliance on Bi Zee Bee Hotels Ltd (supra). It had no bearing with the issue and no argument had been proffered on it. I would leave it at that. I have dealt with these cases because the respondent’s counsel strongly relied on them and the court below said it was bound by them. Obviously, those G decisions, in any event, wrongly interpreted section 230(1)(d).
(p. 1049 B)

COURTS - Jurisdiction - Banking

H 3. I must now proceed formally to analyze section 251(1)(d) of the 1999 Constitution [same as section 230(1)(d) of the 1979 Constitution]. I have already set the provision out in this judgment. It provides that the Federal High Court shall have and exercise jurisdiction to the exclusion of any

other court in civil causes and matters arising from –

“(d) banking, banks, other financial institutions including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.” B

It will be seen that this provision is differently worded from the provision of section 7(1)(d)(iii) of the 1973 Decree, which dealt with “banking, foreign exchange, currency or other fiscal measures.” It was this wording that led this court in Jammal's case to interpret the word “banking” as used therein to mean “banking measures” under the ejusdem generis rule. C

It can be seen that section 251(1)(d) was meant to give the Federal High Court exclusive jurisdiction in “banking” in the wide sense to involve all banking transactions: see the definition given in the Black's Law Dictionary (Supra). That conclusion cannot be resisted in view of the open-ended text of that provision. But having contemplated conferring exclusive jurisdiction on the Federal High Court in all the items stipulated in paragraph (d), which by the language used was indeed conferred, the law-giver then introduced a proviso thus: D

“Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.” F

In considering the effect of the proviso in question, the import of the exclusive jurisdiction conferred on the Federal High Court under section 251(1)(d) of the 1999 Constitution should not be lost sight of.

(p. 1052 E & 1053 C) G

“Notwithstanding anything to the contrary” - Used in s. 251(1)

4. As has been observed, section 251(1) of the 1999 Constitution begins with “Notwithstanding anything to the contrary contained in this Constitution” while section 272(1) is specifically made “subject to the provisions of section 251.” When the term “notwithstanding” is used in a section of a statute, it is meant to exclude an impinging or impeding H

effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself. It follows that, as used in section 251(1) of the 1999 Constitution, no provision of that Constitution shall be capable of undermining the said section. (p. 1054 A)

B

“Subject to” - Used in S. 272 of the 1999 Constitution

5. In regard to section 272 of the Constitution, section 251 is directly relevant in that the former is made subject to it. The expression “subject to” means liable, subordinate, subservient, or inferior to; governed or affected by; provided that or provided; answerable for: see Black’s Law Dictionary 6th edition page 1425.

It must therefore be understood that “subject to” introduces a condition, a restriction, a limitation, a proviso. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be diminished by the subject section. The expression generally implies that what the section is subject to shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provision to which it is subject conditional upon compliance with or adherence to what is prescribed in the provision referred to. (p. 1054 C)

Federal High Court - Constitution - Proviso to S. 251(1) (d)

6. Plainly, the proviso in question in section 251(1)(d), to put it in simple analysis, says that the Federal High Court will have exclusive jurisdiction in banking matters but when what is involved is individual customer and his bank transaction, the Federal High Court shall not have exclusive jurisdiction. Understandably, that was to recognize the jurisdiction the State High Courts had been exercising in such matters which section 272(1) of the Constitution impliedly preserves. The High Court of a State can only exercise jurisdiction in any aspect of such specified matters to the extent that the proviso in section 251(1)(d) permits. The said proviso cannot be interpreted to have the effect of conferring exclusive jurisdiction on the State High Court and completely taking away the jurisdiction of the Federal High Court to entertain causes and matters relating to

individual customer and bank transactions as was erroneously decided by the court below and unsuccessfully argued before this court by Chief Clarke.

Therefore, the proper view of the proviso in section 251(1)(d) of the 1999 Constitution is that the main provision having used the language of exclusive jurisdiction, the proviso then relaxes that exclusiveness given to the Federal High Court therein in a situation in which the issue is a dispute between an individual customer and his bank in respect of transactions between the individual and the bank. In that regard, a State High Court will also have or continue to exercise jurisdiction and this it does concurrently with the Federal High Court. There should be no difficulty in appreciating this. (pp. 1054 H & 1057 D)

STATUTES - Interpretation of - First step - Is to interpret the language ^D

7. *What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground."*

The Court of Appeal fell into the error of adopting the contrary E approach. Instead of construing section 251(1)(d) from the words used in the first instance, it rather sought the help of earlier authorities in a manner that distorted a true interpretation necessary in this case. That was why I found myself compelled to revisit those authorities of Jammal and Bronik cases to show that they were both misunderstood and misapplied by that Court. (p. 1056 F)

LEGISLATION - Legal drafting - Proviso ^G

8. As a general rule, a proviso has a limited operation in qualifying the ambit of the section to which it is related: see Lyods & Scottish Finance Ltd. v. Modern Cars & Caravans (Kingston) Ltd [1964] 2 All E.R. 732 at 740. It follows that where a section with a proviso appended to it confers powers, it would be contrary to the ordinary operation of the proviso to give that section an effect which would neutralize those powers in a way that it goes beyond what compliance with the proviso itself renders necessary. The object of a proviso is normally to cut down or qualify or ^H

create exceptions to or relax in a defined sense the limitations imposed or powers conferred by a section of an enactment or document; or to exclude some possible ground of misinterpretation of its extent, or to modify the main part of a section of a statute to which it relates or to restrain its absoluteness or generality. (p. 1056 H)

Jurisdiction - Banking - Federal High Court - Failed bank matters

9. It can be seen, therefore, that the Federal High Court by the said Decrees had been directly conferred with exclusive jurisdiction over all failed banks matters. But the ultimate position in this connection is that, although by Decree No. 18 of 1994 and Decree No. 62 of 1999, the Federal High Court was given exclusive jurisdiction in such matters, that provision of exclusivity has turned out to be inconsistent with the effect of the proviso to section 251(1)(d) when the 1999 Constitution came into force. That does not mean that the effect of the inconsistency was to deprive the Federal High Court of any jurisdiction at all in matters of customer and bank. By virtue of section 315 of the Constitution, those provisions in the said Decree which are now regarded as existing Acts of the National Assembly, must be brought in line with the said proviso which extends jurisdiction to State High Courts. This must be done with due reference to subsection (3) of section 1 of the Constitution which provides that:

“(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.” (p. 1059 H)

Conflict of laws - Supremacy of the constitution

10. The extent of the inconsistency of Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 with Section 251(1)(d) of the 1999 Constitution is that by giving the Federal High Court exclusive jurisdiction in the Failed Banks recovery of debts vis-à-vis customer and bank transactions, it is inconsistent with the proviso in paragraph (d) of section 251(1) which says the Federal High Court shall not have exclusive jurisdiction in such matters. The said Decree No. 18 of 1994 as amended by Decree

No. 62 of 1999 will simply be read in the light that the Federal High Court shall have jurisdiction in matters of dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank. This will be consistent with the proviso in paragraph (d) of section 251(1) of the 1999 Constitution. The court below was therefore in error to have declared section 3(1) and 9 of Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 paragraph 7 of Part 1 of the Schedule thereto void. (p. 1060 F)

Ground of appeal - Not arising from lower court's decision

11. I think there is merit in that objection. The said ground of appeal does not arise from the decision of the court below. The issue was never canvassed in that court and no leave was obtained to raise it as a new issue here. I accordingly hold that ground 4 is incompetent. I strike it out together with the said issue 4 formulated from it and the argument based on the said issue. (p. 1061 E)

NOTABLE POINTS OF INTEREST

KUTIGIJS

1. Banking - Federal High Court's jurisdiction - Essence of the proviso to S. 251 (1)(d)

It is a cardinal principle of interpretation that where in their ordinary meaning the provisions are clear and unambiguous, effect should be given to them as such (see for example Awolowo v. Shagari [1979] 6-9 S.C. 51; A careful reading of section 251(1)(d) above shows the Federal High Court has exclusive jurisdiction in all matters specifically enumerated therein before the proviso. The problem here is therefore that of the construction of the proviso as it relates to the jurisdiction of the Federal High Court in respect of the item or area stated in the proviso, that is, the provision:-

“any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank.”

The question which easily comes to mind is: Does the proviso exclude the Federal High Court from exercising jurisdiction in the area

contained therein? Or is the Federal High Court simply allowed to exercise exclusive jurisdiction in the area, and in which case it shares that jurisdiction concurrently with other courts, in this case the State High Courts?

B The proviso to my mind is intended not to deny the Federal High Court of jurisdiction in the matter or area stated therein. The proviso is an exception to the “exclusivity.” rule embodied in Section 251(1)(d). In other words it is a proviso to the provision of paragraph (d) of section 251 subsection (1) only. (p. 1063 B)

C

EJIWUNMIJSC

2. Appeals - Should be against ratio not obiter

D It is undoubtedly settled law that an appeal is usually against a ratio and not against an obiter except in cases where the obiter is so closely linked with the ratio as to be deemed to have radically influenced the ratio. But even there, the appeal is against the ratio. See Saude v. Abdullahi [1989] 7 S.C. (pt. II)116. (p. 1080 B)

E

3. Stare Decisis - Court of Appeal is bound by Supreme Court decisions

F From what I have said above, I think it must respectfully be said that the judgment of the Supreme Court in this matter properly upheld the judgment of the court below in that case per Uwaifo, J.C.A. It is manifest that the question that fell for consideration in the court below and which further agitated in this court arose directly from the question raised. Having said this much, I must add however, that the court below in the present case ought to have followed and applied the decision of this court in F.M.B.N. v. N.D.I.C. (supra). I will therefore set aside the decision of the court below as it was a wrong appraisal of the facts before it which led to the wrong conclusion reached by it with regard to the jurisdiction of the Federal High Court and the High Court of a State to entertain suits arising from transactions between a bank and its individual customers. For the avoidance of any doubt, I need to say that any dispute arising from that transaction is triable in the State High Court as well as the Federal High Court. (p. 1083 G)

REPRESENTATION

Alhaji Abdullahi Ibrahim, SAN, with him Rickey Tarfa ESQ., SAN, Akinola Aina, ESQ., Mrs. O.O. Soyebó, O. Jolaawo, ESQ., Rotimi Oguneso, ESQ., Miss Pauline Tarfa, Sunny I, Ukpeke ESQ., and Kolawole Olowookere ESQ., for the appellant. B
Chief Robert Clarke, with him I.C. Eke ESQ., and J.C. Obayi ESQ., for the respondent.

CASES REFERRED TO

N.D.I.C. v. Federal Mortgage Bank of Nigeria [1997] 2 N.W.L.R. (pt. 490) 735
Bronik Motors Ltd. v. Wema Bank Ltd. [1983] 1 S.C.N.L.R. 296
Bi Zee Hotels Ltd. v. Allied Bank of Nigeria Ltd [1996] 8 N.W.L.R. (pt. D 465) 176
N.I.D.B. v. Fembo Nigeria Ltd. [1997] 2 N.W.L.R. (pt. 489) 543
UBN Plc. v. Integrated Timber and Plywood Producers Ltd. [2000] 12 N.W.L.R. (pt. 680) 99
Paico (Press & Books) Ltd. v. CBN [2001] 3 N.W.L.R. (pt. 700) 347
Trade Bank Plc. v. Benilux (Nig) Ltd. [2003] 9 N.W.L.R. (pt. 925) 416
LSDPC v. Foreign Finance Corporation [1987] 1 N.W.L.R. (pt. 50) 413 at 461
Aqua Ltd. v. Ondo State Sports Council [1998] 4 N.W.L.R. (pt. 91) 622 at 655 F

STATUTES REFERRED TO

Regional Court [Federal Jurisdiction] Act . Cap . 177 LFN and Lagos 1958, s. 3
Failed Banks [Recovery of Debts] And Financial Malpractices in Bank Decree No .18 of 1994, ss. 3(1), 9
Federal Revenue Court Decree, 1975, s. 7 (1)
Constitution of the Federal Republic of Nigeria, 1963, s. 78 (1) & (2)
Constitution of the Federal Republic of Nigeria, 1979, ss. 230(1)(d), 236
N. D. I. C. Act (Cap. 301) LFN 1990 s. 28 G H

Constitution of the Federal Republic of Nigeria, 1999, ss. 1(3), 251 (1), 315

Banks and Other Financial Institutions Decree No. 25 of 1991 s. 61

B LEAD JUDGMENT BY UWAIFO JSC

The Nigeria Deposit Insurance Corporation (the NDIC) is the Liquidator of Allied Bank of Nigeria Plc. It acts in that capacity in furtherance of its duties under section 28 of the Nigeria Deposit Insurance Corporation Act (the Act (Cap.301) Laws of the Federation of Nigeria 1990 and under other laws, and as may be relevant under the Companies and Allied Matters Act, 1990 (the CAMA). The 1st respondent, Okem Enterprises Nigeria Limited, was said to be a valued customer of the said Allied Bank of Nigeria Plc (the bank). It maintained various accounts with different branches of the bank. It is alleged that as at 31 January, 1999, the total amount outstanding against the 1st respondent was 284,109,459.59. The bank's licence has been revoked by the Central Bank of Nigeria and this led to the NDIC being appointed the liquidator of the bank.

The NDIC filed an application for the recovery of debt in the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal (the Tribunal) Lagos Zone, on 29 March, 1999 against the 1st respondent and the 2nd – 6th respondents who, at all times material to the action, were the Directors of the 1st respondent. This was done by virtue of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994, (Decree No. 18 of 1994). That Decree was amended by Decree No. 62 of 1999, substituting the Federal High Court for the Tribunal. This suit was accordingly taken over by the Federal High Court, Lagos after the inception of the present democratic dispensation, trial by Tribunal having been discontinued.

On 16 April, 2000, the respondent filed a notice of objection to the jurisdiction of the Federal High Court to entertain the suit, and sought to have the suit struck out. There were four grounds relied on for the objection, namely, that:

1. The proviso to section 251(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 repeats the terms of section 230(1)(d)

of the 1979 Constitution (as amended by Decree 107 of 1993) and did not vest in the Federal High Court the jurisdiction to determine causes and matters relating to transactions between an individual customer and his bank.

2. The reliefs sought in this suit are matters within the exclusive jurisdiction of the State High Court. B

3. All claims made or intended to be made by the plaintiff are a nullity since they are all claims and matters over which the Federal High Court had no jurisdiction.

4. Accordingly, the Federal High Court is devoid of jurisdiction to entertain this suit and the same should therefore be struck out. C

In a short but well considered ruling given on 18 December 2000, Abutu, J. came to the conclusion that in causes and matters between a bank and its individual customer, the Federal High Court and the State High Court have concurrent jurisdiction. The learned trial judge overruled the objection. D

An appeal was lodged by the defendant against that decision to the Court of Appeal, Lagos Division. Two issues were raised before that court for determination, namely: E

“(i) Whether the learned trial judge was right in holding that the present state of the law is that the Federal High Court has concurrent jurisdiction with State High Courts to entertain disputes between banks and their individual customers and thereby assumed jurisdiction to entertain the suit herein. F

(ii) Whether the learned trial judge was correct in the decision that the Federal High Court is vested with jurisdiction to entertain the suit by virtue of the provisions of the Failed Banks Decree as amended by the Tribunal (Certain Consequential Amendments etc.) Decree No. 62 of 1999.” G

The Court of Appeal on 4 February, 2003, allowed the appeal. It held that the Federal High Court has no jurisdiction to entertain causes and matters about individual customer and bank relationship. H

This is an appeal against that decision. The appellant has set down four issues for determination as follows:

“1. Whether the court below was right when it restricted itself to the provisions of Decree 107 of 1993 and Section 251 (1)(d) of the 1999 Constitution in considering whether the position of the law as regards the jurisdiction of the Federal High Court and State High Court in respect of
B transaction between individual customers and their bank had been altered since the time of the 1979 Constitution.

2. Whether Sections 3(1) and 9 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended by Decree No 62 of 1999) are inconsistent with Section 251(1)(d)
C of the 1999 Constitution of the Federal Republic of Nigeria and are therefore unconstitutional, null and void.

3. Whether the 1999 Constitution of the Federal Republic of Nigeria conferred exclusive jurisdiction in ‘disputes between an individual
D customer and his bank’ on the State High Court.

4. Whether the suit instituted by the Appellant against the Respondents herein does not qualify as a suit involving ‘other fiscal measures’ (within the meaning of Section 251(1)(d) of the 1999 Constitution) in
E which the Federal Government is interested as considered in previous decisions of this Honourable Court.”

The respondents have put the issues for determination rather slightly differently as follows:

“(i) Whether the court below restricted itself to the provisions of
F Section 230(1)(d) of the 1979 Constitution as amended by Decree 107 of 1993 and Section 251(1)(d) of the 1999 Constitution in considering whether the position of the law as regards the jurisdiction of the Federal High Court and State High Courts in respect of transactions between indi-
G vidual customers and their banks had been altered since the time of the 1979 Constitution.

(ii) Whether the court below was right in its decision that in disputes between an individual customer and his bank, only a State High
H Court has jurisdiction by virtue of the Proviso to Section 251(1)(d) of the 1999 Constitution.

(iii) Whether the court below was right in its decision that in so far as jurisdiction between an individual customer and his bank has been

vested in State High Courts, Section 3(1) and 9 of the Failed Banks Decree which purports to vest jurisdiction on same matters in the Federal High Court are inconsistent with the Proviso to Section 251(1)(d) of the 1999 Constitution.

(iv) Whether the suit instituted by the Appellant against the Respondents herein qualified as a Suit involving ‘other fiscal measures’ within the meaning of Section 251(1)(d) of the 1999 Constitution.

The respondents have, in any case, raised objection to ground 4 of the appellant’s grounds of appeal in the Notice of Appeal dated 16 April, 2003. I do not find it necessary to reproduce the said ground 4 but I shall later pronounce on the preliminary objection, which concerns issue 4.

In my respectful view, the first three issues as stated by both parties may be considered as one issue thus:

“Whether the Court of Appeal was right in its interpretation of the Proviso to section 251(1)(d) of the 1999 Constitution and the effect to be given to Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 in reaching the conclusion that the State High Courts have exclusive jurisdiction in disputes between an individual customer and his bank.”

I think it is possible that in the process of resolving this issue, arguments proffered by the parties in the consideration of the issues set down by them will be usefully taken into account as may be relevant and appropriate.

Before the court below embarked on the interpretation of section 251(1)(d) together with the proviso therein, it found it necessary to examine the jurisdiction of the Federal High Court prior to the coming into effect of the provisions of the said section 251 of the 1999 Constitution [section 230 of the 1979 Constitution as amended by Decree No. 107 of 1993]. This, in fact, involved a reference to section 7(1) of the Federal Revenue Court Decree 1973 (later to be known as the Federal High Court Act) whose provisions read thus:

“7(1) The Federal Revenue Court shall have and exercise jurisdiction in civil causes and matters-

(a) relating to the revenue of the Government of the Federation in which said government or any organ thereof or a person suing or being

sued on behalf of the said government is a party;

(b) connected with or pertaining to-

(i) the taxation of companies and of other bodies established or carrying on business in Nigeria and all other person subject to Federal taxation.

(ii) customs and excise duties,

(iii) banking, foreign exchange, currency or other fiscal measures;

(c) arising from-

(i) the operation of the Companies Decree 1968 or any other enactment regulating the operation of the Companies incorporated under the Companies Decree 1968.

(ii) any enactment relating to copyright, patents, designs, trade marks and merchandise marks;

(iii) any enactment relating to copyright, patents, designs, trade marks and merchandise marks;

(i) of admiralty jurisdiction.”

After reproducing the above provisions, the court below cited the decision of this court in Jammal Steel Structures Ltd. v. African Continental Bank Ltd. [1973] 1 AII N.L.R. (pt. 2) 208, and quoted a passage there from at page 220; [1973] A.N.L.R. (Green Cover) 852 at 862-863.

Other passages were quoted from the said Jammal case and from Bronik Motors Ltd. v. Wema Bank Ltd [1983] 1 S.C.N.L.R. 296. The court then, per Oguntade, J.C.A, observed as follows:

“The Supreme Court held that the Federal High Court has limited jurisdiction in the sense that it has only so much of the jurisdiction conferred expressly by ‘existing laws’ which are Acts of National Assembly under section 220 subsection (2) and also under specific Section of the 1979 Constitution as well as such other jurisdiction as may be conferred on it by future enactments of the National Assembly under section 230 of the 1979 Constitution.

It is note-worthy that the case of Bronik Motors Ltd (supra) was considered on the basis of the 1979 Constitution and the jurisdiction conferred thereunder on the Federal High Court. Under Section 230(1)

of the 1979 Constitution, the jurisdiction of the Federal Revenue Court as granted under the Federal Revenue Court Decree 1973 was preserved; and the Federal Revenue Court was re-christened as Federal High Court.

Now the 1979 Constitution in relation to the jurisdiction of the Federal High Court was amended by Decree No. 107 of 1993. Section 230(1)(d) of Decree No. 107 of 1993 is in ipssissima (sic) verba with section 251(1)(d) of the 1999 Constitution reproduced above. It is correct to say that prior to the coming into force of Decree No. 107 of 1993, the position was that the Federal High Court had a limited jurisdiction and the State High Court an unlimited jurisdiction. It is also the position that civil causes and matters arising from any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank were under the jurisdiction of the State High Court. The question that then arises is – Have Decree No. 107 of 1993 and Section 251(1)(d) of the 1999 Constitution altered the position with regard to the jurisdiction of the Federal High Court and State High Court in such matters?”

The learned Justice of Appeal discussed other more recent cases, particularly of the Court of Appeal [some of which I shall consider in the course of this judgment] and said inter alia as follows:

“It is my view that the Federal High Court only has exclusive jurisdiction in matters specifically stated under the paragraph in section 230(1)(d) before the proviso. To have stated that the Federal High Court has exclusive jurisdiction in the areas listed in section 230(1)(d) cannot without more mean that it has a concurrent jurisdiction in the area stated under the proviso.”

He went further to state at a later stage of the judgment:

“It seems to me that in so far as jurisdiction in dispute between an individual customer and his bank has been vested in State High Court, section 3(1) and 9 of the Failed Banks Decree (as amended) which vests jurisdiction on the same matters in the Federal High Court must be seen as inconsistent with section 251(1)(d) of the 1999 Constitution. In that case, section 1(3) of the 1999 Constitution makes it void to the extent of the inconsistency.”

Reference was made by Oguntade, J.C.A, to the decision of the Court of Appeal, Lagos Division in *N.D.I.C. v. Federal Mortgage Bank of Nigeria* [1997] 2 N.W.L.R. (pt. 490) 735 which had considered section 230(1)(d) of the 1979 Constitution as amended by Decree No. 107 of 1993 and pronounced that it gave the Federal High Court and State High Courts concurrent jurisdiction. But he came to the conclusion that that pronouncement was obiter because, in his understanding, the issues before the court did not call for a determination whether or not the Federal High Court and State High Courts have concurrent jurisdiction in disputes between an individual customer and his bank. He set out the said issues. He referred to two other decisions of the Court of Appeal where a contrary view was expressed, and said:

“As was held by the Court of Appeal in the two cases, I hold the view that in the dispute between an individual customer and his bank only a State High Court has jurisdiction.

In holding this view, I bear in mind that before the promulgation of Decree No. 107 of 1993, the Federal High Court did not have jurisdiction in such matters. It seems to me that if it was the intention of the draftsman in Decree No. 107 of 1993, to grant the Federal High Court a jurisdiction which it did not previously enjoy, it would have done so in clear, direct and explicit language. It is my view that the Federal High Court only has exclusive jurisdiction in matters specifically stated under the paragraph in section 230(1)(d) before the proviso. To have stated that the Federal High Court has exclusive jurisdiction in the areas listed in section 230(1)(d) cannot without more mean that it has a concurrent jurisdiction in the area stated under the proviso.”

Although the learned Justice proceeded to say: “Appellant’s counsel has submitted that enactments conferring (exclusive) jurisdiction on the Federal High Court are existing laws which must be brought in conformity with the 1999 Constitution pursuant to section 315 of the 1999 Constitution. I entirely agree with him,; yet he reached the final conclusion to allow the appeal without conceding any right of jurisdiction to the Federal High Court to hear disputes between individual customers and his bank.

With due respect to the learned Justice of Appeal, I have to say that he fell into fundamental misconceptions, namely, about (1) the proper import of the decisions in Jamal Case and Bronik case which he discussed and relied on; (2) the correct interpretation of section 251(1)(d) of the 1999 Constitution which he attempted, having regard to the essential function of a proviso in an enactment; and (3) the effect of sections 1 (3) and 315 of the 1999 Constitution on sections 3 (1) and 9 of the Failed Banks Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 in regard to the resolution of the issue of inconsistency. I think a combination of these vital matters was responsible for the grave error committed by the court below in reversing the decision of the Federal High Court per Abutu, J.

It is important to understand what Jammal case decided, why it was so decided and what arguments led to it. Before the Federal Revenue Court Decree No. 13 of 1973 which established the Federal Revenue Court was enacted, State High Courts had jurisdiction (and I shall explain presently what circumstances directly permitted that jurisdiction) over “banking” matters and other matters like admiralty, customs and excise duties, exchange and currency, taxation of companies etc. The operative Constitution then was the 1963 Constitution of the Federation. In particular, section 78(1) thereof gave Parliament the sole power to make laws for banks and banking as follows:

“78(1) Parliament may make laws for Nigeria or any part thereof with respect to banks and banking.”

However, subsection (2) of section 78 made provision thus-

(2) Nothing in this section shall preclude the legislature of a state from establishing an authority for the purpose of carrying on (subject to and in compliance with any Act of Parliament for the time being in force and in particular any Act relating to banks and banking) the business of banking in Nigeria or elsewhere or from making such provision of the constitution of that authority and regulating the performance by that authority of its functions as is consistent with any Act of Parliament.”

Ordinarily in a federal system of government, Federal Courts would adjudicate over matters in which the Central Parliament has exclusive

legislative competence. But because there were no Federal Courts before Decree No. 13 of 1973 to adjudicate in matter (of banks and banking etc) which were within the exclusive legislative competence of the Parliament, the High Courts of the then Regions were given authority which enabled them to adjudicate in respect of matters within exclusive legislative competence of the Parliament by virtue of section 3 of the Regional Courts (Federal Jurisdiction) Act (formerly Ordinance) Cap. 177) Vol. V Laws of the Federation of Nigeria and Lagos, 1958 which provided as follows:

“Where by the law of a Region jurisdiction is conferred upon a High Court or a magistrate court for the hearing and determination of civil causes relating to matters with respect to which the Legislature of the Region may make laws, and of appeals arising out of such causes, the court shall, except in so far as other provision is made by any law in force in the Region, have the like jurisdiction with respect to the hearing and determination of civil causes relating to matters within the exclusive legislative competence of the Federal Legislature, and of appeals arising out of such causes.”

Those were the circumstances I earlier hinted in which Regional High Courts were given jurisdiction [by the said Ordinance] to adjudicate in matter of banks and banking etc, which had there been Federal Courts, such Ordinance would have been most probably unwarranted.

On the promulgation of Decree No. 13 of 1973, section 7(1)(b)(iii) of the said Decree, which is germane to the present case, gave or transferred” jurisdiction to the Federal Court in civil causes and matters connected with or pertaining to-

“banking, foreign exchange, currency or other fiscal measures.”

What really happened by the intervention of Decree No. 13 of 1973 was that the jurisdiction permitted to Regional High Courts relating to some of the matters within the exclusive legislative competence of the Federal Legislature was withdrawn and exclusive jurisdiction in those matters was then conferred on the Federal Revenue Court.

Those matters included the ones just enumerated above as contained in the provision of section 7(1)(b)(iii). But it is essential to note,

because it is of great relevance, how the above provision is worded. It is also pertinent to consider the effect of what section 63(4) of the said Decree, [now section 64(4) of the Federal High Court Act, (Cap. 134) Laws of the Federation of Nigeria, 1990] provided that for the avoidance of doubt, the Regional Courts (Federal Jurisdiction) Act inter alia shall be construed with such modification as may be necessary to bring it into conformity with the provisions of the Decree. The said Decree was thus the dominant statute with which the Regional Courts (Federal Jurisdiction) Act must be consistent through modifications as may be necessary in interpretation. This would seem to be of some moment as to what extent the Regional (or State) High Courts would be accommodated to adjudicate in respect of matters the said Decree had “*transferred*” jurisdiction to the Federal Revenue Court. The relevant matter of jurisdiction as it relates to the present case is “*banking*”. One may ask, which aspect of banking had then been given to the Federal Revenue Court exclusively from the wording of section 7(1)(b)(iii) of the Decree? Is it “*banking*” in its limited interpretation which became an issue in Jammal case?

In the Jammal case, questions of real concern arose. The Federal Revenue Court had recently been conferred with jurisdiction in banking, a matter within the exclusive legislative competence of the Federal Legislature. The jurisdiction of the State High Courts in that same subject of banking, as I have said, had been directly derived from the Regional Courts (Federal Jurisdiction) Act. It was that same Act (and other specified enactments, e.g. Admiralty Jurisdiction Act, 1962) which allowed Regional (State) High Courts to have jurisdiction over other Federal matters relating to revenue, taxation of companies, customs and excise, foreign exchange, currency, copyright, patents, designs, trade marks, Admiralty etc. That was when there was no Federal Court to adjudicate over those matters. Now, Decree No.13 of 1973 transferred to, and conferred exclusive jurisdiction on, the Federal Revenue Court in respect of those matters; and section 63(4) of the said Decree would not permit State High Courts to exercise jurisdiction in respect of matters over which jurisdiction was now conferred on the Federal Revenue Courts unless to the extent that the Regional Courts (Federal Jurisdiction) Act was con-

strued with necessary modifications to bring it in line with the Decree.

The question then arose whether there was still jurisdiction in the State High Courts in banking matters. This question had to be resolved in a suit then pending in the High Court of Lagos State, for “*the balance due to the plaintiffs for an over-draft granted by the plaintiffs to the defendant at their Idumota branch, Lagos, in the normal course of their business as bankers to the defendants and for money paid by the plaintiffs to the defendants as bankers at the latter’s request, which said sum the defendants have refused and/or neglected to pay in spite of repeated demands.*” That was the case of the African Continental Bank Limited, as plaintiffs, against Jammal Steel Structures Limited, as defendants. It was a case of an individual customer and its bank relationship over an alleged debt owing from banking transactions which eventually got to the Supreme Court as the Jammal case (*supra*).

Chief Williams appeared for the defendants/appellants while Mr. Evan Enwerem appeared for the plaintiffs/respondents. Dr. N.B. Graham-Douglas, the Attorney General of the Federation appeared as *amicus curiae*. Chief Williams’ submission, in short, was that since the action was filed after the Federal Revenue Court had assumed jurisdiction in banking matters and had started to work, the High Court of Lagos State no longer had any jurisdiction. Mr. Enwerem submitted that “banking” in the context in which it was used in section 7(1)(b)(iii) of the Decree could only be in reference to a transaction in which the Federal Government was interested and not a simple contractual relationship such as that between banker and customer. Dr. Graham-Douglas had also submitted in line with Chief Williams’ contention that “*all banking transactions*” were included within section 7(1)(b)(iii) with the result that the Lagos State High Court had ceased to have jurisdiction in the case brought against Jammal by African Continental Bank.

Now, the interpretation whether section 7(1)(b)(iii) conferred exclusive jurisdiction on the Federal Revenue Court in all Banking matters depended on the controlling effect “*or other fiscal measures*” on the word “*Banking*” in the said section 7(1)(b)(iii). This court adopted the *ejusdem generis* rule of interpretation to reach the conclusion that the

section placed a limited meaning on “banking” so that what it really connotes is “*banking measures*”. Banking measures were considered by this court in Jammal case to be policy matters of the Federal Government. That meant that it was only in respect of banking measures that the interest of the Federal Government would be affected and, therefore, the Federal Revenue Court would have exclusive jurisdiction only in causes or matters concerning banking measures. In the majority decision of this court delivered by Elias, C.J.N, he observed inter alia at [1973] 1 All N.L.R. (pt. 2); [1973] A.N.L.R. (Green Cover) page 219; and pages 861 – 862 respectively that:

“After a very careful consideration of all arguments put before us, we think that the ejusdem generis rule applies to the interpretation of section 7(1)(b)(iii) with the result that the word ‘measures’ must be taken to qualify each of the proceeding specifically enumerated subjects, including ‘banking’. This means that the natural and ordinary meaning to be given to the subsection is that it should be as ‘banking measures, foreign exchange measures, currency measures or other fiscal measures’.”

And then, at pages 220-222; and pages 862-864 respectively, the learned Chief Justice observed further, and I shall quote him in extenso as follows inter alia:

“We are accordingly of the opinion that in section 7(1)(b)(iii) of the Decree, the word ‘other measures’ must be construed ejusdem generis with the word ‘banking’, ‘foreign exchange, and ‘currency’. Thus construed, banking measures would cover such pieces of legislation, order and regulations of the Federal Government as relate to Banking – for example, the Banking Decree 1968, Central Bank of Nigeria Act (Cap. 30 of 1958 edition), and ancillary enactments. Where any dispute relates to breach of or non-compliance with certain formalities required by law for the lawful operations of banking business, it is a matter for the Federal Revenue Court because it involves a Government measure and the Government because it involves a Government measure and the Government is a necessary party. Thus in Merchants Bank Ltd. v. Federal Minister of Finance [1961] All N.L.R. 598 the question at issue was the revocation of the licence of the plaintiff bank by the defendant under the

Banking Act, 1958 Edition. Such a case must go to the Federal Revenue Court. But where there is involved only a dispute between a bank and one or more of its customers in the ordinary course of banking business or transaction, as is the case with the subject matter of the present case, because the Government is not really interested in the outcome of the dispute, apart of course from its interest in the general maintenance of law and order. (sic).....

It was argued by the learned Attorney-General that the inclusion of subsection (d) in section 7(1) of the Decree in respect of admiralty case is an indication that the Federal Revenue Court was intended to have jurisdiction in other cases than revenue matters. This may be so, but we observe that the original jurisdiction in admiralty cases in respect of which the Supreme Court formally had a monopoly was taken away from it and expressly given to the High Court of the States by the Admiralty Jurisdiction Act, 1962, which is also referred to in section 63(4) of the Federal Revenue Court Decree, 1973. This last provision seems to say that, for the avoidance of doubt, the Admiralty Jurisdiction Act, 1962 'shall be construed with such modification as may be necessary to bring it into conformity with the provisions of the Federal Revenue Court Decree. We do not understand this to mean that the Admiralty Jurisdiction Act 1962 is thereby repealed, leaving jurisdiction in admiralty cases only to the Federal Revenue Court. It seems to us that only such causes or matters of admiralty as pertain to Federal Government vessel or property or revenue are within the jurisdiction of the Federal Revenue Court. If the true intention had been to take all admiralty jurisdiction out of the hand of all State High Courts, express provision would have been made for such a contingency in the Federal Revenue Court Decree

We also think that another reason for giving section 7(1)(b)(iii) of the Decree the construction we have adopted above is that the true object and purpose of the Federal Revenue Court Decree, as can be gathered from the four corners of it, is the more expeditious dispatch of revenue cases, particularly those relating to personal income tax, company tax, customs and excise duties, illegal currency deals, exchange control measures and the like, which the State High Courts were supposed

to have been too tardy to dispose of especially in recent years. It does not seem to us that the legislative intention behind the Decree was to clutter up the new Revenue Court with ordinary cases involving banker-customer relationship, such as disputes in respect of an over-draft, or the negligent dishonouring of a customers' cheques – all 'banking transactions' having nothing to do with Federal Revenue Concern. All the State High Courts and other appropriate courts must continue to exercise their jurisdiction in these and similar matters if the Federal Revenue Court must be allowed to concentrate on its essentially revenue protection functions. In any case, we would require a clearer and more definitive provision than that in section 7(1)(b)(iii) of the Decree before we should be disposed to assent to the submission of both Chief Williams for the appellants and the learned Attorney-General that jurisdiction in 'all banking matters' throughout the Federation and whatever their nature has in fact been exclusively vested in the Federal Revenue Court."

It can be easily seen that the interpretation of "banking" in section 7(1)(b)(iii) of the Decree to mean "banking measures" denied it of the wide meaning of "banking" in its ordinary sense, as given in Black's Law Dictionary, 6th Edition, page 146 as follows:

"The business of banking, as defined by law and custom, consist in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial papers; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations." [Emphasis mine]

The implication of appreciating the meaning of the word 'banking' in the ordinary sense, without its being restricted as a fiscal measure of the Federal Government by the ejusdem generis rule of interpretation as done by the majority decision in regard to section 7(1)(b)(iii) of the Decree, can be noted in the minority view expressed by Fatayi Williams, J.S.C. (later CJN). I find myself referring to his minority view merely to elicit the ordinary meaning of "banking". The learned Justice observed at pages 237-238; and page 877 respectively:

..... I would interpret ‘banking’ in its ordinary sense and hold that the expression is wide enough to embrace every transaction coming within the legitimate business of a banker. The nature of the claim in the case in hand shows clearly that the transaction which formed the basis of it is that of banking. The learned trial judge is also of the same view. It will be recalled that in the course of his judgment he said that he had ‘no difficulty whatsoever in coming to the view that the transaction in the case was a banking transaction.’ As all that we are concerned with is the meaning of the word ‘banking’ and I have formed the view that the word stands alone, I am also of the view that the ejusdem generis rule does not apply.”

The learned Justice was of the view that the word “banking” stood uncontrolled by the phrase “fiscal measures”, and upon that wide meaning, held that the Federal Revenue Court had exclusive jurisdiction over banking in its broad meaning. It is no surprise that that view of Fatayi-Williams, J.S.C, contrasts with the conclusion reached by the majority at page 224; and page 866 respectively thus:

“In the view we have taken of section 7(1)(b)(iii) of the Decree that only ‘banking measures’ are contemplated therein and not ‘all banking transactions’ whatsoever, we hold that the subject-matter of this appeal, which is a simple dispute between banker and customer in respect of an overdraft account, is within the jurisdiction of the High Court of Lagos State, and not the Federal Revenue Court.”

The majority decision in Jammal case was approved in Bronik Motors Ltd. v. Wema Bank Ltd. [1983] 1 S.C.N.L.R. 296, where it was discussed at length in regard to the applicability of the ejusdem generis rule. Bronik case was decided after the Federal Revenue Court had been changed to the Federal High Court. Just as in the majority decision in Jammal Case, where? Elias, C.J.N, made some relevant remarks, Nnamani, J.S.C, who gave the leading judgment in Bronik case said at page 316;

“Having held that the majority judgment is right in construing section 7(1)(b)(iii) such that the Federal Revenue Court is restricted to its essentially revenue protection functions while the State High Courts deal with such matters in which no issue of the Revenue of the Govern-

ment of the Federation arises, I would agree that there has to be express provision and a more definitive provision than section 7(1)(b)(iii) before one can accept the contention that ‘all banking matters’ must fall within the jurisdiction of the Federal High Court.”

It is plain to me that the court below missed the essence of the judgment of this court in the Jammal case. The ratio decidendi of it was the result of the canon of interpretation adopted in respect of section 7(1)(b)(iii) of the Decree. It construed “banking” as meaning ‘banking measures’ by the application of the ejusdem generis rule. This was a restricted meaning bringing it within the Federal Government fiscal measures on banking - a pure concept of the Federal Government revenue policy considered in Jammal and Bronik to be in line with the Federal Revenue Court objective. While it gave exclusive jurisdiction in such fiscal measures to the Federal Revenue Court, the interpretation excluded banker and individual customer relationship. Matters and causes concerning that remained under the jurisdiction of State High Courts.

Now, it is well to recall that when the Federal Revenue Court Decree 1973 was enacted, the relevant provision of the 1963 Constitution of the Federation on banking was section 78(1) which provided that parliament may make laws for Nigeria or any part thereof with respect to banks and banking. By virtue of Items 44 and 45 of the Exclusive Legislative List in the Schedule to the Constitution of the Federation and Part III of the said Schedule, the Federal Government had authority to provide for “*the jurisdiction, powers, practice and procedure of courts of law*” established to carry out the provisions of any enactment passed by virtue of that authority. The Federal Revenue Court Decree 1973 was enacted in virtue of the relevant Laws and, of course, by the overriding authority of the Federal Military Government. However, even under section 220 of the 1979 Constitution before it was amended, the jurisdiction of the Federal High Court was simply thus:

“230. (1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have jurisdic-

tion-

(a) in such matters connected with or pertaining to the revenue of the government of the Federation as may be prescribed by the National Assembly; and

B (b) in such other matters as may be prescribed as respects which the National Assembly has power to make laws.

(2) Notwithstanding subsection (1) of this section, where by law any court established before the date when this section comes into force is empowered to exercise jurisdiction for the hearing and determination of any of the matters to which subsection (1) of this section relates, such court shall as from the date when this section comes into force be restyled 'Federal High Court', and shall continue to have all the powers and exercise the jurisdiction conferred upon it by any law."

D Section 7(1)(b)(iii) of Decree No. 13 of 1973 as interpreted and section 230(1)(a) of the 1979 Constitution as it then stood, admittedly, restricted the jurisdiction of the Federal High Court. Mr. Clarke, learned counsel for the respondents, referring to section 7(1)(b)(iii), and upon E his own understanding of the Jammal case has argued in his brief of argument that:

"Under the above provision, jurisdiction, in civil causes and matters connected with or pertaining to banking was vested in the Federal High Court. Despite the fact that the provision did not expressly exclude disputes between an individual customer and his bank, this honourable court still held that it was not the legislative intent to vest the Federal High Court with jurisdiction in such matters. This was in *Jammal Steel Structures Ltd. v. ACB* [1973] 1 AII N.L.R. (pt. II) 208." [Emphasis mine]

The fatal flaw in this submission, as evident from the italicized portion, has been spotlighted in what I pointed out to be the ratio decidendi of Jammal case. Mr. Clarke either overlooked or misconceived the H critical role played in the application of the eiusdem generis rule in Jammal case.

I need to draw attention here to section 236(1) of the 1979 Constitution. The provisions read:

“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 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, 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 of an offence committed by any person.”

These provisions were considered both in Bronik case and Savanah Bank of Nigeria Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd [1987] 18 N.S.C.C. (pt. 1) 67. Obviously, the said provisions made no distinction between matters within Federal legislative competence and State legislative competence. But the decision in the Savannah bank case in the interpretation of section 236(1), as it tended to allow State High Courts to make an inroad into the jurisdiction of the Federal High Court, became quite controversial.

Chief Clarke has argued on behalf of the respondents in reliance on the Savannah Bank case that this court ‘held that section 8(1) of the Federal High Court Act 1973 which gave the court exclusive jurisdiction in admiralty matters was inconsistent with section 236 of the 1979 Constitution under which the State High Court was vested with unlimited jurisdiction and was therefore void to the extent of its inconsistency with the Constitution.’ That may well be so. But I think, with due respect, Chief Clarke would seem to fail to take cognizance of the fact that section 236 of the 1979 Constitution has now been replaced by section 272(1) of the 1999 Constitution with the word “unlimited” dropped from “jurisdiction”; and the said section 272(1) is made subject to section 251. Section 251 was meant to put an end to the controversy generated by the Savannah Bank Case. This has created a lot of difference in the legal situation, rendering Chief Clark’s said submission completely off the point and therefore untenable. I think Alhaji Ibrahim, SAN., on behalf of the appellant, made a significant point both in his brief and in his oral argument before this court. He said that from the various provisions of the law more recently conferring jurisdiction on the Federal High Court, that

court has virtually gone beyond the original intention of making it just a revenue court and the decisions in Jammal case, Bronik case and Savannah Bank case have to that extent spent their force. I am in complete agreement with the submission.

B By the Constitution (Suspension and Modification) Decree No. 107 of 1993 (the Decree No. 107 of 1993), section 230 of the 1979 Constitution was amended to confer on the Federal High Court jurisdiction to hear and determine civil causes and matters arising from a long list of items. The jurisdiction was far beyond what was contemplated under C the Federal Revenue Court Act 1973. I am particular about section 230(1)(d) [in pari material with section 251(1)(d) of the 1999 Constitution] which is relevant to this case. It provides as follows:

D *“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-*

E *(d) banking, banks, other financial institutions including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other*
F *fiscal measures:*

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank,”

G Notable in this provision is the absence of any phrase which will necessitate the application of the ejusdem generis rule that prevailed in section 7(1)(d)(iii) of Decree No. 13 of 1973 when it was interpreted in the Jammal case. Exclusive jurisdiction has been given to the Federal High Court in all the items mentioned therein, including; “banking” in its H wide sense as must now be recognized since it is not limited to “banking measures”. Attention must, therefore, be drawn now to the effect, which the proviso has on that exclusive jurisdiction in regard to banking in order that it would receive appropriate consideration. This is so because in the

absence of that proviso, the jurisdiction of the State High Courts would be completely removed.

The said provision in section 251(1)(d) together with the proviso has been interpreted in some decisions of the Court of Appeal. It would appear that two conflicting views have been expressed in those cases as to which court has jurisdiction as between the Federal High Court and the State High Courts in disputes between an individual customer and his bank. In the following cases it was held that it is the State High Courts which have exclusive jurisdiction: *Bi Zee Hotels Ltd. v. Allied Bank of Nigeria Ltd* [1996] 8 N.W.L.R. (pt. 465) 176; *N.I.D.B. v. Fembo Nigeria Ltd.* [1997] 2 N.W.L.R. (pt. 489) 543; *UBN Plc. v. Integrated Timber and Plywood Producers Ltd.* [2000] 12 N.W.L.R. (pt. 680) 99; *Paico (Press & Books) Ltd. v. CBN* [2001] 3 N.W.L.R. (pt. 700) 347. On the other hand, in the following cases it was held that both the Federal High Court and the State High Courts have concurrent jurisdiction: *NDIC v. Federal Mortgage Bank of Nigeria* [1997] 2 N.W.L.R. (pt. 490) 735; *Afribank Nigeria Plc. v. K.C.G. (Nigeria) Ltd.* [2001] 8 N.W.L.R. (pt. 714) 87. This last case came to that view relying on the decision of the Supreme Court in *Federal Mortgage Bank of Nigeria v. NDIC* [1999] 2 N.W.L.R. (pt. 591) 333 which heard the appeal from the Court of Appeal in *NDIC v. Federal Bank of Nigeria* (supra).

In the said *NDIC v. Federal Mortgage Bank of Nigeria* [1997] 2 N.W.L.R. (pt. 490) 735 in which I wrote the leading judgment in Court of Appeal, the earlier Court of Appeal decisions, namely *Bi Zee Hotels* and *Fembo Nigeria* were not cited to the court. If they had been cited they would have been considered whether in fact they had decided the matter in issue by which the Court of Appeal ought to be bound. Mr. Clarke, on behalf of the respondent, submits that the pronouncement on the proviso in section 230 (1)(d) of the 1979 Constitution as amended by Decree No. 107 of 1993 in the *NDIC v. Federal Mortgage Bank of Nigeria* (supra) was obiter, Mr. Clarke did not explain why he made that submission in his brief of argument in response to this appeal. I think, however, he simply echoed the view expressed by the court below. The court below held the view that the pronouncement I made in that case was an obiter

dictum because, according to Oguntade, J.C.A, the issues before the Court of Appeal in that case “*did not include a determination of whether or not the Federal High Court has a concurrent jurisdiction with a State High Court in a dispute between an individual customer and his bank.*”

B He set out the three issues considered in that case, the first of which reads:

“*Whether by virtue of section 230(1)(d) of the Constitution (suspension and Modification) Decree No. 107 of 1993, a State High Court has any jurisdiction left to entertain in any dispute between two banks relating to banking transactions.*”

C [Emphasis mine.]

He observed and concluded thus: “*As I stated earlier the issue did not properly arise in the Court of Appeal case NDIC v. FMBN. The judicial authorities which remain binding on this court in the matter are Bi Zee Hotels Ltd. v. Allied Bank Nigeria Ltd (supra) and NIDB v. Fembo Nig. Ltd. (supra). As was held by the Court of Appeal in the two cases I hold the view that in disputes between an individual customer and his bank only a State High Court has jurisdiction.*”

Looking at the above issue, I should have thought it elementary that the nature of the dispute between the two banks and the respective capacities in which they acted in the banking transaction as revealed in the case would have to be ascertained in order to understand the phrase whether “*a State High Court has any jurisdiction left to entertain any dispute between two banks relating to banking transactions,*” so as to answer the issue arising from the arguments of counsel. In so deciding what jurisdiction was left to the State High Courts, one may come to whether it is exclusive or concurrent. But certainly, the question suggests that there was a dispute over the jurisdiction exercisable by the State High Court in the subject matter. The action itself arose from a customer and bank relationship. A sum of money had been deposited by the Federal Mortgage Bank of Nigeria with a commercial Bank (United Commercial Bank Limited) which later went into liquidation. An action had been commenced in the Lagos State High Court before the Liquidation. An action had been commenced in the Lagos State High Court be-

fore the Liquidator (NDIC) came in and objected at a state that by virtue of section 230(1)(d) [as amended], only the Federal High Court had jurisdiction. The Lagos State High Court over-ruled the objection. The matter eventually got to the Court of Appeal and the issue in question was raised. In fact, the arguments of counsel for both parties raised the question as to the meaning of section 230(1)(d), and they were on diametrically opposite directions. One contended that the Federal High Court had exclusive jurisdiction; the other that the State High Courts had exclusive jurisdiction. The two parties were banks and the transaction was that one had lodged money with the other on interest basis. The arguments touched on whether that was a customer bank relationship and the effect under section 230(1)(d) in regard to the dispute. This was recorded thus at page 754:

“But it appears a controversy still remains as to what the proviso to section 230(1)(d) means. Professor Olawoyin on behalf of the appellant argues that when one bank invests money in another bank upon interest and a dispute later ensues, any civil cause arising from that transaction (referred to by him as ‘inter-bank placements’) is in respect of an action between one bank and another which must be heard by the Federal High Court to the exclusion of a State High Court by virtue of section 230(1)(d) of Decree No. 107 of 1993.

On the other hand, Mr. Fagbohungebe on behalf of the respondent submits that the respondent was created by the Federal Mortgage Bank of Nigeria Decree No. 7 of 1977 and not licensed under the Banks and Other Financial Institutions Decree No. 25 of 1991 (the BOFID). He says that under section 61 of the BOFID, ‘bank’ means a bank licensed under the said BOFID. He therefore boldly argues that the respondent is not a bank as defined under section 61 of the BOFID. He contends further that the respondent was merely an ‘investor’ with the United Commercial Bank Limited (now appellant) and not a ‘customer’, and that therefore the Lagos State High Court has jurisdiction to hear the action.”

The argument of Professor Olawoyin that when one bank invested money in another bank upon interest that amounted to ‘interbank placement’ and did not constitute customer and bank relationship, was re-

jected. Also, the argument of Mr. Fagbohunge that the Federal Mortgage Bank of Nigeria was not a bank but an investor and not a customer of the United Commercial Bank Limited, was similarly rejected. The facts that clearly and eventually emerged before the court were those of customer and bank relationship; and the question which arose therefrom was which court had jurisdiction. The issue that was raised whether a State High Court still has any jurisdiction left by virtue of the said section 230(1)(d) must, I think, be taken along with the argument of the appellant that the Federal High Court had exclusive jurisdiction and that of the respondent that it was the Lagos State High Court that had jurisdiction. I should have thought when that was done, one could not avoid taking a decision, upon a rational approach, to support one of the parties, or to rule against both and state where indeed jurisdiction lay, namely, in both courts as appropriate. But a convoluted approach the court below engaged in the present case is bound to miss the merit and inevitability of revolving that issue the way it was. I think, therefore, it is idle to reason or submit that the issue leading to the pronouncement that both the Federal High Court and the State High Courts have concurrent jurisdiction did not arise for consideration and decision in that judgment.

Before going to what the Supreme Court held on appeal in that case, let me return to whether the Court of Appeal had earlier considered section 230(1)(d) and given a decision on it. In *Bi Zee Bee Hotels Ltd.* (supra), although one of the issues was: “Assuming the appeal is competent whether the Federal High Court had jurisdiction to entertain the action which bothers (sic) on banker and customers relationship, “the Court of Appeal came to the conclusion that the appeal was incompetent and struck it out. It was thereafter that it was said at page 185 thus:

“Even if I consider the appeal on its merit, I would have dismissed it as lacking in merit. I say this because having regard to the material placed before the learned trial Judge and the state of the law, that is the proviso to section 230(1)(d) set out above, I quite agree with the learned trial court that the jurisdiction of his court is ousted from determining the complaint of the appellant as formulated from the statement of claim.

The fanciful but misconceived arguments advanced by the counsel for the appellant in trying to draw a distinction between individual banker and non-individual banker as he put it is a non-starter and with all due respect, I do not buy it. This is because the state of the law as it is now makes or even suggest no such a distinction."

It is obvious that section 230(1)(d) was not considered as part of the case before the court and a decision reached on it in the Bi Zee Bee Hotels case. What was said was a comment in passing after the appeal before the Court had been struck out for being incompetent. That cannot constitute a binding authority.

As for Fembo Nigeria Ltd. (supra), only three issues were before the court, one of which was: "*Whether or not the lower court has jurisdiction to adjudicate on the plaintiff's case.*" The other two had no relevance remotely with section 230(1)(d). The contention as reported at page 563 of the report was in regard to whether a company whose shares are wholly owned by the Federal Government was a Federal Government agency under section 230(1)(q) (r) and (s), the pronouncement at page 564 on section 230(1)(d) was simply by the way in reliance on Bi Zee Bee Hotels Ltd (supra). It had no bearing with the issue and no argument had been proffered on it. I would leave it at that. I have dealt with these cases because the respondent's counsel strongly relied on them and the court below said it was bound by them. Obviously, those decisions, in any event, wrongly interpreted section 230(1)(d).

As I have already indicated, NDIC v. Federal Mortgage Bank of Nigeria (supra) came on appeal to this court as Federal Mortgage Bank of Nigeria v. NDIC [1999] 2 N.W.L.R. (pt. 591) 333. What I said there in connection with section 230(1)(d) was copiously reproduced by Ogundare, J.S.C., in his leading judgment at pages 361 – 362 when considering Question 4 raised by the cross-appellant which was stated thus:

"4. Does Lagos State High Court share a concurrent jurisdiction with the Federal High Court in respect of banker-customer disputes/transactions as provided in the proviso to section 230(1)(d) of Decree No. 107 of 1993?"

This was obviously a direct question arising from Issue 1, which had been raised in the court below and decided as already shown. I do not intend to reproduce all what Ogundare, J.S.C, culled from my observation in that case in the court below. It is fairly long. But part of what I B said, which the learned Justice set out and considered, reads thus:

“A bank is an individual legal entity. It can be an individual customer to any other person when not acting as a bank. So it is that it can be an individual customer to a bank in any particular transaction – depending on the type of transaction ... But if one bank as an individual C is interested in earning interest from another bank through deposit, then the relationship of individual customer and bank is established as in the present case. Any dispute arising from that transaction is triable in the State High Court as well as in the Federal High Court.” D [Emphasis mine.]

This was after I had given full consideration to the effect of a proviso in an enactment and as it applied to section 230(1)(d) and the said case. Reacting to the above along with the argument of counsel, E Ogundare, J.S.C, at page 362 said:

“The respondent was unhappy with this conclusion and this forms the kernel of its cross-appeal. It is contended that by virtue of the provision of section 230(1)(d) of the Constitution the High Court of Lagos F State lacked competence and Jurisdiction to entertain the action brought by the plaintiff against another bank, the defendant in this case. It is the further contention of the respondent that any action between one bank and another falls within the exclusive jurisdiction of the Federal High Court.

G It is the contention of the plaintiff that the transaction between the plaintiff and the defendant leading to the action in the High Court of Lagos State was a dispute between an individual customer and his bank, which is exempted from the exclusive jurisdiction of the Federal High H Court by the proviso in section 230(1)(d). It is submitted that the plaintiff, in relation to that transaction, was an individual customer to the defendant.

I have considered the arguments advanced by the parties. I agree

entirely with the reasoning of the court below. With respect to the learned counsel for the respondent, I do not share the view that the proviso in section 230(1)(d) would not apply where in a customer/banker relationship the customer is a bank. To say that where there is a dispute between two banks, the forum for the resolution of the dispute is the Federal High Court is to read into section 230(1)(d) what is not there. A lot depends on the nature of the transaction between the two banks. The facts show that plaintiff, like any other customer, placed a short-term deposit with the defendant on agreed interest. After some roll-overs, plaintiff sought to retrieve its deposit and interest but defendant defaulted. In the absence of any evidence to the contrary about the custom in the industry I must hold that it is a simple customer/banker relationship which the proviso in section 230(1)(d) exempts from the exclusive jurisdiction of the Federal High Court.” [Emphasis mine]

In the face of the above, the court below, per Oguntade, J.C.A, said:

“It is apparent that the Supreme Court did not discuss the issue of concurrent jurisdiction in relation to the matter” even though it was Question 4 which the court fully considered.

The respondents’ counsel also cited and relied on this court’s decision in Trade Bank Plc. v. Benilux (Nig) Ltd. [2003] 9 N.W.L.R. (pt. 925) 416. There, the sole issue was whether the High Court of Lagos State is vested with jurisdiction to hear and determine the respondent’s claim against his banker for improperly paying a cheque marked “*Not Negotiable*” in favour of the plaintiffs to third party. It was a case of conversion arising from customer and bank relationship. It was held that the High Court of Lagos State had jurisdiction to entertain the claim. The leading judgment by Mohammed, J.S.C., was supported in this regard by all the other four learned Justices. But respondent’s counsel quoted the observation of Tobin, J.S.C., in his supporting judgment in that case and relied on it to argue that the proviso in section 230 (1)(d) is not merely to relax the exclusive jurisdiction conferred on the Federal High Court in matters stated in the proviso but that rather, “the purport is to wholly, totally and absolutely deprive the Federal High Court of jurisdiction in

respect of matters coming there under.” At page 432, Tobi, J.S.C., said:

“Section 230(1)(d) of the 1970 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 vests exclusive original jurisdiction on the Federal High Court ‘in respect of banking, banks, other financial institutions including any action between one bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.’ The provision can only be invoked on banking transaction in respect of bank inter se including the Central Bank. By the proviso, the subsection will not apply to any dispute between an individual customer and his bank in respect of transaction between an individual customer and a bank.”

What I understand was implied from the judgment along with the observation of Tobi, J.S.C., is that the Federal High Court has no exclusive jurisdiction in such a cause or matter because of the proviso. That is the true legal position. I cannot understand why learned counsel for the respondent relied on the said observation unless, as it seems, he clearly misconceived it.

I must now proceed formally to analyze section 251(1)(d) of the 1999 Constitution [same as section 230(1)(d) of the 1979 Constitution]. I have already set the provision out in this judgment. It provides that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from –

“(d) banking, banks, other financial institutions including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.”

It will be seen that this provision is differently worded from the provision of section 7(1)(d)(iii) of the 1973 Decree, which dealt with “banking, foreign exchange, currency or other fiscal measures.” It was this wording that led this court in Jammal's case to interpret

the word “banking” as used therein to mean “banking measures” under the ejusdem generis rule. It would appear that the law-giver reacted to the interpretation in the majority decision and also the opinion of the majority decision; and if I may say, as well as the concerns expressed in both Jammal's case and Bronik's case where specifically it was said in Jammal's case that “we would require a clearer and more definitive provision than that in section 7(1)(d)(iii) of the Decree before submission of both Chief Williams for the appellants and the learned Attorney-General that jurisdiction in ‘all banking matters’ throughout the Federation and whatever their nature has in fact been exclusively vested in the Federal Revenue Court.”

It can be seen that section 251(1)(d) was meant to give the Federal High Court exclusive jurisdiction in “banking” in the wide sense to involve all banking transactions: see the definition given in the Black's law Dictionary (Supra). That conclusion cannot be resisted in view of the open-ended text of that provision. But having contemplated conferring exclusive jurisdiction on the Federal High Court in all the items stipulated in paragraph (d), which by the language used was indeed conferred, the law-giver then introduced a proviso thus:

“Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.”

In considering the effect of the proviso in question, the import of the exclusive jurisdiction conferred on the Federal High Court under section 251(1)(d) of the 1999 Constitution should not be lost sight of. The section begins with, “Notwithstanding anything to the contrary contained in this Constitution....” This takes account of the jurisdiction of the High Court of a State in section 272(1) of the 1999 Constitution which says, “Subject to the provisions of section 251 and other provisions of the Constitution, the High Court of a State shall have 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...” This is not a provision conferring

exclusive jurisdiction on the State High Courts. Section 251(1)(d) confers exclusive jurisdiction on the Federal High Court in specified matters notwithstanding section 272(1).

As has been observed, section 251(1) of the 1999 Constitution begins with “Notwithstanding anything to the contrary contained in this Constitution” while section 272(1) is specifically made “subject to the provisions of section 251.” When the term “notwithstanding” is used in a section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself. It follows that, as used in section 251(1) of the 1999 Constitution, no provision of that Constitution shall be capable of undermining the said section. **In regard to section 272 of the Constitution, section 251 is directly relevant in that the former is made subject to it. The expression “subject to” means liable, subordinate, subservient, or inferior to; governed or affected by; provided that or provided; answerable for: see Black’s Law Dictionary 6th edition page 1425.**

It must therefore be understood that “subject to” introduces a condition, a restriction, a limitation, a proviso: see Oke v. Oke [1974] 1 All N.L.R. (pt. 1) 443 at 450. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be diminished by the subject section: see LSDPC v. Foreign Finance Corporation [1987] 1 N.W.L.R. (pt. 50) 413 at 461; Aqua Ltd. v. Ondo State Sports Council [1998] 4 N.W.L.R. (pt. 91) 622 at 655. The expression generally implies that what the section is subject to shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provision to which it is subject conditional upon compliance with or adherence to what is prescribed in the provision referred to: see Tukur v. Government of Gongola State [1989] 4 N.W.L.R. (pt. 117) 517 at 542, 565, 580; Idehen v. Idehen [1991] 6 N.W.L.R. (pt. 198) 382 at 148; Labiyi v. Anretiola [1992] 8 N.W.L.R. (pt. 258) 139 at 163-164.

Plainly, the proviso in question in section 251(1)(d), to put it in simple analysis, says that the Federal High Court will have

exclusive jurisdiction in banking matters but when what is involved is individual customer and his bank transaction, the Federal High Court shall not have exclusive jurisdiction. Understandably, that was to recognize the jurisdiction the State High Courts had been exercising in such matters which section 272(1) of the Constitution B impliedly preserves. The High Court of a State can only exercise jurisdiction in any aspect of such specified matters to the extent that the proviso in section 251(1)(d) permits. The said proviso cannot be interpreted to have the effect of conferring exclusive jurisdiction on the State High Court and completely taking away the C jurisdiction of the Federal High Court to entertain causes and matters relating to individual customer and bank transactions as was erroneously decided by the court below and unsuccessfully argued before this court by Chief Clarke. Alhaji Ibrahim, SAN. has proffered D clear argument in the appellant's brief in this regard.

I think I have sufficiently explained the rationale behind the interpretation adopted in Jammal case. I have also shown that the provision of section 251(1)(d) is not liable to the ejusdem generis rule of interpretation. The words of section (1)(d) are plain enough. It is the proviso that efforts must be made to interpretation of the proviso, not to be carried away by the history behind the jurisdiction of the Federal Revenue Court, later Federal High Court. The first approach is to try to construe the plain F words of section 251(1)(d). I must confess that because of the way the court below dealt with this matter and the arguments of counsel in this court, I was compelled to forage into the past to explain the decisions in Jammal case and Bronik case with much profit. That is why, although I could have done without that history in this particular case where I regard the language of section 251(1)(d) unambiguous, I consider it still G valid that I must feel guided in this regard by the observation of Lord Heschell as to the proper approach when interpreting the plain words of a statute which he made in the House of Lords case of *The Bank of H England v. Vagliano Brother* [1891] AC 107 at pages 144-145 as follows:

"I think the proper course in the first instance is to examine the language of the statute and to ask what is the natural meaning, uninflu-

enced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will be an interpretation in conformity with this view.”

The learned Law Lord then proceeded to make further expatiation thus:

“If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code.... ***What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground.***”

The Court of Appeal fell into the error of adopting the contrary approach. Instead of construing section 251(1)(d) from the words used in the first instance, it rather sought the help of earlier authorities in a manner that distorted a true interpretation necessary in this case. That was why I found myself compelled to revisit those authorities of the Jammal and Bronik case to show that they were both misunderstood and misapplied by that Court.

As a general rule, a proviso has a limited operation in quali-

fying the ambit of the section to which it is related: see *Lyods & Scottish Finance Ltd. v. Modern Cars & Caravans (Kingston) Ltd* [1964] 2 All E.R. 732 at 740. It follows that where a section with a proviso appended to it confers powers, it would be contrary to the ordinary operation of the proviso to give that section an effect which would neutralize those powers in a way that it goes beyond what compliance with the proviso itself renders necessary. The object of a proviso is normally to cut down or qualify or create exceptions to or relax in a defined sense the limitations imposed or powers conferred by a section of an enactment or document; or to exclude some possible ground of misinterpretation of its extent, or to modify the main part of a section of a statute to which it relates or to restrain its absoluteness or generality: see *Re Tabriskey Ex parte Board of Trade* [1947] 2 All E.R. 182 at 183-184 per Lord Greene, M.R.; *West Derby Union v. Metropolitan Life Assurance Co.* [1897] A.C. 647 at 652 per Lord Watson. Therefore, the proper view of the proviso in section 251(1)(d) of the 1999 Constitution is that the main provision having used the language of exclusive jurisdiction, the proviso then relaxes that exclusiveness given to the Federal High Court therein in a situation in which the issue is a dispute between an individual customer and his bank in respect of transactions between the individual and the bank. In that regard, a State High Court will also have or continue to exercise jurisdiction and this it does concurrently with the Federal High Court. There should be no difficulty in appreciating this.

A further argument was made in connection with the provisions of sections 3(1)(a) and 9 of Decree No. 18 of 1994 and part 1 of the Schedule to the Decree No. 62 of 1999, which amended Decree No. 18 of 1994. The court below received arguments in respect of those provisions and expressed its opinion thereon per Oguntade, J.C.A., as follows:

"It seems to me that in so far as jurisdiction in disputes between individual customer and the bank has been vested in State High Court, sections 3(1) and 9 of the Failed Banks Decree as amended which vests jurisdiction on the same matters in the Federal High Court must be in-

consistent with section 251(1)(d) of the 1999 Constitution makes it void to the extend of the inconsistency. Appellant's counsel has submitted that enactments conferring jurisdiction on the Federal High Court are existing laws which must be brought in conformity with the 1999 Constitution pursuant to section 315 of the 1999 constitution. I entirely agree with him."

He did not indicate what the effect would be if the said sections 3(1) and 9 of the Failed Banks Decree as amended by Decree No. 62 of 1999 were to be brought in conformity with the 1999 Constitution pursuant to section 315. But what followed from the conclusion he arrived at to allow the appeal meant that he regarded those provisions void entirely because he said only the State High Courts have jurisdiction.

The appellant's argument in this regard falls under issues 2 and 3 set down in the appellant's brief. It was Decree No. 18 of 1994 under which the Tribunals were set up. Section 3(1)(a) and 9 provided thus:

"3(1) The Tribunal shall have power to
(a) recover, in accordance with the provision of this Decree, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central Bank of Nigeria.

9. Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Tribunal Shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a failed bank, which remains outstanding as at the date of closure of the business of the failed bank."

Paragraph 7 of Part 1, of the Schedule to the Decree No. 62 of 1999 which amended Decree No. 18 of 1994 reads inter alia:

"For the word 'Tribunal' wherever it appears in the Decree substitute the words 'Federal High Court.'"

This enabled pending cases which the Tribunals did not conclude before they were abolished to be taken over by the Federal High Court.

The question that arose in the court below was whether the foregoing provisions were inconsistent with section 251(1)(d) of the 1999

Constitution and therefore unconstitutional, null and void. The opinion of that court and the final decision it reached have been stated above. It is necessary to add that Oguntade, J.C.A., had earlier said: "I hold the view that in dispute between an individual customer and his bank only a State High Court has jurisdiction." It is plain that from the whole tenor of the judgment of the court below, the above-stated pronouncements were made upon faulty premise and are inevitably wrong. One could recall how by the Regional Courts (Federation Jurisdiction) Act and related Acts jurisdiction was given to Regional High Courts (in the absence of a Federal Court) to adjudicate on matters within the exclusive competence of the Parliament. That arrangement was never intended to give exclusive jurisdiction to the Regional High Courts. It was, in my view, a desirable stopgap pending the establishment of a Federal Court. Decree No. 13 of 1973 which established the Federal Revenue Court conferred it with exclusive jurisdiction over some of the matters, but banking became one such matter which turned out to be contentious. Even after Decree No 107 of 1993 which amended section 230 of the 1979 Constitution was promulgated, curious claims were still being made by some that the State High Courts have exclusive jurisdiction to entertain an aspect of banking which involves individual customer and bank relationship. There is no rational basis, as has been shown, for holding that under section 251(1)(d) of the 1999 Constitution, State High Courts have exclusive jurisdiction to determine disputes between the individual customer and his bank in respect of transactions between the individual customer and the bank. It has been demonstrated that in such matters the Federal High Court and State High Courts have concurrent jurisdiction.

There can be no doubt that the intention of enacting Decree No. 18 of 1994 was to place all matters arising from failed banks, including individual customer and bank relationship, within the exclusive jurisdiction of the Tribunals set up by the Federal Military Government. This was to ensure, I believe, that the "crusade" of the Federal Military Government to sanitize banking activities maintained the momentum it could monitor and assess. There is also no doubt that Decree No. 62 of 1999 was intended to keep it that way. **It can be seen, therefore, that the**

Federal High Court by the said Decrees had been directly conferred with exclusive jurisdiction over all failed banks matters. But the ultimate position in this connection is that, although by Decree No. 18 of 1994 and Decree No. 62 of 1999, the Federal High Court was given exclusive jurisdiction in such matters, that provision of exclusivity has turned out to be inconsistent with the effect of the proviso to section 251(1)(d) when the 1999 Constitution came into force. That does not mean that the effect of the inconsistency was to deprive the Federal High Court of any jurisdiction at all in matters of customer and bank. By virtue of section 315 of the Constitution, those provisions in the said Decree which are now regarded as existing Acts of the National Assembly, must be brought in line with the said proviso which extends jurisdiction to State High Courts. This must be done with due reference to subsection (3) of section 1 of the Constitution which provides that:

“(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”

The relevant provision of section 315 is subsection (3)(d). It provides-

“(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say-
(d) any provision of this Constitution.”

The extent of the inconsistency of Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 with Section 251(1)(d) of the 1999 Constitution is that by giving the Federal High Court exclusive jurisdiction in the Failed Banks recovery of debts *vis-à-vis* customer and bank transactions, it is inconsistent with the proviso in paragraph (d) of section 251(1) which says the Federal High Court shall not have exclusive jurisdiction in such matters. The said Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 will simply be read in the light that the Federal High Court shall have jurisdic-

tion in matters of dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank. This will be consistent with the proviso in paragraph (d) of section 251(1) of the 1999 Constitution. The court below was therefore in error to have declared section 3(1) and 9 of Decree No. 18 of 1994 as amended by Decree No. 62 of 1999 paragraph 7 of Part 1 of the Schedule thereto void.

I have considered the preliminary objection to ground 4 in the Notice of Appeal filed on 6 January, 2004 relied on by the appellant and issue 4 formulated therefrom. The said ground complains that the court below erred in law when it failed to consider the relevance of the legal status of the appellant, its statutory duties and its role in the management of failed banks. Issue 4 raised therefrom asks whether the suit instituted by the appellant against the respondents does not qualify as suit involving “*other fiscal measures*” within the meaning of section 251(1)(d) in which the Federal Government is interested. The whole purpose was to urge this court to hold that the failed banks policy which became a major socio-economic issue under the auspices of the Federal Military Government are matters in which the NDIC, regarded as a Federal Government agency, has taken a decision and therefore should remain within the exclusive jurisdiction of the Federal High Court by virtue of section 251(1)(r). **I think there is merit in that objection. The said ground of appeal does not arise from the decision of the court below. The issue was never canvassed in that court and no leave was obtained to raise it as a new issue here. I accordingly hold that ground 4 is incompetent. I strike it out together with the said issue 4 formulated from it and the argument based on the said issue:** see Honika Sawmill (Nig.) Ltd. v. Hoff [1994] 2 N.W.L.R. (pt. 326) 252 at 261; Yusuf v. Union Bank of Nigeria Ltd [1996] 6 N.W.L.R. (pt. 457) 632 at 642.

There is, however, much merit in the appeal and I allow it. I set aside the judgment of the court below together with the order for costs. I restore the decision of the Federal High Court which assumes jurisdiction to entertain this suit. I award N6,000.00 as costs in the court below

and N10,000.00 as costs in this court in favour of the plaintiff/appellant.

KUTIGI JSC

B I have had the privilege of reading in advance the judgment just rendered by my learned brother, Uwaifo, J.S.C. I agree with his reasoning and conclusions. I will however comment briefly.

C Starting with the Respondent's Preliminary Objection, I will also uphold the objection to Ground 4 of the Appellant's Grounds of Appeal, because the ground does not relate to any matter decided in the judgment of the Court of Appeal. Clearly the legal status of the Appellant, its statutory duties and its roles in the management of Failed Banks which ground 4 alleges that the Court of Appeal failed to consider were never issues D before that court nor were they canvassed by any of the parties in that court, Ground 4 and issue 4 founded on it are therefore incompetent and they are hereby struck-out (see for example *Odubeko v. Fowler* [1993] 7 N.W.L.R. (pt. 308) 637 *Agbaka v. Amadi* [1998] 11 N.W.L.R. (pt. 572) E 16. Now, back to the appeal proper.

This appeal is only concerned with the construction or interpretation of the proviso to section 251(1)(d) of the 1999 Constitution which reads thus –

F “251(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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-*

G (a)(omitted)
(b)(omitted)
(c)(omitted)
(d) *connected with or pertaining to banking, banks other financial institutions,*

H *including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange coinage, legal tender, bills of exchange, letters of credit, promis-*

sory notes, and other fiscal measures:

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and his bank in respect of transaction between the individual customer and the bank.”

B

(emphasis is mine)

It is a cardinal principle of interpretation that where in their ordinary meaning the provisions are clear and unambiguous, effect should be given to them as such (see for example Awolowo v. Shagari [1979] 6-9 S.C. 51; Nafiu Rabi v. Kano State [1980] 8-11 S.C. 130); Att. Gen of Bendel State v. Att. Gen. Of The Federation [1981] 10 S.C. 1). A careful reading of section 251(1)(d) above shows the Federal High Court has exclusive jurisdiction in all matters specifically enumerated therein before the proviso. The problem here is therefore that of the construction of the proviso as it relates to the jurisdiction of the Federal High Court in respect of the item or area stated in the proviso, that is, the provision-

C

D

“any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank.”

E

The question which easily comes to mind is: Does the proviso exclude the Federal High Court from exercising jurisdiction in the area contained therein? Or is the Federal High Court simply allowed to exercise exclusive jurisdiction in the area, and in which case it shares that jurisdiction concurrently with other courts, in this case the State High Courts?

F

The proviso to my mind is intended not to deny the Federal High Court of jurisdiction in the matter or area stated therein. The proviso is an exception to the “*exclusivity*,” rule embodied in Section 251(1)(d). In other words it is a proviso to the provision of paragraph (d) of section 251 subsection (1) only.

G

Now, it should be appreciated that the words or provision

“any dispute between an individual customer and his bank in respect of transactions between individual customer and the bank” covered by the proviso, is in an area already covered by the main paragraph (d) itself before the proviso. It will therefore be unreasonable to

H

read the proviso as totally denying jurisdiction in an area where the main paragraph (d) has already conferred jurisdiction. What the proviso has done in my view, therefore, is simply to remove “*exclusivity*” of jurisdiction in the area stated in the proviso of paragraph (d). In other words
 B the Federal High Court can exercise concurrent jurisdiction in the area stated or mentioned in the proviso. To have stated, as did the Court of Appeal, that the Federal High Court has no jurisdiction at all, would have made the proviso superfluous or unnecessary because there are count-
 C less other cases in which the Federal High Court has no jurisdiction. We must in addition also avoid a construction which would have the effect of rendering the proviso otiose. The appeal therefore succeeds and it is allowed.

It is for the above reasons and those ably stated in the judgment of
 D my learned brother, Uwaifo, J.S.C., that I also allow the appeal. For the avoidance of doubt the conclusion is that under the proviso of section 251(1)(d) of the 1999 Constitution, the Federal High Court has concurrent jurisdiction with States High Courts in the matter stated in the pro-
 E viso (see Federal Mortgage Bank of Nigeria v. NDIC [1999] 2 N.W.L.R. (pt. 591) 333; Afribank Nigeria Plc., v. K.C.G. Nigeria Limited [2001] 8 N.W.L.R. (pt. 714) 87.

The judgment of the Court of Appeal is set aside while the Ruling
 F delivered by the Federal High Court on 18/10/2000 is restored. I endorse the order for costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered
 G by my learned brother, Uwaifo, J.S.C, in this appeal. I entirely agree with his reasoning and conclusion and I, also would allow the appeal. I only wish to make a few observations of my own on sections 251(1)(d) and 272(1) of the 1999 Constitution. The main issue in this appeal is whether
 H the State High Court has been conferred with exclusive jurisdiction in “*disputes between an individual customer and his bank*” by the 1999 Constitution of this country. The starting point is section 272 (1) of the 1999 Constitution which confers jurisdiction on the State High Courts. It

provides as follows:

“272-(1) Subject to the provisions of the section 251 and other provisions of the Constitution, the High Court of a State shall have 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 proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”

So what does section 251 provide? It states thus:

“251(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, the Federal High Court shall have and exercise jurisdiction to the exclusion, of any other court in civil causes and matters.

a.

b.

c.

d. Connected with or pertaining to banking, banks, other financial institutions, including any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory notes and other fiscal measures. Provided that this paragraph, shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.”

There are two things that I would like to observe from the above quoted provision of section 272. The first is that whatever jurisdiction is vested in the State High Court by section 272 is made subject to the jurisdiction vested in the Federal High Court by, or pursuant to section 251 of the 1999 Constitution. The second thing to note is the absence of the adjective *“exclusive.”* Thus, it is necessary to bear in mind the provisions of section 251 in construing the jurisdiction vested in the State High Court. In other words, section 251 restricts limits governs and indeed prevails over section 272 of the Constitution which confers jurisdiction on State High Court.

It is a cardinal principle of interpretation of statutes that where the words of the statute are clear and unambiguous, they must be given their plain and ordinary meaning. See *Owena Bank v. N.S.E. Ltd* [1997] 8 N.W.L.R. (pt. 515) 1; *A-G. Bendel v. A-G. Federation: Awolowo v. B Shagari* [1979] AII N.L.R. 12.

It will be seen clearly that section 251(1)(d) confers exclusive jurisdiction on the Federal High Court in specified matters notwithstanding section 272(1). What this means is that the jurisdiction conferred upon and exercised by the State High Court hitherto in regard to those specified matters has been removed. The proviso to section 251(1)(d) however exempts any dispute between an individual customer and his bank from the exclusive jurisdiction of the Federal High Court. What this means is this. The proviso has done two things. First, the jurisdiction of the State High Court in transaction involving an individual customer and his bank has been preserved. In the second place, although the Federal High Court has jurisdiction in such dispute, it is not to the exclusion of the State High Court. In other words both courts have concurrent jurisdiction. That is to say that under the proviso to section 251(1)(d) of the 1999 Constitution, the Federal High Court has concurrent jurisdiction with State High Court in transactions involving an individual customer and his bank: See *Federal Mortgage Bank of Nigeria v. NDIC* [1992] 2 N.W.L.R. (pt. 591) 333.

As I stated earlier on in this judgment. I entirely agree with the reasoning and conclusion of my learned brother, Uwaifo, J.S.C. in the result I, too allow the appeal, and set aside the judgment of the Federal High Court and also award for costs. I restore the judgment of the Federal High Court and also award N6,000.00 as costs in the Court of Appeal and N10,000.00 as costs in this court in favour of the plaintiff/appellant.

KALGO JSC

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Uwaifo, J.S.C., in this appeal. I entirely agree with the judgment and the treatment of the issues raised therein. I adopt this reasoning and conclusions as mine and find that the appeal is

meritorious. I therefore allow it but add a few words of mine by way of emphasis.

I have considered the preliminary objection raised by the learned counsel for the respondents in his brief pertaining to ground of appeal number 4 and issue 4 distilled from it and I agree with Uwaifo, J.S.C., B that it did not arise in the court below and no leave was obtained before it was filed in this court. It is therefore incompetent and is accordingly struck out together with the issue raised from it and the arguments relating thereto.

The substantive issue in controversy between the parties in this appeal is whether the Federal High Court has jurisdiction to hear and determine “disputes between an individual customer and his bank”. In considering this issue, it is my respectful view that the provisions of Decree 107 of 1993, Decree 18 of 1994; Decree 62 of 1999 and most importantly S. 251 (1) (d) of the 1999 Constitution, among others must be considered. D

Decree No. 107 of 19993 amended the 1979 Constitution and in S. 230(1)(d) provides: - E

“(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 cause and matters arising from- F

.....

(d) banking, banks, other financial institutions, including any action between one bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory note and other fiscal measures: G

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank; H

(Underlining mine)

Section 3(1) and 9 of Decree 18 of 1994 (popularly called the

Failed Bank Decree) as amended by Decree 62 of 1999 also provide as follows:-

“3(1) *The Federal High Court shall have power to – (a) recover in accordance with the provisions of this Decree, the debts owed a failed bank, arising in the ordinary course of business and which remain outstanding at date the bank was closed or declared a failed bank by the Central Bank of Nigeria.*”

“9. *Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Federal High Court shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a failed bank which remains outstanding as at the date of closure of business of the failed bank*”.

From these provision of Decree 107 of 1993 and Decree 18 of 1994 as amended by Decree 62 of 1999, it is very clear that in both provisions, the Federal High Court was given exclusive jurisdiction to hear and determine civil causes and matters arising from banking and other fiscal measures. It is also clear however that in respect of Decree 107 of 1993, the exclusivity was limited or curtailed by removing dispute between individual customer and his bank.

It is trite law that the general principles of interpretation of statutes is that where the words of the statute are clear and unambiguous, they must be given their plain and ordinary meaning unless it would be absurd to do so having regard to the nature and circumstances of the case. See *Awolowo v. Shagari* [1979] AII N.L.R. 12; [1979] 6-9 S.C. 51; *Adejumo v. Governor of Lagos State* [1972] 3 S.C. 45; *A-G. Bendel v. A-G. Federation* [1981] 10 S.C. 1; *Owena Bank v. N.S.E. Limited* [1997] 8 N.W.L.R. (pt. 515) 1.

Section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria also provides:-

“*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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil*

causes and matters-

.....

(d) connected with or pertaining to banking, banks, other financial institutions, including any action by or against the Central Bank of Nigeria arising from banking foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures:

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank."

(Underline mine)

Once again this provision also gives the Federal High Court exclusive jurisdiction in civil causes and matters pertaining to banking and other fiscal measures but like S.230 (1)(d) of Decree 107 of 1993, it limits the exclusivity by removing from that jurisdiction, dispute between individual customer and his bank.

The removal of exclusivity from the jurisdiction of the Federal High Court in respect of dispute between individual customer and his bank by the provisos in S. 230(1)(d) of Decree 107 of 1993 and S. 251(1)(d) of 1999 Constitution does not mean that the Federal High Court ceased to have jurisdiction in respect of those disputes but it only means that the jurisdiction is not exclusive to the Federal High Court. It is pertinent to observe that Decree 107 of 1993 ceased to have effect and was repealed by Decree 63 of 1999 with effect from 29th May, 1999. This means that S. 251 of the 1999 Constitution now deals with jurisdiction and powers of the Federal High Court in banking matters.

The Court of Appeal found that sections 3(1) and 9 of the Decree 18 of 1994 were inconsistent with the provisions of Section 251(1)(d) of the 1999 Constitution and therefore null and void. It said in its judgment on page 114 of the record-

"It seems to me that in so far as jurisdiction in disputes between individual customer and the bank has been vested in the State High Courts, Section 3(1) and 9 of the Failed Banks Decree as amended which vest jurisdiction on the same matters in the Federal High Court must be in-

consistent with Section 251(1)(d) of the 1999 Constitution. In that section 1(3) of the 1999 Constitution makes it void to the extent of the inconsistency.”

With due respect to the Court of Appeal, S. 251(1)(d) of the 1999 Constitution does not confer exclusive jurisdiction in disputes between individual customer and the bank on the State High Courts. All it did is to remove the exclusivity in dealing with those kind of disputes from the Federal High Court; which means that the High Court of a state by virtue of s.272 (1) of 1999 Constitution also shares the jurisdiction with the Federal High Court.

The phrase “this paragraph shall not apply” in the proviso to S.251 (1)(d) means what it says, and that is that the exclusive jurisdiction on matters listed in subsection (1) of S. 251, does not apply to disputes between individual customers and his bank. It does not mean that the Federal High Court shall have no jurisdiction in the simple customer/bank relationship at all. If that was the intention of the law maker it would have said so expressly by simply providing that the Federal High Court shall have no jurisdiction to hear and determine any such dispute.

Section 272(1) provides:-

“(1) Subject to the provisions of Section 251 and other provisions of this Constitution, the High Court of a State shall have 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 or determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person”

(underlining mine)

Section 272(1) of the 1999 Constitution inter alia, vested jurisdiction on the State High Courts to hear and determine civil matters in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue. But S. 272(1) is “*subject to the provisions of S.251 and other provisions of the Constitution.*” This means that the jurisdiction to hear and determine civil matters mentioned in S. 272(1) is limited, restricted, regulated, controlled and subordinated by

the provisions of S. 251. This further means that since the Federal High Court has no *exclusive* jurisdiction over “*any dispute between an individual customer and his bank.*” In accordance with the proviso to S. 251, the jurisdiction will now be shared between the Federal High Court and the State High Courts by virtue of the provisions of S. 272(1) above. B My conclusion therefore is that the Federal High Court and the State High Court have concurrent jurisdiction to hear and determine any disputes between an individual customer and his bank and I so hold.

I find it useful and worthwhile to consider cases decided by this C court on the construction of S. 230(1)(d) of Decree 107 of 1993 whose provisions are in pari material with those of S. 251(1)(d) of 1999 Constitution. In Federal Mortgage Bank of Nigeria Ltd. v. N.D.I.C. [1999] 2 N.W.L.R. (pt. 591) 333 at 362-363 Ogundare, J.S.C., in his leading judgment said:- D

“With respect to learned counsel for the respondent, I do not share the view that the proviso in Section 230(1)(d) would not apply where in a customer/banker relationship, the customer is a bank. To say that where there is dispute between two banks, the forum for resolution of the dispute is the Federal High Court is to read into S. 230(1)(d) what is not there... In the absence of any evidence to the contrary about the custom in the industry, I must hold that it is a simple customer/banker relationship which the proviso in Section 230(1)(d) exempts from the exclusive jurisdiction of the Federal High Court.” (Underlining mine) E F

I entirely agree with Ogundare, J.S.C., that the proviso to S. 230(1)(d) did not provide that it would not apply where two banks are involved in the dispute or that only the Federal High Court has jurisdiction G in such disputes. To say so is to read or add what is not in the proviso and this cannot be done. He only ended, quite properly in my view, by saying that in a simple customer/banker relationship, like in the present case, the proviso only exempts the application of the exclusive jurisdiction of the Federal High Court. This means in my respectful view, that H the Federal High Court will still have the ordinary, as opposed to the exclusive jurisdiction in banker/customer disputes. He did not say that the Federal High Court lacks such jurisdiction.

Also in Trade Bank Plc. v. Benilux (Nig) Ltd [2003] 9 N.W.L.R. 416 at page 430 Mohammed, J.S.C, in the leading judgment had this to say: -

B *“The State High Court has no jurisdiction in matters provided under section 230(1)(d) of Decree 107 except disputes between an individual customer and his bank in respect of a transaction between the individual customer and the bank.”*

C I cannot agree more with this. What the learned Justice is saying is that except as to disputes between individual customer and his bank, all other matters pertaining to banking in S. 230(1)(d) of Decree 107 of 1993 are within the exclusive jurisdiction of the Federal High Court. He is not saying that the Federal High Court cannot exercise jurisdiction over dispute between the individual customer and his bank.

D It is true that in these two cases of this court considered by me, the mind of the learned justices did not avert to concurrent jurisdiction between the Federal High Court and the State High Court under the proviso to S. 230(1)(d). That does not stop this court from clearing the
E issue when the opportunity occurs like in the instant appeal where the construction or interpretation of the similar provisions as in S. 230(1)(d) arises.

F I have also carefully studied the case of Jammal Steel Structures Ltd. v. A.C.B. Ltd [1973] 1 AII N.L.R. (pt. II) 208 and Bronik Motors Ltd v. Wema Bank [1983] 1 S.C.N.L.R. 296 and it appears to me that they are not relevant to this case. The Jammal case was considering the jurisdiction of the then Federal Revenue Court now Federal High Court under S. 7(1)(b)(iii) of the Federal Revenue Court Act, 1973. This court
G was of the opinion that the Federal Revenue Court as the name implies was established to essentially take care of the revenue of the Federal Government and since S. 7(1)(b)(iii) of the Act did not specifically give exclusive jurisdiction to the Federal Revenue Court in all banking trans-
H actions, it held in a majority decision per Elias, C.J.N at page 222-223 of the report that:-

“It does not seem to us that the legislative intention behind the Decree was to clutter up the new Revenue Court with ordinary cases

involving banker-customer relationships, such as disputes in respect of an overdraft, or the negligent payment of a forged cheque or negligent dishonouring of a customer's cheques – all “banking transactions” having nothing to do with Federal Revenue concern. All the State High Courts and other appropriate courts must continue to exercise their jurisdiction in these and similar matters if the Federal Revenue Court must be allowed to concentrate on its essential revenue protection functions.” B

By this decision, both the Federal High Court and the State High Courts can exercise jurisdiction in all banking transactions involving banker-customer relationship by virtue of the 1979 Constitution. Their jurisdiction in such banking transaction shall therefore be concurrent even though S. 7(1)(b)(iii) did not say so expressly. C

In the Bronik Motors Case the provisions of S. 230(1)(d) of the 1979 Constitution were considered by this court. The section provides: - D

“230-(1) subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have jurisdiction-

(a) in such matters connected with or pertaining to the revenue of E the Government of the Federation as may be prescribed by the National Assembly; and

(b) in such other matters as may be prescribed as respect which the National Assembly has power to make laws. F

(2) Notwithstanding subsection (1) of this section, where by law any court established before the date when this section comes into force is empowered to exercise jurisdiction for the hearing and determination of any of the matters in which subsection (1) of this section relates, such court shall as from the date when this section comes into force be restyled “Federal High Court”, and shall continue to have all the powers and exercise the jurisdiction conferred upon it by any law.” G

This court held that the words “as may be prescribed” in section 230(1)(a) and (b) can only refer to the future i.e. the National Assembly H may prescribe at a future date additional jurisdiction on the Federal High Court in matters connected with or pertaining to the revenue of Government and in other matters contained in the Exclusive Legislative List

Nnamani, J.S.C, in the leading judgment had this to say: -

“As regards the proper meaning of “as may be prescribed” which occur in Section 230(1)(a) and (b) of the Constitution it is my view that those words should be given their ordinary, plain meaning.... I cannot see how “as may be prescribed” can refer to anything else but the future i.e. as the National Assembly may prescribe at the future date subsequent to the coming into operation of the 1979 Constitution.”

At the time of the decision, that jurisdiction has not been conferred. And although Section 7(1)(b)(iii) of the Federal Revenue Act 1973 has conferred certain jurisdiction in the Exclusive Legislative List on the Federal High Court, there are still left other matters connected with “banking” in the said List which was not conferred on that court. Therefore by virtue of the provisions of S. 236 of the 1979 Constitution, the State High Court would necessarily have jurisdiction on matters not listed under S. 7(1)(b)(iii) of the said Act.

Although the decisions of this court in Jammal and Bronik Motors cases deal with the jurisdiction of the Federal Revenue Court/Federal High Court, the relevant laws or constitutional provisions considered and interpreted therein completely dissimilar and different from the constitutional provisions being considered in the instant appeal.

It appears to me that these two decisions agree that the Federal High Court does not have exclusive jurisdiction in banking and customer-banker relationships. It is also very clear to me that S. 251 (1)(d) of 1999 Constitution is very clear and not in pari material with the provisions and S. 7(1)(b)(iii) of the Federal High Court Act 1973 or S. 230(1)(a) and (b) of the 1979 Constitution. To that extent the decisions in the two cases above are irrelevant in the consideration of the instant appeal and I agree the learned appellant’s counsel, for saying so in his brief.

Decree 18 of 1994 as amended by Decree 62 of 1999 is an existing law and under S. 315 of the 1999 Constitution it takes effect with such modifications as may be necessary to bring it into conformity with the 1999 Constitution. It appears to me that the provisions of section 3(1)(a) and 9 of Decree 18 of 1994 are inconsistent with the provisions of S. 251(1)(d) of the 1999 Constitution and in that they do not

attune to the proviso to S. 251(1) which removes the exclusive jurisdiction of the Federal High Court in customer-bank transactions. They are to that extent in conflict with the provisions of S. 251(1)(d) and therefore inconsistent with it.

From what I have said above, I agree with the submissions of B Alhaji Abdullahi Ibrahim, SAN both in his brief and in oral argument in court that the two decisions discussed above relied upon by the Court of Appeal in reaching its decision, are no authorities for saying that the Federal High Court has no jurisdiction in dispute between individual customer and his bank. I also find that the interpretation of the jurisdiction C conferred on the Federal High Court under S. 230(1)(d) of the 1979 Constitution as amended by Decree 107 of 1993 and or S. 251(1)(d) of 1999 Constitution, by the Court of Appeal, was wrong in that the proviso to each of these sections did not take away, as it were, the whole juris- D diction of the Federal High Court in disputes between an individual customer and his bank. All it did was to remove the exclusive nature of that jurisdiction. In that case, both the Federal High Court and the State High Courts by virtue of S. 272(1) of 1999 Constitution have concurrent juris- E diction in the matter as held by the trial court.

For all what I have said above and the more detailed reasons contained in the judgment of my learned brother, Uwaifo, J.S.C., I too find merit in this appeal. This appeal therefore succeeds and is hereby allowed. I set F aside the decision of the Court of Appeal and restore that of the trial court. I abide by the order of costs made in the leading judgment of Uwaifo, J.S.C.

EJIWUNMI JSC

I have had the privilege of reading before now the draft of the judgment just delivered by my learned brother, Uwaifo, J.S.C. Though I am in entire agreement with his reasoning and the conclusion reached thereon upholding the appeal, yet I do intend to add a few words of my H own by this judgment.

The genesis of this case lies in the fact that the 1st respondent, who was a customer of the now defunct Allied Bank of Nigeria Plc, had

with the said bank several accounts and was the beneficiary of credit facilities and or loans from the bank. By the 31st of January 1999, the 1st respondent was indebted to the Bank in the sum of N284,108,459.49. Following the revocation of the licence by the Central Bank, the Nigeria Deposit Insurance Corporation the appellant, was appointed as the liquidator of the Bank. Pursuant to the appointment, the appellant then filed an application for the recovery of the debt against the respondents under the provisions of the Failed Banks (Recovery of Debts) and Financial Malpractices Decree No. 18 of 1994. And by Decree No. 62 of 1999, Decree No. 18 of 1994 was amended, by substituting the Federal High Court for the Tribunal. The suit was therefore accordingly taken before the Federal High Court.

At the commencement of the hearing in that court, the respondents filed a notice of objection to the jurisdiction of the Federal High Court to hear the suit upon the following grounds. These are:-

“(1) The proviso to section 251(1)(d) of the Constitution of Federal Republic of Nigeria 1999 repeats the terms of section 230(1)(d) of the 1979 Constitution (as amended by Decree 107 of 1993) and did not vest in the Federal High Court the jurisdiction to determine causes and matters relating to transactions between an individual customer and his bank.

(2) The reliefs sought in this suit are matters within the Exclusive jurisdiction of the State High Court.

(3) All claims made or intended to be made by the plaintiff are a nullity since they are all claims and matters over which the Federal High Court has no jurisdiction.

(4) Accordingly, the Federal High Court is devoid of jurisdiction to entertain the suit and the same should therefore be struck out.”

The Federal High Court, per Abutu, J, after receiving address by learned counsel in respect of the preliminary objection, then delivered a considered ruling. By this ruling, he came to the conclusion that in causes and matters between a bank and its individual customers, the Federal High Court and the State High Courts have concurrent jurisdiction to hear and determine such suits. Accordingly, the preliminary objection

was over-ruled by the learned trial judge.

As the respondent whose preliminary objection was so over-ruled, they appealed to the court below. The questions raised in that Court were:-

“(i) Whether the learned trial judge was right in holding that the present state of the law is that the Federal High Court has concurrent jurisdiction with State High Courts to entertain disputes between banks and their individual customers and thereby assumed jurisdiction to entertain the suit herein. B

(ii) Whether the learned trial judge was correct in the decision that the Federal High Court is vested with jurisdiction to entertain the suit by virtue of the provisions of the Failed Banks Decree as amended by the Tribunals (Certain Consequential Amendments etc) Decree No. 62 of 1999.” C
D

The court below following arguments by learned counsel for the parties delivered a considered ruling and concluded that the court below was wrong to have held that the Federal High Court and State High Court enjoy concurrent jurisdiction in respect of matters that form the subject matter of this suit. In effect, the court below took the view that the Federal High Court has no jurisdiction to hear and determine causes and matters arising from “customer and bank relationship”, particularly as disclosed upon the facts of the instant case. Not satisfied with that decision, the appellant has appealed against it. Pursuant thereto, the appellant in the brief filed in its behalf has set out the following issues for the determination of this appeal. They read thus:- E
F

“(1) Whether the court below was right when it restricted itself to the provisions of Decree 107 of 1993 and section 251 (1)(d) of the 1999 Constitution in considering whether the position of the law as regards the jurisdiction of the Federal High Court and State High Court in respect of transaction between individual customers and their bank had been altered since the time of the 1979 Constitution. G
H

(2) Whether section 3(1) and 9 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended by Decree No. 62 of 1999) are inconsistent with section 251(1)(d)

of the 1999(sic) of the Federal Republic of Nigeria and are therefore unconstitutional null and void.

(3) *Whether the 1999 Constitution of the Federal Republic of Nigeria conferred exclusive jurisdiction in disputes between an individual customer and his bank on the State High Courts.*

(4) *Whether the suit instituted by the appellant against the respondents herein does not qualify as a suit involving ‘other fiscal measures’ (within the meaning of section 251(1)(d) of the 1999 Constitution) in which the Federal Government is interested as considered in previous decision of this Honourable Courts.”*

Although the respondents also in their brief, identified issues for the determination of the appeal, it is my view unnecessary to set them out in this judgment, as they would be considered with the arguments advanced in their brief in support of their case. It is however pertinent to refer to the preliminary objection they have raised against 4th issue identified above for the appellant for the determination of this appeal. By this preliminary objection, the respondents are urging that the said ground of appeal as well as the 4th issue and arguments thereon in the appellant’s brief be struck out or discountenanced on the ground that the said ground of appeal did not arise from the decision of the court below.

However, before considering the arguments advanced in respect of these issues including those proffered with regard to the preliminary objection, I think it is desirable to set out the relevant parts of the judgment of the court below that provoked this appeal. It is clear from a careful reading of the judgment of the court per, Oguntade, J.C.A, who read the leading judgment, that in determining this controversy as he did, he referred to the Federal Revenue Court Act 1973, by which the Federal High Court was created and which was later changed by legislation to the Federal High Court. He also referred to some of the cases that were decided with regard to the jurisdiction of that Court; viz:- *Jammal Steel Structures v. A.C.B.* [1973] 1 AII N.L.R. (pt. II) 208 at 220; *Bronik Motors Ltd. v. Wema Bank* [1983] 1 S.C.N.L.R. 296. And also the provisions of section 230(1) of the 1979 Constitution, Decree No. 107 of 1993 and S. 251 of the Constitution. The court below therefore upon the

basis of the aforementioned case and the provisions of the Constitution, then said with regard to the jurisdiction of the Federal High Court in the context of the matter under consideration, as follows:-

“Now the 1979 Constitution in relation to the jurisdiction of the Federal High Court was amended by Decree No. 107 of 1993. Section 230(1)(d) of Decree No. 107 of 1993 is in ipssissima verba with section 251 (1)(d) of the 1999 Constitution reproduced above. It is correct to say that prior to the coming into force of Decree No. 107 of 1993, the position was that the Federal High Court had a limited jurisdiction and the State High Court an unlimited jurisdiction. It is also the position that civil causes and matters arising from any dispute between an individual customer and his bank were under the jurisdiction of the State High Court.”

The court below per Oguntade, J.C.A., then raised the question as to whether Decree No. 107 of 1993 and Section 251(1)(d) of the 1999 Constitution have altered the position with regard to the jurisdiction of the Federal High Court and State High Court in such matters. And in order to answer the question so posed, the following cases were considered:- *Bizee Bee Hotels Ltd. v. Allied Bank Nig. Ltd.* [1996] 8 N.W.L.R. (pt. 465) 176; *N.I.D.B v. F.E.M.B.O. Nig. Ltd.* [1997] 2 N.W.L.R. (pt. 489) 543; where the court below had held that in disputes between an individual customer and his bank, the State High Court has jurisdiction. But in *N.D.I.C. v. Federal Mortgage Bank of Nigeria* [1997] 2 N.W.L.R. (pt. 490) 735, the court below per Uwaifo, J.C.A. (as he then was), took the view, inter alia, that in disputes between an individual customer and his bank, both the Federal High Court and the State High Court have and can exercise concurrent jurisdiction in such circumstances. Meanwhile, this case went on appeal to this court as *FMBN v. NDIC* [1999] 2 N.W.L.R. (pt. 591) 333. And the opinion of Uwaifo, J.C.A. as reiterated above was upheld. This decision of this court was brought to attention of the court below. It does seem to me that ordinarily the court below ought to have followed the decision of this court without much ado. The court below, however, declined to follow that path endorsed by the settled principle of stare decisis. But the court below sought to show that this

court should not have affirmed the decision of the court below.

The premise for this position of that court was because the judgment of the court below, per Uwaifo, J.C.A, did not include a determination of whether or not the Federal High Court has a concurrent jurisdiction with a State High Court in a dispute between an individual customer and his bank. In other words it is being contended that the judgment did not proceed from the decision of the High Court. It is undoubtedly settled law that an appeal is usually against a ratio and not against an obiter except in cases where the obiter is so closely linked with the ratio as to be deemed to have radically influenced the ratio. But even there, the appeal is against the ratio. See Saude v. Abdullahi [1989] 7 S.C. (pt. II) 116 (1989) 7 N.W.L.R (Pt. 116) 384, 431; Ogunbayi v. Ishola [1996] 9 S.C.N.J. 143 at 153; Coker v. United Bank for Africa [1997] 2 S.C.N.J. 130, 145.

Bearing in mind this settled principle, I will now consider the facts in that case and the issues raised thereon from the High Court to the Court of Appeal and also whether any of the issues so raised and considered by the Appellate Courts arose from any of the issues that fell for determination in the High Court of Lagos. I will deal with this question briefly. And in order to appreciate the purport of the action that went before the Court of Appeal and this court, it is necessary to state some of the facts as are pertinent to resolve the question raised above. It does appear that the plaintiff in N.D.I.C. v. F.M.B. (supra), took out a writ of summons against the United Commercial Bank Ltd., as defendant claiming repayment of the sum of N5,000,000.00 it deposited for 90 days period in 1992 and interests thereon. Also filed was a statement of claim. The appellant did not enter appearance. And judgment was entered in favour of the respondent pursuant to Order 36 rule 8 of the High Court (Civil Procedure) Rules of Lagos State 1972. This procedure called "*Registry judgment*" was how the respondent got judgment in its favour. Meanwhile, the liquidator who had taken control of the United Commercial Bank Ltd filed an appeal challenging the jurisdiction of the Lagos State High Court to entertain the matter by virtue of s. 230(1)(d) of the 1979 Constitution as amended by Decree No. 107 of 1993 which vests exclusive jurisdiction in the Federal High Court to entertain certain ac-

tions between one bank and another.

It is sufficient on those facts to say that the action was commenced in the High Court of Lagos State, and that the jurisdiction of the State High Court was challenged by the appellant as the contention of the appellant was that it was only the Federal High Court that had jurisdiction to entertain the issue. And as the appellant lost in that challenge at the High Court, an appeal was lodged against the decision among others to the Court below. The issue raised before the court below on this point reads thus: -

“Whether by virtue of section 230(1)(d) of the Constitution (Suspension and Modification Decree No. 107 of 1993) a State High Court has any jurisdiction left to entertain any dispute between two banks relating the (sic) banking transactions.”

In my humble view, a careful reading of that issue was clearly meant by the appellant as an invitation to the court below to decide whether the Federal High Court was vested with regard to a bank and its customers in the context of the case under consideration. The Court of Appeal rightly took up the invitation and arrived at its decision on the question. Uwaifo, J.C.A. in the course of his judgment said thus:-

“The mere fact that a bank takes an action against another bank does not make such action triable exclusively by the Federal High Court under section 230(1)(d). It must depend on the nature of the transaction and the capacity in which one of the banks dealt with the other. There is therefore the need to examine such transaction and to look at the proviso which talks of transactions between an individual customer and his bank to ascertain its applicability. The point must be made that a section of a statute which contains a proviso must not be construed in such a way as to render the proviso unnecessary: see R. v. Leeds Prison (Governor) Ex parte Stafford [1964] 1 All E.R. 610 at 612 per Lord Parker C.J. But as a general Rule, a proviso is of necessity limited in its operation to the ambit of the section which it qualifies: see Lloyds & Scottish Finance Ltd. v. Modern Cars & Caravans (Kingston) Ltd. [1964] 1 All E.R. 732 AT 740. So where a section confers powers, it would be contrary to the ordinary operation of the proviso to give it an effect which would cut

down those powers beyond what compliance with the proviso renders necessary. The object of a proviso is normally to cut down or qualify what has been stated before in a section. A proviso does not set out to allocate powers or jurisdiction or to impose limitations or restrictions. It
 B function is to create exceptions or relax limitations in a defined sense, or to throw light on any ambiguous import in an enactment; see *Re Tabrisky ex parte Board of Trade* [1947] 2 All E.R. 182 at 183 – 184 per Lord Green M.R. in *West Derby Union v. Metropolitan Life Assurance Co.*
 C [1897] A.C. 647 at 652 per Lord Watson. Section 230(1) of Decree No. 107 of 1993 must first be viewed from its import as I earlier pointed out, namely, to give exclusive jurisdiction to the Federal High Court over causes affecting the vital interest of the Federal Government as regards revenue, fiscal measures, financial institutions, such as banks, the run-
 D ning of the Federal Government and its agencies and all matters within its exclusive list. A dispute between an individual customer and his bank in respect transactions between them can hardly affect the vital interests of the Federal Government. So the proviso in section 230(1)(d) relaxes
 E in that regard the exclusive jurisdiction given to the Federal High Court.”

And later in his judgment at p. 756 he said:-

“It must however be realized that the horizon left for the State High Court under the proviso must not be shrunk into absurdity, or
 F perhaps undue insignificance, by a restrictive interpretation to oust its jurisdiction whenever two banks are involved, simply because they are banks. A bank is an individual legal entity. It can be an individual customer to any other person when not acting as a bank in any particular transaction depending on the type of transaction. Therefore, a possible
 G scenario where one bank as an individual legal entity plays the part of an individual customer to another bank in a given transaction must be appreciated and not ruled out. For instance, when one bank (say a Merchant bank) renders services to another bank as an “Issuing House”, any
 H dispute arising from that transaction between the two banks must be heard in the Federal High Court. But if one bank as an individual is interested in earning interest from another bank through deposit, then the relationship of individual customer and bank is established as in the present

case. Any dispute arising from that transaction is triable in the State High court as well as in the Federal High Court.”

Now earlier in this judgment, I had stated that this matter came before this court as F.M.B.N v. N.D.I.C. (supra). And in the course of the judgment delivered by Ogundare, J.S.C, (with which the others agreed) B said thus:-

“It is contended for the plaintiff that the transaction between the plaintiff and the defendant leading to the action in the High Court of Lagos State was a dispute between an individual customer and his bank which is exempted from the exclusive jurisdiction of the Federal High Court by the proviso in section 230(1)(d). It is submitted that the plaintiff, in relation to that transaction, was an individual customer to the defendant. Reliance placed on Bizee Bee Hotels Ltd. v. Allied Bank (Nig) Ltd. [1966] 8 N.W.L.R. (pt. 465) 176 at 185-186 G.A. I have considered the arguments advanced by the parties. I agree entirely with the reasoning of the court below. With respect to the learned counsel for the respondent, I do not share the view that the proviso in section 230(1)(d) would not apply where in a customer/banker relationship the customer is a bank. To say that where there is a dispute between two banks, the forum for the resolution of the dispute is the Federal High Court is to read into section 230(1)(d) what is not there. A lot depends on the nature of the transaction between the two banks. The facts show that plaintiff, like any other customer, placed a short-term deposit with the defendant on agreed interest. After some roll-overs, plaintiff sought to retrieve its deposit and interest but defendant defaulted. In the absence of any evidence to the contrary about the custom in the industry I must hold that it is a simple customer/banker relationship which the proviso in section 230(1)(d) exempts from the exclusive jurisdiction of the Federal High Court.”

From what I have said above, I think it must respectfully be said that the judgment of the Supreme Court in this matter properly upheld the judgment of the court below in that case per Uwaifo, J.C.A. It is manifest that the question that fell for consideration in the court below and which further agitated in this court arose directly from the question raised. Having said this much, I must add however, that the court below in the

present case ought to have followed and applied the decision of this court in F.M.B.N. v. N.D.I.C. (supra). I will therefore set aside the decision of the court below as it was a wrong appraisal of the facts before it which led to the wrong conclusion reached by it with regard to the jurisdiction of the Federal High Court and the High Court of a State to entertain suits arising from transactions between a bank and its individual customers. For the avoidance of any doubt, I need to say that any dispute arising from that transaction is triable in the State High Court as well as the Federal High Court.

Before concluding, it is pertinent to refer to the view held by the court below on the jurisdiction of the Federal High Court visa-a-vis the State High Court with regard to the provisions of sections 3(1)(a) and 9 of Decree No. 18 of 1994 and part 1 of the Schedule to Decree No. 62 of 1999 which amended Decree No. 18 of 1994. Construing these several provisions, Oguntade, J.C.A, said thus:-

“It seems to me that in so far as jurisdiction in disputes between individual customer and the bank has been vested in State High Court, section 3(1) and 9 of the Failed Banks Decree as amended which vests jurisdiction on the same matters in the Federal High court must be inconsistent with section 251(1)(d) of the 1999 Constitution which makes it void to the extent of the inconsistency. Appellant’s counsel has submitted that enactments conferring jurisdiction on the Federal High Court are existing laws which must be brought in conformity with the 1999 Constitution pursuant to section 315 of the 1999 Constitution. I entirely agree with him.”

The question that therefore falls for consideration is, whether the court below was right to have declared void provisions of section 3(1) and 9 of Decree NO. 18 of 1994 as amended by Decree NO. 62 of 1999, paragraph 7 of the Schedule thereto.

Now section 3(1)(a) and 9 of Decree No. 18 of 1994 read thus:-
“3(1) The Tribunal shall have power to (a) recover, in accordance with the provisions of this Decree, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central

Bank of Nigeria.

9. *Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Tribunal shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a failed bank, which remains outstanding as at the date of closure of the business of the failed bank.*” B

By paragraph 7 of Part 1 of the Schedule to Decree No. 62 of 1999, Decree No. 18 of 1994 was amended, inter alia, thus: -

“*For the word ‘Tribunal’ wherever it appears in the decree substitute the word ‘Federal High Court’*” C

By this piece of legislation, it is manifested that the Federal High Court was vested with the exclusive jurisdiction hitherto enjoyed by the Failed Banks Tribunals. That being the position, there is the further question as to whether that exclusive jurisdiction granted to the Federal High Court is inconsistent to the extent of its being void with the proviso to section 251(1)(d) of the 1999 Constitution and which read: - D

“*251(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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:*” E

a. xxxxxxxxxxx

b. xxxxxxxxxxx

c. xxxxxxxxxxx

d. connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange letters or credit, promissory notes and other fiscal measures. Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.” F G H

In order to determine the question raised above, it is no doubt settled law that in order to interpret the provisions of any enactment, the

court seized of this duty must first begin with the literal reading of the said provisions. And where the intention of the legislature was clear and unambiguous from the words used in the enactment, then the Act or the particular provisions must be interpreted accordingly. See *Awolowo v. B Shagari* [1979] 6-9 S.C. 51; *Nafiu Rabi v. Kano State* [1980] 8-11 S.C. 130; *Attorney-General of Bendel State v. Attorney General of the Federation* [1981] 19 S.C.1. With regard to the provisions of Section 251 (1)(d) reproduced above, and which forms only a part of the provisions of the jurisdiction granted to the Federal High Court, it seems clear that the intention of the lawmakers was to vest the Federal High Court with exclusive jurisdiction in respect of matters were considered within the purview of the Federal Government.

But it is also clear that although by virtue of the proviso to section 251(1)(d), the lawmakers, delimited the exclusive jurisdiction of the Federal High Court to hear and determine matters connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another. In my view the said proviso referred to above did not affect the jurisdiction of the Federal High Court to continue hearing the matters identified in section 251 (1)(d). In the result, it is my view that the court below was wrong to have declared as void the provisions of Decree No. 18 of 1994 as amended by Decree No. 62 of 1999.

It is therefore my view that this appeal has merit and I will allow it for the above reasons and the fuller reasons given in the judgment of my learned brother, Uwaifo, J.S.C. I also abide by the orders made as to costs.

MUSDAPHER JSC

I had the opportunity to read in draft, the judgment of my learned brother, Uwaifo, J.S.C. and I am in entire agreement with it for the reasons he has set out in detail. While I respectfully adopt those reasons as mine. I wish to briefly express my views in my own words.

The relevant facts have been briefly and succinctly stated in the leading judgment and I have no need to go over them. The important constitutional issue that has been addressed and in respect of which I

wish to state my opinion is the interpretation to be given to section 251(1)(d) of the 1999 Constitution.

First, let me refer to NDIC v. Federal Mortgage Bank of Nigeria [1972] 2 N.W.L.R. (pt. 490) 735, a decision of the Court of Appeal. That case interpreted section 230(1)(d) of the 1979 Constitution as amended B by Decree No. 107 of 1993. By the said amendment, the Federal High Court was given in clear language exclusive jurisdiction in a number of items with a proviso. It provided thus:

“230(1) Notwithstanding anything to the contrary contained in C 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 matter arising from-

(d) banking, banks, other financial institutions including any D action between one bank and another; any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures: E

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank,”

This provision has now been inserted in section 251(1)(d) of the F Constitution of the Federal Republic of Nigeria 1999.

Going by the issues that arose for a decision in the Court of Appeal in that case of N.D.I.C. v Federal Mortgage Bank of Nigeria (supra), the court over which I presided came to the conclusion that the proviso was not intended to deprive the Federal High Court of jurisdiction G but only of exclusive jurisdiction in disputes between an individual customer and his bank in respect of transactions between the individual customer and the bank. That naturally meant that the State High Court would also have jurisdiction in such disputes. Put in other words, both H the Federal High Court and the State High Courts would exercise concurrent jurisdiction as may be appropriate.

The Court of Appeal in the present case referred to that case and

came to the conclusion per Oguntade, J.C.A, that the pronouncement that there was concurrent jurisdiction both in the Federal High Court and the State High Court was obiter. Mr. Clarke on his part has now also submitted before us on behalf of the respondent that the pronouncement was an obiter dictum. I am convinced that neither the court below nor Mr. Clarke, with utmost respect, took pains to study that judgment in order to appreciate what led to the pronouncement. The relevant issue that was canvassed by both, counsel in that case was, in essence, whether a State High court still had any jurisdiction to exercise relating to banking transactions having regard to the provision of the said section 230(1)(d). This called for a proper understanding and interpretation of the effect of the proviso in that section. The bank transaction in question happened to be that of individual customer and his bank. But the submissions were polarized. One party argued that only the Federal High Court had jurisdiction, the other party argued it was only the State High Court. It was after a careful consideration that the court reached the decision that the Lagos State High Court in which the particular matter was indeed already pending had jurisdiction to proceed with it. It was then also relevant, in order to meet both arguments, to pronounce that the interpretation to be given to the proviso was that the Federal High Court also could exercise jurisdiction if such a matter was brought before it. I must hold that the court below was in grave error to have failed to regard that pronouncement as a ratio decidendi in that case rather than as obiter.

Secondly, it is plain to me that the court below completely misconceived the rationale behind the decision of this court in Jammal Steel Structures Ltd. v. African Continental Bank Ltd. [1973] 1 All N.L.R. (pt. 2) 208 and Bronik Motors Ltd. v. Wema Bank Ltd. [1983] 1 S.C.N.L.R. 296. As has been explained in the leading judgment, those decisions were arrived at upon the ejusdem generis interpretation of the word 'banking' in section 7(1)(b)(iii) of the Federal Revenue Court Decree 1973/Federal High Court Act having regard to the wording in that section which gave the Federal High Court jurisdiction in civil causes and matters connected with or pertaining to 'banking, foreign exchange, currency or other fiscal measures.' This court interpreted "banking" as

used to mean, “banking fiscal measures.” It was this interpretation, which was not without controversy, that limited the jurisdiction the Federal High court could exercise in banking matters related to or connected with or involving in some way the Federal Government banking policy measures. But that has been altered by the wide and clear wording of section 251(1)(d) which gives exclusive jurisdiction to the Federal High Court in “banking” except where it involves individual customer and his bank transactions, in which case the exclusiveness will not operate. This conclusion can be derived from an appreciation of the functions of a proviso and the application of the one that is reasonably appropriate. In the case of section 251(1)(d), the proviso does not more than relax the exclusive jurisdiction in banking that the section, to which the proviso is appended, is understood to have conferred on the Federal High Court.

Finally, having regard to the manner in which section 251(1)(d) should be interpreted, particularly in respect of the effect of the proviso, Decree No 18 of 1994 as amended by Decree No 62 of 1999, by which exclusive jurisdiction was conferred on the Federal High Court on failed banks matters, must be brought into line with the 1999 Constitution. It must be realized that the original intention was to confine the jurisdiction over the said matter to the Tribunals set up by the Federal Military Government for that purpose. That same intention was carried to the transfer of pending failed banks matters to the Federal High Court. Ordinarily, that intention would have been given effect had the 1999 Constitution made allowance for treating failed banks matters as special. But no such allowance has been made. Accordingly, the supremacy of the Constitution must hold sway over the Decree in question which now have only the force of Acts of the National Assembly. The exclusive jurisdiction which the Federal High Court might have otherwise exercised in failed banks matters in regard to individual customers and their banks transactions will now not be exclusive. It will simply exercise jurisdiction in defence to the proviso in section 251(1)(d). The result is that the State High Courts are also conferred with jurisdiction.

For the above reasons and those more fully stated by my learned brother, Uwaifo, J.S.C, I allow this appeal and set aside the judgment of the court

below. I abide by the orders, including the order for costs, in the leading judgment.

PATS-ACHOLONU JSC

B I have read the lead judgment of my learned brother, Uwaifo,
J.S.C., and I agree with him. I will however add a few comments of
mine. Prior to the coming into effect of the present Nigerian Constitution
in 1999, the appellant had instituted an action against the Respondents
pursuant to the provision of Failed Banks (Discovery of Debts) and Fi-
C nancial Malpractices in Banks Decree No. 18 of 1994 as amended by the
Failed Banks (Recovery of Debts) and Financial Malpractices in Banks
Amended Decree of 1995 in the Financial Malpractices in Banks Tribunal
claiming from them as follows: -

D (i) *The sum of N284,109,459.59 being the outstanding balance
on the loan/overdraft facilities granted by the bank to the respondents as
31st January, 1999.*

(ii) *Interest at the rate of 21% per annum from 1st February,
E 1999 until final liquidation”*

To the claim for the recovery of the alleged indebtedness the Re-
spondents denied any debt to the Appellant. However before the com-
mencement of the trial, a new law described as Tribunals (Certain Con-
F sequential Amendments etc) Decree No. 62 of 1999 came into effect and
the jurisdiction of the Failed Banks Tribunals was transferred to the Fed-
eral High court. The New Constitution which came into force on 29th
May, 1999 made provision for the jurisdiction of the Federal High Court
in this regard.

G The Respondents had contended that the Federal high Court by
the provision of section 251(1)(d) of the Constitution has no jurisdiction
to adjudicate on the matter before it on the transaction arguing that the
contract was not more than the customer and Bank relationship. They
H urged the court to strike out the matter. The trial Court dismissed the
objection and the Respondents appealed to the Court of Appeal which
after examining the case thoroughly, allowed the appeal. Incensed or
irked by the stand of the Court of Appeal the appellant appealed to this

court.

Meanwhile the Respondents further filed a notice of preliminary objection urging the Court to strike out ground 4 of the notice of appeal and the issue based on it. The appellant framed 4 issues for determination by this court and they are as follows:

1. Whether the court below was right when it restricted itself to the provisions of Decree 107 of 1993 and section 251(1)(d) of the 1999 Constitution in considering whether the position of the law as regards the jurisdiction of the Federal High Court and State High Court in respect of transaction between individual customers and their bank had been altered since the time of the 1979 Constitution.

2. Whether sections 3(1) and 9 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended by Decree No. 62 of 1999) are inconsistent with section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria and are therefore unconstitutional, null and void.

3. Whether the 1999 Constitution of the Federal Republic of Nigeria conferred exclusive jurisdiction in “*disputes between an individual customer and his bank*” on the state High Courts.

4. Whether the suit instituted by the Appellant against the Respondents herein does not qualify as a suit involving “*other fiscal measures*” within the meaning of the section 251(1)(d) of the 1999 Constitution) in which the Federal Government is interested as considered in previous decision of this Honourable Court.”

The reply brief of the Appellants is really no answer to the objection of the respondents in the preliminary objection. The respondents however framed 4 issues for consideration by this court. I hereby set them down as follows:-

(i) Whether the court below restricted itself to the provision of section 230(1)(d) of the 1979 Constitution as amended by Decree 107 of 1993 and section 251(1)(d) of the 1999 Constitution in considering whether the position of the law as regards the jurisdiction of the Federal High Court and State High Courts in respect of transactions between individual customers and their banks had been altered since the time of the

1979 Constitution.

(ii) Whether the court below was right in its decision that in disputes between an individual customer and his bank, only a State High Court has jurisdiction by virtue of the Proviso to section 251(1)(d) of the
B Constitution.

(iii) Whether the court below was right in its decision that in so far as jurisdiction between an individual customer and his bank has been vested in State High Courts, section 3(1) and 9 of the Failed Banks Decree which purports to vest jurisdiction on same matters in the Federal
C High Court are inconsistent with the Proviso to section 251(1)(d) of the 1999 Constitution.

(iv) Whether the suit instituted by the appellant against the respondents herein qualified as a suit involving “other fiscal measures” within
D the meaning of section 251(1)(d) of the 1999 Constitution.

The parties contention in the case before this court is essentially built on the ramification of section 251(1)(d) of the 1999 Constitution. In the argument to the contents of the issues framed, the Appellant submitted that it cannot be the correct interpretation of section 230(1)(d) of the
E 1979 Constitution as amended by Decree No. 107 of 1993 when compared with section 251(1)(d) of the 1999 Constitution in respect of the jurisdiction of the Federal High Court that the Constitution has divested
F the Federal High Court of the jurisdiction it hitherto enjoyed in the nature of the case before this court arguing that the correct interpretation of sections 3(1) and 9 of the Failed banks (Recovery of Debts) and Financial Malpractices in Banks Decree (as amended by the Decree No. 62 of
G 1999) is that the Decree vested exclusive jurisdiction to hear and determine its claims against the respondents in the Federal High Court. Now the approach of the lower court to this seemingly naughty and intractable
H problem as to where the jurisdiction of the court lies is to have a historical over view or perspective of the powers of the Federal High Court before the present Constitution. For this the court below sought to show the historical sequence of events which predated both the original Failed Bank Decree of 1994 and the amendments made in 1999 to wit Decree No. 62 of 1999 and also the constitution by going back to the provision

of the law in respect of vesting of powers of adjudication in Federal High Court in a subject matter relating to Banking. Strictly speaking notwithstanding any provision contained in section 3(1) and 9 of the Failed Banks Decree (as amended by Decree No. 62 of 1999), section 251(1)(d) of the Constitution shall be the operative law for this court to rely to discover and understand to which court the subject matter in this case would have the jurisdiction. The appellant is of the view that relying on the case of Ibrahim v. J.S.C. [1998] 12 S.C. at 35, Rheinmass v. Railway Lines Ltd. [1998] 4 S.C. 73 at 82-83 and also Savannah Bank v. Ajilo [1989] 1 S.C. (pt.11) 90 at 106 it is incontestable that a careful consideration of Decree No.107 of 1993 read along with Decree No.62 of 1999 can be said to have vested the federal High Court with the same power. A holistic approach to the controversy would readily show that this court is being called upon to determine whether by reason of section 251(1)(d) of the constitution of the federal Republic of Nigeria the proviso contained in that section can be said to have made any significant alteration to the jurisdictional preserve of the Federal High Court. In other words which court has the jurisdiction in a matter relating to Failed Banks (Recovery of Debts Act), the Federal High Court exercising an exclusive jurisdiction or, a State High Court only exercising exclusive jurisdiction or both having regard to the proviso attached to section 251 (1)(d). The nature of this case reminds one that a mere simplistic approach to what is obviously a complex issue would definitely mire the quest to give a well considered juridical approach to a matter of great importance in the realms of the jurisprudence in relation to recovery of debts. What indeed are the ramifications of the contents and intendment of section 251(1)(d) (supra). Before delving into the nuances of this matter let me first set down the provision of that section;

(i) “251. -(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-

(d) connected with or pertaining to banking, banks other finan-

cial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange coinage, legal tender, bills of exchange, letters of credit, promissory notes, and other fiscal measures:

B *Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank.”*

C By the provision in this section the primary law is stating that the preserve of the Federal High Court in respect of matters contained in subsection (d) above vests squarely and unadulterated in the Federal High Court before the proviso. The proviso to the law then however can be interpreted to say that the exclusiveness of the power so stated above shall not apply in a dispute between an individual customer and his bank D in respect of any banking transaction. Who is a customer of a Bank, Blacks Law Dictionary defines the term in relation to banking as any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another Bank. E The learned counsel for the appellant argued that it would seem that the exclusivity intended by section 251(1)(d) has by virtue of the ubiquitous proviso clause been whittled, down. To the Respondents obviously basking on the judgment of the Court of Appeal and construing the proviso to mean that only the State High Court can exercise jurisdiction in such a F matter they argued that the proviso should be construed to mean that the Federal High Court has been divested of its power hitherto vested on it first by decree No. 107 of 1993, and by Failed Banks (Recovery of Debts) and Financial Malpractice in Banks (Recovery of Debits) and Financial G Malpractices in Banks Amendment Decree of 1995. It is important for us to understand the under belly of the term “*proviso*” when used in a statute. In *Abasi v. The State* [1992] 8 N.W.L.R. (pt. 260) 383, 403 this court held that;

H *“It is well recognized principle of the interpretation of statutes that a proviso is an exception to the main rule. The object of a proviso in a statutory enactment is to qualify or cut down the enacting clause which precedes it. In reality it is used as an exception to the main rule – See Eme*

v. State [1964] 1 All N.L.R. 416. Where the words of a section are capable of showing more than one meaning the proviso will show the proper meaning to be attached to it. See Anyah v. State [1965] N.M.L.R. 62”.

To my mind the approach of the Respondents *id est*, their understanding and construction of the intendment by the proviso is skewed B and constricted. Provisos in enactments are meant to serve as a special exemption from the general run of things. In other words the essence of a proviso in an enactment is to remove or isolate, limit or modify certain matters from the general operations of the law vesting some powers or enacting or establishing some features intended to be provided or prescribed by the enactment. See *Saginaw county Tp. Officers Association v. City of Saginaw* 373 Mich. 477, 130,130 M.W. 2nd 30, 32. It was held in *Stoler v. State* 171 Neb. 93, 105 N.W. 2nd 852 at 856 that a proviso is a clause engrafted on a proceeding enactment for the purpose of re- D straining or modifying the enacting clause or of excepting something from its operation which would otherwise have been within it. In effect, the proviso in section 251(1)(d) is to limit the operability of the foregoing prescription to show that applicability is not general but it does not E destroy or divest the Federal High Court of this power. It should therefore be understood to mean that the exclusivity it enjoyed has been broken and in this case can only mean that the Federal High Court enjoys equal power with State High Court in banking cases involving bank and F customer. In *Lloyds and Scottish Finance Ltd. v. Modern Cars and Caravans (Kingston) Ltd.* [1966] 1 Q.B. 764 –at 981 the court had to consider the import of provisos in a statute. By section 26(1) of the Sale of Goods Act 1893, it was provided that a writ of execution against goods “bind G the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by H virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.” In its construction of the tenor and intendment of the pro-

viso the court held that;

“The proviso, accordingly, does not more than protect a purchaser of the goods against that right of seizure if the stated conditions are fulfilled ... It has no scope for operation where an actual seizure of the debtor’s goods has already been effected; and where this has occurred, it is immaterial whether or not the purchaser from the debtor and notice of the seizure, or even of the writ.”

In the old case of Attorney General v. Chelsea Waterworks Co. [1731] Fittg. 195 it was held that if a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that it speaks the last intention of the law makers. In the present case, the exclusiveness in the vesting of powers of adjudication conferred on the Federal High Court in the older Acts has been diluted to include and confer jurisdiction on the State High Court in this sort of case. It must be admitted and this court takes judicial notice of the fact that banks and state courts are spread all over the country. It is possible that the framers of the constitution might have conceived and contended in their collective wisdom that the federal courts mostly located in Urban areas are not as extended as the State High Courts. Therefore to meet the needs of the litigants in regard to intention of cases of the nature under consideration, it shall be considered more practicable or pragmatic to spread the jurisdiction more widely to deal with banking matters arising in the less fanciful locations. The sum total of what I am saying is that by the proviso both the Federal High Court and the State High Court exercise concurrent jurisdiction in this area.

Accordingly I allow the appeal and set aside the judgment of the court below and restore the judgment of the high Court. I abide by the consequential orders made in the lead judgment.

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