

**SUPREME COURT OF NIGERIA**

10TH JUNE, 2005. SC. 245/2003

**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, A. O. EJI-  
WUNMI, D. MUSDAPHER, D. O. EDOZIE, I. C. PATS-  
ACHOLONU, G. A. OGUNTADE, JJSC**

ATTORNEY-GENERAL OF ABIA STATE ..... PLAINTIFF  
AND

ATTORNEY-GENERAL OF  
THE FEDERATION & 35 ORS ..... RESPONDENTS

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ACTIONS - Parties - Preliminary objection - As to parties that have dispute with plaintiff - Where it succeeds partially - Other parties are struck out (H1)

ACTIONS - Parties - Counter claim - Striking out - Where 30th defendant was struck out as a party - Its counter claim is accordingly struck out (H2)

STATUTES - Interpretation - Words - Where ordinary meaning of the words used in a provision are clear - Effects must be given to the words - Without resorting to any extrinsic aid (H3)

CREATION OF STATES - Statutes - Properties and Chattels - Where a State is newly created - Benefit of properties and chattels lying within are transferred to it - Together with some liabilities (H4)

PLEADINGS - Reply to averment - Where plaintiff did not file a reply - To put defendants defence in doubt - Amounts to admission of facts - Plead by the defendant (H5)

CONSTITUTIONAL LAW - Revenue allocation - Where there is a default in payment of loan - Given for development - Guaranteed by the Federal Government - It has the duty to pay the debts (H6)

PRACTICE & PROCEDURE - Reliefs - Alternative reliefs - Where claim

was not established - Non of the reliefs will be granted (H7)

### **FACTS**

Before the Supreme Court of Nigeria, the plaintiff, the Attorney General of Abia State initiated a suit against the defendants the Attorney General of the Federation and the 35 Attorneys General of the States of the Federation. The plaintiff sought for a declaration that it is not lawful for the first defendant to deduct any sum of money from its share of the Federation Account for the purpose of servicing any debt incurred by the Government of Imo State. And an order of injunction restraining the 1st defendant from making deductions from the plaintiff's share of the Federation Account except as determined by the decision in Attorney-General of Abia State v. Attorney-General of the Federation & 35 Ors. (No.2) (2002) 6 NWLR (Pt.764) 542.

The plaintiff's contention is that the Decree No. 41 of 1991, which created Abia State did not expressly state that it was inheriting any liabilities that might have been with the old Imo State. It sought to establish that this Decree was differently worded when compared with past enactments on the subject of State creation. Plaintiff is as such seeking to inherit only benefits accruing from its share of properties and chattels from the old Imo State without bearing the burdens that were tied up with such properties. The 9th. Defendant, Cross River State, raised a preliminary objection on the ground that there is no cause of action between the plaintiff and the parties hereto and urged that the suit be struck out.

### **ISSUES FOR DETERMINATION**

*"(i) Whether the States (Creation and Transitional Provisions) (No.2) Decree (No.41) 1991 creates the Abia State of Nigeria as a new State and with no encumbrances.*

*(ii) Whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purpose of servicing any debts or at all.*

*(iii) If answers to issues (i) and (ii) above are in the affirmative,*

*whether an injunction will not lie against the 1st defendant.*

*(iv) If answers to issues (i) and (ii) above are in the negative, whether the plaintiff is not entitled to proof of remittances to her creditors and to an assurance of when the deductions will abate?"*

**HELD** (Unanimously dismissing the plaintiff's claim per **EJIWUNMI JSC**)

***Parties - Preliminary objection***

1. After due consideration of this preliminary objection and the grounds of the said objection, it seems that there is merit in a part of the objection. In order to determine this point, I have taken the liberty to study the averments made in the pleadings filed by the parties. The outcome of that study in my respectful view, is that the parties that can properly be described as being in dispute with the plaintiff, having regard to its claim, are the 1st defendant i.e. Attorney General of the Federation, and the 16th defendant, the Attorney General of Imo State. As the reasons for arriving at this conclusion would be made clear later in the course of this judgment, I do not deem it necessary to do so now. I will therefore uphold this aspect of the preliminary objection. But the prayer to have the entire action struck out would be refused. However, in view of the decision that I have taken that there is certainly a dispute between the plaintiff, the 1st defendant and the 16th defendant, the other defendants not being necessary for the determination of the dispute are hereby struck out from the suit. Also struck out are the 2nd and 3rd grounds given for the preliminary objection as they lack any merit in the circumstances. (p. 1679 G)

***Parties - Counter claim - Striking out***

2. It is also appropriate to deal with the counter-claim filed by the 30th defendant in this suit. It is evident that the counter-claim so filed would have to be struck out also in view of the decision I have reached above on the preliminary objection to the main suit. As the 30th defendant has been struck out, the counter-claim filed by it is accordingly struck out. (p. 1680D)

**STATUTES - Interpretation - Words**

3. It is clear and as rightly conceded by the learned Attorney-General for Imo State, that nowhere in Decree 41 of 1991 was the word “liability” mentioned. It is also good law that as a general rule of construction of statutes that a court is not entitled to read into a statute words which are excluded expressly, or impliedly from it. See Attorney-General, Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 1431, where at pp.1 472-1 473, Karibi-Whyte, JSC., observed that:

“It is a well established and cardinal principle of interpretation that where the ordinary meaning of the words used in a provision are clear and unambiguous, effect must be given to the words without resorting to any extrinsic aid. The solemn and sacred duty of the court is to interpret the words used in the section by the legislation and give to them their intended meaning and effect. See *Adeyemo v. Governor of Lagos State* (1972) 2 S.C. 45. See also *Ogun State v. Federation* (1982) 1-2 S.C (Reprint) 7; (1982) 1-2 S.C. 13; *Bronik Motors v. Wema Bank* (1983) 1 SCNLR 2964 for the principle that in interpreting the Constitution or a Decree amending it, the court should take into serious consideration the preamble of the Decree and objects and purposes of the provisions sought to be interpreted.”

True enough in the instant case, the previous legislations for the creation of States are differently worded, vis-a-vis Decree No.41, but as rightly submitted by J. T. U. Nnodum SAN., the differences are without a distinction. This is because in each case, the intendment of the law was to create a new State out of the existing region or State.

But surely, though the word “liability” was not mentioned in Decree No.41 of 1991, that cannot, by any means, be the conclusion of this matter as argued by the plaintiff. It is settled law that in order to discover the true intent of the Government by the promulgation of Decree No.41, the court is entitled to read the Decree in its entirety. After such a perusal, it is quite manifest that Section 7(1) of the said Decree, whose provisions are in pari materia with earlier legislation for the creation of States, had been considered by this court in earlier cases. (p. 1704 C)

**CREATION OF STATES - Statutes - Properties and Chattels**

4. Now, it is of course manifest that in respect of the case in hand, the case which the plaintiff is seeking to make is that the creation of Abia State was effected without any liability as Section (1) of Decree No.41 of 1991 which brought about its existence did not have any liability attached thereto. B

But it cannot be denied that the provisions of Section 7(1), which I have quoted above, remained part of Decree No.41 of 1991. And this Section 7(1) is that which was construed in Attorney-General of Ondo State v. Attorney-General, Ekiti State (supra). I have earlier stated that Section 7(1) of Decree No.36 is in pari materia with Section 7(1) of Decree No.41. May I add that it is a recognized principle that where the provisions of a statute or a section of a statute are in pari materia, light may be thrown on the meaning of such a provision of a statute or section which is in pari materia by referring to a previous decision of a competent court where similar provisions had been previously considered. D

It is therefore my view that the principles enunciated above with regard to the meaning and effect of Section 7(1) of Decree No.36 in the case of Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra) apply to the case in hand. It follows therefore that by the provisions of Section 7(1) of Decree No.41 of 1991, which created Abia State from the old Into State, properties and chattels lying within the newly created Abia State were transferred without any further assurance to Abia State i.e. the plaintiff. Abia State therefore becomes the owner of such properties and chattels. Now, as owners of such properties and chattels and which they have not denied, they were therefore available for the use and enjoyment of the State as part of its economic development. Benefits derived therefrom must also be borne with the burdens that were tied up with such properties and chattels that devolved on the Abia State. (p. 1707 E) F

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**PLEADINGS - Reply to averment**

5. Having regard to the several complaints of the plaintiff, one would have expected the plaintiff to file a reply to this averment so that the defence

proffered by the 1st defendant would at the very least, be put in doubt. This the plaintiff did not do. Then the legal effect of such a failure surely is recognized as an admission of those facts pleaded by the 1st defendant. It is therefore not a question of estoppel as argued by the plaintiff. The situation therefore is not for the plaintiff to argue that the 1st defendant had wrongly raised the defence of estoppel in law. In my humble view, what the 1st defendant had stated in plain language is, that the plaintiff cannot be heard to complain about the averments made by the 1st defendant that meetings were held to resolve whatever payments were due from the plaintiff in respect of the debts it inherited and those which the State incurred after its creation. In my humble view, the position of the 1st defendant in the circumstances is that the plaintiff having not pleaded anything to the contrary to the averments made by the 1st defendant on the point is estopped from denying that such meetings were held as copiously pleaded in the statement of the 1st defendant as amended. (p. 1714 E)

**E *CONSTITUTIONAL LAW - Revenue allocation***

6. As I have earlier held, the plaintiff by virtue of Section 7(1) became the owner of several properties and chattels which devolved on the State following its creation, by Decree No.41 of 1991. And I have also come to the conclusion that some of the properties and chattels came into existence by the loan agreements reached with foreign investors or such bodies as provided loans or credit for development. Now because of default in the payment of these loans, the Federal Government had to guarantee the payment of these loans to the foreign creditors. It is therefore my view that beyond the deduction from the money allocated to the plaintiff to service the debts for the benefits being enjoyed by the plaintiff, the duty to pay the debts rests squarely on the Federal Government. A grant of an injunction as sought by the plaintiff cannot be proper or right in law as in this respect the plaintiff has nothing to protect. The prayer for perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Minister for Finance) or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account

is hereby refused. (p. 1715 C)

**Reliefs - Alternative reliefs**

7. In order to determine this relief, I refer to the dictum of Ayoola, JSC., in *M. V. Caroline Maersk v. Nokoy Invest Ltd.* (2002) 6 S.C (Pt.II) 10; B (2002) 12 NWLR (Pt.782) 472 at p.509.

*“Where the plaintiff on a set of facts asks for a relief and a second relief “further or in the alternative” to the first, it is for the court to decide on the facts and on principle whether the grant of second relief as a further (additional) relief will not amount to double compensation for the same cause of action, in which case the second relief should not be granted. Where a plaintiff is uncertain whether the facts he relies on would entitle him to a relief either in addition to a first relief or merely as an alternative, he can claim the subsequent relief as a “further or alternative relief”. Where the first and principal relief is exhaustive of his remedy, there would not be need to grant the subsequent relief claimed as a “further or alternative relief.”*

Having regard to these principles, it does appear that the facts must have been litigated during the trial that a verdict of the court may go either way. It seems to me also that the alternative verdict would also reflect the facts litigated. In the case in hand, I have after a careful perusal of the alternative reliefs come to the conclusion that as the plaintiff has failed to establish its claim as per the first alternative relief, I find myself unable to grant the relief. The 2nd relief cannot also be granted in the circumstances. Besides that, it must be recalled that the 1st defendant has been established as the guarantor of the debts owed by Abia State to the foreign creditors and as Abia State has not established anything to the contrary, I cannot in the circumstances grant these prayers. (p. 1716 C)

**NOTABLE POINTS OF INTEREST**

**BELOGORE JSC**

*1. State creation - When normal principles of assets and liabilities will prevail*

Unless the statute creating a state expressly states that debts of the new

states so created would be borne by another body, the normal principle of state succession to assets and liabilities will prevail. Certainly, any state created could not be said to be free of encumbrances once structures are in place in its territory installed with loans to be paid. Reliance on Attorney-General of Ondo State v. Attorney-General of Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 143 has no bearing or relevance on this case. Once liability exists within its geographical area or territory and the liability has not been redeemed, that territory will inherit the liability either directly or through its guarantor, in this case, Federal Government of Nigeria. There is no ambiguity in the Decree's 41 of 1991 about creation of Abia State to justify importing assets and liability responsibility into it. The decree purport was to create States and nothing more. The courts should not be invited to do interpretational magic of looking for sundry issues not necessary to the promulgation of a decree. To say a decree creating states is "presumed to excuse" repayment of loans inherited by the state" is stretching to a ridiculous extent the idea of statutory interpretation. Has the Decree 41 of 1991 satisfied its purpose? Certainly it has; Abia State constitutionally exists; there is no secondary purport of the decree. Once the words of the statute are clear, there is no need to look for any extrinsic aid to interpret it. (p. 1717 H)

**OGUNTADEJSC**

*2. State creation - New Abia State has liabilities to bear*

It is important for me to say that following the excision of Abia State from the old Imo State in 1991, the Imo State emerging must be seen and considered as a new State on its own. This situation then compels the raising of the question - who was to meet the liabilities for projects which had been financed in the old Imo State and the benefits of which later accrued to Abia State at its creation? Although the plaintiff in its pleadings and brief before this court tried to convey that Abia State being a new State in 1991 had no burden to share with the new Imo State, his standpoint is belied by the letters annexures 2 and 3 reproduced above.

It seems to me that the plaintiff has been less than sincere in its argument that the new Abia State had no liability at its creation in 1991. It



has only chosen to interpret the facts available to suit its case. It would seem that the plaintiff wishes that we look only at the provisions of the Decree No. 41 and on that basis alone make the pronouncements as to its meaning and effect. That however will, as I said earlier, not resolve the question whether the plaintiff is right to say that the 1st defendant could not make deductions from allocation due to Abia State from the Federation Account. (p. 1742 F)

### **REPRESENTATION**

Awa U. Kalu, SAN, (with him, U. E. Amaonwun (Mrs.) PS/SG, Ministry of Justice, Abia State, C. S. Chioma (Mrs.) DCL, Ministry of Justice, Abia State; O. K. Odabi, Esq., Asst. Chief State Counsel, Ministry of Justice, Abia State and I. C. Nwachukwu Esq., PSC, Ministry of Justice, Abia State), for the Plaintiff. C  
D

Chief Makanjuola Esan, SAN, (with him, Olowokere. O. (Mrs.) and Olayinka Esan), for the 1st Defendant.

U. Udom, Esq., for the 3rd Defendant.

U. N. Udechukwu, SAN, (with him, A. G. Idigo-Izundu (Mrs.) and N. J. Obika, Esq.), for the 4th Defendant. E

Talford Ongolo, Hon. Attorney-General, Bayelsa State, (with him, D. Fideikumo, Esq.), for the 6th Defendant.

David I. Alum, DDLD, (with him, C. Mbafan Ekpendu, (SC), for the 7th Defendant. F

Philip Ikpo Esq., Director of Civil Litigation, Ministry of Justice, Cross River State), for the 9th Defendant.

A. A. Utuama, Attorney-General, Delta State, (with him, O. Pedro Esq., W. Ogbogu, CLO and E. Ohwovoriole, Esq.), for the 10th Defendant. G

Chief J. C. Eze, Attorney-General, Ebonyi State, (with him, S. U. Ewu, Chief Legal Officer), for the 11th Defendant.

A. A. Adeleye, DLR, (with him, E. K. Adetiga, SLO), for the 13th Defendant. H

J. T. U. Nnodum, SAN, Attorney-General, Imo State, (with him, T. E. Chikeka (Mrs.), DCL and Y. C. Nwagu), for the 16th Defendant.

O. E. B. Offiong, Esq., (with him, M. B Adoke), for the 17th Defendant

- Abubakar Malami, Esq., (with him, Nuhu Musa Moh, Esq.), for the 21st Defendant.
- Prince Ben. S. Ikani, Attorney-General, Kogi State, (with him, Osa Obayomi Ali), for the 22nd Defendant.
- B Saka A. Isau, Attorney-General, Kwara State, (with him, H. A. Gegele, Senior State Counsel, Ministry of Justice, Kwara State), for the 23rd Defendant.
- Lawal Pedro, HDCL, (with him Ade Ipaye, Esq.), for the 24th Defendant.
- M. O. Kiadi, Esq., PLP, for the 26th Defendant.
- C Akin Osinbajo, Attorney-General, Ogun State, (with him, O. A. Koleowo ADCL, for the 27th Defendant.
- A.O. Adebuseye, SG/PS, Ondo State, (with L. K. Akinrinsola, DCL and Daniel Onuluin ACLO), for the 28th Defendant.
- D Adedotun Onibokun (Mrs.), Director of Litigation, Ministry of Justice, Osun State), for the 29th Defendant.
- M. O. Isola, DPP, Oyo State, (with him A. I. Raheen, PLO), for the 30th Defendant.
- E F. B. Lotben (Mrs.), DCL, for the 31st Defendant.
- M. U. Wakama (Mrs.), Director, Civil Litigation Department., (with her, Soye Lolomari (Miss)), for the 32nd Defendant.
- Suleiman Abdulkadir, Esq, for the 33rd Defendant.
- J. D. Yakubu, DCL, (with him, E. H. Gowon, State Counsel), for the 34th Defendant.
- F I. S. Kogo, DCL, for the 35th Defendant.

### **CASES REFERRED TO**

- G Attorney-General, Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 1431
- Awolowo v. Shagari (1979) 6-9 S.C. (Reprint) 37; (2001) FWLR (Pt.73) 53, (1979)6-9 S.C. 51
- H Lawal v. G. B. Ollivant (1972) 3 S.C. 124
- Ogun State v. Federation (1982) 1-2 S.C (Reprint) 7; (1982) 1-2 S.C. 13
- Bronik Motors v. Wema Bank (1983) 1 SCNLR 2964
- Obeya Memorial Hospital v. Attorney-General of the Federation & Anor.

A-G Abia State v. A-G Federation (2005) 6 KLR Ejiunmi JSC 1677  
(1987) 3 NWLR 325

M. V. Caroline Maersk v. Nokoy Invest Ltd. (2002) 6 S.C (Pt.II) 10;  
(2002) 12 NWLR (Pt.782) 472 at p.509

Lawal v. G. B. Ollivant (1972) 3 S.C. (Reprint) 120; (1972) 3 S.C. 124

### **STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1963, s. 3(1)

Constitution of the Federal republic of Nigeria 1999, s.232(1)

Decree No. 36 of 1996, s. 7(1)

States Creation and Transitional Provisions Decree (No. 14) 1967, s. 1(1) <sup>C</sup>

States Creation and Transitional Provisions Decree (No. 12) 1976, s. 1

States Creation and Transitional Provisions Decree No. 41 of 1991, ss.  
1(1) & (2), 3-8

States Creation and Transitional Provisions Act Cap. 413 LFN, 1990 s. D  
1(1)

Supreme Court Rules (as amended in 1999), O. 2 r. 9

### **LEAD JUDGMENT BY EJIWUNMI JSC**

This action was commenced by the Attorney-General of Abia State against the Federation and the other States identified in the Writ of Summons under and by virtue of the provisions of Section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999, which vested original jurisdiction in this court in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. <sup>F</sup>

In the case under consideration, the questions raised by the plaintiff against the Federation and thirty-five other States of the Federation for determination by this court are as follows:-

*“1. A determination of the question whether or not the States H  
(Creation and Transitional Provisions) (No.2) Decree (No.41) 1991 is in  
force as a law enacted by the National Assembly and creates Abia State  
of Nigeria without further assurance.*

2. *A determination of the question whether or not the States (Creation and Transitional Provisions) (No.2) Decree (No.41) 1991 creates Abia State as a new state pursuant to Section 1(1) of the Decree.*

B 3. *A determination that the States (Creation and Transitional Provisions) No.2 Decree (No.41) 1991 creates Abia State as a new State with no encumbrances.*

C 4. *A declaration that it is not lawful for the Minister of Finance or any person authorized by him to deduct any sum or sums of money from the plaintiff's share of the Federation Account without plaintiff's consent or concurrence for the purpose of servicing any debts incurred by the Government of the State called Imo State created by the States (Creation and Transitional Provisions) Decree 1976.*

D 5. *An Order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Minister of Finance) or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account except as determined by the decision in Attorney-General of Abia State v. Attorney-General of the Federation & 35 Ors. (No. 5) (2002) 6 NWLR (Pt.764) 542."*

F Pursuant to the originating summons, the plaintiff filed a very copious Statement of Claim, which ended with five reliefs that are in pari materia with the claims made in the originating summons. Thereto, the plaintiff claims against the defendants jointly and severally as follows:-

G (i) An order directing the first defendant to deduct from the plaintiff's share of the Federation Account only such sums as may be mutually agreed by the Government of Abia State and the Government of the Federation (for the purpose of servicing any debt proved or adjudged to be outstanding against the Government of Abia State.

H (ii) An order of injunction restraining the first defendant from making or continuing to make any deductions (from the plaintiff's share of the Federation Account or any other account whatsoever) until further order as in (i) above."

In order to fully appreciate properly the nature of the dispute calling for determination between the parties, the Statement of Claim will be set out and subject to the resolution of the preliminary objection raised against

the action as commenced, the relevant pleadings of the parties deemed necessary for the resolution of the dispute would also be reproduced.

At the beginning of this judgment, mention was made of the fact that plaintiff commenced this action against the Federation and thirty-five States of the Federal Republic of Nigeria. Several of the defendants duly entered appearance, and filed their respective Statements of Defence and Briefs of Argument. Indeed one of them, the 30th defendant, filed a counterclaim in the matter. But before consideration is given to them, I need to first consider the preliminary objection raised by the 9th defendant, namely the Cross River State to the claim.

The Notice of Preliminary Objection which was brought by the 9th defendant under Order 2 Rule 9 of the Supreme Court Rules (as amended in 1999) reads:-

*“Take notice that at the hearing of this action, the 9th defendant herein named intends to rely on the following preliminary objection notice of which is hereby given to you, viz,*

*That there is no cause of action between the parties hereto and consequently this suit ought to be struck out.*

*Further Take Notice that the grounds of the said objection areas follows:-*

*1. The Statement of Claim discloses no dispute between the plaintiff and the 1st defendant or between the plaintiff and the 35 other States of the Federation.*

*2. There is no averment of the plaintiff's prior step of presenting its grievance to the Federation Account Allocation Committee and the failure or refusal of that Committee to grant it redress.*

*3. There is, alternatively, no pleading of resort by the plaintiff to an appropriate authority of the Federal Government for redress and the neglect or refusal of such authority to offer such redress.”*

**After due consideration of this preliminary objection and the grounds of the said objection, it seems that there is merit in a part of the objection. In order to determine this point, I have taken the liberty to study the averments made in the pleadings filed by the parties. The outcome of that study in my respectful view, is that the**

parties that can properly be described as being in dispute with the plaintiff, having regard to its claim, are the 1st defendant i.e. Attorney General of the Federation, and the 16th defendant, the Attorney General of Imo State. As the reasons for arriving at this conclusion would be made clear later in the course of this judgment, I do not deem it necessary to do so now. I will therefore uphold this aspect of the preliminary objection. But the prayer to have the entire action struck out would be refused. However, in view of the decision that I have taken that there is certainly a dispute between the plaintiff, the 1st defendant and the 16th defendant, the other defendants not being necessary for the determination of the dispute are hereby struck out from the suit. Also struck out are the 2nd and 3rd grounds given for the preliminary objection as they lack any merit in the circumstances.

It is also appropriate to deal with the counter-claim filed by the 30th defendant in this suit. It is evident that the counter-claim so filed would have to be struck out also in view of the decision I have reached above on the preliminary objection to the main suit. As the 30th defendant has been struck out, the counter-claim filed by it is accordingly struck out.

Having determined the preliminary points raised in this appeal, what will now be considered are the plaintiff's claims against the 1st and 16th defendants. It is also pertinent to state that the action was tried upon the pleadings, the affidavit evidence and documents attached thereto by the parties. At the hearing, parties placed reliance on their briefs of argument severally filed by each of the contending parties.

In order to properly appreciate the contention as to the issues raised in this action, it is, I think, desirable to set out the relevant averments made in the pleadings filed by the parties. And I begin with that of the plaintiff.

They read thus:

"4. *The plaintiff states that the Abia State of Nigeria was created by virtue of the provisions of sub-section 1 of Section 1 of the States (Creation and Transitional Provisions) No.2 Decree, 1991 as a new State. The plaintiff avers that by virtue of sub-section 2 of Section 1 of the*

*aforesaid Decree, the new State was imbued with the same rights, powers and privileges as the States existing prior to the commencement of the aforesaid Decree.*

5. *The plaintiff states that by virtue of subsection 1 of Section 3 of the Constitution of the Federal Republic of Nigeria 1963, the Federation of Nigeria was made up of four regions, to wit, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-Western Nigeria and each of the aforesaid Regions by force of the said Constitution consisted of the areas comprised in those territories respectively on the thirtieth day of September, 1963.*

6. *The plaintiff pleads that by virtue of the provisions of the States (Creation and Transitional Provisions) Decree No. 14 of 1967, the State then known as Central Eastern State (now defunct) was created out of the former Eastern Region and comprised the following territories, namely: the areas comprising the former Eastern Region excluding Calabar, Uyo and Ogoja Provinces and the Ahoda, Brass, Degema, Ogoni and Port Harcourt Divisions.*

7. *The plaintiff further pleads that the aforesaid Decree No. 14 of 1967 was subsequently amended by the following Decrees, namely: States (Creation and Transitional Provisions) (Amendment) Decree No. 19 of 1967; States (Creation and Transitional Provisions) (Amendment) No.2 Decree No.25 1967; States (Creation and Transitional Provisions) (Amendment) Decree No. 16 1974. By virtue of Section 1(a) of Decree No. 14 1967 the Central Eastern State (later renamed East Central State) was said to be made up of Aba, Abakaliki, Afikpo, Awgu, Awka, Bende, Nsukka, Okigwe, Onitsha, Orlu, Owerri and Udi Divisions. The tenure of the aforesaid Decrees applied throughout the Federation.*

8. *The plaintiff pleads that in 1976 the States (Creation and Transitional (Provisions) No. 12 Decree created 19 States among which was the State known as and called Imo State which State was made up of the following territories, that is to say: Afikpo, Oguta, Nkwere, Mbano, Mbaise, Bende, Arochukwu, Umuahia, Okigwe, Orlu, Oru, Mbaitoli/ Ikeduru, Etiti, Ohafia, Northern Ngwa, Owerri, Aba and Ukwa which territories were in the aforesaid Decree identified either as provinces,*

*divisions or districts.*

*The States (Creation and Transitional Provisions) No. 12 Decree 1976 consequentially repealed o) Decree No. 19 of 1967, No.25 of 1967 and No. 16 of 1974.*

B 9. *The plaintiff avers that Abia State of Nigeria is made up of the following Local Government Areas, namely : Aba North, Aba South, Arochukwu, Bende, Ikwuano, Isiala Ngwa North, Isiala Ngwa South, Isuikwuato, Obi Ngwa, Ohafia, Osisioma Ngwa, Ugwunagbo, Ukwa West, Umuahia North, Umuahia South and Umunneochi.*

C 10. *The plaintiff shall contend that by reason of the matters pleaded in paragraphs 5, 6, 7, 8 and 9 above, the aforesaid States (Creation and Transitional Provisions) (No.2) Decree 1991 created Abia State as a new State without further assurance and free from any encumbrances except as*  
D *provided in the said Decree.*

11. *The plaintiff states that the Government of Abia State since the creation of the State on the 27th day of August, 1991 has not negotiated, concluded or accepted any transaction amounting to a loan for which the*  
E *1st defendant stands as Guarantor or Surety. In the alternative, the plaintiff pleads that the first defendant has not at any time material to this suit agreed with the plaintiff to represent it (i.e. the plaintiff) as Guarantor or surety in respect of any sums expressed in local or foreign currency*  
F *purporting to be a loan for which the 1st defendant has an obligation to repay.*

12. *The plaintiff pleads that notwithstanding the averments contained in paragraph 11 above the first defendant through its servants and agents insists that:*

G (i) *Abia State (of all the States in Nigeria) has the highest debt stock;*

(ii) *Abia State is indebted to various multi lateral institutions in various currencies amounting to a total sum of US \$677,942,276.26 (Six-Hundred and Seventy-Seven Million, Nine Hundred and Forty-Two Thousand Two Hundred and Seventy Six United States Dollars, Twenty Six cents).*

(iii) *The debt service requirement for the stock in 2003 is the*



*equivalent of US \$88,916,846.76 (Eighty Eight Million Nine Hundred and Sixteen Thousand Eight Hundred and Forty Six United States Dollars Seventy Five Cents) while the State's corresponding share in the US \$2 Billion (Two Billion United States Dollars) approved by the National Assembly for debt servicing in 2003 is US \$36, 267,817.00 (Thirty Six Million Two Hundred and Sixty Seven Thousand Eight Hundred and Seventeen United States Dollars) which is the estimated equivalent of N4,642,280,576.00 (Four Billion, Six Hundred and Forty-Two Million, Two Hundred and Eighty Thousand, Five Hundred and Seventy Six Naira). The plaintiff has never received confirmation in advance of a budgetary year what its alleged liability would be.*

*(iv) The Abia State Government as alleged by the first defendant, has an irrevocable obligation to pay the aforesaid sum of N4,642,280,675.00 in the 2003 fiscal year alone which works out at N638,684,162.22 per month.*

*13. The Abia State Government disputes that it has been conducted or made itself privy to any transaction that may lead the first defendant to the irrevocable deductions made monthly from the account of the Government of Abia State and the plaintiff disputes the grounds for these deductions.*

*14. By reason of the foregoing, the 1st defendant deducted at source the sum of N810,175,602.72 from January to June 2003 (from the share of Abia State Government in the Federation Account). The first defendant intends, unless restrained by this court, to deduct the balance of N3,832,104,973.00 from the plaintiff's account before the end of the year 2003. In addition, the first defendant will continue to deduct a substantial sum calculated arbitrarily, without the consent or concurrence of the plaintiff - sums that are so substantial as to continue to stultify the development of Abia State in the 2004 fiscal year one and indefinitely.*

*15. The plaintiff contends that the first defendant began unilateral deductions from the plaintiff's share of the Federation Account in 1998 and the deductions have continued unabated bringing the total deductions made from the plaintiff's share of the Federation Account between January and October, 2003, alone to the sum of N2,524,691,002.00.*

16. The plaintiff avers that it has no direct contact with the purported creditors and has never been invited nor has it been part of any negotiations for debt rescheduling or forgiveness. Furthermore, the plaintiff has no idea as to how soon or when the deductions will stop or how much has been remitted by the first defendant to the alleged creditors abroad or at all.

17. The plaintiff avers that after the monthly deductions pleaded above the Abia State Government becomes helpless and paralysed in terms of the fulfilment of its obligations as a Government. In consequence, the government of Abia State has accumulated arrears of salaries to its civil servants, officers in judicial service and public officers and owes cumulative pension and gratuities to its retirees and cannot run its public utilities.

18. The plaintiff, on account of extant federal government policy cannot raise any loan or other facilities from any bank or financial institution either locally or internationally and will in due course wilt under the weight of loans now credited to her but which it did not arrange or accept.

19. The plaintiff shall show that the existing thirty-six States of the Federation were created at one time or the other by legal instruments made by the then Federal Military Government.

20. WHEREFOR the plaintiff has been damnified and claims against the defendants jointly and severally as follows, namely: -

(i) A determination of the question whether or not the States (Creation and Transitional Provisions) (No. 2) Decree (No.41) 1991 is in force as a law enacted by the National Assembly and creates Abia State of Nigeria without further assurance.

(ii) A determination of the question whether or not the States (Creation and Transitional Provisions) (No.2) Decree (No.41) 1991 creates Abia State as a new State pursuant to Section 1(1) of the Decree.

(iii) A declaration that the States (Creation and Transitional Provisions) No.2 Decree (No.41) 1991 creates Abia State as a new State with no encumbrances.

(iv) A declaration that it is not lawful for the Minister of Finance

*or any person authorized by him to deduct any sum or sums of money from the plaintiff's share of the Federation Account without plaintiff's consent or concurrence for the purpose of servicing any debts incurred by the Government of the State called Imo State created by the States (Creation and Transitional Provisions) Decree 1976.*

(v) *An Order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Minister of Finance) or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account except as determined by the decision in Attorney-General of Abia State v. Attorney-General of the Federation & 35 Ors. (2002) 3 S.C. 106.*

The 1st defendant, responding to the several averments made by the plaintiff, filed its own Statement of Defence, which was further amended. Therefore, the 1st defendant by its 1st Amended Statement of Defence pleaded by its paragraphs 2, 3, 4, 5, 6 (a-i), 7(1-9), 7A, (i-viii), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 as follows:-

"2. The 1st defendant admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the plaintiff's Statement of Claim.

3. In response to paragraph 10 of the plaintiff's Statement of Claim, the 1st defendant states that:-

(1) While Abia State was created under the provisions of the States (Creation and Transitional Provisions) (No.2) Decree, 1991, as a new State out of the former Imo State, a Joint Assets and Liability Sharing Committee was set up upon the creation to ensure that assets and liabilities were shared equitably between the new Imo State and Abia State.

(2) The assets of the old Imo State shared between the new Imo and Abia States included the projects located in various parts of the old Imo State including areas constituting Abia State.

(3) The liabilities of the old Imo State for which the new Imo State and Abia State were to assume responsibility in agreed proportions included the projects financed with foreign loans obtained by old Imo State before the creation of Abia State and guaranteed by the Federal Government.

(4) To ensure sharing of the debt burden of the external loans

utilized in financing the projects, the Joint Assets and Liability Sharing Committee engaged in a bifurcation exercise which involved identification and evaluation of location of the projects in new Imo and Abia States (where possible) and allocated the debt burden to the appropriate State.

B Where the projects overlap new Imo and Abia States, the debt burden was shared in proportion to the benefits accruing to each State and where these could not be easily determined, in the proportion of 52% to Imo State and 48% to Abia State in which the new Imo and Abia States shared other assets and liabilities of the old Imo State.

C (5) The governments of both new Imo and Abia States as well as the Independent Joint Assets and Liability Sharing Committee set up by the Federal Government were satisfied with the arrangements and faithfully implemented it in respect of the assets and also concurred with the  
D arrangements in respect of the liabilities (including the external debt burden).

(6) To that extent, the Abia State was created with encumbrances; to wit, its share of the liabilities of the old Imo State, including the external  
E debt burden.

4. On the plaintiff's paragraph 11 of the Statement of Claim, the 1st defendant states that the Federal Government had at the relevant times stood as Guarantor and Surety in respect of the various foreign loans  
F incurred by the old Imo State at the time when the present Abia State was part and parcel of that State. The present Abia State has a strong obligation to repay a portion of the loans in accordance with the apportionment of the assets and liabilities made by the Joint Asset and Liability Sharing Committee mentioned, supra.

G 5. With further reference to paragraph 11 of the Statement of Claim, the 1st defendant avers that the Government of the old Imo State had agreed that the 1st defendant should stand as surety to it in respect of foreign loans secured by it at the times when the loans were being procured  
H by it before the creation of the plaintiff. Since the creation of the plaintiff, it has also agreed with the 1st defendant to act as surety for all foreign loans procured by it and which accounts for a substantial part of the debt profile of the plaintiff in respect of which deductions are being made from the

allocations due to the plaintiff.

6. In response to paragraph 12 of the Statement of Claim, the 1st defendant submits as follows:-

(a) In December, 2000, the Federal Government of Nigeria signed an “*Agreed Minute*” with her Paris Club Creditors wherein debts owed by the States and guaranteed by the Federal Government were rescheduled for 18 years. Part of these debts were owed by Abia State as reflected in the attached Annextures 1 A- C.

(b) Furthermore, the loans stated in Annextures 1 A-C were loans taken by the former Imo State for various projects, some of which are now in Abia State as a result of the bifurcation of 1991. Abia State inherited these projects as well as their obligations.

(c) A reconciliation exercise of the debts owed by the States of the Federation supervised by the Revenue Mobilization Allocation and Fiscal Commission took place in June, 2002, wherein Abia and Imo States were duly represented. At the reconciliation exercise, the representative of Abia State did not in anyway dispute the level of their indebtedness.

(d) Furthermore, a series of correspondence with the servants and agents of the first defendant Annextures 2 and 3 show that Abia State has never denied being indebted to the Multilateral Institutions, Paris Club and the London Club, as reflected in Annextures 1 A-C.

(e) Abia State has the highest debt stock due to its indebtedness in respect of twenty-nine (29) external loans from Multilateral Institutions, Paris Club group of creditor countries and the London Club of commercial banks vide Annextures 1 A - C.

(f) In 2002, Abia State was duly informed of its debts service requirements for 2003, budget year receipt of which was duly acknowledged - see Annex 1.

(g) Sections 166, 167 and 314 of the 1999 Constitution of the Federal Republic of Nigeria empower the Federal Government to make deductions from the monthly allocation of the States to off-set their indebtedness. In 2003, the amount that was actually deducted from January to December was N2,958,499,248.28 (\$23,113,275.38) as against N4,642,280,576.00 (US \$36,276,817.00) that was expected

to be deducted from the States' allocation as their proportionate share of the \$2 Billion (N256,000,000,000.00) budget for 2003. The Federal Government also had assisted all the States (including Abia State) by giving them the necessary assistance in form of a relief to alleviate their indebtedness vide Annex 4.

(h) In the case of Multilateral loans, the States were involved in the negotiations of the loans and in the disbursement of funds and in the implementation of the projects. In respect of the Paris Club loans, the loans were solely negotiated by the States but guaranteed by the FGN. The guarantee of FGN was invoked when the States defaulted. The same is true with respect to the loans from the London Club. As a result of the assumptions of the responsibility for the loans, it behoves the FGN to negotiate the rescheduling of the loans.

(i) Before the Supreme Court judgment of April 2002, external debt service was done on the basis of first-line-charge. Thereafter, the States have been consistently informed of how the amount deducted from the monthly allocation has been applied in servicing the respective loans.

(7) The 1st defendant avers in relation to paragraph 13 of the Statement of Claim that: -

(1) Before the creation of the plaintiff, the old Imo State entered into various loan agreements with foreign donors under terms, which include the guarantee of such loans by the Federal Government.

(2) As collateral to such Foreign Loan Agreements, the Federal Government entered into subsidiary loan agreements with the Imo State Government, which spelt out the conditions of the guarantee by the Federal Government.

(3) One such agreement is the one between the International Bank for Reconstruction and Development dated the 12th day of October, 1990, wherein Imo State secured a loan for One Hundred and Six Million Dollars for the Tree Crops Project.

(4) In Clause 16(b) of a Subsidiary Loan Agreement dated 14th April, 1991, between the Federal Government and the Imo State Government (Appendix 'A'), it was provided that Imo State had agreed that the Federal Government deduct at source statutory allocations due to Imo

State all sums payable to the Federal Government under the agreement.

(5) Similar clauses exist in respect of all the Foreign Loan agreements entered into by the old Imo State before the creation of Abia State.

(6) The liability of old Imo State under these clauses devolved jointly on new Imo State and Abia State on 27th August, 1991, when Abia State was created out of old Imo State as part of the liabilities of the old Imo State.

(7) After the creation of Abia State on 27th August, 1991, Abia State procured foreign loans for various projects under which the Federal Government was guarantor. These include the loan of Two Hundred and Fifty-Six Million Dollars taken from the International Bank for Reconstruction and Development under an agreement dated 23rd day of July, 1992 for financing the Water Rehabilitation project in Abia State, and the loan of Forty-Two Million, Five Hundred Thousand Dollars taken from the International Bank for Reconstruction and Development under an agreement dated 25th August, 1992, for financing the Agricultural Support Project in Abia State.

(8) These Foreign Loans were guaranteed by the Federal Government, which entered into subsidiary agreements with Abia State on 6th August, 1992, and 4th June, 1996, respectively which subsidiary agreements respectively contain in Clause 18(b) thereof provisions for the Federal Government to deduct at source from the statutory allocations due to Abia State all sums due under the agreement. (Appendices 'B' and 'C').

(9) Upon the plaintiff failing to perform its obligations to make payments to the creditors as provided in the main loan agreements, the 1st defendant, as guarantor, has the right to deduct at source from the statutory allocations due to the plaintiff to meet its obligations to the creditors as agreed with the 1st defendant respective subsidiary agreements.

7A. With further reference to paragraph 13 of the Statement of Claim, the 1st defendant will contend that the plaintiff is estopped from disputing that it had conducted or made itself privy to any transaction that may lead the 1st defendant to the irrevocable deductions made monthly from the account of the Government of Abia State or disputing the grounds

for such deductions in that:

(i) It participated actively in the process of sharing the assets and liabilities of the old Imo State (including liability for repayment of loans) between it and the new Imo State and the bifurcation of the loans on the basis of the areas where the projects financed with the loan are located (where this is ascertained) and/or the proportion in which other assets and liabilities were shared (where the projects are spread across the entire old Imo State.)

On 23rd September, 2003, the Executive Governor of Abia State purporting to protect the interest of both Imo and Abia States in the over-repayments of Foreign Debts owed by the old Imo State, wrote to the Federal Minister for Finance requesting for the refund to Imo and Abia States the sum of N818,691,853.07k paid by the Imo State Government but not remitted to the beneficiaries between March 1991 and September, 1991. (Annexure 2).

iii. The request of Abia State as contained in the letter was that the sum of N818,691,853.07k deducted from the allocation of Imo State before the creation of Abia State but not remitted to the foreign beneficiaries should be refunded to both Imo and Abia States at the usual ratio of Abia 48% to Imo 52% with which they shared other assets and liabilities, working out at Abia State N392,012,132.6k and Imo State N424,679,721.01k.

iv. Abia State is estopped from repudiating liability for 48% of the foreign debt liability incurred by old Imo State before its creation while at the same time laying claim to a refund of 48% of what it regarded as excess deduction from funds accruable to Imo State before the creation of Abia State.

v. In respect of external loans obtained by Abia State between its creation in 1991 and the creation of Ebonyi State from it on 1st October, 1996, a similar bifurcation exercise was carried out by the Joint Assets and Liability Sharing Committee for Abia and Ebonyi States under which some of the liabilities of the old Abia State were transferred to Ebonyi State. These include the Foreign Loan Liability of old Abia State.

vi. On 11th November, 2002, the Permanent Secretary, Ministry of



Finance, Abia State, wrote to the Director-General, Debt Management Office, a letter titled “REVIEW OF ABIA/EBONYI POSITIONS IN RESPECT OF EXTERNAL LOAN LIABILITIES OF OLD ABIA STATE”; requesting for a review of the sharing by the World Bank of the balance of the loan owed by old Abia State Government in respect of the Imo Health and Population Project. He stated that upon creation of Abia State, the balance outstanding against Imo State was shared upon bifurcation between Imo and Abia States and complained that in spite of the fact that many of the projects on which the loan was expended were located in Ebonyi State, the whole of the debt shared to old Abia State was left for the new Abia State to bear upon creation of Ebonyi State with no part of it assigned to Ebonyi State. He listed the projects located in parts of Ebonyi State.

vii. The plaintiff through its Permanent Secretary, Ministry of Finance, concluded that it would be proper to adjust Abia State multilateral debt profile to reflect the position. In effect, he wanted the amount expended on the area now in Ebonyi State before its creation to be bifurcated to Ebonyi State thus reducing the debt profile of Abia State.

viii. Having clearly shown that:

(i) It is jointly liable with the old Imo State for its debts and also jointly entitled to a refund of over-deductions of debt repayments by old Imo State before its creation.

(ii) The external debt profile of old Imo State had been bifurcated between it and new Imo State before the creation of Ebonyi State.

(iii) The old Abia State obtained loans, which were expended on parts of the new Abia State as well as the area carved out as Ebonyi State before the creation of Ebonyi State.

(iv) It is necessary to adjust the debt profile of Abia State to transfer to Ebonyi State, some of it, which were expended in the area now constituted as Ebonyi State before its creation.

The defendant will contend that the plaintiff is estopped from denying that it owes any foreign debt in respect of which the Federal Government can make any deductions.

8. In response to paragraph 14 of the Statement of Claim, the 1st

defendant categorically denies ever making any arbitrary deduction from the share of the Abia State Government in the Federation Account but just what is necessary for servicing the debts incurred by Abia State as its share of the liability of the debt incurred by the old Imo State and those incurred directly by Abia State itself.

9. The 1st defendant categorically refutes the plaintiff's allegation averred in paragraphs 16, 17 and 18 of his Statement of Claim that Abia State had never been part of any negotiation for debt rescheduling, etc., in spite of unabated correspondence between the appropriate agencies of Abia State and the Federal Government. Examples of such correspondence are the letters attached herewith and marked Annexures 1, w, e and 4. Furthermore, the 1st defendant asserts that Abia State is fully aware of how much has been remitted on its behalf to the various foreign creditors as reflected in the deduction schedules, copies of which are constantly sent to it as and when the remittances are made. For instance, the deductions made between 1992 and 2003 are as shown in the documents attached herewith and marked Annexures Ia, Ib, Ic, IIa, IIb, IIc and III.

10. The Abia State and many other States of the Federation whose loans are still being serviced by the Federal Government after they had defaulted could not be encouraged to raise fresh loans or similar facilities from local or foreign banks as such move will compound the already precarious financial situation of the States when the loans incurred earlier were yet to be cleared.

11. It is absolutely false as the plaintiff asserts in paragraph 18 of his Statement of Claim that Abia State did not arrange or accept loans now being credited to her as share of the loans raised by the old Imo State of which she was an integral part at the time when the loans were raised and the loans agreement directly entered into between the Federal Government and Abia State.

12. In a series of agreements between the Federal Government of Nigeria and the old Imo State (of which Abia State was an integral part) and Abia State itself in connection with the international loans Agreements entered into by Imo and Abia States, the two States have agreed for the reimbursement to the Federal Government of the sums of money guaranteed

by the Federal Government upon the default of the two States to repay the loans. Please see the Agreements annexed herewith and marked Appendices “A”, “B” and “C” for the Agreements of the 14th of April, 1991, 6th of August, 1992, and 4th of June, 1996, respectively, being some of such Agreements.

13. With reference to paragraph 20 (i), (ii) and (iii) of the Statement of Claim, the 1st defendant agrees that the States (Creation and Transitional Provisions) (No.2) Decree No.41 of 1991 is in force as a law of the National Assembly, and that it created Abia State without further assurance. The 1st defendant also agrees that by virtue of the Act, Abia State was created as a new State. The 1st defendant however denies that the new State was created with no encumbrances, as it was subject to the encumbrances of all liabilities (including debt burdens) of the old Imo State. This is in exactly the same way as it did not take off with zero asset base, but succeeded to its own share of the assets of the old Imo State as at the date of its creation.

14. With reference to paragraph 20(iv) of the Statement of Claim, the 1st defendant avers that it is not unlawful for the Minister of Finance to deduct from the allocations of the plaintiff all such sums as are necessary to service its own share of the Foreign Debt liabilities of Imo State which was incurred before the creation of Abia State and which was expended on development of the area which now split into new Imo and Abia States and which have been bifurcated with the consent of both Abia and new Imo States.

The 1st defendant further avers that no further consent or concurrence of the Abia State Government is necessary for such deductions beyond the consent and concurrence to share all the assets and liabilities of old Imo State between the two States under the supervision of the Joint Assets and Liability sharing Committee set up for the purpose by the Federal Government.

15. With reference to paragraph 20(v) of the Statement of Claim, the 1st defendant avers that it has been making all deductions from the plaintiff’s share of the Federation Account strictly in accordance with the decision of the Supreme Court in the case of Attorney-General, Abia State

v. Attorney-General of the Federation & 35 Ors. (2002) 3 S.C. 106. Since the delivery of that judgment, without contravening the terms of the judgment in any way. The declaration to that effect is therefore unnecessary.

B 16. With reference to paragraph 21(i) of the Statement of Claim, the sums being deducted from the plaintiff's share of the Federation Account are those previously consented to by the plaintiff or its share of the liabilities of the old Imo State which it had agreed either directly or indirectly to bear upon its creation. It thus does not require any further mutual agreement with the Federal Government for the amounts to be deducted from its allocations. Subjecting the Federal Government to seeking consent from the plaintiff will create problems for the foreign lenders, which problems the involvement of the Federal Government as guarantors, and the D agreement authorizing the Federal Government to make deductions at source, were meant to prevent in the first instance.

17. The 1st defendant will urge the court to strike out paragraph 21(ii) of the Statement of Claim since it is seeking an interlocutory order E pending the determination of the relief contained in paragraph 21(i) in the same proceeding in which the final order will be made.

18. Whereof the 1st defendant contends that the plaintiff's claim lacks merit and urges the court to dismiss it in its entirety."

F By the order of this court dated 18/11/2004, the plaintiff filed a reply to the 1st defendant's amended Statement of Defence, wherein the plaintiff pleaded by its paragraphs 1, 2, 3(i), (ii), (iii), (iv), (v), 4 & 5 thus:-

G *"1. The plaintiff joins issues with the 1st defendant on paragraphs 3(4), 3(5), 3(6), 4, 6(a), 6(d), 6(g), 7(5), 7(6), 7A and 7A(v) of the 1st defendant's amended Statement of Defence. 2. In answer to paragraphs 3 and 4 of the 1st defendant's Statement of Defence as amended, the plaintiff avers that the States (Creation and Transitional Provisions) (No.2) Decree 1991 did not make any provision nor did it H authorize the Joint Asset and Liability Sharing Committee relied upon by the 1st defendant to impose any liability on the plaintiff.*

*3. In answer to paragraphs 6 and 7A of the 1st defendant's Statement of Defence as amended, the plaintiff states as follows:-*

(i) *The plaintiff will abide by any loans suretied or guaranteed by the 1st defendant if shown to have been procured by the government of Abia State from 27th August, 1991, which said loans must in addition be due and payable.*

(ii) *The plaintiff will contend that it is entitled to repudiate any letters or other correspondence, meetings, negotiations or agreements whose purport is intended or designed to ignore the extant provisions of the aforesaid States (Creation and Transitional Provisions) (No.2) Decree 1991.*

(iii) *The plaintiff denies that the 1st defendant is entitled to make any deductions from the plaintiff's monthly allocation without plaintiff's consent or concurrence.*

(iv) *The plaintiff will place great reliance on the 1st defendant's averment in paragraph 6(a) of the 1st defendant's Statement of Defence as amended to show that the plaintiff's assumed debts (if any) will not fall due until the year 2018.*

(v) *The plaintiff denies paragraph 7A(ii) of the 1st defendant's Statement of Defence as amended and will rely on the tenor of the letter under the hand of the Governor of Abia State dated September 23, 2003 addressed to the Honourable Minister of Finance in which the plaintiff asked for a refund of deductions made from its allocation but not remitted to any creditor.*

4. *In answer to paragraphs 9 and 16 of the 1st defendant's amended Statement of Defence, the plaintiff will at the hearing contend that the documents annexed by the 1st defendant and marked annexes Ia, Ib, Ic, IIa, IIb, IIc, and III merely indicate deductions from the plaintiff's account without any evidence of remittance to any creditor(s).*

5. *In further answer the plaintiff repeats its persistent appeal to the 1st defendant to state categorically what the plaintiff owes and how and when the debt ought to be fully repaid."*

I now turn to the Statement of Defence of the 16th defendant - Imo State. For the State, its learned counsel, Mrs. T. E. C. Chikeka, Director of Civil Litigation, pleaded as follows:-

"1. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Statement of Claim

are admitted.

2. Except to admit that the States (Creation and Transitional Provisions) (No.2) Decree No.41 of 1991 created Abia State as a new State, the other averments in paragraph 10 of the Statement of Claim are  
B not admitted.

3. In further answer to paragraph 10 of the Statement of Claim, it is averred that having regard to the tenor of the Decree aforementioned, especially Section 7(1) thereof, the plaintiff was not free from encumbrances.  
C

4. The averments in paragraph 11 of the Statement of Claim are within the peculiar knowledge of the plaintiff and, perhaps, the 1st defendant. The 16th defendant does not admit them.

5. Paragraphs 12(i), (ii), (iii), (iv), 13, 14, 15, 16, 17 and 18 of  
D the Statement of Claim aver matters which are within the peculiar knowledge of the plaintiff or the 1st defendant or both of them.

6. It is further averred in respect of the said paragraphs of the Statement of Claim that the 16th defendant is also a victim of the 1st  
E defendant's arbitrary assertion/computation of alleged indebtedness to creditors.

7. In regard to paragraph 19 of the Statement of Claim, it is averred that the then Federal Military Government created the thirty six States of  
F the Federation through legal instruments issued or made at different times.

8. The 16th defendant does not admit paragraph 20(iii) and (iv) of the Statement of Claim."

I have earlier in this judgment stated that at this trial the parties rely mainly on their pleadings and the affidavit evidence attached to them. But  
G in addition, all the parties to this have also relied on their respective briefs and which learned counsel for each of the parties proffered further arguments at the hearing of this case.

With regard to the briefs filed in the case, I will now refer to the  
H issues raised by them for our determination. In the plaintiff's amended brief, they were couched thus:-

"(i) Whether the States (Creation and Transitional Provisions) (No.2) Decree (No.41) 1991 creates the Abia State of Nigeria as a new

*State and with no encumbrances.*

*(ii) Whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purpose of servicing any debts or at all.*

B

*(iii) If answers to issues (i) and (ii) above are in the affirmative, whether an injunction will not lie against the 1st defendant.*

*(iv) If answers to issues (i) and (ii) above are in the negative, whether the plaintiff is not entitled to proof of remittances to her creditors and to an assurance of when the deductions will abate?"*

C

For the 1st defendant however, the issues raised for determination of the dispute between the parties are as follows:-

*"(1) Whether the States (Creation and Transitional Provisions) (No. 2) Decree No. 41 of 1991 created Abia State of Nigeria as a new State and with no encumbrances.*

D

*(2) Whether Abia State is liable in any way for servicing, repayment etc, of any debts incurred or any loans obtained by the old Imo State while the area created into Abia State was a part of old Imo State before Abia State was carved out of the old Imo State.*

*(3) Whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purposes of servicing any debts or at all.*

F

*(4) Whether the plaintiff is not estopped by the conduct of Abia State Government from disputing its liability for the debts owed by the Government of old Imo State out of it, or that it has debt burden incurred by it after the creation in respect of which the Federal Government is entitled to deduct from its share of the Federation Account.*

G

*(5) If the answers to issues (1) and (3) are in the affirmative, whether an injunction will not lie against the 1st defendant."*

The 16th defendant, Imo State and which I have earlier adjudged in this judgment as properly joined by the plaintiff in this suit also set out two issues in the brief filed on its behalf. As these issues are similar in terms with those identified by the plaintiff, I do not think it necessary to

H

reproduce them. It is also in my view patent that though the 1st defendant has raised five issues in its brief, I have after duly considering them, arrived at the conclusion that the issues raised in the plaintiff's brief sufficiently encompass those issues raised by the 1st defendant. This is more so when  
B the issues are considered in the context of the reliefs that the plaintiff is seeking.

I will now begin with the consideration of each of the issues raised on behalf of the plaintiff.

Issue 1

C The question raised by this issue is, whether or not the States (Creation and Transitional Provisions) (No.2) Decree (No.41) 1991, which from henceforth would be referred to simply as "Decree No.41", is in force as a law enacted by the National Assembly and creates Abia State  
D of Nigeria without further assurances.

Now, in respect of this issue, it is pertinent to relate in its consideration, the first relief being sought by the plaintiff in this action. By this relief, the question is, whether or not Decree No.41 is in force as a law  
E enacted by the National Assembly and that Abia State was created without further assurances. In his brief filed for the plaintiff i.e., the plaintiff's amended brief of argument, it is primarily submitted by its learned Attorney-General, Mr. Awa U. Kalu, SAN., that in order to appreciate how  
F Abia State came into existence, it would be necessary to refer to the historical background and effect of the creation of States in Nigeria. And in support of that contention, reference was made to *Emelogu v. The State* (1988) Vol. 19 NSCC (Pt.I) 869.

G The thrust of the argument of the learned Attorney-General of Abia State is to show that having regard to the various pieces of legislation that were enacted for the creation of States since 1963, legislation enacted for the creation of Abia State is markedly different from the earlier ones enacted for the same purpose. In support of this submission, he referred  
H to Section 1(1) of the States (Creation and Transitional Provisions) Decree (No. 14) 1967, which provides as follows:-

"1 (1) There shall, on the commencement of this Decree, be created out of the Regions (other than Mid-Western Nigeria) States to be known



by the names in Column 1 of the Schedule of this Decree the respective areas of which shall be those provinces or districts named in Column 2 of that Schedule.”

Next, he referred to Section 1 of the States (Creation and Transitional Provisions) (No. 12) Decree 1976, which reads thus:-

“There shall on the commencement of this Decree be created States to be known by the names in Column of the Schedule to this Decree the respective areas of which shall be those provinces, divisions or districts named in Column 2 of that Schedule and the capitals of which shall be those respectively named in Column 3 of that Schedule” (Underlining also for emphasis)

He thereafter invited attention to the following provisions of Section 1(1) of the States (Creation and Transitional Provisions) Act, Cap.413 Laws of the Federation of Nigeria, 1990, which reads:-

“1(1) There shall, as from the commencement of this Act, be created out of Kaduna State, a new State to be known as Katsina State.”

And finally, on the point he is seeking to make, he referred to the provisions of Section 3(1) of the Constitution of the Federal Republic of Nigeria, 1963, which reads:-

‘There shall be four Regions, that is to say, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-Western Nigeria.’

The learned Attorney-General then submitted that a careful study of those legislations referred to above would reveal that the provisions of the States created by those legislations markedly differ from the provisions of Decree No.41 of 1991 that created Abia State. For the purposes of his argument, he then specifically referred to Section 1(1) of Decree No.41 and which reads:-

“1(1) As from the commencement of this Decree and notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979 or any other enactment, there shall be created for the Federal Republic of Nigeria 9 new States, namely, Abia, Anambra, Delta, Jigawa, Kebbi, Kogi, Osun, Taraba and Yobe.

(2) Subject to the provisions of Sections 3-8 of this Decree, the new States created by subsection 1 of this section shall have the same rights,

power and privileges, as the States existing prior to the commencement of this Decree.” (Underlining ours for emphasis)

It is therefore the contention of the learned Attorney-General that in view of the usage of the two words, namely, “notwithstanding” and “new” in the above provisions of Decree No.41, the intention of the drafters of Decree No.41 and by implication, the Federal Government, was to exclude any provision of the 1979 Constitution or any other enactment which does not acknowledge the coming into existence of the new States created by the Decree. This contention, argues learned Attorney-General, was further fortified as the new States, by virtue of Section 1(2) of Decree No.41, were invested with the same rights, powers and privileges as the States existing prior to the commencement of the Decree. In the view of learned Attorney-General, the fact that the expression “existing prior to” was used in Section 1(2) of the Decree was deliberate. He therefore submits that when the word “new” is juxtaposed with “existing prior to”, it is clear that Abia State, together with Anambra, Delta, Jigawa, Kebbi, Kogi, Osun, Taraba and Yobe States were created as new States. For this view, he called in support the case of Attorney-General, Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR (Pt.79) 1431, for the proposition that when the words of a statute are clear, the court ought to give effect to the words as enacted unless such interpretation will lead to absurdity.

Having arrived at the conclusion postulated above that Abia State was created as a new State, learned Attorney-General now turned to answer the question posed by him as to whether Abia State upon its creation was created without encumbrances. To that question, learned Attorney-General says his unhesitating answer is ‘Yes’. In his view, this answer is inevitable for two reasons. The first reason he argued is rooted in the provisions of Section 1(1) of Decree No.41 of 1991. And this, as he had earlier argued, Section 1(1) granted the same rights, privileges and powers as the States prior to the commencement of the Decree. In support of which, he referred to the case of Nkwocha v. Governor of Anambra State (2001) FWLR (Pt.48) 1386 and Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 S.C. (Reprint) 12; (1982)

3 NCLR 166. It is further contended by the learned Attorney-General for the plaintiff, that it must be noted that the rights, powers and privileges granted to the plaintiff were “subject to” the provisions of Sections 3-8 of Decree No.41. He then submitted that as none of those sections refers to or relates to liability, Abia State was created without any liability. And he concluded on this issue by submitting that the Decree No.41 is an enactment of nine sections only and that it does not expressly or even remotely deal with liability. In support of this submission, he referred to the following case of Attorney-General of Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR (Pt.79) 1431; and for the effect of the phrase “subject to” in a provision of law, reference was made to Attorney-General of Ogun State v. Attorney-General of Federation (1982) 1-2 S.C. (Reprint) 12; (1982) 3 NCLR 166; Labiyi v. Anretiola (1992) 8 NWLR (Pt.258) 139; Texaco Inc v. Shell PDC Ltd. (2002) 5 NWLR (Pt.759) 209; Olowofoyeku v. Attorney-General of Oyo State (1996) 10 NWLR (Pt.477) 190. B C D

Chief Makanjuola Esan, SAN., who appeared for the 1st defendant and defended the case for the Attorney-General of the Federation, in the 1st defendant’s amended brief, gave a succinct reply to the several submissions made for the plaintiff in respect of this issue. First, he conceded it that Abia State was, without doubt, created by Decree No.41 of 1991 but submitted that the necessary consequence is that out of Imo State from which Abia State was created, two new States, Imo and Abia, emerged. And for this submission, he referred to the decision of this court in Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra). It is also the submission of the learned Senior Advocate that the words “with no encumbrances” cannot be imported into the provisions of Section 1(1) of Decree No.41 of 1991 as learned Senior Advocate for the plaintiff had sought to do. It is his further contention that words which the draftsman of any legislation had not included in the legislation cannot be included in the legislation. And for this contention, he referred to Nkwocha v. Governor of Anambra State (supra). It is the further submission of learned Senior Advocate for the 1st defendant, that since the provisions of the Decree creating Abia State do not exhaustively define the incidences E F G H

of the State creation on the two States emerging from the old Imo State and therefore cannot be arrived at by imputing them into the Decree. See P.D.P v. INEC (1999) 7 S.C. (Pt.II) 30; (1999) 7 SCNJ 297 at 324; Olanrewaju v. Governor of Oyo State (1992) 9 NWLR (Pt.260) 335 at B 362.

The 16th defendant, Imo State, for its part, also filed a brief of argument, which was prepared by its Attorney-General, J. T. U. Nnodum, SAN. In the said brief, two issues were identified for the determination of the dispute. These are:-

C “(a) *Whether the States (Creation and Transitional Provisions No.2) Decree No.41 1991 created Abia State of Nigeria as a new State without encumbrances; and*

D *(b) Whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff’s share of the Federation Account without the plaintiff’s consent or concurrence for the purpose of servicing any debts or at all.”*

As issue (a) above is in the same terms as the 1st issue framed by E the plaintiff and also the 1st defendant, the contention made for the 16th defendant will be set down hereunder so that the views of the 16th defendant thereon would be considered with that of the plaintiff and the 1st defendant. Issue (b) would later be considered when similar issues F raised by the plaintiff and the 1st defendant would be considered.

In his argument in respect of this issue, the learned Attorney-General for the 16th defendant submitted that the contention of the plaintiff that Abia State was created as a new State in 1991 but deferred from the view of the plaintiff that it was without encumbrances. But he conceded G it though that Decree No.41 made no mention of ‘liability’. And placing reliance on the Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra), as did the learned Senior Advocate for the plaintiff, learned Senior Advocate for the 16th defendant, then submitted that it is H a general rule of construction of statutes that a court is not entitled to read into a statute words which are excluded, expressly or impliedly in it. He further submitted that each case must be determined upon its own circumstances.

In the instant case, it is the submission of the learned Attorney-General for Imo State that the difference in the texts of the previous legislation vis-a-vis Decree No.41 with regard to the manner of creation of States is with, respect, a difference without a distinction. This is because, argued learned Attorney-General, in each case the intendment of the law was to create a new State out of the existing region or State. He then referred to the provisions of Section 1(1) of the States (Creation and Transitional Provisions) Act, Cap.413 of the Laws of the Federation of Nigeria, 1999, which led to the creation of Katsina State.

It is conceded to the plaintiff that the provision in Decree No.41 is not similarly couched, but Section 1(1) thereof also expressed that new States had been created though the word “out of were not used in that subsection. But Section 4 of the Decree expressly provides that all “existing laws in the States out of which a new State is created by this Decree shall continue to have effect in the new State(s) thus created”. On that premise, it is argued for the 16th defendant, that the draftman was mindful of the obvious fact that the new States (sic) were created out of an existing State(s). For this argument, he referred to the States (Creation and Transitional Provisions) Decree No. 12 of 1976, Cap.413.

Learned Attorney-General for the 16th defendant then addressed the contention of the plaintiff that nowhere in Sections 3-8 of Decree No.41 to which the creation of Abia State was subordinated, refers to or relates to liability. But learned Attorney-General then invited attention to the provisions of Section 7(1) of the Decree. And then referred to Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra) where it was held that by virtue of a similar provision in the States (Creation and Transitional Provisions) Decree, No.36 of 1996, the properties of the former State which were situate within the boundaries of the new State belonged to the latter. The learned Attorney-General for the 16th defendant then concluded his argument by submitting that the issue be resolved by holding that Decree No.41 of 1991 created Abia State as a new State with encumbrances.

Now, from the review of the argument of learned counsel for the parties, it is manifest that in respect of this issue, there can be no doubt that

Abia State was created by virtue of the provisions of Decree No.41 of 1991. But what is in controversy between the parties in this dispute is whether the State was created without any encumbrances as claimed by the plaintiff. It suffices to recall that the main grouse of the plaintiff, as  
 B revealed in its claim, is that the plaintiff has been saddled with the payment of loans obtained by the old Imo State and without the consent of the plaintiff. It is further the complaint of the plaintiff that since its creation, it has never sought for any guarantee for the purchase of anything nor for  
 C the development of any project because the State had not enforced contract to establish any. As all these complaints of the plaintiff have been sufficiently set down in its Statement of Claim, I do not need to refer to them here.

**It is clear and as rightly conceded by the learned Attorney-  
 D General for Imo State, that nowhere in Decree 41 of 1991 was the word “liability” mentioned. It is also good law that as a general rule of construction of statutes that a court is not entitled to read into a statute words which are excluded expressly, or impliedly from it. See  
 E Attorney-General, Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 1431, where at pp.1 472-1 473, Karibi-Whyte, JSC., observed that:**

***“It is a well established and cardinal principle of interpretation  
 F that where the ordinary meaning of the words used in a provision are clear and unambiguous, effect must be given to the words without resorting to any extrinsic aid. See Awolowo v. Shagari (1979) 6-9 S.C. (Reprint) 37; (2001) FWLR (Pt.73) 53, (1979)6-9 S.C. 51; Lawal v. G. B. Ollivant (1972) 3 S.C. 124. The solemn and sacred duty of the court  
 G is to interpret the words used in the section by the legislation and give to them their intended meaning and effect. See Adeyemo v. Governor of Lagos State (1972) 2 S.C. 45. See also Ogun State v. Federation (1982) 1-2 S.C (Reprint) 7; (1982) 1-2 S.C. 13; Bronik Motors v. Wema Bank  
 H (1983) 1 SCNLR 2964 for the principle that in interpreting the Constitution or a Decree amending it, the court should take into serious consideration the preamble of the Decree and objects and purposes of the provisions sought to be interpreted.”***

**True enough in the instant case, the previous legislations for the creation of States are differently worded, vis-a-vis Decree No.41, but as rightly submitted by J. T. U. Nnodum SAN., the differences are without a distinction. This is because in each case, the intendment of the law was to create a new State out of the existing region or State.**

**But surely, though the word “liability” was not mentioned in Decree No.41 of 1991, that cannot, by any means, be the conclusion of this matter as argued by the plaintiff. It is settled law that in order to discover the true intent of the Government by the promulgation of Decree No.41, the court is entitled to read the Decree in its entirety. After such a perusal, it is quite manifest that Section 7(1) of the said Decree, whose provisions are in pari materia with earlier legislation for the creation of States, had been considered by this court in earlier cases.** Before setting out the views of this court, I think it is desirable to set out the provisions of Section 7(1) of Decree No.41 of 1991.

It reads:-

“Subject to subsection 2 of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Governor of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section, and without further assurance than this section vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section.”

For the meaning and effect of the provisions of the above quoted Section 7(1) of Decree No.41 which is in pari materia with Section 7(1) of Decree No.36 of 1996, in Attorney-General, Ondo State v. Attorney-General, Ekiti State (supra), I will gratefully quote the dictum of Kutigi, JSC, at pages 1463-1464, which reads thus:-

*“It is certainly a cardinal principle of interpretation that where in*

their ordinary meaning, the provisions are clear and unambiguous, effect must be given to them without resorting to any aid, internal or external. It is the duty of the court to interpret the words of the law maker as used. Those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited (see for example: *Magor and St. Mellow R.D.C. v. Newport Corporation* (1951) 2 All ER 839; *London Transport Executive v. Betts* (1959) AC 231; *Attorney-General of Bendel State v. Attorney-General of the Federation & Ors.* (1981) 10 S.C. (Reprint) 1; (1981) 10 S.C. 1, (1981) 102 NSCC 314; *Attorney-General, Bendel State v. Attorney-General of the Federation* (2000) FWLR (Pt.65). Being guided by the above principles of interpretation, it is not difficult for me to see that the property or properties transferred to the defendant, Ekiti State, are as provided for under Section 7(1) as set out above. The transfers in this case are to the new State (defendant) only. There is clearly no transfer of any property to the plaintiff Ondo State, under the subsection. I have strenuously read through the whole of Decree 36 of 1996 over and over again and I am unable to find any provision anywhere, whereby any property or chattel was vested in the plaintiff as was done for the defendant under Section 7(1). What I am saying in short is that Section 7(1) does not or did not vest, transfer or give any immovable property or chattel anywhere to the plaintiff at 30th September, 1996 or at any time at all.”

And also the dictum of Karibi-Whyte, JSC, at page 1473, which reads:

“A careful perusal of Section 7(1) demonstrates the consistency in words used of the transfers to and vesting in property to the States created out of the existing States. Nowhere in the section was any transfer and vesting of property and/or chattel made in the existing State. This unequivocally demonstrates the intention of the legislation that transfers of property from the existing State was to be to the State created out of it. This shows that the context of the provision demands interpretation in the narrower sense. This is in accord with the accepted principle of interpretation expressed in the Latin maxim ‘expressio unius est exclusio alterius or expressum facit cessare taciturn’. The two related principles mean



firstly that “to state a thing expressly ends the possibility that something inconsistent with it is implied.”

Secondly, “*to express one thing is impliedly to exclude another*”, which, is an aspect of the latter. This principle of construction is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless those mentioned are examples, “*or ex abundanti cautela*” or for some other sufficient reason, the rest are taken to be excluded from the proposition.”

There can be no doubt that the above meaning and effect of the provisions of Section 7(1) (supra) was considered in the context of the claim by the plaintiff, Ondo State, that upon the creation of Ekiti State out of it, certain properties which were developed by the old Ondo State still belonged to the new Ondo State. It may therefore be noted that it was in the context of the claim before this court that this court quite properly ruled that the plaintiff in the case of Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra) cannot succeed in its claim having regard to the principles of interpretation enunciated above, that govern the provisions of Section 7(1) of Decree No.36 by which properties and chattels were transferred from the old Ondo State to Ekiti State.

**Now, it is of course manifest that in respect of the case in hand, the case which the plaintiff is seeking to make is that the creation of Abia State was effected without any liability as Section (1) of Decree No.41 of 1991 which brought about its existence did not have any liability attached thereto.**

But it cannot be denied that the provisions of Section 7(1), which I have quoted above, remained part of Decree No.41 of 1991. And this Section 7(1) is that which was construed in Attorney-General of Ondo State v. Attorney-General, Ekiti State (supra). I have earlier stated that Section 7(1) of Decree No.36 is in pari materia with Section 7(1) of Decree No.41. May I add that it is a recognized principle that where the provisions of a statute or a section of a statute are in pari materia, light may be thrown on the meaning of such a provision of a statute or section which is in pari materia by referring to a previous decision of a competent court

where similar provisions had been previously considered.

It is therefore my view that the principles enunciated above with regard to the meaning and effect of Section 7(1) of Decree No.36 in the case of *Attorney-General of Ondo State v. Attorney-General of Ekiti State* (supra) apply to the case in hand. It follows therefore that by the provisions of Section 7(1) of Decree No.41 of 1991, which created Abia State from the old Into State, properties and chattels lying within the newly created Abia State were transferred without any further assurance to Abia State i.e. the plaintiff. Abia State therefore becomes the owner of such properties and chattels. Now, as owners of such properties and chattels and which they have not denied, they were therefore available for the use and enjoyment of the State as part of its economic development. Benefits derived therefrom must also be borne with the burdens that were tied up with such properties and chattels that devolved on the Abia State.

It follows from all I have been saying above that it has clearly been established that Abia State was created by virtue of Decree No.41 of 1991. Indeed the parties are agreed as to the fact of its creation. In any event, for the avoidance of any doubt about its creation, the Constitution of Nigeria, 1999, has put all the controversy to rest. In this respect, please see Section 3(1) of the said Constitution where Abia State led the list of the thirty-six States in Nigeria. By reason of that provision in the Constitution of Nigeria, 1999, Decree No.41 of 1991 is spent in terms of the creation of Abia State. That answers the 1st relief sought by the plaintiff.

#### 2nd Relief

It also follows for the reasons given above that Abia State is now properly a creation of the Constitution of Nigeria, 1999.

#### 3rd Relief

This relief seeking for a declaration that Abia State was created without encumbrances must be refused. I have earlier in this judgment reasoned that as Abia State was created with benefits, it cannot help but bear the burdens that came with the benefits.

#### 4th Relief

In respect of this relief, the plaintiff is seeking for a resolution as to

whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purpose of servicing any debts or at all. Though the plaintiff presented argument in respect of this relief under its issue II, yet as I think that issue IV is also germane to the determination of this question, therefore the two issues would be considered together. B

The argument urged by learned Attorney-General for the plaintiff on the court is mainly centred on the pleadings of the plaintiff in paragraphs 12-16 of its Statement of Claim. It is the claim of the plaintiff that for several years it has been the mandatory practice of the 1st defendant to deduct large sums of money from the plaintiff's share of the Federation Account, purportedly for servicing of debts owed to foreign creditors. That between the months of January and June 2003, the 1st defendant through the Minister of Finance, caused to be deducted from its own share of the Federation Account, the total sum of N810,175,602.72 (Eight Hundred and Ten Million, One Hundred and Seventy-Five Thousand, Six Hundred and Two Naira, Seventy-Two Kobo only) for debt servicing. And plaintiff then contends that it has no idea as to how soon or when the deductions will stop or how much has been remitted by the 1st defendant to the alleged creditors abroad or at all. In paragraph 2(iii) of its Statement of Claim, the plaintiff pleads that it has never received confirmation in advance of a budgetary year what its alleged liability would be. The premise upon which the plaintiff seeks for relief in respect of its issue III is not dissimilar from the contention made in respect of issue 2, I therefore do not need to repeat what I have reviewed above. However, the common contention deducible from the submission of learned counsel A. U. Kalu Esq., SAN., is that firstly the deductions which were improperly deducted from the sum due to the plaintiff from the Federation Account and that the various sums of money so deducted, were not paid as due to the foreign creditors. In support of his submission, reference was made to the following cases: Attorney-General Ogun State & 4 Ors. v. Attorney-General of the Federation (2002) 12 S.C. (Pt.II) 1; (2002) 18 NWLR (Pt.798) 232; Attorney-General of the Federation v. Attorney-General of G

Abia State & 35 Ors. (No.2) (2002) 4 S.C. (Pt.I) 1; (2002) 6 NWLR (Pt.764) 542; Adone v. Ukebudu (2001) 7 S.C. (Pt.III) 22; (2001) 14 NWLR (Pt.33) 385.

In the 1st defendant's (amended) brief, Chief Makanjuola Esan, B SAN., who prepared and argued the case for the 1st defendant, referred to the Statement of Defence to respond to the several claims of the plaintiff. Learned senior counsel for the 1st defendant then submitted very pointedly that while the plaintiff was prepared to accept that Abia State was created, C the plaintiff is not ready to accept the benefits being enjoyed with the burden that goes with such benefits that came with the creation of the State. And he finally submitted on issue 2 that this court should hold that the plaintiff is obliged to pay plaintiff's share of the loans procured when D Abia State was part of old Imo State. And also the loans procured by Abia State itself since its creation in 1991. In support of this submission, he referred to the following cases: Attorney-General Ondo State v. Attorney-General of Ekiti State (supra); Olowofoyeku v. Attorney-General of Oyo State (1991) 10 NWLR (Pt.477) 190.

E On issue 3 which is, whether it is unlawful for the 1st defendant to deduct any sum or sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purpose of servicing any debts or at all, the contention of the learned senior F counsel for the 1st defendant in the 1st defendant's brief is that, it is very lawful for the 1st defendant to deduct sums of money from the plaintiff's share of the Federation Account for the purpose of servicing plaintiff's debt. He also submitted further that it is not true that deductions are being made without the plaintiff's consent and concurrence. Now, although I G have earlier in this judgment set down the Statement of Defence of the 1st defendant, I think it is useful to set out the position of the 1st defendant as argued in the brief. I refer in this regard to par. 10.08-10.10 of the 1st defendant's amended brief.

H *"10.08 We have demonstrated in our above submission how the plaintiff and the agents of the 1st defendant have, through several meetings, agreed on how the Federal Government will service the various loans. This exercise requires money. The money can only come from the*

*assets of the debtor States and not from the coffers of the Federal Government. In Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 3 S.C. 106; Ogundare, JSC, (as he then was) delivering the judgment of the court held:*

*'Each Government, Federal or State, has obligation to pay its debt. B Thus, neither can constitutionally charge its debts on the Federation Account'.*

*10.09 It is strictly in line with the above principle laid down by the erudite Justice that the Federal Government, with the plaintiff's consent C and concurrence, has been deducting money to the knowledge of the plaintiff from Abia State's share of the Federation Account. The 1st defendant asserts that whatever amount of money that has ever been deducted from Abia State's share of the Federation Account has been for D the purpose of servicing Abia State's debt of which Abia State is aware and with which it agrees.*

*10.10. The plaintiff is fully aware of the fact that the Federal Government's meetings with the creditors have always been on behalf and E with the concurrence of the debtor States (including Abia State). In rebuttal of the plaintiff's denial of his consent and concurrence, the 1st defendant pleads paragraphs 9 and 12 of his Statement of Defence which state:*

*9. The 1st defendant categorically refutes the plaintiff's allegation F averred in paragraphs 16, 17 and 18 of his Statement of Claim that Abia State had never been part of any negotiation for debt rescheduling, etc., in spite of unabated correspondence between the appropriate agencies of Abia State and the Federal Government. Examples of such correspon- G dence are the letters attached herewith and marked Annextures 1,2,3 and 4. Furthermore, the 1st defendant asserts that Abia State is fully aware of how much has been remitted on its behalf to the various foreign creditors as reflected in the deduction schedules, copies of which are constantly to (sic) sent to it as and when the remittances are made. For instance, the H deductions made between 1992 and 2003 are as shown in the documents attached herewith and marked Annextures Ia, Ib, Ic, IIb, IIc and III.*

*12. In a series of agreements between the Federal Government of*

*Nigeria and the old Imo State (of which Abia State was an integral part) and Abia State itself in connection with the international loans agreements entered into by Imo and Abia States, the two States have agreed for the reimbursement to the Federal Government of the sums (sic) money guaranteed by the Federal Government upon the default of the two States to repay the loans. Please see the documents annexed herewith and marked Appendices "A", "B" and "C" for the Agreements of the 14th of April, 1991, 6th of August, 1992 and 4th of June, 1996 respectively being some of such Agreements."*

Learned counsel, Chief Mekanjuola Esan, SAN., then submitted that the deduction of money from Abia State's share of the Federation Account is constitutional, by virtue of the provisions of Sections 166, 167 and 314 of the Constitution of Nigeria 1999, and also to the following case Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 4 S.C. (Pt.I) 1.

I now need to present the argument of the 16th defendant. Briefly, the substance of the argument of learned counsel for the 16th defendant is (1) that the plaintiff should be informed of its indebtedness to creditors, foreign or local which it may have inherited at inception so that as a contracting party, it would be in a position to evaluate or challenge it, if necessary and take other measures to manage it and (2) that it is unlawful for the 1st defendant to deduct any sum of money from the plaintiff's share of the Federation Account without the plaintiff's consent or concurrence for the purpose of servicing any debts or at all.

The review of the various submissions made by learned counsel will not be complete without a brief review of the plaintiff's reply brief in response to the 1st amended defendant's brief. In the reply brief, the learned Attorney-General prayed for leave to respond to issue No.4 first as that issue relates to estoppel. For this contention, he referred to paragraph II of the 1st defendant's brief that the plea of estoppel was not available to the 1st defendant in the circumstances, he referred to Attorney-General of Bendel State v. Attorney-General of the Federation (2000) FWLR (Pt.65) 448 pp. 535-536; (1984) 5 NCLR Vol.5 (Pt.101) and to the English case Lissenden C. A. v. Bosch Ltd. (1940) 1 All ER 425

at p.441. He then argued that having regard to the principles stated in the authorities on the applicability of the plea of estoppel and submitted that estoppel ought not to operate. In addition, he argued that the plaintiff could not have waived its right under a statute.

In my humble view, the plaintiff's reply which I have reviewed is B for the most part a "revisit" of the earlier argument in respect of whether Abia State was created with or without liabilities. I have in the course of this judgment considered this contention in the context of Decree No.41 and in particular the meaning and effect of Section 7(1) of the Decree C No.41. As a result of my consideration of Section 7(1) in the light of the previous decision of this court, namely: Attorney-General of Ondo State v. Attorney-General of Ekiti State (supra), it is my humble view that the plaintiff is wrong in his submission that the interpretation given to Section D 7(1) in the context of Decree 36, to show that the intendment of the legislation was to vest properties in Ekiti State from the old Ondo State cannot apply to the instant case. It is a misconception of the decisions E reached to argue that the plaintiff was required to waive its right under the statute that created Abia State, rather the question that must be considered is, whether Abia State when created became owners of properties and F chattels formerly located in the old Imo State. And as the properties which are beneficial to that accrued to Abia State in the circumstances clearly come with burdens because of the fact that these properties were built F from loans from foreign creditors, the question that is therefore to be resolved is, whether Abia State being the beneficial owner of these properties, does not have the burden for the repayment of the various loans, which were incurred for the projects that had accrued to Abia State G following its creation.

The plaintiff has in the reply brief argued by reference to the case law authorities which he brought to our attention for the proposition that the 1st defendant cannot plead estoppel as it did in its pleadings.

I have earlier in this judgment set out the pleading of the parties and H I do not need to reproduce them here. However, it is pertinent to recall that with regard to the burden of paying debts in relation to projects on the new Abia State, general complaint is that the 1st defendant deducted every

month from money due to it from the 1st defendant without any knowledge of the amount due to be paid by the plaintiff. It is also one of the complaints of the plaintiff that no information was given about the total amount of the loan and for how long the debts are to be paid. And also that the various sums of money deducted from the funds of the plaintiff were without its consent or concurrence.

Although I have quoted paragraph 10.08 of the 1st defendant's Brief, but I think for present purposes, that paragraph needs to be repeated. It reads:

*"10.08 We have demonstrated in our above submission how the plaintiff and the agents of the 1st defendant have, through several meetings, agreed on how the Federal Government will service the various loans. This exercise requires money. The money can only come from the assets of the debtor States and not from the coffers of the Federal Government. In Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1, Ogundare, JSC., (as he then was), delivering the judgment of the court held:*

*Each Government, Federal or State, has obligation to pay its debt. Thus, neither can constitutionally charge its debts on the Federation Account."*

**Having regard to the several complaints of the plaintiff, one would have expected the plaintiff to file a reply to this averment so that the defence proffered by the 1st defendant would at the very least, be put in doubt. This the plaintiff did not do. Then the legal effect of such a failure surely is recognized as an admission of those facts pleaded by the 1st defendant. It is therefore not a question of estoppel as argued by the plaintiff. The situation therefore is not for the plaintiff to argue that the 1st defendant had wrongly raised the defence of estoppel in law. In my humble view, what the 1st defendant had stated in plain language is, that the plaintiff cannot be heard to complain about the averments made by the 1st defendant that meetings were held to resolve whatever payments were due from the plaintiff in respect of the debts it inherited and those which the State incurred after its creation. In my humble view, the position**



**of the 1st defendant in the circumstances is that the plaintiff having not pleaded anything to the contrary to the averments made by the 1st defendant on the point is estopped from denying that such meetings were held as copiously pleaded in the statement of the 1st defendant as amended.**

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**ReliefV**

The plaintiff seeks by this relief an order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever including the Minister of Finance or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account except as determined by the decision in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (No.2) (2002) 4 S.C. (Pt.I) 1; (2002) 6 NWLR (Pt 764) 542. **As I have earlier held, the plaintiff by virtue of Section 7(1) became the owner of several properties and chattels which devolved on the State following its creation, by Decree No.41 of 1991. And I have also come to the conclusion that some of the properties and chattels came into existence by the loan agreements reached with foreign investors or such bodies as provided loans or credit for development. Now because of default in the payment of these loans, the Federal Government had to guarantee the payment of these loans to the foreign creditors. It is therefore my view that beyond the deduction from the money allocated to the plaintiff to service the debts for the benefits being enjoyed by the plaintiff, the duty to pay the debts rests squarely on the Federal Government. A grant of an injunction as sought by the plaintiff cannot be proper or right in law as in this respect the plaintiff has nothing to protect. See Obeya Memorial Hospital v. Attorney-General of the Federation & Anor. (1987) 3 NWLR 325. The prayer for perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Minister for Finance) or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account is hereby refused.**

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The plaintiff has also claimed against the defendants jointly and severally the following which though I have set them at the beginning of

this judgment, I would for the sake of convenience set them down again. They read:-

“(i) *An order directing the first defendant to deduct from the plaintiff’s share of the Federation Account only such sums as may be mutually agreed by the Government of Abia State and the Government of the Federation (for the purpose of servicing any debt proved or adjudged to be outstanding against the Government of Abia State.)*

(ii) *An order of injunction restraining the first defendant from making or continuing to make any deductions (from the plaintiff’s share of the Federation Account or any other account whatsoever) until further order as in (i) above.”*

**In order to determine this relief, I refer to the dictum of Ayoola, JSC., in M. V. Caroline Maersk v. Nokoy Invest Ltd. (2002) 6 S.C (Pt.II) 10; (2002) 12 NWLR (Pt.782) 472 at p.509.**

*“Where the plaintiff on a set of facts asks for a relief and a second relief “further or in the alternative” to the first, it is for the court to decide on the facts and on principle whether the grant of second relief as a further (additional) relief will not amount to double compensation for the same cause of action, in which case the second relief should not be granted. Where a plaintiff is uncertain whether the facts he relies on would entitle him to a relief either in addition to a first relief or merely as an alternative, he can claim the subsequent relief as a “further or alternative relief”. Where the first and principal relief is exhaustive of his remedy, there would not be need to grant the subsequent relief claimed as a “further or alternative relief.”*

Having regard to these principles, it does appear that the facts must have been litigated during the trial that a verdict of the court may go either way. It seems to me also that the alternative verdict would also reflect the facts litigated. In the case in hand, I have after a careful perusal of the alternative reliefs come to the conclusion that as the plaintiff has failed to establish its claim as per the first alternative relief, I find myself unable to grant the relief. The 2nd relief cannot also be granted in the circumstances. Besides that, it must be recalled that the 1st defendant has been established as the

**guarantor of the debts owed by Abia State to the foreign creditors and as Abia State has not established anything to the contrary, I cannot in the circumstances grant these prayers.** There is no reason for me to depart from the view I hold in respect of the main relief above.

In the result, as all the reliefs sought by the plaintiff have failed, the plaintiff's case is hereby dismissed in its entirety. There shall be no order as to costs.

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**UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother, Ejiwunmi, JSC. I entirely agree that this case has no merit whatsoever. I have nothing useful to add.

Accordingly, I too hereby dismiss the plaintiff's claims. Each party to bear its costs.

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**BELGORE JSC**

This is one of those constitutional cases that take much time of the court, whereas they could more conveniently be solved administratively. The plaintiff, Abia State, raised five issues for determination and they are copiously set out in the lead judgment of my learned brother, Ejiwunmi JSC.

On Issue 1, it is ordinary principle of law that a State succeeds what it inherits. Debts, liabilities and assets within its geographical territory are always its own. States (Creation and Transitional Provisions) (No. 2) Decree (No. 41) of 1991 is no more than a general principle of the fact of state creation. Certainly, such a statute is not expected to set out assets and liabilities which would later be identified. It is not the business of such a statute to enumerate which roads, dams, schools, hospitals, etc., were built with loan internally raised or externally procured. To say the law creating states has not mentioned debts and other liabilities is a curious proposition in law. Unless the statute creating a state expressly states that debts of the new states so created would be borne by another body, the

normal principle of state succession to assets and liabilities will prevail. Certainly, any state created could not be said to be free of encumbrances once structures are in place in its territory installed with loans to be paid. Reliance on Attorney-General of Ondo State v. Attorney-General of Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 143 has no bearing or relevance on this case. Once liability exists within its geographical area or territory and the liability has not been redeemed, that territory will inherit the liability either directly or through its guarantor, in this case, Federal Government of Nigeria. There is no ambiguity in the Decree's 41 of 1991 about creation of Abia State to justify importing assets and liability responsibility into it. The decree purport was to create States and nothing more. The courts should not be invited to do interpretational magic of looking for sundry issues not necessary to the promulgation of a decree. To say a decree creating states is "presumed to excuse" repayment of loans inherited by the state" is stretching to a ridiculous extent the idea of statutory interpretation. Has the Decree 41 of 1991 satisfied its purpose? Certainly it has; Abia State constitutionally exists; there is no secondary purport of the decree. Once the words of the statute are clear, there is no need to look for any extrinsic aid to interpret it. Awolowo v. Shagari (1979) 6-9 S.C. (Reprint) 37; (2001) FWLR (Pt. 73) 53, (1979) 6-9 S.C. 51; Ogun State v. Federal Government (1982) 1-2 S.C. (Reprint) 7; (1982) 1-2 S.C. 13; Attorney-General, Ondo State v. Attorney-General, Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR 1431, 1472-3; Attorney-General of Bendel State v. Attorney-General of the Federation & Ors. (1981) 10 S.C. (Reprint) 1; (1981) 10 S.C. 1.

On Issue 2, there are so many documents exchanged between the plaintiff and first defendant on the issue of the debts that the plaintiff cannot resile from them. The plaintiff not only consented but knew of the debts to which the 1st defendant stood for as guarantor. The structures and items procured with the foreign loans cannot be denied by the plaintiff because its territorial jurisdiction benefited from them.

On Issue 3, in view of what I have said above, debts owed must be paid, either by the State or by 1st defendant as guarantor who will normally deduct whatever has been paid from money due to plaintiff in the

Federation Account.

On Issue 4, certainly the plaintiff received from time to time documentary statement of account on repayment of these foreign loans. All the documents annexed to the pleadings are clear about this. There are many of them but of particular importance are Annexures 1A, 1B and 1C; B Appendices B and C, Annexure 2, 1a, 1b, 1c, 11a, 11b, 11c and 11. There seems to be nothing done under cover of darkness.

As a result of the Constitution of the Federal Republic of Nigeria 1999, the Decree 41 of 1991, is spent and the 1999 Constitution is now the operative Constitution. This clearly answers Relief 1 sought by the plaintiff, similarly, Relief No. 2. I have answered positively when adverting to Issue 1 that all States created by simple implication of the law will normally succeed to assets and liabilities within their territories and therefore for so much will they succeed to encumbrances.

The agents of Federal Government and Abia State Government had agreed how the debts of States would be serviced and this could be done only through monies due to States - Federation Account. It is the obligation of each State to pay its debt, but as the Federal Government guaranteed all external loans, it equally has responsibility to see that repayments for the loans are made as and when due. This can only be done by deductions from the State's monies available through Federal Government i.e. the Federation Account. The averment of 1st defendant in paragraph 10.08 is clear on this and the plaintiff is clearly estopped from denying clear and direct agreements on how to liquidate the foreign loans.

I regret I have not found anything in favour of plaintiff in this matter and for the more detailed analysis and reasons in the lead judgment of my learned brother, Ejiwunmi, JSC, which I totally ascribe to, I dismiss this suit. I also make no order for costs.

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**MUSDAPHER JSC**

I have read before now the judgment of my lord, Ejiwunmi, JSC. Just read, with which I entirely agree. In the said judgment his Lordship has meticulously and comprehensively dealt with all the matters that were

submitted for the determination of the case. I adopt the reasonings as mine. In the result, I too refuse the claims sought by the plaintiff, the plaintiff's case is dismissed in its entirety. I make no order as to costs.

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**EDOZIE JSC**

I was privileged to have read in draft the leading judgment just read by my learned brother, Ejiwunmi, JSC., in respect of the case brought by the Attorney-General of Abia State against the Attorneys-General of the Federation and 35 States of the Federation. As the case does not appear to disclose any cause of action against all the defendants, it was struck out except claims in relation to the 1st and 16th defendants, that is, the Attorney-General of the Federation and the Attorney-General of Imo State. The facts which gave rise to the case between the plaintiff and the aforesaid two defendants are clearly spelt out in their pleadings copiously reproduced in the leading judgment. The substance of the plaintiff's claim is that by the States (Creation and Transitional Provisions) (No. 2) Decree No. 41 of 1991 (Decree No. 41 of 1991 for short) which created Abia State from the old Imo State, no provision was made for Abia State to inherit any liability or encumbrances and in consequence, it is unlawful for the 1st defendant and his agents to deduct large sums of money from the plaintiff's share of the Federation Account without the plaintiff's consent for the purpose of servicing any debt incurred by the old Imo State prior to the creation of Abia State. The 1st defendant holds a contrary view. The two main questions that stand out prominently for determination are, firstly, whether Abia State was created without encumbrances or liabilities and secondly, whether it lawful for the 1st defendant to deduct any money from the plaintiff's share of the Federation Account without the plaintiff's consent for the purpose of servicing any debt.

With respect to the first question, the bone of contention is the proper interpretation of Section 1 subsections 1 and 2 of Decree No. 41 of 1991 which provides thus:-

“1 (1) As from the commencement of this Decree and notwithstanding the provisions of the Constitution of the Federal Republic of

Nigeria, 1979, or any other enactment, there shall be created for the Federal Republic of Nigeria 9 new States namely:- Abia, Anambra, Delta, Jigawa, Kebbi, Kogi, Osun, Taraba and Yobe.

(2) Subject to the provisions of Sections 3 to 8 of this Decree, the new States created by subsection 1 of this section shall have the same light B power and privileges as the States existing prior to the commencement of this Decree.”

The gravamen of the plaintiff’s contention is to the effect that since Section 1(2) of Decree No. 41 of 1991, supra, refers to only “rights, power C and privileges” without any reference to liabilities, Abia State was therefore created a new State without any encumbrances. With profound respect, I do not share this view. Section 7(1) of Decree No. 41 of 1991 makes provision for the new State to inherit property located in its area. It D provides:-

“7.(1) Subject to subsection (2) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by E an Edict of the Governor of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section.” F

A similar provision in the States (Creation and Transitional Provisions) Decree No. 36 of 1996 was considered by this court in the case of Attorney-General of Ondo State v. Attorney-General of Ekiti State (2001) G 9-10 S.C. 116; (2000) 17 NWLR (Pt. 743) 706, wherein it was held that by virtue of the provision, the property of the old Ondo State situate within the boundaries of Ekiti State belonged to the latter. If new States are permitted by law to inherit property located within their boundaries, it is inconceivable that they cannot as well inherit the liabilities attached to such H property. It is my view, that although from the wordings or text of the law creating Abia State, it is not expressly stated that it inherited any liabilities of the old Imo State, it is implicit from Section 7(1) of the Decree No. 41

of 1991 that it inherited the assets or property of the old Imo State within its territory together with any encumbrances attached thereto.

In respect of the second question regarding the deduction of plaintiff's share of Federation Account to service debts, it does not appear from the pleadings of the parties, that the plaintiff is disputing its indebtedness in respect of 29 external loans from multilateral institutions and other creditors. The 1st defendant derives its authority to deduct from the plaintiff's share of the allocations of Federation Account from its agreement with the plaintiff as its surety and guarantor of loans entered into with foreign creditors. The deduction, in my view, is not unconstitutional but lawful. The foregoing is by way of emphasis in support of the leading judgment of my learned brother, Ejiovanmi, JSC, with which I am in complete agreement and rely upon in dismissing the plaintiff's claim as lacking in merit. Each party is to bear its own costs.

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#### **PATS-ACHOLONUJSC**

I have read in draft the judgment of my learned and noble lord, Ejiovanmi, JSC., and I agree with him. The sum total of the plaintiff's case is whether it has to carry the burden of financial liability in relation to loans obtained for some structures in its State by the former Imo State overnment and guaranteed by the Federal Government prior to its creation, but the benefits of which enure to it on its creation. It must be understood that as long as the plaintiff benefits from the proceeds of the assets located in its area, common sense or equity dictates and demands that the ensuing liability should fall on it. You cannot enjoy the assets and shirk off the responsibility of the liability. To bring this case into the orbit of Attorney-General Ondo State v. Attorney-General Ekiti State (2001) 9-10 S.C. 116; (2001) FWLR (Pt. 79) is to miss the essence of that judgment. The plaintiff has ungainly latched on the case of Attorney-General of the Federation v. Attorney-General Abia State & 35 Ors. (2002) 4 S.C. (Pt. I) 1. That case is very unhelpful to this case of the plaintiff.

Besides it is not true that since the creation of the present Abia State, it has not asked the Federal Government to guarantee it of external loans.



That averment is not supported or borne out by Appendices B and C.

To my mind, there is no merit in the suit. It is accordingly dismissed.  
I abide by the consequential order in the leading judgment.

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### **OGUNTADE JSC**

This suit was initiated by the Attorney-General of Abia State against the Attorney-General of the Federation and the thirty-five Attorneys-General of the States in the Federation. The suit was brought under and by virtue of Section 232(1) of the 1999 Constitution of Nigeria which vests in this court original jurisdiction in disputes between States and States against the Federal Government. The plaintiff in his originating summons seeks the following:

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“(1) A determination of the question whether or not the States (Creation and Transitional Provisions) (No. 2) Decree (No. 41) 1991 is in force as a law enacted by the National Assembly and creates Abia State of Nigeria without further assurance.

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(2) A determination of the question whether or not the States (Creation and Transitional Provisions) (No. 2) Decree (No. 41) 1991 creates Abia State as a new State pursuant to Section 1(1) of the Decree.

(3) A determination that the States (Creation and Transitional Provisions) (No. 2) Decree (No. 41) 1991 creates Abia State as a new State with no encumbrances.

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(4) A declaration that it is not lawful for the Minister of Finance or any person authorized by him to deduct any sum or sums of money from the plaintiff's consent or concurrence for the purpose of servicing any debts incurred by the Government of the State called Imo State created by the States (Creation and Transitional Provisions) Decree 1976.

G

(5) An order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Minister) or howsoever from deducting or making deductions from the plaintiff's share of the Federation Account except as determined by the decision in Attorney-General of Abia State v. Attorney-General of the Federation & 35 Ors. (2002) 3 S.C. 106.”

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Depending on the determinations made by this court on the above, the reliefs which the plaintiff seeks are:

“(1) An order directing the first defendant to deduct from the plaintiff’s share of the Federation Account only such sums as may be mutually agreed by the Government of Abia State and the Government of the Federation (for the purpose of servicing any debt proved or adjudged to be outstanding against the Government of Abia State).”

(11) An order of injunction restraining the first defendant from making or continuing to make any deductions (from the plaintiff’s share of the Federation Account or any other account whatsoever) until further Order as in (i) above.”

The plaintiff filed a Statement of Claim as did the 1st defendant and several of the other thirty-five States of the Federation. A perusal of the pleadings filed easily reveals the true nature of the dispute between the parties. In a summary, the plaintiff’s contention is that the decree, which created Abia State in 1991, did not expressly say that it was inheriting any liabilities that might have been with the old Imo State out of which Abia State was created. In other words, the plaintiff says that nothing in the decree, which created Abia State, postulates or says expressly that the new Abia State was to bear a part of the existing liabilities of the old Imo State. As far as the plaintiff is concerned, it had started out in 1991 on a clean slate without any encumbrances whatsoever. The plaintiff therefore contends that the 1st defendant ought not be allowed to continue making monthly deductions from the allocation due to Abia State from the Federation Account on the basis that Abia State is liable to meet its share of the financial encumbrances of the old Imo State.

The 1st defendant on the other hand contends that at the creation of Abia State in 1991, it succeeded to the burden of paying a share of the liabilities of the old Imo State just as much as it succeeded to the assets planted in the land area of Abia State by the old Imo State. On this basis, the 1st defendant claims it has been deducting monthly from plaintiff’s allocations the instalments due to overseas creditors on the loans granted to the old Imo State. 1st defendant claims that it guaranteed the foreign loans involved.

If the dispute is as simple as I have narrated above, the inevitable question arising is - what do the other thirty-five States of Nigeria have to say in a dispute which so patently does not directly concern them? It is this question which forms the basis of the preliminary objection raised by the 9th defendant, the Attorney-General of Cross-River State. In his preliminary objection, the 9th defendant says:

“That there is no cause of action between the parties hereto and consequently this suit ought to be struck out.

Further Take Notice that the grounds of the said objection are as follows:-

1. The Statement of Claim discloses no dispute between the plaintiff and the 1st defendant or between the plaintiff and the 35 other States of the Federation.

2. There is no averment of the plaintiff’s prior step of presenting its grievance to the Federation Account Allocation Committee and the failure or refusal of that committee to grant it redress.

3. There is, alternatively, no pleading of resort by the plaintiff to an appropriate authority of the Federal Government for redress and the neglect or refusal of such authority to offer such redress.”

In responding to the 9th defendant’s preliminary objection , it is necessary to call to mind the provisions of Section 232(1) of the 1999 Constitution. It provides:

“232 (1) The Supreme Court shall, to the exclusion of any other court have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence of a legal right depends.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly;

provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.” (Underlining mine)

Under Section 232(1) above this court can only assume original jurisdiction where it is shown that a dispute exists between:

(1) the Federation and a State

(2) A State and another.

In addition to the above, it must also be shown that the dispute involves any question whether of law or fact on which the existence or extent of a legal right depends.

In the case on hand, one can readily see that there is a dispute between Abia State and the Federation as to whether or not it is right for the Federal Government to continue to deduct monthly from Abia State's allocation an amount to satisfy the debt owed by the old Imo State Government. It is also easy to recognize that whichever way this court resolves that dispute will have an impact for good or bad on the present Imo State Government, who is the 16th defendant. Beyond these three, the other parties in this case do not have any dispute either with the plaintiff of the 1st defendant. They do not have any interest in the result of the dispute cognisable by law. In any case, since there is no dispute between them and the parties earlier mentioned, this court, under Section 232 of the 1999 Constitution reproduced above does not have jurisdiction to adjudicate over them in this case. They are accordingly struck out from the case.

I now approach plaintiff's first question. This question must be considered along with the 2nd and 3rd questions. There is no doubt that Abia State was created by Decree No. 41 of 1991. Paragraphs 4 to 19 of the plaintiff's Amended Statement of Claim tell with clarity the constitutional history with reference to the emergence of Abia State in 1991. They read:

4. The plaintiff states that the Abia State of Nigeria was created by virtue of the provisions of sub-section 1 of Section 1 of the States (Creation and Transitional Provisions) No. 2 Decree, 1991 as a new State. The plaintiff avers that by virtue of sub-section 2 of Section 1 of the aforesaid Decree, the new State was imbued with the same rights, powers and privileges as the States existing prior to the commencement of the aforesaid Decree.

5. The plaintiff states that by virtue of subsection 1 of Section 3 of the Constitution of the Federal Republic of Nigeria 1963, the Federation of Nigeria was made up of four regions, to wit, Northern Nigeria, Eastern

Nigeria, Western Nigeria and Mid-Western Nigeria and each of the aforesaid Regions by force of the said Constitution consisted of the areas comprised in those territories respectively on the thirtieth day of September 1963.

6. The plaintiff pleads that by virtue of the provisions of the States (Creation and Transitional Provisions) Decree No. 14 of 1967, the State then known as Central Eastern State (now defunct) was created out of the former Eastern Region and comprised the following territories, namely: the areas comprising the former Eastern Region excluding Calabar, Uyo and Ogoja Provinces and the Ahoda, Brass, Degema, Ogoni and Port Harcourt Divisions.

7. The plaintiff further pleads that the aforesaid Decree No. 14 of 1967 was subsequently amended by the following Decrees, namely: States (Creation and Transitional Provisions) (Amendment) Decree No. 19 of 1967, States (Creation and Transitional Provisions) (Amendment) No. 2 Decree No. 25 1967, States (Creation and Transitional Provisions) (Amendment) Decree No. 16 1974. By virtue of Section 1(a), of Decree No. 14 1967 the Central Eastern State (later renamed East Central State) was said to be made up of Aba, Abakaliki, Afikpo, Awgu, Awka, Bendel, Nsukka, Okigwe, Onitsha, Orlu, Owerri and Udi Divisions. The tenure of the aforesaid Decree applied throughout the Federation.

8. The plaintiff pleads that in 1976 the States (Creation and Transitional Provisions) No. 12 Decree created 19 States among which was the State known as and called Imo State which State was made up of the following territories that is to say: Afikpo, Oguta, Nkwerre, Mbano, Mbaize, Bende, Arochukwu, Umuahia, Okigwe, Orlu, Oru Mbaitoli/Ikedum, Etiti, Ohafia, Northern Ngwa, Owerri, Aba and Ukawa which territories were in the aforesaid Decree identified either as provinces, divisions or districts. The States (Creation and Transitional Provisions) No. 12 Decree 1976 consequentially repealed Decree No. 19 of 1967, No. 25 of 1967 and No. 16 of 1974.

9. The plaintiff avers that Abia State of Nigeria is made up of the following Local Government Areas, namely, Aba North, Aba South, Arochukwu, Bende, Ikwuano, Isiala Ngwa North, Isiala Ngwa South,

Isuikwuato, Obi Ngwa, Ohafia, Osisioma Ngwa, Ugwunagbo, Ukwa East, Ukwa West, Umuahia North, Umuahia South and Umunneochi.

10. The plaintiff shall contend that by reasons of the matters pleaded in paragraphs 5, 6, 7, 8 and 9 above, the aforesaid States (Creation and Transitional Provisions) (No. 2) Decree 1991 created Abia State as a new State without further assurance and free from any encumbrances except as provided in the said Decree.”

Now, the States (Creation and Transitional Provisions) (No. 2) Decree 1991 which created Abia State in its Sections 1, 2 and 7 provides:

“I. (1) As from the commencement of this Decree and notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria, 1979, or any other enactment, there shall be created for the Federal Republic of Nigeria 9 new States, namely:-

Abia, Anambra, Delta, Jigawa, Kebbi, Kogi, Osun, Taraba and Yobe.

(2) Subject to the provisions of Sections 3 to 8 of this Decree, the new States created by subsection (1) of this section shall have the same lights, powers and privileges, as the States existing prior to the commencement of this Decree.

2. Notwithstanding anything to the contrary in the Constitution of the Federal Republic of Nigeria 1979, or any other enactment, there shall be 30 States for the Federal Republic of Nigeria and each State shall have the name given to it in the first column and the Capital in the second column of the Schedule to this Decree and shall consist of the Local Government Areas specified in the third column and the Capital or Headquarters of the Local Government Area in the fourth column to the said Schedule.

7. (1) Subject to subsection (1) of this section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised in a new State created by this Decree and was held by a body corporate directly established by an Edict of the Governor of the State out of which the new State is created or an instrument having effect as such edict shall, by virtue of this section and without further assurance than this section, vest in the Military Administrator of the new State concerned and be held by him for the

purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section.

(2) Nothing in this section shall apply to any such property held on behalf of the Federation for the purposes of the Government of the Federation or to immovable property and chattels in the ownership of statutory corporations or, as the case may be, of companies, owned or controlled by the Government of the Federation.”

The words used in the above Decree No. 41 are clear and explicit. They do not therefore call for any interpretation. In *Ifezue v. Mbadugha* (1984) 1 SCNLR 427, this court said:

“If there is nothing to modify, alter, or qualify the language of a statute, it must be construed in the ordinary and natural meaning of the words and sentences used. The courts have adhered to this literal rule of interpretation since the 19th century as seen from the judgments of Jessel, MR., in *Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd.* (1876) 1 Exhibit D 469 and *Lord Fitzgeraldin Bradlaugh v. Clarke* (1883) 8 App. Cases 354. The object of all interpretation is to discover the intention of the law-makers which is deducible from the language used. Since the meaning is clear the courts are to give effect to it.”

See also *Lawal v. G. B. Ollivant* (1972) 3 S.C. (Reprint) 120; (1972) 3 S.C. 124.

The clear purpose of Decree No. 41 was to create nine new States. It is remarkable however that the Decree in its Section 7 vested in the new States created “any immovable property and any chattel” which immediately before the Decree was situate in the area comprised in a new State. More importantly, it provides that “no compensation shall be payable in respect of any transfer effected by this section.”

On a first look, it would appear that the intention of the lawmaker was to transfer absolutely to the new States created under the Decree assets in form of immovable property and any chattel irrespective of the liability that had been incurred by the States out of which the new States were created in the acquisition of these assets. I am not however to answer the question posed by the plaintiff without giving consideration to the

Statement of Defence and arguments of the 1st defendant. Indeed, it is the flip side of the coin representing the 1st defendant's case that gives plaintiff's case a justiciability it would not otherwise have possessed. If I were only to read the provisions of the Decree and proclaim its meaning, B the exercise would become only academic, hypothetical or giving an advisory opinion.

The 1st defendant in paragraphs 3 to 7A of its Amended Statement of Defence averred:

C "3 In response to paragraph 10 of the plaintiff's Statement of Claim, the 1st defendant states that:-

(1) While Abia State was created under the provisions of the States (Creation and Transitional Provisions) (No. 2) Decree, 1991), as a new State out of the former Imo State, a Joint Assets and Liability Sharing D Committee was set up upon the creation to ensure that assets and liabilities were shared equitably between the new Imo State and Abia State.

(2) The assets of the old Imo State shared between the new Imo and Abia States included the projects located in various parts of the old Imo E State including areas constituting Abia State.

(3) The liabilities of the old Imo State for which the Imo State and Abia State were to assume responsibility in agreed proportion included the projects financed with foreign loans obtained by old Imo State before the F creation of Abia State and guaranteed by the Federal Government.

(4) To ensure equitable sharing of the debt burden of the external loans utilized in financing the projects, the Joint Assets and Liability Sharing Committee engaged in a bifurcation exercise which involved identification and evaluation of location of the projects in new Imo and Abia G States (where possible) and allocated the debt burden to the appropriate State. Where the projects overlap new Imo and Abia States, the debt burden was shared in proportion to the benefits accruing to each State and where these could not be easily determined, in the proportion of 52% to H Imo State and 48% to Abia State in which the new Imo State shared other assets and liabilities of the old Imo State.

(5) The Governments of both new Imo and Abia States as well as the Independent Joint Assets and Liability Sharing Committee set up by the



Federal Government were satisfied with the arrangement and faithfully implemented it in respect of assets and also concurred with the arrangements in respect of the liabilities (including the external debt burden).

(6) To that extent, the Abia State was created with encumbrances: to wit, its share of the liabilities of the old Imo State, including the external debt burden. B

4. On the plaintiff's paragraph 11 of the Statement of Claim, the 1st defendant states that the Federal Government had at the relevant times stood as Guarantor and Surety in respect of the various foreign loans incurred by the old Imo State at the time when the present Abia State has a strong obligation to repay a portion of the loans in accordance with the apportionment of the assets and liabilities made by the Joint Asset and Liability Sharing Committee mentioned supra. C

5. With further reference to paragraph 11 of the Statement of Claim, D the 1st defendant avers that the Government of the old Imo State had agreed that the 1st defendant should stand as surety to it in respect of foreign loans secured by it at the times when the loans were being procured by it before the creation of the plaintiff. Since the creation of the plaintiff, E it has also agreed with the 1st defendant to act as surety for all foreign loans procured by it and which accounts for a substantial part profile of the plaintiff in respect of which deductions are being made from the allocation due to the plaintiff. F

6. In response to paragraph 12 of the Statement of Claim, the 1st defendant submits as follows:

a. In December 2000, the Federal Government of Nigeria signed an "Agreed Minute" with her Paris Club Creditor where debts owed by the States and guaranteed by the Federal government were rescheduled for 18 years. Parts of these debts were owed by Abia State as reflected in the attached Annextures 1A-C. G

b. Furthermore, the loans stated in Annextures 1A-C were loans taken by the former Imo State for various projects, some of which are now H in Abia State as a result of the bifurcation of 1991. Abia State inherited these projects as well as their obligations.

c. A reconciliation exercise of the debts owed by the States of the

Federation supervised by the Revenue Mobilization Allocation and Fiscal Commission took place in June 2002 wherein Abia and Imo States were duly represented. At the reconciliation exercise, the representative of Abia State did not in any way dispute the level of their indebtedness.

B d. Furthermore, a series of correspondence with the servants and agents of the first defendant i.e. Annextures 2 and 3 show that Abia State has never denied being indebted to the Multilateral Institutions, Paris Club and London Club, as reflected in Annextures 1A-C.

C e. Abia State has the highest debt stock due to its indebtedness in respect of twenty-nine (29) external loans from Multilateral Institutions, Paris Club group of creditor countries and the London Club of commercial banks vide Annextures 1A-C.

D f. In 2002, Abia State was duly informed of its debts service requirements for 2003 budget year, receipt of which was duly acknowledged - see Annex 1.

E g. Sections 166, 167 and 314 of the 1999 Constitution of the Federal Republic of Nigeria empower the Federal Government to make deductions from the monthly allocation of the States to off-set their indebtedness. In 2003, the amount actually deducted from January to December was N2,958,499,248.28 (\$23,113,275.38) as against N4,642,280,576.00 (US \$36,276,817.00) that was expected to be deducted from the States' allocation as their proportionate share of the \$2billion (N256,000,000,000.00) budget for 2003. The Federal Government also had assisted all the States (including Abia State) by giving them the necessary assistance in form of a relief to alleviate their indebtedness vide Annex 4.

G h. In the case of the multilateral loans, the States were involved in the negotiation of the loans and in the disbursement of funds and in the implementation of the projects of the Paris Club loans, the loans were solely negotiated by the States but guaranteed by the FGN. The guarantee of FGN was invoked when the States defaulted. The same is true with H respect to the loans from the London club. As result of the assumption of the responsibility for the loans, its behoves the FGN to negotiate the rescheduling of the loans.

i. Before the Supreme Court judgment of April, 2002, external debt

service was done on the basis of first-line-charge. Thereafter, the State has been consistently informed of how the amount deducted from the monthly allocation has been applied in servicing the respective loans.

7. The 1st defendant avers in relation to paragraph 13 of the Statement of Claim that:-

(1) Before the creation of the plaintiffs, the old Imo State entered into various loan agreements with foreign donors under terms, which include the guarantee of such loans by the Federal Government.

(2) As collateral to such Foreign Loan Agreements, the Federal Government entered into subsidiary loan agreements with the Imo State Government, which spelt out the conditions of the guarantee by the Federal Government, which spelt out the conditions of the guarantee by the Federal Government.

(3) One such agreement is the one between the Inter-national Bank for Reconstruction and Development dated the 12th day of October, 1990 wherein Imo State secured a loan for One Hundred and Six Million Dollars for the Tree Crops Project.

(4) In Clause 16(b) of a Subsidiary Loan Agreement dated 14th April, 1991, between the Federal Government and the Imo State Government (Appendix 'A'), it was provided that Imo State had agreed that the Federal Government should deduct at source from the statutory allocations due to Imo State all sums payable to the Federal Government.

(5) Similar clauses exist in respect of all the Foreign Loan Agreements entered into by the old Imo State before the creation of Abia State.

(6) The liability of old Imo State under these clauses devolved jointly on new Imo State and Abia State on 27th August, 1991, when Abia State was created out of old Imo State as part of the liabilities of the old Imo State.

(7) After the creation of Abia State on 27th August, 1991, Abia State procured foreign loans for various projects under which the Federal Government were guarantors. These include the loan of Two Hundred and Fifty-Six Million Dollars taken from the International Bank for Reconstruction and Development under an agreement dated 23rd day of July, 1992, for financing the water rehabilitation project in Abia State, and the

loan of Forty-Two Million, Five Hundred Thousand Dollars taken from the International Bank for Reconstruction and Development under an agreement dated 25th August, 1992, for financing the Agricultural Support Project in Abia State.

B (8) These foreign loans were guaranteed by the Federal Government, which entered into subsidiary agreements with Abia State on 6th August, 1992, and 4th June, 1996, respectively, which subsidiary agreements respectively contain in Clause 18(b) thereof provisions for the  
C Federal Government to deduct at source from the statutory allocations due to Abia State all sums due under the agreement. (Appendices 'B' and 'C').

(9) Upon the plaintiff failing to perform its obligations to make payments to the creditors as provided in the main loan agreements, the 1st  
D defendant, as guarantor, has the right to deduct at source from the statutory allocations due to the plaintiff to meet its obligations to the creditors as agreed with the 1st defendant in the respective subsidiary agreements.

7A. With further reference to paragraph 13 of the Statement of  
E Claim the 1st defendant will contend that the plaintiff is estopped from disputing that it has conducted or made itself privy to any transaction that may lead the 1st defendant to the irrevocable deductions made monthly from the account of Government of Abia State or disputing the grounds  
F for such deductions in that:

i. It participated actively in the process of sharing the assets and liabilities of the old Imo State (including liability for repayment of loans) between it and the new Imo State and the bifurcation of the loans on the basis of the areas where the projects financed with the loan are located  
G (where this is ascertained) and/or the proportion in which other assets and liabilities were shared (where the projects are spread across the entire old Imo State).

ii. On 23rd September, 2003, the Executive Governor of Abia State,  
H purporting to protect the interest of both Imo State and Abia State in the over-repayments of foreign debts owed by the old Imo State, wrote to the Federal Minister for Finance requesting for the refund to Imo and Abia States the sum of N818,691,853.07k paid by the Imo State Government

but not remitted to the beneficiaries between March, 1991, and September, 1991. (annexture 2).

iii. The request of Abia State as contained in the letter was that the sum of N818,691,853.07k deducted from the allocation of Imo State before the creation of Abia State but not remitted to the foreign beneficia- B  
ries should be refunded to both Imo and Abia States at the usual ratio of Abia 48% to Imo 52% with which they shared other assets and liabilities working out at Abia State N392,012,132.06k and Imo State N424,679,721.01k.

iv. Abia State is estopped from repudiating liability for 48% of the C  
foreign debt liability incurred by old Imo State before its creation while at the same time laying claim to a refund of 48% of what it regards as excess deduction from funds accruable to Imo State before the creation of Abia State. D

v. In respect of external loans obtained by Abia State between its creation in 1991 and the creation of Ebonyi State from it on 1st October, 1996, a similar bifurcation exercise was canned out by the Joint Assets and Liability Sharing Committee for Abia and Ebonyi States under which some E  
of the liabilities of the old Abia State were transferred to Ebonyi State. These include the Foreign Loan Liability of old Abia State.

vi. On 11th November, 2002, the Permanent Secretary, Ministry of Finance, Abia State, wrote to the Director-General, Debt Management F  
Office, a letter titled 'REVIEW OF ABIA/EBONYI POSITIONS IN RESPECT OF EXTERNAL LOAN LIABILITIES OF OLD ABIA STATE'; requesting for a review of the sharing by the World Bank of the balance of the loan owed by old Abia State Government in respect of the Imo Health and Population Project. He stated that upon creation of Abia State, the G  
balance outstanding against Imo State was shared upon bifurcation between Imo and Abia States and complained that in spite of the fact that many of the projects on which the loan was expended were located in Ebonyi State, the whole of the debt shared to old Abia State was left for H  
the new Abia State to bear upon creation of Ebonyi State with no part of it assigned to Ebonyi State. He listed the projects located in parts of Ebonyi State.

vii. The plaintiff through its Permanent Secretary, Ministry of Finance, concluded that it would be proper to adjust Abia State multi lateral debt profile to reflect the position. In effect, he wanted the amount expended on the area now in Ebonyi State before its creation to be bifurcated to Ebonyi State thus reducing the debt profile of Abia State.

viii. Having clearly shown that:

a. It is jointly liable with the old Imo State for its debt and also jointly entitled to a refund of over-deductions of debt repayments by old Imo State before its creation.

b. The external debt profile of old Imo State has been bifurcated between it and new Imo State before the creation of Ebonyi State.

c. The old Abia State obtained loans, which were expended on parts of the new Abia State as well as the area carved out as Ebonyi State before the creation of Ebonyi State.

d. It is necessary to adjust the debt profile of Abia State to transfer to Ebonyi State, some of it, which were expended in the area now constituted as Ebonyi State before its creation.

The defendant will contend that the plaintiff is estopped from denying that it owes any foreign debt in respect of which the Federal Government can make any deductions.”

The 1st defendant annexed to its Statement of Defence a letter dated 23-09-2003 written by the Governor of plaintiff State and another letter dated 11-11-2002 by the Permanent Secretary, Abia State Ministry of Justice. The first letter annexure 2 reads:-

"OFFICE OF THE EXECUTIVE GOVERNOR GOVERNMENT HOUSE, UMUAHIA, ABIA STATE, NIGERIA

September 23, 2003.

The Honourable Minister,

Ministry of Finance Headquarters

Ahmadu Bello Way,

Abuja,

My Minister,

REQUEST FOR THE REFUND OF SFR 382,147,250.00  
ULTRAFIN AG LOAN FOR IMO/ABIA STATES

In 1986, the old Imo State Government borrowed money from ULTRAFIN AG of Switzerland to finance the following projects:

- (a) International Glass Industries, Aba
- (b) Concord Hotels, Oweiri
- (c) Modern Ceramics Industries, Umuahia B
- (d) Umuahia Urban Water Scheme

The loan amount was SFR 382,147,250.00 and was later taken over by another Creditor: Banca D'el Gottando of Italy.

In 1990, four years after, the servicing cost of the loan amounted to SFR 200,062,227.58. C

Federal Ministry of Finance debited the Stabilization Account of Imo State Government of this total amount and elected to remit through the Central Bank in 10-monthly instalments to the beneficiaries starting from 3/12/90, even though the original loan of SFr 382,147.250.00 was already cancelled. D

Using the prevailing exchange rate then, the 10-monthly instalments were to be as follows:

1. 31/12/90	-	N139,413,349.57	E
2. 31/1/91	-	N138,719,133.05	
3. 28/2/91	-	N143,530,429.60	
4. 31/3/91	-	N143,530,622.60	
5. 30/4/91	-	N122,264,016.93	F
6. 31/5/91	-	N129,004,112.70	
7. 30/6/91	-	N136,188,346.58	
8. 31/7/91	-	N137,528.763.37	
9. 31/8/91	-	N151,475.009.78	
10. 30/9/91	-	<u>N140,231,693.71</u>	G
		<u>N1.381,885,485.16</u>	

Investigations from the Foreign Investment Office of the foreign operations department of the Central Bank (Ref. No. FOD/10FMF/VO1.8/36 of 6th October, 1997) shows that although the full 10 - months H instalments had already been deducted from the account of Imo State, only 4 (four) Instalments were remitted to the beneficiary. This means that the remaining 6 (six) instalments, being the fund belonging to Imo State

Government, are still being held by the Ministry of Finance.

The 6 (six) remaining instalments not remitted are:

B	1. 30/4/91	-	N122,264,016.94
	2. 31/5/91	-	N129,004,112.70
	3. 30/6/91	-	N136,188,346.58
	4. 31/7/91	-	N137,528,763.37
	5. 31/8/91	-	N151,475,009.78
	6. 30/9/91	-	<u>N140,231,603.71</u>
			<u>N818,691.853.07</u>

C REQUEST

Our humble request is that the Hon. Minister investigate this matter through the Central Bank and the Office of the Accountant General and if confirmed, cause to be paid back to Imo State and Abia State the sum of

D N816,691,843.03 plus accrued interest at the usual ratio of:

Abia State (48%)	N392,012,132.06
Imo State (52%)	<u>N424,679,721.01</u>
Total	<u>N818,691,853.07</u>

E (Plus Interest)

This letter is being copied to the Governor of Imo State for information and necessary action, please.

F Thanking you immensely in anticipation of your favourable and prompt reaction.

Dr. Orji Uzor Kalu, MON  
Executive Governor.”

G And the second letter annexure 3 reads:

“GOVERNOR OF ABIA STATE OF NIGERIA  
MINISTRY OF FINANCE  
OFFICE OF THE PERM. SEC  
P.M.B 7218  
H UMUAHIA, ABIA STATE

OUR REF: MFED/362/I/66  
The Director-General,  
Delta Management Office,



NDIC Building,  
Abuja.

RE: REVIEW OF ABIA/EBONYI POSITIONS IN RESPECT  
OF EXTERNAL LOAN LIABILITIES OF OLD ABIA STATE

I refer to my letter of 27th September, 2002 on the above matter and B  
hereby make further submission and clarification regarding Imo Health  
and Population Project.

The World Bank (IBRD) shared the balance on this loan between  
Abia State and Imo State, on bifurcating. However from the multilateral C  
debt profile of Abia State, no portion of this debt was given to Ebonyi State.

Please find below details of the various projects earned out in  
Ebonyi State in respect of Imo Health and Population project:

NAME OF PROJECT	LOCATION OF PROJECT	AMOUNT	DATE OF AWARD	D
Ngusu Edda Maternity	Afikpo South LGA	725,560.42	24-10-94	
Pharmaceutical Store	Afikpo South LGA	537,666.42	24-10-94	E
Itim-Ukwu Dispensary	Afikpo North LGA	1,086,233.00	6-06-95	
Ishiagu PHC	Ohaozara	2,403,200.00	6-06-95	
Abaomega PHC	Ohaozara	2,000,000.00	6-06-95	F
Okposi PHC	Ohaozara	2,400,000.00	"	
Ndinuhu PHC	Ohaozara	2,000,000.00	"	G
Pharmacy Store	Afikpo North LGA	1,031,825.00	9-08-96	
Owutu Edda Dispensary	Afikpo South LGA	1,200,300.00	"	
Uwana PHC	Afikpo North LGA	1,580,097.00	"	H
Ebuuwana PHC	Afikpo South LGA	2,129,427.00	"	

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	Amangwu Edda PHC	Afikpo South LGA	4,010,924.00	"
	Owutu PHC	Afikpo South LGA	2,501,600.70	"
	Ndinuhu PHC	Ohaozara	3,114,985.50	"
B	Ojigwe Akanto PHC	Ohaozara	6,937,058.70	"
	Okposi PHC	Ohaozara	5,900,000.00	8-10-96
C		Total	N39,558,877.74	

D Or Ref: MFED/362/Vol.1/66A  
Ministry of Finance,  
Office of the Perm. Sec.,  
P.M.B 7218,  
Umuahia-Abia State.

E 11th November, 2002.

F Copy to:  
The Chairman,  
Sub Committee on Debt Management,  
National Revenue Mobilization and  
Fiscal Commission,  
Abuja.

G Overleaf for your information and necessary action please.  
Sgd.  
Rev. N. Dimanochi  
Permanent Secretary.”

H In annexure 2, the plaintiff would appear to have acknowledged on 23-9-2003, that it had a responsibility to pay 48% of the liability incurred by the old Imo State in 1986 at which time Abia State has not been created. The plaintiff was in annexure two asking for a refund of part of the money

debited against the account of the old Imo State between 31-12-90 and 31-1-91. On those two dates Abia State had not been created. It was created on 30-9-91.

In annexure 3, the plaintiff was seeking a relief for projects it had undertaken in the area covered by Ebonyi State which had been a portion of Abia State before the creation of Ebonyi State. The plaintiff represented in annexure three that the World Bank (IBRD) shared the balance on this loan between Abia State and Imo State on bifurcation. The plaintiff wanted a portion of this debt to be transferred to Ebonyi State in respect of projects in areas carved out of Abia State which were later transferred to Ebonyi State.

Now, how did the plaintiff react to these paragraphs of the 1st defendant's Statement of Defence?

In paragraphs 1 to 5 of his Reply to 1st defendant's Statement of Defence, the plaintiff pleaded thus:

1. The plaintiff joins issues with the 1st defendant on paragraphs 3, 4, 6, 8 and 13 of the 1st defendant's Statement of Defence.

2. In answer to paragraphs 3 and 4 of the 1st defendant's Statement of Defence, the plaintiff avers that the States (Creation and Transitional Provisions) (No. 2) Decree 1991 did not make provision nor did it authorize the Joint Asset and Liability Sharing Committee relied upon by the 1st defendant.

3. In answer to paragraph 6 of the 1st defendant's Statement of Defence, the plaintiff states as follows:

(i) The plaintiff will abide by any loans suretied or guaranteed by the 1st defendant if shown to have been procured by the Government of Abia State from 27th August, 1991.

(ii) The plaintiff will contend that it is entitled to repudiate any letters or other correspondence, meetings, negotiations or agreements whose purport is intended or designed to ignore the extant provisions of the aforesaid States (Creation and Transitional Provisions) (No. 2) Decree 1991.

(iii) The plaintiff denies that the 1st defendant is entitled to make any deductions from the plaintiff's monthly allocation without plaintiff's

consent or concurrence.

4. The plaintiff denies paragraphs 8 and 9 of 1st defendant's Statement of Defence and will rely on the letter under the hand of the Governor of Abia State dated September 23, 2003, addressed to the Honourable Minister of Finance in which the plaintiff asked for a refund of deductions made from its allocation but not remitted to any creditor.

5. In further answer, the plaintiff repeats its persistent appeal to the 1st defendant to state categorically what the plaintiff owes and how and when the debt ought to be fully repaid."

It is apparent that the case of the 1st defendant is that quite apart from the extant provisions of Decree No. 41 of 1991 which created Abia State, the Military Administration which promulgated Decree No. 41 also set up a Joint Assets and Liability Committee and that the liabilities of the old Imo State for which the new Imo and Abia States were to assume responsibility in agreed proportion included the projects financed with foreign loans obtained by the old Imo State before the creation of Abia State and guaranteed by the Federal Government. It was also the case of the 1st defendant that in line with this arrangement a bifurcation exercise which involved the identification and evaluation of the projects located in new Imo and Abia States was done and the burden appropriated to each of the two States ascertained on the basis of 52% to Imo State and 48% to Abia State.

It is important for me to say that following the excision of Abia State from the old Imo State in 1991, the Imo State emerging must be seen and considered as a new State on its own. This situation then compels the raising of the question - who was to meet the liabilities for projects which had been financed in the old Imo State and the benefits of which later accrued to Abia State at its creation? Although the plaintiff in its pleadings and brief before this court tried to convey that Abia State being a new State in 1991 had no burden to share with the new Imo State, his standpoint is belied by the letters annexures 2 and 3 reproduced above. If the plaintiff did not believe that an understanding was reached for the sharing of liabilities of the old Imo State between the new Abia and Imo States, why did the plaintiff write annexure 2 on 23/9/2003 to demand from the 1st

defendant the refund of amount deducted from allocation of the old Imo State for a foreign debt incurred in 1986 which it was stated was not remitted to the overseas creditors? Again why did the plaintiff on 11/11/02 vide annexure 3 ask that a foreign loan which had been apportioned between the new Imo and Abia States on the basis of a bifurcation arrangement be spread to Ebonyi State created out of Abia State? B

It seems to me that the plaintiff has been less than sincere in its argument that the new Abia State had no liability at its creation in 1991. It has only chosen to interpret the facts available to suit its case. It would seem that the plaintiff wishes that we look only at the provisions of the Decree No. 41 and on that basis alone make the pronouncements as to its meaning and effect. That however will, as I said earlier, not resolve the question whether the plaintiff is right to say that the 1st defendant could not make deductions from allocation due to Abia State from the Federation Account. C D

The 1991 Constitution of Nigeria has acknowledged the 36 component States in Nigeria such that with or without Decree No. 41 of 1991, Abia State remains one of them. My view is that Decree No. 41 of 1991 certainly did not express that the new Abia State would share out of the liabilities of the old Imo State. But that does not answer the question whether or not Abia State by the arrangements made following its creation was obliged to pay its share of the liabilities incurred by the old Imo State which said liabilities were apportioned between the new Abia and Imo States by the Joint Assets and Liabilities Committee. E F

I agree with the lead judgment by my learned brother, Ejiwunmi, JSC, and I would also refuse plaintiff's claims, I subscribe to the order on costs made in the lead judgment. G