

**SUPREME COURT OF NIGERIA**

17TH FEBRUARY, 2006. SC. 23/2004

**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, A. I. KATSINA-  
ALU, D. MUSDAPHER, I. C. PATS-ACHOLONU, M.  
MOHAMMED, W. S. N. ONNOGHEN, JJSC**

THE FEDERAL REPUBLIC OF NIGERIA ..... APPELLANT  
AND

1. GEORGE OSAHON

2. AUGUSTINE AVURU

3. FELIX AGABO

..... RESPONDENTS

4. OLATUNDE AYODELE ISAAC

5. ALLIED ENERGY RESOURCES LTD.

6. TUSKAR RESOURCES LTD.

7. CAMAC INT. NIG. LTD.

8. BILLY FOLAHAN

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STATUTES - Conflict - Constitutional law - Where two Acts are in conflict - In relation to same subject matter - Constitutional provisions shall govern the interpretation (H1)

CONSTITUTIONAL LAW - Ambiguity - Constitution of a country - Being the guiding light in governance - Must be given clear meaning (H2)

CONSTITUTIONAL LAW - Courts - Criminal prosecution - S.174(1)(b) 1999 Constitution - On the issue of criminal prosecution by any person - Before superior courts of record - Is presumed to mean any legal practitioner (H3)

CONSTITUTIONAL LAW - Statutes - Interpretation - Prosecuting criminal suit before Federal High Court - Can be done by the Police - Or any other authority - Subject to A-G's power - To take over or discontinue the prosecution (H4)

CONSTITUTIONAL LAW - Interpretation - Clear words of the Consti-

tution - Subsidiary legislation - Cannot take away a constitutional power (H5)

CONSTITUTIONAL LAW - Statutes - Conflict - Other laws of the land  
- Cannot defeat the provisions of the constitution (H6)

CRIMINAL PROCEDURE - Federal High Court - Police Act s. 23 - Power to prosecute criminal cases - Without A-G's fiat - Can be exercised by the Police - Vide s. 174(1) 1999 Constitution (H7)

### **FACTS**

Before the Federal High Court, Lagos Division, the appellant charged the respondents with various offences under the Miscellaneous Offences Decree (Act) of 1984. The prosecutor was one Nuhu Ribadu, a police officer who is also a legal practitioner. By a motion on notice filed by the respondents, they prayed for the charges against them to be quashed. They contended that the charges are an abuse of legal process as they were not instituted by the A-G of the Federation or officers of his department as provided by s. 174(1)(a) of the 1999 Constitution.

The trial court ruled that there was no violation of s. 174(1)(a) of the Constitution, holding that legally qualified officers in other government departments can prosecute without the fiat of the A-G. Respondents lodged an appeal before the Court of Appeal, which after a consideration of s. 56(1) of the Federal High Court Act and other statutes held that Police Officers are excluded from prosecuting before the Federal High Court. Being dissatisfied, appellant has now appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right when in interpreting Section 56(1) of the Federal High Court Act, Section 23 of the Police Act and Section 174(1) of the 1999 Constitution, came to the conclusion that the police officers prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal High Court.

2. Whether a police officer, legally qualified to practice law in all courts in the Federation by virtue of his having been called to Nigerian Bar

under Legal Practitioners Act, can institute criminal proceedings without the fiat of the Attorney-General of the Federation.

**HELD** (Allowing the appeal by a majority decision with varying opinions, per **BELGORE JSC**)

***Where two Acts are in conflict***

1. I think the argument that seemed to persuade Court of Appeal is in the argument of the present Respondents as Appellants calling the Police Act a general Act and the Federal High Court Act Specific Act. That dichotomy certainly swayed the court below. That decision, to my mind is misplaced. In the present appeal, it seems the Attorney-General of the Federation as amicus curiae followed that general line in the brief filed. If the Police Act was made by National Assembly, so is the Federal High Court Act. There is no magic wand behind the phrase “any court” in Police Act; the same phrase has been employed in S.174(1)(a) of the Constitution. The cases of *Araka v. Egbue* (2003) 17 NWLR (pt 848) 1; *Ezeadukwa v. Maduka* (1997) 8 NWLR (pt 518) 635, 657, are far from relevant to the present issue before us. Where two provisions, one each from an Act of National Assembly conflict in relation to the same subject-matter, as in this instance, question of right to prosecute criminal matter in Federal High Court, the conflict cannot be isolated to the two provisions only insofar as there are constitutional provisions on the same matter. In such a situation the provisions of the Constitution shall govern the interpretation. (p. 446 G)

***Constitution of a country - The guiding light in governance***

2. Constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws. As such, Constitution is not at any given situation expected to or presumed to contain ambiguity. All its provisions must be given meaning and interpretation even with the imperfection of the legal draftsman. Common sense must be applied to give meaning to all its sections or Articles. (p. 448 A)

***Criminal prosecution - S.174(1)(b) 1999 Constitution***

3. To appear in all superior courts of record in Nigeria to prosecute any case, civil or criminal, the person is presumed to be a legal practitioner as provided in Legal Practitioners Act. So the words “any....person” pre-  
 B sumes as “*represented by a legal practitioner*”. And for “*any other authority*” presupposes that authority could be represented by a legally qualified person either in that authority or engaged for the purpose by that authority. For example in cases of negative averment whereby a person  
 C has defaulted in paying his taxes, the Board of Inland Revenue can engage services of a legal practitioner or a legally qualified employee of the Board to prosecute the defaulter. It does not mean however that in all cases, a legally qualified person must appear. It is only desirable, because superior courts of record have attained the tradition of only legal practitioner, in the  
 D main, prosecuting cases, whether civil or criminal before them. (p. 448 B)

***Prosecuting criminal suit before Federal High Court***

4. Section 56(1) Federal High Court Act, cannot in the face of S.174(1)  
 E of the Constitution (supra) take over for interpretation under the canon of construction - “*expressio unus est exclusio alterius*.”<sup>1</sup> The Constitution must prevail. Police authority can, by virtue of the aforementioned provisions of S.174(1) of the Constitution prosecute any criminal suit  
 F either through its legally qualified officers or through any counsel they may engage for the purpose, (see *NPF v. Adekanye* (No. 1) (2002) 15 NWLR (pt 790) 318, 329.). “*Any other authority or person*” can definitely institute criminal prosecution. The powers of the Attorney-General of the Federation or of the State are not exclusive, any other person or authority can  
 G prosecute. However, the Attorney-General can take over or continue the prosecution from any such authority or person. He can also discontinue by way of nolle prosequi. Once the Constitution is clear and unambiguous on this issue the defects in S.56(1) Federal High Court Act affect only  
 H appearance but its omission of “*any other person or authority*” has not brought it into conflict with the Constitution, its inadequacy is merely procedural. (p. 448 F)

***Clear words of the Constitution - Subsidiary legislation***

5. But the use of the phrase “*subject to*” in S.23 Police Act in reference to S.174(1) of the Constitution is clear that Constitutional provision will govern in case of doubt. Therefore the argument which carried the day in the lower court as regards S.56(1) (Supra) in respect of expressio unus est exclusio alterius<sup>1</sup> will not work with the constitution. The Constitution cannot be strictly interpreted like an Act of National Assembly or a Law of State Assembly. As I said earlier, it must be construed without ambiguity because it being fountain of all laws, it is not supposed to be ambiguous. It must be literally interpreted so that every section therein will have meaning. All canons of construction will not abate but will be employed with great caution. Therefore when the Constitution is clear as to its intendment on any subject, the courts in giving construction thereto, are not at liberty to search its meaning beyond it. Any power given by the Constitution, cannot therefore be taken away by any Act of National Assembly or Law of a state or a subsidiary legislation. (p. 449 C)

***CONSTITUTIONAL LAW - Statutes - Conflict***

6. The provisions of S.56 Federal High Court Act have not closed the category of those who could prosecute criminal cases in the Federal High Court; have they purported to do so, they will conflict with S. 174(1) of the Constitution. The Police Act in S.23 is made subject to S. 174 and 211 of the Constitution. The Constitution cannot be trivialized or be in terrorem<sup>2</sup> of any law. The use of the phrase “*subject to*” as in S.23 (supra) is a very clear manifestation of the provisions of the Constitution vis-a-vis any other law.

In the face of provisions of the Constitution, the Acts or Laws of the country brood no ground for classification into specific or general provisions to defeat the Constitution. I can at any rate find no conflict between the provisions of S. 23 Police Act and Section 56(1) Federal High Court Act once they are juxtaposed and then read with S. 174(1) of the Constitution. (p. 449 H)

***Power to prosecute criminal cases in the Federal High Court***

7. From colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other courts of inferior jurisdiction. They derive their powers under S.23 Police Act. But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting Police Officer, ought to be legally qualified. This is not deleting from provisions of S.174(1) of the Constitution, rather it maintains age long practice of superior courts having counsel rather than by persons in most cases prosecuting matters.

For the foregoing reasons, I allow this appeal and hold that a Police Officer can prosecute by virtue of S.23 Police Act, S.56(1) Federal High Court Act and S. 174(1) of the Constitution of the Federal Republic of Nigeria, 1999. I therefore set aside the decision of Court of Appeal and restore the ruling of Federal High Court. (p. 451 C)

**NOTABLE POINTS OF INTEREST**

**KUTIGIJS**

***1. Implication of s.23 of the Police Act***

Section 23 no doubt gives any Police Officer power to conduct in person all prosecutions before any Court whether or not the information or complaint is laid in his name subject only to the provisions contained in Sections 174 and 211 of the Constitution which relate to the power of the Attorney-General of the Federation and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of Law in Nigeria. The section is unambiguous.

The Constitutional provisions are also quite clear. They simply mean that despite the various persons listed in (1), (2), (3), (4) and (5) above who are empowered to represent the Government of the Federation or any public officer in his official capacity to conduct prosecutions before Courts of law under Sections 56(1) & 57 of the Federal High Court Act, and Section 23 of the Police Act above, the Attorney-General of the Federation under Section 174(1)(b) & (c) of the Constitution, may take over and continue or discontinue any such criminal proceedings at any

stage before judgment. And not only that, the Attorney-General is further empowered to take over and continue or discontinue any such criminal proceedings instituted by any other authority or person. (p. 454 A)

### **KATSINA-ALUJSC**

B

#### *2. Courts are not to add own words to plain meaning of constitution*

The Constitution, by section 174(1) conferred power on the Attorney-General to institute and undertake criminal proceedings against any person before any court of law. The power to institute and undertake such proceedings before any court of law is that of the Attorney-General only. The Constitution does not confer such power on “*any other authority or person.*” I think that is plain enough. It is a cardinal rule of interpretation that if the words of an enactment are clear and unambiguous, the courts must expound those words in their natural and ordinary sense. The object of interpretation is to discover the intention of the law maker which is deducible from the language used. Therefore, once the meaning is clear the courts have a duty to give life and effect to it. The courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment. (p. 457 C)

#### *3. Only the A-G can prosecute before any Court, not the Police*

As I have already held, only the Attorney-General has the power to prosecute any person before any court of law in Nigeria. That power has not been conferred upon any other authority or person. The Police have hitherto prosecuted in some limited courts in Nigeria. But this was subject to the power of the Attorney-General to take over or discontinue such criminal proceedings. Section 23 of the Police Act has not in fact widened their scope and power. The word “any” in my considered opinion, does not imply every court of the land. I think it means “*some.*” If that were not so it would be in conflict with section 174(1)(a).

The inadequacy of section 23 of the Police Act is that it failed to state some of the Courts in which the Police officers can initiate and undertake criminal proceedings. (p. 458 D)

4. *The Police cannot prosecute before Federal High Court*

Whereas section 56(1) of the Federal High Court Act states the officers that can prosecute before that court on behalf of the Government of the Federation. Police officers are not on that list. What this means is that  
 B section 23 of the Police Act is a general provision while section 56(1) of the Federal High Court Act is a specific provision. The principle is well settled in the construction of statutory provisions, where a statute mentions specific things or persons, the intention is that those not  
 C mentioned are not intended to be included. In my judgment a police officer or the police are excluded from initiating criminal prosecutions by or on behalf of the Government of the Federation in the Federal High Court.

In the result, this appeal lacks merit and I dismiss it. (p. 458 G )

D MUSDAPHERJSC

5. *Condition under which Police prosecute before the FHC*

I have no doubt that looking at section 56(1) of the Federal High Court Act, even though a police officer can generally prosecute under section 23 of  
 E the Police Act in some courts, a police officer cannot prosecute in the Federal High Court on behalf of the Federal Government under section 56(1) thereof unless he is a legal practitioner and is authorized to do so by the Attorney-General of the Federation. [A legal practitioner may be  
 F qualified to appear in any court including the Supreme Court of Nigeria, but for him to appear to prosecute a case, he must be authorized either by the law creating the offence or by some other provision authorizing or instructing him to appear in the court. In other words there must be proper  
 G instructions from duly qualified authority to enable a legal practitioner to appear in court or to prosecute any person. Nuhu Ribadu, as a legal practitioner has no competence even though a police officer, to appear on, behalf of the Government of the Federation in the Federal High Court without the consent or instructions of the Attorney-General of the  
 H Federation. In my view, section 56(1) clearly restricts the right of police qua police even as a lawyer from appearing in the Federal High Court to prosecute any offence. In my view section 174 of the Constitution, as mentioned above merely recognizes that other authorities or persons may



have the power to prosecute criminal offences in some courts, but does not itself bestow Constitutional power to prosecute criminal offences in all Courts. It merely recognizes the existence of other laws authorizing the prosecution of offences by certain officials, in some courts. (p. 461 B)

*6. Statutes - Specific later provision overrules prior general provision*

I do not agree that section 174 of the Constitution is wide enough, to cover section 23 of the Police Act to enable any police officer to prosecute any criminal offence before any court, such as the Federal High Court. To give such wide interpretation to section 174 of the Constitution as covering the provision of section 23 of the Police Act will obviously lead to absurdity. It would mean that a police officer lawyer or non-lawyer can prosecute say a case of assault in the Federal High Court!! While section 56(1) of the Federal High Court Act prescribes who will prosecute before the court, section 23 of the Police Act seems to empower a police officer to prosecute before any court notwithstanding whether he is a lawyer or non lawyer. The Law is settled that when two statutes, though both are expressed in affirmative language, are contrary in matter, the latter abrogates the former.

From this rule it follows that if one statute enact something in general terms, and afterwards another statute is passed on same subject which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing or amending by implication the former.

In my view, the general power given to the police to prosecute in any court is necessarily amended by the later special provisions under section 56(1) of the Federal High Court Act requiring special representation in prosecutions before that Court. In my view, the Federal High Court Act merely creates an exemption or exception from the operation of section 23 of Police Act inoperative as far as prosecutions of Criminal offences are concerned in the Federal High Courts. (p. 462 F)

**PATS-ACHOLONUJSC**

*7. S. 56(1) FHC Act seems to contradict s. 174(1) of the constitution*

It is my view that the contents of section 56(1) aforesaid by its intendment has the ungainly feature of being contrary to section 174(1) of the Primary Law of the land. In that case it is a stunted section fit to be ignored. The implication of the intendment of section 174(1) aforesaid of the Constitution is that the office of the Attorney-General does not have the monopoly of prosecution though it has the power to take over any case in any Court and decide whether to go on with it or not. Generally speaking any legal practitioner not disbarred except under some restriction recognized by the primary law of the land has the right of audience in any Court. This equally implies or denotes that in appropriate cases such a legal practitioner coming under the description as contained in the Legal practitioners Act has the right of appearance which term includes prosecuting a case, and can due to the wide open door of section 174(1) initiate criminal prosecution on behalf of the agency he works for particularly as in this case an institutional body vested with power to check, prevent and investigate crimes and even to prosecute. (p. 469 F)

*8. One called to the bar has right of evidence before the court*

It is important to understand that section 56(1) of the Federal High Court Act was made long before the current Constitution. With the tenor of the Constitution (vide section 174(1) it is definitely inappropriate and unacceptable to have a provision in a statute made by the National Assembly that seeks by its intendment to thwart or do violence to section 174(1) of the Constitution. It is difficult for one to endorse a law that dictates as to which legal practitioner may practice in the Federal High Court in a discriminatory manner when no such Act providing for such a preferential treatment for the Supreme Court exists.

I wish to state here that whenever any person is called to the bar and is enrolled to practice then he has the right of audience and unless the Constitution eloquently forbids such a person or provides a qualification for appearance in Court, any Act prescribing provisions contrary to the spirit of the Constitution should be regarded as otiose. (pp. 470 D / 472 A)

**ONNOGHENJSC**

*9. Any person can institute criminal proceedings vide s. 174(1)(b) 1999 Constitution*

It is my considered view that neither Section 23 of the Police Act which grants the power to any Police Officer to institute criminal proceedings in any court in Nigeria nor Section 174(1) (b) which recognizes the right of “*any other authority or person*” to institute criminal proceedings in Nigeria states that such a Police Officer or any “other person” must be a legal practitioner to be so qualified. The provisions are very clear and it is settled principle of constitutional interpretation that the provisions therein must be interpreted liberally instead of being given restrictive interpretation. It is also against the law for the court to read into any provision of a Statute or Constitution what is not expressly or by necessary implication provided or stated. It follows therefore that where constitutional provisions are clear and unambiguous as in this case, there is nothing to be interpreted, the duty of the court being simply to give effect to what has been expressly and clearly stated by the legislature. It is therefore my view that if it was the intention of the framers of the 1999 Constitution to exclude those without legal training from the group of those recognized to institute criminal proceedings in any court in Nigeria they would have clearly stated so in Section 174 of the 1999 Constitution. Their not so stating leaves us with no other option than to hold that by the expression “*any other person*” used in Section 174(1)(b) of the 1999 Constitution, the framers meant what they said; that is any other person whether learned in law or otherwise - provided he is of course a person. (p. 489 A)

*10. Flood gate opened by the Constitution - How it can be closed*

The fear is naturally expressed of the effect of opening the floodgate by giving the clear meaning to the section in issue. My answer is simply that the court is incapable of closing the floodgate already opened by the Constitution of the land by process of judicial activism through the exercise of its interpretative jurisdiction. I hold the view that the floodgate so opened by the Constitution can only be either narrowed or closed down

completely by legislative process duly initiated by way of amendment to the relevant provisions.

The law being as it stands by virtue of the constitutional provisions which is supreme, I hold the view that any police officer, irrespective of the fact that he is a qualified legal practitioner, has the power under Section 23 of the Police Act and Section 174 (1) (b) of the 1999 Constitution to institute criminal proceedings in any court in Nigeria. (p. 489 F)

### **REPRESENTATION**

- C Alh. Abdullahi Ibrahim, SAN for the appellant with him are Prof. Osipitan, SAN; O. Makanjuola Esq. and A. I. Aderogiba Esq.  
Chief Bayo Ojo, SAN, A-G of the federation as amicus curiae with him Salman Salman Esq. and C. O. Assan Esq.
- D Ayodele Akintunde Esq for the 1st to 7th respondents with him is C. A. Balogun, Esq.  
O. G. Oyeleke Esq. for the 8th respondent.

### **CASES REFERRED TO**

- Araka v. Egbue (2003) 17 NWLR (pt 848) 1  
Ezeadukwa v. Maduka (1997) 8 NWLR (pt 518) 635, 657  
NPF v. Adekanye (No. 1) (2002) 15 NWLR (pt 790) 318, 329  
A-G Ondo State v. A-G Ekiti State (2001) 17 NNLR (Pt 743) 706, 770
- F Tukur v. Governor of Gongola State (1984) 4 NNLR (pt 117) 580  
Labiya v. Anretiola (1992) 8 NWLR (Pt 258) 139, 163, 164  
Landboye v. Ogunsiji (1990) 6 NWLR (Pt 155) 210  
Olusemo v. Commissioner of Police (1998) 11 NWLR (pt 575) 547, 558
- G Ifezue v. Madugha (1984) 5 SC 79  
Obeta v. Okpe (1996) 9 NWLR (Pt. 473) 401  
Awobutu v. The State (1976) ALL NLR 237  
Shittu Layiwola & Ors. v. The Queen (1959) 4 F.S.C. 119
- H Buhari v. Yusuf (2003) 14 NWLR (Pt. 841) 446  
P.D.P v. INEC (1999) 11 N.W.L.R . (Pt. 626) 200 at 243  
Owena Bank v. N.S.E Ltd (1997) 8 NWLR (pt 515)

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999 ss. 174(1)(a) & 211

Police Act s. 23

Federal High Court Act ss. 56 & 57

High Court Act (FCT) s. 98(1)

B

**LEAD JUDGMENT BY BELGORE JSC**

The Appellant by an amended charge was before Federal High Court, Lagos Division (Nwodo J.), charging the Respondents with various offences under Miscellaneous Offences Decree (Act) of 1984. The prosecutor was Nuhu Ribadu. By a Motion on Notice the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Defendants, (now 1st - 8th Respondents) prayed for the charge to be quashed upon the following grounds:

(i) Under Section 174(1) (a) of the 1999 Constitution, only the Attorney General of the Federation is empowered to institute and undertake criminal proceedings against the 2nd to the 9th Accused persons in respect of offences created under the Miscellaneous Offences Decree (formerly Special Miscellaneous Offences Decree) No. 20 of 1984;

(ii) The powers conferred on the Attorney-General of the Federation under Section 174(1)(a) of the 1999 Constitution can only be exercised by him in person or through officers of his department; and:

(iii) The Prosecutor in these proceedings and/or other persons assisting him are Police Officers and are not officers of the Attorney-General of the Federation's office/department.

(iv) The Charges and/or the Amended Charges herein are an abuse of legal process.

The supporting affidavit pointed out that the Prosecutor, Nuhu Ribadu, was a police officer in Nigeria Police Force and that all those assisting him to prosecute were similarly police officers. It was further deposed in the affidavit that it was believed the appropriate authority empowered to institute and undertake criminal proceedings against the Respondents herein in respect of offences created under Miscellaneous Offences Act is the Attorney-General of the Federation or through officers in his Ministry. As Nuhu Ribadu and other police officers with him now

prosecuting were not officers in the Attorney-General's Department and they had no fiat of the Attorney-General to prosecute the matter, the charges should be quashed.

In a Counter-Affidavit sworn to by an Inspector-General of Police, Mr. Paul Okafor, it was deposed that the police did not need the fiat of the Attorney-General of the Federation to prosecute the offences under Miscellaneous Offences Act by virtue of Section 23 of Police Act (Cap. 359 Laws of the Federation of Nigeria 1990).

It was further deposed that though the Attorney-General and members of his department could prosecute, the police equally could prosecute under the Act.

In her ruling dated 18th July, 2001, Nwodo, J. referred to S. 56 of the Federal High Court Act which reads:

*"In the case of a prosecution or on behalf of the Government of the Federation or by any public officer in his Official capacity the Government of the Federation or that officer may be represented by a law officer, State Counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation."*

And held that the law officers specified in the section are of two categories, to wit, the law officers in Ministry of Justice and law officers in other government departments. She therefore came to the conclusion that like officers who are legally qualified (in this case officers called to Nigerian Bar) can prosecute without the fiat of the Attorney-General and that there was no violation of S.174 of the Constitution of the Federal Republic of Nigeria 1999.

Against this decision an appeal was lodged at the Court of Appeal, Lagos Division. Before setting out the issues for determination in that Court, it is pertinent to set out the Grounds of Appeal for better appreciation:

## 2. GROUNDS OF APPEAL

### ERROR IN LAW

The learned trial Judge erred in law when she held:

*"In the present case there is no evidence to show that Attorney-General desires or has entered the arena. Until then, the present prosecutor*

*who is not just a police officer but a legal practitioner and entitled to practice in all courts in Nigeria, has the vested right to initiate and prosecute this case.”*

PARTICULARS:

(i) A “*police officer*” is not one of the officers authorized in Section 56(1) of the Federal High Court Act to represent the government of the Federation in the case of a prosecution by or on its behalf in the Federal High Court and it does not matter if the Police officer is a legal practitioner or not;

(ii ) The specific provisions of Section 56(1) of the Federal High Court Act which govern the category of officers that can represent the Government of the Federation in the case of a prosecution by or on its behalf in the Federal High Court and excludes “*police officers*” should have been invoked by the learned trial judge over the general powers of prosecution contained in Section 23 of the Police Act:

(iii) Under Section 56(1) of the Federal High Court Act a “*legal practitioner*” cannot represent the Government of the Federation in a prosecution by or on its behalf in the Federal High Court unless he is authorized by the Attorney-General of the Federation:

(iv) To promote the general purpose of the legislature and the spirit of the Miscellaneous Offences Act or Decree only the Attorney-General of the Federation or any person duly authorized by him can prosecute any offence under the Act or Decree;

(v) Ab initio, the present prosecutor though a police officer and a legal practitioner does not have a vested right to initiate and prosecute this case on behalf of the government of the Federation in the Federal High Court.

2. ERROR IN LAW

The learned trial Judge erred in law when she held:

*“Therefore one can conveniently hold that the word law officer as envisaged in “section 56(1) of Federal High Court Act extend to law enforcement officers such as police officer.”*

PARTICULARS

(i) A “*police officer*” is not a “*law officer*” within the meaning of

Section 3 of the Law Officers Act Cap 204 laws of the Federation:

(ii) “*Law officer*” as envisaged in section 56(1) of Federal High Court Act and the Law Officers Act does not extend to law enforcement officers such as police officers:

B (iii) Since Section 56(1) of the Federal High Court Act expressly excludes a “*police officer*” from the category of officers that can represent the government of the Federation in the case of a prosecution by or on its behalf in the Federal High Court, the police officer prosecuting this case cannot prosecute this case under guise of a “*law officer*.”

C 3. MISDIRECTION IN LAW

After conceding that there was no express provision in the Federal High Court Act giving a police officer the right to prosecute in the Federal High Court, the learned trial judge misdirected herself in law when she held D thus:

*“I do concede that there is no express provision in the Federal High Court but like I earlier discussed it does not expressly exclude police officers. I disagree most respectfully with counsel that the case of Olusemo E is not applicable. Granted, the law in that case was on the penal code and rested on the Federal Capital Territory, Abuja High Court Act. The principle of law discussed on the right of a police officer to prosecute is the same as the present case.”*

F PARTICULARS:

(i) The absence of express provision in the Federal High Court Act allowing a police officer to prosecute meant that “*police officer(s)*” were expressly excluded,

G (ii) Once the learned trial judge conceded that the Federal High Court Act did not expressly provide for a police officer to prosecute in the Federal High Court she was left with no option but to hold that the prosecution of the Appellants was incompetent and an abuse of court process;

H (iii) The facts, circumstances and principle of law of this case are clearly distinguishable from the case of Olusemo Vs. Cop 1998 II NWLR part 575, page 547 and particularly, Section 56(1) of the Federal High Court Act was not considered by the Court of Appeal in Olusemo’s case;



(iv) Section 98(1) of Federal Capital Territory, Abuja High Court Act considered in the case Olusemo Vs. COP (Supra), recognizes that a “law officer” is different from a “police officer” and specifically allows a “police officer” to represent the “State” in the case of a prosecution in the Abuja High Court.

#### 4. RELIEF SOUGHT FROM THE COURT OF APPEAL

That the Appeal be allowed and the ruling of the learned trial judge dated the 18th day of July, 2001 be set aside. On those Grounds of Appeal the sole issue for determination by the Appellants therein (now Respondents) is as follows:-

*“Under S.56(1) of the Federal High Court Act, only a law officer, a state counsel or legal practitioner duly authorized by the Attorney-General of the Federation can represent the government of the Federation in a prosecution by or on its behalf in the Federal High Court. Can a Police Officer (irrespective of being called to the Nigerian Bar) represent the government of the Federation in : the Federal High Court?”*

In their brief the Respondents as Appellants in the court below adverted to several cases including Awobute v. The State (1976) ALL NLR 237, 253; Layiwola & Others v. The Queen (1959) 4 FSC 119 and Law Officers Act (Cap. 204 Laws of the Federation of Nigeria 1990) to demonstrate who is a law officer. The Appellants further advanced a canon of interpretation that where there are two laws, one specific and the other general, and they are in conflict on the same issue or subject-matter, the specific law should be followed and referred to Ezeadukwa v. Maduka (1997) 8 NWLR (Pt 518) 635. Finally it was submitted that the criminal proceedings as initiated by the Police Officers was totally incompetent, null and void by relying on Okafor v. The State (1976) 5 S.C 13; Onwuka v. The State (1970) 1 All NLR 159; Queen v. Owo (1962) 1 All NLR 659, 666, 667. A distinction was pointed out between Section 98 Federal Capital Territory Act which reads: Section 98 of the FCT Act provides:

*“In the case of a prosecution by or on behalf of the State or by a public officer in his official capacity, the State or that officer may be represented by a law officer, Director of Public Prosecutions, State Counsel, administrative officer, “POLICE OFFICER”, or by any legal*

*practitioner or other person duly authorized in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorized by the head of the department concerned.” (emphasis mine)*

While Section 56 of the Federal High Court Act provides:

B :        *“In the case of a prosecution by or on behalf of the government of the Federation or by any public officer in his official capacity the government of the Federation or that officer may be represented by a law officer, State Counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation”.*  
C (emphasis mine) .

The present Appellant as Respondent set out two issues for determination as follows:-

1. Can an accused person, or even a court, object to the counsel  
D representing the complainant in a criminal matter on the ground that the said counsel did not obtain the authority of the Attorney-General of the Federation when the Attorney-General himself did not so object?

2. Can a legal practitioner who is a Police Officer be barred from  
E acting as counsel to the Federal Government of Nigeria in a criminal matter in the Federal High Court merely because he does not have a Fiat (i.e. a legal instrument issued in writing) or even the authority of the Attorney-General of the Federation?

F        The main plank of the Respondent was that it was not the business of the Appellants as Defendants in trial Court to question who prosecuted on behalf of the Federal Government. Reference was made to Nigerian Union of Railwaymen v. Nigerian Railway Corporation (1996) 9 NWLR (Pt 473) 490, 504. The second issue as proposed, seemed to be in the  
G alternative to the first issue: Where the provision of a statute is in conflict with the Constitution the Constitution shall prevail and the statute will be void to the extent of the inconsistencies: Section 56 of Federal High Court Act, though not inconsistent with S.174 of the Constitution, the operative  
H word is “may” which is not compulsive but discretionary.

Court of Appeal found favour with the argument of the Appellants before it. Juxtaposing S.98(1) High Court Act (FCT) with S.56 Federal High Court Act, it came to the conclusion that the latter Act deliberately

excluded Police Officers from prosecution and thus allowed the appeal. Thus this appeal to the Supreme Court. Because of the importance of this matter to the legal profession and its constitutional implications the court asked for briefs from amici curiae to wit, Chief Bayo Ojo S.A.N. then President of the Nigerian Bar Association and Oluyinmi SAN the then Attorney-General of the Federation. Chief Ojo is now the Attorney-General of the Federation and has abandoned his brief as President N.B.A. and adopts the brief of his predecessor in office which is not much different from his own. Now we have the briefs by parties to this appeal and the brief of Attorney-General of the Federation as amicus curiae. Counsel for the Appellant, Alhaji Abdullahi Ibrahim, SAN, formulated only one issue for determination reading as follows:-

#### ISSUES FOR DETERMINATION:

Having regard to the ground of appeal filed in this appeal, the Appellant contend that there is one issue arising for determination in this appeal and that is - Whether the Court of Appeal was right when in interpreting Section 56(1) of the Federal High Court Act, Section 23 of the Police Act and Section 174(1) of the 1999 Constitution, came to the conclusion that the police officers prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal High Court.

This issue is based on the Grounds of Appeal filed. It must be pointed out that some facts are not disputed, to wit:

(i) "The suit has been instituted by a police officer who is also a qualified barrister and solicitor of the Supreme Court of Nigeria by virtue of Legal Practitioners Act and ostensibly entitled to practice before any court, whether of superior Court of record or not.

(ii) It is also true he never filed the suit (criminal charge) with the fiat of the Attorney-General of the Federation as the charge relates to Federal offences i.e. offences under the statute/Act of National Assembly.

However the big issue is whether a police officer, legally qualified to practice law in all courts in the Federation by virtue of his having been called to Nigerian Bar under Legal Practitioners Act, can institute criminal proceedings without the fiat of the Attorney-General of the Federation. To

answer this all important question, it is pertinent to refer to the relevant Acts of National Assembly vis-a-vis the provisions of the Constitution of Federal Republic of Nigeria 1999. Sections 56(1) and 57 of the Federal High Court Act read as follows:

B      S.56(1) *“In the case of prosecution by or on behalf of the Government of the Federation or by any Public Officer in his official capacity the Government of the Federation or that officer may be represented by a law officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.*

S.57: *All persons admitted as legal practitioners to practice in Nigeria shall, subject to the provisions of the Constitution and Legal Practitioners Act have the right to practice In the court”*

D      Federal High Court held by virtue of the above provisions and relative to provisions of S. 174(1) of the 1999 Constitution that legally qualified police officer can file criminal charges and prosecute in all courts in the country subject to the exception in those constitutional provisions.

E      The court considered the Police Act in Section 23 thereof reading:

F      S.23: *“Subject to the provisions of Section 174 and Section 211 of the Constitution of the Federal Republic of Nigeria (which relate to the power of the Attorney-General of the Federation and of the State to institute and undertake, take over and continue criminal proceedings against any person before any court in Nigeria) any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.”*

G      And read it along with S. 174(1) (a), (b) and (c) of the Constitution, (supra) to come to its decision. Court of Appeal held otherwise. **I think the argument that seemed to persuade Court of Appeal is in the argument of the present Respondents as Appellants calling the Police Act a general Act and the Federal High Court Act Specific Act.**

H      That dichotomy certainly swayed the court below. That decision, to my mind is misplaced. In the present appeal, it seems the Attorney-General of the Federation as amicus curiae followed that general line in the brief filed. If the Police Act was made by National

Assembly, so is the Federal High Court Act. There is no magic wand behind the phrase “any court” in Police Act; the same phrase has been employed in S.174(1)(a) of the Constitution. The cases of *Araka v. Egbue* (2003) 17 NWLR (pt 848) 1, *Ezeadukwa v. Maduka* (1997) 8 NWLR (pt 518) 635, 657, are far from relevant to the present issue before us. Where two provisions, one each from an Act of National Assembly conflict in relation to the same subject-matter, as in this instance, question of right to prosecute criminal matter in Federal High Court, the conflict cannot be isolated to the two provisions only insofar as there are constitutional provisions on the same matter. In such a situation the provisions of the Constitution shall govern the interpretation. The Constitution of the Federal Republic of Nigeria 1999 provides as follows:-

Section 174(1) of the Constitution provides:

“174(1) *The Attorney-General of the Federation shall have power:-*

(a) *to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under an Act of the National Assembly;*

(b) *to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

(c) *to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person*”. (Emphasis supplied).

The question of specific provision or general provision of any enactment will disappear in the face of clear provisions of the Constitution. The Constitution without any ambiguity, recognizes as S. 174(1)(b) provides:

“any such criminal proceedings that may have been instituted by any other authority or person.”

The same “any other authority or person,” appears in S. 174(1)(b). If there is any aspect of ambiguity, it could be the word “person.” The Police Force is an authority of the Federal Government. But as the Constitution provides “any person,” does it mean that a flood-gate is

opened for all persons (whether legally qualified or not) to prosecute criminal proceedings in any court in Nigeria?

**Constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws.** As such, Constitution is not at any given situation expected to or presumed to contain ambiguity. All its provisions must be given meaning and interpretation even with the imperfection of the legal draftsman. Common sense must be applied to give meaning to all its sections or Articles. **To appear** in all superior courts of record in Nigeria to prosecute any case, civil or criminal, the person is presumed to be a legal practitioner as provided in Legal Practitioners Act. So the words “*any....person*” presumes as “*represented by a legal practitioner*”. And for “*any other authority*” presupposes that authority could be represented by a legally qualified person either in that authority or engaged for the purpose by that authority. For example in cases of negative averment whereby a person has defaulted in paying his taxes, the Board of Inland Revenue can engage services of a legal practitioner or a legally qualified employee of the Board to prosecute the defaulter. It does not mean however that in all cases, a legally qualified person must appear. It is only desirable, because superior courts of record have attained the tradition of only legal practitioner, in the main, prosecuting cases, whether civil or criminal before them.

**Section 56(1) Federal High Court Act, cannot in the face of S. 174(1) of the Constitution (supra) take over for interpretation under the canon of construction - “*expressio unus est exclusio alterius*.”**<sup>1</sup> The Constitution must prevail. Police authority can, by virtue of the aforementioned provisions of S. 174(1) of the Constitution prosecute any criminal suit either through its legally qualified officers or through any counsel they may engage for the purpose, (see NPF Vs Adekanye (No. 1) (2002) 15 NWLR (pt 790) 318, 329.). “*Any other authority or person*” can definitely institute criminal prosecution. The powers of the Attorney-General of the Federation or of the State are not exclusive, any other person or authority can prosecute.

However, the Attorney-General can take over or continue the prosecution from any such authority or person. He can also discontinue by way of nolle prosequi. Once the Constitution is clear and unambiguous on this issue the defects in S.56(1) Federal High Court Act affect only appearance but its omission of “*any other person or authority*” has not brought it into conflict with the Constitution, its inadequacy is merely procedural. It is clear in S.57 Federal High Court Act that all legal practitioners have right of appearance in Federal High Court. But I am of the view that S.57 (Supra) is not of any help in dealing with S.56(1). But the use of the phrase “subject to” in S.23 Police Act in reference to S. 174(1) of the Constitution is clear that Constitutional provision will govern in case of doubt. Therefore the argument which carried the day in the lower court as regards S.56(1) Supra) in respect of *expressio unus est exclusio alterius*<sup>1</sup> will not work with the constitution. The Constitution cannot be strictly interpreted like an Act of National Assembly or a Law of State Assembly. As I said earlier, it must be construed without ambiguity because it being fountain of all laws, it is not supposed to be ambiguous. It must be literally interpreted so that every section therein will have meaning. All canons of construction will not abate but will be employed with great caution. (PDP v. INEC (1999) 11 NNLR (Pt 626) 200, 243.) Therefore when the Constitution is clear as to its intendment on any subject, the courts in giving construction thereto, are not at liberty to search its meaning beyond it. Any power given by the Constitution, cannot therefore be taken away by any Act of National Assembly or Law of a state or a subsidiary legislation. (Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634; Landboye v. Ogunsiji (1990) 6 NWLR (Pt 155) 210; Adisa v. Oyinwola (2000) 10 NWLR (pt 674) 116, 215. As I posited earlier, the Constitution is not to be construed with any ambiguity or mistake by its framers, it must not be subordinated to any other law and in construction must not be subjected to indignity of deletion of any section or part thereof.

The provisions of S.56 Federal High Court Act have not closed the category of those who could prosecute criminal cases in the

**Federal High Court; have they purported to do so, they will conflict with S. 174(1) of the Constitution.** (A-G Ondo State v. A-G Ekiti State (2001) 17 NNLR (Pt 743) 706, 770 paras A-B). **The Police Act in S.23 is made subject to S. 174 and 211 of the Constitution. The Constitution cannot be trivialized or be in terrorem<sup>2</sup> of any law. The use of the phrase “subject to” as in S.23 (supra) is a very clear manifestation of the provisions of the Constitution vis-a-vis any other law.** (Tukur v. Governor of Gongola State (1984) 4 NNLR (pt 117) 580; Labiyi v. Anretiola (1992) 8 NWLR (Pt 258) 139, 163, 164.

**In the face of provisions of the Constitution, the Acts or Laws of the country brood no ground for classification into specific or general provisions to defeat the Constitution. I can at any rate find no conflict between the provisions of S. 23 Police Act and Section 56(1) Federal High Court Act once they are juxtaposed and then read with S. 174(1) of the Constitution.**

Kalgo J.C.A. (as he then was correctly summed up the situation in Olusemo v. Commissioner of Police (1998) 11 NWLR (pt 575) 547, 558, E when he said:

*“By these provisions the Attorney-General of the Federation and of the State as the case may be, are themselves empowered to institute and undertake any criminal proceedings in any court in Nigeria and if any other person or authority instituted or undertook any such criminal proceedings in any court in Nigeria, within their respective jurisdictions, they have the power to take it over, continue or discontinue at any stage of proceedings;*

*In the instance, the power to prosecute or undertake criminal prosecution is vested in the Police officer under Section 23 of the Police Act subject to the exercise of powers conferred on the Attorney-General by the provisions of Section 160 of the Constitution. It is very clear and without any doubt that the Attorney-General of the Federation has not exercised his powers under Section 160 of the Constitution in the instance case. Therefore, the Police officers powers to prosecute in the criminal proceedings in this case is not limited, restricted or controlled. Mr. Ehindero qua Police Officer is competent to prosecute in these proceed-*



ings in any court in Nigeria including the High Court.” (emphasis supplied)

His Lordship continued:

“Since the applicant’s main objection was the appearance of Mr. Ehindero in the High Court, it is necessary to examine the relevant provisions of the FCT High Court Abuja as contained in Cap. 510 of the Laws of the Federation of Nigeria 1990.”

The case decided clearly that Mr. Ehindero A.I.G. (as he then was) as a legally qualified person, could prosecute any criminal case in any court in Nigeria.

**From colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other courts of inferior jurisdiction. They derive their powers under S.23 Police Act. But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting Police Officer, ought to be legally qualified. This is not deleting from provisions of S.174(1) of the Constitution, rather it maintains age long practice of superior courts having counsel rather than by persons in most cases prosecuting matters.** The confusion that this matter has caused is rather unfortunate for trial of criminal cases; it has caused a disturbingly long delay. Previous Constitutions before 1979 provided for the post of Director Public Prosecutions, an independent officer, with powers in a statute. The absence of this vital office from subsequent constitutions has created this dilemma. But the worrisome side of this case is the failure of the Attorney-General to take over the prosecution. Perhaps the witnesses in the substantive prosecution are still available. Justice seems to suffer some delay in this case.

**For the foregoing reasons, I allow this appeal and hold that a Police Officer can prosecute by virtue of S.23 Police Act, S.56(1) Federal High Court Act and S. 174(1) of the Constitution of the Federal Republic of Nigeria, 1999 I therefore set aside the decision of Court of Appeal and restore the ruling of Federal High Court.**

**KUTIGIJSC**

This is an appeal against the judgment of the Court of Appeal, Lagos wherein the Court set aside the Ruling of the Federal High Court, Lagos and held that the Appellants being Police Officers are not law officers as envisaged by Section 56(1) of the Federal High Court Act, 1990 and thus not capable of initiating and or undertaking the prosecution of cases in the Federal High Court. The Court of Appeal therefore struck out the charges preferred against the Respondents in the Federal High Court.

Being aggrieved by the decision of the Court of Appeal, the Appellant has appealed to this Court. Only one issue has been submitted for determination. It reads -

*“Whether the Court of Appeal was right when in interpreting Section 56(1) of the Federal High Court Act, Section 23 of the Police Act and Section 174(1) of the 1999 Constitution, came to the conclusion that the Police Officers prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal High Court.”*

It is clear to me that the answer to this all-important question can only be found after a careful examination of the relevant laws, to wit -

1. Sections 56(1) & 57 of the Federal High Court Act, 1990;
2. Section 23 of the Police Act Cap. 359 Laws of the Federation 1990; and
3. Section 174(1)(a), (b) & (c) of the 1999 Constitution of Nigeria.

The Sections respectively provide as follows –

*“Section 56(1) - In the case of a prosecution by or on behalf of the Government of the Federation or by any public officer in his official capacity the Government of the Federation or that officer may be represented by a Law Officer, State Counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.”*

*“Section 57 - All persons admitted as legal practitioners to practice in Nigeria shall subject to the provisions of the Constitution and Legal Practitioners Act have the right to practice in the Court.”*

(emphasis supplied by me)

Section 23 of the Police Act also reads -

*“Subject to the provision of Sections 160 and 191 of the Constitution of the Federal Republic of Nigeria (which relate to the power of the Attorney-General of the Federation and the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any Court of Law in Nigeria) any Police Officer may conduct in person all prosecutions before any Court whether or not the information or complaint is laid in his name.”* B

Sections 160 and 191 of the 1979 Constitution referred to above, are now respectively Sections 174 and 211 of the 1999 Constitution. Finally Section 174 of the Constitution provides thus - C

*“174(1) The Attorney-General of the Federation shall have power*

*-*

*(a.) to institute and undertake criminal proceedings against any person before any Court of law in Nigeria, other than a Court martial, in respect of any offence created by or under an Act of the National Assembly;* D

*(b.) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and* E

*(c.) to discontinue at any stage before judgment is delivered any such m criminal proceedings instituted or undertaken by him or any other authority or person.”*

From the provisions of the Acts and the Constitution cited above, which in my view are clear and unambiguous, it is evident that the following persons have the right to practice in the Federal High Court - F

(1.) All persons admitted as legal practitioners to practice in Nigeria (subject to the provisions of the Constitution and the Legal practitioners, Act) (see Section 57; 92) Law Officer (see Section G

56 (1)(3 .) State Counsel (see Section 56(1) ;

(4.) any legal practitioners duly authorized in that behalf by or on behalf of the Attorney-General of the Federation (see Section 56(1)

(5.) Police Officer:: (see Section 23 of the Police Act). H

(6.) any other authority or person (see Section 174(l)(b) & (c) of the 1999 Constitution).

One can safely say that the people mentioned under (2), (3) & (4)

above, must also necessarily be persons admitted as legal practitioners to practice in Nigeria just as it is under (1) . Those under (5) & (6) need not be legal practitioners at all. But if they are, the better.

Section 23 no doubt gives any Police Officer power to conduct in  
B person all prosecutions before any Court whether or not the information  
or complaint is laid in his name subject only to the provisions contained in  
Sections 174 and 211 of the Constitution which relate to the power of the  
Attorney-General of the Federation and the State to institute and undertake,  
C take over and continue or discontinue criminal proceedings against any  
person before any Court of Law in Nigeria. The section is unambiguous.

The Constitutional provisions are also quite clear. They simply  
mean that despite the various persons listed in (1), (2), (3), (4) and (5)  
above who are empowered to represent the Government of the Federation  
D or any public officer in his official capacity to conduct prosecutions before  
Courts of law under Sections 56(1) & 57 of the Federal High Court Act,  
and Section 23 of the Police Act above, the Attorney-General of the  
Federation under Section 174(l)(b) & (c) of the Constitution, may take  
E over and continue or discontinue any such criminal proceedings at any  
stage before judgment. And not only that, the Attorney-General is further  
empowered to take over and continue or discontinue any such criminal  
proceedings instituted by any other authority or person.

F So apart from persons listed under (1), (2), (3), (4) and (5) above,  
the Constitution has extended the list by adding another class of persons  
who may institute or undertake criminal proceedings to wit “*any other  
authority or person.*”

G Needless to say that the “any other authority or person” must be an  
authority or person authorized by law to institute or undertake criminal  
proceedings who as I said may not necessarily be legal practitioners such  
as Police Officers under the Police Act in this case.

H The 1999 Constitution is no doubt as expected far ahead of both the  
Federal High Court Act and the Police Act when it provided for “*any other  
authority or person*” as above. It is observed that both the Federal High  
Court Act and the Police Act are Federal Acts and or legislations. It is  
therefore unthinkable to talk of one being superior to the other. The two

Acts must therefore not be read in isolation of one another. They must be read together jointly with the provisions of Section 174 of the Constitution. And once that is done, the conclusion is inescapable that Police Officers mentioned in Section 23 of the Police Act easily come under and covered by “*any other authority or person*” contained in Section 174 of the Constitution (see for example *OLUSEMO v. COMMISSIONER OF POLICE* (1998) 11 N.W.L.R. (Pt. 75) 547; *N.P.F. v. Adekanye* (2002) 15 N.W.L.R. (Pt. 790) 318). The Constitution is the supreme law of the land and Section 174 is very clear and unambiguous. It means what it says. It must be applied.

The only irresistible conclusion I have reached is that Section 56(1) of the Federal High Court Act and Section 23 of the Police Act when read together with Section 174(l)(b), (c) of the Constitution make it clear that a Police Officer, any Police Officer, has the power to conduct criminal proceedings before the Federal High Court.

It is for the above reasons that I agree with the lead judgment of my learned brother Belgore JSC, which I read before now, to allow this appeal. The judgment of the Court of Appeal is therefore set aside, while the Ruling of the trial Federal High Court is restored. The appeal is allowed accordingly.

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#### **KATSINA-ALU JSC (Dissenting)**

This is an appeal against the judgment of the Court of Appeal (Lagos Division) delivered on 22 May 2003 whereby the court set aside the decision of Nwodo J. of the Federal High Court and held that the Police officers prosecuting the Respondents lacked the competence under section 56(1) of the Federal High Court Act to do so. Consequently the Court of Appeal struck out the charges against the Respondents.

The short facts of the case are these. The Respondents were arraigned before the Federal High Court Lagos on a six count charge and/or amended charge filed by Police officers of the Nigeria Police on 18 January 2001 and 9 February 2001 respectively under the Miscellaneous Offences Decree No. 20 of 1984.

In the course of the proceedings, the Respondents filed an applica-

tion seeking to quash the charge on the ground that by virtue of section 174(1)(a) of the 1999 Constitution, it is only the Attorney-General and officers of his department that can institute or undertake criminal proceedings against them on behalf of the Government of the Federation in that B court.

The Police officers contended that they had powers under section 23 of the Police Act to prosecute the Respondents before the Federal High Court. It was said that they did not require the fiat of the Attorney-General C of the Federation to initiate and prosecute the charge.

The Federal High Court in its ruling dismissed the application of the Respondents and held that Police officers had the power to prosecute the Respondents on behalf of the Government of the Federation.

On appeal to the Court of Appeal, that court allowed the appeal and D held that the Police officers presently prosecuting the Respondents before the Federal High Court lacked the competence under section 56(1) of the Federal High Court Act to do so. This appeal to this court is from that decision.

E In its brief of argument, the Appellant submitted a lone issue for determination. It reads

*“Whether the Court of Appeal was right when in interpreting section 56(1) of the Federal High Court Act, section 23 of the Police Act and F section 174(1) of the 1999 Constitution, came to the conclusion that the police officers prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal Court.”*

The sole issue submitted by the Respondents is similar and indeed G identical to the Appellant’s issue

The main issue in this appeal is the interpretation or construction of section 56(1) of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the Constitution of the Federal Republic of Nigeria 1999 vis-a-vis the powers of the Police Officers to represent the H Government of the Federation in a prosecution by or on its behalf in the Federal High Court.

I shall deal first with section 174(1) of the 1999 Constitution. It provides:

*“174(1) The Attorney-General of the Federation shall have power*

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under an Act of the National B Assemble;*

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any C such criminal proceedings instituted or undertaken by him or any other authority or person.”*

The first thing to note is that section 174(1) deals with the power of the Attorney-General. The Constitution, by section 174(1) conferred D power on the Attorney-General to institute and undertake criminal proceedings against any person before any court of law. The power to institute and undertake such proceedings before any court of law is that of the Attorney-General only. The Constitution does not confer such power on “*any other authority or person.*” I think that is plain enough. It E is a cardinal rule of interpretation that if the words of an enactment are clear and unambiguous, the courts must expound those words in their natural and ordinary sense. The object of interpretation is to discover the intention of the law maker which is deducible from the language used. Therefore, F once the meaning is clear the courts have a duty to give life and effect to it. The courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment: See Ifezue v. Madugha (1984)5 SC 79; Obeta v. Okpe (1996)9 NWLR (Pt.473) 401. G

I come now to section 56(1) of the Federal High Court Act. It provides as follows:

*“In the case of a prosecution by or on behalf : of the government of the Federation or by any public officer in his official capacity the Government of the Federation or that officer may be represented by a law H officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation” (emphasis mine).*

Section 56(1) of the Federal High Court Act in my view also presents no difficulty. A law officer includes the offices of state counsel of all grades, the office of the Director of Public Prosecutions, the office of the Solicitor-General which are offices charged with legal duties under the Attorney-General. Any legal practitioner must be duly authorized in that behalf by or on behalf of the Attorney-General of the Federation. See *Awobutu v. The State* (1976) ALL NLR 237; *Shittu Layiwola & Ors. v. The Queen* (1959)4 F.S.C. 119. Lastly section 23 of the Police Act. It provides:

*“Subject to the provisions of sections 160 and 191 of the Federal Republic of Nigeria (which relate to the power of the Attorney-General of the Federation and of the State to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any police officer may conduct in person all prosecution before any court whether or not the information or complaint is laid in his name.”*

As I have already held, only the Attorney-General has the power to prosecute any person before any court of law in Nigeria. That power has not been conferred upon any other authority or person. The Police have hitherto prosecuted in some limited courts in Nigeria. But this was subject to the power of the Attorney-General to take over or discontinue such criminal proceedings. Section 23 of the Police Act has not in fact widened their scope and power. The word “any” in my considered opinion, does not imply every court of the land. I think it means “*some*.” If that were not so it would be in conflict with section 174(1)(a). See *Texaco Panama Inc. v. Shell PCDN Ltd.* (2002)5 NWLR (Pt.759) 209.

The inadequacy of section 23 of the Police Act is that it failed to state some of the Courts in which the Police officers can initiate and undertake criminal proceedings. Whereas section 56(1) of the Federal High Court Act states the officers that can prosecute before that court on behalf of the Government of the Federation. Police officers are not on that list. What this means is that section 23 of the Police Act is a general provision while section 56(1) of the Federal High Court Act is a specific provision. The principle is well settled in the construction of statutory provisions, where



a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. See *Buhari v. Yusuf* (2003) 14 NWLR (Pt.841) 446. In my judgment a police officer or the police are excluded from initiating criminal prosecutions by or on behalf of the Government of the Federation in the Federal High Court. B

In the result, this appeal lacks merit and I dismiss it. I affirm the decision of the Court of Appeal given on 22nd May, 2003.

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**MUSDAPHER JSC (Dissenting)**

In the Federal High Court, in the Lagos Judicial Division and in charge No.FHC/L/23C/2001, the respondents herein were arraigned on a seven count charge in respect of alleged offences created under the provisions of Miscellaneous Offences Decree [Formerly Special Miscellaneous offences Decree] No. 20 of 1984. The prosecution was conducted by one Nuhu Ribadu, a police officer and he was being assisted in the prosecution of the charge by other police officers. It was in consequence thereof that the respondents on the 20/3/2001 by means of a Motion on Notice applied to the trial court to quash the charges on the grounds (1) that under section 174(1)(a) of the Constitution, only the Attorney-General of the Federation is empowered to institute and undertake criminal proceedings against the applicants respect of the offences created under Decree No. 20 of 1984 aforesaid. (2) The powers conferred on the Attorney-General can only be exercised by him in person or through officers in his department and (3) Section 56(1) of the Federal High Court restricted police officers from, representing, instituting or undertaking criminal prosecutions on behalf of the government of the Federation in the Federal High Court without the consent or fiat of the Attorney-General. In his Ruling on the application, the learned trial judge considered the provisions of Section 174 of the Constitution., Section 56 of the Federal High Court Act, and Section 23 of the police Act and came to the conclusion that a police officer has the competence and the power to undertake the prosecution of the applicants and dismissed the application to quash the charges. Dissatisfied with the decision, the 7 respondents appealed to the Court of Appeal against the decision dismissing their C  
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application to quash the charges. After considering the arguments of counsel of all the parties, the Court of Appeal, held that the police officers presently prosecuting the appellants before the trial court lacked the competence to do so under the provisions of section 56(1) of the Federal High Court. Consequently the Ruling of the trial Court was set aside, the appeal was allowed and the charges preferred against the respondents herein were struck out. This is a further appeal to this Court.

The learned counsel for the appellant Alhaji Abdullahi Ibrahim framed only one issue for the determination of the appeal which reads:-  
*“Whether the Court of Appeal was right when in interpreting Section 56(1) of the Federal High Court Act, Section 23 of the Police Act and. Section 174(1) of the 1999 Constitution, came to the conclusion that the police officer prosecuting the respondents lacked the competence to initiate or conduct prosecution before the Federal High Court.”*

There is no doubt that section 174 recognizes the competence of other persons and authorities to undertake the criminal prosecutions. But, in my view, the intendment of the Constitutional provision is to show clearly and positively the powers of the Attorney-General, in relation to Criminal prosecutions and it does not in my view generally empower any other person, authority or institution to undertake any criminal prosecution in all the Courts. It merely recognizes the fact that certain laws may authorize other persons, authorities or institutions to undertake criminal prosecutions, in some courts. For example Federal Board of Inland Revenue, Nigerian Customs Service and the police.

Now section 56(1) of the Federal High Court Act deals with the question of who is empowered to prosecute criminal matters before the court. The section reads:-

*“In the case of a prosecution by or on behalf of the Government of the Federation or by any public officer In his official capacity the government of the Federation or that officer may be represented by a law officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.”*

In my view section 56 provides for two sets of people who may prosecute before the Federal High Court. On the one hand, there are the

“Law Officers” and “State Counsel” who may prosecute without the sanction or fiat of the Attorney-General and on the other hand, Legal practitioners who may prosecute on behalf of the Government of the Federation, or on behalf of “any public officer” “authorized in that behalf by or on behalf of the Attorney-General of the Federation”. Thus any qualified legal practitioner can prosecute on behalf of the Government of the Federation, on behalf of a public officer in his official capacity provided he has the authorization or fiat of the Attorney-General. I have no doubt that looking at section 56(1) of the Federal High Court Act, even though a police officer can generally prosecute under section 23 of the police Act in some courts, a police officer cannot prosecute in the Federal High Court on behalf of the Federal Government under section 56(1) thereof unless he is a legal practitioner and is authorized to do so by the Attorney-General of the Federation. [A legal practitioner may be qualified to appear in any court including the Supreme Court of Nigeria, but for him to appear to prosecute a case, he must be authorized either by the law creating the offence or by some other provision authorizing or instructing him to appear in the court. In other words there must be proper instructions from duly qualified authority to enable a legal practitioner to appear in court or to prosecute any person. Nuhu Ribadu, as a legal practitioner has no competence even though a police officer, to appear on, behalf of the Government of the Federation in the Federal High Court without the consent or instructions of the Attorney-General of the Federation. In my view, section 56(1) clearly restricts the right of police qua police even as a lawyer from appearing in the Federal High Court to prosecute any offence. In my view section 174 of the Constitution, as mentioned above merely recognizes that other authorities or persons may have the power to prosecute criminal offences in some courts, but does not itself bestow Constitutional power to prosecute criminal offences in all Courts. It merely recognizes the existence of other laws authorizing the prosecution of offences by certain officials, in some courts.

I now come to section 23 of the police Act. It reads:

“Subject to the provisions of sections 160 and 191 of the Constitution of the Federal Republic of Nigeria [which relate to the power of the

*Attorney-General of the Federation and of the State to institute undertake, takeover and continue or discontinue criminal proceedings] any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.”*

B In my view, this is a general section and the general powers of a police-man to prosecute in his name in some courts. The said section does not by any stretch of imagination include the authority to ‘prosecute by or on behalf of the Government of the Federation or other institutions such as Nigerian Customs Services. Historically the police prosecute on their authority especially at the magistrates and area courts where prosecution may also begin by a complaint or by any aggrieved person against anybody. In my view the general powers of criminal prosecution under section 23 of the police Act are necessarily limited by the specific provisions of section 56(1) of the Federal High Court Act.

Historically, the Police Act was promulgated during the colonial rule in 1943 and at that material time the magistrates courts were manned by laymen mostly District Officers and the police had the unfettered powers of prosecutions in all the magistrates courts and later Customary, Native and Area Courts. The Federal High Court was established in 1973 to specifically deal with, the very special subjects enumerated under section 7 of that Act. Now, its criminal jurisdiction is found under section 251(3) of the Constitution.

F I do not agree that section 174 of the Constitution is wide enough, to cover section 23 of the Police Act to enable any police officer to prosecute any criminal offence before any court, such as the Federal High Court. To give such wide interpretation to section 174 of the Constitution as covering the provision of section 23 of the police Act will obviously lead to absurdity. It would mean that a police officer lawyer or non-lawyer can prosecute say a case of assault in the Federal High Court. While section 56(1) of the Federal High Court Act prescribes who will prosecute before the court, section 23 of the police Act seems to empower a police officer to prosecute before any court notwithstanding whether he is a lawyer or non lawyer. The Law is settled that when two statutes, though both are expressed in affirmative language, are contrary in matter, the latter

abrogates the former [LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT) in DR. FOSTERS CASE 1615 11 CO REP. 566, 626. By the Statute of 33 HENRY 8, C.23, it was enacted that “If any person being examined before the King’s Council xxxxxxxx shall confess any treason xxxxxxxx he shall be tried in any county where the King pleases, by his commission, etc; and afterwards another law was made (1 and 2 ph & Mar, Co 1Q) in these words; “That all trials hereafter to be had for any treason, shall be had according to the course of the common law and not otherwise”: This latter Act “hath abrogated the former because they are contrary in matter.” See GARNET V. BRADLEY (1878) A.C. 944, 965. From this rule it follows that if one statute enact something in general terms, and afterwards another statute is passed on same subject which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing or amending by implication the former, see ELLEN STREET ESTATES V. MINISTER OF HEALTH. [1934] 1 K.B.590, 596.

In my view, the general power given to the police to prosecute in any court is necessarily amended by the later special provisions under section 56(1) of the Federal High Court Act requiring special representation in prosecutions before that Court. In my view, the Federal High Court Act merely creates an exemption or exception from the operation of section 23 of Police Act inoperative as far as prosecutions of Criminal offences are concerned in the Federal High Courts.

I have to emphasize that section 174 though recognizing the competence of e.g the police to prosecute criminal matters in some courts, it is not the Constitution that empowers the police to prosecute in all courts. The police have no constitutional power bestowed by section 174 to prosecute criminal matters in all the courts. The general powers of the police to prosecute criminal matters is clearly limited by the specific provisions of section 56(1) of the Federal High Court Act. It is because of the above, that I affirm the decision of the Court of Appeal given on 22nd May, 2003. The appeal is dismissed as it lacks merit.

**PATS-ACHOLONUJSC**

This appeal which is novel in its contents and the remedy sought in the declaratory reliefs of this Court, is indeed interesting, stimulating and challenging. The appeal arose from a case in the High Court wherein the Respondents were arraigned in the Federal High Court and a Police Officer who though a barrister-at-law but did not have the fiat of the Attorney-General was denied the right to prosecute the Respondents. As the case was proceeding the Respondents sought to have the charges against them quashed on the ground that the Police Officer purporting to prosecute them is not a law officer or a State Counsel or even a legal practitioner authorized to prosecute on behalf of the Attorney-General. They equally referred the Court to section 56(1) of the Federal High Court Act which prescribes the qualification, or competence of lawyers who may prosecute a case in that Court. The contention of the Respondents that the Police Officer seeking to prosecute the case was not competent to do so was dismissed by the Federal High Court but was reversed by Court of Appeal hence the appeal to this Court.

The learned Counsel for the Appellant Alhaji A. Ibrahim SAN framed only one issue which runs thus;

*“Whether the Court of Appeal was right when interpreting section 56(1) of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the 1999 Constitution came to the conclusion that the Police Officer prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal High Court.”* However the learned Counsel for the Appellant appeared to have encapsulated the issue by singularly narrowing it to this question in his brief, *id est* “can a Police Officer (being a qualified legal practitioner) institute or undertake a criminal prosecution in the Federal High Court without the fiat of the Attorney-General”.

In the summary of what the Appellant seeks of this Court the learned Counsel urges the Court *inter alia* to hold

*“that by dint of the provisions of section 174(1) of the 1999 Constitution and section 23 of the Police Act the Police Officer in the present case has a right to institute and undertake criminal prosecution*

*before any Court in Nigeria including the Federal High Court*” (the underlining is mine) I must quickly point out the prosecuting Police Officer in the present case is a qualified legal practitioner. It seems to me that the case should really resolve on the true extent of the provision of section 174(1)(a)(b) and (c) of the Constitution of the Federal Republic of Nigeria. B In other words the provisions of certain relevant statutes as regard the competence to prosecute such as the ubiquitous sections 56(1) and 57 of the Federal High Court Act and section 23 of the Police Act (Cap 359) Laws of the Federation and I would add the relevant provisions of Criminal C Code Act, the Law Officers Act Cap 204 Laws of the Federation 1990 and of course the Legal Practitioners Act, shall be properly considered in answering the poser.

In considering this case it is I dare say essential to remind myself that because a matter before this Court is novel or because of its peculiar D nature could raise some passions possibly affecting the professional jealousy of Legal Practitioners perse, there may be apprehension that it may not be given its due careful scrutiny to try to discover what the Constitution intends. E

Section 174(1) of the Constitution states as follows “*The Attorney-General of the Federation shall have power*

(a) *To institute and undertake criminal proceedings against any person before any Court of law in Nigeria other than a Court Martial in respect of any offence created by or under an Act of the National F Assembly;*

(b) *To take over and continue any such criminal proceedings that may have been instituted by any other authority or person and*

(c) *To discontinue at any stage before judgment is delivered any G such criminal proceedings instituted or undertaken by him or any other authority or person.”*

The stand of the Respondents is somewhat on all fours with the H issue framed by the Appellants; however they tend to narrow it to section 56(1) thereby appearing to be restrictive in their pursuit. Be that as it may, the issue is horizontally the same because the respondents have tended to build their case on section 56(1) of the Federal High Court Act as they latch

on a lot in this provision, and seem to be oblivious of other various statutory enactments in respect of legal practice eligibility.

Now sections (56)(1),(2) and (57) of the Federal High Court Act state as follows:-

B “(56)(1) In the case of a prosecution by or on behalf of the Government of the Federation or by any public officer in his official capacity the Government of the Federation or that officer may be represented by a law officer, State Counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.

C (2) In any civil cause or matter in which the Government of the Federation or any public officer in his official capacity is a party or in any civil cause or matter affecting the revenue of the Government of the Federation, that Government or that officer may be represented by a law officer, State Counsel, or any legal practitioner or other person duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.

D (57). All persons admitted as legal practitioners to practise in Nigeria shall subject to the provisions of the Constitution and the Legal Practitioner Act have the right to practise in the Court”.

E The Respondents submitted that by the virtue of section 56(1) of the Federal High Court Act a prosecution on behalf of the Federal Government must be by a Law officer, a state counsel or a legal practitioner duly authorized by the Attorney General of the Federation. In their other submissions to booster up their argument their learned counsel stated that

F “Though legal Practitioners are the second group of persons who may represent the government of the federation in the prosecution of the Respondents in the Federal High Court not all legal practitioners can do so”. Before a legal practitioner can do so section 56(1) of the Federal High Court Act clearly states that the legal practitioner must be duly authorized in that behalf by or on behalf of the Attorney General of the Federation.”

G It cannot be gain-said that implicit in that argument is that by that



logic and the intended meaning and tenor decipherable from therein that though a lawyer i.e a legal practitioner may be qualified to practice in any other Courts in Nigeria including even the Supreme Court, he may not be competent to prosecute a criminal case in the Federal High Court. This interpretation skewed, awkward and hackneyed as it portends, seems or B is oblivious of section 174(1) of the Constitution which states as follows:

*“The Attorney General of the Federation shall have power:-*

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a Court martial in respect of any offence created by or under any Act of the National C Assembly.*

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any D such criminal proceedings instituted or undertaken by him or any other Authority or person”.*

It must be admitted that there are three elements ingrained in this provision namely (a) Power of the Attorney General to institute and E undertake criminal proceedings before any Court of law in Nigeria (b) a recognition that power to institute criminal proceedings is not exclusively vested in the Attorney General, id est, it impliedly admitting of initiating of criminal proceedings by other authorities, agencies and persons, (c) The F office of the Attorney General can use its discretion to do any of the things mentioned in that section. Because he shall have a discretion to do any of these things mentioned therein if he so chooses or desires, it then means that he ought not be unduly over zealous in taking over or continue to G prosecute a case, initiated by any other body, thereby tacitly recognizing that the Attorney General does not have the monopoly of instituting criminal prosecutions, fiat or no fiat.

I must state here that in trying to understand or appreciate the laden H words of either section 56(1) of the Federal High Court Act or section 23 of the Police Act, a construction that does not take into consideration the tenor and intendment of section 174(1) of the Constitution which is really the fons et origo of the matter would be obtuse, undiscerning and I dare

say phlegmatic as it would not hit the nail on the head.

The issue is whether a police officer who at the same time is a legal practitioner can prosecute a criminal case whether in the Federal High Court or any other Court without the fiat of the Attorney-General. The  
 B appellant's counsel in his brief submitted that section 174(1) (b) duly recognizes the power of other person/persons and authority to institute and undertake criminal proceedings and verily referred to the warnings given by this Court in *P.D.P v INEC* (1999) 11 N.W.L.R . (PT 626) 200  
 C at 243 and by the English Court in *Colquhoun v. Brooks* (1888) 21 QBD 52 at 65 on over reliance on the latin maxim "*expressio unius est exclusio alterius*" as it can wreak havoc and may rather constitute a principle that inhibits the course of justice. The learned Counsel for the 1st-7th  
 D Respondents relied on the recent case of *Buhari v Yusuf* (2003) 14 NWLR (Pt 841) P. 446 where Uwaifo JSC sought to expound that maxim to bring out its true intention or purport. It is important to recognise that in a Constitution such as ours which is relatively young, to take care of the vagaries and other hidden problems in an unsophisticated society as ours,  
 E though vibrant in its intendment and orientation because it is still developing, construction of the provisions must be equally vibrant to be in accentuation with the growth of a dynamic society. In other words, beneficial interpretation which would give meaning and life to the society  
 F should always be adopted in order to enthrone peace, justice and egalitarianism in the society.

I have carefully looked and critically examined for umpteenth times the provision of the ubiquitous section 56(1) of the Federal High Court Act and I have come to the inescapable conclusion that to see that provision  
 G in its literal sense might blind one to the fact that it is not intended to be immutable. In any case I must confess that I am not in the least enamoured by the language of that section. What is so unique or extraordinary of the Federal High Court Act that should make the law concerning legal  
 H appearance in that Court purport to exclude any legal practitioner not authorized by the Attorney General of the Federation to prosecute a criminal case. I believe that where a statute makes the meaning of a provision difficult to discern properly it is I dare say, the indisputable right

of the Court to explore deeper and try to make sense out of it in the context of the primary law so that it would in its operationality following the construct of the Court, would have the meaning which it eventually wears and which would help to promote and optimize the cause of justice, the advancement of sociological jurisprudence and the Rule of Law. B

I have refused to be drawn to be semantics associated with the use of the word “*may*” in section 56(1) of the Federal High Court Act because I am simply not impressed with the seeming tenor and the negative language that section appears to bear. Whatever the framers of that act may have intended that section tends to colourise the provision of section 174(1) of the Constitution and its oddity is shockingly difficult to decipher as to what is the true intent. Therefore, to even indulge into the dialectics of the niceties of the word “*may*” is to raise the argument of what that word could mean in that context to a height it does not to my mind deserve. C D

I said earlier that the issue being agitated by the parties can truly be resolved by subjecting section 56(1) of Federal High Court Act and section 174(1) of the Constitution to a liberal Construction. Lord Reid had in the case of *Westminster Bank Ltd v. Zang* (1965) A. C 182 P. 222 said “*No Principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in the Act. If these words are in any way ambiguous if they are reasonably capable of more than one meaning of the provision in question, is contradicted by or is incompatible with any other provision in the Acts, the Court may depart from the natural meaning of the words in question*”. E F  
It is my view that the contents of section 56(1) aforesaid by its intendment has the ungainly feature of being contrary to section 174(1) of the Primary Law of the land. In that case it is a stunted section fit to be ignored. The implication of the intendment of section 174(1) aforesaid of the Constitution is that the office of the Attorney-General does not have the monopoly of prosecution though it has the power to take over any case in any Court and decide whether to go on with it or not. Generally speaking H any legal practitioner not disbarred except under some restriction recognized by the primary law of the land has the right of audience in any Court. This equally implies or denotes that in appropriate cases such G

a legal practitioner coming under the description as contained in the Legal practitioners Act has the right of appearance which term includes prosecuting a case, and can due to the wide open door of section 174(1) initiate criminal prosecution on behalf of the agency he works for particularly as in this case an institutional body vested with power to check, prevent and investigate crimes and even to prosecute. Can it therefore be said that since a Police Officer more particularly a qualified legal Practitioner belongs to the security apparatus that can or is empowered to prevent and investigate crimes, that he cannot initiate prosecution on behalf of the State. The question that this Court is called upon to resolve is not whether any police officer as referred to in section 23 of the Police Act can prosecute but whether a police officer legally qualified can prosecute a matter in the High Court.

It is important to understand that section 56(1) of the Federal High Court Act was made long before the current Constitution. With the tenor of the Constitution (vide section 174 (1) it is definitely inappropriate and unacceptable to have a provision in a statute made by the National Assembly that seeks by its intendment to thwart or do violence to section 174(1) of the Constitution. It is difficult for one to endorse a law that dictates as to which legal practitioner may practice in the Federal High Court in a discriminatory manner when no such Act providing for such a preferential treatment for the Supreme Court exists. Such provision would obviously be weird, and difficult to conceptualize. No Constitution can cover all unforeseeable eventualities, therefore it will be remiss in the mind of anyone imbued with appreciating the elements to be considered in interpreting the Constitution carefully to be simplistic in approach.

But I believe that such a law has to be made a living law not a law that is dead or the one that seeks ingloriously to look backwards thereby tending to make the interpretation not in tune with the dynamic nature of the society, but rather something anachronistic that can no longer stand the test of time.

While it should not empirically speaking be within the ambits of the Courts to cause to insert or arrogate to itself the messianic power to give a different meaning to the words of the statute as to more or less compete

with the Legislature, I believe it is the duty of the Court to breathe life into a provision which is wooly or cloudy, and in which a conservative leaning interpretation may do incalculable harm. I make bold to say that an interpretation which is arcane or rancid would be doing violence to the tenor of section 174(1) of the Constitution. Both Daniel Hall in his *“Constitutional Law: Cases and Commentary,”* and Lawrence Tribe and Michael Dorf in their book *“Reading the Constitution”* have written suavely on the various modes and attitudinal bents Courts should resort to in the interpretation of the words of the Constitution. There is the liberal approach sometimes described as the modernist approach, and the originalism approach. These Concepts could be deceitful and liable to render constructions strictly based on them a mere forage into academic dialectics of interpretation. Having said that, it is my view that an autochthonous Constitution like ours which seeks to give a frame work of a law or stipulation that binds us should as much as possible reflect positive tendencies to liberalize the mind from the cocoon of antiquated and fossilized ideas or philosophy which might militate against judicial progressivism that would situate the Constitution in a vibrate clime.

I now come to the provision of section 2 of the Legal Practitioners Act which states as follows:-

*“2.(1) Subject to the provisions of this Act, a person shall be entitled to practise as a barrister and solicitor if, and only if, his name is on the roll.*

*(2) If-*

*(a) an application under this sub-section is made to the Chief Justice by or on behalf of any person appearing to him to be entitled to practise as an advocate in any country where the legal system is similar to that of Nigeria; and*

*(b) the Chief Justice is of the opinion that it is expedient to permit that person to practise as a barrister for the purposes of proceedings described in the application, the Chief Justice may by warrant under his hand authorize that person, on payment to the registrar of such fee not exceeding fifty naira as may be specified in the warrant, to practise as a barrister for the purpose of those proceedings and of any appeal brought*

*in connection with those proceedings.”*

I wish to state here that whenever any person is called to the bar and is enrolled to practice then he has the right of audience and unless the Constitution eloquently forbids such a person or provides a qualification  
B for appearance in Court, any Act prescribing provisions contrary to the spirit of the Constitution should be regarded as otiose.

I agree with the leading judgment of my learned brother Belgore JSC which I have read in draft and in my view the issue as made out is  
C successful. I therefore allow the appeal and set aside the judgment of the Court below, and restore the ruling of the Federal High Court.

I cannot but however fail to comment on the nature of the title of this case which appears strange. The strangeness of this title is even made more difficult as the chambers of the Attorney General opposed the appeal  
D ostensibly brought in the name of Federal Republic of Nigeria of which he should or ought at all times under common law be known and referred to as the conscience of the state. The whole thing is weird. As it is said by Lewis Carol in Alice in Wonderland, it is getting “*curiouser and curiouser*”

E In my view, the appeal succeeds and I set aside the judgment of the Court of Appeal and affirm the judgment of the Federal High Court. I abide by the consequential order in that lead judgment.

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### MOHAMMED JSC

F The respondents in this appeal were being tried before the Federal High Court, Lagos on a six count amended charge filed by Nuhu Ribadu as prosecutor under the Miscellaneous Offences Decree No. 20 of 1984  
G as amended. The charge was filed on behalf of the Federal Republic of Nigeria.

By a motion on notice dated 20-3-2001, the respondents as the accused person being prosecuted before the Federal High Court, applied to quash the charge against them on the grounds that section 56(1) of the  
H Federal High Court Act does not permit the prosecutor and his team being police officers to represent, institute or undertake criminal prosecution on behalf of the Federal Republic of Nigeria in the Federal High Court. In their counter affidavit opposing the motion, the prosecuting police officers

maintained that they had powers under section 23 of the Police Act to prosecute the respondents at the Federal High Court and that they did not require the fiat of the Attorney-General of the Federation to perform their duty.

After hearing the parties on the preliminary objection, the learned B judge of the Federal High Court, Nwodo J, in her ruling delivered on 18-7-2001, dismissed the preliminary objection and held that the prosecuting police officer had powers to prosecute the respondents on behalf of the Federal Republic of Nigeria in the Federal High Court. Part of this ruling C at page 29 of the record states -

*“In the light of the above, I hold that the present officer prosecuting has powers to initiate and prosecute the present charge. There is no conflict between section 23 and section 174 of the 1999 Constitution. The amended charge is not an abuse of the process of the court. The objection lacks merit D and is hereby overruled and dismissed.”*

Dissatisfied with this decision of the Federal High Court, the respondents appealed against it to the Court of Appeal, Lagos Division which after hearing the parties, allowed the appeal, set aside the ruling of E the trial Federal High Court and struck out the charge against the respondents. In allowing the appeal, the Court of Appeal held that the prosecuting police officers prosecuting the respondents on the charge against them before the Federal High Court, lacked the competence to do F so under section 56(1) of the Federal High Court Act. The present appeal in this matter now before this court was brought by the prosecuting police officers against the decision of the Court of Appeal delivered on 22-5-2003 and presented only one issue for determination as follows in the appellants’ G brief of argument:-

*“Whether the Court of Appeal was right when in interpreting section 56(1) of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the 1999 Constitution, came to the conclusion that the police officers prosecuting the respondents lack the competence to initiate H or conduct prosecution before the Federal High Court.”*

In the respondents’ brief, the same issue was identified.

The dispute between the parties in this appeal no doubt arose from

the motion on notice dated 20-3-2001 filed by the respondents at the trial Federal High Court asking for an order to quash the charge or amended charge against the respondents filed on 18-1-2001 and 9-2-2001. The grounds upon which the application was brought outlined at page 16 of the

B record include:-

“(i) *Under Section 174(l)(a) of the 1999 Constitution, only the Attorney-General of the Federation is empowered to institute and undertake criminal proceedings against the 2nd to the 9th Accused persons in respect of offences created under the Miscellaneous Offences Decree*  
C *(formerly Special Miscellaneous Offences - Decree) No.20 of 1984.*

*(ii) The powers conferred on the Attorney-General of the Federation under section 174(l)(a) of the 1999 Constitution can only be exercised by him in person or through officers of his department; and*

D *(iii) The prosecutor in these proceedings and/or other persons assisting him are Police Officers and are not officers of the Attorney-General of the Federation’s office/department.*

*(iv) The charge and/or the Amended charge herein are incompetent*  
E *and invalid.*

*(v) The Charge and/or the Amended charge herein are an abuse of legal process.”*

In the determination of the single issue, it is necessary to look into  
F the appropriate provisions of section 56(1) of the Federal High Court Act CAP 134 of the Laws of the Federation 1990; Section 23 of the Police Act Cap 359 of the Laws of the Federation 1990 and section 174(l)(a)(b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 upon which  
G both sides in this appeal rely in support of their positions regarding the state of the law. Section 56( 1) of the Federal High Court Act states -

“56(1) *In the case of a prosecution by or on behalf of the Government of the Federation or by any public officer in his official capacity the Government of the Federation or that Officer may be*  
H *represented by a law officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.”*

Section 23 of the Police Act on the other hand states -



*“23. Subject to the provisions of sections 160 and 191 of the Constitution of the Federal Republic of Nigeria (which relate to the power of the Attorney-General of the Federation and of the State to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of Law in Nigeria) any police officer, B may conduct, in person all prosecutions before any court whether or not the information or complaint is laid in his name.”*

Sections 160 and 191 of the 1979 Constitution are now sections 174 and 211 respectively of the 1999 Constitution.

Coming to the provision of the 1999 Constitution, section 174(1) C dealing with the powers of Attorney-General of the Federation on public prosecution which contains identical provisions for the powers of Attorney-General of the States in section 211 reads-

*“174(1) The Attorney-general of the Federation shall have power- D*

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly; E*

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person” F*

Looking closely into the provisions of section 56(1) of the Federal High Court Act, it is quite clear that the section has catered for representation before the Federal High Court in matters in which the Government of the Federation or any public officer of that Government in his official capacity are parties. The categories of Legal Practitioners listed therein all derived their power to represent the Government of the Federation or any Public Officer of that Government before the Federal High Court from the Attorney-General of the Federation himself. The police as one of the H authorities in the Government of the Federation charged with the responsibilities among others of conducting criminal prosecution of persons accused of committing various offences in our law courts, has not been

mentioned in the section.

However on turning to the provisions of section 23 of the Police Act, there is no doubt that the section confers powers on the police to conduct prosecutions before any court, obviously including the Federal High Court, subject only to the powers of the Attorney-General of the Federation and Attorney-General of any State in the Federation to take over and continue or to discontinue at any stage before judgment is delivered such criminal proceedings being conducted by the police. Therefore it is not correct as argued by the learned counsel to the respondents that the police lacked the power to prosecute the respondents for the offences they were charged with at the Federal High Court. This power of the police to prosecute the respondents before the Federal High Court is also traceable to the provision of the 1999 Constitution itself in section 174(1) earlier quoted in this judgment. This is because the opinion held by the respondents in some of the grounds in support of their application at the trial court that under section 174(1)(a) of the 1999 Constitution only the Attorney-General of the Federation and legal officers of his Ministry are charged with or empowered to institute and undertake criminal proceedings against the respondents in respect of offences created under the Miscellaneous Offences Decree No.20 of 1984, is not correct in law. The reason of course being that if the respondents through their learned counsel had averted to the provisions of paragraphs (b) and (c) of the same section 174(1) of the 1999 Constitution, it would have dawned on them that the phrase instituted by any other authority or person in paragraphs (b) and (c) of section 174(1) of the Constitution, are wide enough to accommodate the police. In other words the powers of the Attorney-General of the Federation under paragraph (a) of section 174(1) of the Constitution to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created or under any Act of the National Assembly, are also clearly available to any other authority or person before the Honourable Attorney-General could exercise his powers of taking over and continuing such criminal proceedings or discontinuing them at any stage before judgment is delivered. On this interpretation therefore, I am of the view that the police

as an authority of the Federal Republic of Nigeria or as a person, has power to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial. To this end, the charge against the respondents as instituted and undertaken before the Federal High Court, Lagos is quite competent. The lower court was B therefore in error in striking out the charge.

For the foregoing reasons and the fuller reasons contained in the judgment of my learned brother Belgore JSC, the draft of which I have had the benefit of reading before today, I shall also allow this appeal and abide C by the final orders contained in the lead judgment.

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### ONNOGHENJSC

This is an appeal against the judgment of the Court of Appeal, Lagos Division in appeal No. CA/L/395/2001 delivered on 22nd May, 2003 in D which it set aside the ruling of the Federal High Court, Lagos delivered on 18th July, 2001.

By an amended charge No. FHC/L/23C/2001 signed by N. RIBADU as prosecutor, the respondents were charged with offences under the E Miscellaneous Offences Decree No. 20 of 1984.

The charge was preferred in the name of "*The Federal Republic of Nigeria*" and the person who signed same, though a qualified legal practitioner, is a serving police officer with the Nigeria Police Force. The F charge was not being prosecuted on the authority or fiat of the Attorney General of the Federation. Consequently, the respondents filed a motion before the Federal High Court, Lagos for an order of certiorari "*quashing the charge and/or the Amended Charge herein filed on the 18th of January, 2001 and the 9th of February, 2001 respectively and pending in this G Honourable Court.*"

The grounds on which the application is based are stated as follows:-

"(i) *Under Section 174(1) of the 1979 Constitution, only the H Attorney-General of the Federation is empowered to institute and undertake criminal proceedings against the 2nd to the 9th Accused Persons in respect of offences created under the Miscellaneous Offences Decree*

(formerly *Special Miscellaneous Offences Decree*) No. 20 of 1984.

(ii) *The powers” conferred on the Attorney-General of the Federation under Section 174 (1) (a) of the 1979 Constitution can only be exercised by him in person or through officers of his department, and,*

B        (iii) *The prosecutor in these proceedings and/or other persons assisting him are Police Officers and are not officers of the Attorney-General of the Federation’s office/department;*

          (iv) *The Charge and/or the Amended Charge herein are incompetent and invalid;*

C        (v) *The charge and/or the Amended Charge herein are an abuse of legal process.”*

          The application was supported by an affidavit of 12 paragraphs on which the applicants, who are now respondents in this court, relied. The present appellants filed a counter affidavit of 4 paragraphs on which they relied in opposing the application.

          Upon conclusion of arguments, the trial court identified the issue for determination as being "*can a police officer who is a legal practitioner initiate and prosecute a criminal charge against the accused persons in the Federal High Court. In effect is there a Constitutional limitation that a police legal practitioner cannot prosecute in the federal High Court or is the condition pre-requisite to his doing so is that he must produce a fiat or letter of authority before he can prosecute in this court.*"

F        After reviewing the arguments and legal authorities, the learned trial judge held that the police officers who are qualified legal practitioners have vested right to initiate and prosecute criminal cases in the Federal High Court and consequently dismissed the application for an order of certiorari.

          The present respondents were dissatisfied with that ruling and appealed to the Court of Appeal which set aside the resulting in the present further appeal.

H        The issue for determination as identified by learned senior counsel for the appellant, ALHAJI ABDULLAHI IBRAHIM, SAN, in the Appellant’s Amended Brief of Argument filed on 12/4/05 is as follows:-

*“Whether the Court of Appeal was right when in interpreting*

*Section 56 (1) of the Federal High Court Act Section 23 of the Police Act and Section 174 (1) of the 1999 Constitution came to the conclusion that the police officers prosecuting the Respondents lack the competence to initiate or conduct prosecution before the Federal High Court.”*

In arguing the appeal, learned Senior Counsel for the appellant, B submitted that the laws, the construction of which is relevant for the determination of the appeal are Sections 56(1 and 57 of the Federal High Court Act, 1990; Section 23 of the Police Act, Cap 359, Laws of the Federation 1990 and Section 174(1) (a), (b) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 C Constitution). Learned Senior Counsel then referred to the judgment of the lower court and submitted that the court erred in considering each of the provisions of the Acts relevant to the issue in isolation of the others instead of considering them as a whole and that that court ought not to have D adopted the maxim *expressio unius est exclusio alterius* in interpreting the provisions particularly as the rule is restrictive and not suitable for interpretation of constitutional provisions; that Section 174(1) (a), (b) and (c) of the 1999 Constitution recognizes the power of “*any other authority E or person to institute and undertake criminal proceedings*” apart from the office of the Attorney-General; that the expression “*any other authority or person*” includes the police particularly as Section 23 of the Police Act gives “*any police officer*” the power to conduct in person all prosecutions F before any court whether or not the information or complaint is laid in his name and that the right conferred on the police by Section 174 of the 1999 Constitution is subject only to the Attorney-General’s power to take over or discontinue the prosecution, and that Section 56 (1) of the Federal High G Court Act cannot be interpreted to whittle down the rights so vested by the Constitution. Learned Senior Counsel then urged the court to resolve the issue in favour of the appellant and allow the appeal.

On his part, learned counsel for the 1st to 7th respondents, H AYODELE AKINTUNDE Esq submitted that Police Officers are not entitled to practice as Barristers and Solicitors in a criminal prosecution by or on behalf of the Federal Government in the Federal High Court, particularly as they are not “*law officers*” within the meaning of the

Criminal Code Act, the Law Officers Act or officers in the Attorney - General's department and cannot therefore represent the government of the Federation in the prosecution of the respondents; that because a Police Officer is a legal practitioner is not a licence for such an officer to initiate  
 B and undertake criminal prosecution on behalf of the government of the federation in the Federal High Court without the fiat of the Attorney-General of the Federation as provided under Section 56(1) of the Federal High Court Act.

C Turning to the provisions of Section 174 of the 1999 Constitution, learned counsel submitted that though the powers of public prosecution of the Attorney-General of the Federation are not exclusive and that "*any other authority or person*" may institute and undertake criminal -  
 D proceedings, before the "*authority or person*" can so act, it must be empowered by law or be authorized by the Attorney-General of the Federation and that the law establishing the court in which the criminal proceedings is to be initiated must so permit.

On his part, learned counsel for the 8th respondent O. C. OYELEKE  
 E Esq. made similar submissions to those made by counsel for 1st to 7th respondents earlier summarized in this judgment.

The Hon. Attorney-General of the Federation as amicus curiae, apart from submitting that Section 56 (1) of the Federal High Court Act  
 F being a specific provision will take precedence over section 23 of the Police Act which is a general provision and therefore inapplicable and that the appellant does not come within the definition of a "*law officer*" for the purpose of section 56 (1) of the Federal High Court Act submitted further  
 G that although appellant qualifies as "*any other authority or person*" in section 174 of the 1999 Constitution, he thereby acquires no power to initiate and conduct criminal proceedings on behalf of the Federal Government without the knowledge, consent or authority of the Attorney-General of the Federation. Finally, the Hon. Attorney-General of the  
 H Federation submitted that the case of NPS v. Adekanye (2002) 15 NWLR (pt. 790) 318 at 329 which decides that power in criminal prosecution is by virtue of Section 174 of the 1999 Constitution available to any other authority or person is wrongly decided and ought not to be followed.

To resolve the issue in controversy in this appeal it is necessary to look at the relevant provisions of the Acts and the 1999 Constitution relied upon by the contending counsel. :

Section 56(1) of the Federal High Court Act provides as follows:-

*“56(1). In the case of prosecution by or on behalf of the Government of the Federation or by any Public Officer in his official capacity the Government of the Federation or that officer may be represented by a law officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.*

*On the other hand, Section 23 of the Police Act provides as follows:-*

*“23. Subject to the provisions of Section 174 and Section 211 of the Constitution of the Federal Republic of Nigeria (which relate to the power of the Attorney-General of the Federation and of the State to institute and undertake, take over and continue criminal proceedings against any person before any court in Nigeria) any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.”*

Finally Section 174(1) of the 1999 Constitution provides as follows:

*“174(1). The Attorney-General of the Federation shall have power*

*(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under an Act of the National Assembly;*

*(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and*

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.”*

From the facts, it is not disputed that the appellant instituted the criminal proceedings at the Federal High Court, Lagos in the name of the Federal Republic of Nigeria when he is not the Attorney-General of the Federation; a law officer, a state counsel or a legal practitioner duly

authorized in that behalf by or on behalf of the Attorney-General of the Federation. The appellant instituted the criminal proceedings aforesaid in his own right as a Police Officer who is also a qualified legal practitioner, his contention being that he derives his authority to so act by virtue of the provisions of Section 23 of the Police Act and Section 174 of the 1999 Constitution.

I am of the considered view that to resolve the issue, the three provisions must be read as a whole bearing in mind the fact that the Constitution is the Supreme Law of the land and as such it supercedes every other legislation or law.

It is not in doubt that Section 56(1) of the Federal High Court Act does not include a Police Officer in the list of those qualified to practice or initiate criminal prosecution by or on behalf of the Government of the Federation.

Looking however at Section 23 of the Police Act, it is clear and both counsel are agreed that it provides that any Police Officer may conduct in person all prosecutions before any court subject, of course to the power of the Attorney-General of the Federation to take over, continue or discontinue the prosecution under section 174 of the 1999 Constitution. The expression 'subject to' when used in a statute means liable, subordinate, subservient, or inferior to, governed or affected by; provided that or provided; answerable for. The term introduces a condition, a restriction, a limitation, a provision. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be deminished by the subject section. The expression generally implies that what is subject to shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provisions to which it is subject conditional upon compliance with or adherence to what is prescribed in the provisions to which it is subject conditional upon compliance with or adherence to what is prescribed in the provision referred to -see *Oke v. Oke* (1974) 1 All NLR (pt.1) 443; *LS.DPC v. Foreign Friance Corp* (1981) 1 NWLR (pt 50) 413; *Agua Ltd v. Ondo State Sports Council* (1988) 4 NWLR (pt. 91) 622; *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517;



Idehen v. Idehen (1991) 6 NWLR (pt. 198) 382; Labiyi v. Anretiola (1992) 8 NWLR (pt. 285) 139; NDIC v. Okem Ent. Ltd (2004) 10 NWLR (pt. 880) 107.

Turning to Section 174 of the 1999 Constitution it has been argued that the Section only confers powers on the Attorney-General of the Federation to institute and undertake criminal proceedings against any person before any court of law except a Court Martial and not on a nebulous “*any other authority or person*,” that rather than confere such a power of institution, it grants power to the Attorney-General of the Federation to take over and continue any criminal proceedings that may be instituted by any other authority or person etc.

The argument though brilliant, loses sight of the fact ‘*that the Section recognizes the right of that “other authority or person”*’ to institute any criminal proceedings particularly in paragraph (b) of sub section 1 of section 174 of the 1999 Constitution. I hold the view that the relevant constitutional provision needs not create the power to so institute criminal proceedings once it recognizes the existence of that right to so institute criminal proceedings. In the present appeal, the right to institute criminal proceedings’ by any police officer is created and conferred by Section 23 of the Police Act. I therefore hold the view that the expression “*any other authority or person*” as used in Section 174 of the 1999 Constitution is wide enough to include and actually includes Police Officers and that the said Section 174 of the 1999 Constitution recognizes the power of any Police Officer to institute criminal proceedings in any court subject of course to the powers of Attorney-General of the Federation to take over and continue any such criminal proceedings and to discontinue, at any stage before judgment is delivered, any such criminal proceedings.

There is the sub-issue as to whether the power to institute criminal proceedings extends to any Police Officer irrespective of the fact that he is not a legally trained mind. This brings me to the actual issue before the trial court, upon the application that gave rise to this appeal. I have carefully gone through the facts as deposed to in the affidavit in support of the motion for an order of certiorari and the counter affidavit thereto and have come to the conclusion that the actual issue before that court is simply

whether a police officer simpliciter has a right to institute criminal proceedings before any court in Nigeria. The issue is not, with respect to the trial judge and also the Court of Appeal, “*can a Police Officer who is a legal practitioner institute a criminal charge against the accused persons in the Federal High Court....*” as stated by the trial court and adopted by the Court of Appeal and also argued before this court by the respondents.

I had earlier in this judgment reproduced the grounds upon which the relief of certiorari is based and there is nothing therein to suggest that the Police Officers involved were legal practitioners. Is there any fact in the affidavits to show that the said Police Officers are legal practitioners so as to place a distinction between them and ordinary police officers or officers not learned in the law? This leads us to a reproduction of the paragraphs of the affidavits. These are as follows:

D "AFFIDAVIT IN SUPPORT

1. That I am a legal practitioner in the firms of Messrs Laniyan, Akintunde & Ibrahim, the solicitors to the 2nd to the 9th accused herein and by virtue of my position, I am familiar with the facts of this case.

E 2. That I have the authority of the 2nd to the 9th Accused's herein and that of the firm to depose this affidavit on their behalf.

3. That on the 18th of January, 2001, the Prosecutor filed in this Honourable Court a charge against the 2nd to the 9th Accused persons for various offences pursuant to the Miscellaneous Offences Decree (formerly Special Miscellaneous Offences Decree) No. 20 of 1984.

F 4. That on the 9th of February, 2001 the Prosecutor filed in this Honourable Court an Amended Charge against the 2nd to the 9th accused persons for various offences pursuant to the Miscellaneous Offence Decree (formerly Special Miscellaneous Offences Decree) No. 20 of 1984.

G 5. That the Prosecutor is one Nuhu Ribadu who is a Police Officer with the Nigeria Police Force.

H 6. That the other persons assisting him in the prosecution of this charge are also Police Officers with the Nigeria Police Force.

7. That I verily believe that the Attorney-General of the Federation is the appropriate authority/person empowered to institute and undertake criminal proceedings against the 2nd to the 9th accused persons in respect

*of offences created under the Miscellaneous Offences Decree No. 20 of 1984 or any.....*

8. *That I verily believe that the Attorney-General of the Federation can only exercise his powers in person or through officers of his department.*

B

9. *That I verily believe that the Prosecutor herein and/or other persons assisting him are Police Officers and are not officers of the Attorney-General of the Federation's office or department.*

10. *That is I verily believe that the Attorney-General of the Federation has not given the Prosecutor or persons assisting him a fiat to prosecute this case against the 2nd to the 9th accused persons.*

C

11. *That I verily believe that the charge and/or the Amended Charge herein and these proceedings are an abuse of court process and should be quashed/struck out....."* Emphasis supplied by me.

D

The counter affidavit is of four paragraphs. These are as follows:-

"1. *That I am the investigating Police Officer (IPO) in this case and by virtue thereof I am conversant with the facts of this case.*

2. *That I have the consent and authority of the complainant/ respondent to depose to this affidavit.*

E

3. *That I have seen the motion on notice filed by the 2nd to 9th applicants together with the supporting affidavit sworn to by MRS Yemisi Oladipo and in response aver that paragraphs 7, 8, 9, 10, 11, and 12 are hereby denied as not being true.*

F

4. *That Mr. Offem I. Uket of the Legal/Prosecution Section, Force CID, Abuja informed me on 18th April, 2001 at about 1400 hrs at the Force CID Abuja and I verily believed him as follows:-*

i. *That the police have the authority to institute and undertake Criminal Proceedings in any court by virtue of Section 23 of the Police Act Cap 359 Laws of the Federation of Nigeria 1990.*

G

ii. *That besides the Attorney-General and Minister of Justice of the Federation office, the police can initiate and commence criminal proceedings against the 2nd to 9th applicants under the Miscellaneous Offences Decree No. 20 of 1984 as amended without the fiat of the Attorney-General and Minister of Justice of the Federation.*

H

iii. *That the charge before this Honourable Court does not amount to an abuse of court process as there is no other charge against the applicants pending either before this court or any other court.*” Emphasis also supplied.

B From the above read along with the grounds on which the application was based, it is clear that the application was contested only on the basis of the fact that the prosecutor and those who assisted him in the proceedings are police officers and nothing more. The fact that they are in addition to being police officers, legal practitioners who claim to have the right to institute criminal proceedings before any court of law in Nigeria is neither clearly stated nor can it be inferred from the totality of the facts deposited to in the affidavits before the court. When one looks at the issue as formulated and the arguments of the appellant on record and before this court, appellant based their right to institute the action on Section 23 of the Police Act and Section 174 of the 1999 Constitution.

The issue as formulated before this court by learned senior counsel for the appellant in the amended appellant’s brief is:

E “*Whether the Court of Appeal was right when in interpreting Section 56(1) of the Federal High Court Act, Section 23 of the Police Act in Section 174(1) of the 1999 Constitution, came to the conclusion that the police officers prosecuting the respondents lack the competence to initiate or conduct prosecution before the Federal High Court.*”

F From the grounds on which the application for certiorari was based and the two affidavits used in the proceedings before the trial court, the issue in controversy between the parties is as formulated by learned senior counsel for the appellant. That apart, from the grounds of appeal filed in this appeal the issue for determination is still as formulated by learned senior counsel for the appellant.

The grounds of appeal are as follows:-

“GROUND ONE”

H *The learned Justices of the Court of Appeal misdirected themselves in holding that a prosecutor in the Federal High Court has to be either a law officer, State Counsel or a legal practitioner armed with the authority of the Attorney General.*

PARTICULARS OF ERROR

(a) Section 56(1) of the Federal High Court Act is not exhaustive. The mere fact that a police officer was not mention in the Act does not exclude him from prosecuting in the Court.

GROUND TWO

The learned Justices of the Court of Appeal erred in law in holding that section 23 of the Police Act read in conjunction with section 174 of the 1999 Constitution does not empower police officers to prosecute in the Federal High Court.

PARTICULARS OF ERROR

(a) Under section 174(1)b of the 1999 Constitution police fall within the category of persons of 'any other authority or person' who are constitutionally empowered to prosecute in any court including the Federal High Court.

GROUND THREE

The learned Justices of the Court of Appeal erred in Law in holding that under section 56(1) of the Federal High Court Act, police officers not having been listed as persons to represent the state in the Federal High Court lack the standing to initiate and to undertake criminal proceedings before the Federal High Court.

PARTICULARS OF ERROR

(a) Under section 23, Police Act, a police officer has powers to initiate and undertake prosecutions in person before any court in Nigeria including the Federal High Court.

(b) The powers conferred on police officers under section 23 of the Police Act are not limited or restricted by section 56(1) of the Federal High Court.

(c) The powers of the police under section 23 Police Act to initiate and undertake prosecutions in person can always be exercised in any court provided the powers of the Attorney General under section 174 of the 1999 Constitution are not invoked.

GROUND FOUR

The learned Justices of the Court of Appeal erred in law in holding that section 23 of the Police Act of 1990 stand limited or restricted by the

*special provisions of section 56(1) of the Federal High Court Act.*

PARTICULARS OF ERROR

(a) *The powers conferred on police officers under section 23 of the Police Act to initiate and undertake prosecution in any court in Nigeria is constitutional. It is subject to the provision of section 174(1) of the 1999 constitution.*

(b) *Section 56(1) of the Federal High Court Act is inconsistent with the provisions of section 23 of Police Act and section 174(1) of the 1999 Constitution.*

GROUND FIVE

*The learned Justices of the Court of Appeal erred in law in holding that they do not find that section 23 has conferred any powers on police officers to prosecute the appellant in the Federal High Court.*

PARTICULARS OF ERROR

(a) *The power conferred on police under section 23 Police Act to initiate prosecution in any court in Nigeria is not a general power but a specific power relating to the police.*

(b) *The provision of section 23 Police Act is only subject to the provisions of section 174 of the 1999 Constitution and not to any other law including section 56(1) of the Federal High Court Act.*

(c) *The provisions of section 174 of the 1999 Constitution are supreme and supercede any other law made on the same subject matter including the Federal High Court Act.”*

Where the provisions of a statute are clear and unambiguous, effect should be given to them as such unless it would be absurd to do so having regard to the nature and circumstances of the case see *Awolowo v. Shagari* (1979) 6-9 S.C 51; *Rabiu v. State* (1980) 8-11 S.C 130; *Bendel State v. A.G Federation* (1981) 10 S.C 1; *Owena Bank Vs N.S.E Ltd* (1997) 8 NWLR (pt 515); *Adejumo v. Governor of Lagos State* (1972) 3 S.C 45.

Therefore a court of law is without power to import into the meaning of a word, clause or section of a statute something that it does not say. Indeed, it is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are

adequate grounds to justify the inference that the legislature intended something which it omitted to express - see *Bronik Motors v. Wema Bank Ltd* (1983) 6 S.C 158.

It is my considered view that neither Section 23 of the Police Act which grants the power to any Police Officer to institute criminal proceedings in any court in Nigeria nor Section 174(1) (b) which recognizes the right of “*any other authority or person*” to institute criminal proceedings in Nigeria states that such a Police Officer or any “other person” must be a legal practitioner to be so qualified. The provisions are very clear and it is settled principle of constitutional interpretation that the provisions therein must be interpreted liberally instead of being given restrictive interpretation. It is also against the law for the court to read into any provision of a Statute or Constitution what is not expressly or by necessary implication provided or stated. It follows therefore that where constitutional provisions are clear and unambiguous as in this case, there is nothing to be interpreted, the duty of the court being simply to give effect to what has been expressly and clearly stated by the legislature. It is therefore my view that if it was the intention of the framers of the 1999 Constitution to exclude those without legal training from the group of those recognized to institute criminal proceedings in any court in Nigeria they would have clearly stated so in Section 174 of the 1999 Constitution. Their not so stating leaves us with no other option than to hold that by the expression “*any other person*” used in Section 174 (1) (b) of the 1999 Constitution, the framers meant what they said; that is any other person whether learned in law or otherwise - provided he is of course a person.

The fear is naturally expressed of the effect of opening the floodgate by giving the clear meaning to the section in issue. My answer is simply that the court is incapable of closing the floodgate already opened by the Constitution of the land by process of judicial activism through the exercise of its interpretative jurisdiction. I hold the view that the floodgate so opened by the Constitution can only be either narrowed or closed down completely by legislative process duly initiated by way of amendment to the relevant provisions.

The law being as it stands by virtue of the constitutional provisions

which is supreme, I hold the view that any police officer, irrespective of the fact that he is a qualified legal practitioner, has the power under Section 23 of the Police Act and Section 174(1)(b) of the 1999 Constitution to institute criminal proceedings in any court in Nigeria. That being the case  
 B I hold the further view that the opinion expressed by my learned brother, Belgore, JSC in the case of *NPS v. Adekanye* supra to the effect that the powers of the Attorney-General of the Federation under Section 174 of the 1999 Constitution to institute and undertake Criminal Proceedings is not  
 C exclusive is sound law and therefore decline the invitation of the Attorney-General of the Federation in his *Amicus Curiae* Brief to either overrule same or decline to follow it.

Finally I hold the view that when Section 56(1) of the Federal High Court Act is read together with Section 23 of the Police Act and Section  
 D 174(1)(b) of the 1999 Constitution, it becomes very clear that a police officer has the power to initiate criminal proceedings before the Federal High Court without first and foremost obtaining the Attorney-General of the Federation's fiat. The fact that such a police officer is a lawyer is a  
 E bonus or excess luggage.

In conclusion I too allow the appeal and set aside the judgment of the Court of Appeal delivered on 22/5/03 while the ruling of the trial court delivered on 18/7/01 is hereby affirmed. I abide by the other consequential  
 F orders contained in the lead judgment of my learned brother, BELGORE, JSC including the order as to costs.

Appeal allowed.

G

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H 1 A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another.

2 In fright or alarm or terror. In terror or warning; by way of threat.