

SUPREME COURT OF NIGERIA

2ND MARCH, 2007 SC. 26/2006

**CORAM:- I. L. KUTIGI CJN, U. A. KALGO, N. TOBI,
A. M. MUKHTAR, M. MOHAMMED, W. S. N. ONNOGHEN,
I. F. OGBUAGU, JJSC**

ATTORNEY-GENERAL OF KANO STATE PLAINTIFF
AND
ATTORNEY-GENERAL OF THE FEDERATION DEFENDANT

JURISDICTION - Courts - Competence - Includes the subject matter being within its jurisdiction - Any thing done without jurisdiction - Is an exercise in futility (H1)

CONSTITUTIONAL LAW - Supreme Court - Original jurisdiction - Complaints must be against the Federation - For jurisdiction to accrue under s. 232 1999 Constitution (H2)

ACTIONS - Jurisdiction - Dispute - Statement of claim - Disclosed no dispute - Between Kano State and the Federation - So as to invoke Supreme Court's original jurisdiction (H3)

ACTIONS - Jurisdiction - Reliefs sought - Have nothing to do with the defendant - And arising from criminal proceedings - Supreme Court is barred from exercising original jurisdiction - Vide proviso to s. 232 (2) 1999 Constitution (H4)

FACTS

By a Writ Summons before the Supreme Court, Kano State of Nigeria as plaintiff filed an action against the Federation, as defendant. Plaintiff through its House of Assembly promulgated Kano State Hisbah Board Law No. 4 of 2003, which was amended in 2005. The Board was to be carrying out some functions similar to the duties of the Nigeria Police. The Inspector General of Police felt that the Board was unconsti-

tutional and arrested some of its top officers. A correspondence took place between the President of Nigeria and the Kano State Governor over matters related to the said Hisbah Board. Plaintiff claimed 6 declarations, 2 injunctions and 1 order including an injunction restraining the defendant, in particular the I-G of police from stopping the full operation of the Kano State Hisbah Law as amended. The claim was purportedly brought under the Supreme Court's original jurisdiction vide s. 232 of the 1999 Nigerian Constitution.

The Supreme Court suo motu raised the issue of whether the Court's original jurisdiction was properly invoked by the plaintiff having regard to the nature of the dispute disclosed. The parties addressed the Court through their counsel on this issue of jurisdiction.

HELD (Unanimously striking out the suit per **MOHAMMED JSC**)

JURISDICTION - Courts - Competence

1. The Law is well settled that where a court has no jurisdiction to entertain any claim, anything done in respect of the claim will be an exercise in futility. In the celebrated case on the subject of jurisdiction and competence of court of *Madukolu & Ors v. Nkemdilim & Ors* (1962) 2 SCNLR 342 (1962) NSCC 374; (1962) 1 All NLR 587; Bairamian, F.J. stated the law at page 595 as follows:-

“Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put it briefly, a court is competent when

(1) it is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or another; and

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

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

Once there is a defect in competence, it is fatal as the proceedings

are a nullity. (p. 1113 F)

Supreme Court - Original jurisdiction

2. Now the word “Federation” is defined by the 1999 Constitution itself in Section 318 where it stated:-

“ ‘Federation’ means the Federal Republic of Nigeria”

I therefore respectfully, adopt the definition of the word ‘Federation’ in Section 232 of the 1999 Constitution as bearing the same meaning as the ‘Federal Republic of Nigeria’. By this meaning of course all the complaints of the plaintiff in its statement of claim in the present case must be viewed as being against the Federal Republic of Nigeria in order to bring the case within the purview of Section 232 of the Constitution. In other words any complaints against the Government of the Federation or any person who exercises power or authority on its behalf like the Inspector General of Police as asserted by the learned senior counsel for the plaintiff in his address before this court, are completely outside the original jurisdiction of this court.

For the avoidance of any doubt I have very carefully examined the plaintiff’s statement of claim right from paragraph one through to the last paragraph 31 containing the reliefs being sought, I have not come across any compliant in any of the paragraphs against the Federation or the Federal Republic of Nigeria. (p. 1116 D/ 1117 B)

Jurisdiction - Dispute - Statement of claim

3. Not a single paragraph of the plaintiff’s statement of claim accused the Federation of Nigeria or the Federal Republic of Nigeria of doing anything to the Hisbah Law of Kano State, the operation of the Hisbah Corps in Kano State or the arrest and detention of the named Commander General and Deputy Commander General of the Hisbah Corps in Kano State. On the face of the statement of claim of the plaintiff therefore, it is not difficult to see that there is no dispute whatsoever between Kano State in its status as a component unit of the Federation and the unit of the Federation itself which are the recognized parties when the original jurisdiction of this court is invoked. (p. 1119 E)

Jurisdiction - Reliefs sought

4. Going back to the reliefs sought by the plaintiff in paragraph 31 of the statement of claim earlier quoted in this judgment, none of the reliefs B claimed has anything to do with the defendant in this case, which is the Federation or Federal Republic of Nigeria. Quite contrary to the requirement of the law in filing actions in courts of competent jurisdiction, all the reliefs in this case sought by the plaintiff in this court were claimed C against the Inspector General of Police who unfortunately is not a recognized party subject to the original jurisdiction of this court under Section 232 (1) of the 1999 Constitution. That apart, relief 9 claimed by the plaintiff namely:-

D *“to stop the arrest and prosecution of any official of Kano State Government in the lawful execution and implementation of the provisions of the said laws.”*

being in the nature of relief arising from criminal proceedings, this court is specifically barred from exercising original jurisdiction in such E matters in the provision to sub-section (2) of section 232 of the 1999 Constitution. In other words the plaintiff’s statement of claim in the present case not having disclosed any dispute between Kano State as plaintiff and the Federation of Nigeria as defendant, the original jurisdiction of this F court cannot be invoked to hear and determine the plaintiff’s case in the absence of any justiciable dispute between the parties. (p. 1121 E)

NOTABLE POINT OF INTEREST

MOHAMMED JSC

G *1. Courts are to give statutes their ordinary meaning*

In any case, the provisions of section 232 of the 1999 Constitution are quite clear. It is now well settled that the duty of this court and indeed any other court, is to interpret the words contained in the Constitution, H and any statute in their ordinary and literal meaning. Certainly, it is not the duty of the court to go outside words used in a statute and import an interpretation which may be or is convenient to it or to the parties or to one of the parties. (p. 1121 B)

REPRESENTATION

Yusuf O. Ali, SAN with him K. K. Eleja, A. T. Uwais, R. O. Balogun, J. I. Jacobs (Miss) and S. O. Babakebe for Plaintiff, Mrs. A. O. Mbamali (Ag. Director Civil Litigation) Federal Ministry of Justice for the Defendant. B

CASES REFERRED TO

Madukolu & Ors v. Nkemdilim & Ors (1962) 2 SCNLR 342 (1962) NSCC 374; (1962) 1 All NLR 587

Attorney General of Lagos State v. Attorney General of the Federation (2004) 18 NWLR (pt. 904) 1 at 125-126 C

Attorney General Anambra State v. Attorney General of the Federation (2005) 2 NWLR (pt.931) 572 at 625

Attorney General of the Federation v. The Attorneys General of 36 States of the Federation, (2001) D

Ojo-Ajao & Ors v. Popoola Ajao & Ors (1986) 5 NWLR (pt.45) 802

Attorney General of the Federation v. Attorney General of Imo State (1983) 4 NCLR 178 E

Governor of Ondo State v. President of the Federation (1985) 6 NCLR 681

Governor of Kaduna State v. The President of the Federal Republic of Nigeria (1981) 2 NCLR 786

Obioha v. President of the Federal Republic of Nigeria (1981) 2 NCLR 701 F

Governor of Ogun State v. President of the Federal Republic of Nigeria (1982) 3 NCLR 538

President of the Federal Republic of Nigeria v. Governor of Kano State (1982) 3 NCLR 819 G

Attorney General of Bendel State v. Attorney General of the Federation & 22 Ors (1981) 10 SC 1

Curtis v. Stovin (1869) 22 G.B.D. 513 at 519 H

Tukur v. Government of Gongola State (1989) 4 NWLR (pt. 117) 517 at 547

Ozomo V. A-G Bendel State (1986) 4 NWLR (pt. 36) 448

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999 Ss. 214-216, 232, 251 and 318

B Kano State Hisbah Board Law No. 4 of 2003 s. 7(4)

LEAD JUDGMENT BY MOHAMMED JSC

In this Civil suit, Kano State of Nigeria as the plaintiff claims against
C the Federation of Nigeria by a Writ of Summons dated and filed the same
day 13-2-2006 in the registry of this court accompanied by a statement
of claim claiming a number of reliefs in paragraph 31 thereof as follows:-

“31. WHEREOF the plaintiff claims as follows-

D 1. DECLARATION that the Kano State Hisbah Board Law No.4
of 2003 (hereinafter referred to as Law No.4) and the Kano State Hisbah
Board (Amendment) Law No.6 of 2005 (hereinafter referred to as Law
No.6) were regularly made by the Kano State House of Assembly, duly
assented to by the Governor of Kano State, *they are Legal, Lawful and*
E *Constitutional*.

2. DECLARATION that Law No.4 and Law No.6 were made by
the Kano State House of Assembly for peace, Order and good govern-
ment of Kano State, *the Laws are therefore valid, lawful, legal and con-*
F *stitutional*.

3. DECLARATION that Law No.4 and Law No.6. aforesaid were
made in accordance with the powers vested in the Kano State House of
Assembly by the provisions of section 4(6) and (7) of the Constitution of
the Federal Republic of Nigeria 1999.

G 4. DECLARATION that Law No.4 and Law No.6 were made by
the Kano State House of Assembly and assented to by the Governor of
Kano State in accordance with the provisions of section 100 of the Con-
stitution of the Federal Republic of Nigeria 1999 and all other powers in
H that behalf.

5. DECLARATION that the defendant, *his agents or privies have*
no power nor authority to declare as unconstitutional any of the provi-
sions of Law No.4 and Law No. 6 without a court order or pronounce-

ment to that effect.

6. DECLARATION that all the provisions of Law No.4 and Law No.6 are valid, extant and operate until otherwise declared.

7. INUNCTION restraining the defendant by himself, his agents, or privies, in particular *the Inspector General of Police from disturbing, stopping, disrupting or in any other manner stop the full operations of Law No.4 and Law No.6 by taking any step whatsoever in the stoppage of the full implementation of the said Laws.*

8. INJUNCTION restraining the defendant by himself, his agents, or privies *and in particular the Inspector General of Police from arresting, harassing or intimidate any person in the lawful execution of and/or implementation of the provisions of Law No.4 and Law No.6 respectively.*

9. ORDER directing the defendant by himself, his agents or privies to stop forthwith any interference with the lawful implementation of the provisions of Law No.4 and Law No.6 *and in particular to stop the arrest and or prosecution of any official of Kano State Government in the lawful execution and implementation of the provisions of the said E laws.*

10. AND for such further or *other reliefs* as the court may find the plaintiff entitled to.”

The plaintiff was purported to have brought this suit against the defendant under the original jurisdiction of this court prescribed by section 232 of the 1999 Constitution of the Federal Republic of Nigeria. The suit came before this court for hearing on 29-6-2006 and adjourned to 23-11-2006 for further hearing on which date judgment was reserved for delivery on 23-2-2007. However, on 8-1-2007 the parties were recalled by this court when their learned counsel were given the opportunity to address this court on whether the original jurisdiction of this court under section 232 of the 1999 Constitution was properly invoked by the plaintiff in this suit having regard to the nature of the dispute disclosed in the plaintiff’s Writ of Summons and the statement of claim. In other words, this court suo motu raised the issue of jurisdiction and asked the parties through their learned counsel to satisfy it if this

court has original jurisdiction to entertain the plaintiff's suit against the defendant having regard to the nature of the dispute disclosed in the statement of claim and the ultimate reliefs claimed, in paragraph 31 thereof, which I have earlier in this judgment quoted in full.

B In the learned counsel's addresses on this issue of jurisdiction, while learned counsel to the defendant Mrs. A. O. Mbamali, the Director of Civil Litigation from the Federal Ministry of Justice for the defendant agreed that this court has no original jurisdiction to entertain the plaintiff's
C suit, Alhaji Yusuf O. Ali, learned Senior Counsel for the plaintiff insisted that this court has original jurisdiction under section 232 of the 1999 Constitution to hear and determine the plaintiff's claims in the suit.

In his argument in this respect, learned counsel to the plaintiff referred to the provisions of section 232 (1) and (2) of the 1999 Consti-
D tution and observed that the key word in subsection (1) of the section is the word 'dispute'. On the existence of this dispute between the Federation and Kano State, the learned senior counsel referred to paragraphs 14 and 18 of the plaintiff's statement of claim at pages 5 and 6 of the plaintiff's
E brief of argument and also paragraphs 20, 29 and 30 of the statement of claim at pages 7 and 8 of the plaintiff's brief of argument as disclosing dispute between the plaintiff and the defendant to justify this court exercising its original jurisdiction to entertain the plaintiff's suit. This position
F is particularly so insisted the learned senior counsel, who relied on the cases of *Attorney General of Lagos State v. Attorney General of the Federation* (2004) 18 NWLR (pt. 904) 1 at 125-126 and *Attorney General Anambra State v. Attorney General of the Federation* (2005) 2 NWLR (pt.931) 572 at 625 and the documents tendered and received in evidence
G in support of the plaintiff's case.

The learned Director of Civil Litigation in the Federal Ministry of Justice for the defendant is however of the view that this court has no jurisdiction under section 232 (1) and (2) of the 1999 Constitution to
H entertain the plaintiff's suit as disclosed in the Writ of Summons and the statement of claim, Learned counsel pointed out that in the action instituted by the plaintiff, there is no dispute between the Federation and Kano State if the statement of claim is closely examined without looking

at the statement of defence or the briefs of argument filed by the parties. Citing the cases of *Attorney General of the Federation v. The Attorneys General of 36 States of the Federation* (2001) 6 Monthly Judgments of Supreme Court page 89 also reported in (2001) 7 SCNJ 1 and *Attorney General of Anambra State & Ors. v. Attorney General of the Federation & Ors* (1993) 6 NWLR (pt.302) 692 at 699 and paragraphs 12-17 of the statement of claim, learned counsel emphasized that in determining the issue of jurisdiction, only the statement of claim is relevant. Referring to the facts averred in paragraphs 12-17 of the statement of claim, the learned defendant's counsel observed that from the letters exchanged between the Federal Government and the Kano State Government on the subject of the Hisbah Board Law, there was no dispute between the parties; that even on the facts averred in paragraph 19 of the statement of claim heavily relied upon by the plaintiff on the conduct of the Inspector General of Police whom the plaintiff regarded as agent of the defendant, learned counsel submitted that the action of the Inspector General of Police was within his own powers as conferred by section 215 of the 1999 Constitution. Concluding her submission on this issue of jurisdiction, learned defendant's counsel urged this court to strike out the plaintiff's action for lack of jurisdiction to entertain it as the dispute disclosed from the statement of claim does not go beyond the Inspector General of Police and Kano State Government.

The Law is well settled that where a court has no jurisdiction to entertain any claim, anything done in respect of the claim will be an exercise in futility. In the celebrated case on the subject of jurisdiction and competence of court of *Madukolu & Ors v. Nkemdilim & Ors* (1962) 2 SCNLR 342 (1962) NSCC 374; (1962) 1 All NLR 587; Bairamian, F.J. stated the law at page 595 as follows:-

“Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put it briefly, a court is competent when

(1) it is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or another; and

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

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

Once there is a defect in competence, it is fatal as the proceedings are a nullity. See *Ojo-Ajao & Ors v. Popoola Ajao & Ors* (1986) 5 NWLR (pt.45) 802 and *Attorney General Anambra State v. Attorney General of the Federation* (1993) 6 NWLR (pt.302) 692.

Now section 232 (1) and (2) under which the plaintiff sought to invoke the original jurisdiction of this court to entertain and determine the plaintiff’s action against the defendant reads-

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

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly: Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.”

The question therefore is whether the original jurisdiction of this court was properly invoked by the plaintiff in the present case. When confronted with similar question in a preliminary objection in *Attorney General of Lagos Stated v. Attorney General of the Federation* (2004) 18 NWLR (pt.904) 1, relied upon by both parties in this case, my learned brother Tobi JSC answered the question at pages 125-126 where he said-

“In Attorney General of the Federation v. Attorney General of Imo State (1983) 4 NCLR 178, it was held that before the original jurisdiction of the Supreme Court can be invoked under section 212 of the 1979 Constitution, the following criteria must be satisfied:

“(1) There must be a justiciable dispute involving any question of

law or fact.

(2) *The dispute must be:-*

(a) *between the Federation and a State in its capacity as one of the constituent units of the Federation; or*

(b) *between the Federation and more states than are in their capacities as members of the constituent units of the Federation; or*

(c) *between States in their aforesaid capacities and the dispute must be one on which the existence or extent or a legal right in the aforesaid capacity is involved."*

In Governor of Ondo State v. President of the Federation (1985) 6 NCLR 681, it was held that it is only the Supreme Court that has exclusive jurisdiction by virtue of Section 212 (1) of the 1979 Constitution to hear and determine a dispute between the Federation on the one hand and the State on the other. See also The Governor of Kaduna State v. The President of the Federal Republic of Nigeria (1981) 2 NCLR 786; Obioha v. President of the Federal Republic of Nigeria (1981) 2 NCLR 701; Governor of Ogun State v. President of the Federal Republic of Nigeria (1982) 3 NCLR 538; President of the Federal Republic of Nigeria v. Governor of Kano State (1982) 3 NCLR 819. And if I may say, Section 212 of the 1979 Constitution is in pari materia with the original section 232 of the 1999 Constitution."

On the type of disputes that parties could bring to invoke the original jurisdiction if this court under Section 232 of the 1999 Constitution of the Federal Republic of Nigeria which is in pari materia with the provision of section 212 of the 1979 Constitution on the original jurisdiction of this court, see a recent decision of this court in *Attorney General Anambra State v. Attorney General of the Federation* (2005) 9 NWLR (pt 931) 572 at 610 and 625 where some of the reliefs claimed by the plaintiff which could not have been brought within the original jurisdiction of this court were struck out.

It is quite clear from the numerous decisions of this court that in order to invoke the original jurisdiction of this court under section 232 (1) of the 1999 constitution, there must be a dispute between the Federation and one or more States as component part of the Federation or

between the States themselves and the character of the dispute, as clearly qualified by the Section, must involve a question whether of law or fact, on which the existence or extent of a legal right depends. It must be clearly established that the dispute within the purview of the Section, must be a justifiable dispute. In other words the dispute contemplated under the section must be a dispute that is appropriate for judicial determination. See *Attorney General of Bendel State v. Attorney General of the Federation & 22 Ors* (1981) 10 SC 1.

In the present case, there is no doubt whatsoever that the plaintiff in its statement of claim filed in this court to invoke the original jurisdiction of this court under Section 232 of the 1999 Constitution, has shown the existence of a dispute contemplated under the section. However, the main question is whether the plaintiff has succeeded in showing the existence of this dispute with the Federation of Nigeria which is the real defendant in the action. **Now the word “Federation” is defined by the 1999 Constitution itself in Section 318 where it stated:-**

“ ‘Federation’ means the Federal Republic of Nigeria”

Although on the face of the word there may not be difficulty in its meaning, I shall still refer to the definition of the word as used in Section 212 of the 1979 Constitution which is in pari materia with section 232 of the 1999 Constitution in the case of *Attorney General of the Federation v. Attorney General of Imo State* (1993) 4 NCLR 178 where Bello JSC (as he then was of blessed memory) defined the word “Federation” in his judgment at pages 193-194 where he said:-

“It now remains to consider the crucial question, which has never been decided by this court, as to what is ‘Federation’ and ‘State’ within the ambit of Section 212 of the Constitution, xxxx ‘State’ when used otherwise than in relation to one of the component parts of the Federation includes government. xxxx ‘government’ includes the Government of the Federation, or of any State or of a Local Government Council or any person who exercises power or authority on its behalf, xxxxxxxxxxxxxxxx

The meaning of the word ‘Federation’ presents no difficulty. It is clear from the provisions of Section 2 of the Constitution that the words ‘Nigeria’, ‘Sovereign State’, ‘Federal Republic of Nigeria’ and ‘Federa-

tion' are synonymous. I hold that 'Federation' in Section 212(1) of the Constitution bears the same meaning as the Federal Republic of Nigeria."

I have already stated earlier in this judgment that Section 212 of the 1979 Constitution under which the word 'Federation' was defined is in pari materia with the provisions of Section 232 of the 1999 Constitution now under consideration. **I therefore respectfully, adopt the definition of the word 'Federation' in Section 232 of the 1999 Constitution as bearing the same meaning as the 'Federal Republic of Nigeria'. By this meaning of course all the complaints of the plaintiff in its statement of claim in the present case must be viewed as being against the Federal Republic of Nigeria in order to bring the case within the purview of Section 232 of the Constitution. In other words any complaints against the Government of the Federation or any person who exercises power or authority on its behalf like the Inspector General of Police as asserted by the learned senior counsel for the plaintiff in his address before this court, are completely outside the original jurisdiction of this court.**

For the avoidance of any doubt I have very carefully examined the plaintiff's statement of claim right from paragraph one through to the last paragraph 31 containing the reliefs being sought, I have not come across any compliant in any of the paragraphs against the Federation or the Federal Republic of Nigeria. In his address before this court learned senior counsel to the plaintiff referred to paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 27, 28, 29 and 30 of the statement of claim as disclosing dispute with the defendant, the Federal Republic of Nigeria. These paragraphs of the plaintiff's statement of claim read:-

"13. The plaintiff states that some time in 2005 the president of the Federation wrote a letter to the Governor of Kano State in which he expressed some concern about the Hisbah Board and the Governor duly replied the president to allay his fears on the matter. The two letters are hereby pleaded and shall be found upon at the hearing.

14. The plaintiff avers further that earlier in July, 2005 the Presi-

dent sent a delegation made up of the Honourable Minister of Police Affairs, the Head of the Civil Service of the Federation and two other top Federal Government functionaries to Kano State on a fact finding mission on the issue of the Hisbah Board and its operations.

B 15. The plaintiff states that the Government of Kano State duly received the delegation and extended all support and co-operation to them by giving all necessary information on the operation of the Hisbah in Kano State to them and the above facts were attested to in the letter of the President dated 29th July, 2005 written to the Governor of Kano State.

C 16. The plaintiff states that the Governor of Kano State further in August, 2005 wrote another letter to the President to clarify certain misinformation passed to the President on the issue of the Hisbah by some individuals. A copy of the letter is pleaded.

D 17. The plaintiff states that on or about 7th of February, 2006 the Inspector General of Police Mr. Sunday Ehindero addressed the press and at the briefing he declared the Hisbah Law and the operations of the bodies created by the Laws as unconstitutional and illegal.

E 18. The plaintiff states that on 8th February, 2006 the Inspector General of Police caused his officers and men to effect the arrest of the Chairman and Commander General of the Hisbah Corps, Mallam Yahaya Farouk Chedi and his deputy Mallam Abubakar Abdulkareem Rabo who were arrested in Kano but immediately taken to Abuja And detained.

F 19. The plaintiff avers that before the events alluded to above supra, the agents of the plaintiff had made some allegations that the Hisbah had sought foreign assistance from Libya and Iran for training as a terrorist group.

G 20. The plaintiff states that when this allegation got to the attention of the Governor of Kano State, he directed that the veracity of the allegation be investigated and this was duly done.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

H 27. The plaintiff shall contend further that until a piece of legislation is declared unconstitutional, no authority or person in Nigeria can unilaterally declare such legislation unconstitutional nor stop its full operation and or implementation.

28. *The plaintiff states that the defendant through the Minister of Information had addressed the press in which he made serious allegations of security breaches against the Kano State Government. A copy of the press release of the said Minister shall be found upon at the hearing.*

29. *The plaintiff states emphatically that there is no iota of truth in the allegations of the defendant on the activities of the Hisbah Corps and since 2003 when the corps came into operation it has been assisting the law enforcement agencies in maintaining peace in Kano State to the admiration of all peace loving people of the State.*

30. *The plaintiff shall contend that the activities of the defendant on the issue of the Hisbah is actuated not by national security but petty politics vendetta and blackmail.”*

Although the word ‘defendant’ was used in some of the paragraphs of the statement of claim, that word cannot be construed as referring to the Government of the Federation or any of its agencies or any person who exercises power or authority on its behalf like the Inspector General of Police or the Attorney General of the Federation. The word must be construed to refer to the ‘Federation of Nigeria’ or the ‘Federal Republic of Nigeria’, which is the recognized defendant in terms of Section 232 of the 1999 Constitution prescribing the parties that may invoke the original jurisdiction of this court. **Not a single paragraph of the plaintiff’s statement of claim accused the Federation of Nigeria or the Federal Republic of Nigeria of doing anything to the Hisbah Law of Kano State, the operation of the Hisbah Corps in Kano State or the arrest and detention of the named Commander General and Deputy Commander General of the Hisbah Corps in Kano State. On the face of the statement of claim of the plaintiff therefore, it is not difficult to see that there is no dispute whatsoever between Kano State in its status as a component unit of the Federation and the unit of the Federation itself which are the recognized parties when the original jurisdiction of this court is invoked.**

However, quite contrary to the requirements of section 232 (1) of the 1999 Constitution, the dispute disclosed in the plaintiff’s statement of claim is a dispute between the Government of Kano State and its agen-

cies and the Government of the Federation and its agencies, particularly the Police and the Federal Ministry of Information through the Inspector General of Police and the Minister of Information who in their capacities as persons exercising power or authority on behalf of the Government of the Federation, addressed the press declaring the Hisbah Law of Kano State and the operation of the bodies created by it, as unconstitutional and illegal. Certainly if the plaintiff has any dispute with the Inspector General of Police and the Honourable Minister of Information for their respective roles in the various declarations they made on the Hisbah Law, the operation of the Hisbah Corps and the arrest and detention of the officials of the Hisbah Corps, the proper venue for the settlement of such dispute does not lie in invoking the original jurisdiction of this court. The venue for the settlement of such dispute lies elsewhere with various courts of first instance whose original jurisdictions are clearly outlined in the same 1999 Constitution. It may be appropriate to observe at this stage that the original jurisdiction of this court under section 232 of the 1999 Constitution must be distinguished with the original jurisdiction of the Federal High Court under Section 251(1)(p)(q) and (r) dealing with actions against the Federal Government or any of its agencies where the same Constitution states:-

“251(1) Notwithstanding anything to the contrary contained in this Constitution, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

xx

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

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

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; xx”

Having regard to these plain provisions of the Constitution, I am of the strong view that to accede to the arguments of the learned senior counsel for the plaintiff to entertain the present action would result in reducing the status and function of this court to that of the Federal High Court, quite contrary to the spirit and intention of the Constitution which assigned the limit of powers and jurisdiction to be exercised by each court created by it. B

In any case, the provisions of section 232 of the 1999 Constitution are quite clear. It is now well settled that the duty of this court and indeed any other court, is to interpret the words contained in the Constitution, and any statute in their ordinary and literal meaning. Certainly, it is not the duty of the court to go outside words used in a statute and import an interpretation which may be or is convenient to it or to the parties or to one of the parties. See *Curtis v. Stovin* (1869) 22 G.B.D. 513 at 519; *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517 at 547; *Attorney-General of Bendel State v. Attorney General of the Federation & Ors* (1981) 3 NCLR and *Attorney General of Lagos State v. Attorney-General of the Federation* (2004) 18 NWLR (pt.904) 1 at 32. E

Going back to the reliefs sought by the plaintiff in paragraph 31 of the statement of claim earlier quoted in this judgment, none of the reliefs claimed has anything to do with the defendant in this case, which is the Federation or Federal Republic of Nigeria. Quite contrary to the requirement of the law in filing actions in courts of competent jurisdiction, all the reliefs in this case sought by the plaintiff in this court were claimed against the Inspector General of Police who unfortunately is not a recognized party subject to the original jurisdiction of this court under Section 232 (1) of the 1999 Constitution. That apart, relief 9 claimed by the plaintiff namely:- F

“to stop the arrest and prosecution of any official of Kano State Government in the lawful execution and implementation of the provisions of the said laws.” G

being in the nature of relief arising from criminal proceedings, this court is specifically barred from exercising original jurisdiction in such matters in the provision to sub-section (2) of section H

232 of the 1999 Constitution. In other words the plaintiff's statement of claim in the present case not having disclosed any dispute between Kano State as plaintiff and the Federation of Nigeria as defendant, the original jurisdiction of this court cannot be invoked to hear and determine the plaintiff's case in the absence of any justiciable dispute between the parties. This is in line with the observation of Kutigi JSC (as he then was) in the case of *Curtis v. Stovin* (1869) 22 G.B.D. 513 at 519; *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517 at 547 where, when faced with a similar situation as in the present case, remarked thus

"It will in my view be subversive for a court of law to claim to determine disputes where none existed or had ceased to exist."

Applying this remark to the present case, the plaintiff having failed to show the existence of any justiciable dispute between it and the defendant being the Federal Republic of Nigeria, the original jurisdiction of this court is ousted thereby relieving the court of the power to adjudicate in the matter. Accordingly, the plaintiff's suit No. SC.26/2006 filed in this court on 13-12-2006 in purported invocation of the original jurisdiction of this court under section 232 (1) of the 1999 Constitution of the Federal Republic of Nigeria, is hereby struck out with no order on costs.

F

KUTIGI CJN

I have had the privilege of reading in draft the judgment just rendered by my learned brother Mohammed, JSC. I agree with his reasoning and conclusions. The Plaintiff has woefully failed to show that there is any dispute between it and the Defendant to enable it invoke the original jurisdiction of this Court under Section 232(1) of the Constitution. The suit No. SC.26/2006 is accordingly incompetent and is hereby struck out. No order as to cost.

H

KALGO JSC

I have had the privilege of reading in advance the judgment of my

learned brother Mohammed JSC in this action which was filed pursuant to the original jurisdiction of this court under Section 232 (1) of the 1999 Constitution. I find myself in full agreement with reasoning and conclusions reached in the said judgment. I however wish to add a few words of mine by way of emphasis.

The whole action was based on or arose out of the operation of the Kano State Hisbah Board Law No. 4 of 2003 and Kano State Hisbah (Amendment) Law No. 6 of 2005. Under Section 7 of the law No. 4 of 2003 Hisbah Corps were established with the duties and responsibilities set out under subsection (4) of that section. Some of these duties and responsibilities are very similar in many respects, to those of the Nigeria Police. They include for example-

“(i) Rendering necessary assistance the Police and other Security Agencies especially in the areas of prevention, detention and reporting of offences;

(ix) Handling non-fire-arms for self defence like batons, and other non-lethal civil defence instruments;

(xi) Assisting in traffic control

(viii) Assisting in any other situation that will require the involvement of Hisbah be it preventive or detective.”

All other responsibilities under the subsection are of general nature.

As a result of the operations of the Hisbah Corps under the Hisbah Board Law, particularly of the responsibilities set out above, the Inspector-General of Police was of the opinion that the Hisbah Corps in Kano State have completely usurped the powers and duties of the Nigeria Police under the Police Act and the Constitution. That was why, he posed it and even went to the extent of issuing a press release challenging the Hisbah Board Law and arrested the top commanders of the Hisbah Corps and charged them to court. This was followed by a similar press release by the Hon. Minister of Information.

From the Statement of Claim of the plaintiff, it is very clear especially paragraphs 17 and 18 that the Inspector-General of Police was directly opposed to Hisbah Board Law and its operation and in fact took

certain actions against the operators. There is nothing in the whole Statement of Claim to show that the Federal Government of Nigeria, either through the President or the Hon. Attorney-General of the Federation has taken any adverse action against the operation of the Hisbah Board Law or Kano State Government itself. Paragraphs 13 and 14 of the Statement of Claim merely explained that by a letter in 2005, the President expressed some concern about the Hisbah Board operations in Kano State and later sent a delegation on a “fact finding mission” on the Hisbah law and its operation.

Thereafter the Governor of Kano State, in addition to receiving the delegation and giving necessary explanation and information replied the President’s letter to the President giving further information about Hisbah operations in Kano State.

It is pertinent and significant to observe that the President, apart from writing the letter and sending a delegation on a fact finding mission to Kano, did not take or threaten take any action against Kano State Government, or Hisbah Law, or any of its operators. There is no doubt that the President in his official capacity has the constitutional powers to address or deal with any security issue affecting or likely to affect Nigeria or any part thereof. He is the Chief Security Officer of this country and must be satisfied with any formation on security before deciding whether to take action or not. In this case, the President did not take any action, apart from acquiring information from the Kano State government, and therefore since he took no action at all, he is presumed to be satisfied with the explanation and information given to him. But the Inspector-General of Police went beyond collecting information about the Hisbah Board Law or its operations. He look certain drastic action apart from the press release challenging the constitutionality of the Hisbah law.

The writ of summons in this action was filed on the 13th of February 2006 in this court pursuant to the provisions of Section 232 (1) of the 1999 Constitution. The plaintiff, Kano State Attorney-General asked for 9 reliefs. The defendant is the Attorney-General of the Federation. It is not in dispute that the Attorney-General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be made

against the Federal Government or any of its authorized agencies, arising from any act or omission complained of. See *Ozomo V. A-G Bendel State* (1986) 4 NWLR (pt. 36) 448. The Inspector-General of Police, who is involved in this case, is the head of the Nigeria Police Force in Nigeria. It is a force recognized by the State and Federal Governments of Nigeria B and its a separate body created by the Constitution with special powers and responsibilities and can properly be sued. (See Sections 214 - 216 of 1999 Constitution and Police Act Cap. 359 of Laws of Federation 1990).

As stated earlier Attorney-General of a State or the Federation can be sued in any civil claim or complaint against the Government of a State C or the Federation as the case may be, but this can only properly happen where the claim or complaint is directly against the State or Federal Government concerned. In this case, the Federal Government was not directly concerned and no relief was sought against it by the plaintiff in the D action. The provisions of Section 232 of the 1999 Constitution under which this action is purported to instituted cannot therefore in my view be applicable here. I accordingly so hold.

For the above and more detailed reasons stated in the leading judgment of Mohammed JSC, I also find that this action was not properly E filed in this court, and I hereby strike it out. I abide by the order of costs made in the said judgment.

F

TOBI JSC

I have read in draft the judgment of my learned brother, Mohammed JSC and I agree with him. The matter has to do with the original jurisdiction of the Supreme Court. G

Section 232 of the Constitution of the Federal Republic of Nigeria, 1999 provides for the original jurisdiction of the court. By section 232(1) the court has original jurisdiction to the exclusion of any other court in H any dispute between the Federation and State or between States if and in so far as that dispute involves any question on which the existence or extent of a legal right depends. Section 232(2) provides that in addition to the jurisdiction conferred upon the court by section 232(1) the court

shall have original jurisdiction as may be conferred upon it by any Act of the National Assembly.

Before the original jurisdiction of the court can be invoked, the following criteria must be satisfied:

B (1) There must be a justiciable dispute involving any question of law or

(2) The dispute must be;

(a) between the Federation and a State in its capacity as one of constituent units of the Federation; or

C (b) between the Federation and more States than are in their capacities as members of the constituent units of the Federation; or

(c) between States in their aforesaid capacities, and the dispute must be one on which the existence or extent of a legal right of a State in D its aforesaid capacity is involved.

See Governor of Ondo State v. President of the Federation (1985) 6 NCLR 681. See also Governor of Kaduna State v. President of the Federal Republic of Nigeria (1981) 2 NCLR 786; The Governor of Osun E State v. President of Nigeria (1982) 3 NCLR 538; President of the Federal Republic of Nigeria v. Governor of Kano State (1982) 3 NCLR 819.

Where a dispute is not between the Federation and a State or between States, the Supreme Court cannot exercise original jurisdiction. In F Attorney-General of Ondo State v. Attorney-General of the Federation (1983) 2 SCNLR 296, the plaintiff invoked the original jurisdiction of court under section 212 of the 1979 Constitution, which is *impari materia* with section 232 of the 1999 Constitution. The action was against the Federation and 19 States and the Federal Electoral Commission as the G 20th defendant. The complaint was alleged interference with usurpation of the duties of the 20th defendant.

On a preliminary objection on the jurisdiction of the court, it was held as follows:

H (a) The court has no jurisdiction to entertain an action on a dispute which is not between the Federation and a State or which is not a dispute between States, which does not involve any question on which the existence or extent of a legal right depends.

(b) The Federal Electoral Commission is not a State.

(c) Section 212 does not cover dispute between a State and a body which is not a State or between a Federation and a State.

(d) Section 212 does not authorize a State to bring another State to the bar of the Supreme Court for a dispute that does not affect the property or powers of the complaining State in its sovereign or corporate capacity but at most affect also the rights of individual citizens within the state.

The plaintiff in his writ of summons has asked for nine reliefs: six declaratory, two injunctive and one order “*directing the defendant by himself, his agents or privies to stop forthwith any interference with the lawful implementation of the provisions of Law No. 4 and Law No. 6 and in particular to stop the arrest and or prosecution of any official of Kano State Government in the lawful execution and implementation of the provisions of the said laws.*”

The Kano State as a component part of Nigeria provided for in section 3(1) and first Schedule, Part I of the Constitution, as an entity is distinct from the persons living in the State, While a dispute between Kano State and the Federation is within the original jurisdiction of the Supreme Court, a dispute between persons living in the State and the Federal Government or dispute between persons living in the State and organs of the Federal Government is outside the original jurisdiction of the Supreme Court.

The action in its six declaratory reliefs are asking for a declaration that the Kano State Hisbah Board Law No. 4 of 2003 and the Kano State Hisbah Board (Amendment) Law No. 6 of 2005 are legal, lawful and constitutional. Where is the dispute between Kano State and the Federation here? There is nothing to show that the Federal Government has declared the Laws Nos 4 and 6 illegal, unlawful and unconstitutional. Why then the reliefs one to six? Is the plaintiff not trying to jump the gun? If that is what the plaintiff is trying to do or is really doing, this court will not assist him because there is no legal basis for assisting him.

Reliefs 7 and 8 are against the defendant and the Inspector -General of Police. Can the reliefs metamorphose to a dispute between Kano

State and the Federation? Our adjectival law allows the plaintiff or other aggrieved persons to either sue the defendant on record or the Inspector-General of Police individually or together.

It is my humble view that the action does not come within the provision of section 232 of the Constitution. The action is trying to give a burden to the section which it cannot carry. The action is therefore incompetent. It is accordingly struck out.

C

MUKHTAR JSC

I have read in advance the lead judgment delivered by my brother Mohammed JSC. I agree entirely that no dispute has arisen between the parties to warrant the institution of the suit. Section 232 of the Constitution of the Federal Republic of Nigeria is very clear on this. In the circumstance, I also strike out the suit as it is incompetent.

E

ONNOGHEN JSC

I have had the privilege of reading in draft, the lead judgment of my learned brother, MOHAMMED, JSC just delivered and I agree with his reasoning and conclusion that this court has no original jurisdiction to entertain and determine the matter and that the suit should be struck out.

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I order accordingly and abide by the consequential order as to costs. Case struck out.

G

OGBUAGU JSC

On 29th June, 2006, this case came up for hearing and after the learned counsel for the parties who had filed and exchanged their respective Briefs of Argument, had each adopted their respective Briefs and the learned counsel for the Plaintiff, Yusuf Ali, Esqr, (SAN), urged the court to enter judgment in favour of the plaintiff while the learned counsel for the Defendant, urged the court to dismiss the suit, the court reserved Judgment till 23rd February, 2007.

At the instance of the Court, the learned counsel for the parties, were invited by the Court to address it on 8th January, 2007, on the issue of its original jurisdiction pursuant to Section 232(1) & (2) of the Constitution of the Federal Republic of Nigeria, 1999 as regards this suit in view of the Statement of Claim and the reliefs therein sought by the Plaintiff.

Ali, Esqr., (SAN) - the leading learned counsel for the Plaintiff, read out in the open court, the provisions of Section 232(1) & (2) of the said 1999 Constitution and referred the Court, to paragraphs 17, 18, 28, 29 and 30 of the Statement of Claim reproduced at pages 5, 6, 7 and 8 of their Brief of Argument filed on 24th April, 2006. He also referred to case No. 2 in their list of Authorities - i.e. *Attorney General of Lagos State v. Attorney General of the Federation (2004) 18 NWLR (Pt.904) 1 @ 125 -126* - per Tobi, JSC, (it is also reported in *(2004) 12 SCNJ. 1; (2004) 11-12 S.C. (Pt.85)* and also the case of *Attorney General, Anambra State v. Attorney General of the Federation (1993) 6 NWLR (Pt.302) 692 @ 724-725* - per Karibi-Whyte, JSC. He then submitted that given the facts and the Exhibits tendered in this case, that the Plaintiff, has dispute recognizable to be entertained by this Court.

Mrs. Mbamali (Acting DCL, Federal Ministry of Justice) - the learned counsel for the Respondent, submitted that this Court, has no jurisdiction to entertain this suit. He/she referred to the case of *Attorney General of the Federation v. Attorney General of Abia State & 35 ors. (2001) MJSCN (Monthly Judgments of the Supreme Court of Nigeria) 89 @ 109* (it is also reported in *(2001) 7 SCNJ, 1*) as to the elements and the definition of a "Dispute". He/she submitted that there is no dispute between the Plaintiff and the Defendant having regard to the Statement of Claim of the Plaintiff. He/she referred to the case of *Attorney General, Anambra State v. Attorney General of the Federation (supra)*. Learned counsel referred to paragraphs 4 to 17, and 19 of the Statement of Claim as to the action of the Inspector-General of Police referring to the Agents of the Plaintiff and not that of the Defendant. He/she then referred to Section 215 (2) of the 1999 Constitution as to the powers conferred on the Inspector-General of Police and also the reliefs sought. He/she sub-

mitted that the dispute, is between the plaintiff and the Agents of the Inspector-General of Police. She finally, urged the Court to strike out the suit as, according to him/her, there is no dispute between the Plaintiff and the Defendant.

B Ali, Esqr, (SAN) in reply to point of law, referred the Court to Section 215 (4) and (5) of the 1999 Constitution. Thereafter, Judgment, was reserved till to-day.

C I have had the privilege of reading before now, the lead Judgment of my learned brother, Mohammed, JSC, just delivered. I agree with his reasoning and conclusion that the plaintiff, has failed to show the existence of any justiceable dispute between it and the Defendant. This being the case, this Court, has no original jurisdiction to entertain and determine this suit. In the circumstances, I too, strike out the said suit without costs. However, by way of emphasis, I will make, even briefly, my own contribution.

E In a long line of decided authorities, it is now firmly settled that it is the Statement of Claim that is looked at in determining whether or not, a court has jurisdiction to entertain and determine any suit or matter and not at the defence. See *Chief Adeyemi & ors. v. Opeyori* (1976) 9-10 S.C. 31 @ 51; *The Attorney-General, Anambra State & 13 ors. v. The Attorney-General of the Federation & 16 ors.* (1994) 3 NWLR (Pt.335) 659 @ 674; (1994) 4 SCNJ. 30.

G For the umpteen times, let me state that, it is now firmly established that by virtue of Section 212 of the 1979 Constitution of the Federal Republic of Nigeria and Section 232 (1) of the Constitution of the Federal Republic of Nigeria, 1999, which are *in pari materia*, there must be a dispute between the Federal Government and a State or States. The dispute, must raise an issue or question (whether of law or fact) on which the existence or extent of a legal right depends. It must be definite and concrete. See the cases of *Attorney General of Bendel State v. Attorney-General of the Federation & 22 ors.* (1981) 10 S.C. 1 and *The Attorney-General Anambra State v. The Attorney-General of the Federal Republic of Nigeria & 35 ors.* (2005) 9 NWLR (Pt.931) 572 @ 610, 623; (2005) 5 SCNJ. 38 @ 59; (2005) 5 S.C. (Pt.1) 73.

As to what constitutes a “Dispute”, Uwais, CJN, (Rtd.) in his Ruling in the case of *Attorney-General of the Federation v. Attorney-General of Abia State & 35 ors.* (supra), stated as follows:

“What constitutes a dispute under Section 212 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1979, which has exactly the same provisions as section 232 subsection (1) in question, had been considered by this Court in the cases of *Attorney General of Bendel State v. Attorney General of the Federation & 22 ors.* (1981) 10 S.C. 1 and *A-G of the Federation v. A-G of Imo State & 2 ors.* (1983) 4 N.C.L.R. 178. In *Attorney General of Bendel State’s case, Bello, JSC*, (as he then was), stated as follows on pp.48 to 49 thereof:-

“To invoke the original jurisdiction of this Court there must be a dispute as so qualified between the Federation and a State or between States. The issue of jurisdiction was contested on three grounds, firstly, that there is no dispute which affected the interest of the Federation and Bendel State between the plaintiff (Bendel State) and the Federation, Secondly,

I think the first point may be easily disposed of from the definition of the word “dispute”. The Oxford Universal Dictionary defines it as ‘the act of arguing against, controversy, debate, contention as to rights, claims and the like or on a matter of opinion”

I also held as follows on p. 320 thereof:-

“It is well established principle of the interpretation of constitution that the words of a constitution are not to be read with stultifying narrowness - *United States v. Classic* 313 U.S. 299 and *Nafiu Rabi v. The State*, (1980) 8-11 S.C. 130 at pp. 148-149. The word ‘dispute’ in section 212(1) should therefore be given such meaning that will effectuate rather than defeat the purpose of that section of the Constitution. Webster’s New Twentieth Century Dictionary, 2nd Edition, provides that ‘dispute’ is synonymous with controversy, quarrel, argument, disagreement and contention.”

In order to avoid unnecessary repetitions, this Court, has stated and re-stated in a string of decided authorities, the Ingredients of jurisdiction and the effect of its absence in a court, and as to what is the

present position of the original jurisdiction of this Court under the 1979 and 1999 Constitutions. I rely on the pronouncements of this Court in the cases of *The Attorney General of Anambra State & 13 ors. v. The Attorney General of the Federation & 16 ors.* (1993) 6 NWLR (Pt.302) 692 @ 724-725, 737-739, 744-745 and 750-751 and *Attorney General of Lagos State v. Attorney General of the Federation* (2004) 18 NWLR (Pt. 904) 1 @125-126; (2004) 11-12 S.C. 83 @ 149 (supra) and as to when original jurisdiction of this Court, can be invoked. Many other previous decided authorities, were referred to in these two cases. I therefore, cannot improve on all the discussions of my learned brother, Mohammed, JSC, in the lead Judgment. I endorse and adopt the same as mine. This is why, I too struck out this suit and also made no order as to costs.

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