

SUPREME COURT OF NIGERIA
11TH JANUARY, 2008, SC.201/2005
CORAM:- S. U. ONU, D. MUSDAPHER, A. M. MUKHTAR, I. F.
OGBUAGU, P. O. ADEREMI, JJSC

1 THE REGISTERED TRUSTEES
OF NATIONAL ASSOCIATION OF
COMMUNITY HEALTH APPELLANT
PRACTITIONERS OF NIGERIA

2. HONOURABLE MINISTER OF
LABOUR AND PRODUCTIVITY APPELLANTS

3. THE REGISTRAR OF TRADE UNION
AND
MEDICAL AND HEALTH WORKERS RESPONDENT
UNION OF NIGERIA

TRADE UNIONS - Registration - Judicial precedents - Where there is a registered trade union - That carters for the union seeking registration as in this case - Refusal to register the new union - Was rightly upheld by the Court of Appeal (H1)

TRADE UNIONS - Freedom of association - Guaranteed by the Constitution - Is not contravened by sections 3 & 5 of Trade Union Act - Which authorize refusal to register a union - As decided in Osawe case - Rightly followed by lower court (H2)

STATUTES - Interpretation - Is not dependent on whether period of judgment - Was during military or democratic regime - Appellate court will not interfere - With lower court's correct statutory interpretation (H3)

ACTIONS - Relief claimed - Basis - Where reliance is placed on an international law - Plaintiff must show domestication and applicability of that law in Nigeria (H4)

ACTIONS - Relief - Based on an international labour convention -

Was wrongfully granted by trial court - Since the convention has not been enacted into law by the National Assembly - As provided in s. 12(1) of 1999 Constitution (H5)

PRACTICE & PROCEDURE - Joinder of parties - Applicant who desires to be joined to a suit - Will show inter alia that he will be bound by the result of the action - And his interest prejudiced if not joined (H6)

EVIDENCE - Affidavits - Joinder of parties - Discretion - Where depositions in counter affidavit - Did not essentially controvert applicant's affidavit - Lower court rightfully affirmed the joinder - By relying on the affidavit evidence (H7)

CONSTITUTIONAL LAW - Interpretation - Cannons of - Extraneous matters should not be imported - To secure a meaning not intended by the legislature - In applying the cannon of considering a statute as a whole (H8)

CONSTITUTIONAL LAW - Words used - International treaty - Phrase used in s. 12(1) of 1999 Constitution - Does not mean that similar provisions in other laws - Can be relied upon in holding a treaty applicable - When not yet adopted by the National Assembly (H9)

FACTS

_____ Before the Federal High Court Ilorin, applicant/1st appellant filed an application for judicial review against 2nd and 3rd appellants. Respondent was subsequently made a party upon the success of its application to that effect. 1st appellant members had been members of the respondent trade union which has been catering for them. But they sought to register a trade union in their own name which they defined as a senior staff trade union. 1st appellant's application for registration was addressed to the 2nd appellant, who in refusing the registration directed it to liaise with the Registrar of Trade Unions (3rd appellant). It is dissatisfaction with the refusal that gave rise to this action. 1st appellant prayed inter alia, for an order of certiorari quashing the refusal, order of mandamus compelling their registra-

tion and declaration that the refusal which is against the provisions of conventions 87 & 89 of the International Labour Organisation is unconstitutional and illegal. They claimed that the refusal is a breach of their constitutional right to freedom of association.

Respondents/appellants (before the trial court) raised a preliminary objection to the application seeking that it be struck out for being incompetent, abuse of court's process and for lack of locus standi. After the addresses of counsel for all sides, the learned trial judge granted the application, holding that applicant was entitled to the relief claimed. Respondents' appeal to the Court of Appeal was successful as decision of the trial court was set aside. Further appeals by applicant and 1st/2nd respondents at the trial Federal High Court, have now been brought before the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the learned justices of the court below were right in setting aside reliefs (i) (ii) and (v) granted in favour of the appellant by the trial court on the ground that the appellant did not proof (sic) her entitlement to same having regard to the alleged non-denial of paragraph 7 or the counter-affidavit of the 1st respondent which was clearly not so on record.

2. Whether the learned justices of the court below correctly interpreted the provisions of Sections 3 and 5 of the Trade Union Act Cap 437 viz-a-viz the provisions of Section 40 of the 1999 Constitution and the decision of this court in the case of Osawe v. Registrar of Trade Unions (1985) 1 NWLR (pt. 4) 255 when the facts, circumstances and antecedent of the case were totally different from the facts of the present case.

3. Whether the learned justices of the court below were not wrong in the view their Lordships took that relief No. (iii) was not properly granted in favour of the appellant by the trial judge on the ground that the provisions of Clauses 87 and 89 of the International Labour Organization Convention have no legal force in Nigeria having not been ratified by the National Assembly even though signed by Nigeria, when the decision of the trial court to grant the relief was based on other valid grounds not considered by the court below.

4. Whether their Lordships of the court below were right to have endorsed the ruling of the trial court that the 1st respondent was

a proper party to the case, when it granted its application for joinder when in fact there was no relief claimed by the appellant against the 1st respondent, there was no counter claim by the 1st respondent and there was nothing in the case connecting it to the reliefs sought and granted by the trial court in favour of the appellant.”

HELD (Unanimously dismissing both appeals per MUKHTAR JSC)
TRADE UNIONS - Registration - Judicial precedents

1. I fail to see that the lower court misconstrued the case on the point of the usurpation of the powers of the 3rd respondent by the 2nd respondent, and refuse to endorse the argument of the learned Senior Advocate. By the content of paragraph (3) in exhibit NAC 5 which has already been reproduced supra, and some other affidavit evidence, (excerpts of which have been reproduced supra) the 1st appellant has been under the umbrella of the respondent. The position being so, the decision of the Court of Appeal to uphold the refusal of the 2nd and 3rd respondents to register the appellant as a trade union is not in error. The case of Erasmus Osawe and 2ors v. Registrar of Trade Unions 1985 1 NWLR part 4 page 755, was cited by learned counsel for the respondent in aid of the finding of the lower court upholding the refusal of the registration in controversy. Kazeem, JSC., in expounding the purpose of the provisions of sections 3(1) and (2) of the Trade Unions Act made the following emphasis on page 763:-

“In my view, this new provision makes it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the Registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under Section 5 (2) of the Trade Unions Act, 1973.

Having regard to the facts of this case, I am of the view that the Registrar was right to have rejected the application for registration immediately, for to have done otherwise, might have led to a ridiculous situationWhat would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one

The above demonstrates a situation that is parallel to the

one at hand, for as I have found earlier, there are many materials in the documents before this court that confirm that the 1st appellant had all along been catered for by a wider and encompassing body, which is the 1st respondent. After an investigation there was no way the 1st appellant would have been registered in the circumstances. Besides the law is not such that registration is automatic. It is at the discretion of the Registrar after he would have made his investigations and became satisfied. (p. 677 B)

TRADE UNIONS - Freedom of association

2. In the present case, the court below, as per Coomasie, J.C.A., (as he then was) held as follows:-

“I am obliged and bound by this holding, and I consequently hold that the provisions of sections 3 and 5 of the Trade Union Act, (Cap. 43) are not inconsistent with the provisions of the 1999 Constitution.”

The learned justice of the Court of Appeal arrived at the above holding after he had considered the stance of the appellant in the lower court, the said provision of Section 40 of the 1999 Constitution, the relevant provisions of the Trade Union Act, and Section 45 of the same Constitution. The excerpt of the judgment in the Osawe’s case supra, which the court below relied upon reads as follows:-

“As regards ground 2, it was disputed that the fundamental right enshrined under section 37 of the Constitution of 1979 for freedom of association as Trade Union was subject to the derogation set out in Section 4(1) (a) of the said Constitution. Hence section 37 of the Constitution is not absolute as it can invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health. It was in fact in order to maintain public order out of a chaotic situation that the exercise of 1978 was embarked upon which gave rise to the promulgation of the Trade Union (Amendment) Act 1978. I am therefore unable to agree that Section 3 (2) of the Trade Union Act, 1973 as amended contravenes Section 37 of the Constitution of 1979.”

I would also align myself with the above exercise and finding

of the lower court if I was in the shoe of the Justice of the Court of Appeal.
(p. 678 H)

STATUTES - Interpretation

- B 3. My perception of this discussion is that it did not matter whether the dispensation of the period of the judgment of the Supreme Court was military or democratic, the most important thing is that the existing laws were thoroughly considered and the correct interpretations were
C given to them. Once a court gives the provisions of a law that is not ambiguous the grammatical and ordinary interpretation to conform with the intent of the legislature when the law was passed, an appellate court cannot fault such interpretation, for the cardinal principle of interpretation would have been met with by the lower court.
(p. 680 F)

D

Relief claimed - Basis

4. The point is, relief no. (III) in the appellant's application is as clear as crystal, that even a law student in the university would immediately tell a lay man that the declaration sought in respect of the refusal to
E register the 1st appellant as a trade union was to render the refusal as unconstitutional, etc, as some conventions International Labour Organisation have been breached. It goes without saying that the basis for that relief was the International Labour Organisation, in
F which case it was incumbent on the 1st appellant to place the evidence of the domestication of that law and its applicability to Nigeria, the law being an international one. Its proof of domestication in Nigeria is very important if any court in Nigeria is to invoke and apply it to any litigation before it. It is of paramount importance that any party who raises an issue or a law must show and convince the court of
G the efficacy of reliability and applicability. (p. 683 E)

Relief - Based on an international labour convention

5. In the light of the above discussion I do not see that the learned Justice in the court below erred when it was held thus in the leading judgment:-
H "On relief (iii) granted by the trial court it is crystal clear that

the relief was granted in error. The relief granted by the trial court is for a declaration that it is unconstitutional, illegal, unlawful and against the provisions of Convention 87 and 89 of the International Labour Organisation for the respondents to refuse to register the applicant as a Senior Staff Trade Union (S.S.T.U.). There is no evidence before the court that the ILO Convention, even though signed by the Nigerian government, has been enacted into law by the National Assembly. Section 12 of the 1999 Constitution provides as follows:-

“12 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

In so far as the ILO Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply.

As can be seen from the above, the learned justice took the pains of expounding on the necessity of such international treaty or convention to be domesticated before it can be invoked and applied to cases in Nigeria. That is in fact what the learned trial judge should have done, rather than accept and grant the relief hook, line and sinker. (p. 684 D)

Applicant who desires to be joined to a suit

6. I have carefully perused the counter-depositions supra and I have not seen or discerned the effective controversion of the depositions in the supporting affidavit therein, not even paragraphs (6) and (7) of the supporting affidavit. It is instructive to note that an applicant who desires to be joined as a party to a suit is required to show that he will be bound by the ultimate result of the action, as the orders in the judgment will affect it, and its interest will be prejudiced if it is not joined. Another test is that the action may not be completely settled without the party sought to be joined as a party in the suit, in the appeal on hand it is clear from the affidavit evidence that it was necessary to join the 1st respondent.

I agree that the learned trial judge did not specifically refer to the affidavit evidence in detail, but that is not to say that he did not advert his mind to the depositions in the two affidavits. (p. 687 C)

Affidavits - Joinder of parties - Discretion

7. Bearing in mind the fact that I have held above that the depositions in the counter-affidavit did not essentially controvert or challenge the respondent's depositions, I will state the position of the law that is trite that affidavit evidence that is neither challenged nor debunked remain good and reliable evidence which ought to be relied upon by a court.

With this line of thought, I endorse the finding of the lower court (after it had considered the salient depositions in the supporting affidavit), which read:-

"By these averments, it is my considered view that the 1st respondent has disclosed sufficient interest in the claims/reliefs before the lower court, and the lower court, with respect, was right in joining the 1st respondent as a defendant in this case. It cannot be otherwise."

I am of the view that it is not necessary to go further into the argument of the joinder as it will be over flogging the issue. This is not a case where this court will interfere with the discretion of the lower courts by reversing the order of joinder, as urged by the learned senior advocate. (p. 688 A)

CONSTITUTIONAL LAW - Interpretation

8. Learned counsel for the appellants has submitted that one of the cannons of the interpretation of a Constitution is that the true meaning of the words used and the intention of the legislature in any statute and particularly in a written Constitution, can best be properly understood if the statute is considered as a whole.

I agree, but then it does not mean that extraneous matters should be imported into a constitutional provision to credit it with meaning different from what the legislature had in mind. To understand and appreciate a piece of legislation a court must not look beyond the periphery or precinct of the law to interpret it and give it the appropriate and correct meaning, even if it involves an over all analysis and consideration of other provisions in a particular enactment. (p. 691 C)

CONSTITUTIONAL LAW - Words used

9. To say that because the words “shall have the force of law except to the extent” was used in section 12 (1), of the Constitution supra, simply admits that there is a qualification or proviso to the opening part of the provision is a misapprehension. Indeed this situation is a locus classicus of the necessity to read the whole of section 12 (1), as a whole. The use of the phrase ‘to the extent’ does not connote that a person with interest in the provision should fish around for other enactments that contain such provisions in order to make them valid and enforceable. In essence what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly, not bits and pieces of provisions found here and there in the other laws of the land, but not specifically so enacted to domesticate it, to make it a part of our law. To interpret similar provisions as being part of the International Labour Organization Conventions just because they form parts of some other enactments like the African Charter, and Peoples Rights, etc will not be tolerated. (p. 691 G)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. Purpose and conditions for joinder of parties

Secondly, It is the general rule that the court, may in every cause or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Again, the joinder of parties, whether as plaintiffs or defendants, is subject to two conditions, namely,

“(i) the right to relief must in each case be in respect of or arise out of the same transaction or series of transactions.

(ii) there must be some common question of law or fact. See the case of Ibighami v. Military Governor, Ekiti State (2004) 4 NWLR (Pt.863) 243.”

Why have the Rules of court, provided for joinder of parties and causes of actions? I or one may ask. In the case of Egonu & 3 ors. v. Egonu & anor. (1973) 3 ECCLR. 664, it was held that all those who claim some share or interest in the subject-matter of the suit, or who may be affected by the result, as well as those who the court may join

even suo motu, are necessary parties, for their presence before the court may be necessary in order to enable the court, effectively and completely, to adjudicate upon and settle all the questions involved or in controversy. (p. 709 H)

B 2. Court has duty to prevent separate suits that can be joined
Indeed, under our law, a person whose interest is involved or is in issue in an action and who knowingly chose to stand-by and let others fight his battle for him, is equally bound by the result in the same way as if he were a party.

C In the case of *Chinweze & anor. v. Masi (Mrs.) & anor.* (1989) 1 NWLR (Pt. 97) 254 at 257; (1989) 1 SCNJ. 148 at 156, also cited and relied on in the Respondent's Brief, it was held inter alia, that the court has a duty to prevent the expensive luxury of having two separate suits where it can, by joinder, settle the whole matter in one action. That where, the determination of one of the claims between the plaintiffs and the 1st defendant, will involve and affect the 2nd defendant's legal rights over property or his pecuniary interests, that the trial court, was right in making the 2nd defendant a party. That it is the policy of the courts, to avoid as much as possible, a multiplicity of suits. (p. 710 G)

REPRESENTATION

F K. K. Eleja, (with him, M. I. Hanafi, S. A. Oke, Uwadiole Omebum and Kolade Oladokun), for the 1st Appellant,
Taiwo Abidogun, for the 2nd and 3rd Appellants.
I. A. Oputa-Ajieh, (with him, A. I. Adebayo and A. Ogbagben), for the Respondents.

CASES REFERRED TO

G Adejugbe v. Ologunja 2004 6 NWLR part 868 page 70
Adisa v. Oyinwola 2000 10 NWLR part 674 page 116
Aqua Ltd v. Ondo Sports Council (1988) 4 NWLR part 91 page 622
Ifeme v. Mbadugha 1984 1 SCNLR page 42)
Jammal Steel Structures Ltd v. A.C.B. 1973 11 S.C. page 77
H Shell Petroleum Development Co. (Nig.) Ltd. v. Federal Board of Internal Revenue (1996) 8 NWLR part 466 page 256

Osawe v. Registrar of Trade Unions (1985) 1 NWLR (pt. 4) 255
Peenok Investment Ltd, v. Hotel Presidential Ltd. (1982) 12 S.C. 1
Tunde Oshirinde v. Ajamogun (1992) 6 NWLR part 246 page 156
Oduola v. Coker (1981) 5 S.C. 197
Long v. Crossley (1879)13 Ch. D. 388
Uku & ors. v. Okumagba & ors. (1974) 3 S.C. 35 @ 60

B

STATUTES & RULES REFERRED TO

African Charter on Human and Peoples Rights (Ratification and Enforcement), Cap. 10 Laws of the Federation of Nigeria 1990, Art. 10 C
Constitution of the Federal Republic of Nigeria 1999 ss. 12, 37, 40, 45
Electoral Act, 2001 s. 79 (1) & (2)
International Labour Organisation Convention, Articles 87 & 89
Labour Act, Cap. 189,
Medical and Health Workers Union of Nigeria, 1996 D
Trade Union (Amendment) Act, 1978 S.1 (1) (a)
Trade Union (Amendment) Act, 2005.
Trade Union Act, 1973 ss. 3 (2), 5 (2) & (4)
Trade Unions (Amendment) Act, 1978 s. 1(1) (a), 5 E
Trade Unions (Amendment) Act, 1996
Trade Unions Act, Cap. 437, Laws of the Federation of Nigeria, 1990
s. 3 (1), (2)
Federal High Court (Civil Procedure) Rules, 2000 O. 12 r. 3

F

LEAD JUDGEMENT BY MUKHTAR JSC

In the Federal High Court holding in Ilorin the 1st appellant sought the following reliefs in an application for judicial review:-

“(i) An order of certiorari to remove into this Honourable court for purpose of being quashed the decision of the respondents contained in a letter dated 19th February, 2003 ref. No. ML.IB/147/1/76 refusing the registration of the applicants a Senior Staff Trade Union. G

(ii) Order of mandamus compelling the respondents to register the applicant as a Senior Staff Trade Union under the Trade Union Act, Cap. 437 as amended. H

(iii) Declaration that it is unconstitutional, illegal, unlawful and against the provisions of convention 87 and 89 of the International Labour Organization for the respondents to refuse to register the

applicant as a Senior Staff Trade Union.

(iv) Declaration that it is ultra vires the powers of the respondents to refuse, or neglect to register the applicant as a Senior Staff Trade Union without following the provisions of the Trade Union Act, Cap 437 as amended or in total violation of the provisions of that Act.

(v) Order directing the respondents to forthwith register the applicant as a Senior Staff Trade Union.”

The grounds relied upon by the applicants for the relief’s sought are as follows:-

“(a) The decision of the respondents to refuse to register the applicant as a Senior Staff Trade Union was in clear breach of the provisions of the Constitution of the Federal Republic of Nigeria 1999, the provisions of the Trade Union Act, convention 87 and 89 of the International Labour Organisation and against the rules of natural justice.

(b) The respondents in coming to a decision refusing registration took irrelevant facts and material into consideration in coming to their conclusion on the matter.

(c) The rights of the members of the applicant to freely associate as guaranteed under the Constitution has been violently breached by the respondents.”

A verifying affidavit of the above facts had the following salient paragraphs:-

“5. That I know as a fact that in February, 1997 our Association was registered with the Corporate Affairs Commission as an incorporated Trustee under part C. The copy of the certificate of registration dated 18th February, 1997 is attached as exhibit NAC 1.

6. That I know as a fact that the interest of our members is not being safeguarded or represented by any of the existing Trade Unions.

7. That I know as a fact that due to the fact in paragraph 6, supra the members of our Association resolved that we should register our Association as a Senior Staff Trade Union to effectively take care of our collective and individual interests all over Nigeria and in furtherance of our Constitutional right of free association.

8. That I know as a fact that in furtherance of the above,

our Association vide its letter of 28th March, 2002 applied to the 1st respondent for registration as a Senior Staff Professional Association. A copy of the letter is attached and marked as exhibit NAC 2.

9. That I know as a fact that the 1st respondent in his letter of 24th April, 2002 directed our Association to the 2nd respondent. A copy of the letter is attached as exhibit NAC 3. B

10. That I know as a fact that in compliance with exhibit NAC 3, our Association met with the 2nd respondent and the applicant met all the statutory requirements set out in the Trade Union Act to get itself registered as a trade union. C

13. That I know as a fact that the 1st respondent responded to exhibit NAC 4 in his letter of 19th February, 2003 in which he stated that the applicant cannot be registered. A copy of the letter is attached as exhibit NAC. 5.

14. That our leading counsel Yusuf O. Ali. Esq.; SAN told D me, and I verily believed him that:

(i) The 2nd respondent is the officer that has power under the law to register or refuse to register a trade union.

(ii) The refusal to register a union must be in the prescribed form. E

(iii) The 1st respondent has no power to usurp the statutory power of the 2nd respondent

(vi) The right to form or belong to any association is constitutional and cannot be denied. F

(v) The refusal of the respondents to register the applicant has eroded the constitutional rights of the members of the applicant.”

The respondents raised preliminary objection to the application on the following preliminary points of law which are:-

“1. That the applicant’s suit as commenced herein be struck G out, the same being incompetent, unmaintainable and an abuse of Court process.

2. This Honourable Court lacks jurisdiction to entertain this suit in its entirety in that the Applicants herein lack locus standi to institute this action against the respondents. H

Grounds of Objection

(a). The procedure adopted by the Applicants in commencing this suit by way of judicial review for an order of Certiorari is fatal to the Honourable Courts determination of the applicants’ cause of

action (if any) in that the Honourable Court is limited to only affidavit evidence thereby.

(b). The use and/or employment of the procedure for judicial review is most inappropriate in the circumstances and amounts to an irregularity which this Honourable Court should not accede to.

(c). The Applicant herein lacks locus standi to institute this action, against the Respondents; the Applicant not being a registered Trade Union by law."

One Ibrahim Kwasaure of the Federal Ministry of Employment Labour and Productivity, swore to a counter-affidavit to the motion on notice. Both affidavits were considered by the learned trial judge, who at the end of the day, overruled the objection. On 10/11/2003, the Medical and Health Workers Union of Nigeria applied to be joined in the application as defendant/respondent before judgment can be delivered on it. In its ruling for joinder as an interested party, the Learned Federal High Court judge granted the application and ordered that the applicant be joined as defendant/respondent. The interested party as a 3rd respondent caused a counter-affidavit to be sworn to, and salient among the depositions are the following:-

"6. I am further aware that Alhaji M. A. Erena, the National President of the 3rd Respondent herein is a Community Health Practitioner and a member of the Applicant's Association.

7. I am further aware that the following Community Health Practitioners/Workers are members of the 3rd Respondent Union and are currently holding the various executive posts in the 3rd Respondent Union too

8. I am aware that the 3rd Respondent Union has been organizing, safe-guarding and representing the interest of members of the Applicant in paid employment in all the States of the Federation since the Restructuring of Trade Unions in 1978.

9. I am also aware that under the Trade Unions (Amendment) Act, 1996 the 3rd Respondent Union herein was granted jurisdiction to organize and represent all Medical and Health Workers in all Medical and Health Institutions in the Country inclusive of members of the Applicant's Association.

10. I am further aware that it was based on this state of the law that the 1st Respondent herein declined to grant the application of

the Applicant as in Exhibit NAC 5 of the verifying affidavit in support of the Motion on Notice.

11. I am informed by I. A. Oputa-Ajie Esq of counsel and I verily believe him that:

(a). The 1st and 2nd Respondents herein have the power under the law to refuse the registration of any new Trade Union where there is already an existing Trade Union. B

(b). The right to form or belong to any Association is a qualified right and as such can be denied to any person or group of persons.

12. I am further aware that none of the Respondents herein resides in Ilorin nor carry out their statutory functions in Ilorin within the jurisdiction of this Honourable court.” C

After the address of learned counsel for all sides involved, the learned Judge granted the application, and held that the applicant was entitled to the reliefs sought in the matter. The respondents dissatisfied with the judgment appealed to the Court of Appeal. The Court of Appeal set aside the decision of the trial court. Further appeals were filed in this court by the applicant, and the 1st and 2nd respondents in the application before the Federal High Court. Briefs of argument were exchanged by learned counsel. As there are two separate appeals, I will treat the appeals individually. In the first appeal, brief of argument filed by the Senior Advocate for the appellant has the following issues for determination formulated therein. They are:- D E

“1. Whether the learned justices of the court below were right in setting aside reliefs (i) (ii) and (v) granted in favour of the appellant by the trial court on the ground that the appellant did not proof (sic) her entitlement to same having regard to the alleged non denial of paragraph 7 or the counter-affidavit of the 1st respondent which was clearly not so on record. F G

2. Whether the learned justices of the court below correctly interpreted the provisions of Sections 3 and 5 of the Trade Union Act Cap 437 viz-a-viz the provisions of Section 40 of the 1999 Constitution and the decision of this court in the case of Osawe v. Registrar of Trade Unions (1985) 1 NWLR (pt. 4) 255 when the facts, circumstances and antecedent of the case were totally different from the facts of the present case. H

3. Whether the learned justices of the court below were not wrong in the view their Lordships took that relief No. (iii) was not

properly granted in favour of the appellant by the trial judge on the ground that the provisions of Clauses 87 and 89 of the International Labour Organization Convention have no legal force in Nigeria having not been ratified by the National Assembly even though signed by Nigeria, when the decision of the trial court to grant the relief was
B based on other valid grounds not considered by the court below.

4. Whether their Lordships of the court below were right to have endorsed the ruling of the trial court that the 1st respondent was a proper party to the case, when it granted its application for joinder
C when in fact there was no relief claimed by the appellant against the 1st respondent, there was no counter claim by the 1st respondent and there was nothing in the case connecting it to the reliefs sought and granted by the trial court in favour of the appellant.”

A single issue for determination was raised in the 2nd and 3rd appellants’ brief of argument on the second appeal. The issue reads
D as follows:-

“Whether the ideals embodied in the ratified ILO conventions 87 and 98 have not become incorporated into Nigerian jurisprudence by virtue of similar rights preserved under cognate provisions in Municipal Trade Unions Acts and Legislations as to make its provisions
E justiceable in Nigerian Courts; and if not, whether recourse to the 1999 Constitution and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement), CAP 10, Laws of the Federation of Nigeria 1990, containing identical provisions preserves a litigant’s
F rights, so as to negate the lower courts decision that the same have not been enacted into law and have no force of law in. Nigeria.”

A single respondent’s brief of argument was filed and in the brief are the following issues formulated for determination:-

“1. Whether the Court of Appeal was right to have reversed the decision of the trial court granting reliefs i, ii and v, claimed by the
G 3rd Respondent (now 1st Appellant) on the ground that there already exists a Union covering the interest of the 3rd Respondents (now 1st Appellant);

2. Whether the Court of Appeal was right to have reversed the decision of the trial Court by holding that the Minister of Labour and Registrar of Trade Unions were right to have refused to register
H the Community Health Practitioners of Nigeria as a senior staff trade union, having regard to the totality of the evidence before the trial

court and the subsisting state of statutory and judicial authorities.

3. Whether the Court of Appeal was right to have stated that relief iii granted by the trial court was based on non-existing law having regard to the fact that relief iii was predicated on ILO Convention 87 and 98.

4. Whether the Court of Appeal was right to have upheld the Order of joinder of the Medical and Health Workers Union of Nigeria Appellant (now Respondent) as an interested party in the proceedings by the trial court.”

I will commence the treatment of the appeals with the first appeal. An excerpt of the judgment of the court below attacked by the Learned Senior Advocate, in dealing with issue (i) in the appellant’s brief reads:

“I have carefully gone through the affidavit Evidence before the court and I am of the view that these findings of the lower court, were not based on the evidence before that court. In the counter-affidavit filed by the Appellant dated 14th May, 2004 particularly paragraph 7 it was deposed to as follows:-

“7. I am further aware that the following Community Health Practitioners/Workers are members of the 3rd Respondent union and are currently holding the various executive position in the 3rd Respondent union too.

(a) Comrade Lot Dadiya, National vice President, North East.

(b) Comrade Halsam K. Lawan, Chairman, Yobe State Council.

(c) Comrade Muhammad Kadir, Chairman, Gombe State Council.

(d) Comrade Dambara Dogo, Chairman, Kaduna State Council.

(e) Comrade Al-Mumini, Chairman, Kwara State Council.

(f) Comrade Musa Das, Chairma, Bauchi State Council.

(g) Comrade Ahmed Idris, Chairman, Jigawa State Council.

(h) Comrade Halilu Ismaila, Chairman, Zamfara State Council.

(i) Comrade A. Joseph, Chairman, Enugu State Council.

(j) Comrade U. U., Chairman, Taraba State Council.

(k) Comrade Hussan Obata, Chairman, Nasarawa State Council.

(1) Comrade Ore, Chairman, Ogun State Council."

In further Affidavit in verification of the facts relied upon filed by the 3rd respondent in reply to the counter-affidavit filed by the Appellant, this important averment was not denied. It is therefore crystal clear that the 3rd respondent indeed belonged to an existing trade union i.e. the Appellant.

It is on this basis, my Lords, that I hold that the reliefs numbers (i), (ii) and (v) granted by the lower court cannot stand. I also wish to point out that the right of freedom of association granted by section 40 of the 1999 constitution is not absolute."

Learned Senior Advocate submitted that the above decision is totally wrong. He further submitted that a proper appraisal and understanding of the totality of the affidavit evidence more than justify the trial court's decision granting the reliefs sought by the appellant which reads as follows:-

"The applicant was turned down for registration because it was alleged that there was an existing Trade Union taking care of her union activities. But by the Community Health Practitioners Decree No. 61 of 1992, the Federal Government enacted the legislation for the community Health Practitioners in the country to realise its community and rural health objectives.

The question is why would the Registrar or Minister deny the workers Trade Union status if the government itself has carried the body out as a separate profession. It was averred by the Minister or Register that there was an existing Trade Union for that purpose but the bottom has been knocked out of this contention by the letter of the Minister himself, Exh. NAC 5 in paragraph 8, where their letter reads as follows:-

"8 By a copy of this letter, the Registrar of Trade Unions and the 2 unions contending for the unionisation of the members of the Community Health Practitioners are being informed of the Hon. Minister's decision on the matter."

This paragraph clearly shows that the situation is fluid contrary to the view that there is an existing trade union for the Applicant. The truth is that the Medical Workers Union and the National Union of Local Government Employees are contending for the unionisation of the applicant.

In my humble view, it is more discreet to allow them form a

trade union within themselves rather than leave them at the mercy of the two contending forces which they do not want. Furthermore, this would be a *fait accompli* as the Federal Government itself recognised them as a profession by virtue of Decree 61 of 1992.

"In the light of the above, I am of the view that the discretion of the Minister not to register the applicant as a trade union has not been judicially or judiciously exercised."

The respondents have argued that the above finding of the lower court cannot be faulted. In my view paragraph (7) of the 3rd respondent's counter-affidavit is the pivot around which the present argument revolves, and it has already been reproduced above. The respondent in reply to the counter-affidavit deposed the following in the further affidavit in verification of the facts relied upon:-

"5. That the General Secretary of the National Association of Community Health Practitioner of Nigeria informed me and I verily believe him to be true and correct that virtually all the depositions contained in the counter-affidavit are not true, especially paragraphs 4, 5, 6, 7, 8, 9, 10 and 12 of the counter-affidavit contained fabricated depositions.

(vi) That all persons listed in paragraph 7 of the counter affidavit are not bonafide members of National Association of Community Health Practitioners of Nigeria as all of them are not registered and/or licensed under the Community Health Practitioners Registration Board of Nigeria established pursuant to Decree No. 61 of 1992.

(vii) That apart from the fact that they were/are not registered, they cannot claim to be members of National Association of Community Health Practitioners because they were excommunicated as a result of their anti professional behaviour which is not in line with the code of conduct (Ethics) for Community Health Practitioners in Nigeria, especially clause 20 thereof. The said code of conduct is hereby attached as Exhibit NACH 8."

Looking at the depositions in the further affidavit of verification which I have reproduced above, although there is a blanket denial of paragraph (7) of the counter-affidavit (also already reproduced supra), the specific denials in subparagraphs (vii) and (viii) supra are not denials in the true sense of it. It is instructive to note that while it was admitting that the persons listed in the said paragraph (7) were members, it professed that they were not bonafide members because

of non registration, and that they were in fact excommunicated from the association because of some negative behaviour. This to my mind reinforces the respondent's case that they were members, and actually participated in the affairs of the appellant's association, (whether or not they were bonafide part of them), since they 14 were worthy of being sanctioned. In other words, if they were not members, the need to excommunicate them would not have arisen. Again exhibits NAC 6 and 7 attached to the further affidavit buttress the case of the respondent that the members in paragraph (7) were members of the Association, even though the said Exhibit NAC 6 talks of withdrawal of the appellant's association from other Industrial Unions. Paragraph (2) in exhibit NACH 6 dated 18/6/95, and addressed to the Honourable Minister, Federal Ministry of Labour and Productivity does not categorically state that the 1st appellant's members holding positions in the respondent's association have already resigned, as it reads thus:-

“(2) That our members holding position in such former unions have been directed to resign and should tender their resignation letters to their Chief Executive or next in command where they are the Chief Executive.”

Now, we do not know that those mentioned above have resigned, for there is nothing to show that they have carried out the directive to them. So they have not in essence denied that those mentioned in paragraph (7) of the counter-affidavit are no longer part of the respondent's body, or that they have been expelled by the 1st appellant. Indeed even exhibit NACH 7 which forms part of the evidence of the 1st appellant to show that members have been expelled, is in connection with one Mallam Isa Idasho, and not any of the members mentioned in paragraph (7) of the counter-affidavit. As far as I am concerned it has not proved the contrary as far as the said paragraph (7) supra is concerned. The only point it has pursued to prove is that members of the 1st appellant's association were expelled for not adhering to its directive and it exhibited exhibit NACH 7 to support its affidavit evidence. In fact this exhibit established the fact that it was not all of the 1st appellant's members that were in agreement with the association, for some like Isa Idasho failed to comply with the directive in the first paragraph of exhibit NACH 6 which reads

thus:-

“We the above mentioned Association, wish to re affirm our earlier decision on the above subject matter in our National Executive Council (NEC) meeting held at Benin in 1986 and in our delegates conference at Bauchi in 1990, in which we agreed in principle not to belong to any Trade Union or Association other than our National Association of Community Health Practitioners of Nigeria.” B

In the light of the above analysis, I subscribe to the argument of the learned counsel for the respondent that the former decision of the court below not affirming that of the latter decision of the trial court is unassailable. Still, on this issue (1), the Learned Senior Advocate for the appellant has argued that the Minister of Labour and Productivity acted ultra vires in writing exhibit NAC 5 by usurping the statutory powers of the Registrar Trade Union, which was what the trial court found, but that the court below misconstrued the case on that point. He cited the case of Adejugbe v. Ologunja 2004 6 NWLR part 868 page 70. According to the learned Senior Advocate under Section 3(1) of the Trade Union Act, the decision to register or not to register a trade union lies in the Registrar trade union and not in the Minister of Labour and Productivity. The Learned Senior Counsel submitted that where a court misconstrues the case of a party like the court below did in this matter, its decision would be held to be perverse. He placed reliance on the case of U7dengwu y. Uzuegbu 2003 13 NWLR part 836 page 136. At this juncture it is pertinent to consider the provision of the said Section 3(1) of the Trade Unions Act Cap. 437, Laws of the Federation 1990, which reads thus:- D E F

“3 (1) An application for the registration of a trade union shall be made to the Registrar in the prescribed form and shall be signed:-

(a) In the case of a trade union of workers, by at least fifty members of the union; and G

(b) In the case of a trade union of employers by at least two members of the union.”

Interestingly, the 1st appellant’s application for registration (exhibit NAC 2) was addressed to the Minister of Labour and Productivity, whose ultimate response to the application exhibit NAC 5 was sought to be quashed by the 1st appellant vide relief (1) in its application, and it was the minister that requested the 1st appellant H

to liaise with the Registrar of Trade Unions; who has the statutory responsibility to deal with the matter, vide exhibit NAC 3. The letter of refusal to register, written by the minister, exhibit NAC 5, and which forms the kernel of this litigation, the salient paragraphs of which read as follows:-

B “2. Community Health Practitioners (Registration, etc) Decree No. 1 of 1992 established a Board in respect of Community Health Practitioners and also makes incidental provisions for the control of the practice of the profession. By this Decree, the Government has
C recognized the Association as a professional body but this does not automatically transform it to a trade union organization.

3. Section 3 subsection 2 of Trade Union Act, CAP 437 of 1990 (quoted in part) states as follows:-

D 4. “..... But no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.”

4. Similarly, section 5 subsection 4 of the same Act on procedures states as follows:-

E On the receipt of application for registration.”the Registrar shall not register the trade union if it appears to him that any existing trade union is sufficiently representing the interest of the class of persons whose interest the union is interested to represent.”

F 7. In view of the foregoing and in accordance with subsection 2 of section 3 of Trade Unions Act CAP. 437, of the Laws of the Federation of Nigeria, 1990, the Honourable Minister is not satisfied that you should be registered as a Trade Union of Senior Staff Association. Your request for registration as a trade union of Senior Staff Association cannot be favourably considered.”

G It is instructive to note that exhibit NAC 5 supra was in consequence of exhibit NAC 4, which the 1st appellant again addressed to the Minister of Labour and Productivity to intervene to ensure its registration by the 3rd respondent. The 1st appellant has not shown by any exhibit, that it heeded the advice of the 2nd respondent to liaise with the Registrar of the Trade Unions and the response of the said Registrar. It only exhibited the letter of refusal by the 2nd respondent.
H How, when it was the 1st appellant who brought the matter before the 2nd respondent, will it now accuse the 2nd respondent of intermeddling,

is beyond me. A pertinent question I would like to ask is, if the 1st appellant was very much aware of the provision of section 3(1) of the Trade Unions Act supra, (on which it has predicated its argument), then why were there no correspondents between it and the 3rd respondent? The content of Exhibit NAC 5 which I have reproduced supra has clearly set out the pertinent and relevant provisions of the Trade Union Act and the reasons for the refusal of the application. The wordings of the provisions are crystal clear, and their application is correct and proper. Nothing is ambiguous and nothing is prone to be misunderstood. I fail to see that the lower court misconstrued the case on the point of the usurpation of the powers of the 3rd respondent by the 2nd respondent, and refuse to endorse the argument of the learned Senior Advocate. By the content of paragraph (3) in exhibit NAC 5 which has already been reproduced supra, and some other affidavit evidence, (excerpts of which have been reproduced supra) the 1st appellant has been under the umbrella of the respondent. The position being so, the decision of the Court of Appeal to uphold the refusal of the 2nd and 3rd respondents to register the appellant as a trade union is not in error. The case of **Erasmus Osawe and 2ors v. Registrar of Trade Unions 1985 1 NWLR part 4 page 755**, was cited by learned counsel for the respondent in aid of the finding of the lower court upholding the refusal of the registration in controversy. Kazeem JSC, in expounding the purpose of the provisions of sections 3(1) and (2) of the Trade Unions Act made the following emphasis on page 763:-

***“In my view, this new provision makes it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the Registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under Section 5 (2) of the Trade Unions Act, 1973.*”**

Having regard to the facts of this case, I am of the view that the Registrar was right to have rejected the application for registration immediately, for to have done otherwise,

might have led to a ridiculous situationWhat would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one”

B The above demonstrates a situation that is parallel to the one
at hand, for as I have found earlier, there are many materials in the
documents before this court that confirm that the 1st appellant had
all along been catered for by a wider and encompassing body, which
is the 1st respondent. After an investigation there was no way the 1st
C appellant would have been registered in the circumstances. Besides
the law is not such that registration is automatic. It is at the discretion
of the Registrar after he would have made his investigations and
became satisfied. For the foregoing reasoning, I resolve this issue in
favour of the respondent, and dismiss grounds (2), (3), (6) and (7)
of appeal to which the issue is married.

D Issues (2) and (3) were treated together in the appellant’s brief
of argument. The Learned Senior Advocate opened the argument
under these issues with the examination of the provisions of the said
sections 3 and 5, of the Trade Unions Act supra, and Section 40
E of the Constitution of the Federal Republic of Nigeria 1999, which
makes the following provision:- “40. Every person shall be
entitled to assemble freely and associate with other persons, and in
particular he may form or belong to any political party, trade union
or any other association for the protection of his interests.

F Provided that the provisions of this section shall not derogate
from the powers conferred by this Constitution on the Independent
National Electoral Commission with respect to political parties to
which that Commission does not accord recognition.”

G The learned Senior Advocate has attacked the finding of the
court below which referred to the finding of the Supreme Court in the
Osawe’s case supra on the validity and applicability of the provisions
of section 3 of the Trade Union Act supra vis-a-vis the provision of
the Constitution, in that case, section 37 of the Constitution of 1979.
In the present case, the court below, as per Coomasie, J.C.A., (as he
then was) held as follows:-

H ***“I am obliged and bound by this holding, and I consequently hold that the provisions of sections 3 and 5 of the***

Trade Union Act, (Cap. 43) are not inconsistent with the provisions of the 1999 Constitution.

The learned justice of the Court of Appeal arrived at the above holding after he had considered the stance of the appellant in the lower court, the said provision of **Section 40 of the 1999 Constitution**, the relevant provisions of the **Trade Union Act**, **and Section 45** of the of the same Constitution. The excerpt of the judgment in the Osawe's case supra, which the court below relied upon, reads as follows:-

“As regards ground 2, it was disputed that the fundamental right enshrined under section 37 of the Constitution of 1979 for freedom of association as Trade Union was subject to the derogation set out in Section 4(1) (a) of the said Constitution. Hence section 37 of the Constitution is not absolute as it can invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health. It was not also the contention of the Appellant that Section. 3(2) of the Trade Union Act, 1973 as amended by Section 1(1) (a) of the Trade Union (Amendment) Act, 1978 was a law reasonably justified in a democratic society. It was in fact in order to maintain public order out of a chaotic situation that the exercise of 1978 was embarked upon which gave rise to the promulgation of the Trade Union (Amendment) Act 1978. I am therefore unable to agree that Section 3 (2) of the Trade Union Act, 1973 as amended contravenes Section 37 of the Constitution of 1979.”

I would also align myself with the above exercise and finding of the lower court if I was in the shoe of the Justice of the Court of Appeal, as it is most fortifying, irrespective of the fact that the Osawe's judgment was handed down during the Military dispensation which according to Learned Senior Advocate was with the clear policy to prune down the number of Trade Unions as found by the Military Government in the country then, which informed the said decision. The Learned Senior Advocate for the appellant took a rather long and thorny part to show this court in his brief of argument that the Osawe's case is distinct from the instant case, endeavouring in the process to make unnecessary heavy weather of the existing admin-

istration and the administration at the time of the case. The Learned
counsel for the respondent has faulted the contention of the appellant
on the distinction he tried to draw from the administrations, albeit
military or democratic, by arguing that the circumstances that gave
rise to Osawe's case was in December 1980, during a democratic
B dispensation. Indeed, the judgment of the Supreme Court on the
Osawe's case reported in the citation referred to above reveals that the
circumstances that led to the case in the High Court of Bendel State
occurred in 1980, during the second republic, and the judgment of that
C court was in February 1982, a time that also falls within a democratic
dispensation. However, the judgments of the Court of Appeal and
the Supreme Court were delivered during the military dispensation.
Indeed the circumstances, the facts and the out come of the cases
and appeals at each step of the litigation as they transpired in both
cases are the same, with no difference whatsoever, as the 1st appellant
D would want this court to believe, in spite of the minor difference that
another union is alleged to be contending with the 3rd respondent for
the representation of the members of the Association. As a matter
of fact that aspect is rather inconsequential to the overall facts. In
this respect, I refuse to believe that the outcome was influenced by
E the military dispensation as it is completely out of tune. As a matter
of fact if one reads the excerpt of the Osawe's case from which the
court below found solace, and which I have reproduced supra, it will
be seen that the learned Justice of the Supreme Court did take into
F consideration democratic society and dispensation. My perception
of this discussion is that it did not matter whether the dispensation
of the period of the judgment of the Supreme Court was military or
democratic, the most important thing is that the existing laws were
thoroughly considered and the correct interpretations were given to
them. Once a court gives the provisions of a law that is not ambigu-
G uous the grammatical and ordinary interpretation to conform with
the intent of the legislature when the law was passed, an appellate
court cannot fault such interpretation, for the cardinal principle of
interpretation would have been met with by the lower court. See *Adisa*
v. *Oyinwola* 2000 10 NWLR part 674 page 116, *Ifeme v. Mbadugha*
1984 1 SCNLR page 42), *Jammal Steel Structures Ltd v. A.C.B.* 1973
H 11 S.C. page 77. and *Shell Petroleum Development Co. (Nig.) Ltd.*

v. Federal Board of Internal Revenue (1996) 8 NWLR part 466 page 256.

In this case however, the learned trial court by bringing extraneous issue or logic to bear on the case when it was not a bone of contention, is to my mind an exercise in futility as it is of no moment, for the judgment of the Supreme Court is applicable to the present case, and the Court of Appeal had to follow it, if it was to follow the right path and not go astray. In the case of Independent National Electoral Commission and ors v. Alhaji Abdulkadir Balarabe Musa and 4 ors (2003) 3 NWLR (Pt. 806) page 72 upon which the Learned Senior Advocate relied heavily, section 79 (2) of the Electoral Act, 2001 was the provision in relation to which Sections 40 and 45 of the 1999 Constitution was dealt with thus at page 161 of the report:-

“Section 79(2)(c) of the Act was invalid because it was inconsistent with Section 40 of the Constitution. In terms of Section 45 (1) (a) of the Constitution there is nothing reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health in prohibiting a member of the public service or Civil Service of the Federation, a State or Local Government or Area Council from eligibility to be registered as a member of a political party. The submission that the restriction is a valid derogation from Section 40 by virtue of Section 45 (1)(a) of the Constitution was erroneous. However, this conclusion is limited to the question of the validity of Section 79 (2)(c) of the Act, and is not related to any question, not now before this court in these proceedings of the extent to which the activity, as members of a political party, of the category of persons mentioned in that section can be validly restricted by relevant legislation in the interest of public service.”

I am guided by the above.

I think it is pertinent that I reproduce the provision of the said section 79 (2) (c) of the Electoral Act that was dealt with supra together with section (1) for a proper understanding. They read:-

“79 (1) Membership of a Political Party shall be open to every citizen irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping.

(2) Subject to subsection (1) of this section, a person shall not be eligible to be registered as a member of a political party

if he -

(c) is a member of the Armed Forces of the Federation, the Nigeria Police, Security Agencies or Paramilitary organ of the Government.”

B If the above reproductions are read together side by side the facts and applicable laws in the case at hand, a position is manifestly clear that even though sections 40 and 45 of the Constitution formed the basis of the decision and influenced it, the derogation principle was clearly confined to the validity of section 79 (2)(c) of the Electoral
C Act supra only, not generalized. Towards this, the INEC case supra did not overrule the Osawe’s case, nor in fact did the case of Abacha v. Fawehinmi (2000) 6 NWLR part 660 page 228, which the learned trial judge relied upon in granting the application, and the provision of Article 10 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation
D 1990, which provides the following:-

“1. Every individual shall have right to free association provided that he abides by the law.

2. Subject to the obligation of Solidarity provided for in Article
E 29 no one may be compelled to join an association.”

The above provision is very much in substance identical with the provision of section 37 of the Constitution of 1979, and sections 40 and 45 of the 1999 Constitution supra, that were discussed and analysed in the Osawe’s case supra.

F The Learned Senior Advocate in dealing with issue (3) supra, submitted that the court below was wrong in dwelling as it did on the applicability or otherwise of the provisions of articles 87 and 89 of the International Labour Organisation Convention contending that the learned trial Judge did not rely only on the provisions of Section 40 of the 1999 Constitution and Article 10 of the African Charter on
G Human and Peoples’ Right, and the decision in INEC’s case supra: Before I go any further, I will look at the judgment of the trial court, first to see whether the above submission is in tandem with any part of the judgment, and how the issue of the convention arose and was dealt with and relied upon. It is a fact that in his conclusion of the
H judgment, the learned trial judge said:-

“In the light of the foregoing, this application succeeds. I

hereby hold that the applicant is entitled to the reliefs sought in the matter i.e. reliefs I, II, III and V.”

To appreciate the purport of the above conclusion, one has to look at the reliefs sought. It is instructive to note that the relevant relief to this discussion is relief No III which was predicated on the International Labour Organisation, and which has already been reproduced in the earlier part of this judgment. The argument of the learned counsel for the respondent is that the relief was granted in error by the trial court because there was no evidence before the court that ILO convention on which the relief was predicated had the force of law in Nigeria, it not having been enacted into law by the National Assembly. The lower court declared that the relief was granted in error by the trial court, and in this respect the learned counsel for the respondent has submitted that the court below was right because the question whether or not the said International Labour Organisation conventions have been domesticated in Nigeria is an issue of fact to be proved by evidence, and in the instant case, no such evidence was before the learned trial court. See *Abacha v. Fawehinmi* supra. I don't subscribe to the argument of Learned Senior Advocate that the issue of whether ILO conventions have been domesticated never arose before the trial court, as issue was not joined on this point. The point is, relief no. (III) in the appellant's application is as clear as crystal, that even a law student in the university would immediately tell a lay man that the declaration sought in respect of the refusal to register the 1st appellant as a trade union was to render the refusal as unconstitutional etc, as some conventions International Labour Organisation have been breached. It goes without saying that the basis for that relief was the International Labour Organisation, in which case it was incumbent on the 1st appellant to place the evidence of the domestication of that law and its applicability to Nigeria, the law being an international one. Its proof of domestication in Nigeria is very important if any court in Nigeria is to invoke and apply it to any litigation before it. It is of paramount importance that any party who raises an issue or a law must show and convince the court of the efficacy of reliability and applicability. After stating this said relief no. (3) supra, the 1st appellant made no reference to the convention upon which it predicated it, it was conveniently forgotten, as though

its success was automatic. That most probably lent credence to why the learned trial Judge thought once the relief was there, it must be granted, and he so granted it. Ironically learned senior advocate argued in his brief of argument that the issue of whether or not the ILO conventions have been domesticated never arose before the trial court, as issue was not joined on the point. This I must say is rather ridiculous, for I would want to believe that the position of the law is unchanged that a party who seeks a court's order must do all in its power to establish that it deserves such order, and not expect the adversary to nudge it into waking up to its responsibility. As a matter of fact, contrary to learned counsel's contention; the issue of domestication of the ILO convention did crop up in the arguments of learned counsel.

In the light of the above discussion I do not see that the learned Justice in the court below erred when it was held thus in the leading judgment:-

“On relief (iii) granted by the trial court it is crystal clear that the relief was granted in error. The relief granted by the trial court is for a declaration that it is unconstitutional, illegal, unlawful and against the provisions of **Convention 87 and 89 of the International Labour Organisation** for the respondents to refuse to register the applicant as a Senior Staff Trade Union (S.S.T.U.). There is no evidence before the court that the ILO Convention, even though signed by the Nigerian government, has been enacted into law by the National Assembly. **Section 12 of the 1999 Constitution** provides as follows:-

“12 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

In so far as the ILO Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply. See also *Abacha v. Fawehinmi* (2000) 6 NWLR (PART 660) 228 at PP. 288 - 289 where Ogundare, J.S.C of blessed memory had this to say:-

“Suffice to say that an international treaty entered into by the government of Nigeria does not become binding until enacted

into law by the National Assembly. See Section 12 (1) of the 1979 Constitution which provides

As can be seen from the above, the learned justice took the pains of expounding on the necessity of such international treaty or convention to be domesticated before it can be invoked and applied to cases in Nigeria. That is in fact what the learned trial judge should have done, rather than accept and grant the relief hook, line and sinker. In this vein issues (2) and (3) are resolved in favour of the respondents, and grounds (4) in the original notice of appeal and (2) of additional ground to which they relate fail, and they are hereby dismissed.

Now, to the last issue i.e. issue (4) supra. The sum total of the submission of the learned senior advocate under this issue is the omission of the court below to give the 1st appellant's counter-affidavit filed in opposition to the motion for joinder the attention it deserved. In order to consider the efficacy of this argument it is essential that I consider the depositions in the supporting and counter-affidavits, after reproducing them hereunder. The salient depositions in the affidavit in support are:-

"4. I am aware that there had been series of litigations between the plaintiff/applicant and the applicant/party seeking to be joined herein in respect of the reliefs the plaintiff/applicant in this suit, is seeking before this honourable court.

5. I am further aware that the plaintiff/applicant in his suit had on 29th July, 1997 constituted an action against the applicant herein and the Rivers State High Court of Justice, Port-Harcourt, judicial division in suit No PHC/1075/975, wherein the plaintiff/applicant sought unsuccessfully to restrain the applicant, Medical and Health Workers Union of Nigeria from organising the members of the plaintiff/applicant for Trade Union purposes as their members....

6. I am aware that since this ruling, the plaintiff/applicant accepted that the applicant herein has the excessive jurisdiction under the Trade Unions Acts to organize members of the plaintiff/applicant and has continued to organize them till date.

7. I am further aware that under the Trade Unions (Amendment) Act, 1996 the Medical and Health Workers Union of Nigeria, the applicant herein has been granted jurisdiction to organize Medical

and Health Workers in all Medical and Health Institution.

8. I am also aware that the decision of the respondents which the plaintiff/applicant is seeking the order of this honourable court to quash as contained in the 1st respondent's letter reference No ML. IB/147/1/76, dated 19th February, 2003 specifically stated that under the existing Trade Union Acts, the Medical and Health Workers Union of Nigeria, the applicant herein has exclusive jurisdiction to organise members of the plaintiff/applicant and therefore decline to register the applicant as a New Trade Union.

9. All the reliefs now being sought by the plaintiff/applicant in this suit if granted by this honourable court will affect the existing interest of the applicant."

In its counter-affidavit, the following depositions were sworn to at the instance of the 1st appellant. They read inter alia:-

"6. That I know as a fact that there is no provision in the Trade Unions Amendment Act, 1996 or any other law which vests the party seeking to be joined the power to organize the applicant or its members.

7. That I know as a fact that there is nothing in the Trade Unions Amendment Act, 1996 which prevents or precludes the applicant from being registered (sic) registration as a trade union.

8. That I know as a fact that the party seeking to be joined has no business whatsoever in the matter concerning the registration of trade unions in Nigeria as this is within the purview and powers of the respondents in this case.

9. That I know as fact that the party seeking to be joined is a meddlesome interloper whose joinder will serve no useful purpose but to thwart the quick determination and expeditious delivery of judgment in this case which has been reserved to 5th December 2003 by the Honourable court after full arguments."

The learned senior advocate has in addition to the submission above submitted that on the basis of the affidavit evidence before the trial court, the 1st respondent was not a proper party to this suit, and the trial court and the court below were in error to have ordered her joinder. He relied upon the case of *Green v. Green* (1987) 3 NWLR part 61 page 480. He further submitted that the court lacks jurisdiction to join a person whose presence is not necessary for that purpose,

and cited the case of Ige v. Farinde (1994) 7 NWLR part 354 page 42.

A careful perusal of the affidavit in support of the motion for joinder, especially paragraphs (5) and (6) supra shows that prior to this process the applicant i.e. 3rd respondent was involved in a suit with the 1st appellant in respect of trade unionism, as is evidenced by the documents exhibited and attached to the supporting affidavit. Paragraph (8) of the affidavit is very clear on the position, and interest of the 3rd respondent in the controversy of the registration of the 1st appellant as a trade union, and by paragraph (9) of same, the 3rd respondent has shown that its position will be jeopardized if the reliefs sought by the 1st appellant were granted. I have carefully perused the counter-depositions supra and I have not seen or discerned the effective controversion of the depositions in the supporting affidavit therein, not even paragraphs (6) and (7) of the supporting affidavit. It is instructive to note that an applicant who desires to be joined as a party to a suit is required to show that he will be bound by the ultimate result of the action, as the orders in the judgment will affect it, and its interest will be prejudiced if it is not joined. Another test is that the action may not be completely settled without the party sought to be joined as a party in the suit, in the appeal on hand it is clear from the affidavit evidence that it was necessary to join the 1st respondent. See Tunde Oshirinde v. Ajamogun (1992) 6 NWLR part 246 page 156, Oduola v. Coker (1981) 5 S.C. 197, African Continental Bank Plc. v. Nwaigwe (2001) 1 NWLR part 694 page 304.

I agree that the learned trial judge did not specifically refer to the affidavit evidence in detail, but that is not to say that he did not advert his mind to the depositions in the two affidavits, as he did, as can be inferred from the following excerpt of his ruling, which reads thus:-

“I must say that the undisputed contention that the applicants in the main matter belong to the same trade union with the applicants herein weigh much on my mind. The applicants in the main matter seek to separate from them and form an independent trade union. In the light of this fact I cannot come to any other conclusion that they are a necessary party to a just determination of the main matter.”

Bearing in mind the fact that I have held above that the

depositions in the counter-affidavit did not essentially controvert or challenge the respondent's depositions, I will state the position of the law that is trite that affidavit evidence that is neither challenged nor debunked remain good and reliable evidence which ought to be relied upon by a court. See Attorney General Plateau State v. Attorney General Nasarawa State (2005) 9 NWLR part 930, page 421, Badejo v. Federal Ministry of Education (1999) 8 NWLR part 464 page 15, and Exparte: Adesina (1996) 6 NWLR part 442 page 254.

C With this line of thought, I endorse the finding of the lower court (after it had considered the salient depositions in the supporting affidavit), which read:-

“By these averments, it is my considered view that the 1st respondent has disclosed sufficient interest in the claims/reliefs before the lower court, and the lower court, with respect, was right in joining the 1st respondent as a defendant in this case. It cannot be otherwise.”

I am of the view that it is not necessary to go further into the argument of the joinder as it will be over flogging the issue. This is not a case where this court will interfere with the discretion of the lower courts by reversing the order of joinder, as urged by the learned senior advocate, and so the cases of Megwalu v. Megwalu (1994)7 NWLR part 359, page 718 and Udensi v. Odusote (2004) All FWLR part 215 page 377 relied upon are of no assistance. In the light of the above reasoning, I resolve this last issue in favour of the respondent.

F Grounds (5) and (6) of Appeal, the issue covers must therefore fail, and they are hereby dismissed. The end result is that this appeal fails in its entirety and it is so dismissed. The judgment of the lower court is hereby affirmed.

Now, to the other appeal, which is that of the 2nd and 3rd appellants, of which only one ground of appeal was filed , and from which an issue, (which I have already reproduced above) was formulated. The assertion of the lower court which learned counsel for the 2nd and 3rd appellants is attacking under this issue is thus:-

“In so far as the ILO convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and cannot possibly apply.”

The learned counsel in treating this issue examined the relevant Conventions, relevant provisions of the Constitution of the Federal Republic of Nigeria 1999, the Trade Unions Act Cap. 432, 1990 Laws of Federation of Nigeria (as amended), the Labour Act, Cap. 189, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1990, and the Trade Union (Amendment) Act, 2005. The provisions of the above read as follows:-

"1. Convention No 87: "Freedom of Association and Protection of Right to organize."

2. Convention No 98: "Right to organize and collective Bargaining."

3. Section 40 of the Constitution of 1999, stipulates the following:- "Every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party trade union or any other association for the protection of his interests."

4. The Trade Unions Act, Cap 437, Laws of the Federation of Nigeria 1990 (as amended) stipulates the following:-

"A person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that he is of a particular community, tribe, place of origin, religion or political opinion."

The Trade Disputes Act, Cap. 432, Laws of the Federation of Nigeria, 1990 (as amended) provides as follows in Section 2(1):-

"Where there exists any collective agreement for the settlement of a trade dispute, at least three copies of the said agreement shall be deposited by the parties thereto with the Minister -

a. In the case of collective agreement entered into before the date of commencement of this Act, within thirty days of that date; and

b. In the case of a collective agreement entered into on or after the date of commencement of this Act, within fourteen days of the execution thereof."

Learned counsel for the 2nd and 3rd appellants reproduced the excerpt of the judgment of the lower court on the applicability of the ILO convention, (which I have already reproduced above), and proceeded to deal with the provision of Section 12 (1) of the Nigerian

Constitution of 1999 supra, by submitting that going by the ordinary connotation of the phrase ‘to the extent’ in the said section 12 (1), a treaty, convention or charter need not be wholly enacted into law as a compact for such provisions as it contains to be valid and enforceable as long as such are found in existing diverse enactment. The Learned Counsel placed reliance on the case of Abacha v. Fawehinmi supra.

The reply of learned counsel for the respondent has already been dealt with and found on supra in the first appeal, so going through it again will result in repetition. The Learned Counsel for the respondent has argued that Counsel for the 2nd and 3rd appellants in the court of trial adopted the argument of the respondent to the effect that the trial court could not predicate its judgment on the ILO conventions that had not been domesticated in Nigeria, but changed his position in the court below and now before this court. The Learned counsel submitted that the conduct of the Counsel is procedurally wrong and should not be countenanced. He cited the cases of Edebiri v. Edebiri (1997) 4 NWLR part 498 page 165, and Oredoyin v. Arowolo (1989) 4 NWLR part 114 page 172. In the appellants’ reply brief of argument, it was argued that the case of Edebiri supra cannot avail the respondent, as the case is distinguishable from the instant case. It may well be that the facts and principles in both cases are not the same, but then one may wonder why the appellants made a U-turn and faced the opposite direction after the judgment of the trial court. As is evident on page 115 of the printed record of proceedings, Mr. Oputa-Ajie of counsel for the joined party, (now the respondent, but then the 3rd respondent) addressed the court on international labour organization thus:-

“On ILO See Abacha v. Fawehinmi (2000) 6 NWLR (part 660) 1 2000 4 SCNJ 400, 422.

The ILO 89

Has not been satisfied, it is not a municipal law”

Then on page 116 can be found the following, which learned counsel for the present appellants, (when it was his turn to address the court) said :-

“Mr. Abidogun - I adopt submission of Mr. Oputa Ajieh. I have nothing to add.”

In the Court of Appeal Mr. Abidogun changed his position

in as far as the ILO Convention was concerned as can be seen in paragraph 7.03 on page 359 of the printed record of proceedings. Then he appealed to this court on this issue of the applicability of the said ILO. I don't think this should be allowed, for a party is expected to be consistent in the case he puts forward before a court. It is not supposed to deviate from what he initially professes by changing the complexion of its argument. B

However, the kernel of the appellants' argument in this appeal to my mind revolves around the interpretation of Section 12 of the 1999 Constitution *supra*. Emphasis has been laid on the phrase; 'to the extent' to which such treaty has been enacted into law by the National Assembly! Learned counsel for the appellants has submitted that one of the canons of the interpretation of a Constitution is that the true meaning of the words used and the intention of the legislature in any statute and particularly in a written Constitution, can best be properly understood if the statute is considered as a whole. He placed reliance on the cases of Archbishop Okogie v. The Attorney General Lagos State 2 NCLR 337, Adamu v. A. G. Borno State (1996) 8 NWLR part 465 page 203 and Aqua Ltd v. Ondo Sports Council (1988) 4 NWLR part 91 page 622. D E

I agree, but then it does not mean that extraneous matters should be imported into a constitutional provision to credit it with meaning different from what the legislature had in mind. To understand and appreciate a piece of legislation a court must not look beyond the periphery or precinct of the law to interpret it and give it the appropriate and correct meaning, even if it involves an over all analysis and consideration of other provisions in a particular enactment. See Income Tax Commissioners v. Pemse (1891) A.C. 534 at 543, and International Bank for West Africa Ltd v. Imano (Nigeria) G Ltd. & or. (1988) 2 N.S.CC. page 245. F

To say that because the words "shall have the force of law except to the extent" was used in **section 12 (1), of the Constitution *supra***, simply admits that there is a qualification or proviso to the opening part of the provision is a misapprehension. Indeed this situation is a **locus classicus** of the necessity to read the whole of section 12 (1), as a whole. The use of the phrase 'to the extent' does not connote that a person with interest in the provision should fish H

around for other enactments that contain such provisions in order to make them valid and enforceable. In essence what the legislature meant or intended is that for a treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly, not bits and pieces of provisions found here and there in the other laws of the land, but not specifically so enacted to domesticate it, to make it a part of our law. To interpret similar provisions as being part of the International Labour Organization Conventions just because they form parts of some other enactments like the African Charter, and Peoples Rights, etc will not be tolerated. See *Abacha v. Fawehinmi's* case supra.

In the light of the foregoing reasoning I resolve this issue in favour of the respondent. Its related single ground of appeal therefore lacks merit and it is dismissed. The appeal is definitely unmeritorious and is dismissed in its entirety. The judgment of the Court of Appeal, Ilorin Division is hereby affirmed. I assess costs at ₦1 0,000.00 in favour of the respondent against each set of the three appellants.

E
ONU JSC

Having been privileged to read in draft the judgment of my learned brother Mukhtar, J.S.C just delivered, I am in entire agreement therewith that the appeal be dismissed in its entirety with costs assessed at ₦ 10,000.00 in favour of the respondent against each set of the three appellants.

In expatiation thereto, I wish to add as follows:

In the Federal High Court holden in Ilorin, the 1st Appellant sought the understated reliefs in an application for judicial review:

G “(i) An order of certiorari to remove into this honourable court for purpose of being quashed the decision of the respondents contained in a letter dated 19th February, 2003 ref. No ML.IB/147/1/76 refusing the registration of the applicants a senior staff trade union.

(ii) Order of mandamus compelling the respondents to register the applicant as a senior staff trade union under the Trade Union Act Cap.437 as amended.

H (iii) Declaration that it is unconstitutional, illegal, unlawful and

against the provisions of convention 87 and 89 of the International Labour Organisation for the respondents to refuse to register the applicant as a senior staff trade union.

(iv) Declaration that it is ultra vires the power of the respondents to refuse, or neglect to register the applicant as a senior staff trade union without following the provisions of that Act. B

(v) Order directing the respondents to forthwith register the applicant as a senior Staff trade union.”

The grounds relied upon by the applicants for the reliefs sought are as follows:

“(a) The decision of the respondents to register the applicant as senior staff union was in clear breach of the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the provisions of the Trade Union Act, convention 87 and 89 of the International Labour Organisation and against the rules of natural justice. C D

(b) The respondents in coming to a decision refusing registration took irrelevant facts and material into consideration in coming to their conclusion on the matter.

(c) The rights of the members of the applicants to freely associate as guaranteed under the constitution has been violently breached by the respondents.” E

After the appellant had proffered a verifying affidavit of fourteen paragraphs, the respondents for their part, raised a preliminary objection on the following preliminary points of law, to wit:

“1. That the applicant’s suit as commenced herein be struck out, the same being incompetent, unmaintainable and an abuse of court process. F

2. This Honourable court lacks jurisdiction to entertain this suit in its entirety in that the applicant herein lack locus standi to institute this action against the respondents. G

Grounds of objection

(a) The procedure adopted by the applicant herein lack locus standi to institute this suit by way of judicial review for an order of certiorari is fatal to the honourable court determination of the applicants cause of action (if any) in that the honourable court is limited to only affidavit evidence thereby. H

(b) The use and/or employment of the procedure for judicial

review is most inappropriate in the circumstances and amounts to an irregularity which this honourable court should not accede to.

(c) The applicant herein lacks locus standi to institute this action against the respondents; the applicant not being a registered Trade Union by law.”

B One Ibrahim Kwasaure, of the Federal Ministry of Employment Labour and Productivity swore to a counter-affidavit to the motion on notice. Both affidavits were considered by the learned trial Judge who upon weighing them overruled the objection. Sequel to this, on C 10/11/2003, the Medical and Health Workers Union of Nigeria applied to be joined in the application as defendant/respondent before judgment can be delivered on it. The learned trial High Court Judge in a considered ruling granted the application and ordered that the applicant be joined as defendant/respondent. The interested party as a 3rd respondent caused a counter-affidavit to be sworn to embracing D twelve paragraphs in all.

After the address of learned counsel for all sides affected, the learned Judge granted the application and in consequence held that the applicant was entitled to the reliefs sought. Being dissatisfied with the judgment, the respondents appealed to the Court of Appeal E (hereinafter in this judgment referred to as the “court below”). The court below set aside the decision of the trial court. Further appeals were filed in this court at the instance of the 1st and 2nd respondents in the application before the Federal High Court. Briefs of argument F were filed and exchanged by learned counsel. As there are in consequence two appeals, I intend to consider the four issues submitted as arising for our determination as follows:

G "(1) Whether the learned justices of the court below were right in setting aside reliefs (i), (ii) and (v) granted in favour of the appellant by the trial court on the ground that the appellant did not proof (sic) her entitlement to same having regard to the alleged non denial of paragraph 7 of the 1st respondent which was clearly not so on record.

H (2) Whether the learned justices of the court below correctly interpreted the provisions of Section 40 of the 1999 Constitution and the decision of this court in the case of Osawe v. Registrar of Trade Unions (1985) 1 NWLR (Pt.4) 755 when the facts circumstances

and antecedent of the case were totally different from the facts of the present case.

(3) Whether the learned justices of the court below were not wrong in the view their Lordships took that relief No (iii) was not properly granted in favour of the appellant by the trial judge on the ground that the provisions of clauses 87 and 89 of the International Labour Organisation Convention have no legal force in Nigeria having not been ratified by the National Assembly even though signed by Nigeria, when the decision of the trial court to grant the relief was based on other valid grounds not considered by the court below. B C

(4) Whether their Lordships of the court below were right to have endorsed the ruling of the trial court that, the 1st respondent was a proper party to the case, when it granted its application for joinder when in fact there was no relief claimed by the appellant against the 1st respondent and there was nothing in the case connecting it to the reliefs sought and granted by the trial court in favour of the appellant.” D

The single issue for determination proffered by the 2nd and 3rd appellants on the second appeal states as follows:

“Whether the ideals embodied in the ratified ILO conventions 87 and 98 have not become incorporated into Nigerian jurisprudence by virtue of similar rights preserved under cognate provisions in Municipal Trade Unions Acts and Legislations as to make its provisions justice-able in Nigerian Courts, and if not, whether recourse to the 1999 Constitution and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act CAP. 10 Laws of the Federation of Nigeria 1990, containing identical provisions preserves a litigant’s rights, so as to negate the lower court’s decision that the same have not been enacted into law and have no force of law in Nigeria.” E F G

A lone respondent’s brief of argument was filed in which the following issues for determination were submitted as arising:

“1. Whether the Court of Appeal was right to have reversed the decision of the trial court granting reliefs (i), (ii) and (v) claimed by the 3rd Respondent (now 1st Appellant) on the ground that there already exists a union covering the interest of the 3rd Respondent (now 1st Appellant). H

(2) Whether the Court of Appeal was right to have reversed the decision of the trial court by holding that the Minister of Labour and Registrar of Trade Unions were right to have refused to register the Community Health Practitioners of Nigeria as a senior staff trade union, having regard to the totality of the evidence before the trial court and the subsisting state of statutory and judicial authorities.

(3) Whether the Court of Appeal was right to have stated that relief iii granted by the trial court was based on non-existing law having regard to the fact that relief iii was predicated on ILO convention 87 and 98.

(4) Whether the Court of Appeal was right to have upheld the order of joinder of the Medical and Health Workers Union of Nigeria Appellant (now respondent) as an interested party in the proceedings by the trial court.”

Now, I will commence the consideration of these appeals with the first appeal. An extract of the judgment of the court below attacked by the learned senior advocate, while dealing with issue (i) in the appellant’s brief states: -

“I have carefully gone through the affidavit evidence before the court and I am of the view that these findings of the lower court were not based on the evidence before that court. In the counter-affidavit filed by the Appellant dated 14th May, 2004 particularly paragraph 7 deposed thereof the various executive positions enumerated in (a-1) of the 3rd respondent union. Be it noted that in further affidavit verifying the facts relied upon filed by the 3rd respondent in reply to the counter-affidavit by the appellant and an important averment that point was not denied. That being so, it is crystal clear that the 3rd respondent belonged to an existing trade union, namely the appellant. It is on this basis that the reliefs numbers (i), (ii) and (v) granted by the lower court cannot stand. I also wish to point out that the right of freedom of association granted by Section 40 of the 1999 Constitution is not absolute.”

The learned senior advocate thereupon submitted that a proper appraisal and understanding of the totality of the affidavit evidence more than justified the court’s decision granting the reliefs sought by the appellant which reads as follows: -

“The applicant was turned down for registration because it

was alleged that there was an existing trade Union taking care of her union activities. But by the Community Health Practitioners Decree No 61 of 1992, the Federal Government enacted the legislation for the Community Health Practitioners in the country to realize its community and rural objectives. The question is why would the Registrar or Ministry deny the Workers Trade Union status if the government itself has carried (sic) that there was an existing Trade Union, for that purpose but the bottom has (sic) been knocked out of this contention by the letter of the Minister himself Exhibit NAC5 in paragraph 8, where their letter reads as follows: “8. By a copy of this letter, the Registrar of Trade Unions and the 2 unions contending for the unionization of the members of the Community Health Practitioners are being informed of the Hon. Minister’s decision on the matter.” The above paragraph clearly depicts that the situation is fluid contrary to the view that there is an existing trade union for the Applicant. The truth is that the Medical Workers Union and the National Union of Local Government Employees are contending for the unionization of the applicant.

I hold the view that it is more advisable to allow them form a trade union within themselves rather than leave them at the mercy of the two contending forces which they do not want. Furthermore, this would be a *fait accompli* as the Federal government itself recognized them as a profession by virtue of Decree 61 of 1992.

“From the foregoing, I take the view that the discretion of the Minister not to register the applicant as a trade union has not been judicially or judiciously exercised.”

Still on this issue - issue (1) - the learned senior advocate for the appellant has argued that the Minister of Labour and Productivity acted *ultra vires* in writing exhibit NAC5 by usurping the statutory powers of the Registrar of Trade Union, which was what the trial court found, but the court below misconstrued that point. The case of *Adejuge v. Ologunja* 2004 6 NWLR Part 868 Page 70 was cited in support. According to the learned senior advocate, under Section 3(i) of the Trade Union Act, the decision to register or not to register a trade union vests in the Registrar Trade Union Act and not in the Minister of Labour and Productivity. The learned senior counsel submitted that where a court misconstrued the case of a party like the court

below did in this matter, its decision would be held to be perverse. He called in aid the case of *Udengwu v. Uzuegbu* 2003 13 NWLR (Part 836) page 136. See also Section 3(i) of the Trade Unions Act Cap.437 Laws of the Federation 1990 which reads thus:

B “3. (l) An application for the registration of a trade union shall be made to the registrar in the prescribed form and shall be signed: -

(a) in the case of a trade union of workers, by at least fifty members of the union: and

C (b) in the case of a trade union of employers by at least two members of the union.”

In the light of the foregoing, I take the view in the instant case that the registrar was right to have rejected the application for registration right away for, to have done otherwise, might have led to a ridiculous situation.

D On the receipt of application for registration “the registrar shall not register the trade union if it appears to him that any existing trade union is sufficiently representing the interest of the class of persons whose interest the union is interested to represent,”

E “In view of the foregoing and in accordance with sub-section 2 of section 3 of Trade Unions Act Cap.437 of the Laws of the Federation of Nigeria 1990, the Honourable Minister is not satisfied that you should, be registered as a Trade Union of senior Staff Association. Your request for registration as a trade union of Senior Staff
F Association cannot be favourably considered.”

By the content of exhibit NAC5 which I had earlier set out the pertinent and relevant provisions of the Trade Union Act and the reasons for the refusal of the application are set out. The wordings of the provisions of the Trade Union Act and the reasons for the refusal of the application are correct and proper since nothing is ambiguous and prone to be misunderstood. I fail to see that the lower court misconstrued the case on the point of the usurpation of the powers of the 3rd respondent by the 2nd respondent therefore; accordingly, I refuse to endorse the argument of the learned. Senior Advocate.
G By the content of paragraph (3) in Exhibit NAC5 which has already been reproduced above and some other affidavit evidence (excerpts
H of which have been reproduced hereinbefore) the 1st appellant has

been under the umbrella of the respondent. The position being so, the decision of the Court of Appeal to uphold the refusal of the 2nd and 3rd respondents to register the appellant as a trade union cannot be faulted. The case of Erasmus Osawe & 2 ors v. Registrar of Trade Unions (1985) 1 NWLR Part 4 page 755 was called in aid to uphold the lower court's decision refusing the registration, and rightly so, in my view. Kazeem, J.S.C in expounding the purpose of the provisions of Section 3(1) and (2) of the Trade Unions Act, emphasized at page 763 in a situation analogous to that in the case in hand thus:

“In my view, this new provision makes it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under Section 5(2) of the Trade Union Act, 1973. Having regard to the facts of this case, I am of the view that the Registrar was right to have rejected the application for registration immediately, for to have done otherwise, might have led to a ridiculous situation

What would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one ...”

My learned brother went on to elucidate how the above demonstrates a situation that is parallel to the one on hand, for as she earlier demonstrated, there are many materials in the documents before the court which confirmed that the 1st appellant had all along been catered for by a wider and encompassing body which the 1st respondent represents. Besides, the law is not automatic; it being at the discretion of the Registrar after he would have made his investigations and became satisfied. Moreover, parties ought not to be joined when a case for joinder is not made out or the party seeking joinder.

In the light of the above, I do not see that the learned Justice in the court below erred when he held as follows:

“On relief iii granted by the trial court it is crystal clear that the

relief was granted in error. The relief granted by the trial court is for a declaration that it is unconstitutional, illegal, unlawful and against the provisions of Convention 87 and 89 of the International Labour Organisation for the respondents to refuse to register the applicant as a Senior Staff Trade Unions (S.S.T.U.). There is no evidence before the court that the International Labour Organisation Convention, even though signed by the Nigerian Government has been enacted into law by the National Assembly. Section 12 of the 1999 Constitution provides as follows:-

“12 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

In so far as the International Labour Organisation Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply. See also *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt.660) 228 at Pages 28-289 where Ogundare, J.S.C of blessed memory had this to say:-

“ Suffice to say that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly.”

As can be seen from the above, the learned Justices took pains in expounding on the necessity of such international treaty or convention to be domesticated before it can be invoked and applied to cases in Nigeria. That is in fact what the learned Judge should have done rather than accept and grant the relief hook, line and sinker.

In the result, reliefs (2) and (3) are resolved in favour of the respondents, and grounds 4 in the original notice of appeal and (2) of additional grounds to which they relate, fail.

For the reasons I have given and those more comprehensively set out in the leading judgment of my learned brother Mukhtar, JSC with which I am in entire agreement, I dismiss the appeal and make similar order as to costs in favour of the respondent against each set of the three appellants.

In respect of the single issue formulated and canvassed by the 2nd and 3rd appellants, I am also in entire agreement with my learned brother that the appeal being unmeritorious is also accordingly dismissed with costs as assessed.

MUSDAPHER JSC

I have had the preview of the judgment just delivered with which I entirely agree, in the aforesaid judgment, my Lady has meticulously, comprehensively and admirably dealt with all the issues submitted for the determination of the appeals. I adopt the reasoning as mine and I accordingly dismiss the two appeals and affirm the decisions of the Court of Appeal. I abide by the order for costs proposed in the aforesaid lead judgment.

OGBUAGU JSC

There are two (2) sets of Appellants in the instant appeal. The 1st Appellant was the Applicant at the Federal High Court, Ilorin for orders of Certiorari, and Mandamus and an order directing the 2nd and 3rd Appellants, to register the Applicant, as a Senior Staff Trade Union. The learned trial Judge in his considered Judgment, granted all the reliefs sought except the (iv) forth relief. The Respondent, aggrieved by the said decision, appealed to the Court of Appeal, Ilorin Division (hereinafter called “the court below”). While the appeal was pending, the 1st Appellant sought and was granted leave by the court below, to appeal against the earlier Order of the trial court, joining the Respondent at its instance, as a defendant in the said application of the 1st Appellant. The two appeals, were argued together and in its well considered Judgment, substantially or in part, allowed the appeal of the Respondent and dismissed the appeal of the 1st Appellant in respect of the said Order of Joinder.

Dissatisfied with the said decision, the 1st Appellant, has appealed to this Court and filed seven (7) Grounds of Appeal from which it distilled four (4) issues for determination. It is noted by me that the 2nd and 3rd Appellants, did not appeal to the court below, the said decision of the trial court and this fact, is conceded by them in paragraph 2.03 of their Brief. They however, filed one (1) Ground of Appeal and distilled one (1) issue for determination. The Respondent, has formulated four (4) issues for determination. All the issues are

reproduced in the lead Judgment, of Mukhtar, JSC.

On 16th October, 2007, when these appeals came up for hearing, Learned counsel for the 1st Appellant - Elejah, Esqr., with other learned counsel, told the court that the 1st Appellant's Brief dated 19th September, 2005, was filed on 26th September, 2005. He adopted the same. He stated that on 10th July, 2006, this Court granted, the P¹ Appellant, leave to file an additional Ground of Appeal and that they filed the same on 17th October, 2006 as an Amended Notice of Appeal. He then urged the court to allow the appeal.

Abidogun, Esqr., - Learned Counsel for the 2nd and 3rd Appellants, told the court that their Brief dated 30th November, 2005, was filed on the same date but deemed properly filed and served by the court on 10th July, 2006. That the 2nd and 3rd Appellants also filed a Reply Brief dated 14th June, 2006 which was filed on the same date. He adopted the two (2) Briefs and urged the court to allow the 2nd and 3rd Appellants' appeal.

Oputa-Ajieh, Esqr., with two other learned counsel, told the court that the Respondent's Brief dated 3rd April, 2006, was filed on 5th April, 2006, He adopted the same and urged the court to dismiss the two (2) appeals and affirm the decision of the court below. Judgment was thereafter, reserved till to-day.

I have had the privilege of reading before now, the lead Judgment of my learned brother, Mukhtar, J.S.C., just delivered. I agree with his reasoning and conclusions. I will however, for purposes of emphasis, make my own brief contribution. As far as I am concerned, the crucial issue for determination in the appeal of the 1st Appellant, is Issue 2 of both the 1st Appellant and the Respondent which although differently couched, are substantially the same. In other words, the said issue touches on the discretionary powers conferred by statute, on the 3rd Respondent in particular, to either register or refuse to register the 1st Appellant as a Trade Union or in fact, any Association or body, that applies to it, for registration as a Trade Union. It will therefore, be pertinent for me, to reproduce (again for emphasis), the statutory provisions in Sections 3(2) and 5(4) of the Trade Unions Act Cap. 437 of the Laws of the Federation of Nigeria, 1990.

Section 3 (2) provides as follows:

“..... but no Trade Union shall he registered to represent

workers or employers in a place where there already exists a Trade Union”.

Section 5(4) provides as follows:

“The Registrar shall not register the Trade Union if it appears to him that any existing Trade Union is sufficiently representative of the (not representing as appears in Exhibit NAC. 5) interests of the class of persons whose interest the Union is intended (not interested as appears in Exhibit NAC.5) to represent”.

These provisions, are clear and unambiguous. It is noted by me that the 1st Appellant had in fact, first applied to the 2nd Appellant for it to be registered as a Trade Union in its letter/application dated 28th March, 2002- The 2nd Appellant who the 1st Appellant now castigates, in its magnanimity, clearly and Frankly, in Exhibit NAC.5 to the 1st Appellant, (see pages 37-39 of the Records) said it all so to say, it put its cards upwards on the table and drew the attention of the 1st Appellant, to the said statutory provisions and in fact, copied or endorsed the said letter/Reply to the Registrar of Trade Unions. For purposes of emphasis again, I will reproduce, some pertinent parts of the said letter/Reply to the letter/application of the 1st Appellant. They read inter alia, as follows:

“Community Health Practitioners (Registration etc.) Decree No. 1 of 1992 established Board in respect of Community Health Practitioners and also makes incidental provisions for the control of the practice of the profession. By this Decree, the Government has recognized the Association as a professional body but this does not automatically transform it to a trade union organization”,

“It is pertinent to observe that application for registration, of Senior Staff Professional Association does not arise in this matter because there is no dichotomy between the senior and junior staff unions in the jurisdictional scope of the two unions mentioned above. Both MWHUN and NULGE cover all the employees in their respective area of jurisdictional scopes”,

“Besides, NULGE claims that the nomenclature of Community Health Workers were previously in the State government but were later transferred to the Local Government Administration as a result, your members have since then remained in NULGE and your employer is the Local Government Service Commission. Again, the

law establishing trade unions states that all the Local Government Employees except Nurses and Teachers tire members of NULGE”.

I have hereinabove stated, that the said provisions of Sections 3(2) and 5(4) of the Trade Unions Act, Cap. 437 of the Laws of the Federation 1990, were reproduced in this said letter/Reply, or one
 B may ask, what is responsible or behind all the unnecessary fuss by the 1st Appellant in view of the clear contents of Exhibit NAC.5? Does it mean, with respect, that the said representatives and the signatories to the said letter/application of the 1st Appellant, are/were uncompromising or that they were not prepared to respect and/or appreciate the
 C said clear and unambiguous contents of Exhibit NAC.5? I wonder.

There is again, the weighty averment in the counter-affidavit for and on behalf of the Respondent at pages 100 to 102 of the records. Paragraph 8 thereof, avers as follows:

“I am aware that the 3rd Respondent Union has been organizing, safeguarding and representing the interest of members of the Applicant in paid employment in all the States of the Federation since the Restructuring of Trade Unions in 1978”.

Paragraph 9 thereof, avers as follows:

“I am also aware that under the Trade Unions (Amendment) Act, 1996 the 3rd Respondent Union herein was granted jurisdiction to organize and represent all Medical and Health Workers in all Medical and Health Institutions in the Country inclusive of members of the Applicant’s Association “.

I note that in paragraph 7 of the Further-Affidavit for and on behalf of the 1st Appellant, what is described as,

“the true position of the matter in reaction the depositions contained in paragraphs 8, 9, 10, II and 12 of the Counter-Affidavit”. were stated. These however, did not detract from the solid fact that the 3rd Appellant, was/is vested with statutory discretion in the matter
 G of whether or not, to register an Association and particularly the 1st Appellant.

More importantly, this Court, has/had dealt wit!; ;-n 1 pronounced on the said provisions of Sections 3 and 5 of the Trade Unions Act (hereinafter called “the Act”) in the case of Qsawe & _ors. v. Registrar of Trade Unions (1985) 1 NWLR (Pt.4) 755 at 763(it is also reported in (1985)1 NSCC Vol 16 at page 766)- Since ii has not
 H

been overruled by this Court, it is binding on it. In fact, the facts and the law in this instant case leading to this appeal i.e., (the issue of Registration by the Registrar), can conveniently and unequivocally be said by me, to be substantially, in all fours with Osawe's case (supra). It is a very illuminating judgment and the cowl below, reproduced some part of it. I will also herein, reproduce what I consider the pertinent portions/parts of the said Judgment - per Kazeem, JSC. At page 772 of the NSCC Report, the following appear, inter alia:

"In my view, this new provision makes it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under section 5(2) of the Trade Unions Act, 1973. Having regard to the facts of this case, I am of the view that the registrar was right to have rejected the application for registration immediately; for to have done otherwise might have led to a ridiculous situation. It may even be asked: What would have been the result if the registrar had first complied with the provisions of section 5(2) of the Act by publishing the name of the proposed trade union in the Nigeria Official Gazette and had called for objections? What would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one? I am of the view that to have embarked upon such an exercise would not only have been wasteful, but it would also have served no useful purpose, because, in the end, he would have had to reject the registration of the proposed union. For these reasons, ground 1 fails".

I wish to observe' that Sections 3 and 5 of the Act, have not been amended. Right of freedom of association and in respect of restriction and derogation from fundamental rights, have been "orchestrated" by the trial court and canvassed both in the Briefs of the 1st Appellant in the court below and in this Court. Sections 37 and 41 of the 1979 Constitution referred to in Osawe's case (supra), are the same as Sections 40 and 45 of the Constitution of the federal

Republic of Nigeria, 1999. In this regard, His Lordship in the Osawe’s case had these to say:

“As regards ground 2, it was not disputed that the fundamental right enshrined under Section 37 of the Constitution of 1979 for freedom of association as trade unions was subject to the derogation set out in Section 41 (1) (a) of the said Constitution. Hence Section 37 of the Constitution ‘is not absolute as it cannot invalidate any law that is reasonably justifiable in a democratic society “in the interest of defense, public safety, public order, public morality, or public health”’. It was not also the contention of the appellants that Section 3(2) of the Trade Unions Act, 1973 as amended by Section 1 (1) (a) of 5 the Trade Unions (Amendment) Act, 1978 was a law reasonably justified in a democratic society. It was in fact in order to maintain public order out of a chaotic situation that the exercise of 1978 was embarked upon which gave rise to the promulgation of the Trade Unions Amendment Act 1978. I am therefore unable to agree that Section 3(2) of the Trade Unions Act 1973 as amended, contravenes Section 37 of the Constitution of 1979. Accordingly, I am satisfied that the Court of Appeal was right in allowing the appeal and in setting aside the order of the High Court Benin City which ordered the respondent to register the appellants ‘ union’.

Since I am bound by these pronouncements, I agree with the court below, that the said Sections 3 and 5 of the Act, are not inconsistent with the provisions of the 1999 Constitution. I hold specifically, that Section 40 of the 1999 Constitution is not absolute. I also hold that section 3(2) of the Act, does not contravene Section 37 of the 1979 Constitution (as Amended).

Before concluding this issue , I note that the learned trial Judge in refusing to be bound by Osawe’s case (supra), tried with respect, in vain, to distinguish it from the instant case leading to this appeal He stated at pages 129 and 130 of the Records inter alia, thus:

“I have gone through the ease of Osawe v. The Registrar of Trade Unions (1985) 1 NWLR (Pl.4) 755 at 756, where the Supreme Court held as follows;

“The right of association guaranteed in Section 3 7 of the Constitution, like other rights in Chapter IV of the Constitution is not an absolute right, but a qualified right, which can be derogated

from in accordance with the provision of Section 41 of the 1979 Constitution”

His Lordship then reasoned and stated inter alia, as follows:

.”The powers conferred on the Registrar of Trade Unions to refuse registration of a trade union are not limited by the provisions of Section 5(2) of the Trade Union Act. This country has however since then moved forward as the country embraces democracy and the rights of the citizens have since been enhanced through legislations and pronouncements. The African Charter on Human and People’s Right have been incorporated into the laws of the country as Cap. 10 LFN 1990”. B C

The learned trial Judge with respect, threw to the winds so to say. the firmly established principles of interpretation of a Statute where the words used, are clear and unambiguous as Section 5(2) of the Act and “imported” unjustifiably, extraneous matters, He even ignored or failed, refused and/or neglected to appreciate, the reasoning of this Court as to why the Registrar of the Trade Unions, must have a discretion in the matter of registration. He even gave his own interpretation of” paragraph 8 of Exhibit NAC.5, for said he inter alia, as follows: D E

“This paragraph clearly shows that contrary to the view that there is an existing trade union for the applicant. The truth is that the Medical Workers Union and the National Union of Local Government Employees are contending for the unionisation of the applicant. F

In my humble view, it is more discreet to allow them form a trade union within themselves rather than leave them at the mercy of two contending forces which they do not want. Furthermore, this would be a fait accompli as the Federal Government itself” recognized them as a profession by virtue of Decree 61 of 1992”. G

His Lordship concluded thus:

“In the light of the above, I am of the view that discretion of the Minister not to register the applicant as a trade union has not been judicially or judiciously exercised”

. The above holdings, with respect, are unfortunate to say the least. In fact, it seems to me that the reason(s) for the views of the learned trial Judge, appears to me to be that Section 5(2) of the Act, has been modified by Article 10 of the African Charter on Human and H

People's Right and that the right of the citizens "have been enhanced through legislations and pronouncement" hence the reliance not only on the said Charter, but on the decisions of this Court in the cases of Abacha v. Chief Fawehinmi (2006) 6 NWLR (Pt.228) at 248 which is also reported in (2000)4SCNJ.1 and INEC& anor. v. Alhaji Musa & ors. (2003) 3 NWLR (Pt.806) 72@ 131 which is also reported in (2003)1 SCNJ. I, This is why he concluded as follows:

1. "The essence of the latter Supreme Court's decisions is that the right to associate freely is a sacred part of the Constitution and any enactment such as the Trade Union Act would be invalid if its provisions run contrary to the letter and the spirit of the 1999 Constitution".

I have noted in this Judgment, that Osawe's case (supra), has not been overruled and therefore, extant. Yet, the learned trial Judge, has declared the said provisions of Section 5(2) of the Act, invalid.

Wonders shall never end! It is instructive that this Court, in the case of Chief Okpala & ors. v. Okpu & ors (2003) 5 NWLR (Pt.812) 183 @ 215 also reported in (2003) 1 SCNJ. 290 also cited and relied on in the Respondent's Brief, this Court per Tobi, JSC, stated inter alia, as follows:

"A case does not lose its value as a judicial precedent in the common law system on the ground of age. As a matter of law, a case, which has survived the test of judicial precedent, is recognized as stable if decided by the highest court of the land and will receive the adoration of the lowest courts until overruled by the highest court. But until it is overruled, it represents the state of the law; the older a case the maturer it is, and this Court and all the courts below are bound to follow it, and not throw it in the dust bin".

(The underlining mine)

I note however, that the case of INEC v. Alhaji Musa & ors. (supra) relied on by the trial court, with respect, has no relevance or bearing with the subject-matter of this suit leading to this appeal, as it relates to the issue of registration of political parties under Section 79(2) of the Electoral Act.

I have also in this Judgment, agreed with the court below that Sections 3 and 5 of the Act, is not inconsistent with the provisions of the 1999 Constitution. I agree with Ikongbe, JCA (of blessed mem-

ory), when in his concurring Judgment at page 392 of the Records, he stated inter alia, as follows:

“..... I entirely agree with my learned brother that in the circumstances of this case the 1st and 2nd Respondents property exercised their discretion within the law when they refused to register the 3rd respondent. Their refusal was justified by the provisions of Section 3(2) of the Trade Unions Act, which entitled them to refuse to register a trade union “to represent workers or employers in a place where there already exist a trade union “to represent workers or employers in a place where there already exist a trade union”. In their letter to the 3rd respondent refusing to register it as a trade union they reminded it of the fact that at the time it applied for registration its members were still members of existing trade unions. I agree with my learned brother that the reason given by the learned Judge for rejecting the stand of the 1st and 2nd respondents is not tenable

(The underlining mine)

I therefore, sustain and uphold the decision of the court below setting aside the said decision of die trial court.

As regards the second appeal, the law on joinder, has long been firmly settled. Again, for purposes of emphasis, I will deal with it even briefly. Firstly, there is the statutory provision in Order 12 Rule 3, of the Federal High Court (Civil Procedure) Rules, 2000 which provides as follows:

“All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment”.

(The underlining mine)

The above is clear and unambiguous.

Rule 5(1) of the same Rules, provide as follows:

“If it appears to the Court, at or before the hearing of a Suit, that all persons who may be entitled to or who claim a share or interest in the subject matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the court and

direct that such persons shall be made either plaintiffs and defendants in the suit, as the case may be”.

Secondly, It is the general rule that the court, may in every cause or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. See the cases of Peenok Investment Ltd. v. Hotel Presidential Ltd., (1982) 12 S.C. 1 and Okoye & 7 ors. v. Nigerian Construction & Furniture Co. Ltd. & 4.ors. (1991) 7 SCNJ. (Pt.5) 365 @ 382-383. Again, the joinder of parties, whether as plaintiffs or defendants, is subject to two conditions, namely,

“(i) the right to relief must in each case be in respect of or arise out of the same transaction or series of transactions.

(ii) there must be some common question of law or fact. See the case of Ibighami v. Military Governor, Ekiti State (2004) 4 NWLR (Pt.863) 243.”

Why have the Rules of court, provided for joinder of parties and causes of actions? I or one may ask. In the case of Egonu & 3 ors. v. Egonu & anor. (1973) 3 ECSLR. 664, it was held that all those who claim some share or interest in the subject-matter of the suit, or who may be affected by the result, as well as those who the court may join even suo motu, are necessary parties, for their presence before the court may be necessary in order to enable the court, effectively and completely, to adjudicate upon and settle all the questions involved or in controversy. Perhaps, see also the English case of Long v. Crossley (1879)13 Ch. D. 388 and our local cases of Coker v. Adeyemo & anor. (1968) NMLR 323 @ 324 and Uku & ors. v. Okumagba & ors. (1974) 3 S.C. 35 @ 60. and Green v. Green (supra)

In the case of Green v. Green (1987) 3 NWLR (Pt 61) 480; (1987) NSCC 1115; (1987) 7 SCNJ. 262 - per Oputa, J.S.C. it was held inter alia, that the only reason which makes it necessary to make a person a party to an action, is that he should be bound by the result of the action and the question to be settled. That there must be a question in the action which cannot be effectively and completely settled unless he is a party. The case of Amon v. Raphael Tuck & Sons Ltd (1956) 1 QBD 357 @ 380. per Delvin. J. was referred to.

Indeed, under our law, a person whose interest is involved

or is in issue in an action and who knowingly chose to stand-by and let others fight his battle for him, is equally bound by the result in the same way as if he were a party.

In the case of *Chinweze & anor. v. Masi. (Mrs.) & anor.* (1989) 1 NWLR (Pt. 97) 254 @ 257; (1989) 1 SCNJ. 148 at 156, also cited and relied on in the Respondent's Brief, it was held inter alia, that the court has a duty to prevent the expensive luxury of having two separate suits where it can, by joinder, settle the whole matter in one action. That where, the determination of one of the claims between the plaintiffs and the 1st defendant, will involve and affect the 2nd defendant's legal rights over property or his pecuniary interests, that the trial court, was right in making the 2nd defendant a party. That it is the policy of the courts, to avoid as much as possible, a multiplicity of suits. See also the case of *Amon v. Raphael Tuck & Sons Ltd*, (1956) 1 & 2 QBD 357, (Supra).

In fact, as rightly submitted in the 3rd Respondent's Brief, this Court in interpreting Order IV Rule 5(1) of the High Court of the then Eastern Nigeria Rules, applicable in Anambra State which is in pari materia with the said Order 12 Rule 5 of the Federal High Court (Civil Procedure) Rules, 2000, stated in *Chinweze's case* (Supra) inter alia, as follows:

"A plaintiff has a duty and obligation to join a person as a party if that person is a necessary party in an action instituted by that plaintiff. If a plaintiff fails to join a necessary party and it appears from the proceedings that such a person ought to have been joined, the trial judge could suo motu join him. If the court could suo motu join a necessary party, a fortiori, the court has a duty to join him if he applied to be made a party to enable him defend his interest. See *Green v. Green* (1987) 7 SCNJ. 262".

It is noted by me, that it was the 3rd Respondent, who applied to be joined as a party in the said suit leading to this Instant appeal. The court below at page 390 of the Records, stated inter alia, as follows:

"I have earlier in the judgment set out the decision of the lower court on this issue. I only wish to say that by virtue of the provisions of Order 12 Rule 3 of the Federal High Court Rules 2000, all persons may be joined as defendants whom the right to any relief is alleged

exist, whether jointly or severally. In the instant case, the interest of the 1st Respondent is to prevent the registration of the appellant as a Trade Union in order to forestall their breaking away from them.” .

I cannot fault the above.

B After referring to the averments/depositions in paragraphs 8 and 9 of the affidavit of the 3^r Respondent in support of the application for joinder, the court below concluded thus:

C “By these averments, it is my considered view that the 1st respondent has disclosed sufficient interest in the claims/reliefs before the lower court, and the lower court, with respect, was right in joining the Plaintiff/Respondent as a Defendant in this case. It cannot be otherwise. See *Oba Joseph Adeyemo Ajayi v. Oba Joseph Jola yemi* (2001) 3 SCNJ. 250. *Onibudo & Ors. v. Abdullahi & Ors.* (1991) 2 NWLR (PT. 172) 230 at 246, per Kalgo, JCA (as he then was).

D I therefore find no merit in this appeal against the joinder, and it is hereby dismissed”

I agree.

Ikongbe, JCA (of blessed memory) put the matter succinctly in his said concurring Judgment when he stated *Inter alia*, as follows:

E “..... The argument of the learned Senior Advocate of Nigeria for the Appellant, that it was wrong of the Judge to force a defendant on his client against whom the later did not wish to do battle does not impress me. No doubt, it is generally the law that the court cannot
F force a defendant on an unwilling plaintiff who has no case against that defendant. Yet there must be situations where a defendant can insist that he be allowed to join the fray against the plaintiff to protect himself against the ill effect of the relief that the plaintiff might obtain from the court. I think this in one such circumstance. The MHWUN in this case felt that unless it entered the fray and thwart the efforts
G of the appellant in Its quest, its (MHWUN’s) interest would be adversely affected if the Registered Trustees of National Association of Community Health Practitioners of Nigeria were allowed to have its way unchecked and it might later find itself faced with the plea of estoppel by standing by. I think it was perfectly justified in wanting to join the fray in the circumstances of this case.

H Although the appellant had framed the reliefs it sought from

the lower court to look as if it did not concern the MHWUN, clearly if those reliefs are granted they are bound to have adverse repercussions on the later. It claimed that members of the appellant were part of it and that the registration of the appellant would lead to legally unjustifiable split-up of it. In the circumstances, I agree that even if the appellant pretended not to want do battle with the MHWUN the later was perfectly justified inchoosing to do battle with the ostensibly unwilling appellant to protect itself from (lie adverse effect of the appellant's activities". B

I completely agree with the above. I too, dismiss the appeal as being totally unmeritorious. More importantly, the 2nd and 3rd Appellants, having not appealed to the court below against the judgment of the trial court, they have no foundation in bringing this appeal and having however, participated in the hearing of the suit in the trial court, and the appeal in the court below and in this Court, with respect, in my humble but firm view, their appeal to this Court, boils down to an academic exercise which the Court, does not encourage. There is also the concurrent judgments of the two lower courts. C

In the final result/analysis, from the foregoing and the conclusions in the said lead Judgments of my learned brother, Mukhtar, J.S.C., the two appeals, are devoid of any merit, they fail and are dismissed. I abide by the consequential order in respect of costs as contained in-the said lead Judgment. D E

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ADEREMI JSC

The appellant in this case who was the applicant in the trial court (Federal High Court, Ilorin Division had, pursuant to the Trade Union Act, Cap 437, Laws of the Federation of Nigeria, 1990 Section 3 (1) and (2) thereof, applied to the 2nd and 3rd respondents that it (the appellant) be registered as a trade union. The application was refused, consequent upon which it brought an application ex-parte filed on the 5th of March 2003 before the Federal High Court, Ilorin per which it sought and obtained leave to apply for judicial review of the decision of the Honourable Minister of Labour and Productivity and the Registrar of the Trade Unions; and simultaneously claimed G H

the following reliefs: -

“1. An order of certiorari to remove into this Honourable Court for purpose of being quashed the decision of the respondents contained in a letter dated 19th February 2003 Ref. No. ML/IB/147/1776 refusing the registration of the applicants a (sic) Senior Staff Trade Union.

2. An order of mandamus compelling the respondents to register the applicant as a Senior Staff Trade Union under the Trade Union Act Cap 437, as amended.

3. Declaration that it is unconstitutional, illegal, unlawful and against the provisions of convention 87 and 89 of the International Labour Organisation for the respondents to refuse to register the applicant as a Senior Staff Trade Union.

4. Declaration that it is ultra vires the powers of the respondents to refuse or neglect to register the applicant as a Senior Staff Trade Union without following the provisions of the Trade Union Act, Cap. 437, as amended or in total violation of the provisions of that Act.

5. Order directing the respondents to forthwith register the applicant as a Senior Staff Trade Union.”

By a motion on notice dated 7th November 2003, the Medical and Health Workers Union of Nigeria (MHWUN) prayed the trial court for an order joining it (MHWUN) as defendant/respondent and an order granting it leave to be heard on the plaintiff/applicant’s application before judgment can be delivered on it. The motion on notice was in respect of the prerogative orders to which a preliminary objection had been filed challenging the competency of the action. The motion for joinder was heard on the 19th of February 2004 and the applicant (Medical and Health Workers Union of Nigeria) was joined as a co-defendant. Having been so joined, the co-defendant filed a counter-affidavit dated 4th May 2004 and all the parties were heard on the substantive case on the 7th of June 2004. In his judgment granting reliefs 1, 2, 3 and 5, the trial judge held inter alia:

“I therefore hold that the non-registration of the applicant is also invalid because it has denied the applicant the right to associate and belong to a trade union of choice recognized by the Constitution and the African Charter on Human Rights

In the light of the foregoing, this application succeeds, I hereby hold that the applicant is entitled to the reliefs sought in the matter i.e. reliefs I, II, III and V.”

Dissatisfied with the decision, the co-respondent (MHWUN) appealed to the court below, sequel to the grant of his motion on notice dated 2/11/2004, for an order for leave to appeal and extension of time to appeal against the ruling. The 2nd and 3rd respondents did not consider it necessary to appeal against the judgment of the trial court that non-registration of the appellant was invalid. Suffice it to say that there was an appeal against the order joining MHWUN. Briefs were filed and exchanged between the parties. In a considered judgment delivered by the court below, it was held thus: -

“I have carefully gone through the affidavit Evidence before the court, and I am of the view that these findings of the lower court were not based on the evidence before that court

It is on this basis, my lords, that I hold that the reliefs numbers i, ii and v granted by the lower court cannot stand. I also wish to point out that the right of freedom of association granted by Section 40 of the 1999 Constitution is not absolute. It is subject to the provisions of Section 45 of the same constitution

On relief iii granted by the trial court, it is crystal clear that the relief was granted in error. The relief granted by the trial court is for a declaration that it is unconstitutional, illegal, unlawful and against the provisions of convention 87 and 89 of the International Labour Organization for the respondents to refuse to register the applicant as a Senior Staff Trade Union (S.S.T.U.). There is no evidence before the court that the I.L.O. Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly

In so far as the I.L.O. Convention has not been enacted into law by the National Assembly, it has no force of law in Nigerian and it cannot possibly apply.

My conclusion therefore is that relief iii was granted based on a non-existing right and law and it is consequently set aside. In all, this appeal succeeds in part and I order as follows: -

(a) That this action is properly commenced and determined at the appropriate venue i.e. Ilorin Division of the Federal High Court;

and

(b) The reliefs granted by the lower court are herewith set aside, and the 3rd respondent's claims are hereby dismissed."

Being dissatisfied with the judgment of the court below, the appellant has appealed to this court vide a Notice of Appeal dated B 27th May 2005. The said Notice was later amended with the leave of court; hence the Amended Notice of Appeal dated 12th October 2005 but filed on 17th October 2005; it carries one additional ground of appeal. The 2nd and 3rd respondents at the lower court also being C dissatisfied with the said judgment, filed a Notice of Appeal against the judgment. The appellant has distilled four issues from its seven original grounds and one additional ground of appeal. As set out in its brief of argument; they are as follows:

D "1. Whether the learned justices of the court below were right in setting aside reliefs (i), (ii) and (v) granted in favour of the appellant by the trial court on the ground that the appellant did not proof (sic) her entitlement to same having regard to the alleged non denial of paragraph 7 of the counter-affidavit of the 1st respondent which was clearly not so on record.

E 2. Whether the learned justices of the court below correctly interpreted the provisions of Sections 3 and 5 of the Trade Union Act Cap 437 vis-à-vis the provisions of section 40 of the 1999 Constitution and the decision of this court in the case of Osawe v. Registrar Of Trade Unions (1985) 1 NWLR (pt. 4) 255 when the facts, circumstances F and antecedent of the case were totally different from the facts of the present case.

G 3. Whether the learned justices of the court below were not wrong in the view their Lordships took that relief No. iii was not properly granted in favour of the appellant by the trial judge on the ground that the provisions of Clauses 87 and 89 of the International Labour Organization Convention have no legal force in Nigeria having not been ratified by the National Assembly, even though signed by Nigeria when the decision of the trial court to grant the relief was based on other valid grounds not considered by the court below.

H 4. Whether their Lordships of the court below were right to have endorsed the ruling of the trial court that the 1st respondent was a proper party to the case, when it granted its application for joinder

when in fact there was no relief claimed by the appellant against the 1st respondent, there was no counter-claim by the said 1st respondent and there was nothing in the case connecting it to the reliefs sought and granted by the trial court in favour of the appellant.”

The 1st respondent (MHWUN) identified four issues for determination in this appeal and they are as follows: - B

“(1) Whether the Court of Appeal was right to have reversed the decision of the trial court granting reliefs i, ii and claimed by the 3rd Respondent (now 1st appellant) on the ground that there already exists a Union covering the interest of the 3rd respondents (now 1st C Appellants).

(2) Whether the Court of Appeal was right to have reversed the decision of trial court by holding that the Minister of Labour and the Registrar of Trade Unions were right to have refused to register the Community Health Practitioners of Nigeria as a senior staff trade D union, having regard to the totality of the evidence before the trial court and the subsisting state of statutory and judicial authorities.

(3) Whether the Court of Appeal was right to have stated that relief iii granted by the trial court was based on non-existing law having regard to the fact that relief iii was predicated on JLO E Convention 87 and 98 (sic).

(4) Whether the Court of Appeal was right to have upheld the order of joinder of the Medical and Health Workers Union of Nigeria Appellant (now Respondent) as an interested party in the F proceedings by the trial court.”

When this appeal came before us for argument on the 15th of October 2007, Mr. Eleja, learned counsel for the appellant, referred to, adopted and relied on the appellant’s brief and he urged that the appeal be allowed. Mr. Abidogun, referred to, adopted and relied on G the 2nd and 3rd appellants’ brief and the reply brief filed on 14/6/06, he urged that the appeal of the 2nd and 3rd appellants be allowed. Mr. Oputa-Ajieh, learned counsel for the 1st respondent referred to, adopted and relied on the 1st respondent’s brief filed on 5/4/2006 H and urged that the appeal be dismissed.

The crucial or fundamental point that calls for resolution in this appeal is the refusal to register the appellant as a trade union under the Trade Unions Act, Cap 437; Laws of the Federation, 1990.

The relevant provision is Section 3 (1) which reads: -

“An application for the registration of a trade union shall be made to the Registrar in the prescribed form and shall be signed: -

(a) in the case of a trade union of workers, by at least fifty members of the union; and

(b) in the case of a trade union of employers by at least two members of the union.”

By the provisions of the Trade Unions Act reproduced above, the decision to register or not to register a trade union inheres in the Registrar of Trade Union and not the Minister of Labour and Productivity. Suffice it to say that the 1st appellant’s application for registration, which was tendered in evidence as Exhibit NAC2, was addressed to the Minister and not to the Registrar. It was the Minister who directed the 1st appellant to liaise with the Registrar. There is no evidence, oral or documentary, that the 1st appellant heeded the advice of the Minister to liaise with the Registrar for the registration. Rather, all that we have is Exhibit 4 which the 1st appellant wrote to the Minister requesting him to intervene on its behalf to get the Registrar register the union. The 1st appellant got a response from the Minister in terms of Exhibit 5 which inter alia, made it categorically clear to the 1st appellant that no trade union shall be registered to represent workers or employers in an area where there already exists a trade union.

In support of their different arguments as contained in their respective briefs, all the parties have cited the decision of this court in Erasmus Osawe & Ors. v. Registrar Of Trade Unions (1985) 1 NWLR (pt.4) 755, the brief facts of which case are as follows:-

the appellants in this appeal applied to the Registrar of Trade Union for the registration of a Trade Union called “The Nigerian United Teaching Services Working Union” otherwise called the “Nigerian Administrative Staff Union of Primary and Post Primary Schools”.

The Registrar of Trade Unions refused to register the Association based on the ground that there was in existence, a Trade Union named the “Non-Academic Staff Union of Educational and Associated Institutions” which, according to him, adequately caters for the interests of the members of the union proposed to be registered. In Exhibit NAC. 5, a letter dated 19th February 2003, signed by one M.A.B. Atilola, a

Director in the Trade Union Services and Industrial Relations Department on behalf of the Minister for Labour and Productivity; in turning down the request for the registration, the Minister had said inter alia:

“(2) Community Health Practitioners (Registration etc) Decree No.1 of 1992 established a Board in respect of Community Health Practitioners and also makes incidental provisions for the control of the practice of the profession. By this Decree, the Government has recognized the Association as a professional body hut this does not automatically transform it to a trade union organization. B

(3) Section 3 sub-section 2 of Trade Union Act, Cap 437 of 1990 (quoted in part) states as follows:- C

“ but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.”

Similarly, Section 5 sub-section 4 of the same Act on procedures states as follows: - D

“On the receipt of application for registration, the Registrar shall not register the trade union if it appears to him that any existing trade union is sufficiently representing the interest of the class of persons whose interest the union is interested to represent.

In view of the foregoing and in accordance with sub-section 2 of Section 3 of Trade Unions Act, Cap 437 of the Laws of the Federation of Nigeria 1990, the Honourable Minister is not satisfied that you should be registered as a Trade Union of Senior Staff Association. Your request for registration as a trade union of senior staff Association cannot be favourably considered.” E F

The assessment of the facts on which the application for registration was predicated as stated in Exhibited NAC 5 quoted supra cannot be faulted. In the Osawe case supra, it was the provisions of Section 3 (1) and (2) of the Trade Unions Act 1973 as amended, which are materially similar to Section 3(1) and (2) of the Trade Unions Act, Cap 437 of 1990 that were construed. In so doing, Kazeem JSC., who read the lead judgment of this court in that case reasoned thus: - G

“Having regard to the facts of this case, I am of the view that the registrar was right to have rejected the application for registration immediately; for to have done otherwise might have led to a ridiculous situation. It may even be asked: What would have been the result if the registrar had first complied with the provisions of section 5 (2) of H

the Act by publishing the name of the proposed trade union in the Nigeria Official Gazette and had called for objections? What would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one? I am of the view that to have embarked upon such an exercise would not only have been wasteful, but it would also have saved no useful purpose, because in the end, he would have had to reject the registration of the proposed union.”

The learned jurist had earlier held before the quotation above thus:

“In my view, this new provision makes it mandatory for the Registrar of Trade Unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it become incumbent in my view, for the registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under Section 5 (2) of the Trade Unions Act, 1973.”

This being the decision of this court earlier delivered, I must follow it particularly when the facts are similar and no distinguishing factors, I shall also resolve Issue 1 in favour of the respondent. The appeal therefore fails on this issue.

The appeal of the 2nd and 3rd appellants which dwell on the applicability of the International Labour Organization Convention, I cannot improve upon the lucid and exhaustive consideration of this point as given by my learned brother, Mukhtar, JSC. in the leading judgment which I beg to adopt. Suffice it for me to say that the treaty has not received any legal backing in Nigeria in the sense that no law has been enacted by the National Assembly to accord it any legal force. That issue distilled from the single ground of appeal contained in the Notice of Appeal of the said 2nd and 3rd appellants, is resolved in favour of the respondent as well.

For the little I have been able to say supra but most especially