

SUPREME COURT OF NIGERIA
22ND FEBRUARY, 2008. SC.89/2003
**CORAM:- S. U. ONU, D. MUSDAPHER, G. A. OGUN-
TADE, I. T. MUHAMMAD, P. O. ADEREMI, JJSC**

1. DR. TAIWO OLORUNTOBA-OJU
(Chairman Academic Staff Union of
Universities (ASUU) Unilorin Branch)
 2. DR. BODE OMOJOLA
(Vice-Chairman (ASUU) Unilorin Branch) APPELLANTS
 3. DR. YETUNDE OSUNFISAN
 4. DR. ADEYINKA BANWO
 5. DR. SOLA ADEMILUKA
 6. PROFESSOR BISI OGUNSINA
(Head of Dept. of Linguistics Unilorin)
 - AND
 1. PROFESSOR P. A. DOPAMU
 2. DR. BADE AJAYI
 3. MR. SUNDAY ODODO
 4. PROF. SHUAIB OBA ABDULRAHEEM
(Vice-Chancellor University of Ilorin) RESPONDENTS
 5. TUNDE BALOGUN
(Registrar University of Ilorin)
 6. UNIVERSITY OF ILORIN
 7. THE GOVERNING COUNCIL OF
UNILORIN
-

ACTIONS - Claims - Nature - Present claims relate more to infraction of Unilorin Act - Than mere pursuit of Trade Union activities - The suit is not a trade dispute (H1)

ACTIONS - Jurisdiction - Trade dispute - Definition - Suit filed by representatives of a trade union - Does not automatically become a trade dispute - As to remove Federal High Court's Jurisdiction (H2)

ACTIONS - Master & Servant - Removal from office - Manner in which it was done - Is the true form or nature of present suit - Lower

courts erred in viewing it as a trade dispute (H3)

CONSTITUTIONAL LAW - Jurisdiction - National Industrial Court - Does not have jurisdiction in all employment matters - Existing law that is in conflict with the Constitution - Is void to the extent of the inconsistency (H4)

FACTS

Before the Federal High Court Ilorin, the plaintiffs/appellants filed an originating summons against the defendants/respondents. The major questions presented for the court's determination had to do with the powers of the 4th defendant (Vice Chancellor Unilorin) and the other defendants to do certain things contrary to the University of Ilorin Act. Some of the things being queried include the unilateral removal and replacement of a Dean of Faculty, and conducting degree examination without the participation of appropriate examiners. Subject to the answers given by court to the questions, plaintiffs claimed inter alia, injunctions, nullification and setting aside of all ultra vires actions of the defendants.

Defendants filed an application praying that the suit be struck out for want of jurisdiction, abuse of court's process and misjoinder of causes of action. The trial court struck out the suit as prayed. Plaintiffs' appeal to the Court of Appeal was also dismissed. The lower court wrongfully felt that because it was a strike action of the Academic Staff Union of Universities (ASUU) that gave rise to the suit, it was a trade dispute which can only be tried by the National Industrial Court. Still dissatisfied, plaintiffs have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Court of Appeal was right in holding that the Federal High Court had no jurisdiction to entertain the plaintiffs/appellants’ case having regard to the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999.

2. Whether the Court of Appeal was right in relying on the plaintiffs/appellants’ affidavit evidence instead of their claims/reliefs to hold that the Federal High Court had no jurisdiction to entertain the case.

3. Whether the plaintiffs/appellants case was/is a trade dispute

and if so, whether the Court of Appeal was right in holding that the jurisdiction of the Federal High Court was ousted by Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree 47 of 1992.

HELD (Unanimously allowing the appeal per **OGUNTADE JSC**)

Claims - Nature

1. It seems to me that from the totality of the plaintiffs/appellants' claims, their grievance relates more to the infraction of the provisions of the University of Ilorin Act, than in the mere pursuit of Trade Union activities. Considering the fact that the plaintiffs/appellants' suit was a spill-over from a union strike action embarked upon by the plaintiffs/appellants Union, it is easy to see suggestions of collective posturing and grievance suffered by the plaintiffs/appellants. That however would not turn their suit into a trade dispute. It seems to me that the trial court had the duty to sift the grain from the shaft at the end of hearing and determine which of the claims truly arose out of the failure to abide by the provisions of the University of Ilorin Act, and which did not. (p. 1132 E)

ACTIONS - Jurisdiction - Trade dispute - Definition

2. The passage reproduced above from the judgment of the trial court seems to suggest that its conclusion that the Federal High Court has no jurisdiction in a case as this was largely influenced by the fact that the action was brought by the representatives of a trade union.

Section 47 of the Trade Disputes Act, Cap 432, Laws of the Federation, 1990 defines a "Trade dispute" as meaning "*any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.*"

The suit brought by the plaintiffs/appellants appertains to whether or not the provisions of the University of Ilorin Act, were complied with by the defendants/respondents in the discharge of their statutory duties. Even If some of the plaintiffs/appellants were employees of the 7th defendant/respondent, that did not change the nature of their suit to one "*connected with the employment or non-employment or the terms of employment and physical conditions of*

work of any person." (p. 1135 E)

Master & Servant - Removal from office

3. It is my view that both courts below erred in viewing this case as a trade dispute. The suit in its true form was a challenge by the plaintiffs/appellants to the manner in which the 6th plaintiff was removed from office. The suit did not touch upon the collective employment terms of the plaintiffs/appellants' union. The 6th plaintiff/appellant could have on his own brought the suit to contend that his removal did not comply with the University of Ilorin Act. That his academic staff Union chose to pursue the suit with him did not alter the nature and substance of the facts leading to the dispute. (p. 1137 A)

Jurisdiction - National Industrial Court

4. It seems to me too that to construe the interpretation clause in Section 47 of Cap 432, 1999 Laws of Federation as conferring on the National Industrial Court the jurisdiction to adjudicate on all manner of disputes concerning employment matters would do a great violence to the provisions of Section 251 (1)(q),(r) and (s) of the 1999 Constitution. It would in my view take a more specific provisions of Cap 432 and not just an interpretation clause to have such a far reaching effect which overrides the clear provisions of Section 251 (1)(g), (r) and (s) of the Constitution. It cannot be overlooked that Cap. 432, being an existing law within the meaning of Section 315 of the 1999 Constitution cannot be given an effect which overrides the clear" provisions of Section 251(1)(q), (r) and (s) of the 1999 Constitution. Any provision of an existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency.

Finally, on the point, it seems to me that to give jurisdiction in all matters relating to disputes in employment matters to the National Industrial Court will clearly overburden a special purpose court which the National Industrial Court was designed to be.

I would accordingly allow this appeal as I have come to the conclusion that the Federal High Court has the jurisdiction to hear and determine the plaintiffs/appellants case. (p. 1137 D)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. Jurisdiction here does not fall to the National Industrial Court

The plaintiffs claims/reliefs, and of course the whole case, cannot by the slightest imagination, in view of the potency of the Constitutional provisions conferring jurisdiction on the Federal High Court, which represents the supreme law currently in operation be said to have fallen within the subject matters upon which the National Industrial Court has jurisdiction. Section 47 of the Trade Dispute Act (supra) defines “Trade Dispute” to mean any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person. The dispute in the matter on hand has more to do with the interpretation of the University of Ilorin Act, Cap. 455, LFN, 1990 vis-a-vis the management of day to day running of the University by the 4th, 5th, 6th and 7th respondents. This can hardly be within the competence of the National Industrial Court. (p. 1140 D)

ADEREMI JSC

2. How court's jurisdiction is determined

I then pause to pose the question; what determines the jurisdiction of the court? In answering the question, I say it is the claim of the plaintiff that determines the jurisdiction of the court in entertaining the suit. A High Court, indeed, any court of record has the jurisdiction under the 1963, 1979, 1999 Constitutions to declare what the law is when invited by process of litigation. But, where the Constitution, the grundnorm of the land, has declared that a court cannot exercise jurisdiction over a matter, any provision to the contrary is null and void and of no effect. (p. 1142 F)

REPRESENTATION

Dayo Akinlaja, (with him, Richard Baiyeshea), for the Appellants.
K. K. Eleja, (with him, B. Ajanaku), for the Respondents

CASES REFERRED TO

Udoh v. OHMB. (1993) 7 NWLR (Pt. 304) 139 at 148 or (1999) 7

SCNJ 436 at 443

Nwankwo v. Nwankwo (1992) 4 NWLR (Pt. 238) 693 at 710

A. Y. Eke & Ors. v. Nago Rubber Industries Ltd. & Ors. Re Clara Eke (1993) 4 NWLR (Pt. 286)

Western Steel Works v. Iron & Steel Works Union of Nigeria & Ors
B (1987) 1 NSCC 133 at 140

University of Abuja v. Ologe (1996) 4 NWLR (Pt. 445) 706 at 722

NEPA v. Edeghero & Ors. (2002) 12 S.C. (Pt. II) 119 (2002) 12
SCNJ 173 at 183 -185

Utih v.. Onoyivwe (1991) 7 S.C. (Pt. I) 61; (1991) 1 NWLR (Pt.
C 166) 166

Adeyemi & Ors. v. Opeyori (1976) 9-10 S.C. 31; (1976) 9-10 S.C.

Peter Obi v. INEC & 7 Ors. (2007) 7 S.C. 268; (2007) 11 NWLR (Pt.
1046) 560

D

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999 s. 251 (1) (q),
(r) & (s)

Constitution of the Republic of Nigeria, 1979 s. 277(1)

E Decree No. 107 of 1993 S. 230(1)(q), (r) & (s)

Schedule to Decree No. 11 of the 1993 s. 1

Suspension and Modification, Decree, No. 107 of 1993 s. 230(1) (q)

Trade Disputes Act, Cap. 432, Law of the Federation of Nigeria, 1990
s. 47(1), 315

F Trade Unions Act, (Cap. 437), Laws of the Federation of Nigeria,
1990 s. 1(1)

LEAD JUDGMENT BY OGUNTADE JSC

G The appellants were the plaintiffs at the Federal High Court,
Ilorin where on 07/05/2001, they issued their Originating Summons
against the respondents as the defendants. They sought for the de-
termination of the following questions:

H *"1. Whether the 4th defendant has the powers under the and
by virtue of the provisions of University of Ilorin Act, to unilaterally
appoint the Dean of any faculty of the University of Ilorin.*

*2. Whether the 4th defendant has the powers to unilaterally
appoint a Head of Department for any Department of the University*

of Ilorin under the University Act.

3. *Whether the 4th defendant has powers to appoint the 1st defendant as the Acting Dean of Faculty of Arts, University of Ilorin.*

4. *Whether the 4th defendant has the power to unilaterally remove the substantive Dean of Faculty of Arts, University of Ilorin, Professor E. E. Adegbija, and appoint 1st defendant to act in that position.* B

5. *Whether the appointment of the 1st defendant as the Acting Dean of Faculty of Arts, University of Ilorin by the 4th defendant is not ultra vires.* C

6. *Whether the appointment of the 2nd and 3rd defendants as Acting Heads of Departments of themselves or through their agents, privies, officers/officials by whatsoever name called from preventing the plaintiff and other members of their Union from entering their offices in the University or from operating, meeting and generally associating and carrying out their duties and functions from the ASUU secretariat located in the mini-campus of the 6th defendant.* D

Linguistics and Performing Arts respectively in the Faculty of Arts is not ultra vires the power of the 4th defendant having regard to the provisions of the Unilorin Act. E

7. *Whether the purported replacement of the Dean Faculty of Arts, 2nd plaintiff as Head of the Department of Performing Arts and 6th plaintiff as Head of Department of Linguistics, with 1st, 2nd and 3rd defendants respectively in acting capacity is not tantamount to victimization on political and other grounds and contrary to the laws and the Constitution of the Federal Republic of Nigeria, 1999.* F

8. *Whether the defendants can conduct any valid and/or credible degree examination without the participation and/or moderation of appropriate examiners and whether the 4th it-defendant can unilaterally remove and replace any examiner of the University.* G

9. *Whether the 4th defendant has the power to ban the plaintiffs and/or instruct/order security officers and agents of the University of Ilorin to prevent the plaintiffs and other members of ASUU from entering the premises of the University of Ilorin and whether such ban is not contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999.* H

10. *Whether the defendants are entitled to victimize the plain-*

tiffs by taking decisions that are adverse or prejudicial to their appointment with the 4th defendant or participating in a national protest/strike action as directed by their National Executive Council and whether said defendants are not in violation of the statute of the University and the Constitution of the Federal Republic of Nigeria by intimidating, harassing and threatening, compelling the plaintiffs to abandon their legitimate struggle against oppression/suppression by the 4th defendant."

Depending on the answers given by the court to the above questions, the reliefs claimed against the respondents are:

"1. A declaration that the purported appointment of the 1st defendant as the Acting Dean of the Faculty of Arts of University of Ilorin by the 4th defendant by virtue of the letter to that effect addressed to the 1st defendant and signed by the 5th defendant is ultra vires, unconstitutional, illegal, unlawful, null and void and of no effect whatsoever having been made in flagrant violation of the provisions of University of Ilorin Act, Cap. 455, Laws of the Federation. 1990.

2. An order nullifying and setting aside the said purported appointment of the 1st defendant as the Acting Dean of the Faculty of Arts University of Ilorin (6th defendant).

3. A declaration that -

(i) the purported appointment of the 2nd defendant as the Mead of Department of Linguistics in the Faculty of Arts of the 6th defendant by the 4th defendant is ultra vires, unconstitutional, null and void and of no effect whatsoever having been in flagrant violation of procedure and provisions of the University of Ilorin Act.

(ii) the 6th plaintiff is at all material times the Head of the said Department."

4. An order setting aside and nullifying the purported appointment of 2nd defendant as the Head of Department of Linguistics in the Faculty of Arts of the 6th defendant.

5. An order compelling the 4th, 5th, 6th and 7th defendants to restore the 6th plaintiff to the position of Head of Department of Linguistics in the Faculty of Arts of the University of Ilorin (6th defendant).

6. A declaration that the purported appointment it of the 3rd

defendant as Acting Head of Department of the Performing Arts in the Faculty of Arts of the University of Ilorin (6th defendant) by the 4th defendant is ultra vires, null and void and of no effect whatsoever having been made in flagrant violation of the laid down procedure in the University and the provisions of the University of Ilorin Act. B

7. An order setting aside and nullifying the purported appointment of the 2nd defendant as the Head of Department of Performing Arts in the Faculty of Arts of the 6th defendant.

8. An order compelling the 4th, 5th, 6th and 7th defendants C to reinstate and restore the 2nd plaintiff to the position of the Head of Department of Performing Arts in the Faculty of Arts of the 6th defendant.

9. A declaration that the arrangement or purported conduct by the defendants of degree examination without moderation and/ D or participation of appropriate examiners (external & internal) as provided for in the statute of the University, that is Unilorin Act is ultra vires, illegal, unlawful, null and void and of no effect whatsoever.

10. A declaration that it is wrongful, unlawful and unconstitutional E for the defendants at the instance and/or the instruction of the 4th defendant to prevent the plaintiffs and other members of their Union (ASUU) who they represent from entering the premises or campuses of the University (6th defendant) or restricting and preventing the plaintiffs from using, operating, meeting and generally F carrying out their legitimate duties and functions in the ASUU secretarial located within the mini-campus of the 6th defendant.

11. An order of injunction restraining the 4th, 5th, 6th and 7th G defendants whether by themselves or through their agents, privies, officers/officials by whatsoever named called or by any description from disturbing or preventing the plaintiffs and other members of their Union (ASUU) Unilorin Branch from entering the premises (campuses) of the 6th defendant.

(ii) An order of injunction restraining the 4th, 5th, 6th and 7th H defendants whether by

12. A declaration that it is wrongful, unlawful and unconstitutional for the defendants to prevent and disturb the plaintiffs and

their Union members from entering or gaining access into the campuses of the 6th defendant or from entering their respective offices within the said campuses of the Universities or restricting their movements into and out of the said campuses of the university.

B 13. An order declaring as void all actions, decisions and steps taken by the 1st/2nd and 3rd defendants while purported to act in their respective positions since the time their purported acting appointments were made by the 4th defendant.

C 14. An order prohibiting/restraining the 4th, 5th, 6th and 7th defendants from taking any decisions or acting in any manner or doing anything whatsoever that will adversely affect or prejudice the plaintiffs' appointment/ employment with the 6th defendant."

D In compliance with the requisite procedure the appellants filed a 49 paragraph affidavit in support of their Originating Summons. They annexed to the said affidavit some documentary exhibits identified as 'A' to 'R'.

The defendants (now respondents) in reaction to the plaintiffs/appellants' Originating Summons filed an application wherein they prayed for the following:

- E “(i) *An order of the Honourable Court striking out this suit on the ground of lack of jurisdiction to entertain same; and/or*
 (ii) *An order of the Honourable Court dismissing the case for being a gross abuse of the process of the Honourable Court.*
F (iii) *An order of the Honourable Court striking out the case on the ground of misjoinder of causes of action.*
 (iv).....”

The grounds relied upon by the defendants/respondents for bringing the application were stated to be the following:

- G “1. *The issues raised in the suit relate to trade dispute in respect of which this Honourable Court lacks jurisdiction.*
 2. *The plaintiffs had already filed an action against the 5th and 6th defendants the subject matter of which is same with the present action and which action is subsisting.*
H 3. *The plaintiffs' action in the circumstances constitutes a flagrant abuse of the process of the Honourable Court.*
 4. *The causes of action of the plaintiffs are distinct and peculiar to the plaintiffs and the causes of action cannot be joined.*

5. It is in the (sic) justice to grant this application.”

In the affidavit in support of the application, paragraphs 3 and 4 which are relevant to this judgment read:

“3. That I know as a fact upon a perusal of the processes filed in this case and the documents annexed thereto that:-

(i) There is a dispute between some members of Academic Staff Union of Universities, University of Ilorin and the 4th - 7th defendants who are their employers and principal and important organs of the employer respectively. B

(ii) The dispute deals with employment and terms of employment and conditions of work of some members of Academic Staff Union of Universities, University of Ilorin Branch. C

(iii) The plaintiffs are members of a trade union (ASUU) and they filed this action for themselves and on behalf of the members of the said trade union. D

(iv) The issue in the case also- includes the propriety or otherwise of the use of strike action to press home the demand of the plaintiffs and their trade union members.

(v) The issue raised in the case also deals with the use of a Trade Union's Secretariat (ASUU Secretariat) and the entitlement of the employer to recover same and assign another one to the Trade Union. E

(vi) The failure of some members of ASUU (a trade union) to call off a strike action and refusal to return to work is also an issue in the case. F

4. That I know as a fact based on the foregoing that the issues raised in the case are ones for determination before the National Industrial Court hence this court lacks jurisdiction to entertain the case.” G

The trial court received arguments on the application. On 5-10-2001, the court struck out the plaintiffs/appellants' suit. Its conclusion on the application at pages 218-219 of the record reads:

“I rely on the pronouncement of the Supreme Court in Tukur v. Government of Taraba State (supra) at p. 577, paras. C-D that a court is competent to try an action when the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction. H

Section 20 of the Trade Disputes Act, (Cap.432) and Section 1A of the Trade Disputes (Amendment) Decree, No. 47 of 1992 give exclusive jurisdiction to the National Industrial Court in matters of trade disputes. See Udoh v. OHMB. (1993) 7 NWLR (Pt. 304) 139 at 148 or (1999) 7 SCNJ 436 at 443.

B *At this juncture, I wish to identify with the view of the learned defence counsel that both the Trade Disputes Act, Cap. 432 and Decree 47 of 1992, are existing laws by virtue of Section 315 of the Constitution. I further agree with him that unless a law is expressly repealed, it is deemed to be still in existence and there cannot be*
 C *repeal by implication. In so far as it is the Constitution by itself that has created and preserved special jurisdictions of certain courts, I do not accept that such jurisdiction as conferred in Cap. 432 and Decree 47, are inconsistent with the provisions of the Constitution. A parallel*
 D *to this is found in the provisions of Section 251(1) of the Constitution of the Federal Republic of Nigeria, which confers exclusive jurisdiction on this court in respect of matters specified therein. It has thus been held in Ajuebor v. Attorney-General of Edo State (2001) 5 NWLR (Pt. 707) 466 at 481, paras. C-D, that though the law is settled*
 E *that courts guard their jurisdiction jealously, if however, in any given case where the court's jurisdiction is expressly and unambiguously ousted by the provisions of the Constitution, an Act of Parliament or a Decree, then there must be a compliance with such an ouster clause.*
 F *Equally, in Nwankwo v. Nwankwo (1992) 4 NWLR (Pt. 238) 693 at 710, paras. E-G, it is held that although the High Court has jurisdiction to grant declaratory reliefs, such declaration will not be made where the Constitution has already given exclusive jurisdiction in respect of such matters to another tribunal.*

G *I hold that the cases of Adisa v. Oyinwola and Bendel State v. Obayuwana (supra) are not applicable in the circumstances of this case. Obayuwana's case for instance, decides that a citizen has unfettered right to seek redress in court for the determination of any question as to the civil rights and obligations. Therefore, where he, by a*
 H *declaratory action, raises a constitutional issue he cannot be inhibited by procedural laws like the Petition of Rights Law and Public Officers Protection Law. In the present case, the inhibition against the declaratory action of the plaintiffs is not by a mere procedural law but a*

substantive law; enjoying the force of the Constitution itself. That is the difference.

In the light of all the foregoing, I declare that this court lacks jurisdiction to entertain the plaintiffs' suit as presently constituted. It is hereby, consequently struck out."

Dissatisfied with the ruling of the trial court, the plaintiffs brought an appeal against it before the Court of Appeal, Ilorin (hereinafter referred to as 'the court below'). On 10-12-02, the court below dismissed the appeal, thus affirming the ruling of the trial court. The court below at pages 304 -305 of its judgment reasoned thus:

"When the above affidavit evidence is considered together with the appellants' claim, it becomes clear that the present suit was instituted in order to protect the collective interests of the appellants. This fact is confirmed by the strike action the appellants undertook in order to get the 6th and 7th respondents look into what the appellants considered to be the excesses of the 4th respondent.

It is clear from the foregoing that the collective interests of the appellants can not be protected without making the issue between the appellants and the respondents a trade dispute as defined in Section 47 of the Trade Disputes Act, Cap, 432, Laws of the Federation of Nigeria, 1990. In the section, 'trade dispute' is defined. (See the above for the definition). A careful look at the definition shows that the reliefs are caught by the said definition.

I am aware that some of the reliefs relate to the appellant's right of Association and the interpretation of the University of Ilorin Act, but, those disputes are ancillary to the main complaint of the appellants which is, against the repressive style of administration of the 4th respondent. Being a dispute between an employer and its workers, the provisions of Section 1(i) of the Trade Disputes Act, apply.

In that case it is improper to approach a court that is competent to determine some of the issues raised, which in this case happen to be ancillary issues. This is because a court cannot adjudicate over an ancillary claim if it has no jurisdiction to entertain the main claim.

In the result, having regard to the foregoing, I hold the view that this appeal lacks merit. And, it is accordingly dismissed. I make no order as to costs."

Still dissatisfied, the plaintiffs have come before this court on a final appeal. In their Notice of Appeal filed on 23/12/2002, the plaintiffs raised five grounds of appeal. They have distilled from their grounds of appeal three issues for determination. The issues are these:

- B *“1. Whether the Court of Appeal was right in holding that the Federal High Court had no jurisdiction to entertain the plaintiffs/appellants’ case having regard to the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999. (Grounds 1 and 4 of the grounds of appeal).”*
- C *2. Whether the Court of Appeal was right in relying on the plaintiffs/appellants’ affidavit evidence instead of their claims/reliefs to hold that the Federal High Court had no jurisdiction to entertain the case. (Grounds 2 & 5 of the grounds of appeal.)*
- D *3. Whether the plaintiffs/appellants case was/is a trade dispute and if so, whether the Court of Appeal was right in holding that the jurisdiction of the Federal High Court was ousted by Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree 47 of 1992. (Ground 3 of the Grounds of Appeal).”*

E The defendants/respondents formulated two issues for determination. The said issues are covered by the plaintiffs/ appellants’ issues. The three issues raised for determination by the plaintiffs/appellants could be conveniently taken together and I intend so to take them.

F The pith of the appeal relates to the question whether or not the two courts below were right to have held that having regard to the nature of plaintiffs/appellants claims, the Federal High Court has no jurisdiction to entertain the suit. The two courts below held that the claims raised matters in respect of which only the National Industrial Court has exclusive jurisdiction. Now in *Western Steel Works v. Iron & Steel Works Union of Nigeria & Ors.* (1987) 1 NSCC 133 at 140, this court per Karibi-Whyte, JSC., said whilst considering the relevant determinants of the jurisdiction of a court to hear a matter when objection is raised as to the exercise of such jurisdiction:

H *“Therefore the jurisdiction of the court will be determined by the subject-matter of the claim and not the claim relating to the injunction which was an ancillary relief and depends on the primary claim. In Adeyemi & Ors. v. Opeyori (1976) 9-10 S.C. (Reprint) 18;*

(1976) 1 FNLR 149, the Supreme Court stated the position clearly as follows-

'It is fundamental that it is the claim of the plaintiff that determines the jurisdiction of the court which entertains the claim.'

I earlier in this judgment set out serially the claims which the plaintiffs/appellants raised against the defendants/ respondents. Although the plaintiffs/appellants brought the suit for themselves and on behalf of Academic Staff Union of Universities, Unilorin Branch,' it is the claim brought by them and not the capacity in which the claims were brought that should be the relevant consideration in determining the question which court has jurisdiction in the matter. When the claims of the plaintiffs/appellants are carefully scrutinized, it becomes clear that the gravamen of their complaint is the alleged unconstitutional removal of the 6th plaintiff from the position of Head of the Department of Linguistics of the 7th defendant University and replacing him with the 2nd defendant in the same position. It was alleged that the said removal was in a manner not consistent with the provisions of the Act creating the 7th respondent - University of Ilorin Act. It was further alleged that the conduct of degree examination by the defendants/respondents without the participation of the appropriate examiners was contrary to the provisions of the University of Ilorin Act. Finally, they claimed that it was unlawful and unconstitutional for the defendants to prevent the plaintiffs/appellants and their members from gaining access to their respective offices within the University of Ilorin campus.

In paragraphs 14 -18 of the affidavit deposed to in support of the Originating Summons, the deponent said:

14. That no academic staff can become a Dean or Head of Department without being elected by academic members of the Faculty and Department respectively. And that no Dean or Head of Department in the University can be removed unilaterally by the 4th defendant or by any other power or authority without compliance with the statute of the University and other relevant regulations made by the defendants. That it is necessary for this court to give interpretation to the said statutes, regulations and documents one of which is the internal memorandum of 8/7/99, issued by the 5th defendant. Copy is attached herewith as Exhibit 'B'.

15. *That all the other plaintiffs are members of the Faculty Board of the Faculty of Arts who also participated in the election of the Dean of the Faculty, Professor E. E. Adegbija, sometime in the year 2000 and so, individually and collectively we have a stake in the affairs and administration of the said Faculty.*

B 16. *That if the Dean of the Faculty is to be removed for any reason whatsoever, the Vice-Chancellor 4th defendant cannot do it unilaterally, it has to be done fully in accordance with the statute establishing the University.*

C 17. *That the purported removal of the said Dean by the 4th defendant is borne out of victimization as it is shown in the letter of Professor E. E. Adegbija, dated 3/4/2001, to the 4th defendant and the minutes of the 4th defendant on the said letter which clearly shows that 4th defendant is claiming that the Dean is not 'loyal' to the Vice-Chancellor. Copy of the said letter with the minutes thereon is attached herewith as Exhibit 'C'.*

E 18. *That the 4th defendant purported to have appointed the 1st defendant as the Acting Dean of Faculty of Arts which is wrong. And the 1st defendant while purporting to act as the Dean circulated the letter with the VC's minutes referred to in paragraph 17 above by a memorandum dated 6th April, 2001 copy of which is attached herewith as Exhibit 'D'.*"

It seems to me that from the totality of the plaintiffs/appellants' claims, their grievance relates more to the infraction of the provisions of the University of Ilorin Act, than in the mere pursuit of Trade Union activities. Considering the fact that the plaintiffs/appellants' suit was a spill-over from a union strike action embarked upon by the plaintiffs/appellants Union, it is easy to see suggestions of collective posturing and grievance suffered by the plaintiffs/appellants. That however would not turn their suit into a trade dispute. It seems to me that the trial court had the duty to sift the grain from the shaft at the end of hearing and determine which of the claims truly arose out of the failure to abide by the provisions of the University of Ilorin Act, and which did not.

Section 251 (l)(p), (q) and (r) provides:

"(1) Notwithstanding anything to the contrary contained in this

Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

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

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies (r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;” C

In *University of Abuja v. Ologe* (1996) 4 NWLR (Pt. 445) 706 at 722, 1 had this to say on the ambit of Section 230(1)(q), (r) and (s) of Decree No. 107 of 1993, which is in substance the same with Section 251 (1)(p), (q) and (r) above. D

“In the instant case, in which Section 230(1)(q) (r) and (s) confers the exercise of jurisdiction on the Federal High Court to the exclusion of any other court in civil causes or matters arising from:- E

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

(r) subject to the provisions of this - Constitution in so far as it affects the Federal Government or any of its agencies; and F

(s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and in which by virtue of Section 277(1) of the 1979 Constitution ‘Public Service of the Federation’ include: G

(e) staff of any educational institution established or financed principally by the Government of the Federation, of which the respondent is a staff, and

(ii) the University of Abuja is listed in Section 1 of the Schedule to Decree No. 11 of the 1993 as item 2; H

the provisions of Section 230(1)(q), (r) and (s), which clearly confer jurisdiction exclusively on the Federal High Court in instances such as this is not difficult to see. The issue is not one of interpretation of

statutory provisions. The provisions are clear and unambiguous and do not admit of what counsel or Judge thinks otherwise they are. In addition, the University is clothed with legal status to sue and be sued. It has a perpetual succession with a common seal and can sue or be sued in its corporate name. It needs not join anybody or the Federal Government. The action before the lower court is a proceeding for declaration that their letters of suspension by the University is illegal and void. That action is well within the ambit or provision of Section 230(1)(q) of the 1979, Constitution (Suspension and Modification) Decree, No. 107 of 1993. The pursuit to sue or join the Federal Government is a wild goose chase. It is a non-sequitur."

The trial court in its judgment at pages 217- 218 of the record said:

"The Originating Summons of the plaintiffs in this case ordinarily seems founded on fundamental rights issues whose determination require only statutory and constitutional interpretation. However, some alien characteristics are identifiable therefrom. Very prominent among these is the fact that the plaintiffs have expressed having taken the action 'For themselves and on behalf of Academic Staff Union of Universities, Unilorin Branch.' It is incontestable that ASUU is a Trade Union as defined in Section 1(1) of the Trade Unions Act, (Cap. 437), Laws of the Federation of Nigeria, 1990. That being so, it seems difficult to seek to maintain an action aimed at protecting group or collective rights without introducing some elements of industrial dispute. Credence seems lent to this view particularly by Nos. 9 and 10 questions for determining. They read thus:

'9. Whether the 4th defendant has the power to ban the plaintiffs and/or instruct/order security officers and agents of the University of Ilorin to prevent the plaintiffs and other members of ASUU from entering the premises of the University of Ilorin and whether such ban is not contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

10. Whether the defendants are entitled to victimize, the plaintiff (sic) by taking decisions that are be (sic) adverse or prejudicial to their appointment with the 6th defendant for participating in a national protest/strike action as directed by their National Executive Council and whether said (sic) defendants are not in violation of the

statute of the University and the Constitution of the Federal Republic of Nigeria by intimidating, harassing and threatening, compelling the plaintiffs to abandon their legitimate struggle against oppression, suppression by the 4th defendant.'

Admittedly, the plaintiffs have raised constitutional questions but which in my humble opinion, are so tied to the matter of trade dispute with their employers that they appear inseparable.

The term 'trade dispute' as defined in Section 47(1) of the Trade Disputes Act, (Cap. 432) means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person. This definition substantially covers the issues for determination in the Originating Summons. There are complaints of removal of some officers and their replacement with others, the right to go on strike action, and so forth. These, among other issues touch and concern the terms of the plaintiffs' Employment. Therefore, the way the plaintiffs' action is formulated makes it more suited for a Court with specialized jurisdiction. This is because the issues no doubt have arisen from administration of the University or Ilorin (6th defendant) which is a Federal Government Agency, but the aspect of trade dispute is foreign to this court's jurisdiction."

The passage reproduced above from the judgment of the trial court seems to suggest that its conclusion that the Federal High Court has no jurisdiction in a case as this was largely influenced by the fact that the action was brought by the representatives of a trade union.

Section 47 of the Trade Disputes Act, Cap 432, Laws of the Federation, 1990 defines a "Trade dispute" as meaning "any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person."

The suit brought by the plaintiffs/appellants appertains to whether or not the provisions of the University of Ilorin Act, were complied with by the defendants/respondents in the discharge of their statutory duties. Even If some of the plain-

tiffs/appellants were employees of the 7th defendant/respondent, that did not change the nature of their suit to one "connected with the employment or non-employment or the terms of employment and physical conditions of work of any person."

B The court below followed the reasoning of the trial court when in its judgment at pages 302-303 of the record it said:

C *"In my considered view, the appellants, in the action before the lower court are not the above six named, i.e. Dr. Taiwo Oloruntoba-Oju and the other five persons, but, Dr. Taiwo-Oju, and the other five representing the Academic Staff union of Universities, Unilorin Branch. It is therefore not a personal, but, a representative action. Etowa Enang & Ors. v. Fidelis Ikor Adu (1981) 11-12 S.C. 85 at 38 & 33; (1981) 11-12 S.C. (Reprint) 17.*

D *I observe that in a representative action every member of the class represented by the named plaintiffs is equally a party to the action though unnamed. They are unnamed party in the action because each and every member of the class represented will be bound by the eventual decision of the court. See - A. Y. Eke & Ors. v. Nago Rubber Industries Ltd. & Ors. Re Clara Eke (1993) 4 NWLR (Pt. 286)*

F *It follows that the appellants in the present case is, the Academic Staff Union of the Universities, Unilorin Branch. It is trite that a right of action is exercisable by a person who has complaints touching on his civil rights and obligations against another person. The only way the present suit may be justified in law, is that, it was brought by the appellants in order to determine their complaints against the respondents.*

G *Section 47 of the Trade Disputes Act, Cap. 432, 1990, Laws of the Federation of Nigeria defines 'Trade Dispute' as -*

H *'any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment & physical conditions of work of any person.'*

From the affidavit evidence before the lower court, the appellants' grievance is, in the main against the arbitrary, rude and unconstitutional manner their employers are running the University of Ilorin.

That collective right cannot be protected without treating it as a trade dispute in the light of the above definition. This is because the dispute is between the employers and workers and it is connected with employment, terms of employment, etc.”

It is my view that both courts below erred in viewing this case as a trade dispute. The suit in its true form was a challenge by the plaintiffs/appellants to the manner in which the 6th plaintiff was removed from office. The suit did not touch upon the collective employment terms of the plaintiffs/appellants’ union. The 6th plaintiff/appellant could have on his own brought the suit to contend that his removal did not comply with the University of Ilorin Act. That his academic staff Union chose to pursue the suit with him did not alter the nature and substance of the facts leading to the dispute.

It seems to me too that to construe the interpretation clause in Section 47 of Cap 432, 1999 Laws of Federation as conferring on the National Industrial Court the jurisdiction to adjudicate on all manner of disputes concerning employment matters would do a great violence to the provisions of Section 251 (1)(q),(r) and (s) of the 1999 Constitution. It would in my view take a more specific provisions of Cap 432 and not just an interpretation clause to have such a far reaching effect which overrides the clear provisions of Section 251 (1)(g), (r) and(s) of the Constitution. It cannot be overlooked that Cap. 432, being an existing law within the meaning of Section 315 of the 1999 Constitution cannot be given an effect which overrides the clear” provisions of Section 251(1)(q), (r) and (s) of the 1999 Constitution. Any provision of an existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency.

Finally, on the point, it seems to me that to give jurisdiction in all matters relating to disputes in employment matters to the National Industrial Court will clearly overburden a special purpose court which the National Industrial Court was designed to be.

I would accordingly allow this appeal as I have come to

the conclusion that the Federal High Court has the jurisdiction to hear and determine the plaintiffs/appellants case. It is directed that the case be heard on the merit by another Judge of the Federal High Court, Ilorin. I would award N10,000.00 costs in favour of the appellants.

B

ONU JSC

C Having been privileged to read before now the judgment of my learned brother, Oguntade, JSC. I am in entire agreement with him that the appeal is meritorious and must therefore succeed. Consequently, I allow the appeal. I make no order as to costs.

D

MUSDAPHER JSC

E I have had the preview of the judgment of my Lord, Oguntade, JSC., just delivered with which I entirely agree. For the same reasons so eloquently and exhaustively canvassed in the judgment of my Lord aforesaid, which I respectfully adopt as mine, I too, allow the appeal and hold that the Federal High Court has the jurisdiction to hear and determine the appellants' case. I abide by the order for costs contained in the judgment.

F

MUHAMMAD JSC

G My learned brother, Oguntade, JSC., has graciously permitted me to read in draft form the judgment he has just delivered. I agree with my brother's reasoning and conclusion. I think it needs "to be clearly re-stated over and over again that with the enlarged jurisdiction of the Federal High Court, as provided by Section 251 of the Constitution of the Federal Republic of Nigeria, 1999, that any dispute irrespective of the nature of the claim, once the Federal Government or any of its agencies is involved that dispute has to be solely decided by the Federal High Court. Section 251 of the said Constitution confers general jurisdiction on the Federal High Court. The section is wide. I will be contented in relation to this case to reproduce some part thereof:

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

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

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

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

The University of Ilorin, is an Agency of the Federal Government. In the case of NEPA v. Edeghero & Ors. (2002) 12 S.C. (Pt. II) 119; (2002) 12 SCNJ 173 at 183 -185, this court held, per Ogundare, JSC., as follows:

“The aim of paragraphs (q), (r) and (s) of subsection 1 of Section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agents was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action.” (Underlining mine for emphasis)

The exclusivity of the Federal High Court jurisdiction on those matters must by necessary implication apply to other courts including the National Industrial Court, irrespective of the nature of the claim filed before it.

Thus, if one takes a hard look at the questions of law submitted by the plaintiff in their Originating Summons before the trial court, the claims or Briefs being sought by the plaintiffs were purely within the context of Section 251 of the Constitution. It is the Federal High Court that has jurisdiction. See: NEPA v. Edeghero & Ors. (supra).

The general jurisdiction of the National Industrial Court is provided by the Trade Dispute Act, Cap. 432, LFN which provides:

“20(1) the court shall to the exclusion of any other court, have jurisdiction:-

(a) to make awards for the purpose of settling trade dispute;

and

(b) to determine questions as to the interpretation of-

(i) any collective agreement

(ii) any award made by an arbitration tribunal or by the court under part 1 of this Act,

B (iii) the terms of settlement of any trade dispute as recorded in Any memorandum under Section 7 of this Act.

(2) The court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute.

C (3) No appeal shall lie to any other body or person from any determination of the court.

(4) Nothing in subsection (1) and (2) of this section shall prejudice any jurisdiction of the Supreme Court of Nigeria under Section D 359 or 213(2) of the Constitution of the Federal Republic of Nigeria or any jurisdiction of a High Court under Section 242 of that Constitution."

The above represents the jurisdiction of the National industrial Court. The plaintiffs claims/reliefs, and of course the whole case, cannot by the slightest imagination, in view of the potency of the Constitutional provisions conferring jurisdiction on the Federal High Court, which represents the supreme law currently in operation be said to have fallen within the subject matters upon which the National Industrial Court has jurisdiction. Section 47 of the Trade Dispute Act (supra) defines "Trade Dispute" to mean any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person. The dispute in the matter on hand has more to do with the interpretation of the University of Ilorin Act, Cap. 455, LFN, 1990 vis-a-vis the management of day to day running of the University by the 4th, 5th, 6th and 7th respondents. This can hardly be within the competence of the National Industrial Court.

H I hold that it is the Federal High Court that has jurisdiction over the matter on hand and not the National Industrial Court. I allow this appeal. I make no order as to costs.

ADEREMI JSC

The appellants, who were the plaintiffs at the Federal High Court had, in their Originating Summons, issued on the 7th of May, 2001, sought for the determination of ten questions which have been set out in details, in the lead judgment of my learned brother, Oguntade, JSC. Subject to the answers given by the trial court to the said ten questions, the plaintiffs/appellants had claimed some declaration and injunctive orders which are also set out in full in the lead judgment of my learned brother. A 49 - paragraph affidavit to which were attached some exhibits, was filed in support of the said Originating Summons. In their reaction to the Originating Summons, the respondents, as defendants, brought an application to either strike out or dismiss the suit for grounds which again, have been set out in details in the lead judgment. The trial court took arguments from the respective counsel of the parties and on the 5th of October, 2001 struck out the suit for the reason of lack of jurisdiction.

Dissatisfied with the ruling striking out the suit, the appellants lodged an appeal against it to the court below which court, after taking arguments of counsel, in a reserved judgment on the 10th of December, 2002, dismissed the appeal, thus affirming the ruling of the trial court. It is against the judgment of the court below that the plaintiffs/appellants have approached this court by a Notice of Appeal filed on the 23rd of December, 2002 in which it was incorporated five grounds. And distilled from the aforesaid grounds of appeal are three issues which as set out in the appellants' Brief of Argument filed on 9th June, 2003 are, in the following terms:-

"(i) Whether the Court of Appeal was right in holding that the Federal High Court had no jurisdiction to entertain the plaintiffs/appellants case having regard to the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999.

(2) Whether the Court of Appeal was right in relying on the plaintiffs/appellants' affidavit evidence instead of their claims/reliefs to hold that the Federal High Court had no jurisdiction to entertain the case.

(3) Whether the plaintiffs/appellants' case was/is a Trade Dispute and if so, whether the Court of Appeal was right in holding that

the, jurisdiction of the Federal High Court was ousted by the Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree 47 of 1992."

For their part, the respondents raised two issues for determination which, as contained in their Brief of Argument filed on 26th April, 2004 are as follows:-

"(1) Whether the Court of Appeal was not right in considering the affidavit evidence in addition to the reliefs/claims adumbrated on the Originating Summons in coming its (sic) conclusion and in holding that the Federal High Court lacks jurisdiction to entertain the appellants' case as formulated.

(2) Whether the Court of Appeal was not right in holding that the provisions of the Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree No. 47 of 1992 and in affirming the trial court's ruling striking out the case."

As I have said above, the reliefs sought before the trial court are merely Declaratory and Injunctive in nature. When a litigant claims declaratory relief, he does no more than to invite the court to declare what the law is on the issue. See *Peter Obi v. INEC & 7 Ors.* (2007) 7 S.C. 268; (2007) 11 NWLR (Pt. 1046) 560. Whatever a court of law may say in acceding to that invitation is not executory. Indeed the grant of such a relief is discretionary. Therefore, a plaintiff who intends to have an enforceable legal right from a declaratory judgment or order in his favour must, in addition, seek Injunctive Order or damages. I have had a close reading of the reliefs sought, the most fundamental issue that calls for determination in this case is, whether the trial court has jurisdiction to entertain the suit as constituted. I then pause to pose the question; what determines the jurisdiction of the court? In answering the question, I say it is the claim of the plaintiff that determines the jurisdiction of the court in entertaining the suit. See: *Adeyemi & Ors. v. Opeyori* (1976) 9-10 S.C. 31; (1976) 9-10 S.C. (Reprint) 18. A High Court, indeed, any court of record has the jurisdiction under the 1963, 1979, 1999 Constitutions to declare what the law is when invited by process of litigation. But, where the Constitution, the grundnorm of the land, has declared that a court cannot exercise jurisdiction over a matter, any provision to the contrary is null and void and of no effect. See *Utih v. Onoyiwwe*

(1991) 7 S.C. (Pt. I) 61; (1991) 1 NWLR (Pt. 166) 166.

What is the provision of the Constitution that is relevant to this case? I say that it is Section 251(1)(p), (q) and (r) which provides: -

“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as maybe conferred upon it by an Act of the National Assembly the Federal High Court exercise jurisdiction to the exclusion of any other court in Civil Causes and Matters relating to:-

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

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

(r) Any action or proceeds for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”

The combined effect of the provisions reproduced above is that the Federal High Court is vested with the power to enter into adjudication of any action or proceeding seeking declaratory and Injunctive Reliefs. Instead, Section 951 aforesaid defines the jurisdiction of the Federal High Court. True, it is that the representatives of a trade Union brought this action and Section 47 of the Trade Disputes Act, Cap. 432, Laws of the Federation 1990, define a “Trade Dispute” as meaning:-

“any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.”

But a careful study of the suit leaves me in no doubt that it relates to the issue whether or not the provisions of the University of Ilorin Act were complied with by the defendants/respondents in discharging their official or statutory duties. Granted that some of the plaintiffs/appellants were employees of the University Council of Unilorin - the 7th respondent, this has not changed the nature of the suit formulated by the plaintiff/appellants from one of merely inviting the court to declare what the law is in its interpretative duty and so as

to give that interpretation of the law a legal bite, to couple it with an Injunctive Order. I repeat, this does not give the suit a colouration of a suit *“connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.”*

B The trial court and the court below in my respectful view were wrong to have construed the case as one importing “Trade Dispute”. Let it be said, and this finds support in a number of judicial authorities, that the power of a court of record to make a declaration where C it is only a question of defining rights of two parties is almost unlimited. In jurisdictions other than ours, it has been said that if any limitation is to be placed on the exercise of such power, it is only at the discretion of the court. I may further say that the court retains toe power to declare contested legal rights, subsisting or future of the D parties represented in the litigation before it and not those of anyone else; see Peter Obi’s case supra. With due respect, I cannot subscribe to the contention that the present suit falls within the exclusive jurisdiction of the National Industrial Court. This is therefore a matter that should be sent back for re-trial before another Judge of the Federal E High Court in Ilorin.

It is for this little contribution, but most especially for the lucid and exhaustive reasoning in the lead judgment of my learned brother, Oguntade, JSC., that I also will allow this appeal and hereby say that F the Federal High Court has jurisdiction to entertain the suit. I abide by all other consequential orders contained in the lead judgment of my learned brother including the order as to costs.

G

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