

SUPREME COURT OF NIGERIA
6TH FEBRUARY, 2009. SC. 224/2002
CORAM:- N. TOBI, M. MOHAMMED,
W. S. N. ONNOGHEN, J. O. OGEBE,
M. S. MUNTAKA-COOMASSIE, JJSC

1. J. A. ADEKOYE
2. FRED OLOYIDE
3. DAVID OKUMA

(Suing for themselves and
on behalf of pensioners of
Nigerian Security, Printing
and Minting Company Limited
who have attained the age of
45 years)

4. RICHARD ANORUE APPELLANTS

5. OLUSEGUN FABIYI

6. ABEL DENIRAN

7. J. O. E. EJKEME

(Suing for themselves and
on behalf of pensioners of
Nigerian Security, Printing
and Minting Company Limited
who have not attained the age of
45 years)

AND

1. NIGERIAN SECURITY, RESPONDENT/
PRINTING AND MINTING CROSS-APPELLANT
COMPANY LIMITED

2. FEDERAL MINISTRY OF
FINANCE AND ECONOMIC
DEVELOPMENT

3. ATTORNEY-GENERAL OF RESPONDENTS
THE FEDERATION

APPEALS - Main & cross appeal - Issues - Sequence of resolution -
Were there is a main appeal & a cross appeal - Issues in the main

appeal are normally resolved first - Unless there is a jurisdictional issue raised in the cross appeal - In which case it takes precedence (H1)

CONSTITUTIONAL LAW - Federal government agency - Concept of - Any enterprise in which the federal government owns controlling shares or interest - Is part of the public service of the federation - Therefore it is an agency of the federal government (H2)

JURISDICTION - Federal High Court - Exclusive jurisdiction - Applicability - A question of payment of pension to public servants under the Pensions Act - Is an issue within the administration of the relevant Federal government enterprise - So it is within the exclusive jurisdiction of Federal High Court (H3)

FACTS

Each of the two sets of appellants had, as plaintiffs sued the defendants/respondents by originating summons at the Lagos High Court claiming to be entitled to pension under the provisions of the Pensions Act, Cap 346, L.F.N. 1990. The basis of their claim was that the 1st respondent was part of the public service of the federation and accordingly its staff were public servants.

After hearing, the trial court granted all the claims of the appellants. Dissatisfied, the respondents appealed to the Court of Appeal which allowed the appeal. That court held that the 1st respondent was part of the public service of the federation but that that status does not without more entitle the appellants to pension under the Pensions Act. Aggrieved, appellants have brought this appeal against the judgment of the Court of Appeal. The respondents had raised an issue of lack of jurisdiction in the trial Lagos High Court before the Court of Appeal but were overruled. They have cross appealed against the judgment of the Court of Appeal on this point .

ISSUE FOR DETERMINATION

"Whether in view of the provisions of section 230 of the 1979 Constitution the Lagos State High Court has the jurisdiction to hear and determine the matter as constituted"

HELD (Unanimously allowing the cross appeal and striking out the appeal per **ONNOGHEN JSC**)

Main & cross appeal - Issues - Sequence of resolution

1. The normal practice when there is a main appeal and a cross appeal is to resolve the issue(s) raised in the main appeal before going onto those of the cross appeal. However in the instant appeal where the issue raised in the cross appeal touches and concerns the jurisdiction of the trial court to hear and determine the originating summons in the first place, it becomes of utmost importance that that issue be determined first before proceeding to determine the issue(s) touching and concerning the merit of the appeal, if need be, as it is settled law that whenever an issue of jurisdiction, which is usually considered a periphery issue, is raised, it must be resolved first and foremost. (p. 240 E)

Federal government agency - Concept of

2. Section 277(1) of the 1979 Constitution defines “public Service of the Federation” to mean “service of the Federation in any capacity in respect of the Government of the Federation, and includes service as....

(f) staff of any company or enterprise in which the Government of the federation or its agency owns controlling share or interest;...”.

From the above, it is very clear that by constitutional arrangements the 1st respondent/cross appellant as well as its members of staff form part of the public service of the federation and that the 1st respondent in particular is an agency of the Federal Government as it is not disputed that the Federal Government owns a controlling share in the 1st respondent/cross appellant.

I therefore hold the view that the 1st respondent/cross appellant is an agency of the Federal Government contrary to the views of the lower court. (p. 244 C)

Federal High Court - Exclusive jurisdiction

3. I therefore hold that the question of payment of pension to public servants or entitlement to payment of pension under the provision of the Pensions Acts Cap 346, Laws of the Federation, 1990 is an issue within the administration, management and control of the 1st respondent/cross appellant within the provisions of section 230(1) of the 1979 Constitution supra and consequently that where an issue

has arisen as in the instant case, between the 1st respondent and its staff or former employees, only the Federal High Court has the exclusive jurisdiction to hear and determine the dispute, not a State High Court. (p. 244 H)

B REPRESENTATION

Chief G. O. K. Ajayi SAN for the appellant with him are Messrs. A-O Okeaya-Inneh, SAN and O. O. Philips N. I Quakers, Esq. for the 1st respondent with him is Ifeoma Amakor (Miss)

C G. U. Ekomaru Esq., for the 2nd and 3rd respondents with him is J. Igbiniedion (Miss)

CASES REFERRED TO

NEPA vs Edeghero (2002) 18 NWLR (Pt.798) 79 at 98

D Ali vs CBN (1997) 4 NWLR (Pt. 498) 192 at 204

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

Adebileje vs NEPA (1998) 12 NWLR (Pt. 577) 219 at 222

Attorney General Lagos State v. Dosunmu (1989) 3 N.W.L.R. (Pt. III) 552 at 567

E African Newspaper Vs. Federal Republic of Nigeria (1985) 2 NWLR (pt 6) 137

Ojokolobo Vs. Alamu (1987) (pt 61) 377

A-G. Bendel State Vs. Aideyan (1989) 4 NWLR (pt 118) 640

F STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, s. 230 & 277
Pensions Act, Cap. 346, L.F.N., 1990

G LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the decision of the Court of Appeal, holden at Lagos in Appeal NO.CA/L/154/98 delivered on the 29th day of April, 2002 in which the court allowed the appeal of the present 1st respondent/cross appellant and dismissed the claim of the present H appellants, thereby giving rise to the instant appeal.

By an originating summons NO. LD/M/358/92 filed on 25/6/92, the appellants as plaintiffs raised the following questions for determination by the Lagos State High Court:-

“(i) Whether the employees of the Nigerian Security Printing

and Minting Company Limited (N.S.P.M.C) are public officers of the federal Republic of Nigeria within the meaning of the Constitution of the Federal Republic of Nigeria, 1979.

(ii) Whether the Nigerian Security Printing and Minting Company Limited is part of the public service of the Federal Republic of Nigeria. B

(iii) Whether the provisions of the Pensions Act, Cap.346 Laws of the Federation are applicable to the employees of N.S.P.M.C by virtue of being public officers of the federation.

(iv) If the answer to question 3 is in the negative whether having as having been (sic) members of the public service of Nigeria and thereby made subject to the disabilities, liabilities and restrictions applicable to such officers the provisions of the Pensions Act which deprive them of some pension rights and privileges applicable to other public servants under that Act are not inconsistent with the constitution and therefore void." C D

The appellants, as plaintiffs then claimed the following reliefs:-

".... Declaration that:

1. The 1st defendant is part of the public service of the Federal Republic of Nigeria. E

2. The plaintiffs being former employees of the 1st defendant were subject to the disabilities, liabilities and restrictions prescribed for the members of the public service of the federation by or under the constitution of the Federal Republic of Nigeria, 1979 and are therefore entitled to enjoy all the rights, privileges and immunities including the pension rights of public servants under the constitution of the Federal Republic. F

3. That the 1st defendant being part of the public service of Nigeria and having obtained the approval of the Federal Minister of Finance and Economic Development to implement its pension scheme in accordance with the Federal Government Guidelines is subject to the provisions of the Pensions Act Cap 346 Laws of the Federation 1990. G

4. Each of the 1st - 3rd plaintiffs and those they represent who were compulsorily retired from service after attaining the age of 45 years was entitled to commence to receive his pension on the basis of total emolument effective from the date of retirement. H

5. Each of the 5th-7th plaintiffs and those they represent who

were compulsorily retired from the service of the 1st defendant before attaining the age of 45 years were entitled to commence to receive pension on the basis of total emolument from the date of his retirement notwithstanding the fact that he had not as yet attained the age of 45 years.

B *6. An order of mandamus compelling the defendants to pay pension to the plaintiffs in accordance with provisions of the Pension Act Cap 346 Laws of the Federation 1990."*

At the conclusion of arguments, the trial court granted all the claims of the plaintiffs/appellants in the following terms-

C *"(i) The employees of the Nigerian Security Printing and Minting Company Limited are public officers of the Federal Republic of Nigeria 1979.*

(ii) The Nigerian Security Printing and Minting Company Limited is part of the public service of the Federal Republic of Nigeria.

D *(iii) The provisions of the Pension Act Cap 346 Laws of the Federation of Nigeria 1990 are applicable to the employees of the Nigerian Security Printing and Minting Company Limited by virtue of being public officers of the federation.*

E *(iv) Any provisions of the Pension Act which deprives them of some pension rights and privileges applicable to other public servants under that Act are inconsistent with the constitution and therefore void."*

F The trial court also made the following declarations:-

"(i) that the 1st defendant is part of the public service of the Federal Republic of Nigeria,

(ii) the plaintiffs being former employees of the 1st defendant were subject to the disabilities, liabilities and restriction prescribed for the members of the public service of the Federation Republic of Nigeria, 1979 and are therefore entitled to enjoy all the rights, privileges and immunities including the pension rights of public servants under the constitution of the Federal Republic, that the 1st defendant being part of the public service of Nigeria and having obtained the approval of the Federal Minister of Finance and Economic Development to implement its pension scheme in accordance with the Federal Government guidelines, is subject to the provisions of the Pension Act, Cap 346 Laws of the Federation, 1990".

(iv) each of the 1st to 3rd plaintiffs and those they represent

who were compulsorily retired from service after attaining the age of 45 years was entitled to commence to receive his pension on the basis of total emolument effective from the date of his retirement,

(v) each of the 1st to 3rd plaintiffs and those they represent who were compulsorily retired from the service of the 1st defendant before attaining the age of 45 years were entitled to commence to receive pension on the basis of total emolument from the date of his retirement notwithstanding the fact that he had not yet attained the age of 45 years,

(vi) an order of mandamus is granted compelling the defendants to pay pension to the plaintiffs in accordance with provisions of the Pension Act, Cap 346 Laws of the Federation 1990,

(vii) the defendants shall pay the cost of this suit assessed at N7,500.00 (seven thousand, five hundred naira) in favour of the plaintiffs.”

The defendants were dissatisfied with that judgment and consequently appealed to the Court of Appeal, which as stated earlier in this judgment allowed the appeal by stating, inter alia thus:

“...I hold that this appeal has merit. It is allowed. I hold further that the appellant was made a part of the public service of the Federation under section 277 of the 1999 Constitution. However, it is my view that the provisions of the Pensions Act, Cap 346 do not apply to the plaintiffs/respondents. I therefore dismiss plaintiffs/respondents claim in so far as the claims were hinged on the assumption that respondents were entitled to pension under the Pensions Act, Cap 346.”

The plaintiffs, who were respondents in the court below, are not satisfied with the above judgment and have consequently appealed to this court against same.

In addition to the above appeal, there is a cross appeal by the 1st respondent against the said judgment.

In the appellants’ brief of argument filed on the 14 day of August, 2006 and adopted in argument of the appeal on the 10th day of November, 2008, the Learned Senior Counsel for the appellants Chief G.O. K. Ajayi, SAN submitted the following issue for the determination of the appeal.

“Having accepted that the effect of the 1979 Constitution was to expand the scope of the meaning of the expression “public ser-

vice” to include the appellants, was the Court of Appeal right in nevertheless proceeding to hold that the appellants were not entitled to receive pension benefits under the Pension Act “unless and until a new law is passed for that purpose by the National Assembly”.

On the other hand, learned counsel for the 1st respondent
 B Norrison .I. Quarkers Esq., in the 1st respondent/cross appellants’ brief of argument filed on 10/11/05 and also adopted in argument of the appeal, submitted one issue each for the determination of the appeal and cross appeal.

C For the appeal, the issue is:-

“Whether the Court of Appeal was right in holding that the appellants are not entitled to receive pension under the Pension Act”.

While that for the cross appeal reads thus:-

D “Whether the Court of Appeal was right in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st respondent a company responsible for the printing and minting of Nigeria’s currency and in which the administration, management, and control lies with the Federal Government of Nigeria.”

E **The normal practice when there is a main appeal and a cross appeal is to resolve the issue(s) raised in the main appeal before going onto those of the cross appeal. However in the instant appeal where the issue raised in the cross appeal touches and concerns the jurisdiction of the trial court to hear**
 F **and determine the originating summons in the first place, it becomes of utmost importance that that issue be determined first before proceeding to determine the issue(s) touching and concerning the merit of the appeal, if need be, as it is settled**
 G **law that whenever an issue of jurisdiction, which is usually considered a periphery issue, is raised, it must be resolved first and foremost.**

It therefore follows that the peculiar circumstance of the issues in this appeal makes it necessary for me to first resolve the issue raised in the cross appeal before going on to consider the issue raised in the main appeal, depending on the outcome of the resolution of the issue in the cross appeal.

H In arguing the cross appeal, learned counsel for the 1st respondent/cross appellant referred the court to a passage at pages 69 - 70 of the record where the lower court held that the Lagos State

High Court has the jurisdiction to hear and determine the matter because though the 1st respondent may be an agent of the Federal Government, it is not, being a limited liability company, an agency of the Federal Government and therefore not covered by the provisions of Decree No. 107 of 1993, and submitted further that the lower court was in error in so holding having regards to the decision of the court in the case of NEPA vs Edegbero (2002) 18 NWLR (Pt.798) 79 at 98; that the issue of payment of pension or entitlement to payment of pension in accordance with the provisions of the Pensions Act falls within the purview of administration, management and control of the Federal Government or its agencies and that the 1st respondent is an agency of the Federal Government, as contemplated by section 230(1) (a) to (s) of the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter referred to as the 1979 Constitution), and that it is only the Federal High Court, in the circumstance that has the jurisdiction to entertain the suit/action as constituted. Learned counsel cited the following additional authorities in support of his contention: Ali vs CBN (1997) 4 NWLR (Pt. 498) 192 at 204; University of Abuja vs Ologe (1996) 4 NWLR (Pt. 445) 706 at 722; Adebileje vs NEPA (1998) 12 NWLR (Pt. 577) 219 at 222 and urged the court to resolve the issue in favour of the cross appellant and allow the cross appeal.

In the reply brief filed on 28/4/2008 and signed by Ade Okeaya-Inneh SAN, it is submitted that the proper issue calling for determination following the grounds of cross appeal is as follows:-

“Whether the Court of Appeal was right in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st respondent”.

However, whether the issue as formulated by the cross respondent is preferable does not take away the substance of the issue in contention which is simply whether in view of the provisions of section 230 of the 1979 Constitution the Lagos State High Court has the jurisdiction to hear and determine the matter as constituted. I had earlier reproduced the questions raised in the originating summons and the determination of same by the trial court.

Referring to the passage in the judgment of the lower court at pages 69 - 70 of the record earlier referred to by learned counsel for the 1st respondent/cross appellant learned counsel submitted that

the 1st respondent is not an agency of the Federal Government within the meaning of Decree No. 107 of 1993 but an agent used by the Federal Government to perform specific transactions; that the 1st respondent was not created by the Federal Government but was brought about by the provisions of the Companies And Allied Matters Act, the 1st respondent/cross appellant being a limited liability company; that the Lagos State High Court therefore has the jurisdiction to hear and determine the originating summons and urged the court to resolve the issue against the cross appellant and dismiss the cross appeal.

The learned counsel for the 2nd and 3rd respondents, G. F. ZI Esq. in the 2nd and 3rd respondents brief of argument deemed filed on the 10th day of November, 2008 adopted the argument of the learned counsel for the 1st respondent/cross appellant on the cross appeal and urged the court to allow the cross appeal.

Now, section 230(l)(q)(r)(s) of the 1979 Constitution, as modified by Decree No. 107 of 1993, provides as follows:-

“230 (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 or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion to (sic) any other court in civil causes and matters arising from:

(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, the operation and interpretation of this constitution in so far as it affects the Federal Government or any of its agencies; and

(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.

Provided that nothing in the provisions of paragraphs (q)(r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.”

In reacting to the submissions of the learned counsel for the Appellant, 1st respondent/cross appellant, in respect of the issue of

the jurisdiction of the trial court to hear and determine the originating summons, the lower court had this to say at pages 69-70 of the record:-

“.... It may well be that the Federal Government has used the 1st defendant in the execution of certain functions. That however, does not make the 1st defendant an agency of the Federal Government within the meaning of Decree 107 of 1993. At the highest, that it would only make the 1st defendant an agent of the government for the purpose of the specific transactions done for the government by the defend certainly not an ‘agency’.

The 1st defendant was incorporated under the Companies Ordinance. It cannot possess a character different from other companies incorporated under the Companies Ordinance. All the attributes of companies incorporated under the Companies Ordinance are derived from the same law. It cannot enjoy a greater advantage from the same law than other companies just because the Federal Government has shares in it. It is my firm view that the Lagos State High Court was right to have assumed jurisdiction to hear and determine this matter.”

The question is whether the lower court is right in its decision *supra*.

It has to be kept in view that the action of the appellants is premised on the fact that the 1st respondent/cross appellant, by virtue of the Federal Government owning controlling shares therein and by constitutional provision, to wit, section 277 of the 1979 Constitution, together with its employees form part and parcel of the Federal Public Service as a result of which the appellants contend that they are entitled, as public servants to receive pensions under the provisions of the Pension Act, Cap 346, Laws of the Federation, 1990. The lower courts agreed with the appellant that by operation of section 277 of the 1979 Constitution, the 1st respondent and the appellants form part of the Federal Public Service of Nigeria. The lower court, however held, in addition thereto that for the appellants to enjoy the benefits of such a pension under the Pensions Act *supra*, the National Assembly has to enact an Act to make the provisions of the Pensions Act, Cap 346 applicable to the appellants thereby giving rise to the main issue for determination in the main appeal. However, now that the issue is as to whether the trial court has the juris-

B dictation to entertain the suit as constituted in view of the public service
 status of the 1st respondent, the answer from the appellants/cross
 respondents and the lower court is that the 1st respondent being a
 limited liability company created by the Companies Ordinance re-
 C mains the same i.e. limited liability company and not part of the pub-
 lic service of the Federation. We have to remember that it is the con-
 stitution of this country that conferred the status of public service on
 the 1st respondent/cross appellant, not an ordinary Act of the Na-
 tional Assembly. We all know, and in fact it is long settled that the
 provisions of the constitution are supreme over any other provisions,
 law or Act of the National Assembly.

The said **section 277(1) of the 1979 Constitution defines**
“public Service of the Federation” to mean “service of the
Federation in any capacity in respect of the Government of
 D **the Federation, and includes service as....**

(f) **staff of any company or enterprise in which the Gov-**
ernment of the federation or its agency owns controlling share
or interest;...”.

E **From the above, it is very clear that by constitutional**
arrangements the 1st respondent/cross appellant as well as
its members of staff form part of the public service of the fed-
eration and that the 1st respondent in particular is an agency
of the Federal Government as it is not disputed that the Fed-
 F **eral Government owns a controlling share in the 1st respon-**
dent/cross appellant.

I therefore hold the view that the 1st respondent/cross
appellant is an agency of the Federal Government contrary to
the views of the lower court.

G I hold the further view that the issue of payment of pension to
 qualified public servants in Nigeria with particular reference to those
 employed in the 1st respondent/cross appellant has to do with the
 administration, management and control of the 1st respondent/cross
 appellant as an agency of the Federal Government. It is therefore
 H erroneous to hold that the 1st respondent/cross appellant is only an
 agent of the Federal Government in respect of specific functions.

I therefore hold that the question of payment of pension
to public servants or entitlement to payment of pension under
the provision of the Pensions Acts Cap 346, Laws of the Fed-

eration, 1990 is an issue within the administration, management and control of the 1st respondent/cross appellant within the provisions of section 230(1) of the 1979 Constitution supra and consequently that where an issue has arisen as in the instant case, between the 1st respondent and its staff or former employees, only the Federal High Court has the exclusive jurisdiction to hear and determine the dispute, not a State High Court. B

In the circumstance, I hold that the sole issue in the cross appeal be and is hereby resolved in favour of the cross appellant. C

In conclusion, I find merit in the cross appeal which is hereby allowed. It is hereby ordered that suit No. LD/358/92 which was instituted at the Lagos State High Court be and is hereby struck out for want of jurisdiction in that court.

I make no order as to costs in view of the fact that the appellants are pensioners. Cross appeal allowed while the main appeal is hereby struck out. D

TOBI JSC

I have read in draft the judgment of my learned brother Onnoghen, JSC and I agree with him. The appellants and those they represent were former employees of the 1st respondent, the Nigeria Security Printing and Minting Company Limited. They were compulsorily laid off and paid pension in accordance with the contractual pension scheme of the 1st respondent as a private limited liability company incorporated under the Laws of the Federal Republic of Nigeria. E F

The appellants sued the respondents at the High Court of Lagos State by way of originating summons for the enforcement of their rights under the Pensions Act on the ground that the 1st respondent is part of the public service of the Federal Republic of Nigeria and being former employees of the 1st respondent, they are subject to the disabilities, liabilities and restrictions prescribed under the 1979 Constitution and as such are entitled to enjoy all the rights, privileges and immunities, including pension rights of public servants under the Constitution of the Federal Republic of Nigeria, 1979. The appellants sought five declaratory reliefs and order of mandamus compelling G H

the respondents to pay pension to them in accordance with the provisions of the Pensions Act, Cap. 346 Laws of the Federation of Nigeria, 1990.

The learned trial Judge gave judgment to the appellants in the following terms:

B *“(i) The employees of the Nigerian Security Printing and Minting Company Ltd. are public officers of the Federal Republic of Nigeria within the meaning of the Constitution of the Federal Republic of Nigeria 1979.*

C *(ii) The Nigerian Security Printing and Minting Company Ltd. is part of the public service of the Federal Republic of Nigeria.*

D *(iii) The provisions of the Pensions Act Cap 364 Laws of the Federation 1990 are applicable to the employees of the Nigerian Security Printing and Minting Company Ltd. by virtue of being public officers of the Federation.*

(iv) Any provisions of the Pensions Act which deprives them of some Pension rights and privileges applicable to other public servants under that Act are inconsistent with the Constitution and therefore void.

E *I also make the following declarations:*

(i) that the 1st Defendant is part of the public service of the Federal Republic of Nigeria

F *(ii) That Plaintiffs being former employees of the 1st Defendant were subject to the disabilities, liabilities and restriction prescribed for the members of the public service of the Federation by or under the Constitution of the Federal Republic of Nigeria 1979 and are therefore entitled to enjoy all the rights, privileges and immunities including the pension rights of public servants under the Constitution of the Federal Republic.*

G *(iii) That the 1st Defendant being part of the public service of Nigeria and having obtained the approval of the Federal Minister of Finance and Economic Development to implement its pension scheme in accordance with the Federal Government guidelines, is subject to the provisions of the Pensions Act Cap 346 Laws of the Federation 1990.*

H *(iv) Each of the 1st to the 3rd Plaintiffs and those they represent who were compulsorily retired from service after attaining the age of 45 years was entitled to commence to receive his pension on*

the basis of total emolument effective from the date of retirement.

(v) *Each of the 4th to the 7th Plaintiffs and those they represent who were compulsorily retired from the service of the 1st Defendant before attaining the age of 45 years were entitled to commence to receive on the basis of total emolument from the date of his retirement notwithstanding the fact that he had not as yet attained the age of 45 years.* B

(vi) *An order of Mandamus is granted compelling the Defendants to pay pension to the Plaintiffs in accordance with provisions of the Pensions Act Cap 346 Laws of the Federation 1990.*

(vii) *The Defendants shall pay the cost of this Suit assessed at N7,500.00 in favour of the Plaintiffs.* C

The Court of Appeal allowed the appeal in respect of Grounds 2 and 3. The court did not allow the appeal on Grounds 1 and 4 on jurisdiction of the Lagos State High Court and mandamus and conflicts in affidavit evidence respectively. D

This appeal is in respect of the two grounds. There is also a cross-appeal by the 1st respondent. Briefs were filed and exchanged. Appellants formulated the following issue for determination:

“Having accepted that the effect of the 1979 Constitution was to expand the scope of the meaning of the expression “public service” to include the Appellants, was the Court of Appeal right in nevertheless proceeding to hold that the Appellants were not entitled to receive Pension benefits under the Pensions Act ‘unless and until a new law is passed for that purpose by the National Assembly” E F

The 1st respondent formulated the following issue for determination:

“Whether the Court of Appeal was right in holding that the Appellants are not entitled to receive pension under the Pensions Act.” G

The 1st respondent formulated the following issue on his cross-appeal:

“Whether the Court of Appeal was right in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st Respondent, a company responsible for the printing and minting of Nigeria’s currency and in which the administration, management and control lies with the Federal Government of Nigeria.” H

The 2nd and 3rd respondents adopted the issue formulated by the 1st respondent.

Learned counsel for the appellants, Chief G. O. K. Ajayi submitted that the Court of Appeal gave wrong reasons for dismissing the appeal on the two grounds of appeal. He relied on the following reasons enumerated in the conclusion of the brief:

"1. Because having in effect rejected the case made by the Defendants/Respondents on their two Grounds of Appeal the Court of Appeal erred in law in not dismissing their appeal.

2. Because the Court of Appeal had itself agreed that the 1979 Constitution extended the scope of the Pensions Act and made Plaintiff/Appellants members of the public service of the Federation.

3. Because the Court of Appeal was not entitled to make suo motu a case for the Respondents which they did not make for themselves.

4. Because by operation of section 274(1), 274(4)(b) and (c) of the 1979 Constitution, the Pensions Act Cap 346 took effect as modified by section 277(f) of the 1979 Constitution with effect from the 1st of October, 1979 and the Appellants became as from 1st October 1979 entitled to receive Pension under the Pensions Act."

He urged the court to allow the appeal.

Learned counsel for the 1st respondent, arguing the main appeal, submitted that the Court of Appeal was right in holding that the appellants are not entitled to receive pension under the Pensions Act. He submitted that the Pensions Act not being applicable to the 1st respondent, the appellants cannot take advantage of the provisions of the Pensions Act, because by the express provisions of the Act, it applies only to a limited and specified number of public service organizations. He urged the court to dismiss the main appeal.

Arguing the cross-appeal, learned counsel submitted that the Court of Appeal was wrong in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st respondent, a company responsible for the printing and minting of Nigeria's currency and in which the administration, management and control lie with the Federal Government of Nigeria. He urged the court to allow the cross-appeal.

Learned counsel for the 2nd and 3rd respondents, Mr. G. F. Zi, adopted the arguments of 1st respondent in its brief and urged

the court to dismiss the appeal.

In his Reply Brief, learned counsel for the appellants submitted that the issue formulated by the 1st respondent misses the whole point raised by the Grounds of Appeal contained in the Amended Notice of Appeal filed as well as the grounds upon which the Court of Appeal based its decision now being appealed against. He submitted on the cross-appeal that the Court of Appeal was right in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st respondent. He urged the court to dismiss the cross-appeal.

I will take the issue of jurisdiction of the High Court of Lagos State in this matter. On the issue of jurisdiction, the Court of Appeal said:

“The 1st Defendant was incorporated under the Companies Ordinance. It cannot possess a character different from companies incorporated under the Companies Ordinance. All the attributes of companies incorporated under the Companies Ordinance are derived from the same law. It cannot enjoy a greater advantage from the same law than other companies just because the Federal Government has shares in it. It is my view that the Lagos State High Court was right to have assumed jurisdiction to hear and determine this matter;”

Learned counsel for 1st respondent did not agree with the above. Citing a number of cases, counsel submitted that the High Court of Lagos State lacked the jurisdiction to hear the matter. He argued that jurisdiction to hear the matter is on the Federal High Court. Counsel for the 2nd and 3rd respondents also endorsed the submission. I entirely agree with the submission. It is clear from the expanded jurisdiction of the Federal High Court, vide the Constitution (Suspension and Modification) Decree No. 107 of 1993, a Decree which amended section 230 of the 1979 Constitution, the Federal High Court has exclusive jurisdiction to hear the matter. See NEPA v. Adegbero (2002) 18 NWLR (Pt. 798) 79.

Accordingly, the main appeal is struck out. The cross-appeal is allowed. I also make no order as to costs.

MOHAMMED JSC

By Originating Summons dated 25th June, 1992 and filed at the High Court of Justice of Lagos State at Lagos the same day, the Appellants in this appeal as Plaintiffs sued the Respondents as Defendants for the enforcement of the Appellants rights under the Pensions Act on the grounds that the 1st Respondent, the Nigerian Security, Printing and Minting Company is part of the Public Service of the Federal Republic of Nigeria and the Appellants being its former employees, are subject to the disabilities, liabilities and restrictions prescribed under the 1979 Constitution and as such are entitled to enjoy all the rights, privileges and immunities, including pensions rights of public servants under the 1979 Constitution. The Appellants therefore sought for a number of declaratory reliefs and an order of mandamus compelling the Respondents to pay their pensions in accordance with the provisions of the Pensions Act CAP 346, Laws of the Federation of Nigeria, 1990.

At the end of the hearing of the parties at the trial Court, the learned trial Judge granted the reliefs sought by the Appellants. The Defendants/Respondents' appeal against the judgment of the trial Court, was allowed in part resulting in the present appeal by the Plaintiffs/Appellants. There is also a cross-appeal by the 1st Respondent against the same judgment of the Court of Appeal. Since the cross-appeal has raised a fundamental issue of jurisdiction, I shall deal with it first as required by law. The issue is -

"Whether the Court of Appeal was right in upholding the jurisdiction of the trial Court to hear and determine the claim for pension against the 1st Respondent, a company responsible for the Printing and Minting of Nigeria's currency and in which the administration, management and control lies with the Federal Government of Nigeria."

The case of the Appellants as Plaintiffs as constituted against the three Defendants, namely, the Federal Government of Nigeria sued through the Honourable Attorney-General of the Federation, the Federal Ministry of Finance and Economic Development and the Nigerian Security, Printing and Minting Company, an agency of the Federal Government in which the Federal Government has controlling shares, considering the subject matter of the suit involving the

interpretation of the Constitution and the application of the Pensions Act in determining the rights of the Plaintiffs/Appellants, was within the jurisdiction of the trial High Court at the time it was filed on 25th June, 1992 under Section 236 of the 1979 Constitution. However, with the coming into force of the provisions of the Constitutional Amendments to Section 230(1) of the same Constitution to expand the jurisdiction of the Federal High Court on 17th November, 1993 while the Appellants' case was still awaiting determination at the trial Court, the Appellants' case unfortunately for them found its way into the exclusive jurisdiction of the Federal High Court. See the case of NEPA v. Edegbero & Ors. (2002) 13 N.W.L.R. (Pt. 798) 79 at 98 where Uwais, CJN stated the changed position where he said -

"The clear intendment of the modification to Section 230 of the 1979 Constitution, by the Constitution (Suspension and Modification) Decree No. 107 of 1993 was to confer on the Federal High Court exclusive jurisdiction in matters specified under subsection (1)(a) to (s) thereof."

The case of the Appellants, the proceedings of the hearing of which continued at the trial High Court from 17th November, 1993 when that Court ceased to have jurisdiction in the matter up to the date of judgment in the matter on 17th April, 1998, was therefore heard without jurisdiction. The result of course is obvious. See Attorney General Lagos State v. Dosunmu (1989) 3 N.W.L.R. (Pt. III) 552 at 567 where Oputa JSC remarked -

"Ouster of jurisdiction is thus a condition which comes about when a Court which once had jurisdiction over a matter ceases to retain that jurisdiction."

This is exactly what happened in the present case. It is for this reason dial I entirely agree with ray learned brother Onnoghen JSC in his leading judgment in this matter that the trial Court lacked jurisdiction to hear and determine the Appellants' case as constituted against the parties they brought to the Court. The cross-appeal therefore succeeds and it is hereby allowed. I abide by the orders made in the lead judgment including the order striking out the main appeal without any order on costs.

OGEBE JSC

I had a preview of the lead judgment of my learned brother Onnoghen JSC just delivered and I agree with his reasoning and conclusion.

B I am also of the view that all the respondents are Federal agencies and the Lagos High Court lacked jurisdiction to try the claim against them. Only the Federal High Court is possessed of the jurisdiction. Accordingly, I allow the cross-appeal and strike out the claim in the trial court. I also strike out the main appeal. I make no order as to costs.

MUNTAKA-COOMASSIE JSC

D I have had the privilege of reading before now the judgment just delivered by my learned brother, Onnoghen JSC. The judgment is competently written. I admire the amount of industry displayed in this judgment.

E This is an appeal against the decision of the Court of Appeal, Lagos Division delivered on 21/04/1998 allowing the appeal before it and dismissing the Appellants suit before the trial court. The Appellants being dissatisfied with the judgment of the Court of Appeal, hereinafter called court below, appealed to the Supreme Court.

F The Appellants, who were the plaintiffs at the trial court, commenced this action by way of originating summons and set out the following issues for determination :-

"1. The 1st defendant is part of the public service of the Federal Republic of Nigeria.

G *2. The plaintiffs being former employees of the 1st defendant were subject to the disabilities, liabilities and restrictions prescribed for the members of the public service of the federation by or under the Constitution of the Federal Republic of Nigeria 1979 and are therefore entitled to enjoy all the rights, privileges and immunities*
H *including the pension rights of public servants under the constitution of the Federal Republic of Nigeria.*

3. That the 1st defendant being part of the public service of Nigeria and having obtained the approval of the Federal Minister of Finance and Economic Development to implement its pension

scheme in accordance with the Federal Government guidelines, is subject to the provisions of the pensions Act Cap 346 Laws of the Federation 1990.

4. Each of the 1st - 3rd plaintiffs and those they represent who were compulsorily retired from service after attaining the age of 45 years was entitled to commence to receive his pension on the basis of total emolument effective from the date of retirement.

5. Each of the 4th - 7th plaintiffs and those they represent who were compulsorily retired from the service of the 1st defendant before attaining the age of 45 years were entitled to commence to receive pension on the basis of total emolument from the date of his retirement notwithstanding the fact that he had not as yet attained the age of 45 years.

6. An order of mandamus compelling the defendants to pay pension to the plaintiffs in accordance with provisions of the pension Act Cap 346 Laws of the Federation 1990".

The originating summons was supported by four (4) different affidavits. There is no doubt that the plaintiffs were former employees of the 1st defendant. Their main complaints are as contained in paragraph 8 and 15-19 respectively of the affidavit dated 25/6/98 and sworn to by Joseph Adebowale Adekeye.

"8. That 75% of the shares in the 1st defendant are held by the Federal Government and its agencies while the remaining 25% are owned by foreign private interest. -

11. That plaintiffs aver that the 1st defendant having regard to the proportion of shares held by the Federal Government therein is part of the public service of Nigeria.

12. That by virtue of the status of the 1st defendant aforesaid, each and every employee of the said company is/was a public servant as defined by the constitution of the Federal Republic of Nigeria".

The plaintiffs therefore sought benefit from the enhanced pension entitlements introduced by the Federal Government as contained in circular of 13/9/91 reference No. B 63216/5.1/K7618 and attached as Exhibit JAA2 as public servants. The circular in question, which was issued by one K. F. Adebolu Director-General (Establishments) on behalf of the Ministry of Establishment reads as follows:-

"REVIEW OF PENSION RATES"

This is to inform you that the Federal Military Government has approved that calculations and payment of retirement benefits should be based on the total annual emolument of an officer for the purpose of this exercise, the component units of an officer's total emolument which are to be taken into account in computing pension and

B gratuity are as follows:-

(a) OFFICERS ON GL 01 - 09

(i) Annual Terminal Basic Salary

(ii) Annual Transport Allowance

C (iii) Annual Rent Subsidising

The implementation of this circular takes effect from 1st January 1991". The 1st defendant filed a counter affidavit dated 2nd December 1993. The gist of this counter affidavit is that the 1st defendant (Nigeria Security Printing and Minting Company Limited) is not
D one of the organisations listed on the Pension Act Cap. 346 Laws of the Federation. That the circulars attached to the plaintiffs' affidavit do not apply to the 1st defendant since it has its own pension and gratuity scheme, and they relate only to organisations listed in the Pension Act Cap. 346. Particularly the 1st defendant averred in para-
E graphs 9-11 of the counter-affidavit as follows

"9. That the 1st Defendant duly obtained ministerial approval for its pension and gratuity scheme (hereinafter called the scheme) to which duly appointed representatives of the 1st defendant staff including the plaintiffs subscribed.

F *10. That in compliance with the provision of the scheme, the plaintiffs herein signed nomination form for the purpose of paying any benefit accruable under the scheme to nominees in case of death.*

G *11. That all the plaintiffs herein have since their retirement, taken various benefits under the 3rd defendant's scheme. In particular while the 1st, 2nd and 3rd plaintiffs and all other plaintiffs represented by them have received and continue to receive their pension benefits under the scheme, the 4th, 6th and 7th plaintiffs and all the plaintiffs represented by them have been paid and they willingly re-
H ceived their gratuity under the scheme".*

After hearing both counsel to the parties, learned trial judge, C. O. Segun J. granted all the plaintiffs claims. In reaching his conclusion, the learned trial judge held as follows on pages 41- 42 of the record:-

"It is my view that the mere fact that top ranking government officials choose to limit the applicability of the pension Act to only those mentioned in Exhibit JAA2 cannot by itself make it lawful in accordance with the constitution of the Federal Republic of Nigeria 1979. The constitution has made it clear, and the provisions of the pension Act, if properly interpreted according to the definitions provided by the interpretation Act, makes it clear beyond any doubt that the clear intention of the constitution makers is that the pension rights of all public officers must be regulated by law. If any doubt exists in one's mind about the clear intentions of the constitution makers, that doubt is clearly resolved by Section 159 (1) of the 1979 Constitution. What the defendants are saying is that the pension right of the plaintiffs should be regulated by their contract rights entered into by them. "I hold the view that it can only be regulated by law and not by contract". He then proceeded to make some declarations see pp 42 - 44 of the record of proceedings. The defendants, being dissatisfied with the decision of the trial court appealed to the Court of Appeal, Lagos Division, hereinafter called "court below".

The court below allowed the appeal and dismissed the plaintiffs' claims. On the issue of jurisdiction raised for the 1st time in the Court of Appeal, the lower court held that the trial court had jurisdiction to entertain the matter.

It is against this decision that the appellants had appealed to this court. The respondents also cross appealed on the issue of jurisdiction. In accordance with the rules of this court, both parties filed and exchanged their respective briefs of arguments. The appellants, in their brief of argument, formulated one sole issue for determination as follows:-

"1. Having accepted that the effect of the 1979 constitution was to expand the scope of the meaning of the expression "public service" to include the appellants, was the Court of Appeal right in nevertheless proceeding to hold that the appellants were not entitled to receive pension benefits under the Pensions Act "unless and until a new law is passed for that purpose by the National Assembly" while the 1st respondent/cross-appellant also formulated an issue each for determination in respect of the appeal and cross appeal as follows:- "Whether the Court of Appeal was right in holding that the appellants are not entitled to receive pension under the Pension Act".

On the cross appeal, the issue was promulgated thus:-

“Whether the Court of Appeal was right in upholding the jurisdiction of the trial court to hear and determine the claim for pension against the 1st respondent, a company responsible for the printing and minting of Nigerian currency and in which the administration, management and control lies with the Federal Government of Nigeria”.

The 2nd - 3rd respondents, on their own, adopted the sole issue promulgated by the 1st respondent in the main appeal.

It was the submission of the learned senior counsel to the appellants that the lower court having held that the appellants are public servants by virtue of Section 277 of the 1979 Constitution it should not have proceeded to consider some extraneous matters or reasons in allowing the appeal. The appellants itemised the reasons and grounds upon which the Court of Appeal relied, allegedly erroneously for arriving at its decisions as follows:-

1. That there is no inconsistency or conflict between Section 159 (1) and 277 (f) of the 1979 Constitution and Section 24 of the Pension Act.

2. That the only law in existence regulating the payment of pensions to retired employees of the public service of the Federation is the Pension Act 1990 Cap 346.

3. Sections 159 (1) and 277 (f) of the 1979 Constitution does not expressly repeal Sections 24 of the Pension Act.

4. Sections 277 of the 1979 Constitution only expand the scope of the pensions in the public service of the Federation.

5. Section 159 (1) of the same constitution however provides that the right of those in the public service to receive pension shall be regulated by law but did not provide that it should be regulated only by the pensions Act or any specific law,

6. That the High Court was in error to have supposed that the plaintiffs/appellants who were by force of Section 277 of the 1979 Constitution made public servants thereby became entitled to receive pension regulated by the Pension Act Cap. 346.

7. That the expression “shall be regulated by law does not mean “shall be regulated by the Pension Act”.

8. That the word “shall” in Section 159(1) could refer to a law in existence or a law to be made in the future by the National Assem-

bly.

9. That the Pensions Act was presently applicable to those covered by the un-amended provisions of Section 24 of the Pension Act but it is not applicable to those made public servants under the 1979 constitution and that a new law could have to be made for them in future by the National Assembly.

B

10. It could not be practicable to make the existing pension rules applicable to new comers.

The appellants referred to Section 24 of the Pensions Act, 1990 and further submitted that with the coming into operation of the 1979 Constitution, its Section 277 (f) expanded the meaning of the term public service in Section 24 of the Pensions Act to include all retired employees of the organisation in which the Federal Government owned a controlling share with the result that the appellants became members of the public service within the expanded meaning of Section 24 of the Pensions Act and entitled therefore to receive pension thereunder like other public servants including those who had been public servants before 1979.

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D

The learned counsel submitted that it cannot be correct as held by the court below that there was no inconsistency between Sections 159 (1) and 277 of the Constitution on the one hand and Section 24 of the Pension Act, because the Court of Appeal had itself specifically held that the 1979 constitution expanded the scope of Section 24 of the Pensions Act. It was therefore submitted by expanding the scope, the 1979 Constitution made a provision which was not the same as that of Section 24 and having overridden Section 24 changed the meaning of the Pensions Act. Section 159 of the 1979 constitution was not concerned with the interpretation of the expression “public service”, it only prescribed that the pension rights of public servant should be prescribed that the pension rights of public servant should be regulated by law. It was therefore concerned with abolishing cases where the pension rights of public servants are regulated by private contract. Learned counsel then referred to Section 274 (4)(1) of the 1979 Constitution and submitted that the Pension Act Cap 346 of 1990 is an existing law.

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Learned counsel to the 1st respondent, Quakers Esq., in his submission referred to Section 1 (1) of the Pensions Act Cap. 346 and submitted that the appellants are not amongst those envisaged

as person (s) belonging to public service of the Federation within the purview of the Pensions Act, as they were not listed among the 104 organisations listed in schedule two pursuant to the provisions of Section 15 (2) of the Pensions Act Cap. 346. It was therefore submitted that it is well settled principle of law that the express mention of specific things in any enactment means the express exclusion of general
 B ousts not so mentioned. The cases of *African Newspaper Vs. Federal Republic of Nigeria* (1985) 2 NWLR (pt 6) 137, *Ojokolobo Vs. Alamu* (1987) (pt 61) 377 and *A-G. Bendel State Vs. Aideyan* (1989) 4
 C NWLR (pt 118) 640 were cited in support.

That the counsel further referred to Section 159 (1) of the Constitution and submitted that it means:-

- (a) A person in the public service has a right to receive pension or gratuity.
- D (b) That the right which he has, shall be regulated by law (small L) meaning legislation and not by L the Constitution.
- (c) Section 159 is not a self executing legislation, something else is required to bring it to life.
- (d) What brings Section 159, big L, to life are regulations (small
 E 'L')

It was therefore submitted that the pension Act provides that only those public organisations stipulated under its schedule 2 are entitled to be governed by its provisions while other public service
 F that are not listed under the said schedule are free to provide appropriate pension schemes under other regulations in accordance with the provisions of the Constitution. To hold otherwise, it was submitted, would amount to proclaiming unconstitutional all pension schemes drawn up by public organisations that are not listed under
 G the pensions Act. He cited, for example, the pensions rights of Judges Act Cap. 347, that even though Judicial Officers are public officers under the interpretation of the constitution, they were not paid pension under the Pension Act.

It was further submitted that the words “under this Act” in the
 H heading under schedule II of the Pensions Act confirm that the Act envisage that only a certain category of public servants, and not every public servants as defined under Section 277 of the Constitution, falls under the provisions of the Pensions Act. For example, the learned counsel cited part I of the 5th schedule of the Constitution which sets

out Code of Conduct for public officers. Part II of the same schedule reads “*public officers for the purpose of the Code of Conduct*”, this is in effect limits its applicability to only those listed in its part II and not all public officer as defined even under the same document. Learned counsel therefore submitted that the 1st respondent being a limited liability company incorporated under the companies and Allied Matters Act (CAMA) is constitutionally obliged to provide a pension scheme for its employees. The mere fact that a person is said to be in public office does not, ipso facto, entitled him to pension or bring his service under the Pension Act, the case of Ejutagba Vs. PHMB (1995) 2 NWLR (pt. 376) 189 at 197 was cited in support of his submissions.

On the cross-appeal, learned counsel submitted that once a matter falls within the administration, management and control of the Federal Government or any of its agencies, jurisdiction over the matter lies exclusively with the Federal High Court. The cases of Ali Vs. CBN (1997) 4 NWLR (Pt. 498) 92; University of Abuja Vs. Ologe (1996) 4 NWLR (Pt.445) 706 at 722; and Adebileje Vs NEPA (1998) 12 NWLR (pt. 577) 219 at 222 were cited. He therefore submitted that the issue of payment of pension or entitlement to payment of pensions sequel to the provisions of the pensions Act, 346 is an issue that borders on Administrative, management and control of the 1st respondent which is an agent of the Federal Government, and therefore submitted that the trial High Court has no jurisdiction.

The 2nd and 3rd respondents in their brief of argument submit that the Court of Appeal (now court below) was right in holding in its judgment that the Pensions Act is not applicable to the 1st respondent; and this represents the correct position of the provisions of Section 159 (1) of the 1979 Constitution if they are to be given their ordinary and literal meaning.

It was the submission of the learned counsel that for the appellants to be entitled to pension and gratuity under the Pensions Act pursuant to the provisions of Section 159 (1) and 277 of the 1979 Constitution the provisions of Section 274 (2) of the 1979 Constitution which is similar to Section 315 (2) of the 1999 Constitution would have to be invoked by modifying the Pensions Act to add or include the 1st respondent as one of the organisations listed to which the Pensions Act is applicable.

It was further submitted that the fact that the Federal Govern-

ment of Nigeria has controlling shares in the 1st respondent could not make it be the owner to the extent of solely controlling and regulating the company’s management. He cites Okomu Oil Palm Co. Ltd. Vs. Iserhiermien (2001) FWLR (pt. 45) 670 at 698. He therefore urged this court to dismiss the appeal.

B The appellant filed a reply brief where it was submitted that the 1st respondent is a limited liability company, registered under the Companies and Allied Matters Act (CAMA) and therefore not an agency of the Federal Government.

C Now, the appellants’ claim is based primarily on the provisions of Section 277 (f) of the 1979 Constitution of Nigeria, that is, having been defined as public officers, they thus become entitled to earn pensions and gratuities under the provision of the pensions Act Cap. 346 of the Laws of the Federation 1990. Thus, the definition of the
D public officer “as conferred in the said Section 277 (f) of the 1979 Constitution has expanded the definition of public officer as defined by Section 24 of the Pensions Act, Cap. 346. Hence, being public officers they are entitled to earn pensions under the provisions of Pensions Act. Cap. 346, 1990. Thus, the main issue for determination in this appeal is whether the Appellants become entitled to earn
E pensions under the provisions of the Pensions Act, Cap. 346, 1990, by virtue of the definition of public officers” as defined in Section 277 (f) of the 1979

F Constitution provides as follows:-
 “277 (1) in this constitution, unless otherwise expressly provided or the context otherwise requires”
 “public service of the Federation” means the service of the Federation in any capacity in respect of the Government of the Federa-
G *tion and includes service as:-*

- (a).....
- (b).....
- (c).....
- (d).....
- H (e).....
- (f) *Staff of any company or enterprises in which the Government of the Federation or its agency owns controlling share or interest”.*

Whereas, by the provisions of pension Act Cap 346, 1990 in

Section 24, public service is defined as follows:-

“24. In this Act, unless the context otherwise requires, “public service” or “service” means service under the Government of the Federation in a civil capacity or such other service in any organisation specified in schedule to this Act or such other organisation as the minister may from time to time, by order, determine to be Civil Service for the purposes of this Act and service under any superannuation scheme in respect of which there is a reciprocal arrangement for the acceptance of service as qualifying service under this Act or any regulation made thereunder.

In the SECOND SCHEDULE of the Act named “ORGANISATIONS DECLARED AS PUBLIC SERVICE UNDER THIS ACT”, the 1st respondent was not listed as one of the organisations. It is in this regard that the 1st respondent submitted, forcefully, that since the second schedule of the Pension Act Cap. 346, 1990 did not list the 1st respondent as one of the organisations declared as public service under the Act, the appellants could not earn pensions, under the Act. Particularly when they have been enjoying pensions under the pension scheme put in place by the 1st respondent.

My learned brother Onnoghen JSC considered closely the issues as presented to us for the consideration of the appeal. The issue of which court has the power to decide who are the public servants under the constitution and the law must lie with the Federal High Court and not the State High Court. I am therefore in agreement with my learned brother that the sole issue in the cross-appeal must be resolved in favour of the cross-appellant. The cross-appeal is hereby allowed. The main appeal is therefore struck out. I abide by the consequential orders made by my learned brother. I endorse the order as to costs.