

SUPREME COURT OF NIGERIA
13TH FEBRUARY, 2009. SC. 239/2002
CORAM:- D. MUSDAPHER, G. A. OGUNTADE,
I. F. OGBUAGU, P.O. ADEREMI,
M. S. MUNTAKA-COOMASSIE, JJSC

MR. OMIETE MICHAEL KALANGO APPELLANT
AND

1. THE GOVERNOR OF
BAYELSA STATE OF NIGERIA

2. THE CHAIRMAN CIVIL
SERVICE COMMISSION RESPONDENTS
OF BAYELSA STATE

3. THE HONOURABLE
A-GENERAL BAYELSA STATE

JURISDICTION - Ouster provisions - Public Officers (Special Provisions) Act - Scope - It ousts the jurisdiction of the court from adjudicating on a suit - Filed by a dismissed public officer - So far as dismissal was purported to have been done under the Act (H1)

ADMINISTRATIVE LAW - Public servants - Notice of dismissal - Effect of non-conveyance - It is not the normal function of the Military Governor but that of the civil service commission - To convey such notice - Therefore it is of no moment that the instrument was not served on the appellant (H2)

ADMINISTRATIVE LAW - Delegation of duty - Under the Public Officers (Special Provisions) Act - Propriety of - The appropriate authority may delegate to another person the duty to act on its behalf - It is enough that the action was done within the purview of the Act (H3)

FACTS

The plaintiff/appellant sued the defendants/respondents claiming sundry reliefs challenging his compulsory retirement from the services of Bayelsa State Government. The compulsory retirement was purportedly ordered by Military Administrator of Bayelsa State under the provisions of the Public Officers (Special Provisions) Act.

The respondents raised a preliminary objection to the jurisdiction of the court, in that the Act contained an ouster clause prohibiting the court from questioning the validity of actions purportedly taken under its provisions. The trial court upheld the objection. Aggrieved, the appellant appealed against that ruling of the trial court to the Court of Appeal. His appeal was dismissed. He has brought this further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether in considering the legality of the appellant’s compulsory retirement, the only letter of retirement served on him should not be construed or the said letter together with other documents not served on him should be considered together.

2. Whether the only letter of compulsory retirement served on the appellant conforms with the provisions of section 1 (i) (a) of Public Officers [special provisions] Act Cap 381 Laws of the Federation 1980 so as to oust the jurisdiction of the court in keeping with section 3 of the said Act.”

HELD (Unanimously dismissing the appeal per **MUSDAPHER JSC**)

JURISDICTION - Ouster provisions

1. Where it applies, the tenor of the provisions of the Public Officers [Special Provisions] Act is a very drastic legislation. It enabled the appropriate authority to dismiss, terminate or retire, a public officer and went further to oust the jurisdiction of the court from adjudicating on a suit filed by the public officer.

It is as mentioned above a rather harsh provision but the courts, even if they did not like it, were duty bound to give effect to it if there is no escape route. It appears to me that the clear intention of the words “Or purported to have been done is that even when the reason for the appropriate authority’s action under the Act did not fall squarely within paragraphs (a) - (e) of subsection 1, if there is satisfactory evidence, that the termination of the appointment or removal from the surrounding circumstances that the action was intended to be done under the Act. In the instant case, it was clear that the appropriate authority, the Military Administration of Bayelsa State had issued a legal instrument compulsorily retiring, the appellant from the public service of Bayelsa State. (p. 374 C/E)

Public servants - Notice of dismissal

2. In my view the letter Exhibit B, could not be divorced from the Instrument signed by the appropriate authority. It is not the normal function of the Military Governor, or Military Administrator to convey to public servants the dismissal or other disciplinary action against them, but this is the normal functions of the civil service commission and heads of different parastatals. It is therefore of no moment, that the Instrument was not served on the appellant. Exhibit B which was served on him clearly show that the appellant was compulsorily retired under the provisions of the Act. (p. 375 A)

ADMINISTRATIVE LAW - Delegation of duty

3. There is no doubt that the appropriate authority may act or delegate to another person the duty to act on its behalf once it is shown that the action was done within the purview of the Act, that is enough. The appellant as per paragraph 6 of the affidavit he swore to during these proceedings on the 13/10/1998 clearly admitted that he heard on the radio that the first respondent herein announced over the radio that the appellant was retired from service. In my view, that is enough especially when coupled with the Instrument and the letter Exhibit B. (p. 375 C)

REPRESENTATION

Chief Kola Babalola for the Appellant.

H.P.M. Apeli Esq., D.C.L. Bayelsa State for the Respondents.

CASES REFERRED TO

WILSON VS. A.G. BENDEL STATE [1985] 1 NWLR (Pt 4) 572

EBOHON VS. A.G. OF EDO STATE [1997] 5 NWLR (Pt 505) 298

ONWUCHEYA VS. MILITARY ADMINISTRATOR OF IMO STATE [1997] 1 NWLR (Pt. 482) 429

GRAITE LTD V MIN. OF HOUSING [1958] 1 ALL E.L.R 625

OMO VS. J.S.C., DELTA STATE [2000] FWLR (Pt. 20) 676

RABIU VS. THE STATE [1980] 8 - 11 SC 130 at 149

ANISIMIWIC VS. FOREIGN COMPENSATION [1969] 2 AC 147

Nwosu v. Imo State E.S.A. (1990) 2 NWLR (Pt.135) 688

A-G BENDEL STATE V. AIDEYAN [1989] 4 NWLR (Pt. 118) 646

STATUTES REFERRED TO

Evidence Act, s. 148 (c)

Public Officers (Special Provisions) Act, cap 381, L.F.N., 1990, ss. 1 & 3

B

LEAD JUDGMENT BY MUSDAPHER JSC

This is an appeal against the judgment of the Court of Appeal Port Harcourt Division in appeal No. CA/PH/159/2000 delivered on 28/5/2002 in which the court dismissed the appeal of the appellant herein against the ruling on a preliminary objection against the appellant's suit on the grounds of jurisdiction. The trial court upheld the preliminary objection. The matter started this way: In the Federal High Court in the Port Harcourt Division and in suit No. FHC/PH/936/96, the appellant herein, as the plaintiff challenged his compulsory retirement from the services of Bayelsa State Government whereby in his writ he claimed as follows:-

"1. A declaration of this honourable court that the purported "Compulsory Retirement" of the plaintiff from the civil service of Bayelsa State in "public interest" without any prior query, indictment or known offence is null and void and of no effect whatsoever in that it contravenes the provisions of the 1979 Constitution of the Federal Republic of Nigeria.

2. An order of this honourable court compelling the defendants to reinstate the plaintiff back to his office as Accountant-General of Bayelsa State unconditionally.

3. An order of this Honourable Court restraining the defendants, their servants, agents, privies or anyone from implementing the said retirement order or interfering with the performance of the plaintiffs duties as the Accountant-General of Bayelsa State in any manner whatsoever."

An order of the transfer of the matter to the Bayelsa State High Court was issued by the Federal High Court Port Harcourt on the 18/11/1999. The suit then became Suit No. YHC/85/1999. On the 1/2/2000, the defendants filed a Notice of Preliminary Objection in these terms:-

"Take Notice that this Honourable Court will be moved on THURSDAY 10th day of February, 2000 at the hour of 9 o'clock in

the forenoon or so soon thereafter as Counsel on behalf of the Defendants/Applicants can be heard praying for an order;

(i) that this Honourable Court lacks jurisdiction to hear and determine this matter, and any

(ii) other order or orders that this Honourable Court may deem fit to make in the circumstance.” B

An affidavit was filed in support of the objection. The Affidavit contains documentary exhibits including an instrument signed by the Military Administrator of Bayelsa State compulsorily retiring the plaintiff from service. The plaintiff filed a counter affidavit containing other documents. The trial court heard arguments on the preliminary objection and on the 20th day of April, 2000 delivered its ruling upholding the preliminary objection and held that the court lacks the jurisdiction to entertain the plaintiffs claims because it’s “jurisdiction has been ousted by express provision of statute.” C

The plaintiff appealed to the Court of Appeal Port Harcourt Division against the ruling and in its judgment delivered the 28th day of May 2002, the plaintiffs appeal was dismissed and the decision of the trial court was affirmed. The plaintiff now referred to as the appellant has now further appealed to this court. The defendants shall hereinafter be referred to as the respondents. D

It was with the leave of the Court of Appeal, that the appellant filed his Notice of Appeal containing three grounds of appeal. In his brief for the appellant the learned counsel has identified and submitted two issues arising for the determination of the appeal. The issues are:- E

“1. Whether in considering the legality of the appellant’s compulsory retirement, the only letter of retirement served on him should not be construed or the said letter together with other documents not served on him should be considered together.” F

2. Whether the only letter of compulsory retirement served on the appellant conforms with the provisions of section 1 (i) (a) of Public Officers [special provisions] Act Cap 381 Laws of the Federation 1980 so as to oust the jurisdiction of the court in keeping with section 3 of the said Act.” G

Before discussing the issues submitted for the determination of the appeal it is convenient at this stage to set out the relevant background facts. The appellant joined the civil service of the Rivers State H

Government in September, 1974. When Bayelsa State was created in 1996, the appellant's services were transferred to the new Bayelsa State. The appellant remained in the civil service of the Bayelsa State Government until 9/10/1998 when the Military Administrator of Bayelsa State executed an instrument under the provisions of Public Officers (Special Provisions) Act, compulsorily retiring the appellant from the services of Bayelsa State Government. The appellant was informed by a letter and that after compulsorily retiring the appellant, his former position as the Accountant General Bayelsa State was filled by appointing another person to the position. Hence the appellant took the action and claimed the reliefs recited above.

The learned counsel for the appellant took the first issue. He submits that both issues identified revolve round the legality of the compulsory retirement of the appellant from the civil service of Bayelsa State. It is submitted that section 3(3) of the Public Officers (Special Provisions) Act cap 381 of the 1990 LFN did not oust the jurisdiction of the Court to deal with the claims of the appellant. It is submitted that the letter of compulsory retirement dated 9/10/1998 served on the appellant was the only one served on him and that the letter did not "refer to anybody as giving the directive nor did it refer to any document that could be credited to the appropriate authority" the Military Administrator. It is further submitted that the Instrument issued by the Military Administrator was not communicated to the appellant. On the face of the document communicated to the appellant there was nothing to indicate that the compulsory retirement emanated from the appropriate authority. See *WILSON VS. A.G. BENDEL STATE & OTHERS* [1985] 1 NWLR (Pt 4) 572. The lower courts were in error to have read the two documents together because (1) the letter written by the Civil Service Commission cannot on the face of it be based on the Instrument emanating from the Military Administrator. (2) the letter from the Civil Service Commission did not express any "directional authority" in that it did not state who directed the Civil Service Commission to issue the letter. It is further stated that up to now, the appellant has not been served with the Instrument issued by the "appropriate authority" the Military Administrator.

On the second issue, it is submitted that the letter served on the appellant and issued by the Civil Service Commission could not

be said to conform with section 1 (1) (a) of the Public Officers [Special Provisions] Act, so as to oust the jurisdiction of the court, in accordance with section 3 (3) of the said Act. It is submitted that the only letter communicated to the appellant was the one signed by one N. D. Igaran “for Permanent Secretary Civil Service Commission and it did not emanate from the “appropriate authority” Learned counsel referred to the WILSON’s case supra and EBOHON VS. A.G. OF EDO STATE [1997] 5 NWLR (Pt 505) 298. It is further submitted that statutes that oust the jurisdiction of the Court should be interpreted strictly see NWOSU’s case supra see also ONWUCHEYA VS. MILITARY ADMINISTRATOR OF IMO STATE [1997] 1 NWLR (Pt. 482) 429 GRAITE CO. LTD. VS. MINISTRY OF HOUSING AND LOCAL GOVERNMENT [1958] 1 ALL E.L.R 625. B C

The learned counsel for the respondents on the other hand has identified and submitted one issue for the determination of the appeal and it reads:- D

“Whether the letter of compulsory retirement [Exhibit B] served on the appellant should be construed together with a prior public Instrument terminating the appointment of the Appellant in considering the application of Section 1 - 4 of the Public Officers [Special Provisions] Act cap 381 otherwise known as Decree No. 17 of 1984 now repealed.” E

It is submitted that by a prior Instrument under the hand of the appropriate authority issued on 9/10/1998, the appellant was compulsorily retired from the service of Bayelsa State Government under the provisions of the Act referred to above. It was later on the same day, the Civil Service Commission wrote Exhibit B informing the appellant of his compulsory retirement in accordance with the provisions of “Decree No. 17 of 1984”. It is submitted that under the relevant and existing law, the action of the appropriate authority could not be questioned in any court since the jurisdiction of the court to delve into such matters had been ousted. It is further submitted that the appellant as per paragraph 6 of the statement of claim heard on the radio that the appropriate authority had compulsorily retired him from the public service. Learned counsel referred to and relied on the case of OMO VS. JUDICIAL SERVICE COMMITTEE, DELTA STATE [2000] FWLR (Pt. 20) 676. F G H

The learned counsel further submitted that by virtue of sec-

tions 7-10 and 148 (c) of the Evidence Act, the respondents followed due process in terminating the employment of the appellant. It is submitted that since the Instrument of compulsory retirement was issued by appropriate authority, no action can lay and there is nothing in the instrument on the appellant. It was enough that he
B heard its content on the radio.

Now, there is no doubt that “the appropriate authority” issued an instrument which was in these terms:-

“GOVERNMENT OF RIVERS STATE OF NIGERIA PUBLIC
C OFFICERS [SPECIAL PROVISIONS] ACT CAP. 381, L.FN. 1990
COMPULSORY RETIREMENT OF PUBLIC OFFICER In the exercise of the powers conferred upon me by Section 1 (I) (a) of the Public Officers [Special provision] Act, Cap 381, Laws of SCHEDULE the Federation of Nigeria 1990 and other powers enabling me
D in that behalf, I Lt. Col. EDOH OBI, Military Administrator of Bayelsa State, compulsorily retire with immediate effect from the civil service of Bayelsa State the person whose name is set out in subjoined schedule.

The compulsory retired officer is entitled to his retirement benefits.
E

Dated at Yenagoa the 9th day of October 1998.

Signed.

LT. COL. PAUL EDOH OBI MILITARY
ADMINISTRATOR BAYELSA STATE

F SCHEDULE

1. Mr. Omiete M Kalango [Accountant-General]”

It was as a result of above Instrument, that the Civil Service Commission issued the letter Exhibit B which reads thus:-

G “GOVERNMENT OF BAYELSA STATE OF NIGERIA CIVIL SERVICE COMMISSION

P.M.B. 15

YENAGOA.

Telegrams: BAYELSA COM

H Telephone:

Your reference:-

Our reference CCSC/PP/294/Vol.1/11.

9/10/1998

Mr. O. M. Kalango

[Accountant]

*u.f.s. The Permanent Secretary
Ministry of Finance and
Economic planning, Yenagoa
Compulsory Retirement*

*Government has considered your continued stay in the Civil
Service of Bayelsa State is against Public Interest.* B

*In view of the above, I am directed to inform you that you are
hereby compulsorily retired as Accountant General in accordance
with effect from 9th October, 1988. Accordingly, you are hereby
required to hand over all government properties in your possession C
to the permanent secretary Ministry of Finance and Economic Plan-
ning.*

Signed

N. D. IGIRAN

*For: Permanent Secretary D
Civil Service Commission."*

The appellant argued that the above was the only document communicated to him terminating his appointment by compulsorily retiring him from the public service. It is also submitted that the two documents i.e. the letter communicated to him and the Instrument issued by Military Administrator should not be read together to render the termination of the appointment under the provisions of the Public Officers (Special provisions) Act. E

Now, there is no doubt and it is settled law that the provisions of section 3 of the Public Officers [Special Provisions] Act ousted the jurisdiction of the courts in matters or things done or purported to be done under the Act by the appropriate authority or any other authority acting on the direction of the appropriate authority. In other words the provisions while subsisting created an ouster provision. G The attitude of courts to ouster of jurisdiction clauses has been well settled see PEARLMAN VS. GOVERNOR OF HARROW SCHOOL [1978] 3 W.L.R. 736. F

It is also settled law that statutes which overreach the citizen's right or access to court are subject to very strict interpretation H ANIAGOLU JSC said in the case of AFOLABI VS. GOVERNOR OF OYO STATE [1985] 2 NWLR (Pt 9) 734 at 753:

"Again the courts have adopted the principle that statutes that over reach on the right of the subjects whether as regards persons or

property are subject strict construction in the same way as penal Acts. Therefore it is recognized that such statutes should be interpreted, if possible, so as to respect such rights and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted. See DAVID VS. DE SILVA [1934] AC 106.”

B See also RABIU VS. THE STATE [1980] 8 - 11 SC 130 at 149, ANISIMIWIC VS. FOREIGN COMPENSATION [1969] 2 AC 147, at 170, NWOSU VS. IMO STATE ENVIRONMENTAL SANITATION AUTHORITY & OTHERS *supra*. ATTORNEY-GENERAL OF
C BENDEL STATE VS. AIDEYAN [1989] 4 NWLR (Pt. 118) 646 at 674.

Now, ***where it applies, the tenor of the provisions of the Public Officers [Special Provisions] Act is a very drastic legislation. It enabled the appropriate authority to dismiss, terminate or retire, a public officer and went further to oust the jurisdiction of the court from adjudicating on a suit filed by the public officer.*** Section 3 of the Act provided:-

*“No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or
E purported to be done by any person under this Act and if any such proceedings have been or are instituted before on or after the making of this Act, the proceedings shall abate, be discharged and void.”*

***It is as mentioned above a rather harsh provision but the courts, even if they did not like it, were duty bound to give effect to it if there is no escape route. It appears to me that the clear intention of the words “Or purported to have been done is that even when the reason for the appropriate authority’s action under the Act did not fall squarely within
F paragraphs (a) - (e) of subsection 1, if there is satisfactory evidence, that the termination of the appointment or removal from the surrounding circumstances that the action was intended to be done under the Act. In the instant case, it was clear that the appropriate authority, the Military Administra-
G tion of Bayelsa State had issued a legal instrument compulsorily retiring, the appellant from the public service of Bayelsa State.*** The Instrument was given on the 9/10/1998. It was on the same day, the Civil Service Commission communicated Exhibit B to the appellant informing him, that he was ‘compulsorily retired in ac-

cordance with Decree No. 17 of 1984" ***In my view the letter Exhibit B, could not be divorced from the Instrument signed by the appropriate authority. It is not the normal function of the Military Governor, or Military Administrator to convey to public servants the dismissal or other disciplinary action against them, but this is the normal functions of the civil service commission and heads of different parastatals. It is therefore of no moment, that the Instrument was not served on the appellant. Exhibit B which was served on him clearly show that the appellant was compulsorily retired under the provisions of the Act.***

There is no doubt that the appropriate authority may act or delegate to another person the duty to act on its behalf once it is shown that the action was done within the purview of the Act, that is enough. The appellant as per paragraph 6 of the affidavit he swore to during these proceedings on the 13/10/1998 clearly admitted that he heard on the radio that the first respondent herein announced over the radio that the appellant was retired from service. In my view, that is enough especially when coupled with the Instrument and the letter Exhibit B.

This appeal is clearly without any merit and is dismissed by me. I affirm the decisions of the courts below and the respondents are entitled to costs assessed at N50,000.00.

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Musdapher JSC. I agree with him that (his appeal has no merit. I would also dismiss it. I subscribe to the order on costs made in the lead judgment.

OGBUAGU JSC

I have had the privilege of reading in advance, the Lead judgment of my learned brother, Musdapher, JSC. I agree with his reasoning and conclusion that this appeal, lacks merit. However, by way of emphasis, I will make my own brief contribution.

In my respectful view, the issue in this appeal, is the legality or otherwise of the compulsory retirement of the Appellant by the then

Military Administrator of Bayelsa State in exercise of the powers conferred upon him by Section 1(a) of the Public Officers (Special Provisions) Act, Cap 381, Laws of the Federation of Nigeria, 1990 (hereinafter called “the Act”) and whether the jurisdiction of the courts, is lawfully ousted by the said Act.

B The Appellant admits that he is/was a Civil Servant or a Public Officer. For the avoidance of any doubt, Section 3(3) of the Act, provides as follows:

C *“No civil proceedings shall lie or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Act and if any such proceedings have been or are instituted before, on or after the making of this Act, (4) provides: “Chapter iv of the Constitution of the Federal Republic of Nigeria is hereby suspended for the purposes of*
D *this Act and the question whether any provision thereof has been, is being or would be contravened by anything done or purported or proposed to be done in pursuance of this Act shall not be inquired into in any Court of Law”*

[the underlining mine]

E Decree No. 17 of 1984 which is pertinent in this matter, has been pronounced upon by the two Appellate Courts of this country in a number of decided cases including Nwosu v. Imo State Environmental Sanitation Authority & 4 Ors. (1990) 2 NWLR (Pt.135) 688 @ 695 (it is also reported in (1990) 4 SCNJ. 97 @ 112) also cited
F and relied on by the parties in their respective Brief and also referred to by the two lower courts, The Military Governor of Kwara State & 2 ors. v. Afolabi (1991) 6 NWLR (Pt.196) 212 @ 224 C.A.; Oyebamiji v. State Civil Service Commission Oyo State & 2 ors. (1997) 5 NWLR (Pt.503) 113 @ 119 C.A.; Lt. Commander Ebohor (Rtd.) v. Attorney-General, Edo State & 2 Ors. (1997) 5 NWLR (Pt.505) 298 @ 310; (1997) 5 SCNJ. 163; Omo v. Judicial Service Committee, Delta State & ors. (2000) 7 SCNJ. 17; (2000) FWLR (Pt.20) 676 and NEPA v. J.A. Osesanya & ors. (2004) 5 NWLR (Pt.867) 601 @
G 620,624; (2004) 1 SCNJ. 226 @ 235. 237.
H

In Nwosu's case (supra), it was held, inter alia, as follows:

“Where an objection is raised to the jurisdiction of the Trial Court to try an action, the Court at that stage has to inquire whether in fact its jurisdiction has been ousted. In doing so, the Court must be

guided by the principle that every Superior Court of Record guards its jurisdiction jealously.”

On interpretation of statute ousting or restricting the jurisdiction of the Court, it was held as follows:

“While a person’s access to have his civil right adjudicated upon by the Court may be restricted or ousted by statute, the language of such a statute must be construed strictly. But once, with such an approach, it is clear that the ouster or restriction of the jurisdiction was intended, and that, from the facts of the particular case, it is squarely within the 4 corners of the statute, the Court has no alternative but to hold that its jurisdiction has been ousted”.

It held further as follows:

“In the interpretation of a statute ousting the Court’s jurisdiction in respect of a particular cause no Court has the power to so inquire why its jurisdiction had been ousted. All it could inquire into is whether or not on the facts and circumstances of the particular case, its jurisdiction had in fact been ousted or restricted”.

In the case of Ajayi v. The Military Administrator of Ondo State & Ors. (1997) 5 NWLR (Pt.504) 237 @ 279 C.A. also referred to by the trial court, it was held inter alia, as follows:

“The combined effect of Sections 1, 3(3), 4(1) (a) and 4(2) (a) of the public officers Special Provisions Decree No. 17 of 1984 operates to deprive and oust the jurisdiction of the Court to entertain the Appellant’s complaint against his retirement or dismissal from public service once the retirement or dismissal was done by the appropriate authority under the decree. In the instant case since the dismissal and or the retirement of the Appellant were acts done by the appropriate authority under the powers vested on him by the Decree, the Court has no jurisdiction to entertain the appeal”.

Finally, in Ebohon’s case (supra), this Court held, inter alia, as follows:

“Under the Public Officers (Special Provisions) Decree No. 17 of 1984, the Military governor of a State, or any person authorized by him, has power to dismiss or remove a public officer from his office summarily or retire him from public service compulsorily. However, unless it is established that the dismissal is by the appropriate authority, the State will be unable to take cover” under the Decree”,
[the underlining mine]

It is not in doubt as held by the two lower courts, that the Act under Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended), is an existing law. See the cases of Uwaifo v. Attorney-General of Bendel State (1982) 7 S.C. 124 and The Attorney-General of Lagos State v. The Hon. Justice J.J. Dosunmu (1989) 2 NWLR (Pt. III) 552 @ 601. The learned trial Judge at pages 104 and 105 of the Records, concluded, as follows:

"The language or words of the statute under consideration - The public officers (Special Provisions) Act are clear and explicit. It is not therefore the duty of the Court to interpret or to give other meanings to the said provisions. The National Assembly has not modified the Sections complained of in the Public Officers (Special Provisions) Act, From the authorities so far reviewed both of the Supreme Court and the Court of Appeal, I hold the view that this Court lacks jurisdiction to entertain the Plaintiff's Claim because its jurisdiction has been ousted by express provision of statute. The Plaintiff's claim and the entire suit is hereby struck out".

At pages 178 and 179 of the Records, the court below - per Pats-Acholonu, JCA (as he then was and of blessed memory) stated inter alia, as follows:

"Reading the document from the Military Administrator, terminating the appointment of the Accountant-general, and the letter from the Civil Service Commission, it cannot be said that the appellant or anyone for that matter does not understand that the termination was made by the appropriate Authority, the Military Administrator. Of course, it is common knowledge that courts in a bid to curb the ruthlessness that characterized some inhuman and unedifying provisions of debilitating decrees made by erstwhile Military regimes, had tended to use all sorts of subtleties to either evade or get round the strictures of this offending laws. It is to be regretted that the regimes that came to power with the avowed expressions of removing dirt and other seeming oddities from society were so inebriated with power or consumed with their own positions that they strove to make laws which tended to obliterate or destroy the fountain of humanity-nay fundamental rights of the people and engaged in emasculating the whole population and bestriding the nation state like a colossus.

Nevertheless, having said that, the court cannot be oblivious of the intention of Decree No. 17 of 1984 and in an appropriate case

may construe the provisions of the law to be in consonance with the tenor and intendment of the Act. The document from the Military Administrator shall be read together with the letter from the Civil Service Commission. I fail to find it difficult to hold that in stricto sensu it was not the Military Administrator who terminated the appellant from his post. By so holding therefore, it is my view that the termination was made by the appropriate authority and the court of first instance was right in rejecting assumption of jurisdiction.

In the circumstance, the appeal fails and it is hereby dismissed. The Judgment of the court below is affirmed. I make no order as to costs”.

[the underlining mine]

I am unable to and indeed, cannot fault the above. In respect of Issue 1 of the Appellant and the sole issue of the Respondent, it is submitted at page 5, paragraphs 5.1 and 5.2 of the Appellant’s Brief, thus:

“..... that the Law requires that it must be clear on the FACE OF THE DOCUMENT which authority ordered the compulsory retirement of the Appellant if an advantage of Section 3(3) of the Decree is to be taken. See the case of Wilson vs. A.G. Bende (sic) & Others 1985 1 NWLR (Part 4) page 572”.

The above case dealt with who is an “appropriate authority” who/that could effect, the dismissal or termination as the case may be, of the Public Officer so as to oust the jurisdiction of the High Court by virtue of Section 3(3) of the Act. It is forcefully submitted or contended at page 7 paragraphs 6.1 (a), 6.2, 6.3 and 6.4 of the Appellant’s Brief as follows:

“6.1(a) Up till now no one has served the Instrument allegedly made by the Military Administrator on the Appellant. There is no where in the pleadings and supporting affidavits of the Respondent where it is contended that the instrument has been served on the appellant.

6.2 It is our submission that a statutory instrument MUST be served on the victim or at least the existence of the instrument must be conveyed to him at the inception of the cause of action i.e. compulsory Retirement of the Appellant.

6.3 From the foregoing it is clear that the two documents cannot be read together as held by the Court of Appeal at page 179

lines 2 - 3 as follows:

“The document from the Military Administrator shall be read together with the letter from the Civil Service Commission”.

6.4 It is our submission that the first issue should be resolved in favour of the appellant that it is only the document (letter of Retirement) that was **ACTUALLY SERVED** on the appellant and no other document that should be construed in considering the legality of the Appellant’s compulsory retirement in accordance with the provisions of Decree 17 of 1984”.

C Now, in the case of NEPA v. Osesanya & ors. (supra), this Court - per Iguh, JSC, held inter alia, that it is not mandatory that the letter of termination, must make reference to the “appropriate authority” and its source of authority, if there is other evidence in proof of that fact.

D First, at page 237, the case of Nwosu v. Imo State Environmental Sanitation Authority & ors. (supra) was referred to and it was held inter alia, that what is decisive, is that there must be evidence to satisfy the court, that the decision to terminate or dismiss the Public Officer, was taken by the “appropriate authority” or that the said letter, was signed by the “appropriate authority” or by a person duly authorized by him. The case of Federal Capital Development Authority v. Side (1994) 3 NWLR (Pt.332) 286 @ 287; (1994) 3 SCNJ. 71 was referred to the effect, that the law, therefore, is not that the letter of termination or dismissal, must show ex facie, (as is the contention of the Appellant in this appeal) that it was issued pursuant to Decree No. 17 of 1984.

G The rationale behind the decision of whether a Public Officer, was dismissed or terminated on the authority or directive of the “appropriate authority” and that the court must go beyond the four walls of the letter of dismissal or termination, was stated by His Lordship Iguh, JSC, therein. It was further held that once the above fact, is established, it would not matter, how seemingly poor the draftsmanship of the letter of dismissal, retirement or termination is, or H how inelegantly or negligently, it had been drafted, that the court, ought to give effect to the same.

In the instant case leading to this appeal, Exh. “B” - the said letter, is headed “GOVERNMENT OF BAYELSA STATE OF NIGERIA” and it was/is captioned “COMPULSORY RETIREMENT”. It reads

in part,

“Government” has considered that your continued stay in the Civil Service of Bayelsa State is against the public interest.

In view of the above, I am directed to inform you that you are hereby compulsorily retired as Accountant General in accordance with Decree No. 17 of 1984.....”

The Schedule to Exh.”A”, clearly shows that it was directed to the Appellant. The said letter, for the avoidance of doubt, was copied to The Permanent Secretary, Ministry of Finance & Economic Planning, Yenegoa. The Appellant, has not challenged and cannot challenge, the competence of the Federal Military Government, to promulgate the said Decree. See the cases of Uwaifo v. Attorney-General of Bendel State (supra) and Din v. Attorney-General of the Federation (1988) NWLR (Pt.87) 147 @ 171: (1988) 9 SCNJ. 14. His complaint, is that he was not served with Exh.”A”. He only received Exh.”B”. He did not in his Statement of Claim, challenge the authenticity of Exh.B. His tenuous argument, is that he was not served with Exh.A. In my humble and respectful view, a prudent man and I expect that the Appellant is, will insist (if he was in any doubt) on finding out from Mr. Igiran who signed Exh.”B” for the Permanent-Secretary, Civil Service Commission, for evidence of the said direction stated in the said letter, especially as he was required, to hand over all Government properties in his possession to another officer. I am inclined to hold that the suit was an after-thought and a subterfuge, especially, as he admitted that he heard from the Radio, that he had, voluntarily, retired from service.

Certainly, the said Military Administrator, was the appropriate authority in accordance with Section 4(2) of Decree No. 17, 1984. I so hold. See also the cases of Omo v. Judicial Service Committee, Delta State @ 692-693 of the FWLR and Ebohon v. Attorney-General, Edo State (supra).

In respect of my answer to the said Issue 1, the Appellant and the sole issue of the Respondent, I rest the same on the case of NEPA v. Osesanya (supra),

In concluding this Judgment, I note that there are concurring findings of facts by the two lower courts. The attitude of this Court, is not to disturb or interfere with such findings which are not perverse. See the cases of Uzoechi v. Onyenwe (1999) 1 SCNJ. 34 @ 39:

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Prince Sosanya v. Engr. Onadeko & 5 ors. (2005) 2 SCNJ. 103;
(2005) 2 S.C. (Pt.II) 13 and Chief Durosaro v. Ayorinde (2005) 3
SCNJ. 8: (2005) 3-4 S.C. 14.

It is from the foregoing and the more detailed Judgment of my learned brother, Musdapher, JSC, that I too, dismiss the appeal. I
B hereby and accordingly affirm, the decision of the court below affirming the Ruling of the learned trial Judge.

ADEREMI JSC

C The appeal here is against the judgment of the Court of Appeal (Port Harcourt Division) in appeal No.CA/PH/159/2000 delivered on the 28th May 2002 wherein the appeal against the ruling of the trial court on a preliminary objection against the plaintiff/appellant's suit on the ground of jurisdiction was dismissed. The plaintiff/appel-
D lant had in suit No. FHC/PH/936/96; OMIETE MICHAEL KALANGO VS. THE GOVERNOR OF BAYELSA STATE & ORS., claimed before the Federal High Court the following reliefs:

E *“(1) A declaration of this Honourable Court that the purported the “compulsory Retirement “of the plaintiff from the Civil service of Bayelsa State In “Public interest” without any prior query, indictment or known offence is null and void and of no effect whatsoever in that it contravenes the provisions of the 1979 Constitution of the Federal Republic of Nigeria.*

F *2. An order of this Honourable Court compelling the defendants to reinstate the plaintiff back to his office as Accountant - General of Bayelsa State unconditionally.*

G *3. An order of this Honourable Court restraining the defendants, their servants, agent, privies or anyone from implementing the said retirement order or interfering with the performance of the plaintiff's duties as the Accountant - General of Bayelsa State in any manner whatsoever.”*

H The counsel for the respondents who were the defendant before the trial court had on behalf of his clients filed a Notice of Preliminary objection challenging the jurisdiction of the trial court to hear and determine the suit. Sequel to the taking of arguments of counsel on the preliminary objection, in a reserved judgment delivered, the preliminary objection was upheld.

Dissatisfied with the said ruling, the plaintiff/appellant had ap-

pealed to the court below which in its judgment delivered on the 28th of May 2002, upheld the decision of the trial court while consequently dismissing the appeal brought before it.

The plaintiff/appellant had come to this court, with the leave of the court below, appealing against that ruling. Arguments for and against this appeal are contained in the respective brief of arguments filed by the appellant and the respondents. The appellant identified two issues for determination in this appeal and they are as follows

“(1) *Whether in considering the legality of the Appellant’s compulsory retirement, the only letter of retirement served on him should not be construed or the said letter together with other documents not served on him should be considered together.*

(2) *Whether the only letter of compulsory Retirement served on the Appellant conforms with the provisions of Section 1(i) (a) of the Public Officers (special Provisions) Act Cap 381 Laws of the Federation 1990 so as to oust the jurisdiction of the Court in keeping with Section 3 of the said Act.”*

The respondents, however raised only one issue for determination by this court, and as contained in their brief, it is as follows:

“*Whether the letter of compulsory retirement (Exhibit B) served on the appellant should be construed together with a prior public instrument terminating the appointment of the appellant in considering the application of Sections 1- 4 of the Public Officers (Special Provisions) Act Cap 381 otherwise known as Decree No 17 of 1984 now repealed.*”

I have considered all the arguments canvassed by both parties on the issues raised. It is beyond argument that the instrument for compulsory retirement was issued by the appropriate authority, in this case the Military Administrator of Bayelsa State. The schedule made pursuant to that instrument specifically referred to the appellant. The letter of compulsory retirement dated 9th October 1998 was addressed to the appellant and it has not been denied that same was served on the appellant, The dismissal was made pursuant to the provisions of Section 3 of the Public Officers (Special Provisions) Decree No 17 of 1984 now Act; which provides:

“*No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Act and if any such*

proceedings have been or are instituted before or after the making of this Act, the proceedings shall abate, be discharged and void."

This provision forbade any court of law to entertain any suit relating to compulsory retirement during the military regime. Where the provisions of any decree, act or law ousts the jurisdiction of a court from determining a matter the court does not easily chicken out and surrender. It must examine critically the language of the statute ousting its jurisdiction to see whether the wordings are clear and unambiguous and whether in truth and in law, its jurisdiction has been ousted thereby ensuring that access to the court is not taken away. See ADEYEMI & ORS VS OPEYORI (1976) 9 &10 S.C.. 31. I do appreciate that the reliefs claimed are declaratory in nature. But the exercise of a jurisdiction by a court of law to make a declaratory relief is not an exception to the general principle that where the Constitution or the provision of an Act has declared that the courts cannot exercise jurisdiction any provision to the contrary is null and void and of no effect. See UTHI VS. ONOYIVWE (1991) 1 NWLR (PT.166) 166.

I have had a careful examination of the wordings of Section 3 of aforesaid and I have no doubt that it clearly ousts the jurisdiction of the court and that the provisions of same have been strictly complied with.

For what I have been saying but most especially for the detailed reasoning and conclusion reached by my learned brother, Musdapher, JSC in the leading judgment, with which I am in full agreement, I also adjudge this appeal to be unmeritorious. It is also dismissed by me. I affirm the decisions of the two lower courts while I abide with all other consequential orders contained in the judgment including the order as to costs.

MUNTAKA-COOMASSIE JSC

I have read in draft the judgment of my learned brother Musdapher JSC, and I agree with his Lordship that the appeal lacks merit and it should be dismissed. Based on his reasoning and conclusion which I respectfully adopt as mine, I too dismiss this appeal and abide by the consequential orders made therein including orders as to costs.