

**SUPREME COURT OF NIGERIA**  
10TH JULY, 2009. SC. 146/2003  
**CORAM:- N. TOBI, A. M. MUKHTAR , I. F. OGBUAGU,**  
**J. O. OGBE, J. A. FABIYI, JJSC**

ALHAJI IBRAHIM ABDULLAHI ..... APPELLANT  
AND

1. THE MILITARY ADMINISTRATOR KADUNA STATE
2. THE GOVERNMENT OF KADUNA STATE
3. THE HONOURABLE ATTORNEY-GENERAL
4. THE CIVIL SERVICE COMMISSION ..... RESPONDENTS
5. THE MINISTRY OF WATER RESOURCES
6. AHMED SULAIMAN

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MASTER & SERVANT - Letter of retirement - Basis of - Pension Act  
- The circular referred to by the letter made reference to the Act -  
Court of Appeal was wrong therefore to hold that the letter did not  
refer to the Act (H1)

EVIDENCE - Relevancy - Exhibit 17 - It alleges that the retirement  
was on the basis of Pension Act - Which allegation is denied by re-  
spondents - So Court of Appeal was wrong to hold that it is irrel-  
evant (H2)

EVIDENCE - Documents - Exhibit 17 - Execution by proper author-  
ity - It was made by D. G. on behalf of the Commissioner - Who is  
empowered to appoint and discipline civil servants - So it did ema-  
nate from constituted authority (H3)

EVIDENCE - Documents - Exhibit 17 - Probative value - Though  
the letter predated the serving of Civil Service Commission's letter -  
That fact does not reduce it's evidential or probative content (H4)

ADMINISTRATIVE LAW - Kaduna State Civil Service - Retirement -  
Proper age - Under s. 9 (1) of Pensions and Gratuities Law - It is sixty  
years - As the use of the word 'shall' therein is mandatory (H5)

ADMINISTRATIVE LAW - Kaduna State Civil Service - Retirements -  
Applicability of Civil Service (Reorganisation) Act - It is inapplicable

because it is an Act - As such it applies only to the Federal Civil Service (H6)

ADMINISTRATIVE LAW - Powers - Civil Service (Reorganisation) Act, s. 5 - Scope of - Though it empowers Ministries to appoint, dismiss and discipline persons - That power does not extend to retirement of persons (H7)

ADMINISTRATIVE LAW - Kaduna State Civil Service - Compulsory Retirement - Persons under 60 years - Propriety - Under s. 9 (2) of Pensions & Gratuities Law 1991 - The Commission may so retire persons - Who are above 45 years (H8)

### ***FACTS***

The plaintiff/appellant sued the defendants/respondents challenging his retirement from the Kaduna State Civil Service before he had attained the age of 60 years. It was in evidence that appellant was retired from service on July 8, 1998, by virtue of Implementation Guidelines on the Civil Service Reforms of 1988 and Establishments Circular EBD 111996 No. S/PEN/24/1/320 of 1996 made pursuant to Civil Service (Re-organisation) Decree 1988. The case of the respondents was that by virtue of the foregoing instruments, a civil servant, like the appellant was due to retire from civil service upon having served for 35 years or upon attaining the age of 60 years, whichever is earlier. Appellant's said retirement was communicated to him vide a letter written by the Director General on behalf of the Commissioner for Water Resources and Rural Development to the appellant- Exhibit 17.

After hearing, the trial court found for the respondents, dismissing the suit of the appellant. Appellant's appeal to the Court of Appeal was also dismissed. Still dissatisfied, appellant has brought this further and final appeal to the Supreme Court. Appellant contends, inter alia, that the only law under which a public officer could be retired was the Pension Act which provided for retirement upon attaining the age of 60 years and no more.

### ***ISSUES FOR DETERMINATION***

*"1. Whether the learned lower court Justice was right when he held that; "The Civil Service Commission's letter communicating*

*Appellant's Retirement to him, exhibit 1A16 did not state that appellant was retired on the provisions of Pension Act Cap. 346 rather it categorically stated that the Retirement was in accordance with the provision of Implementation Guidelines on the Civil Service Reform of 1988 and Establishments Circular ED.1/1996, No.S/PEN.24/1/320 of 14th January, 1996.*

2. Whether the learned Justice was right when he held that: "An action taken or an operation carried out under enactment subsists or is unaffected after the legislation is repealed by dint of Section 6 (1) (b) of the Interpretation Act, Cap 192 of the Laws of the Federation of Nigeria, 1990. It survives in spite of the repeal of the Law under which the action was taken. Section 6 (1) (b) of the said Act Cap. 192 reads as follows:

6 (1) The repeal of an enactment shall not:-

(a) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(b) Affect the previous operation of the enactment or anything duly done or suffered under the enactment."

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

***Letter of retirement - Basis of - Pension Act***

1. Dealing with the issue, the Court of Appeal said at pages 192 and 193 of the Record:

"But if I must answer the question, the respondents did not state in the correspondence conveying appellant's retirement to him that he was retired on the strength of the provisions of section 4 (1) of the Pension Act, Cap. 346 of the Laws of the Federation of Nigeria, 1990. The Civil Service Commission's letter communicating Appellant's retirement to him, exhibit 1A16 did not state the appellant was retired on the provisions of the Pension Act Cap. 346 Rather it categorically stated that the retirement was in accordance with the provisions of Implementation Guidelines on the Civil Service Reform of 1988 and Establishments Circular ED.1/1996, No.S/PEN.24/1/320 of 14th January 1996"

This conclusion, with the greatest respect, is not vindicated by Circular No.ED.1/1996 written by Dr. Saidu Goje, Director General (Establishments). The above is a general circular. It clearly made reference to the Pensions Act. (p. 1778 A/H)

***EVIDENCE - Relevancy - Exhibit 17***

2. The Court of Appeal, reacting to the above letter, said at page 195 of the Record: “*Exhibit 17, a letter written by the Director General on behalf of Commissioner for Water Resources and Rural Development with reference No. WRRD/PER,504,T/VI/15 dated 24th April, 1998, making reference to Pension Act is irrelevant ....*” I do not see any irrelevance in a letter which relies on the Pensions Act as basis for the retirement of the appellant, *a fortiori*, when the respondents deny that the appellant was retired on the basis of the Pensions Act. Can there be a more relevant situation than this? Are the Circular to the entire Civil Service and the letter to the appellant not admission against interest?

I would like to think so, and I think I am correct in so thinking.  
(p. 1779 D/H)

D

***Documents - Exhibit 17 - Execution by proper authority***

3. I do not agree with the Court of Appeal that the Director General was “an exuberant officer and should or ought to be treated with contempt it deserved” There is no such evidence before the trial court and I will certainly shy away from that conclusion. Exhibit 17 was written on behalf of the Commissioner for Water Resources and Rural Development. In my humble view, the letter duly emanated from constituted authority. While I agree with the Court of Appeal, that the Director General has no constitutional power to retire the appellant, I must say that by section 5 of the Implementation Guidelines the Civil Service Reforms of 1988 (Re-organisation) Act, Cap 55, Laws of the Federation of Nigeria, 1990, the Commissioner was vested with the power to appoint, dismiss and take disciplinary measures against civil servants. Whether the above powers cover retirement is a different matter altogether. I will not go there. (p. 1780 E)

***Documents - Exhibit 17 - Probative value***

4. One other reason why the Court of Appeal did not think much about the letter is because it pre-dated serving the Civil Service Commission’s letter, exhibit 1A16 on the appellant on 23rd July, 1998. While I agree that it is the fact, I do not see how it reduces the evidential or probative content of the letter. I think the appellant has the right to use the letter in a number of ways to contradict the respon-

dents, particularly as Exhibit 1A16 of 23rd July 1998 did not make reference to the letter by nullifying it. (p. 1780 H)

***Kaduna State Civil Service - Retirement - Proper age***

5. The applicable statute, in my view, is the Pensions and Gratuities Law, Cap 111, Laws of Kaduna State 1991. Section 9 (1) of the Law provides: *“Every officer shall retire upon attaining the age of sixty years, so however that officers retiring on or before 31st March, 1977, the compulsory retiring age shall be fifty-five years.”* B

As it is, the subsection is mandatory, imperative and peremptory as it provides for the word of command, “shall”. In the context of section 9 (1) it connotes “must” as it is inconsistent with exercise of discretion. While the word may at times be construed as conveying a permissive or directory meaning of “may” it is my view that it maintains its usual meaning of command or compulsion in section 9(1). D

Interpreting the word in its mandatory, imperative and peremptory content means that an officer, including the appellant, must retire from the service upon attaining the age of sixty years. That is the first leg of the subsection. The second leg does not apply to the appellant. (p. 1781 B) E

***State Civil Service - Retirements - Applicability of the Act***

6. Appellant submitted that the Act was repealed with effect from 1st April, 1995. What I want to take now is whether the Civil Service (Reorganisation) Act, Cap. 55 Laws of the Federation of Nigeria, 1990, even if not repealed, is applicable in the case. I say this because the statute, being an Act should apply only to the Federal Civil Service and accordingly in respect of Federal Civil Servants. Section IV of the Schedule to the General Guidelines for the Implementation of the Civil Service Reforms, does not pretend to apply to the States, although section 3(2) of the Act seems to involve the States. It does not appear that the provision is in conformity with the 1979 Constitution which was in force at the material time. (p. 1782 B) F

***Civil Service (Reorganisation) Act, s. 5 - Scope of***

7. Assuming that the Act applies, does it cover retirement of civil servants? Appellant argued that by section 5, only the Ministries in the Civil Service have the power to appoint, dismiss and discipline H

persons. I do not think the section covers the situation in this appeal, which is retirement. The section does not provide for retirement. Retirement is certainly different from appointment, dismissal or disciplinary control as provided in section 5 of the Act. (p. 1782 F)

**B *Compulsory Retirement - Persons under 60 years - Propriety***

8. In the course of preparing this judgment, one of my brothers in the Panel called my attention to section 9 (2) of the Pensions and Gratuities Law, Cap 111, Laws of Kaduna State, 1991. The subsection reads:

C *“The Commission may require an officer to retire from the service at any time after he has attained the age of 45 subject to three months notice in writing of such requirement being given.”*

The subsection clearly stops or prohibits any possible fortunes D of the appellant in this appeal. Although the subsection does not specifically provide for the alternative thirty five years service, the totality of the provision is consistent with the retirement of the appellant. There is no dispute that he was more than forty-five years when he was retired. In my view, the appellant’s retirement was in accordance with section 9 (2) of the Pensions and Gratuities Law, 1991 of E Kaduna State, and I so hold. (p. 1783 B/E)

**NOTABLE POINT OF INTEREST**

**F *OGBUAGU JSC***

1. *Claiming a right under wrong law does not defeat claim*  
In his Brief, he also relied on Section 4 of the Pensions Act Cap. 346 Laws of the Federal Republic of Nigeria, 1990. The above Decree and Act, are Federal provisions and not State Laws. On these grounds, G it is my respectful view that the action itself, is incompetent and should and ought to have been struck out by either of the two lower courts. However, since it is settled that claiming a right under a wrong law, does not defeat the claim. I will also deal with the appeal, on its merits. (p. 1787 F)

H

**REPRESENTATION**

Alhaji Ibrahim Abdullahi in person

Paul C. Ananaba, Esqr., for the Respondents with him, S. N. Mbaezue, Esqr.

**CASES REFERRED TO**

- Eduok v Nwoko (2003) 28 W.R.N. 85 at 105  
Falobi v. Falobi (1976) 9 & 10 S.C. 1 @ 13-14  
Ogidi v The State (2005) 5 NWLR (Pt. 918) 268  
Captain Amadi v NNPC (2000) 10 NWLR (Pt.674) 76 B  
Justice Atake v. Chief Afejuku (1994) 12 SCNJ. 8, 1 @ 11  
UBA v. G.M.B.H (1989) 3 NWLR (Pt. 110) 374 at 391  
Obatoyinbo v Oshatoba (1996) 5 NWLR (Pt. 450) 531 at 548  
Afolabi v Government of Oyo State (1985) 2 NWLR (Pt.9) 734 C  
Chief Gani Fawehinmi v. NBA No. 1 (1989) 2 NWLR (Pt.105) 494  
General Bamaïyi v A-G Federation (2001) 12 NWLR (Pt.727) 468

**STATUTES REFERRED TO**

- Civil Service (Re-organisation) Act, cap 55, L.F. N. 1990 D  
Interpretation Act, Cap 192, L. F. N., 1990, s. 9  
Pension Act, cap 346, L.F. N., 1990, s. 4  
Pensions and Gratuities Law of Kaduna State, 1991, s. 9

**LEAD JUDGMENT BY TOBI JSC**

The appellant was born in 1943. He was appointed as a painter and decorator in the former Ministry of Works and Water Resources in the then Northern Region and later known as the Northern States of Nigeria. The appointment took effect from 5th December, 1962. F  
The appellant was later transferred to the North Central State and finally to Kaduna State.

Appellant, who rose to the rank of Chief Works Superintendent, Ministry of Water Resources and Rural Development, Kaduna State was retired from the service on 8th July, 1998 by virtue of G Implementation Guidelines on the Civil Service Reforms of 1988 and Establishments Circular E BD 111996 No. S/PEN/24/1/320 of 12th January 1996 made pursuant to Civil Service (Re-organization) Decree 1988.

The appellant, aggrieved by the action of the respondents, sued H by way of originating summons on 6th October, 1998 after entering into several correspondences with the respondents. The reaction of the respondents was that of a rebuff. He asked for the following reliefs:

“(a) A Declaration that the purported retirement of the plaintiff by the 1st to 5th defendants is contrary to Decree 102 of 1979 and is illegal, null and void.

B (b) A Declaration that the stoppage of the plaintiffs salary and emoluments with effect from March 31st 1998 is illegal, null and void.

(c) A Declaration that the breaking into the plaintiff's office and the removal of his items there from by the 6th defendant on April 29th, 1998 is illegal.

C (d) A Declaration that the plaintiff is entitled to consideration for and promotion to Grade level 16 by the 1st to 5th defendants.

IN THE ALTERNATIVE: That the emoluments and benefits accruing to Grade Level 16 Officer enure to the plaintiff and same be made and paid personally to him.

D (e) An order of immediate reinstatement of the plaintiff to his office by the defendants.

(f) An order that all emoluments of the plaintiff withheld since March 31st 1998 till his reinstatement in office be paid to him.

E (g) An order that the 4th defendant consider and effect the overdue promotion of the plaintiff to a Grade Level 16 officer with its attendant emoluments or make payment of same personally to him.

(h) Damages in the sum of N50,000.00 against the 6th defendant for breaking into the plaintiff's office.

F (i) The return of the items removed from the plaintiff's office by the 6th defendant or damages in the sum of N10,000,00 being cost of replacing same.

(j) For the determination of the following questions:

G (i) Whether Decree 102 of 1979 makes it mandatory for civil servants as the plaintiff to retire from service after serving for 35 years only?

(ii) Whether Decree 102 of 1979 precludes the plaintiff from remaining in service after serving for 35 years and before attaining 60 years of age?

H (iii) Whether the plaintiff can be retired from service on the basis of Implementation Guidelines on the Civil Service Reforms of 1988, which are pursuant to and founded upon the Civil Service (Re-organization) Decree 1988, which was repealed on 1st April, 1995?



(iv) *Whether the defendants can stop the payment of the plaintiffs salary and emoluments and break into his office without lawful orders and without any authority whatsoever?*

(v) *Whether the plaintiff was entitled to promotion in 1991 based on the Implementation Guidelines on the Civil Service Reforms and thereafter entitled to promotion in 1998 on the 3-year rule in operation before the said Guidelines came into effect?"* B

The learned trial Judge dismissed the suit of the appellant. His appeal to the Court of Appeal was also dismissed. He has come to this court.

Briefs were filed and duly exchanged. Appellant also filed a reply brief. The appellant formulated the following issues for determination:

*"1. Whether the learned lower court Justice was right when he held that; "The Civil Service Commission's letter communicating Appellant's Retirement to him, exhibit 1A16 did not state that appellant was retired on the provisions of Pension Act Cap. 346 rather it categorically stated that the Retirement was in accordance with the provision of Implementation Guidelines on the Civil Service Reform of 1988 and Establishments Circular ED.1/1996, No.S/PEN.24/1/320 of 14th January, 1996.* C

*2. Whether the learned Justice was right when he held that: "An action taken or an operation carried out under enactment subsists or is unaffected after the legislation is repealed by dint of Section 6 (1) (b) of the Interpretation Act, Cap 192 of the Laws of the Federation of Nigeria, 1990. It survives in spite of the repeal of the Law under which the action was taken. Section 6 (1) (b) of the said Act Cap. 192 reads as follows:* F

*6(1) The repeal of an enactment shall not:-* G

*(a) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx*

*(b) Affect the previous operation of the enactment or anything duly done or suffered under the enactment. "*

The respondents adopted the issues formulated by the appellant.

Appellant, appearing in person, submitted on issue No.1 that the Court of Appeal misunderstood the law of retirement. He submitted that the only law under which any public officer, including him can be retired is the Pensions Act, Cap 346 and not the provisions of Implementation of the Civil Service Reform of 1988 and H

Establishments Circular ED.1/1996, No.S/PEN.24/1/320 of 14th January 1991 as wrongly held by the Court of Appeal. He argued that apart from the fact that the Implementation Guidelines on the Civil Service Reforms of 1988 (Reorganisation) Act, Cap.55, Laws of the Federation of Nigeria, 1990 contained no provision of retirement  
 B of civil servants or any public officer, the Act was repealed with effect from 1st April, 1995. Even if the Act was not repealed at the time the Civil Service Commission retired him, it was ultra vires of the Commission because section 5 of the Implementation Guidelines on the  
 C Civil Service Reforms of 1988 (Reorganisation) Act, Cap 55, Laws of the Federation of Nigeria, 1990 vested no power on the Civil Service Commission to retire him or any civil servant of the State, appellant argued. He called the attention of the court to Establishments Circular ED.1/1996 No. S/PEN.24/1/320 and submitted that the purpose  
 D of the circular was to draw the attention of civil servants of the existence of the provision of section 4 of the Pensions Act, Cap 346. He urged the court to hold that his retirement was illegal, being contrary to the provision of the Pensions Act, the only law that can retire him and any public officer in the country. Appellant submitted on Issue  
 E No.2 that the application of section 6 (1) (b) of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990 was an anachronism. He pointed out that the subsection refers to operation or anything duly done or suffered previously that is, when the Act was  
 F in force and not repealed. He contended that the relevant paragraph applicable to this case is (a) not (b). He contended that the Implementation Guidelines on the Civil Service Reforms of 1988, (Reorganisation) Act, was repealed on 1st April, 1995 and the Civil Service Commission retired him on 8th July 1998 - that is after three  
 G years of the repeal of the Act. Relying on *UBA v. G.M.B.H* (1989) 3 NWLR (Pt. 110) 374 at 391, *Obatoyinbo v Oshatoba* (1996) 5 NWLR (Pt. 450) 531 at 548 and *Eduok v Nwoko* (2003) 28 W.R.N. 85 at 105, appellant submitted that the Court of Appeal was in error in holding that his retirement was in accordance with the Implementa-  
 H tion Guidelines on the Civil Service Reforms of 1988, Cap 55 and that section 6 (1) (b) of the Interpretation Act is applicable. He urged the court to allow the appeal.

Learned counsel for the respondents Mr. Paul Ananaba submitted on Issue No.1 that the appellant is wrong in arguing that the

only law under which any public officer including the appellant, can be retired is the Pensions Act Cap 346. He relied on the Implementation Guidelines on the Civil Service Reforms of 1988 (Reorganisation) Act, Cap. 55 Laws of the Federation of Nigeria, 1990 and the two letters communicating the retirement to the appellant. Accordingly, the Honourable Commissioner for Water Resources and Rural Development Kaduna State and the Civil Service Commission of Kaduna State are the appropriate statutory authorities for the retirement of Civil servants in Kaduna State, including the appellant, learned counsel contended. He relied on section 5 of the Implementation Guidelines on the Civil Service Reforms of 1988, Cap 55.

Learned counsel submitted on Issue No.2 that section 6(1) (b) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990 was properly construed by the Court of Appeal. The repeal of the Implementation Guidelines on the Civil Service Reforms of 1988 Cap.55, on April, 1995 does not affect those already proceeding on retirement. Implementation Guidelines on the Civil Service Reforms of 1988 subsists notwithstanding the repeal by the Civil service (Reorganisation) Act, Cap 55 Laws of the Federation of Nigeria on 1st April, 1995. He relied on *Adewunmi v. Attorney General Ekiti State* (2002) 2 MJSC, 1, *Afolabi v Government of Oyo State* (1985) 2 NWLR (Pt.9) 734, *Uwaifo v Attorney General of Bendel State* (1982) 7 SC 124. He urged the court to dismiss the appeal.

Appellant in his reply brief, submitted that as he had not attained sixty years before he was retired, the retirement did not comply with section 4 (1) of the Pensions Act, Cap 346, Laws of the Federation of Nigeria 1990. As the reply brief is essentially repetitive of the appellant's brief, I shall not go into it any further because that is not the function of a reply brief. The function of a reply brief is to answer the arguments in the respondent's brief which were not taken in the appellant's brief.

The first issue I should take is whether the Pensions Act is applicable in this case. It is the submission of the appellant that the Act is applicable. It is the submission of counsel for the respondents that it is not, as the appellant was not retired on the basis of the Pensions Act but on the basis of the Implementation Guidelines on the Civil Service Reforms of 1988 (Re-organisation) Act and Establishments Circular ED.1/1996, No. S/PEN 24/1/320.

***Dealing with the issue, the Court of Appeal said at pages 192 and 193 of the Record:***

***“But if I must answer the question, the respondents did not state in the correspondence conveying appellant's retirement to him that he was retired on the strength of the provisions of section 4 (1) of the Pension Act, Cap. 346 of the Laws of the Federation of Nigeria, 1990. The Civil Service Commission's letter communicating Appellant's retirement to him, exhibit 1A16 did not state the appellant was retired on the provisions of the Pension Act Cap. 346 Rather it categorically stated that the retirement was in accordance with the provisions of Implementation Guidelines on the Civil Service Reform of 1988 and Establishments Circular ED.1/1996, No.S/PEN.24/1/320 of 14th January 1996”***

***D . This conclusion, with the greatest respect, is not vindicated by Circular No.ED.1/1996 written by Dr. Saidu Goje, Director General (Establishments).***

Paragraph 2 of the circular reads:-

***“I wish to point out that the number of these cases are becoming too numerous just as they are unbearable on Government's slim purse, because the practice of condoning the period of over-stay in service by officers with impunity have encouraged civil servants to continue to grossly abuse the favour and, therefore, become pretentiously unmindful of their retirement dates and as such do not vacate office as and when due. Thus, it has become inevitable to draw your attention to section 4 of the Pension Decree No. 102 of 1979 (underlining provided for emphasis only) as well as the provision of our circular ED.9/1995 (reference No.S.GEN.24/Vol.1/74 dated 20th October (1985) all of which make it mandatory for all grades of officers in the civil service, (with exception of High Court Judges whose retirement age is 65 years of service) which ever comes first. Besides, no additional pension or gratuity is earned by any officer who remains in service after his 60th birthday or after the completed 35 years of public service.”***

***The above is a general circular. It clearly made reference to the Pensions Act.*** I must concede that the reference to the Pensions Act is not important because the circular was not sent to the appellant. I will refer to the relevant document. It is Exhibit 17, a

letter written by the Director General on behalf of the Commissioner for Water Resources and Rural Development to the appellant. The letter reads:

***“RE: RETIREMENT AND HANDING OVER OF OFFICE***

*Subsequent to ours REF No. WRRD/PER/504/T/Vol.I/11 dated 31st March, 1998 and in accordance with the provisions of section 4<sup>B</sup> of the Pension Decree No.102 of the year 1979 (Again underlining for emphasis only) you were due for retirement by December, 1997. Up to now, you have refused to submit your retirement notice accordingly;*

*I am directed to ask you to hand over your Office latest by<sup>C</sup> Monday, 27th day of April, 1998. An advance copy of the handing over note should reach my office by 10.00a.m of the same day.”*

Again, Exhibit 17 clearly mentioned section 4 of the Pensions Decree No.102 of 1979. Is the Court of Appeal therefore right in<sup>D</sup> holding that the appellant was not retired on the strength of the Pensions Act?” I think not.

**The Court of Appeal, reacting to the above letter, said at page 195 of the Record:**

***“Exhibit 17, a letter written by the Director General on<sup>E</sup> behalf of Commissioner for Water Resources and Rural Development with reference No. WRRD/PER,504,T/V.I/15 dated 24th April, 1998, making reference to Pension Act is irrelevant. It is not only irrelevant but also premature in the sense that<sup>F</sup> the letter was written on behalf of a person or by a person who has no constitutional power to retire the appellant. It is a mere irritant emanating from an exuberant officer and should or ought to be treated with contempt it deserved especially when it pre-dated serving the Civil Service Commission’s letter exhibit 1A 16 on the appellant on 23rd July, 1998.”***<sup>G</sup>

With the greatest respect, I am not with the Court of Appeal. I am unable to go along with the Court at all. What is irrelevant about the letter? What is premature in respect of the letter? Something is said to be irrelevant when it is not relevant. I do not think. I have said<sup>H</sup> much. I should go further. Something is irrelevant when it does not have any real connection with or relation to something else as one can say “If Amatare can do the job well, his age is irrelevant”. **I do not see any irrelevance in a letter which relies on the Pen-**

**sions Act as basis for the retirement of the appellant, a fortiori, when the respondents deny that the appellant was retired on the basis of the Pensions Act. Can there be a more relevant situation than this? Are the Circular to the entire Civil Service and the letter to the appellant not admission against interest? I would like to think so, and I think I am correct in so thinking.**

I come to the word “premature”. The word dictionaly means developing or happening before the natural or proper time, as one can say his premature death at the age of 18 years is a great loss. What is premature about the letter? Could the letter have waited for tendering after the case was completed? That cannot be because at that time there will be no legal basis for tendering the letter. There will be nowhere to tender the letter. I do not therefore agree with the Court of Appeal that it was premature, “ in the sense that the letter was written on behalf of a person or by a person who has no constitutional power to retire the appellant.” That is certainly not my understanding of the word. In my humble view, the appellant tendered the letter at the appropriate time. He tendered it at the proper time.

The Court of Appeal went further to pass aspersion on the Director General. The court referred to him as an “exuberant officer” With respect, I do not think so. ***I do not agree with the Court of Appeal that the Director General was “an exuberant officer and should or ought to be treated with contempt it deserved” There is no such evidence before the trial court and I will certainly shy away from that conclusion. Exhibit 17 was written on behalf of the Commissioner for Water Resources and Rural Development. In my humble view, the letter duly emanated from constituted authority. While I agree with the Court of Appeal, that the Director General has no constitutional power to retire the appellant, I must say that by section 5 of the Implementation Guidelines the Civil Service Reforms of 1988 (Re-organisation) Act, Cap 55, Laws of the Federation of Nigeria, 1990, the Commissioner was vested with the power to appoint, dismiss and take disciplinary measures against civil servants. Whether the above powers cover retirement is a different matter altogether. I will not go there. One other reason why the Court of Appeal did not think much about the letter is***

***because it pre-dated serving the Civil Service Commission's letter, exhibit 1A16 on the appellant on 23rd July, 1998. While I agree that it is the fact, I do not see how it reduces the evidential or probative content of the letter. I think the appellant has the right to use the letter in a number of ways to contradict the respondents, particularly as Exhibit 1A16 of 23rd July 1998 did not make reference to the letter by nullifying it.*** B

Which of the Pensions Statute is applicable? Is it the Pensions Act as contended by appellant or the Pensions and Gratuities Law of Kaduna State? ***The applicable statute, in my view, is the Pensions and Gratuities Law, Cap 111, Laws of Kaduna State 1991. Section 9(1) of the Law provides:*** C

***"Every officer shall retire upon attaining the age of sixty years, so however that officers retiring on or before 31st March, 1977, the compulsory retiring age shall be fifty-five years."*** D

***As it is, the subsection is mandatory, imperative and peremptory as it provides for the word of command, "shall". In the context of section 9(1), it connotes "must" as it is inconsistent with exercise of discretion. While the word may at times be construed as conveying a permissive or directory meaning of "may" it is my view that it maintains its usual meaning of command or compulsion in section 9(1).*** See generally Chief Ifezue v Mbadugha (1984) 5 SC 19., Captain Amadi v NNPC (2000) 10 NWLR (Pt.674) 76, General Bamaïyi v Attorney General of the Federation (2001) 12 NWLR (Pt.727) 468, Ogidi v The State (2005) 5 NWLR (Pt. 918) 268. E F

***Interpreting the word in its mandatory, imperative and peremptory content means that an officer, including the appellant, must retire from the service upon attaining the age of sixty years. That is the first leg of the subsection. The second leg does not apply to the appellant.*** The twist in this matter comes or arises from the retirement of officers who have completed thirty five years in the service but who have not clocked sixty years. The question is this: Where does the requirement of completion of thirty five years come from? The Pensions and Gratuities Law of Kaduna State does not specifically provide for the alternative of thirty-five years service. I will answer the questions later in this judgment. For G H

now let me take other areas. It is the case of the respondents that the appellant was retired by virtue of the Implementation Guidelines on the Civil Service Reforms of 1988 (Reorganisation) Act, Cap. 55 and Establishments Circular ED.1/1996 No.S/PEN.24/1/320. I sound repetitive here; it is good for emphasis and so I repeat it.

B I will take them in turn. First, the Civil Service (Re-organisation) Act, Cap. 55. **Appellant submitted that the Act was repealed with effect from 1st April, 1995. What I want to take now is whether the Civil Service (Reorganisation) Act, Cap. 55 Laws of the Federation of Nigeria, 1990, even if not repealed, is applicable in the case. I say this because the statute, being an Act should apply only to the Federal Civil Service and accordingly in respect of Federal Civil Servants. Section IV of the Schedule to the General Guidelines for the Implementation of**  
 C **the Civil Service Reforms, does not pretend to apply to the States, although section 3(2) of the Act seems to involve the States. It does not appear that the provision is in conformity with the 1979 Constitution which was in force at the material time. I will not pursue this as it was not raised by the parties. I merely**  
 D **thought aloud. The respondents agreed with the repeal when their counsel submitted that “the repeal of the Implementation Guidelines and the Civil Service Reforms of 1988 Cap. 55 in April 1995 does not affect those already proceeding for retirement”.**  
 E

F **Assuming that the Act applies, does it cover retirement of civil servants? Appellant argued that by section 5, only the Ministries in the Civil Service have the power to appoint, dismiss and discipline persons. I do not think the section covers the situation in this appeal, which is retirement. The section**  
 G **does not provide for retirement. Retirement is certainly different from appointment, dismissal or disciplinary control as provided in section 5 of the Act.** In my humble view, the applicable law is section 9 of the Pensions and Gratuities Law of Kaduna State, 1991 which provides for retirement of officers.

H Appellant kindly copied the Establishments Circular at pages 11 to 13 of his brief. The relevant portion is in paragraph 2 of the circular. I reproduce it once more:

*“Besides, no additional Pension or gratuity is earned by any officer who remains in service after his 60th birthday or after the*



*completed 35 years of public service.”*

While the requirement of the 60th birthday of an officer is in conformity with section 9(1) of the Pensions and Gratuities Law of Kaduna State, 1991 the additional requirement of 35 years, in the alternative, is not specifically provided in the Statute.

So far so good for the appellant, but it is not a bed of roses for him at the end of the day. ***In the course of preparing this judgment, one of my brothers in the Panel called my attention to section 9(2) of the Pensions and Gratuities Law, Cap 111, Laws of Kaduna State, 1991. The subsection reads:***

***“The Commission may require an officer to retire from the service at any time after he has attained the age of 45 subject to three months notice in writing of such requirement being given.”***

***The subsection clearly stops or prohibits any possible fortunes of the appellant in this appeal. Although the subsection does not specifically provide for the alternative thirty five years service, the totality of the provision is consistent with the retirement of the appellant. There is no dispute that he was more than forty-five years when he was retired.*** By the subsection, the appellant or any other civil servant can be asked to go on retirement if he has completed a service of thirty five years. ***In my view, the appellant’s retirement was in accordance with section 9(2) of the Pensions and Gratuities Law, 1991 of Kaduna State, and I so hold.***

I think I can stop here. It is not necessary to take Issue 2 in the light of my conclusion on Issue 1, because it is largely academic to do so. Courts of law are not interested in academic matters. The appeal fails and it is dismissed.

I award N50,000.00 costs to the respondents.

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### MUKHTAR JSC

The gravamen of this appeal against the decision of the Court of Appeal Kaduna Division is hinged on the interpretations of the Pension Act, and Implementation Guidelines on the Civil Service Reforms. The lower court affirmed the decision of the trial court, which dismissed the appellant’s case seeking inter alia the following reliefs:-

***“1. A Declaration that the purported retirement of the Plaintiff***

by the 1st to 5th defendants is contrary to Decree 102 of 1979 and is illegal, null and void.

2. A Declaration that the stoppage of the Plaintiff's salary and emoluments with effect from March 31st 1998 is illegal, null and void.

B 3. A Declaration that the breaking into the Plaintiffs office and the removal of his items therefrom by the 6th Defendant on April 29th 1998 is illegal.....”

C Although the appellant raised five issues for determination in his brief of argument for the treatment of the appeal before this court, I am of the view that the following first three issues will suffice and I will for the purpose of emphasis deal with them. The issues are:-

(1) Whether the learned lower court Justice was right when he held that:

D “The Civil Service Commission’s letter communicating Appellant’s Retirement to him, exhibit 1A 16 did not state that appellant was retired on the provisions of Pension Act Cap. 346 rather it categorically stated that the Retirement was in accordance with the provisions of implementation guidelines on the Civil Service Reform  
E of 1988 and Establishments Circular ED.1/1996, No. S/PEN.24/1/320 of 14th January 1996.”

2. Whether the learned Justice was right when he held that:

F “An action taken or an operation carried out under enactment subsists or is unaffected after the legislation is repealed by dint of Section 6 (1) (b) of the interpretation Act, Cap. 192 of the Laws of the Federation of Nigeria, 1990. It survives in spite of the repeal of the Law under which the action was taken. Section 6 (1)(b) of the said Act Cap. 192 reads as follows:-

G 6 (1). The repeal of an enactment shall not:-

(a) xxx

(b) Affect the previous operation of the enactment or anything duly done or suffered under the enactment.”

H The learned counsel who appeared and made submissions on the appeal in person, (he being the appellant), in arguing the first issue, submitted that the only law under which any public officer, including the appellant can be retired is the Pensions Act Cap. 346 Laws of the Federation of Nigeria 1990, and the appellant was not retired in accordance with the provisions of Implementation Guide-

lines on the Civil Service reforms of 1988 and Establishments Circular ED.1/1996, No. S/PEN. 24/1/320 of 14th January 1996. The learned counsel for the respondents has argued that the exhibits provided by the appellant show that the appellant was retired by virtue of the Implementation Guidelines on the Civil Service Reforms of 1988, and not the Pensions Act supra. At this juncture, I will reproduce the relevant letters hereunder. In a letter dated 8/7/98 emanating from the Civil Service Commission, and addressed to the Honourable Commissioner of Ministry of Water Resources and Rural Development, the appellant's retirement was approved as follows:-

*"With reference to your letter No. MWRRD/CON/254/T/V.1/96 of 11th May, 1998, I am directed to inform you that the Commission has carefully studied the officer's petition and has approved his retirement from service with effect from 5th December, 1997 in accordance with the provisions of Implementation Guidelines on the Civil Service Reforms of 1988 and Establishments Circular ED./1/1996, No. S/PEN.24/1/320 of 14th January, 1996.*

*2. This letter is copied to the Secretary to the State Government for information and awareness."*

The above letter was sequel to a petition written by the appellant, and the subsequent action taken by his office. The response to the appellant reads thus:-

*"Re: Retirement from Service*

*(ii) I had earlier, on receipt of your petition, passed same to the Civil Service Commission (CSC).*

*The Commission has responded in its letter No. 01240/Vol.1/350 dated 8th July, 1998. I attach the letter for your information. Attached also is another copy of the letter from Government House, Kaduna, No. GH/KD/S/64/S/1 of 25th June, 1998."*

It is clear from the former letter that the appellant was retired by virtue of the provisions of the Implementation Guidelines on the Civil Service Reforms of 1988, and not the Pensions Act as the letter speaks for itself. Perhaps I should at this juncture reproduce the provision of Section 4 (1) of the Pensions Act. It states as follows:-

*"Every officer shall retire upon attaining the age of 60 years, so however that officers retiring on or before 31st March 1977, the compulsory retiring age shall be 55 years."*

I believe the above provision is for the purpose of the compu-

tation of pension of civil servants in general, for even the preamble of the Act, if very carefully perused conveys this notion. I shall for ease of understanding reproduce the preamble here below. It reads:-

*“An Act to consolidate all enactments dealing with Pensions, War Pensions and disability benefits and gratuities for civilian employees in the public service of the Federation.”*

It does not in the real sense deal with the civil service laws, rules and regulations that govern the appointments, promotions, discipline and retirement of civil servants. This is in fact why the retirement letter of the appellant did not in any way refer to the said Pensions Act, but the Implementation Guidelines on the Civil Service Reforms of 1988, as the authority under which he was retired. In this wise, I do not see that the lower court as per Salami J.C.A. erred in his holding reproduced supra. I endorse it and completely agree with him as it is supported by the exhibit i.e the said letter of retirement reproduced above.

For the foregoing reasonings with which I have highlighted issue (1) supra, and the fuller and more detailed reasonings in the lead judgment of my learned brother Niki Tobi JSC, I am of the opinion that the appeal has no merit, and ought to be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

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### **OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Kaduna Division (hereinafter called “the court below”) delivered on 22nd January, 2003 (and not 20003 as appears in the Appellant’s Amended Brief) affirming the Judgment of the Kaduna State High Court - per Makeri, J. delivered on 30th June, 2000 dismissing the Appellant’s case in its entirety.

Dissatisfied with the said decision, the Appellant has appealed to this Court. He has formulated two issues for determination which the Respondents adopted. When this appeal came up for hearing on 28th April, 2009, the Appellant who appeared in person, adopted his said Amended Brief and his Reply Brief. He urged the Court, to allow the appeal. The leading learned counsel for the Respondents - Ananaba, Esqr, adopted their Brief. He urged the Court to dismiss the appeal which he described as “purely academic”. Thereafter,

Judgment was reserved till to-day.

I note firstly that the parties stated above in this Judgment, are the same parties appearing both in the Originating Summons taken out in the said High Court and in the said Judgment of the High Court. Secondly, that in the two lower courts, the Appellant, was represented by counsel of his own choice - namely, G.N. Okonkwo, Esqr. who in fact, took out the said Summons and J. N. Buba, Esqr. who settled the Appellant's Brief in the court below. In this Court, he decided to appear and prosecute his appeal, personally and not as Counsel as he was entitled to. See the case of *Chief Gani Fawehinmi v. NBA & 4 ors. No. 1 (1989) 2 NWLR (Pt.105) 494; (1989) 2 NSCC 3 @ 32; (1989) 4 SCNJ. (Pt.1) 1 @ 22* - per Obaseki, JSC. It was held that every Appellant, be he a barrister or solicitor or an ordinary member of the public, has a right to argue his case either at first instance or on appeal in person. Sections 17(2)(a) & (b) and 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 were referred to. See also Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999. See also the case of *Justice Atake v. Chief Afejuku (1994) 12 SCNJ. 8, 1 @ 11*. A person, cannot appear both as a person or party and as counsel for himself. See the *English cases of Newton v. Ricketts (1862) 9HLC. 626 @ 732; 11 E.R. 731* - per Lord Campbell, L-C and *In New Brunswick & anor. v. Conybeare (1862) 9 H.L.C.. 711; 11 E.R.. 90* - Per Lord Westbury, L.C.

Thirdly, in his claim No 1, he claimed,

*"A Declaration that the purported retirement of the Plaintiff by the 1st to 5th defendants is contrary to Decree 102 of 1979 and is illegal, null and void"*.

In his Brief, he also relied on Section 4 of the Pensions Act Cap. 346 Laws of the Federal Republic of Nigeria, 1990. The above Decree and act, are Federal provisions and not State Laws. On these grounds, it is my respectful view that the action itself, is incompetent and should and ought to have been struck out by either of the two lower courts. However, since it is settled that claiming a right under a wrong law, does not defeat the claim. - See the case of *Falobi v. Falobi (1976) 9 & 10 S.C. 1 @ 13-14* - per Fatayi-Williams, JSC (as he then was but later CJN), I will also deal with the appeal, on its merits.

Fourthly, that there are the concurrent findings of fact and

holdings by the two lower courts unfavourable to the Appellant. This Court in such circumstances, does not disturb or interfere. See the cases of *Chief (Dr.) O. Fajemirokun v. Commercial Bank Nig. Ltd. & anor. (2009) 2 SCNJ. 77* and *Madam M. Ibrahim v. Dr. Osunde & ors. (2009) 2 SCNJ. 268*.

B Now, Section 4 (2) of the said Pensions Act (supra) provides as follows:

C *“The Minister may require an officer to retire from the service at any time after he has attained the age of 45 years subject to three months’ notice in writing of such requirement being given”.*

The applicable law which is the Pensions and Gratuities Law, Cap. 111 of the Laws of Kaduna State 1991. Section 9 thereof, provides as follows:

D *“(1) Every Officer shall retire upon attaining the age of 60 years, so however, that for officers retiring on or before 31st March, 1978 the compulsory retiring age shall be 55 years”.*

*(2) The Commission may require an officer to retire from the service at any time after he has attained the age of 45 subject to three months’ notice in writing of such requirement being given”.*

E As can be seen, Section 4(2) of the said Act and Section 9(2) of the Kaduna State Law, make similar provision. I note that the Appellant, was over 55 years of age and in fact, had served the Kaduna State Government for about 35 years at the time or date of his said retirement. I find as a fact and hold that the Appellant, was lawfully  
F retired by the 2nd & 4th Respondents or by the 1st to 5th Respondents. He is lucky that he was not dismissed for insubordination against lawful authority.

G It is from the foregoing and the conclusion of my learned brother, Niki Tobi, JSC in his lead Judgment which I had the privilege of reading before now and with which I agree, that I too, find no merit in this appeal which fails. I too dismiss it. I abide by the consequential order in respect of costs.

H **OGEBE JSC**

I read in advance the lead Judgment of my learned brother, Niki Tobi, JSC and I agree entirely with his reasoning and conclusion.

In spite of the large volume of documents the appellant placed before the trial court, in his Originating Summons his main complaint

was that the respondents had no power to retire him before he reached the age of sixty years. His argument is that the only law under which any public officer including himself can be retired is Pensions Act (Cap) 346 of the Laws of the Federation.

He relies particularly on Section 4(1) thereof.

Section 4 of the Act has two sub-sections which are quoted B hereunder in full.

*“4(1) Every officer shall retire upon attaining the age of sixty years, so however that for officers retiring on or before 31 March 1977, the compulsory retiring age shall be 55 years.*

*(2) The Minister may require an officer to retire from the service at any time after he has attained the age of 45 years subject to three months’ notice in writing of such requirement being given.”* C

Assuming this is the applicable law, subsection 2 gives the Minister power to retire an officer from service after he has attained the D age of 45 years subject to three months’ notice in writing. It is not disputed that as at the time the appellant was retired from service in 1998 he was over 55 years of age and had served Kaduna State for a period of 35 years.

The Pensions’ Act in its introductory part reads thus: E

*“An Act to consolidate all enactments dealing with pensions, war pensions and disability benefits for civilian employees in the public service of the Federation.”*

This shows clearly that the Act applies to civilian employees of F the Public Service of the Federation and not to employees of the Kaduna State Public Service from which the appellant retired. This meant that the appellant was pushing for the interpretation of a law which did not apply to him.

The applicable law to the appellant’s case is the Pensions and G Gratuities Law (Cap) 111 of the Laws of Kaduna State 1991. Section 9 thereof reads:

*“(1) Every officer shall retire upon attaining the age of 60 years so however, that for officers retiring on or before 31 March 1978 the compulsory retiring age shall be 55 years.*

*(2) The Commission may require an officer to retire from the service at any time after he has attained the age of 45 subject to three month’s notice in writing of such requirement being given.”* H

By subsection 2 the Civil Service Commission of the State had

power to retire the appellant from service after he had attained the age of 45 years. His retirement therefore was covered by law. There is no merit in his case whatsoever. It is a wasteful exercise.

This case underscores the admonition that this Court usually gives to counsel who conduct their own cases to engage other counsel to take on their cases. If the appellant had engaged the service of another counsel he might have been advised not to pursue this litigation having regard to the state of the law.

In the final analysis, I also dismiss this appeal and I endorse the costs as assessed in the lead Judgment.

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**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother, Niki Tobi, JSC. I agree with the reasons ably advanced to arrive at the conclusion that the appeal lacks merit and should fail.

The appellant personally conducted his appeal with fervour. The passion generated by him was so intense that I felt he had a good case when he made his oral submissions on 28th April, 2009 the day the appeal was heard.

The appellant, an employee of the Kaduna State Government, erroneously placed heavy reliance on *the* provision of section 4(1) of the Pension Act, Cap. 346 Laws of the Federation, 1990. He feigned ignorance of subsection (2) of the same section which provides that:-

*“The Minister may require an officer to retire from service at any time after he has attained the age of 45 years subject to three months notice in writing of such requirement being given.”*

Since he was not a Federal Officer, the applicable law to his situation is section 9(2) of the Pensions and Gratuities Law Cap. 111 Laws of Kaduna State, 1991. It is akin to the provision of the Federal Act reproduced above. The appellant’s retirement was in accordance with same. With due deference to the appellant, the fuss generated by him was to no avail.

I am at one with my learned brother that the appeal lacks merit and should be dismissed. I order accordingly and abide by the order in respect of costs as contained in the lead judgment.