

SUPREME COURT OF NIGERIA
19TH MARCH. 2010 S.C. 4/2003
CORAM:- N. TOBI, I. F. OGBUAGU, J. O. OGEBE,
J. A. FABIYI, O. O. ADEKEYE, JJSC

CYRIL O. OSAKUE APPELLANT
AND

1. FEDERAL COLLEGE OF EDUCATION
(TECHNICAL) ASABA

2. DR. F. ULINFUN (PROVOST) RESPONDENTS

3. F. U. ADUWA (DEPUTY REGISTRAR)

JUDICIAL PRECEDENTS - Conflicting judgments - Of Supreme Court
- Option of lower courts - Where there are conflicting Supreme Court
authorities - Lower courts are bound by the latter decision (H1)

JURISDICTION - Federal High Court - Effect of s. 230(1) of 1979
Constitution - Paragraphs (p) to (s) conferred exclusive jurisdiction
on the court - In certain matters notwithstanding the nature of the
claim (H2)

JUDICIAL PRECEDENTS - Courts - Conflicting decisions of superior
court - No discernible *ratio* - Option of lower courts - In such a
case the lower court is free to choose between the decisions - Which
appears to it correct (H3)

JUDICIAL PRECEDENTS - Stare decisis - Decisions per incuriam -
Binding nature - Lower court cannot refuse to be bound by decisions
of higher courts - Even if such decisions are reached per incuriam
(H4)

FACTS

The plaintiff/appellant sued defendants/respondents before the
High Court of Delta State challenging the alleged unlawful termination
of his appointment with the 1st respondent. The case of appellant
was that the termination of his appointment, ought to have been
made by the Minister of Education in the absence of a governing
council of the 1st respondent having regard to the enabling Act un-

der which appellant was employed. On the contrary however, the letter terminating appellant's appointment - Exhibit W - was signed by the secretary of the senior management committee. It was not in dispute that appellant, while in the employment of 1st respondent, had embarked on the pursuit of a full time study leading to the award of a Ph. D. Degree. It was in consequence of this that his appointment was terminated.

After trial, the trial judge dismissed all the claims of appellant. Aggrieved, appellant appealed to Court of Appeal. The appeal was allowed but the court held that appellant was only entitled to six months salary *in lieu* of notice and not to reinstatement in view of his misconduct in embarking on the Ph.D. study. Still dissatisfied, appellant appealed to Supreme Court. The court raised the issue of whether the State High Court had jurisdiction to try the matter in view of the interpretation of s. 230(1), paragraphs (p), (r) and (s) of Decree 107 of 1993 in the case of *NEPA v. Edegbenro* and had counsel address it thereon. During address of counsel, it was pointed out that there were conflicting Supreme Court decisions on the effect of Decree 107.

ISSUE FOR DETERMINATION

Whether it is the Federal High Court and not the State High Court that has jurisdiction in this matter.

HELD (Unanimously striking out the suit for want of jurisdiction per **OGBUAGU JSC**)

JUDICIAL PRECEDENTS - Conflicting judgments

1. While thanking the two learned counsel for the parties for their submissions, I wish to stress the fact that in the hierarchy of the courts, where there are conflicting Judgments, the Court of Appeal, is bound by the latter or last decision of this Court. It has no choice however brilliant and knowledgeable the Justices of that court may think or hold that they are more than this court. I will come back to this latter in this Judgment. (p. 962 E)

JURISDICTION - Federal High Court

2. The amendment on Section 230 of the 1979 Constitution, conferred additional jurisdiction on the Federal High Court which is exclusive to it hence by the opening words in section 230(1), it states

or uses the words

“notwithstanding anything to the contrary contained In the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to exclusion of any other court in civil cause and matters arising”.

This is in spite of the proviso thereto. In other words, the aim of paragraphs (q), (r) and (s) of sub-section (I) of Section 230, *was to vest* exclusive jurisdiction in the Federal High Court in matters, notwithstanding the nature of the claim in the action. While paragraph (s) talks of actions for declaration or injunction, the proviso extended this to actions for damages, injunction or specific performance. (p. 966 B)

Conflicting decisions of superior court - No discernible ratio

3. As for hierarchy of the courts, it is now settled that the *ratio decidendi* of a case, is the reason for the decision, the principle, of the decision. A court lower in the judicial hierarchy, is bound by the *ratio decidendi* of a higher court not necessarily the obiter dictum.

Where there is no discernible *ratio decidendi* common to the decisions of a superior court and this Court has handed down conflicting decisions, the lower court or a court of co-ordinate jurisdiction is free to choose between the decisions which appear to it to be correct. (p. 966 G/968 F)

Stare decisis - Decisions per incuriam - Binding nature

4. In the hierarchy of Courts, the lower court, is bound by the decision of the higher court. In fact, in the case of *Attorney-General Ogun State & anor. v. Egenti (1986) 3 NWLR (Pt. 28) 265 at 272-273*, it was held that it is not for a lower court, to question or say that a decision of the higher court, was reached *per incuriam*. That that is a privilege of that higher court if after reconsidering its former decision, it is satisfied that the previous decision, had been reached *per incuriam*. That the doctrine of *stare decisis* is a well settled principle of judicial policy. Thus, while it is open for a lower court to depart from its own decisions reached *per incuriam*, the lower courts, cannot refuse to be bound by decisions of higher court even if reached *per incuriam*. (p. 967 C)

NOTABLE POINT OF INTEREST

OGEBE JSC

Judicial precedents - O.H.M.B v Garba is questionable authority

The Court of Appeal in University of Ilorin V. Adeniran (2007) All FWLR (Pt. 382) 1871 had no business in preferring the former decision of the Supreme Court in the case of O.H.M.B. V Garba & Ors. (2002) FWLR (Pt. 123) 200. In that case it was the appellant which was successful in the Court of Appeal that appealed to the Supreme Court. The respondents did not appeal and did not take part in the appeal to give the Supreme Court balanced arguments on the issues raised in the appeal. It is questionable if the appellant which won in the Court of Appeal had any right of appeal to the Supreme Court. This raises the competence of that appeal and the validity of the pronouncements of the Supreme Court in that appeal. (p. 970 D)

REPRESENTATION

K.O. Ijatuyi, Esqr., for the Appellant.

Chike Onyemenam, Esqr., for the Respondent with him, Philip Adu-Odogwu, Esqr.

CASES REFERRED TO

- Adah v. NYSC (2004) 13 NWLR pt. 891 pg. 639
- Madukolu v. Nkemdilim (1962) 2 SCNLR 341 at 348
- F NEPA v. Edegbere (2002) 18 NWLR pt. 798 at page 79
- Ayeni v. University of Ilorin (2000) 2 NWLR pt. 644 pg. 290
- Gov. of Oyo State v. Folayan (1995) 8 NWLR pt. 413 pg. 292
- Olutola v. University of Ilorin (2005) ALL FWLR (pt.. 245)1151
- G University of Ilorin V. Adeniran (2007) All FWLR (Pt. 382) 1871
- Nigeria Airports Authority v. Chief Okoro (1995) 7 SCNJ. 1 @ 13
- Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt. 184) 157
- Ada v. NYSC (2004) All FWLR (Pt. 223) 1850, (2004) 13 NWLR (pt. 891) 639
- H Alhaji Mohammed & anor. v. Olawunmi & 9 ors. (1993) 5 SCNJ. 94 @112-113
- University of Ilorin v. Mr. A. I Adeniran (2007) All FWLR (Pt. 382) 1871 @ 1906
- Attorney-General Ogun State & anor. v. Egenti (1986) 3 NWLR (Pt.

28) 265 at 272-273

Chief Okpozo v. Bendel Newspaper Corporation & anor. (1990) 5 NWLR (Pt. 153) 652@ 661, 663

Western Steel Works Ltd. & anor. v. Iron Steel Workers Union of Nigeria (1986) 3 NWLR (Pt. 30) 617

B

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, s. 230(1) 1979

Constitution (Suspension and Modification) Decree No. 107, 1993

Constitution of the Federal Republic of Nigeria, 1999, s. 247(1)

Federal Colleges of Education Act, Cap. 129 L.F.N; 1990, s. 6

C

LEAD JUDGMENT BY OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Benin Division (hereinafter called “the court below”) delivered on 18th February, 2002, allowing the appeal of the Appellant and holding that the decision to terminate his appointment, ought to or would have been made by the Minister of Education in the absence of the Governing Council of the 1st Respondent having regard to the enabling Act under which the Appellant was employed - i.e. Decree No. 4 of 1986.

E

After taking “a hard look at the Decree and the letter of appointment” of the Appellant as a Senior lecturer on Grade Level 13 Step 1 and that the Appellant, did not state or give evidence as to what his salary was at the time of the appointment was terminated, it found as a fact that the Appellant on the termination of his said appointment, was granted or “awarded” only one month’s salary in lieu of notice. It then proceeded to award to the Appellant, Six (6) months salary in lieu of notice having regard to his grade of employment as the reasonable amount that he would have been paid relying on two decided authorities.

F

G

It concluded that,

“Since the Appellant admitted under cross examination that it was necessary to obtain permission from his employer before he could embark on the work study Ph.D programme but undertook the course without such permission, there is justification for the termination....”

H

It ordered that the parties should bear their own costs as the Appellant according to it, “had won only a technical victory”.

Dissatisfied with the Judgment, the Appellant has appealed to this Court on four (4) Grounds of Appeal which without their particulars, read as follows:

B “1. *The learned Justice of the Court of Appeal erred in law when he held as follows: Even though I have found that the Appellant’s matter ought to have been referred to the Governing Council, this would only be a matter of formality..... and it will amount to a wrongful exercise of judicial discretion to order that the Appellant be reinstated*”.

C 2. *The Learned Justice of the Court of Appeal erred in law when he held that:*

D “*Apart from the appointment having statutory flavour since it was made pursuant to Section 6 (i) 6 (j) of the Federal Colleges of Education Act Cap. 129 laws of the Federation of Nigeria 1990 (otherwise known as Decree No. 4 of 1986) there is no direction as to the period of time a staff should continue in his employment or a period for giving notice of termination. The employer is therefore at large*”.

3. *The learned Justice of the Court of Appeal also erred in law when he held that*

E “Six months salary in lieu of notice is the reasonable amount that he should have been given and I accordingly award him six months salary in lieu of notice”.

F 4. *The learned Justice of the Court of Appeal erred in law when he held as follows:*

G “*In conclusion since the Appellant admitted under cross-examination that it was necessary to obtain permission from his employer before he could embark on the work study Ph.D. Programme but undertook the course without such permission, there is justification for the termination..... The Appellant has won only a technical victory*”.

H It can be seen from the first line/sentence of the above grounds of appeal, that the learned counsel who prepared them, was, with respect, personalizing the said Judgment of the court below. Section 247(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides under the jurisdiction of the Court of Appeal, that it shall be duly constituted if it consists of not less than three Justices of the court. That is why I note that in the “Particulars of Error” in grounds 1 and 4, the words used are “the lower court”.

The Appellant in his Brief of Argument, formulated two (2) issues for determination, namely,

"2.01 (a) *Whether in the circumstances of this case and having regard to the finding of the Lower Court to the effect that the "Appropriate Authority did not terminate the employment of the Appellant", the Court ought to have made an order for the Reinstatement of the Plaintiff/Appellant.*" ^B

2.02 (b) *Whether the employment of the Appellant can be said to be at large in view of the specific provisions of the Laws under which he was employed - i.e. Decree No. 4 1986 and Guidelines for the Management of the Federal College of Education (Exhibit 8)".* ^C

On its part, the Respondents, also formulated two issues for determination namely,

"2.01 (a) *Whether or not the Court below exercised its discretion judicially in refusing an order of reinstatement of the Appellant having regard to the circumstances of the case.*" ^D

(b) *If the lower Court exercised its discretion judicially, whether or not the six months salary in lieu of notice is reasonable".*

I note that none of the parties or their Counsel, stated under which of the grounds of appeal their respective issues are distilled from. Although the consequences are now settled, in my respectful view, Grounds 1 and 2 of the Grounds of Appeal, can be taken care of by the two issues of the parties. ^E

The facts of this case briefly stated are that the Appellant was employed in the 1st Respondent's (Educational Psychology) after an interview. I note that in the letter of "Offer of Appointment" dated September 29, 1982, the following appear inter alia: ^F

"..... I am pleased to inform you that you are successful and that the Honourable Minister of Education has approved your appointment to the post of Senior Lecturer on Grade Level 13 Step 1 with effect from the day you resume duty.....". [underlining mine] ^G

I also note from the Records and the uncontradicted evidence of the Appellant, that the post is a permanent and pensionable position. The Appellant was first assigned as Acting Dean from 1987 to 1989 and later as Head of Department of Education from September to December, 1989. It appears that at a stage, the School Authorities were not satisfied with his performance and he was therefore, removed and replaced with two of his colleagues one of them ^H

was George Compah-Keyeke who took over from him as the Head of the Department of Education. The relationship between the Appellant and his immediate successors, became strained and this extended to the 2nd Respondent. The Appellant was requested to resign his appointment and be refused to do so. There were series of exchanges of communications between the Appellant and the School/ College Authorities. Series of queries were issued to the Appellant who responded to them. The genesis of the crisis which culminated to the termination of the Appellant's appointment, was when the School Authorities, confirmed that he was undergoing a full-time Ph.D. programme at the University of Benin, without permission. Two queries - Exhibits "C" and "D", were issued to the Appellant and he replied in Exhibits "E" and "F". A Management Committee of three members to investigate the matter, was constituted/raised by the 2nd Respondent. The Report of the Committee, is Exhibit 10 at page 235 of the Records. Exhibit "W" at page 225 - 226, is the letter of termination where six allegations against the Appellant were stated. The letter was signed by the Secretary of the Senior Management Committee. Pursuant to the Guidelines for the Management of the Federal Colleges of Education (Exhibit 8), of the 1st Respondent, the Appellant wrote protest letters to the Honourable Minister to come to his rescue in Exhibits "J", "L" and "M" at pages 214 to 218 of the Records. Finally, he wrote Exhibit "Z" at page 227 thereof. He eventually took the action leading to the instant appeal.

The trial court - per Akoro, J. of the Delta State High Court sitting at Asaba, at page 188 of the Records, first held that by the ouster clause in Decree No. 12 of 1994, the jurisdiction of the court was ousted. But it held the view that assuming it was wrong in so declaring, that since the appropriate Authority terminated the Appellant who it held was given a fair hearing, that the Appellant was properly terminated for gross misconduct having deserted his full time employment as a Lecturer and engaged himself on a frolic by pursuing a full time study leading to the award of the Ph.D Degree. It therefore, dismissed all the claims of the Appellant with costs hence the appeal to the court below.

When this appeal came up for hearing on 28th January, 2010, both learned counsel for the parties, adopted their respective Brief. While the Appellant's learned Counsel - Ibekwe (Mrs.), urged the

Court to allow the appeal and reinstate the Appellant, Onyemenam, Esqr. - learned counsel for the Respondents, urged the court to dismiss the appeal. He admitted that the court below found as a fact that the dismissal was wrongful. He added however, that the issue was whether or not the court below exercised its discretion judicially. Thereafter, Judgment was reserved till to-day. B

After the Judgment in this appeal had been reserved till to-day, my learned brother, Ogebe, JSC, drew our attention to the competence of the suit leading to this appeal, having been heard by the Delta State High Court instead of the Federal High Court and having regard to the interpretation of Section 230 (l), (q), (r) and (s) of Decree 107 of 1993 (hereinafter called "the Decree") by this Court in the case of *NEPA v. Mr. B. Edegbero & 15 ors. (2002) 12 NWLR (Pt. 798) @ 95-96, 97, 98* - per Uwais, CJN and *@ 99-100* - per Niki Tobi, JSC (it is also reported in (2002) 12 SCNj. 173). Since the matter touches on jurisdiction and has been raised so to speak, *suo motu* by us (or this Panel/Court), the learned counsel for the parties, were invited to address us in respect of the said issue on 9th March, 2010. C D

Ijatuji, Esq. - the learned counsel for the Appellant, told us that this issue of jurisdiction, was raised and settled in the trial High Court. He referred the Court to page 153 - lines 8 to 28 and page 184 of the Records. He adopted his address or submissions in that court. He stated that there was a Ruling. That the commencement date of the said Decree, was 17th November, 1993 while the suit of the Appellant, was filed on 14th December, 1992. He referred to Section 4 (4) of the Decree and submitted that at the time the suit was filed, the Decree, was not in existence. That Section 6 of the Constitution of the Federal Republic of Nigeria, 1979, was in existence. He still urged the Court to allow the appeal and order for the reinstatement of the Appellant. E F G

Onyemenam, Esq. - the leading learned counsel for the Respondent, referred the Court to what he described as the two conflicting Judgments of this Court - i.e. the cases of *Orthopaedic Hospital Management Board (O.H.M.B.) v. Mallam Umaru Garba & 2 ors. (2002) FWLR (pt.123) 200* (it is also reported in (2002) 7 SCNj. 256 and *Prof. Olutola v. University of Ilorin (2005) ALL FWLR (pt.245) 1151* (it is also reported in (2004) 18 NWLR (pt. 905) 416; (2004) H

12 SCNJ. 236 and (2004) 11-12 S.C. 214. He stated that in the earlier case, it was held that the Decree, has no retrospective effect, but that in the latter case, it was held that there is a distinction between the law governing cause of action and the law conferring jurisdiction. That the law governing the cause of action, is the relevant law at the time the cause of action accrued. Whereas, if it is jurisdiction, the law divests the jurisdiction. He referred to the case of the University of Ilorin v. Mr. A. I. Adeniran (2007) All FWLR (Pt. 382) 1871 @ 1906 in which the Court of Appeal, in effect, sat on appeal over the decision of this Court and held to the contrary, the clear and unambiguous latter decision of this Court in Prof. Olutola v. Unillorin (supra). He urged the Court to follow its latter decision and hold that the Delta State High Court, having been divested of jurisdiction, could not have gone on with the hearing of the said suit which according to the learned counsel, was/ is a nullity. He finally, urged the Court to strike out the said suit.

In his reply, Ijatuyi, Esqr. stated that in view of the conflict, the Court should revisit the case according to him, in the interest of justice. Thereafter, the judgment still stood reserved till to-day.

While thanking the two learned counsel for the parties for their submissions, I wish to stress the fact that in the hierarchy of the courts, where there are conflicting Judgments, the Court of Appeal, is bound by the latter or last decision of this Court. It has no choice however brilliant and knowledgeable the Justices of that court may think or hold that they are more than this court. I will come back to this latter in this Judgment.

I note that at page 1905 of the ALL FWLR, His Lordship Ogunwumiju, JCA who wrote the lead judgment, stated inter alia, as follows:

“The learned Justices of the Supreme Court in Olutola v. Unillorin made a clear distinction between the law applicable to a cause of action and the law applicable to the determination of the jurisdiction of a court”.

His Lordship reproduced in extenso, the concurrent contribution of Niki Tobi, JSC and then stated inter alia, as follows:

“My learned brothers and I are torn between the two judgments of the Supreme Court. We are aware that Olutola v. Unillorin

did not consider O.H.M.B. v. Garba, which earlier case considered section 6(1) of the Interpretation Act, Cap. 192 Laws of the Federation. We are however each at liberty to pick and choose which precedent to follow”.

His Lordship followed, the *O.H.M.B. v. Garba’s* case (*supra*). At page 1908 of the All FWLR, His Lordship stated inter alia, as follows:

“I am also aware of the decision of the Supreme Court in NEPA v. Edeghero and Adah v. NYSC (supra). A decision is authority for the law based on the facts it decides. In Ada v. NYSC and NEPA v. Edeghero the suits were filed after the promulgation of Decree No. 107 of 1993.

I was initially enticed by the doctrine of implied repugnancy as espoused in Olutola v. Unillorin. However a rule of doctrine cannot override express provisions of the law.....”.

His Lordship had earlier at the above page, stated inter alia, as follows:

“It is humbly opined that the change in law contained in Section 230 (1) (q) (1) (sic) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993 even though has not affected the accrued or vested rights of the respondent but has only changed the venue of the trial to another court cannot be retroactive. I have pondered on the dictum of Niki Tobi, JSC concurring with the lead judgment in Olutola v. Unillorin where he referred to the Supreme Court’s earlier decision in Ada v. NYSC (2004) All FWLR (Pt. 223) 1850; (2004) 13 NWLR (pt. 891) 639, he said inter alia at page 464 of Part 905-

“On appeal to this Court it was held (per Uwaifo) JSC, that the law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was Hinted and heard (Italics mine for emphasis)”.

I will pause here to note again, that Mr. Ijatuji told this Court that the issue of jurisdiction, was raised and settled in the trial court. I

had earlier in this Judgment, noted that the trial court had held firstly, that the jurisdiction of the court, had been ousted by Decree No. 12 of 1994. But for the avoidance of doubt. I note regrettably, that the learned trial judge, with respect, blew hot and cold as it were, at the same time. He approbated and reprobated, At page 182 of the
 B Records, His Lordship in dealing with the issue of jurisdiction, stated inter alia, as follows:

“..... No doubt the Plaintiff (sic) cause of action have arisen before Decree No. 12 of 1994 was promulgated. This Decree took
 C effect from 1st November, 1993. Ordinarily on the face of it, this Court has jurisdiction to entertain the suit but section 2 (b) of Decree No. 12 of 1994 provides as follows:

(1) *No civil proceedings shall lie or be instituted in any court for on account of or in respect of any act matter or thing done or
 D purported to be done under or pursuant to any Decree or indict and if such proceedings are instituted before on or after the commencement of this Decree the Proceedings shall abate, be discharged and made void. It is clear that the law as it stands, the Plaintiff cannot enforce any rights he may have had in any court of law. This is be-
 E cause the suits which he filed before coming into force of the Decree No. 12 of 1994 abates after the commencement of the Decree. The jurisdiction of this Court to entertain this suit have been taken away by this Decree. It is unfortunate. I am unable to accept the conten-
 F tion of Mr. Ijatuyi Counsel for the Plaintiff that since the commencement date of Decree No.12 of 1994 is 18^h November, 1995 and the Plaintiff was in court before that date this Court has jurisdiction to hear and determine the suit.....”.*

His Lordship at page 184 thereof, with respect, made a U-Turn
 G and stated inter alia, as follows:

“.....*This action is well within the ambit or provision of Section 230(1) of the 1979 Constitution (Suspension and modification) Decree No. 107 of 1993. Since the commencement date of Decree No. 107 of 1993 is 17/11/93 and this matter was filed before 17/11/
 H 94 (sic) when the cause of action arose this Court has not lack jurisdiction (sic) to determine the matter”.*

Now back to the issue. It is now settled that issue of jurisdiction, is fundamental and crucial, it is in fact, a threshold matter. Where a court has no jurisdiction, any action taken will be a nullity however

well conducted. The principles which define the competence of the Court, are stated in the case of Madukolu & ors. v. Nkemdilim (1962) 1 ANLR (pt. 4) 587; (1962) SCNLR 324.

Where a court on its own discovers that it has acted without jurisdiction, it has an inherent power to set aside its own decision in the matter. See the cases of Forfe v. Kwabena Seifah (1956) 1 All E. Report 289 PC.; and Western Steel Works Ltd. & anor. v. Iron Steel Workers Union of Nigeria (1986) 3 NWLR (Pt. 30) 617;

It is not in dispute as borne out from the Records, that the Appellant brought the suit in the Delta State High Court and not in the Federal High Court that has jurisdiction. In the NEPA v. Edegbero & ors. case (*supra*), which facts are substantially similar to the instant case, this Court - per Ogundare, JSC (of blessed memory) held inter alia, at pages, 96 – 97 as follows:

“..... *It is also not disputed that the cause of action in this matter arose out of the administrative action or decision of the defendant. The action is for declaration and an injunction and the principal purpose of it is to nullify the decision of the defendant terminating the appointments of the plaintiffs and others. In the light of all these, therefore the action on hand came squarely within the provision of Section 230 (1) (s) of the 1979 Constitution A careful reading of paragraphs (q), (r) and (s) reveals that the intention of the law-makers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High court actions in which the Federal Government or any of its agencies is a party.....I agree entirely with the submission of the learned counsel for the defendant that the two courts below were in error in holding that the State High Court had jurisdiction in this matter. There is nothing in the proviso to those paragraphs that could be said to have whittled down the objective of the law*”.

In the light of the above, this should have been the end of this appeal as I hold that it is the Federal High Court and not the Delta State High Court, that has jurisdiction to entertain and determine, the subject-matter of the Appellant's said suit or action.

However, for purposes of emphasis, this court is bound, not only by the decision in NEPA v. Edegbero (*supra*), it is also bound by that in Prof. Olutola v. University of Ilorin (*supra*). The latter decision was after the decision in O.H.M.B. v. Mallam Garba (*supra*). It is now

settled that if there are two conflicting Judgments of this Court, the lower courts, are bound by the latter. So be it in this case. To sound it loud and clear, by the Decree, the unlimited jurisdiction vested in the State High Courts, to hear and determine both civil and criminal causes, had by virtue of the Decree, been modified by removing
 B from the State High Courts, the jurisdiction to hear and determine causes and matters including declaratory actions against the Federal Government and its agencies such as the 1st Respondent. **The amendment on Section 230 of the 1979 Constitution, conferred additional jurisdiction on the Federal High Court which is exclusive to it hence by the opening words in section 230(1), it states or uses the words**
 C

***“notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as
 D may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to exclusion of any other court in civil causes and matters arising”.***

***This is in spite of the proviso thereto. In other words,
 E the aim of paragraphs (q), (r) and (s) of sub-section (I) of Section 230, was to vest exclusive jurisdiction in the Federal High Court in matters, notwithstanding the nature of the claim in the action. While paragraph (s) talks of actions for declaration or injunction, the proviso extended this to actions for
 F damages, injunction or specific performance.***

It is now settled that where there are two conflicting Judgments of this Court, the lower court or courts is or are bound by the latter decision and must follow and apply it. See the case of Chief Okpozo v. Bendel Newspaper Corporation & anor. (1990) 5 NWLR (Pt. 153) 652@ 661, 663 C.A.
 G

***As for hierarchy of the courts, it is now settled that the ratio decidendi of a case, is the reason for the decision, the principle of the decision. A court lower in the judicial hierarchy,
 H is bound by the ratio decidendi of a higher court not necessarily the obiter dictum.***

Stare decisis, means to abide by former precedents where the same points came again in litigation. It presupposes that the law has been solemnly declared and determined in the former case. It

thus, precludes the Judges of the subordinate courts, from changing what has been determined. Thus, under the doctrine of *stare decisis*, lower courts, are bound by the theory of precedent. So said this Court in the case of *Mrs. Clement & anor. v. Mrs. Iwuanyanwu & anor.* (1989) 4 SCNJ. (Pt. II) 213 @ 220. See also the case of *Foreign Finance Corporation v. Lagos State Development & Property Corporation & 2 ors.* (1991) 5 SCNJ. 52. B

In the case of *The University of Lagos & anor. v. Olaniyan & 2 ors.* (1985) 1 NWLR (Pt. 1) 156, it was held that the Court of Appeal has no business with whether or not the decision of the Supreme Court, is right or wrong. **That in the hierarchy of Courts, the lower court, is bound by the decision of the higher court. In fact, in the case of Attorney-General Ogun State & anor. v. Egenti (1986) 3 NWLR (Pt. 28) 265 at 272-273, it was held that it is not for a lower court, to question or say that a decision of the higher court, was reached per incuriam. That that is a privilege of that higher court if after reconsidering its former decision, it is satisfied that the previous decision, had been reached per incuriam. That the doctrine of stare decisis is a well settled principle of judicial policy. Thus, while it is open for a lower court to depart from its own decisions reached per incuriam, the lower courts, cannot refuse to be bound by decisions of higher court even if reached per incuriam.** The cases of *Tsamije v. Bauchi N. A.* (1957) NRNL 73; *Cassel & Co. Ltd. v. Broone & anor.* (1972) 2 WLR 645, 653; (1972) 2 All E. R. 801, 809 and *Pascal & Luding Inc. v. Kiren* (1975) (1) NMLR 74 @ 72-78 were followed and applied. C
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In the case of *Rossek & 2 ors. v. A.C.B. Ltd. & 2 ors.* (1993) 8 NWLR (Pt. 312) 382; (1993) 10 SCNJ. 20 @ 54, it was held that the doctrine of *stare decisis* or precedent, is an indispensable foundation on which to decide what the law is and that unless there is certainty in the law, there will be no equilibrium in the society. See also the case of *NEPA & anor. & Obayangbona & 6 ors. v. Mrs. P.O. Onah* (1997) 1 SCNJ. 220 @ 226 - per Mohammed, JSC, citing the case of *Funnel v. Alexander* (1977) A.C. 59. See also the case of *Dalhatu v. Turaki & 5 ors.* (2003) 7 SCNJ. 1 @ 12 - per Katsina-Alu, JSC (as he then was now CJN.): Lord Denning, M.R. in his Book ;The Discipline of Law, defined the doctrine thus; F
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“stand by your decisions and the decisions of your predecessors, however wrong they are and whatever injustice they inflict”.

Back to hierarchy of courts, Olatawura, JSC (of blessed memory) in the case of *Alhaji Mohammed & anor. v. Olawunmi & 9 ors. (1993) 5 SCNJ. 94 @ 112-113*, stated that the attitude in disregarding the process of this Court, borders on judicial impertinence. That it is an affront to the authority of this Court. That all courts established under the Constitution, derive their powers and authority from the Constitution. That the hierarchy of courts, shows the limit and powers of each court. Therefore, to defy the authority and powers of a higher court, appears undesirable and distasteful. See also the case of *7-up Bottling Co. Ltd. & 2 ors. V. Abiola & sons Nig. Ltd. (1995) 3 NWLR (pt. 883) 257; (1995) 3 SCNJ. 37 @ 49 citing the case of Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt. 184) 157; and Nigeria Airports Authority v. Chief Okoro (1995) 7 SCNJ. 1 @ 13. In the case of Dalhatu v. Turaki & ors. (supra), it was/is stated that a refusal by a Judge of the court below, to be bound by the decision of this Court, is gross insubordination and that such a judicial officer, is a misfit in the judiciary.*

Lastly and in summary, the legal position is that the Court of Appeal and indeed all lower courts, are bound by the decision of this Court. However, where the principles enumerated in any decision of this Court, is not relevant or applicable to the issue or issues arising for determination in the case before the Court of Appeal or lower court, that is a different matter or a different ball game. See the case of *Osho v. Foreign finance Corporation (supra)*. **Where there is no discernible ratio decidendi common to the decisions of a superior court and this Court has handed down conflicting decisions, the lower court or a court of co-ordinate jurisdiction is free to choose between the decisions which appear to it to be correct.** See *NEPA & ors. V. Mrs. Onah (supra)* and *Okolie Chime & anor. v. Ofili Elikwu & anor. (1965) NMLR 71*. To be stressed, is that it is not open to a lower court, to disagree with the decision of the higher court on any point even if the decision of the higher Court, was reached *per incuriam*. The only course open to a lower court that does not feel able to follow the decision of a higher court on any point, is to state a case to the higher court for consideration. See the cases of *Yusuf v. Dada (Mrs.) & 3 ors. (1990) 4 NWLR (Pt. 146) 657;*

(1990) 7 SCNJ. 68 and African Newspaper of Nigeria Ltd. & 2 ors. v. The Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137.

In the case of *Okonji v. Dr. Mudiaga Odje & ors. (1985) 10 S.C. 267@ 268-269* Esq., JSC stated inter alia, as follows:

"In the hierarchy of the courts in this Country, as in all other free common law countries, one thing is clear, however learned a lower court considers itself to be and however contemptuous of the higher court that lower court is still bound by the decisions of the higher court....."

I hope it will never happen again whereby the Court of Appeal in this Country or any lower Court for that matter, would deliberately go against the decisions of this Court and in this case, even to the extent of not considering the decisions when those of this Court were brought to the notice of that court. This is the discipline of the law. This is what makes the law certain and prevents it from being an ass".

Those who think that they are very knowledgeable than this Court, if they have listening ears, let them hear and take care. I have gone this far, because the learned Justices of the Court of Appeal in the *University of Ilorin v. Adeniran (supra)*, who claim or assert to be "torn between the two judgments of this Court", should please take note and come to terms with the principles or doctrine of *stare decisis*, precedents and hierarchy of the courts, which are clear and unambiguous. They are an indispensable foundation. For the umpteenth time, where there appear to be conflicting judgments of this Court, the latter or latest, will or should apply and must be followed if the circumstances are the same.

In conclusion, in view of the fact that sentiments, have no place in our judicial system and in the administration of justice - See the cases of *Ndaeyo v. Ogunnaya (1977) 1 S.C. (Reprint) 7* and *Ezeugo v. Ohanyere (1978) 6-7 S.C. 171 @184; (1978) 6-7 S.C. (Reprint) 115*. I hold that the Delta State High Court, had or has no jurisdiction to hear and determine the suit leading to this appeal. It is the Federal High Court that has such jurisdiction. In the final analysis or in the end result, the said suit, is hereby and accordingly struck out. No order as to costs.

TOBI JSC

I have read in draft the judgment of my learned brother, Ogbuagu, JSC and I agree with him that it is the Federal High Court and not the State High Court that has jurisdiction in this matter.

B The Constitution of the Federal Republic of Nigeria 1999 is clear on the issue of jurisdiction in this matter and I cannot go outside the clear provision to vest jurisdiction to the State High Court. I therefore agree with my learned brother, Ogbuagu, JSC that jurisdiction is vested in the Federal High Court. I also abide by his orders as to costs.

OGEBE JSC

D I read in advance the lead judgment of my learned brother Ogbuagu JSC just delivered and I agree entirely with his reasoning and conclusion.

The Court of Appeal in University of Ilorin V. Adeniran (2007) All FWLR (Pt. 382) 1871 had no business in preferring the former decision of the Supreme Court in the case of O.H.M.B. V. Garba & Ors. (2002) FWLR (Pt. 123) 200. In that case it was the appellant which was successful in the Court of Appeal that appealed to the Supreme Court. The respondents did not appeal and did not take part in the appeal to give the Supreme Court balanced arguments on the issues raised in the appeal. It is questionable if the appellant which won in the Court of Appeal had any right of appeal to the Supreme Court. This raises the competence of that appeal and the validity of the pronouncements of the Supreme Court in that appeal.

F The Court of Appeal should have followed the latter case of Olutola V. University of Ilorin (2005). All FWLR (Pt. 245) 1151 which is on all fours with the present case on appeal.

G The Delta High Court had no jurisdiction to determine the claims of the appellant. This want of jurisdiction also affected the judgment of the Court of Appeal. Accordingly. I declare as a nullity the proceedings and judgments of the two lower courts and strike out the appellant's claims before the trial court. I also make no order as to costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Ogbuagu, JSC. I agree with the reasons ably advanced therein to arrive at the conclusion that the appellant goofed in initiating his suit at the Delta State High Court in Asaba, instead of the Federal High Court which is imbued with jurisdiction. B

Jurisdiction is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. It is the bed-rock or launching pad of any court in its adjudicatory process. *Pinner v. Pinner* 33 N.C. App. 204, 234 SE. 2d 633. C

The issue of jurisdiction is very fundamental as it goes to the competence of the court or tribunal. Any action taken by a court without the requisite jurisdiction is a waste of time and a nullity. D See: *Barclays Bank v. Central Bank* (1976) 6 SC 175.

A court will, *inter alia*, have the necessary competence to hear and determine a matter if same is within its jurisdiction and there is no feature in the case, which prevents the court from exercising its jurisdiction. This is as enunciated by this court in the case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 at 348. E

At page 182 of the record of appeal, the learned trial judge considered the provision of section 2 (b) of Decree No. 12 of 1994 which he said abates all suits filed before the coming into existence of the Decree. He felt that his jurisdiction to entertain the suit had been taken away by the Decree. He said it was unfortunate. He bemoaned the situation of things to no avail. That was the position we had to contend with as at that time. F

With the above in view, I do not see the rationale for the fuss G generated by the court of Appeal, Ilorin Division in its decision in *University of Ilorin v. Adeniran* in preferring to follow the decision of this court in *O.H.M.B v. Mallam Garba* and brushing aside the latter decision of this court in *Olutola v. University of Ilorin*. In a similar situation in *Atolagbe v. Awuni Ors.* (1997) 7 SCNJ 1 at 20, 24 and H 35 this court was not happy with the stance of the trial judge who engaged in a similar prank. The doctrine of stare decisis has come to stay with us. A lower court should tow the line. It does not fall within the province of a lower court to criticize the judgment of a superior

court out of perceived erudition and assert that a judgment was rendered per incuriam. It is for the superior court to so pronounce at an opportuned time. *See: Tsamiye v. Bauchi N.A. (1957) NRNLR 73.*

It is not in dispute in this appeal that the 1st respondent is an agency of the Federal Government which was sued by the appellant at the Delta State High Court instead of initiating his suit at the Federal High Court as dictated by section 230 (1), (q), (r) and (s) of the 1979 Constitution (Suspension and Modification Decree No. 107 of 1993). The suit was not competent. The same divests the State High Court of jurisdiction to try the matter. This is as decided in *Adebileje & Anor v. NEPA & Anor (1998) 12 NWLR (pt. 577) 219 C.A.; NEPA v. Edeghero & Ors. (2002) 18 NWLR (Pt. 798) 79 S.C.; Ali v. Central Bank of Nigeria (1997) 4 NWLR (Pt. 498) 192 C.A.*

For the above reasons and the fuller ones set out by my learned brother, I, too hold that the Delta State High Court has no jurisdiction to determine the suit leading to this appeal. It is the Federal High Court that has jurisdiction. All actions taken by the two courts below were to no avail in the prevailing circumstance. The suit is hereby struck out. I endorse the order relating to costs as contained in the lead judgment.

ADEKEYE JSC

I had read before now the judgment just delivered by my learned brother I.F. Ogbuagu, JSC. I agree with his reasoning and conclusion. This court took judicial notice of Decree No. 107 of 1993 which amended the provision of Section 230 (1) (q) (r) and (s) of the 1979 Constitution and vested exclusive jurisdiction on the Federal High Court in civil matters arising from the administration, management of and control of the Federal Government or any of its agencies. The court saw the need for the counsel in this suit to further address on the jurisdiction of the Delta State High Court, Asaba Judicial Division to adjudicate on this matter in view of Decree No. 107 of 1993, and its effect on the provisions of Section 230 (1) and (2) of the 1979 Constitution. Counsel for the parties addressed the court on 9/3/10. Learned counsel for the appellant submitted that the action was filed in 1992 before the Asaba High Court whereas the Decree was promulgated and the date of commencement was 18th

of November 1993 well before the Decree 107 of 1993 became operative. That Asaba High Court was right in assuming jurisdiction and adjudicating on the suit. The learned counsel for the respondent drew our attention to the two conflicting decisions of this court in *O.H.M.B. V. Garba (2002) FWLR pt.123 page 200* and *Olutola v. University of Ilorin (2005) FWLR pt.245 pg.1151*. The learned counsel referred to the case of *Unilorin v. Adeniran (2007) FWLR pt. 382 pg. 1871 at 1151* in which the Court of Appeal criticized the decision of the Supreme Court in the case of *Olutola v. University of Ilorin*. My Lord in his leading judgment has given adequate consideration to the case of *Unilorin v. Adeniran* and the application of the doctrine of *Stare Decisis*. I do not wish to make any further comments on this.

On the two conflicting judgments - the last in time *Olutola's* case is very relevant to this case. The learned counsel for the respondent, with reference to *Olutola's* case, submitted that the Asaba High Court had no jurisdiction to entertain the case, because as at the time trial commenced in it, Decree 107 of 1993 was already promulgated. That the learned trial judge should have declined jurisdiction and directed the appellant to institute his action before the Federal High Court. The trial court adverted its mind to this issue and gave due consideration to this crucial question at pages 181-184 of the Record. Before the lower court, the appellant raised it as issue (c) in the issues formulated for determination, and the respondent raised it as issue (a). The trial court considered same on pages 320-322 of the record. Both parties agreed that the Federal College of Education (Technical) Asaba was created by Decree No. 4 of 1986. It is therefore not disputed that the respondent here is a Federal Government Agency.

Adebilije v. N.E.P.A. (1998) 12 NWLR pt. 572 pg. 219.

N.E.P.A. v. Edegbero (2002) 18 NWLR pt. 798 pg. 79.

Olutola v. Unilorin (2004) 18 NWLR pt. 905 pg. 416.

Ansa v. P.T.P.C.N. (2008) 7 NWLR pt. 1086 pg. 421.

Oloruntoba-Oju v. Dopemu (2008) 1 NWLR pt. 1068 pg. 397.

The issue for determination by the court between the parties is a contract of employment. In view of the decision of this court in the case of *NEPA v. Edegbero (2002) 18 NWLR pt. 798 at page 79*, entering into a contract of employment with an employee is a business relationship which clearly comes within Section 230 (1) (q) of the 1979 Constitution as amended by Decree No. 107 of 1993. In

construing Section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993, two important matters arise for consideration by this court, namely - the parties in litigation and the subject-matter of litigation - which is the termination of the employment of the appellant. Both lower courts declared that the appellant's cause of action accrued when his employment was terminated on 30/3/90 and the appellant's cause of action arose before Decree 107 was promulgated, as the Decree came into effect on the 18th of November 1993.

By virtue of Section 236 (1) and (2) of the 1979 Constitution, the High Court of a State had unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. The criminal or civil matters include those that originated in the State High Court and those brought to it in the exercise of its appellate or supervisory jurisdiction. By the provision of Section 230 (1) (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 exclusive jurisdiction was vested in the Federal High Court in civil causes and matters arising from the administration, management and control of the Federal Government, the operation and interpretation of the Constitution as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions of the Federal Government.

In effect, the provision of Section 230 (1) (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 required the following conditions to be satisfied before embarking on any action at the Federal High Court:-

(a) The action or proceeding must be civil matters brought against the Federal Government or its agencies arising from the administration, management and control.

(b) The action or proceedings must affect the validity of any executive or administrative action or decision of the Federal Government or any of its agencies.

(c) The matter must arise from the operation and interpreta-

tion of the constitution - as it affected the Federal Government.

In the case of N.E.P.A. v. Edegbere (2002) 18 NWLR pt. 798 pg. 79 at pg. 98, my Lord Uwais CJN (as he then was) said that -

“The clear intendment of the modification to Section 230 of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 107 of 1993 was to confer on the Federal High Court exclusive jurisdiction in respect of matters specified under sub-section (1) (q) (r) and (s) thereof. The proviso to the section - does not whittle down the exclusive jurisdiction. A careful gleaning of paragraphs (q) (r) and (s) of Section 230 (1) reveals that the intention of the law makers was to take away from the jurisdiction of the High Court of the State actions in which the Federal Government and its agencies is a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action.”

Egonu v. BRTC (1997) 12 NWLR pt. 531 pg. 29.

Nigeria Deposit Insurance Corporation v. Federal Mortgage Bank of Nigeria Ltd. (1997) 2 NWLR pg. 235.

UTB v. Ukpabia (2000) 8 NWLR pt. 676 pg. 570.

The exclusive jurisdiction granted to the Federal High Court is confirmed by the opening words of Section 230 (1) of the 1979 Constitution as amended which states that-

“Notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters which are stated in the paragraphs of the Section 230(1).”

I shall now consider the impact of Decree No. 107 of 1993 on cases pending before State High Courts when it came into effect. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose, and the law relating to jurisdiction is the prevailing law when the action was instituted and heard. The law in both situations may not co-exist.

Adah v. NYSC (2004) 13 NWLR pt. 891 pg. 639.

Utih v. Onoyivwe (1991) 11 NWLR pt. 166 pg. 166.

Uwaifo v. A-G Bendel State (1982) 7 SC pg. 224.

Sossa v. Fokpo (2001) 1 NWLR pt. 693 pg. 16.

Gov. of Oyo State v. Folayan (1995) 8 NWLR pt. 413 pg. 292.

I.G.P. v. Aigberemolen (1999) 13 NWLR pt. 635 pg. 443.

As I have mentioned earlier on in this judgment - the cause of action in this matter arose in 1990 when the appointment of the appellant was terminated. The appellant sought redress at the High Court in Asaba in 1992. The court commenced trial in the action in 1994. Decree 107 of 1993 became operative in November 1993. The law applicable to the cause of action and that applicable to determine the jurisdiction of the court in this case conspicuously differ. It is however apparent that by the time the case of the appellant was heard in 1994, the State High Court had been divested of jurisdiction. In the case of Olutola v. Unilorin (2004) 18 NWLR pt. 905 pg. 416 at page 471 paras B - C the court had this to say –

“Although a Statute is prospective and not retrospective, since Decree No. 107 of 1993 made no provision for cases already pending in court on its effective date of 17th November 1993 those cases such as the one that gave rise to the instant appeal were caught by the Decree thereby rendering the decision of the trial court a nullity.”

The simple and straight forward interpretation of the nature of Decree 107 of 1993 is that when it came into operation, it was endowed with the force of law as the existing Constitution of the Federal Republic of Nigeria. By the Decree, Section 230 (1) of the 1979 Constitution was duly modified. By so doing the provision of Section 236 (1) and (2) of the 1979 Constitution, which gave unlimited jurisdiction to the State High Courts to hear and determine both civil and criminal causes automatically lapsed. The provision have been impliedly repealed and abrogated by Decree 107 of 1993. In effect the provisions of Decree 107 of 1993 and those of the 1979 Constitution could not stand together. In the appeal in hand since the respondent, the Federal College of Education is an agency of the Federal Government, the High Court of Asaba lacked the jurisdiction to hear and ultimately determine the matter when it did after the promulgation of Decree 107 of 1993. The trial court having become aware of the Decree, should have put an end to the proceedings as the court was rendered incompetent to handle the matter. Any defect in competence is fatal for the proceedings are nullity, however well conducted and decided.

University of Abuja v. Ologe (1996) 4 NWLR pt. 445 pg. 707.

University of Ilorin V. Olutola (1998) 12 NWLR pt. 905 pg.

416.

NEPA v. Edeghero & Ors (2002) 8 NWLR pt. 798 pg. 79.

Adah v. NYSC (2004) 13 NWLR pt. 891 pg. 639.

IGP v. Aigbiremolen (1999) 13 NWLR pt. 635 pg. 443.

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Ayeni v. University of Ilorin (2000) 2 NWLR pt. 644 pg. 290.

Western Steel Works v. Iron and Steel Workers Union (1986)

3 NWLR pt. 30 pg. 617.

Oloba v. Akereja (1988) 3 NWLR pt. 84 pg. 508.

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With the fuller reasons given by my Lord in the leading judgment, I also strike out the appellant's claims in the trial court and adopt the consequential orders as mine.

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