

**SUPREME COURT OF NIGERIA**

30TH APRIL, 2010, SC. 229/2004

**CORAM:- M. MOHAMMED, I. F. OGBUAGU, F. F. TABAI,  
M. S. MUNTAKA-COOMASSIE, O. O. ADEKEYE, JJSC**

1. JOSIAH AYODELE ADATAYO
2. Ms. FOLUKE IBIDAYO-OBE ..... APPELLANTS
3. MR. NURU ARUWA  
(For themselves and on  
behalf of other land owners  
at Yakoyo Ojudu Village)  
AND
1. KUNLE ADEMOLA
2. FEDERAL MINISTRY OF  
WORKS AND HOUSING ..... RESPONDENTS
3. ATTORNEY-GENERAL  
OF THE FEDERATION

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JURISDICTION - Courts - Determination - Basis - It is to be determined on plaintiff's statement of claim - Without any recourse to defendant's statement of defence (H1)

JURISDICTION - Federal High Court - S. 251(1)(r) of 1999 Constitution - Scope - Though it appears to give the court exclusive jurisdiction - Once Federal Government is a party - But facts and circumstances - Are the determinant factors (H2)

JURISDICTION - Federal High Court - S. 251(1)(r) of 1999 Constitution - Activation - It is activated only where the executive action of the Federal Government - Is being challenged by plaintiff (H3)

LAND LAW - Actions - Original jurisdiction - Courts having - State High Courts have exclusive jurisdiction - Over urban lands - And shares jurisdiction with Area and Customary courts - Over rural lands (H4)

ACTIONS - Courts - Transfers - S. 22 of Federal High Court Act - Limit - It will not avail the court - Where subject of action involves plots of land - Located in two or more states (H5)

### ***FACTS***

The plaintiffs/appellants sued defendants/respondents at the Federal High Court holden at Lagos. Appellants' claim was for declaration of title to the various parcels of land being respectively occupied by them but which were being claimed by 1st respondent. Appellants also claimed a declaration that the judgment in suit No. FHC/L/CS/820/95 is null and void in that neither themselves nor the 2nd and 3rd respondents were served with the court processes in the suit. Before the action came up for hearing, 1st respondent filed a motion on notice praying the court for an order "dismissing" the action for want of jurisdiction.

In its ruling on the motion by 1st respondent, trial court held that it had jurisdiction to entertain the action by virtue of the provisions of section 251 (I) (r) of the 1999 Constitution. Aggrieved, 1st respondent appealed against the ruling to Court of Appeal. That court allowed the appeal as it held that trial court had no jurisdiction irrespective of the provisions of the said section of the 1999 Constitution. Consequently, it struck out the action of appellants. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal. They also contend that in the event Court of Appeal turns out to be right in its holding that trial court lacked jurisdiction, the proper order to make was not an order striking out the suit but rather transferring same to the appropriate court pursuant to section 22 of the Federal High Court Act.

### ***ISSUE FOR DETERMINATION***

Whether or not the Court below was right in its decision now on appeal that the trial court has no jurisdiction under Section 251 (1) (r) of the 1999 Constitution to entertain the Plaintiffs/Appellants' action claiming declaration of title to plots or parcels of land.

### ***HELD*** (Unanimously dismissing the appeal per **MOHAMMED JSC**) ***JURISDICTION - Courts - Determination - Basis***

1. The law is indeed well settled that in cases initiated by Writ of Summons and statement of claim such as the present case, the jurisdiction of the Court is determined by the Plaintiffs statement of claim. In other words although it is necessary sometimes to hear some sort of evidence first in assistance for the purpose of the determination of

or the resolution of the issue of jurisdiction of Court, where pleadings are filed in a suit as in the instant case, the issue of jurisdiction ought to be determined on the Plaintiffs' statement of claim without any recourse to the Defendant's statement of defence. (p. 1384 C/ E)

***S. 251(1)(r) of 1999 Constitution - Scope***

2. The law is trite that the jurisdiction of any Court is derived from the statute creating the Court or from any other statute specifically conferring such jurisdiction on the Court.

Section 251 (1) (r) of the 1999 Constitution reads -

*“251(1) 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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters –*

*(a.) xxxxxxxxxxxxxxxx*

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

On the face of these provisions of the Constitution, it appears that impression has been created that the Federal High Court has exclusive original jurisdiction to the exclusion of all other Courts in Nigeria in any civil cause or proceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provisions, would show that this is not necessarily the true position. This is because, in my view, it is the facts and circumstances of each case that will determine whether or not it is a case within or outside the exclusive jurisdiction of the Federal High Court. (p. 1385 D/ E)

***S. 251(1)(r) of 1999 constitution - Activation***

3. It must be emphasized that the claims of the Plaintiffs/Appellants is for declaration of title to land and injunction to protect their possession of the land. The executive and administrative action or decision of the Federal Government and its agency the Ministry of Works and Housing to compulsorily acquire the parcels of land for public purposes namely, the construction of the Lagos - Ibadan Express Way is not at all the subject of the action. Thus, as the executive action of the

Federal Government in compulsorily acquiring the land in dispute is not being challenged by the Plaintiffs/Appellants in their instant action, there is no opening whatsoever for the Federal High Court to come into the matter in exercise of its original jurisdiction under Section 251 (1) (r) of the 1999 Constitution. (p. 1387 C)

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***LAND LAW - Actions - Original jurisdiction - Courts having***

4. The Courts conferred with jurisdiction to entertain disputes between Nigerians in exercising their right to acquire and use land under the Act are clearly specified therein.

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While the State High Court has exclusive jurisdiction over lands in Urban Areas by virtue of Section 39(1) of the Land Use Act, that Court shares jurisdiction with only the Area Courts and Customary Courts or other Courts of equivalent jurisdiction by virtue of both the jurisdiction of the State High Court under Section 272 of the 1999 Constitution and the jurisdiction conferred on the Area Courts and Customary Courts by virtue of Section 41 of the Act. As there is nothing in these Sections 39, 41 and 42 of the Land Use Act that conferred any jurisdiction on the Federal High Court to entertain land causes or matters, I entirely agree with the Court below that the Federal High Court has no jurisdiction to hear and determine any dispute on declaration of title to land. (p. 1388 B/ 1389 F)

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***Transfers - S. 22 of Federal High Court Act***

5. With regard to the complaint of the Appellants that their suit ought to have been transferred to the appropriate Court having jurisdiction to entertain it under S. 22 of the Federal High Court Act rather than striking out the suit, the fact that the parcels or plots of land being claimed are located within Lagos and Ogun States, it was not possible to have made any definite order to the appropriate State whose Courts have jurisdiction to entertain the suit. The order striking out the suit since the trial Court has no jurisdiction to entertain it, is therefore quite in order. (p. 1390 A)

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***REPRESENTATION***

O. S. Sowemimo, SAN with Chuka Okolo for the Appellants.  
George Etomi with Sampson Ebomhe for the 1st Respondent.  
2nd and 3rd Respondents absent and not represented but duly served.

**CASES REFERRED TO**

- Adeyemi v. Opeyori (1976) 9-10 S.C. 31 at 51  
Adisa v. Oyinwola (2000) 10 NWLR pt. 674 pg. 116  
NEPA v. Adegbero (2002) 18 N.W.L.R. (Pt. 798) 79  
Jack v. Unam (2004) 5 N.W.L.R. (Pt. 865) 208 at 229 B  
Chief Oloba v. Akereja (1988) NWLR (Pt. 84) 508 @ 510  
Madukolu v. Nkemdilim & Ors. (1962) 2 SCNLR pg. 341  
Acqua Ltd. v. Ondo State Sports Council (1990) 4 N.W.L.R. (Pt. 91) 622  
Kalagbor v. General Oil Ltd. (2008) All FWLR pt. 418 pg. 303 C  
A-G Kwara State v. Olawale (1993) 1 N.W.L.R. (Pt. 272) 645  
Alade v. Alemuloke & 2 ors. (1988) 1 NWLR (Pt. 69) 201 @ 204  
Aso Motel Kaduna Ltd. V. Deyemo (2006) 7 N.W.L.R. (Pt. 978) 87  
Orthopaedic Hospital Management Board v. Garba (2002) 14 D  
N.W.L.R. (Pt. 788) 538 at 563

**STATUTES REFERRED TO**

- Constitution of the Federal Republic of Nigeria, 1999, s. 251 (1) (r) E  
Federal High Court Act, s. 22  
Land Use Act, 1978, ss. 39, 41 and 42

**LEAD JUDGMENT BY MOHAMMED JSC**

The Appellants in this appeal were the Plaintiffs at the Federal High Court Lagos where they, by a Writ of Summons and statement of claim, filed their action against the Respondents herein who were the Defendants and claimed against them in paragraph 13 of the statement of claim as follows - F

*“(a.) A declaration that they are the persons entitled to be issued with certificate of occupancy in respect of the various parcels of land being occupied by them and claimed by the first Defendant at Yakoyo near Ojodu village. G*

*(b.) A declaration that the judgment in suit No. FHC/L/CS/820/95 is null and void as neither the Plaintiffs nor the second and third Defendants were served with Court processes in the suit. H*

*(c.) An injunction restraining the Defendants, their servants, agents, privies and otherwise howsoever from interfering with the Plaintiffs' possession of the land being occupied by them at Yakoyo*

near Ojodu village.”

However, before the action came up for hearing, the 1<sup>st</sup> Respondent who was the 1<sup>st</sup> Defendant at the trial Court filed a motion on Notice urging the Court to dismiss the action for want of jurisdiction to entertain the same. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, were Respondents to the motion which was heard by the trial Court. In its Ruling delivered on 11<sup>th</sup> July, 2001, the trial Court held that it has jurisdiction to entertain the Plaintiffs’ action by virtue of the provisions of Section 251 (1) (r) of the 1999 Constitution. The 1<sup>st</sup> Respondent who was not happy with the Ruling of the trial Court decided to appeal against it to the Court of Appeal Lagos Division where the only issue raised for the determination of the appeal was -

*“Whether by virtue of the provisions of Section 251 (1) (r) of the 1999 Constitution, the Federal High Court has jurisdiction to entertain an action for a declaration of title to the land.”*

After hearing the appeal, the Court of Appeal in resolving the single issue of jurisdiction that was placed before it for determination in its judgment delivered on 30<sup>th</sup> June, 2004 came to the conclusion that the provisions of Section 251 (1) (r) of the 1999 Constitution by virtue of which the trial Court held that it has the required jurisdiction to entertain the Plaintiffs/Appellants’ action, does not confer such jurisdiction on the trial Court and consequently struck-out the action in allowing the appeal. The Plaintiffs who were not happy with that decision are now on appeal to this Court.

In the brief of argument filed on behalf of the Plaintiffs/Appellants by their learned Senior Counsel to challenge the decision of the Court of Appeal that the trial Federal High Court has no jurisdiction to entertain the action of the Appellants for declaration of title to various plots of land, the following five issues were identified for the determination of the appeal -

*“(1.) Whether the Federal High Court lacks jurisdiction to entertain land matters in all circumstances.*

*(2.) Whether it is the reliefs endorsed on the statement of claim that determines the jurisdiction of the Court.*

*(3.) Whether or not the Appellants’ claim is one properly within the jurisdiction of the Federal High Court either by Section (sic) (1) (r) and (s) of the 1999 Constitution or even by the nature of the issue raised in the statement of claim.*

*(4.) Whether the Appellants were obliged to file a notice of intention to affirm the Ruling of Abutu J. on other grounds or to obtain leave to appeal before raising the issue.*

*(5.) Whether the learned Justices of the Court of Appeal were right in striking out the suit in view of Section 22 of the Federal High Court Act. ”*

In the Respondent's brief of argument filed for the 1<sup>st</sup> Respondent, the following three issues were formulated -

*“(1.) Whether the Federal High Court lacks jurisdiction to entertain land matters in all circumstances.*

*(2.) Whether it is the reliefs endorsed on the statement of claim that determines the jurisdiction of the Court.*

*(3.) Whether or not the Appellants' claim is one properly within the jurisdiction of the Federal High Court either by Section (sic) (1) (r) and (s) of the 1999 Constitution or even by the nature of the issue raised in the statement of claim. ”*

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being the Federal Ministry of Works and Housing and the Attorney General of Federation respectively who were at the center of the complaint of the Appellants on the issue of jurisdiction and who were duly served with the processes of this appeal, neither filed their Respondents' brief of argument nor appeared or represented (*sic nor were*) at the hearing of the appeal.

Taking into consideration that this appeal originated from the Ruling of the trial Court on the preliminary objection of its jurisdiction to entertain the Plaintiffs/Appellants' action, the appeal from which (*sic it*) to the Court of Appeal also raised a single issue of whether or not the trial Court has jurisdiction to entertain the action by virtue of the provisions of Section 251 (1) (r) of the 1999 Constitution, as many as five issues and three issues raised by the Appellants and the 1<sup>st</sup> Respondent in their respective Appellants' brief and Respondents' brief of argument, are clearly out of tune with the real subject of the appeal on the issue of jurisdiction. Since the substantive action of the Plaintiffs/Appellants is yet to be heard and determined on the merit by the trial Court, the only real issue for determination in this appeal is whether or not the Court below was right in its decision now on appeal that the trial court has no jurisdiction under Section 251 (1) (r) of the 1999 Constitution to entertain the Plaintiffs/Appellants' action claiming declaration of title to plots or parcels of land.

The circumstances surrounding the facts that gave rise to the dispute between the parties started in 1992 when the Federal Government of Nigeria through the Federal Ministry of Works and Housing compulsorily acquired a large parcel of land at Ojodu in Lagos/Ogun States. Part of the land was utilized for the Lagos - Ibadan Express way while the remaining part was allocated to private individuals for residential purposes. The 1<sup>st</sup> Respondent who claimed interest in part of the land, filed an action at the Federal High Court for declaration of title which was granted by the Court in its judgment delivered on 26<sup>th</sup> September, 2000. Like in the present appeal, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were Defendants in that action did not contest the claim against them. Armed with the judgment in his favour, the 1<sup>st</sup> Respondent pasted notices all over the land in dispute and threatened to evict the Plaintiffs/Appellants from their various plots of land. The Plaintiffs/Appellants therefore, went to the same Federal High Court and filed their action against the Defendants/Respondents for declaration of title to their respective plots of land occupied by them and the setting aside of the judgment of the same Federal High Court in favour of the 1<sup>st</sup> Respondent and injunction restraining the 1<sup>st</sup> Respondent from interfering with their possession of the land.

However, before the matter proceeded to hearing, the 1<sup>st</sup> Respondent's preliminary objection to the jurisdiction of the trial Court to entertain the action was heard and dismissed by the trial Court but his appeal to the Court of Appeal against the Ruling of the trial Court was successful when the Court of Appeal allowed the appeal and struck out the Plaintiffs/Appellants' action on the ground that the trial Court lacks jurisdiction to hear and determine the claims.

On the only issue of jurisdiction which calls for determination in this appeal, learned senior Counsel of the Appellants has submitted that the trial Court by virtue of Section 251 (1) (r) and (s) of the 1999 Constitution was clearly conferred with exclusive jurisdiction to hear and determine the Plaintiffs/Appellants action since the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being the Federal Government of Nigeria and its agency the Federal Ministry of Works and Housing, were Defendants in the action. Learned Counsel stressed that the wording of sub-section (1) of Section 251 of the 1999 Constitution which said -

*“Notwithstanding anything to the contrary contained in this Constitution.”*



are quite clear and unambiguous that in any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies, the Federal High Court has exclusive jurisdiction to entertain the action. Learned Senior Counsel relied heavily on the decision of this Court in *NEPA v. Adegbero* (2002) 18 N. W. L. R. (Pt. B 798) 79, which he argued was not properly considered for appropriate guidance by the Court below. Other cases cited in support of this stand of the Appellants include *Texaco Panama Inc. v. Shell Petroleum Development Company of Nigeria Ltd.* (2002) 5 N. W. L. R. (Pt. C 759) 209, *Adeyemi v. Opeyori* (1976) 9-10 S.C. 31 at 51 and *Nafiu Rabi'u v. State* (1981) N. C. L. R. 293. Learned senior Counsel concluded on this issue by observing that it is not only the reliefs claimed by the Plaintiff that determines the jurisdiction of Court but that the statement of claim including the reliefs claimed therein are D also relevant and urged the Court to give the provisions of Section 251 (1) (r) of the 1999 Constitution broad interpretation to accommodate the jurisdiction of the trial Court to entertain the Appellants' action and allow this appeal. Counsel also made a point that the Court below having held that the trial Court has no jurisdiction in the E matter, was in error in striking out the Plaintiffs/Appellants suit rather than transferring the case to the appropriate Court having jurisdiction to hear it under Section 22 of the Federal High Court Act.

Although the 1<sup>st</sup> Respondent's brief of argument dwelt extensively on issue estoppel which does not arise from the Ruling of the F trial Court that gave rise to this appeal, the issue of jurisdiction was adequately covered in the concluding part of the arguments where it is submitted that the Federal High Court lacks jurisdiction to entertain actions in land matters in all circumstances. Learned Counsel relying G on the cases of *Aso Motel Kaduna Ltd. V. Deyemo* (2006) 7 N.W.L.R. (Pt. 978) 87 at 113, *Omosowan v. Chiedozie* (1998) 9 N.W.L.R. (Pt. 566) 477 at 484 and *Jack v. Unam* (2004) 5 N.W.L.R. (Pt. 865) 208 at 229, pointed out that there is no blanket provision in Section 251 (1) (a) - (s) of the Constitution which confers exclusive jurisdiction on H the Federal High Court in actions against the Federal Government or any of the agencies regardless of the subject matter of the action. Agreeing with the Court below, learned Counsel emphasized that the Land Use Act which is entrenched in the Constitution has given the

State High Courts unlimited jurisdiction over land matters within their States and as such Section 251 of the 1999 Constitution will not operate to divest the State High Courts of jurisdiction and therefore urged this Court to dismiss the appeal.

As I have earlier stated in this judgment, taking into consideration that the present appeal arose from the preliminary objection raised to the jurisdiction of the trial Court which the Court below decided that the trial Court lacks jurisdiction to hear and determine the Plaintiffs/Appellants' action, the only issue for determination in this appeal is whether the Court below was right in holding that the trial Court has no jurisdiction under Section 251 (1) (r) of the 1999 Constitution to hear and determine the Plaintiffs/Appellants' claims for declaration of title to plots or parcel of land. ***The law is indeed well settled that in cases initiated by Writ of Summons and statement of claim such as the present case, the jurisdiction of the Court is determined by the Plaintiffs statement of claim.*** (See Adeyemi v. Opeyori (1976) 9-10 S.C. 31 at 51, Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (Pt. 117) 517 and Orthopaedic Hospital Management Board v. Garba (2002) 14 N.W.L.R. (Pt. 788) 538 at 563. ***In other words although it is necessary sometimes to hear some sort of evidence first in assistance for the purpose of the determination of or the resolution of the issue of jurisdiction of Court, where pleadings are filed in a suit as in the instant case, the issue of jurisdiction ought to be determined on the Plaintiffs' statement of claim without any recourse to the Defendant's statement of defence.*** See Izenkwe v. Nnadozie (1953) 14 W. A. C. A. 361 AND Attorney General Kwara State v. Olawale (1993) 1 N.W.L.R. (Pt. 272) 645.

The fundamental nature of jurisdiction is that it does not exist in vacuum because all Courts of law derive their power, authority and therefore jurisdiction either under the Constitution or under specific statutes. See Lekwot v. Judicial Tribunal (1997) 8 N.W.L.R. Pt. 515) 22. In this respect, no Court can assume jurisdiction in the absence of having been constitutionally or statutorily empowered to do so.

The law is also well settled that the question of jurisdiction strikes at the root of any cause or matter and consequently raises the issue of competence of the Court to adjudicate in the particular proceedings. Therefore any defect in competence is fatal as such proceedings

become null and void no matter how well conducted and decided the proceedings have been. Madukolu & Ors. v. Nkemdilim & Ors. (1962) 2 S. C. N. L. R. 341 and Skenconsult (Nigeria) Ltd. V. Ukey (1981) 1 S. C. 6.

In the present case it is not at all in dispute that from the Writ of Summons and the statement of claim filed by the Plaintiffs/Appellants, their claim is for declaration of title to various parcels of land, possession of the same parcels of land and injunction restraining the Defendants/Respondents from interfering with the Plaintiffs/Appellants' possession of the said parcels of land being claimed. Thus, guided by the position of the law in the determination of the issue of jurisdiction, the Plaintiffs/Appellants' claims at the trial Court as earlier quoted in full in this judgment, shall be the focus of attention in guiding me to resolve this issue in determining whether or not the Court below was right in its decision that the trial Federal High Court has no jurisdiction to entertain the Plaintiffs/Appellants' action. ***The law is trite that the jurisdiction of any Court is derived from the statute creating the Court or from any other statute specifically conferring such jurisdiction on the Court.*** The statutes in contention in the present case are of course the provisions of Section 251 (1) (r) of the 1999 Constitution and the provisions of Sections 39, 41 and 42 of the Land Use Act 1978 also entrenched in the provisions of the 1979 and 1999 Constitution respectively in Sections 274(5) and 315(5) thereof ***Section 251 (1) (r) of the 1999 Constitution reads -***

***“251(1) 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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters -***

***(a.) xxxxxxxxxxxxxxxx***

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

***On the face of these provisions of the Constitution, it appears that impression has been created that the Federal High Court has exclusive original jurisdiction to the exclusion of all other Courts in Nigeria in any civil cause or pro-***

***ceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provisions, would show that this is not necessarily the true position. This is because, in my view, it is the facts and circumstances of each case that will determine whether or not it is a case within or outside the exclusive jurisdiction of the Federal High Court.***

The principles guiding the interpretation of Constitutional provisions as those quoted above are well settled. Such provisions ought to be interpreted liberally. In other words it is not the duty of the Court to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends. See Mohammed v. Olawunmi (1990) 2 N.W.L.R. (Pt. 133) 458, Rabi v. State (1980) 2 N. C. L. R. 293; Acqua Ltd. v. Ondo State Sports Council (1990) 4 N.W.L.R. (Pt. 91) 622; and Ishola v. Ajiboye (1994) 1 N.W.L.R. (Pt. 352) 506.

Coming back to the provisions of Section 251 (1) (r) of the 1999 Constitution, this Court had given guidance on proper approach to the interpretation of Section 230 of the 1979 Constitution as amended by Decree No. 107 of 1993 which is in Pari-materia with Section 251 of the 1999 Constitution. The need to examine the parties in the litigation as well as the subject matter of the litigation was strongly advised for close scrutiny in resolving the issue. In construing the parties, the Court will have no difficulty in identifying the Federal Government but it may have difficulty in identifying an agency of the Federal Government in certain matters. See NEPA v. Edeghero (2002) 18 N.W.L.R. (Pt. 789) 79 at 100. Happily in the instant case, there is no dispute at all that the Federal Government and the Federal Ministry of Works and Housing are parties as Defendants at the trial Court and as Respondents in the Court of Appeal and in this Court. What remains to be considered therefore is the subject matter of the Plaintiffs/Appellants claims to see whether or not the claims can be accommodated under Section 251 (1) (r) of the 1999 Constitution. While the trial Court found that it has jurisdiction under the provisions of the Constitution, the Court below was of a different view. My task in resolving the issue is to find which of the Courts

below was right. What the provision in question provide is that the Federal High Court shall have exclusive jurisdiction in civil causes and matters in -

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

Applying this provision to the claims of the Plaintiffs/Appellants in the instant case, although the claims indeed include a declaration and injunction, there is nothing to show that the declaration and injunction being claimed relate or affect the validity of any executive or administrative action or decision of the Federal Government or any of its agencies. ***It must be emphasized that the claims of the Plaintiffs/Appellants is for declaration of title to land and injunction to protect their possession of the land. The executive and administrative action or decision of the Federal Government and its agency the Ministry of Works and Housing to compulsorily acquire the parcels of land for public purposes namely, the construction of the Lagos - Ibadan Express Way is not at all the subject of the action. Thus, as the executive action of the Federal Government in compulsorily acquiring the land in dispute is not being challenged by the Plaintiffs/Appellants in their instant action, there is no opening whatsoever for the Federal High Court to come into the matter in exercise of its original jurisdiction under Section 251 (1) (r) of the 1999 Constitution.*** D E F

Close examination of the entire provisions of Section 251 of the 1999 Constitution prescribing the jurisdiction of the Federal High Court to the exclusion of all other Courts, there is nothing therein specifically conferring jurisdiction in that Court in causes or matters concerning land disputes. Although the Section also indicated that the National Assembly may confer additional jurisdiction to the Court, there is no indication that such Act of the National Assembly had been promulgated conferring additional jurisdiction to the Court to entertain causes and matters on land disputes. If any such additional jurisdiction had been given, the most relevant statute to examine in search for it in my view, is the Land Use Act because jurisdiction of the Federal High Court to entertain land matters cannot be inferred by implication in the construction of Section 251 of the 1999 Constitution the meaning of which is quite clear and plain as no causes or matters in land dispute are mentioned G H

therein.

Since the provisions of Section 251 (1) (r) of the 1999 Constitution are not helpful in tracing any jurisdiction in land matters to the Federal High Court as jurisdiction of Court is derived from statutes conferring the jurisdiction, I decided to examine the provisions of the  
 B Land Use Act 1978 which was promulgated specially and specifically to deal with the control and management of land in Nigeria. **The Courts conferred with jurisdiction to entertain disputes between Nigerians in exercising their right to acquire and use land under the Act are clearly specified therein.** The relevant  
 C Sections in this respect are Sections 39, 41 and 42 respectively which state -

***“JURISDICTION OF HIGH COURTS AND OTHER COURTS***

***Jurisdiction of High Courts***

D 39(1) *The High Court shall have exclusive jurisdiction in respect of the following proceedings -*

(a) *proceedings in respect of any land the subject of a statutory right of occupancy*

E *granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings includes proceedings for a declaration*  
*of title to a statutory right of occupancy;*

(b) *Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under the Act.*

F (2) *All laws, including rules of Court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this Section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this*  
 G *Section.*

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***41. Jurisdiction of Area Courts or Customary Courts etc***

H *An Area Court or customary Court or other court of Equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this net; and for the purposes of this paragraph “proceedings” includes proceedings for a declaration of title to a customary right off and all laws including rules of Court regulating practice and procedure of such Courts shall have effect with such*

*modifications as would enable effect to be given to this Section.*

42. (1) *Proceedings for the recovery off rent payable in respect of any certificate off occupancy may be taken before a Magistrate's court of competent jurisdiction by and in the name of the Chief Land Officer or by and in the name of any other officer appointed by the Governor in that behalf.*

(2) *Proceedings for the recovery of rent payable in respect off any customary right off occupancy may be taken by and in the name of the Local Government concerned in the Area court or Customary Court off equivalent jurisdiction."*

It is quite clear from the provisions of the above Sections of the Land Use Act with specific powers and jurisdiction in respect of land matters specified therein conferred on State High Court, Area Court, Customary Court and Magistrate Court that the Federal High Court is not one of the Courts conferred with jurisdiction to entertain any dispute in land matters. In fact the purpose which Sections 39, 41 and 42 of the Land Use Act are designed to serve are very clear. While Section 39 excludes Area Courts and Customary Courts from exercising jurisdiction in respect of land the subject of statutory right of occupancy, Section 41 redefines the jurisdiction of the Courts referred to therein so as to ensure that Courts, such as the Customary Courts in Southern States of this Country which had previously been exercising concurrent jurisdiction with the High Court without distinction by classification of land, have their jurisdiction limited as stated therein. In other words ***while the State High Court has exclusive jurisdiction over lands in Urban Areas by virtue of Section 39(1) of the Land Use Act, that Court shares jurisdiction with only the Area Courts and Customary Courts or other Courts of equivalent jurisdiction by virtue of both the jurisdiction of the State High Court under Section 272 of the 1999 Constitution and the jurisdiction conferred on the Area Courts and Customary Courts by virtue of Section 41 of the Act. As there is nothing in these Sections 39, 41 and 42 of the Land Use Act that conferred any jurisdiction on the Federal High Court to entertain land causes or matters, I entirely agree with the Court below that the Federal High Court has no jurisdiction to hear and determine any dispute on declaration of title to land.***

***With regard to the complaint of the Appellants that their suit ought to have been transferred to the appropriate Court having jurisdiction to entertain it under S. 22 of the Federal High Court Act rather than striking out the suit, the fact that the parcels or plots of land being claimed are located within Lagos and Ogun States, it was not possible to have made any definite order to the appropriate State whose Courts have jurisdiction to entertain the suit. The order striking out the suit since the trial Court has no jurisdiction to entertain it, is therefore quite in order.***

For the above reasons given, I am completely with the Court below in its judgment now on appeal that the Federal High Court indeed has no jurisdiction to entertain the Plaintiffs/Appellants claims for declaration of title, injunction and possession of various parcels of land in their action against the Defendants/Respondents. I therefore find no merit at all in this appeal. The appeal is accordingly hereby dismissed.

There shall be N50,000.00 costs to the 1<sup>st</sup> Respondent alone against the Appellants

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### **OGBUAGU JSC**

This is again an Interlocutory appeal as the merits of the suit by the Appellants, are yet to be determined by a court with competent jurisdiction. In the writ of summons and the reliefs sought in the Statement of Claim filed in the Federal High Court, Lagos Judicial Division, the Appellants claimed against the Defendants/Respondents jointly and severally as follows:

*"a. A declaration that they are the persons entitled la be issued with Certificates of Occupancy in respect of the various parcels of land being occupied by them and claimed by the first Defendant at Yakoyo near Ojodu Village.*

*b. A declaration that the Judgment in suit No. FHC/L/CS/820/95 is null and void as neither the Plaintiffs nor the second and third Defendants were served with court processes in that suit.*

*c. An injunction restraining the Defendants their servants, agents, privies and otherwise howsoever from interfering with the Plaintiffs possession of the land being occupied by them at Yakoyo, near Ojodu Village".*



I note that at pages 79 to 83 of the Records, the trial Federal High Court - per Abutu, J. (as he then was now C. J) in the said suit No. FHC/L/CS/820/95, had given judgment in favour of the Appellants as against the Attorney-General of the Federation and the Minister of Works and Housing. An application to set aside the said Judgment on the ground that the suit was incompetent, was on 11<sup>th</sup> July, 2001, refused by the learned trial Judge. I note that the stapling of the pages of the Records, is faulty and mixed up. However, an appeal to the Court of Appeal, Lagos Division and sitting in Lagos by the Respondents, was successful, hence the instant appeal.

In my respectful but firm view, what calls for determination in this appeal, is the true interpretation of Section 251 (1) (r) and (s) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore, whether the court below, was right in its said decision. The Appellants have formulated five issues for determination, while the Respondents formulated three issues for determination. For the Appellants, they read as follows:

*“(1) Whether the Federal High Court lacks jurisdiction to entertain land matters in all circumstances.*

*“(2) Whether it is the reliefs endorsed on the Statement of Claim that determines the jurisdiction of the court.*

*“(3) Whether or not the Appellants (sic) claim is one properly within the jurisdiction of the Federal High Court either by Section (1) (r) and (s) of the 1999 Constitution (sic) (omitted 251) or even by the nature of the issue raised in the Statement of Claim.*

*“(4) Whether the appellants were obliged to file a notice of intention to affirm the Ruling on Abutu J. (sic) on other grounds (I take it to mean Respondents’ Notice) or to obtain leave to appeal before raising the issue.*

*“(5) Whether the learned justices of the Court of Appeal were right in striking out the suit in view of Section 22 of the Federal High Court Act”.*

For the Respondents, their issues read as follows:

*“(1) Whether the Federal High Court lacks jurisdiction to entertain land matters in all circumstances.*

*“(2) Whether it Is the reliefs endorsed on the Statement of Claim that determines the jurisdiction of the Court.*

*“(3) Whether or not the Appellants claim (sic) is one properly within*

*the jurisdiction of the Federal High Court either by Section (1) (r) and (s) (sic) of the 1999 Constitution or even by the nature of the issue raised in the Statement of Claim ”’.*

When this appeal came up for hearing on 9<sup>th</sup> February, 2010, the learned leading counsel for the Appellants - Sowemimo, Esq, adopted their Brief and he urged the court to allow the appeal. The leading learned counsel for the Respondents - Awogbamila, Esq., also adopted their Respondents’ Brief. He urged the Court to dismiss the appeal. Thereafter, Judgment was reserved till today.

I will deal with Issues 1, 2, 3 and 5 of the Appellants and the three Issues of the Respondents, because they appear to me to be substantially the same. It must be borne in mind always and this is settled that all the courts in this country, derive their powers and jurisdiction in particular, by either statute or Constitution which is the supreme, organic, fundamental law and the grund-norm of this country. See the case of Alhaji Nuhu v. Alhaji Ogele (2003) 18 NWLR (Pt. 852) 251 (2003) 12 SCNJ. 158 @ 173.

Therefore, when a court lacks jurisdiction, it lacks the necessary competence to try the case. This is because, a defect in competence, is fatal as the proceedings, are null and void ab initio. See the case of Ogigie & 3 ors. v. Obiyan (1997)10 SCNJ. 1 citing the cases of Alhaji Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 513; (1989) 9 SCNJ. 1; Salati v. Shehu (1986) 1 NWLR (Pt. 15) 198; Alade v. Alemuloke & 2 ors. (1988) 1 NWLR (Pt. 69) 201 @ 204; (1988)2 SCNJ. 1; Chief Oloba v. Akereja (1988) NWLR (Pt. 84) 508 @ 510; (1988) 7 SCNJ. 56.

Now, Section 251(1) of the 1999 Constitution provides as follows:

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

*(r) any action or proceeding for a declaration of injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and (the underlining mine)*

*(s) such other jurisdiction civil or criminal and whether to the*

*exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly”.*

*There is a proviso.*

The above are clear and unambiguous. It is now settled in a number of decided authorities that in the interpretation of statutes, where the words are clear and unambiguous, in their ordinary meaning, effect must be given to them. See the cases of *City Engineering (Nig.) Ltd. v. Nigerian Airport Authority* (1999) 6 SCNJ. 263, (1999) 6 S.C. (Pt. III) 41 @ 47 and *NNPC v. Latin Investments Ltd. & anor.* (2006) 2 NWLR (Pt. 965) 506; (2006) 1 SCNJ. 131 @ 144; (2006) 1 S.C. (Pt. III) 49; (2006) All FWLR (Pt. 301) 1760; (2006) Vol. 134 LRCN 316; (2006) Vol. 2 MJSC 1; (2006) 1 JNSC (Pt. 1) 97 - per Kalgo, JSC citing some other cases therein. There is no where in the above provision, where declaration of title to land and injunction in respect thereof (which are the claim of the Appellants), are mentioned or included. In other words, there is nothing mentioning or including disputes in respect of land. There is nothing in the Records, to show or suggest that the National Assembly, has extended the jurisdiction of the Federal High Court, (although it could not because the subject matter of the action relates or concerns the jurisdiction of a State High Court) to include land disputes or entitlement to the issuance of a Certificate Occupancy in respect of land such as the ones which are the subject-matter of the said suit leading to the instant appeal. In the case of *Alhaji Adisa v. Oyinnola & 4 ors.* (2000) 10 NWLR (Pt. 674) 116; (2000) 6 SCNJ. 290; (2000) FWLR 1349, it was held that the unlimited jurisdiction of a State High Court, cannot now be limited by any Statute other than the Constitution. See also Section 272 of the 1999 Constitution.

As to what determines the jurisdiction of a court, it is now firmly settled that the jurisdiction of a court, is determined by the Plaintiff's claim- i.e. by the subject-matter and claim before the court. See the cases of *Chief Adeyemi & ors. v. Opayori* (1976) 9-10 S.C. 31 @ 51; (1976) 1 FNLR 149 @ 158; *Western Steel Workers Ltd. & anor. v. Iron & Steel Workers Union* (1987) 1 NWLR (pt..) @ 301 - 302; (1987) 2 SCNJ. 1; *The Attorney-General, Anambra State & 13 ors. v. The Attorney-General of the Federation & 16 ors.* (1993) 6 NWLR (Pt. 302) 692 @ 742; (1993) 7 SCNJ. (Pt. II) 245 and *Akinfolarin & 2 ors. v. Akinola* (1994) 3 NWLR (Pt. 335) 659 @ 674; (1994) 4

SCNJ. 30 just to mention but a few. In other words, jurisdiction is determined by the Plaintiffs demand and not by the defendant's answer. See the case of *Izenkwe & ors. v. Nnadozie* 14 WACA 361.

Before concluding this Judgment, in the case of *National Bank of Nigeria Ltd- v. Weide & Co. Nig. Ltd. & 3 ors.* (1996) 9-10 SCNJ. 147, it was held that jurisdiction is the very basis on which any tribunal or court tries a case, that it is the life line of all trials. That any trial without jurisdiction is a nullity. That the importance of jurisdiction, is the reason why it can be raised at any stage of the case be it at the trial, on appeal to the Court of Appeal or to this Court and that a fortiori, the Court can suo motu raise it. Several other cases were therein cited in support. Therefore, it is firmly settled that where a court finds out and holds that it has no jurisdiction to entertain and determine a case, it does not dismiss the action, but to strike it out. See my recent Judgment in the case of *Owners of MV "Arabella v. Nigeria Agricultural Insurance Corporation* (2008) 11 NWLR (Pt. 1097) 182; (2008) 5 SCNJ. 189 @ 209. (2008) 4 - 5 S.C. (Pt. II) 189; (2008) 5 SCM 39 citing some other cases therein. See also the cases of *Okoye & 7 ors. v. Nigerian Construction & Furniture Co. Ltd.* & 4 ors. (1991) 6 NWLR (Pt. 199) 501 @ 534; (1991) 7 SCNJ. (Pt. II) 365 @ 388; *Fasakin Foods Nig. Ltd, v. Shosanya* (2006) 10 NWLR (Pt. 987) 126; (2006) 4 SCNJ. 229 @ 240; (2006) 4 S.C. (Pt.II) 204; (2006) Vol. 142 LRCN 2702; (2006) NSCOR 641; (2006) Vol. 7 MJSC. 48; (2006) 4 JNSC (Pt. 12) 105. *Military Governor Ondo State v. Ajayi* (1998) 8 NWLR (Pt. 540) 27, 35 C.A and *Nelson v. Chief Ebanga* (1998) 8 NWLR (Pt. 563) 701, 716 C.A. just to mention but a few.

In conclusion, my answer to Issue 1 of the parties, is in the Positive/Affirmative and particularly in respect of the said suit leading to this appeal. In respect of Issue 2 of the parties, my answer is in the Affirmative. As regards Issue 3 of the parties, my answer is in the Negative. As regards Issue 5 of the Appellants, my answer is in the Affirmative/Positive. Issue 4 of the Appellants, with respect, is a non-issue and I accordingly, discountenance it.

It is from the foregoing and the more detailed lead Judgment of my learned brother, Mohammed, JSC just delivered and which I had the advantage of reading before now and I agree with the reasoning and conclusion, that I too dismiss this appeal. I hereby affirm the Judgment of the court below setting aside the Ruling of the trial

court. I too award N50,000.00 (Fifty thousand naira) costs in favour of the 1<sup>st</sup> Respondent payable to him by the Appellants.

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### **TABAI JSC**

I have had a preview of the lead judgment prepared by my learned brother Mahmud Mohammed JSC. I agree entirely with the conclusion therein that the appeal be dismissed. B

For purposes of emphasis however I would like to make some comments on this issue of jurisdiction. The settled principle of law is that it is the claim of the plaintiff that determines the jurisdiction of the court to entertain a suit. The claim of the Plaintiffs/Appellants against the Defendants/respondents endorsed in paragraph 13 of the Statement of Claims reads:- C

*“(a) A declaration that they are the persons entitled to be issued with certificate of occupancy in respect of the various parcels of land being occupied by them and claimed by the first Defendant at Yakoyo near Ojodu village.*

*(b) A declaration that the judgment in Suit No. FHC/I/CS/820/95 is null and void as neither the Plaintiffs nor the second and third Defendants, were served with court process in the suit.* E

*(c) An injunction restraining the Defendants, their servants, agents, privies and otherwise howsoever from interfering with the Plaintiffs' possession of the land being occupied by them at Yakoyo near Ojodu village”*

The action itself was filed at the Lagos Judicial Division of the Federal High Court on the 26<sup>th</sup> of February, 2001. By a motion filed on the 27<sup>th</sup> of March, 2001 the 1<sup>st</sup> Defendant/Respondent sought an order dismissing the action on the grounds (i) that the court has no jurisdiction to entertain the suit and (ii) that the suit does not disclose a cause of action. F

Argument was taken on the motion on the 30/5/2001. In his ruling on the 11<sup>th</sup> of July, 2001 the learned trial judge D. D. Abutu J (as he then was) reasoned that by virtue of the provisions of section 251(1)(r) of the 1999 Constitution the Federal High Court has the jurisdiction to entertain the action. H

On appeal, the Court of Appeal thought otherwise. In its judgment on the 30<sup>th</sup> of June, 2004 at Page 158 the court per Chukwuma-Eneh JCA (as he then was) said:

*“The crucial question is whether this claim can be construed as challenging the validity of the executive action or decision to acquire and allocate the land in dispute to the Plaintiffs. I think not as it will be reading into the claim what is not there and so stretch the purport of the said claim to a breaking point. The claim is merely one*  
 B *pertaining to land.”*

I fully endorse the above opinion of the court. Section 251(l) (r) of the 1999 Constitution provides; “251(1) *Notwithstanding anything to the contrary contained in the Constitution and in addition to*  
 C *such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.”*

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

There is nothing in the entire 13 paragraph Statement of claim that complains of or questions the validity of the compulsory acquisition by the Federal Government of Nigeria nor any other executive or administrative action or decision of the Federal Government of Nigeria. Indeed the Plaintiffs’/Respondents’ acceptance of the validity of the Federal Government’s compulsory acquisition of the property is implicit in paragraph 6 of the statement of claim wherein they pleaded:  
 E  
 F

*“6 The Plaintiffs aver that after the expiration of six weeks from the notice of intention to acquire the said land, title to the said land became vested in the Federal Government of Nigeria, free from all adverse or competing rights titles or interests whatsoever.”*

It is my view that there is nothing in the entire claim of the Plaintiffs/Respondents to bring it within the provisions of section 251(1)(r) of the Constitution to vest jurisdiction in the Federal High Court. Clearly the trial court misconstrued the provisions of section 251(l)(r) of the constitution. As I said earlier, I fully endorse the opinion of the court below.  
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 H

For the foregoing reasons and fuller reasons explicitly articulated in the lead judgment, I also dismiss the appeal for lack of merit. I abide by the order on costs contained in the lead judgment.

**MUNTAKA-COOMASSIE JSC**

I have read in draft the lead judgment of my learned brother Mahmud Mohammed JSC. I closely digested the record of proceedings and the treatment of issues served on us. I completely agree with my Lord's reasoning and conclusions. I, in fact, adopt them as mine. It goes without saying that the trial court i.e. Federal High Court Lagos lacked jurisdiction to entertain claims for declaration title, injunction and possession of land against the defendants now Respondents. The appeal before us lacks merit and same is hereby dismissed. I endorse the order as to costs of N50,000.00 to the 1<sup>st</sup> Respondent alone against the Appellants herein.

**ADEKEYE JSC**

I was privileged to read in draft the judgment just delivered by my learned brother, Mahmud Mohammed JSC. I agree with him that the germane issue for determination in this appeal is whether by virtue of Section 251 (1) (r) of the 1999 Constitution, the Federal High Court has jurisdiction to entertain an action for a declaration of title to land. The Court of Appeal was positively of the opinion that this relevant section of the Constitution does not confer jurisdiction on the Federal High Court to entertain an action for a declaration of title to land. I agree with my learned brother 'that jurisdiction is very fundamental and the nerve centre of the entire litigation. It is a term of comprehensive import embracing every kind of judicial action. Courts are set up under the Constitution, Decrees, Acts, Laws and Edicts; they equally cloak them with the powers and jurisdiction of adjudication. In other words, all courts in Nigeria are vested with some specific statutory jurisdiction. If the Constitution, Decrees, Acts, Laws and Edicts do not grant jurisdiction to a court or tribunal, the court or parties cannot by agreement endow it with jurisdiction. Therefore, jurisdiction being a radical and crucial question of competence, any defect in the competence and jurisdiction of a court or an action is fatal as the proceedings therein would result in a nullity howsoever well conducted and determined, because such a defect is said to be extrinsic to the adjudication. The competence of a court to adjudicate upon a matter is both a legal and a constitutional prerequisite.

Kalagbor v. General Oil Ltd. (2008) All FWLR pt. 418 pg.

- Forestry Research Institute of Nigeria v. Gold (2007) 11 NWLR pt. 1044 pg. 1
- Madukolu v. Nkemdilim & Ors. (1962) 2 SCNLR pg. 341.
- Uzoho v. National Council on Privatization (2007) All FWLR pt. 394 pg. 370
- B Oke v. Oke (2006) 17 NWLR. pt. 1008 pg. 224.
- SPDC (Nig) Ltd. v. Isaiah (2001) 11 NWLR pt. 723 pg. 168.
- Peenok Investments Ltd. v. Hotel Presidential Ltd. (1983) 4 NCLR pg. 122.
- C A-G Federation & 2 Ors. v. Sode & 2 Ors. (1990) 1 NWLR pt. 128 pg. 500.
- Osafire & Anor. v. Odi & Anor No. 1 (1990) 3 NWLR pt. 137 pg. 130.
- It is equally trite that the jurisdiction of a court is determined by the plaintiff's Writ of Summons and statement of claim.
- Adeyemi v. Opeyori (1976) 9- 10 SC pg. 51.
- Tukur v. Government of Gongola State (1989) 4 NWLR pt. 113 pg. 517.
- OHMB v. Garba (2002) 14 NWLR pt. 788 pg. 538 at 563.
- E The reliefs sought by the plaintiffs before the Federal High Court are as follows: -
- "(a) A declaration that they are the persons entitled to be issued with certificate of occupancy in respect of the various parcels of land being occupied by them and claimed by the first defendant at Yakoyo near Ojodu village.*
- F *(b) A declaration that the judgment in Suit No. FHC/L/CS/820/95 is null and void as neither the plaintiffs nor the second and third defendants were served with court processes in the suit.*
- G *(c) An injunction restraining the defendants, their servants, agents, privies and otherwise howsoever from interfering with the plaintiffs' possession of the land being occupied by them at Yakoyo Ojodu village."*
- H The provision of section 251 (1) (r) of the 1999 Constitution reads: -
- Section 251 (1). 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, the Federal High Court shall have and exercise jurisdiction to the



exclusion of any other court in civil causes and matters.

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

The action or proceedings for a declaration or injunction stipulated in section 251 (1) (r) is that which affected the validity of any executive or administrative action or decision by the Federal Government or any of its agencies and this has no bearing with the declaration that any person is entitled to be issued with certificate of occupancy in respect of parcels of land at Yakoyo near Ojodu village. The latter is covered by the provisions of sections 39, 41 and 42 of the Land Use Act 1978. The case of *Adisa v. Oyinwola* (2000) 10 NWLR pt. 674 pg. 116 is very clear on this issue.

Section 39 excluded Area Courts and Customary Courts from exercising jurisdiction in respect of land subject of statutory right of occupancy, Section 41 redefines the jurisdiction of the courts referred to therein so as to ensure that courts such as customary courts in Southern States which had previously been exercising concurrent jurisdiction with the High Court without distinction by classification of law, have their jurisdiction limited as stated therein. Section 39 (1) of the Land Use Act 1978 vest original and exclusive jurisdiction in the clearest possible terms on the State High Courts in respect of all causes or matters relating to land, the subject matter of a statutory right of occupancy granted by State Governor or deemed to have been granted by him under that Act. Section 41 of the Land Use Act confers jurisdiction on the Area Courts, the Customary Court or other court of equivalent jurisdiction in a State to entertain actions relating to disputes over land dispute, subject to a customary right of occupancy granted by a Local Government under the Act or for a declaration of title to land to a customary right of occupancy to such land.

In the interpretation of a statute, where the words of a document, legislation or constitution are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit unless that would lead to absurdity.

*Ahmed v. Kassim* (1958) SCNLR pg. 28

*Ifezue v. Mbadugha* (1984) 1 SCNLR pg. 427.

Shell Petroleum Development Co. (Nig.) Ltd. v. Federal Board of Internal Revenue (1996) 8 NWLR pt. 466 pg. 256.

National Bank of Nig. Ltd. v. Weide & Co. (Nig.) Ltd. (1996) 8 NWLR pt. 465 pg. 150.

Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 6 SC pg. 158.

B I agree with my learned brother that the provisions of the Constitution ought to be interpreted liberally. Thus it is not the duty of the court to construe any of the provisions of the Constitution so as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.

C Mohammed v. Olawunmi (1990) 2 NWLR pt. 133 pg. 458.

Rabiu v. The State (1980) 2 NCLR pg. 293.

D Aqua Ltd. v. Ondo State Sports Council (1990) 4 NWLR pt. 91 pg. 622.

Ishola v. Ajiboye (1994) 1 NWLR pt. 352 pg. 506.

It is apparent from the foregoing and with fuller reasons given by my Lord in the leading judgment that the claims of the appellants cannot be entertained under Section 251 (1) (r) of the 1999 Constitution. The trial court was therefore wrong to have assumed jurisdiction in the matter under Section 251 (1) (r) of the 1999 Constitution. Where a court discovers that it has no jurisdiction to entertain a matter, the proper order to make is to strike it out.

F Okoye & 7 Ors v. Nigerian Construction Furniture Co. Ltd. & 4 Ors (1991) 6 NWLR pt. 199 pg. 501 at pg. 534.

Chief Eleke v. Oko & Anor (1995) 5 NWLR pt. 395 pg. 100.

Saleh v. Munguno (2003) 1 NWLR pt. 801 pg. 221.

G The order of the lower court striking out the suit as the trial court had no jurisdiction to entertain it was right and proper.

It is my conclusion in unison with the leading judgment that the trial court is not by the 1999 Constitution vested with vires to entertain a claim for declaration of title to land. I also dismiss the appeal.

H I adopt the consequential orders as mine.