

SUPREME COURT OF NIGERIA

10TH JUNE, 2011. SC. 36/2006

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
J. A. FABIYI, O. O. ADEKEYE, S. GALADIMA, JJSC**

1. THE GOVERNOR OF KWARA STATE
2. ATTORNEY-GENERAL, KWARA STATE APPELLANTS
3. KWARA STATE CIVIL SERVICE
COMMISSION
AND
JEROME OLADELE DADA RESPONDENT

JURISDICTION - Fundamentality of - Where a court has no jurisdiction to hear and determine a case - Its proceeding remains a nullity ab initio - No matter how well conducted and decided (H1)

STATUTES - Interpretation - Ouster clause - It is not for the court to inquire - Why its jurisdiction is ousted in statutory interpretation - It can only inquire into whether or not its jurisdiction has been ousted (H2)

ACTIONS - Cause of action - Competence - S. 3(3) Public Officers (Special Provision) Act precludes a cause of action - And grants no jurisdiction to court to entertain same (H3)

FACTS

Plaintiff/respondent was an employee of 1st defendant/1st appellant. He had risen to the position of Director of Lands as at 28th June, 1996 when he was served with a letter of dismissal from service marked Exhibit 4. The dismissal was authorized by the Military Administrator of Kwara State vide a letter personally signed by him (Military Administrator) marked as Exhibit 20. The State was not happy with the manner in which respondent processed an application of Kwara Animal Feeds Ltd to Panat Company Ltd. for Deed of Assignment and alleged misconduct under the Civil Service Rules. There was also the issue relating to improper authentication of Certificate of Occupancy No.4357 by respondent.

Respondent consequently filed this action against the dis-

missal at High Court of Kwara State, Ilorin. Appellants objected to the Court's jurisdiction by virtue of the provisions of Section 3(3) Public Officers (Special Provisions) Act Cap.381 Laws of Federation 1990 which ousts the jurisdiction of the court. The Court declined jurisdiction and consequently struck out the suit. Aggrieved, respondent appealed to Court of Appeal, Ilorin Division. The Court set aside the ruling of the High Court and subsequently ruled that the provisions of the Act did not oust jurisdiction of the High Court. Dissatisfied, appellants have now appealed to Supreme Court.

ISSUE FOR DETERMINATION

1. Whether the decision of the Court of Appeal setting aside the judgment of the trial court declining jurisdiction on the ground that the dismissal of the respondent was made not under the provision of the Public Officers (Special Provisions) Act, Cap. 381 Laws of the Federation, is right and has not occasioned a miscarriage of justice.

HELD (Unanimously allowing the appeal per **FABIYI JSC**)

JURISDICTION - Fundamentality of

1. Let me state it briefly that jurisdiction of a court in the process of adjudication is very fundamental. It should be determined at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, its proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but also extrinsic to the entire process of adjudication.

As objection was taken to the jurisdiction of the trial court to try the action, it has an abiding duty at that point in time to inquire whether in fact its jurisdiction has been ousted. It has to be guided by the principle that every superior court of record guards its jurisdiction jealously. (p. 1755 A)

STATUTES - Interpretation - Ouster clause

2. In the interpretation of a statute ousting jurisdiction as in this matter, the court is not imbued with power to inquire as to why its jurisdiction has been ousted. It can only inquire into whether or not, on the prevailing facts and circumstances, the jurisdiction had been ousted or restricted.

It is the duty of the court to construe the provisions of a statute

ousting jurisdiction strictly. But once it is clear that an ouster of jurisdiction was intended and from the facts of the case, it comes squarely within the four corners of the statute, the court has no alternative but to hold that its jurisdiction has been ousted. It does not behove on the court to attempt to dance round it and wring a false meaning out of the language of the statute.

A citizen's right of access to court is of paramount importance and should, as much as it is practicable be guided jealously. In deserving cases, a statute which ousts jurisdiction ought to be construed narrowly and strictly against any one claiming its benefit.

From the surrounding circumstances, it goes without saying that the Military Administrator believed that he acted or intended to act under the Act. There is evidence of compliance with the Act. The court is precluded from delving into the reason upon which the powers for the action is based.

In my view, the provision of section 3 (3) of the Act effectively ousts the jurisdiction of the trial court as found by it. The court below over-stretched the language of the statute. It attempted to dance round it. It is not the duty of a court to 'wring' as false meaning out of the language of the statute. In this respect, the court below embarked upon same; to no avail. (p. 1755 D/1758 D)

ACTIONS - Cause of action - Competence

3. In sum, the main issue is whether the respondent who was dismissed by the Military Administrator in exercise of his powers under the Act can sue for the reliefs claimed by him. Section 3 (3), of the Act forbids same. The respondent has no cause of action and the court has no jurisdiction to entertain the claim of the respondent. The order that is clearly warranted is one striking out the suit as initially done by the trial court. I endorse same. (p. 1759 A)

NOTABLE POINTS OF INTEREST

ADEKEYE JSC

1. Interpretation of statute is to reflect intention of the legislature

The crucial aspect of this case is the interpretation of a statute. It is trite that the legislature does not intend creating injustice or an absurdity; hence the court must always adopt a construction or interpretation which will (sic, not) reduce legislation to futility. In interpret-

ing Section 1 (1) of Decree No.17, there is emphasis on the point that the appropriate authority has to be satisfied that the dismissal, removal or retirement of a public officer falls within any of the four grounds listed in section 1. Each of the grounds enumerated is independent of each other - it is disjunctive - hence there cannot be recourse to a combination of the grounds to dispense with the service of a public officer. The law makes special and specific provisions for the removal or dismissal of public officers and no general provision or reasons can override the specific reasons or grounds.

Public Officers (Special Provisions) Act as piece of legislation with its ouster clause is one of a kind. The Public Officer (Special Provisions) Act with all respect is a law that encroaches on vested rights of public officers and in interpreting such laws, the courts have always insisted upon strict construction in view of its far reaching effects and consequences. (p. 1766 D)

2. Definition of Government

The word “government” is defined in sub-section 277(1) of the Constitution to include “the government of the Federation or of any State or of a Local Government or any person who exercises powers or authorities on its behalf. (p. 1767 G)

REPRESENTATION

F. Lawal (Mrs.) DCL M.O.J. Kwara State, for Appellants
Dr. J. O. Olatoke with B. O. Adesina and G. A. Ashaolu, for Respondent

CASES REFERRED TO

- G Oloba v. Akereja (1988) 3 NWLR (Pt.84) 508
- Anya v. Iyayi (1993) 2 NWLR (Pt.305) 230 at 312
- FCDA v. Sule (1994) 3 NWLR (Pt.305) 257 at 286
- Garba v. F.C.S.C. (1988) 1 NWLR (Pt.71) 449 at 447
- NEPA v. Ososanya (2001) FWLR (Pt.60) 1441 at 1451
- H Wilson v. A-G Bendel State (1985) 1 NWLR (Pt.4) Pg.572
- Utih & Ors. V.Onoyivwe & Ors (1991)1 NWLR (Pt.166) 66
- Obikoya v. Gov. of Lagos State (1987) 1 NWLR (pt.50) pg.385
- Gabriel Madukolu v. Johnson Nkemdilim (1962) All NLR 587 at 595
- Peanok Int'l Ltd. v. Hotel Presidential Ltd. (1982) 12 SC 1 at 25

Bello v. Diocesan Synod of Lagos (1973) 3All NLR (Pt.1) 330 at 344
Wilson v. A.G. Bendel State & Ors. (1985) 1 NWLR (Pt.4) 572
Attorney-General Bendel State v. Chief C. O. M. Agbofodoh & 2
Ors. 1 (1999) 2 SCNJ 111 at 144

STATUTES REFERRED TO

Public Officers (Special Provisions) Act Cap.381 Laws of Federation
1990, ss.1(1), 3(3), 4(1)(a), (2)
Constitution of Federal Republic of Nigeria 1979, s.277

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal,
Ilorin Division ('the court below' for short) delivered on 28th Octo-
ber, 2004. Therein, the decision of the trial court declining jurisdic-
tion was set aside on the ground that the dismissal of the respondent D
from the service of the 1st appellant was not done under the provi-
sions of the Public Officers (Special Provisions) Act, Cap. 381, Laws
of the Federation 1990. The court below felt that the jurisdiction of
the trial High Court was not ousted by the provision of section 3(3)
of the above stated Act. E

The respondent, as plaintiff at the trial High Court, claimed
against the appellants as defendants in paragraph 17 of the state-
ment of claim thus:-

*"17 WHEREOF the plaintiff claims against the defendants jointly F
and severally as follows:-*

*(i) A DECLARATION that the purported dismissal of the plaintiff
from the service of the Kwara State Government vide a Letter Ref.
No. S.04144/261 dated 28th June, 1996 emanating from the office
of the 3rd defendant and purportedly written on behalf of the 1st G
defendant is illegal null and void and of no effect whatsoever.*

*(ii) AN ORDER setting aside the purported dismissal of the
plaintiff from the service of the Kwara State Government as con-
tained in the said letter of the defendants.*

*(iii) AN ORDER commanding the defendants to reinstate the H
plaintiff into the service of the Kwara State Government and pay him
all the salaries, allowances and entitlements.*

*(iv) AN ORDER OF INJUNCTION restraining all the defend-
ants either by themselves, servants, privies, agents or through any*

person or persons howsoever from putting into effect and/or continuing to put into effect the letter of 28th June, 1996 particularly from treating the plaintiff as a dismissed public servant.”

It is apt to state the relevant background facts leading to this appeal briefly. The respondent, an employee of the 1st appellant
B had risen to the position of ‘Director of Lands’ as at 28th June, 1996 when he was served with a letter of dismissal from service - Exhibit 4. The dismissal was authorized by the Military Administrator of the State vide a letter personally signed by him as extant in Exhibit 20.

C The appellants, at the trial court, objected to the court’s jurisdiction by virtue of the provisions of the Act. It appears that they were not happy with the manner in which the respondent processed an application of Kwara Animal Feeds Ltd, to Panat Company Ltd. for Deed of Assignment and alleged misconduct under the Civil Service
D Rules. There was also the issue relating to improper authentication of Certificate of Occupancy No.4357 by the respondent.

The learned trial judge was properly addressed by learned counsel to the parties on the point relating to the ouster of jurisdiction of the court. The issue was carefully considered and Adebara, J.
E concluded as follows:-

I therefore have no hesitation in holding that the provision of section 3 (3) of the Act properly and effectively ousts the jurisdiction of this court to entertain this suit and I so hold.”

F The learned trial judge struck out the respondent’s claim and thereafter determined the merit of same. The respondent’s dismissal was found to be wrongful, illegal, null and void and of no effect whatsoever.

G The respondent was not satisfied with the portion of the learned trial judge’s decision declining jurisdiction and striking out the case. He appealed to the court below on same

Thereat, it was found that the dismissal of the respondent was not done under the provisions of the Act. The decision of the trial judge declining jurisdiction was set aside. The court below further
H found that since there was no appeal against the judgment on the merit as given by the trial court, the same stands.

The appellants were not happy with the stance posed by the court below and have appealed to this court, briefs of argument were filed and exchanged by learned counsel on behalf of the parties.

They were duly adopted and relied upon when the appeal was heard on 15th March, 2011.

The two issues formulated for determination by the appellants read as follows:-

“1. Whether the decision of the Court of Appeal setting aside the judgment of the trial court declining jurisdiction on the ground that the dismissal of the respondent was made not under the provision of the Public Officers (Special Provisions) Act, Cap. 381 Laws of the Federation, is right and has not occasioned a miscarriage of justice.

2. Whether the failure of the Court of Appeal to make pronouncement on the trial courts decision on the merit of the case simply because it has not been made a ground of appeal before the court is right and has not occasioned a miscarriage of justice.”

On behalf of the respondent, two issues were also decoded with slight variation in tone as follows:-

“1. Whether considering the content of the respondent’s letter of dismissal against the antecedents of this case, the lower court was not right in holding that the dismissal was not done under the Public Officers (Special Provisions) Act, Cap. 381 Laws of the Federation and that the jurisdiction of the trial court was not ousted.

2. Whether the lower court was not right in its view that the trial court’s judgment on the merit, having not been appealed against, stands.”

Arguing issue 1, learned counsel for the appellants submitted that the learned justices of the court below erred in law and misinterpreted the decision of this court in *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 3 NWLR (Pt.135) 688. He felt that the court below erred when it found that for a dismissal to fall within the purview of the Act so as to oust the jurisdiction of the court, the reason for dismissal of a public officer must fall within those stated in section 1(1) (a) - (d) of the Act. He submitted that the decision in *Nwosu’s* case which is in *pari materia* with this case is that the reason for the dismissal of a public officer needs not be stated if it can be deduced from the letter of dismissal and the surrounding circumstances of the case that the act of the Governor was made pursuant to the Act.

Learned counsel further submitted that from the letter addressed

to the respondent - Exhibit 4 and the surrounding circumstances of this case, the dismissal falls within the provisions of the Act. He alluded to the fact of alleged misconduct in the manner the respondent hurriedly carried out the assignment of Animal Feeds Ltd. to Panat Feeds Limited. He contended that all these show that the author of the letter of dismissal intended that the respondent was dismissed pursuant to the provisions of the Act, in particular paragraph (d) of section 1(1) of same.

Learned counsel further submitted that the expression - "Your service is no longer required" as contained in Exhibit 4 has been given judicial interpretation for termination of appointment or dismissal to be in accordance with section 1(1) of the Act so as to enjoy the ouster clause in section 3(3) of the Act. He cited the case of NEPA v. Ososanya (2001) FWLR (Pt.60) 1441 at 1451.

Learned counsel felt that the court below over-stretched the interpretation of section 1(1)(a) - (d) and 3 (3) of the Act. He referred to the cases of Wilson v. Attorney General, Bendel State & Ors. (1985) 1 NWLR (Pt.4) 572; Attorney-General Bendel State v. Chief C. O. M. Agbofodoh & 2 Ors. 1 (1999) 2 SCNJ 111 at 144. Learned counsel urged that the decision of the court below should be set aside.

On behalf of the respondent, learned counsel submitted that considering the antecedents of the case with particular reference to Exhibits 20, 4 and the provisions of section 1(1) (a)-(d) of the Act, the court below was right in its decision that the dismissal of the respondent was not done under same so as to oust the jurisdiction of the court. He felt that the respondent's dismissal was not rooted on any of the grounds specified in the Act as directed by the Military Administrator. He submitted that the immunity against proceeding granted by the Act cannot be called in aid against the respondent's case.

Learned counsel submitted that the court has the jurisdiction to find out if the dismissal was actually done within the contemplation of the Act. He referred to Nwosu's case (supra) (1990) 21 NSCC (Pt.11) 108 at 135 as well as FCDA v. Sule (1994) 3 NWLR (Pt.305) 257 at 286; Anya v. Iyayi (1993) 2 NWLR (Pt.305) 230 at 312.

Learned counsel submitted that the dismissal of the respondent having been premised on the reason - 'Your service is no longer

required' which is not one of those expressly provided by the Act, the trial court wrongly declined jurisdiction.

Let me state it briefly that jurisdiction of a court in the process of adjudication is very fundamental. It should determine at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, its proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but also extrinsic to the entire process of adjudication.

(See: Gabriel Madukolu v. Johnson Nkemdilim (1962) All NLR 587 at 595, Utih & Ors. V. Onoyivwe & Ors (1991) 1 NWLR (Pt. 166) 66 and Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508.)

As objection was taken to the jurisdiction of the trial court to try the action, it has an abiding duty at that point in time to inquire whether in fact its jurisdiction has been ousted. It has to be guided by the principle that every superior court of record guards its jurisdiction jealously.

In the interpretation of a statute ousting jurisdiction as in this matter, the court is not imbued with power to inquire as to why its jurisdiction has been ousted. It can only inquire into whether or not, on the prevailing facts and circumstances, the jurisdiction had been ousted or restricted.

It is the duty of the court to construe the provisions of a statute ousting jurisdiction strictly. But once it is clear that an ouster of jurisdiction was intended and from the facts of the case, it comes squarely within the four corners of the statute, the court has no alternative but to hold that its jurisdiction has been ousted. It does not behove on the court to attempt to dance round it and wring a false meaning out of the language of the statute.

A citizen's right of access to court is of paramount importance and should, as much as it is practicable be guarded jealously. In deserving cases, a statute which ousts jurisdiction ought to be construed narrowly and strictly against any one claiming its benefit. (See: Peanok International Ltd. v. Hotel Presidential Ltd. (1982) 12 SC 1 at 25. Garba v. F.C.S.C. (1988) 1 NWLR (Pt. 71) 449 at 447.)

All the above views are for guidance for due consideration of matters

like this one.

From the tenor of the Act, the Military Administrator (as then called) was imbued with power to dismiss, terminate, or retire a public officer. It further goes on to oust the jurisdiction of the courts from adjudicating on “anything done or purported to have been done pursuant to the ‘Decree’. It as in some quarters branded as the “Almighty Decree” because of its sting. Section 3(3) of the Act reads as follows:-

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

The above Provisions sound drastic and abhorrent. The court is however bound by its provisions, if there is no escape route. The clear intention of the words ‘or purported to have been done’ is that where the reason for the Governor’s action under the Act does not fall squarely within any of paragraphs (a)- (d) of such-section 1, if there is satisfactory evidence say, from the letter addressed to the public servant or from other surrounding circumstances that he believed and/or intended that he was acting under the Act, the ouster provisions will apply. See Nwosu’s case (supra) at Page 724.

Now then, the letter of authority to dismiss the respondent along with two others was written by the Military Administrator of Kwara State himself. It is Exhibit 20 which reads as follow:-

“GH/KW/99/111/682

The Chairman

Civil Service Commission,

Ilorin,

Kwara State.

25th June, 1996

AUTHORITY PURSUANT TO SECTION 4(2) OF THE PUBLIC OFFICERS (SPECIAL PROVISIONS) ACT NO 17 OF 1984.

1. Pursuant to the power conferred on me by sections 1-4 of the Public Officers (Special Provisions) Act No. 17 of 1984 and all other powers enabling me in that behalf I hereby authorize the Kwara State Civil Service Commission through its Chairman to dismiss the

following officers from the Public Service of Kwara State:-

(i) Mr. J. O. Dada - Director of Lands

(ii) Mr. Patrick Atolagbe - P.E.O. (GL.12)

(iii) Mr. J.O. Obafemi - A.C.E.O. (GL. 13)

on any or all of the grounds specified in section 1 of the afore-mentioned Act.

B

2. I further direct and authorize the Chairman of the Kwara State Civil Service Commission to sign the letter of dismissal.

(Sgd)

BA IYAM

C

Group Captain

Military Administrator

Kwara State,”

The Chairman of the 3rd appellant complied with the directive of the Military Administrator. He wrote Exhibit 4 and addressed it to the respondent. It reads as follows:-

“Ref. No. S.04144/261

CIVIL SERVICE COMMISSION

Private Mail Bag 1390

ILORIN

E

KWARA STATE

NIGERIA.

DATE 28TH June, 1996

Mr. Jerome Oladele Dada

F

Director (Lands)

Dept of Lands, Surveys & Physical Dev.

Military Administrator’s Office,

Ilorin.

DISMISSAL FROM THE KWARA STATE CIVIL SERVICE

G

I am directed by the Government of Kwara State of Nigeria to inform you as follows:-

(a) That you are hereby dismissed from the service of the Kwara State Government pursuant to the provisions of Decree No. 17 of 1984 this is necessary because your service is no longer required in the State Civil Service.

(b) That your dismissal is with immediate effect.

(2) You are to surrender every Government property in your custody to your Head of Department.

(Sgd)
(ALHAJI A. H. KAIAMA)
CHAIRMAN
KWARA STATE CIVIL
SERVICE COMMISSION.”

B It is not in doubt that the Military Administrator of Kwara State
at the material time was the Chief Executive of the State and the
appropriate authority. He personally signed the letter written by him
as extant in Exhibit 20. Therein, he authorised the dismissal of the
C respondent and directed the Chairman of the 3rd appellant to convey
same to the respondent. The directive was complied with vide
Exhibit 4.

Further more, there was the issue relating to the manner in
which the respondent processed an application of Kwara Animal Feeds
D to Panat Feeds Ltd. for Deed of assignment as well as authentication
of Certificate of Occupancy No. 4357 by the respondent. **From the
surrounding circumstances, it goes without saying that the
Military Administrator believed that he acted or intended to
act under the Act. There is evidence of compliance with the
E Act. The court is precluded from delving into the reason upon
which the powers for the action is based.** (See: National Electric
Power Authority v. Ososanya (supra); Wilson v. Attorney-General,
Bendel State (supra); Shitta-Bey v. Attorney-General, Federation &
F Anor. (1998) 7 SCNJ 264 at 281.)

It is not in contention that the respondent was a public officer
until he was served with Exhibit 4 on 28th June, 1996. As a Director
of Lands, he was within the meaning of section 4 (1) (a) and (b) of
the Act read together with section 277 of the 1979 Constitution a
G public officer (See: Uwaifo v. Attorney-General Bendel State (1982)
7 SC 124.)

It has been shown that the respondent was dismissed from
service on the authority of the Military Administrator of Kwara State
who believed he acted or intended to act under the Act. Section 1
H (1) (a) of same is of moment.

In my view, the provision of section 3 (3) of the Act effectively ousts the jurisdiction of the trial court as found by it. The court below over-stretched the language of the statute. It attempted to dance round it. It is not the duty of a court to

'wring' as false meaning out of the language of the statute. In this respect, the court below embarked upon same; to no avail.

In sum, the main issue is whether the respondent who was dismissed by the Military Administrator in exercise of his powers under the Act can sue for the reliefs claimed by him. Section 3 (3), of the Act forbids same. The respondent has no cause of action and the court has no jurisdiction to entertain the claim of the respondent. The order that is clearly warranted is one striking out the suit as initially done by the trial court. I endorse same. (See: Wilson v. Attorney-General Bendel State (supra) Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212; Sule v. Nigerian Cotton Board (1985) 2 NWLR (Pt. 5) 17.)

Issue 1 is hereby resolved in favour of the appellants and against the respondent.

Issue 2, in the prevailing circumstance, has become spent. I only wish to say it that having determined that it had no jurisdiction and struck out the suit, proceedings by the trial court thereafter remain a nullity as pronounced earlier in this judgment. I say no more on this point.

I come to the unalloyed conclusion that the appeal is meritorious. It is hereby allowed by me. The judgment of the court below delivered on 28th October, 2004 is hereby set aside. The respondent's suit is struck out. In the prevailing circumstance, I make no order on costs.

MOHAMMED JSC

My learned brother Fabiyi, JSC, had given me the opportunity before today, of reading in draft the judgment he has just delivered in this appeal. The two issues identified in the Appellants' brief of argument and the Respondent's brief of argument, have been exhaustively examined and resolved in accordance with the provisions of the applicable statute, namely, the Public Officers (Special Provisions) Act Cap. 381 Laws of the Federation 1990.

The question of whether or not the dismissal of the Respondent from the service of the Kwara state Government was properly done under the provision of the Act, can be easily answered from the contents of the letters of dismissal issued by the Military Administrator

of the State and the Head of Service of the State, The Military Administrator's letter issued on 25th June 1996 reads-

"Authority Pursuant to Section 4(2) of the Public Officers (Special Provisions) Act No. 17 of 1984

B *1. Pursuant to the powers conferred on me by Sections 1 - 4 of the Public Officers (Special Provisions) Act No. 17 of 1984 and All Other Powers enabling me in that behalf I hereby authorize the Kwara State Civil Service Commission through its Chairman to dismiss the following officers from the Public Service of Kwara State -*

C *(i.) Mr. J.O. Dada-Director of Lands on any or all of the grounds specified in section 1 of the aforementioned Act.*

2. I further direct and authorize the chairman of Kwara State Civil Service Commission to sign the letters of dismissal.

D *Signed"*

In compliance with the authority and directive of the Military Administrator of Kwara State, the Chairman Civil Service Commission of Kwara State issued and signed the letter of dismissal addressed to the Respondent dated 28th June, 1996 in the following terms-

E *"Mr. Jerome Oladele Dada*
Director (Lands)
Department of Lands, Survey and
Physical Development,
Military Administrator's Office,
F *Ilorin.*

Dismissal from Kwara State Civil Service

I am directed by the Government of Kwara State of Nigeria to inform you as follows:-

G *(a) That you are hereby dismissed pursuant to the provisions of Decree No.17 of 1984.*

This is necessary because your service is no longer required in the State Civil Service.

(b) That your dismissal is with immediate effect.

H *You are to surrender every Government property in your custody to your Head of Department*
Signed"

To me, the clear contents of these two letter leave no one in doubt that the dismissal of the Respondent was effected by the Gov-

ernment of Kwara State being the appropriate authority empowered to do so under the provisions of Sections 1 - 4 of the Public Officers {Special Provisions} Act No 17 of 1984. The Court below was therefore in error in setting aside, on appeal to it, the judgment of the trial Court declining jurisdiction to entertain the Respondents action challenging his dismissal.

For the foregoing reasons and fuller reasons given by Fabiyi, JSC in the lead judgment, I also allow this appeal, set aside the judgment of the Court below and abide by the orders made in the lead judgment including the order on costs.

CHUKWUMA-ENEH JSC

I have read the lead judgment prepared and delivered by my learned brother Fabiyi JSC and I agree with his reasoning and conclusion that the appeal is unmeritorious and should be dismissed. I too dismiss the appeal and endorse all the orders contained in the lead judgment.

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother, J.A. Fabiyi JSC. My lord had meticulously considered the legal issues raised in this appeal and I agree with his reasoning and conclusion. This appeal is against the judgment of the Court of Appeal, Ilorin Division delivered on the 28th of October, 2004. The lower court in that judgment allowed the appeal of the respondent before this court, by setting aside the judgment of the trial court delivered on the 17th of February, 2003 to the effect that the jurisdiction of the court was ousted by Decree no. 17 of 1984. The trial court however went further in the same judgment to look into the merits of the case and examine the reasons and the allegations made by the appellants to support the respondent's dismissal. The Court of Appeal came to the conclusion that the respondent's dismissal was wrongful, illegal, null and void as it was not done under Decree No. 17 of 1984 and further that since there was no appeal against the judgment on the merit given by the trial court, the judgment stands.

The appellants distilled two issues for determination from the three grounds of appeal filed as follows:-

1. Whether the decision of the Court of Appeal setting aside the judgment of the trial court declining jurisdiction on the ground that the dismissal of the respondent was made not under the provision of the Public Officers (Special Provisions) Act Cap. 381 Laws of the Federation is right and has not occasioned a miscarriage of justice.

2. Whether the failure of the Court of Appeal to make pronouncement on the trial court's decision on the merit of the case simply because it has not been made a ground of appeal before the court is right and has not occasioned a miscarriage of justice.

The respondents also raised two similar issues that:-

1. Whether considering the content of the respondents' letter of dismissal against the antecedents of this case, the lower court was not right in holding that the dismissal was not done under the Public Officers (Special Provisions) Act Cap. 381 Laws of the Federation and that the jurisdiction of the trial court was not ousted.

2. Whether the lower court was not right in its view that the trial court's judgment on the merit, having not been appealed against stands.

In this contribution, I intend to comment briefly on issue one.

The background facts of the case are that the respondent in this appeal was an employee of the 1st appellant - the government of Kwara State for a period of 26 years and was in the rank of "Director of Lands" when he was dismissed from service. The letter of dismissal dated the 28th of June, 1986 stated that the dismissal was done pursuant to the provisions of Decree No. 17 of 1984 - now Public Officers (Special Provisions) Act Cap 381. Laws of the Federation 1990. The letter stated expressly that the respondent's services were no longer required in the State Civil Service.

The applicable documents before the two lower courts are:-

(i) The letter from the Military Administrator of Kwara State to the Chairman of the Kwara State Civil Service Commission, the third appellant vide page 8 of the Record.

(ii) The letter from the Chairman of the 3rd appellant to the respondent notifying him of his dismissal from the Kwara State Civil Service dated the 28th of June, 1998. Vide page 13 of the Record.

(iii) The provisions of Section 1(1)(a)(d) of the Public Officers (Special Provisions) Act Cap. 381. Laws of the Federation 1990 - formerly known as Decree No. 17 of 1984.

The provisions of section 1(1)(a) - (d) of the Public Officers (Special Provisions) Act Cap. 381, Laws of the Federation 1990 reads:-

1. Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that - B

a. It is necessary to do so in order to facilitate improvements in the organization of the department or service to which a public officer belongs, or C

b. By reason of age or ill-health, or due to any other cause a public officer has been inefficient in the performance of his duties; or

c. The public officer has been engaged in corrupt practices or has in any way corruptly enriched himself or any other persons, or

d. The general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest; the appropriate authority may at any time after 31st December, 1983. D

(i) Dismiss or remove the public officer summarily from his office or E

(ii) Retire or require the public officer to compulsorily retire from the relevant public service.

Section 2(1) of the Act reads:-

"Where any Public Officer is dismissed, removed or retired compulsorily from his office pursuant to Section 1 of this Act, the appropriate Authority shall direct - F

(a) Whether appropriate retirement benefit are to be paid or (b) Whether those benefits shall be forfeited." G

(2) In this section, the reference to appropriate retirement benefits is a reference to any benefit payable under any enactment or law of the Federation or of a State.

Section 3(3)

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

void.

Section 4(1) of the Act defines a “Public Officer” as -

“Any person who have or has held any office on or after 31st December, 1983 in -

B a. The public service of the Federation or of a State within the meaning assigned thereto by Section 277(1) of the Constitution of the Federal Republic of Nigeria.

b. The service of a body whether corporate or unincorporated established under a Federal or State Law.

C c. A company in which any of the Government in the Federation has a controlling interest.

The appropriate authority in the operation of the Act -

D a. In respect of any office which was held for the purpose of any State shall be the Military Governor of that State or any person authorized by him, and

b. In any other case, shall be the President or any person authorized by him or the Armed Forces Ruling Council.

E At the commencement of the suit before the trial court, the defendants then, now appellants raised an objection to the competency of this suit on the ground that the jurisdiction of the court is ousted by virtue of the provisions of Section 3(3) of the Act. Before that court, the plaintiff, now respondent contended that Public Officers (Special Provisions) Act 1990 is inapplicable and as such the jurisdiction of the court is not ousted because the letter of dismissal which
F was written on the authority of Kwara State Government was not written by the appropriate authority as envisaged under Section 4(2) of the Act and that the reason pursuant to which the plaintiff (sic) was unknown to the Act.

G The letter from the Military Administration to the Chairman Civil Service Commission, 3rd Appellant dated the 25th of June, 1996, reads-

“Authority pursuant in Section 4(2) of the Public Officers (Special Provisions) Act No. 17 of 1984.

H *1. Pursuant to the powers conferred on me by Sections 1 - 4 of the Public Officers (Special Provisions) Act No. 17 of 1984 and all other powers enabling me in that behalf, I hereby authorize the Kwara State Civil Service Commission through its Chairman to dismiss the following officers from the Public Service of Kwara State -*

(i) Mr. J.O. Dada - Director of Lands

(ii) *Mr. Patrick Atolugbe* - *P.E.O. 1 (GL.12)*

(iii) *Mr. J.O. Obafemi* - *A.C.E.O. (GL.13)*

on any or all of the grounds specified in Section 1 of the aforementioned act.

2. I further direct and authorize the Chairman of Kwara State Civil Service Commission to sign the letter of dismissal.

Signed

B.A. Iyam

Group Captain

Kwara State”

At page 13 of the Record, there is a letter dated the 28th of June 1996 written to the respondent before this court which reads

Mr Jerome Oladele Dada Director (Lands)

Dept. of Lands, Surveys & Physical Dev.

Military Administrator’s Office

Ilorin.

Dismissal From the Kwara State Civil Service

I am directed by the Government of Kwara State of Nigeria to inform you as follows-

(a) That you are hereby dismissed from the Service of the Kwara State Government pursuant to the provisions of Decree No.17 of 1984. This is necessary because your service is no longer required in the State Civil Service.

(b) That your dismissal is with immediate effect.

You are to surrender every Government property in your custody to your Head of Department.

Signed Alhaji A.H. Kalama,

Chairman.

Kwara State Civil Service Commission”

Prior to these letters, the plaintiff now respondent was said to have while in the Service of the Kwara state Government without lawful authority whatsoever, assigned the Certificate of Occupancy No.4357 in respect of the Kwara Animal Feeds Company Limited to Panat Industries Limited sometime in April 1996, even when the sale of the said company by the liquidator was still being contested at the Federal High Court, Ilorin in the said suit No.FHC/IL/M8/96, a fact within the plaintiff’s knowledge when he was not the appropriate officer to authorize the assignment. He was not authorized by any

statute nor was there any delegation of authority to him by the Military Administrator of the state to make or approve the said assignment. The letter from the Military Administration to the Chairman of the Kwara State Civil Service is marked Exhibit 20 and the letter of the chairman to the respondent is marked Exhibit 4. The relevant portions of the two exhibits are germane to this case.

Paragraph 1 of the Exh.20 dated the 25th of June 1996 reads:-

“Pursuant to the powers conferred on me by section 1 to 4 of the Public Officers (Special Provisions Act) No.17 of 1984 and all other powers enabling me in that behalf, I authorize the Kwara State Civil Service Commission through its Chairman to dismiss the following officers from the Public service of Kwara State-

(i) Mr. J.O. Dada - Director of land

On any or all of the grounds specified in section 1 of the aforementioned act.”

The crucial aspect of this case is the interpretation of a statute. It is trite that the legislature does not intend creating injustice or an absurdity; hence the court must always adopt a construction or interpretation which will reduce legislation to futility. In interpreting Section 1 (1) of Decree No.17, there is emphasis on the point that the appropriate authority has to be satisfied that the dismissal, removal or retirement of a public officer falls within any of the four grounds listed in section 1. Each of the grounds enumerated is independent of each other - it is disjunctive - hence there cannot be recourse to a combination of the grounds to dispense with the service of a public officer. The law makes special and specific provisions for the removal or dismissal of public officers and no general provision or reasons can override the specific reasons or grounds.

Public Officers (Special Provisions) Act as piece of legislation with its ouster clause is one of a kind. The public officer (Special Provisions) Act with all respect is a law that encroaches on vested rights of public officers and in interpreting such laws, the courts have always insisted upon strict construction in view of its far reaching effects and consequences.

(Obikoya v. Gov. of Lagos State (1987) 1 NWLR (pt.50) pg.385; Bello v. Diocesan Synod of Lagos (1973) 3 All NLR (Pt.1) pg.330 at pg.344; Wilson v. A-G Bendel State (1985) 1 NWLR (Pt.4) Pg.572) It was held in the case of Anya v. Iyayi (1993) 2 NWLR (Pt.305)

pg.230 at pages 312-313 that-

“There is a clear intention to restrict the exercise of such wide-ranging powers which interfere with vested rights of the subject. It is more restrictive when the exercise of these powers cannot be questioned in the courts.”

Other cases considered on the applicability of Public Officers (Special Provisions) Act are:

Nwosu v. Imo State Environmental Sanitation Authority (1990) 21 NSCC (Pt.11) Pg.108; FCDA v. Sule (1994) 3 NWLR (Pt.305) pg.257 at pg. 286; Garuba v. FCSC & Anor (1988) NWLR (Pt.71) pg.449; O.P. Ulegede & Anor v. Military Administrator Benue State (1996) 6 NWLR (Pt.457) pg 693.

Shitta-Bey v. Attorney-General of the Federation (1998) 7 SCNJ pg. 264.

In the circumstance of this case, the decision to dismiss the plaintiff from the Kwara State Civil Service was that of the State Military Administrator who represents the Government and whose act can be properly described as the act of the Government of the State. The Chairman Civil Service Commission rightly specified this in his letter notifying the plaintiff of his dismissal. The Chairman is the Head of the Civil Service Commission, a body established by sub-section 178(1)(a) of the constitution 1979. The Commission has authority as provided in paragraph 2 of part 11 of the Third Schedule to the constitution to dismiss and exercise disciplinary control over members of the State Civil Service. The Military Administrator who gave the directives is by a combined operation of subsection 162(2) of the constitution and sub-section 6(8) of the constitution (Suspension and Modification) Decree No.107 of 1993 the Chief Executive of the State and Head of the State Government.

The word “government” is defined in sub-section 277(1) of the constitution to include “the government of the Federation or of any State or of a Local Government or any person who exercises powers or authorities on its behalf.

It is undisputed that (a) the respondent is a public officer as defined under the Decree.

(b) The appropriate Authority has acted.

(c) His action were taken under the provisions of the Decree coupled with the fact that the officer affected is a public officer, then

the said action is immuned from litigation and the jurisdiction of the court is ousted under sub-section 3(3) of the Decree. The trial court was therefore right to hold that it had no jurisdiction to try this suit. The entire claim of the respondent is incompetent.

B The respondent could be rightly said to have been dismissed pursuant to section 1(1) (d) of the Act which states that-

(d) The general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest.

C With the foregoing and fuller reasons given in the lead judgment of my learned brother, J.A. Fabiyi, JCA, I agree that this appeal be allowed and the judgment of the lower court is hereby set aside. I abide the consequential orders made in the lead judgment.

D _____

GALADIMA JSC

E I have had the benefit of reading in draft the lead judgment of my learned brother Fabiyi JSC just delivered. The two identical issues distilled by the Appellants and the Respondent in their respective brief have been meticulously examined and resolved. Careful consideration has been accorded to the relevant provisions of the statute namely the Public officers (Special Provisions) Act cap 381, Laws of the Federation, 1990 hereinafter referred to simply as the "Act".

F The issue here is whether or not the dismissal of the Respondent from the Public Service of 3rd Appellant (Kwara State Civil Service Commission) was properly carried out under the provisions.

G This issue easily resolved from the consideration of the contents of the two letters of dismissal issued by the duo authorities, namely the Military Administrator of Kwara State and the State Head of Service. The Military Administrator's letter Exhibit 20 issued on 25/6/1996 reads as follows:

"GH/KW/99/111/682

H The Chairman

Civil Service Commission

Ilorin, Kwara State."

25th June, 1996.

AUTHORITY PURSUANT TO

SECTION 4(2) OF THE PUBLIC OFFICERS
(SPECIAL PROVISIONS)
ACT NO.17 OF 1984.

1. Pursuant to the powers conferred on me by sections 1- 4 of the Public officers (Special Provisions) Act No. 17 of 1984 and all other powers enabling me in that behalf, I hereby authorize the Kwara state Civil Service Commission through its Chairman to dismiss the following officers from the Public Service of Kwara State:-

- (i). Mr. J.O. Dada - Director of Lands
- (ii). Mr. Patrick Atolagbe - P.E.O (GL. 12)
- (iii). Mr. J.O. Obafemi-A.C.E.O (GL.13)

On any or all of the grounds specified in section 7 of the afore-mentioned Act.

2. I further direct and authorize the chairman of the Kwara State Civil Service Commission to sign the letter of dismissal.

(signed)

B.A. IYAM

Group captain

Military Administrator

Kwara State”

In due compliance with the directive of the Military Administrator, the chairman of the 3rd Appellant wrote Exhibit 4 and addressed it to the Respondent on 28/6/1996 in the following terms:

“ Ref. No.5.044144/261

Civil Service commission,

Private Mail Bag 1390,

Ilorin, Kwara State,

Nigeria.

Date: 28th June, 1996.

Mr. Jerome Oladele Dada,

Director (Lands)

Dept. of Lands, Survey &

Physical Dev, Military Administrator’s Office Ilorin

DISMISSAL FROM THE KWARA STATE CIVIL SERVICE.

I am directed by the Government of Kwara State of Nigeria to inform you as follows:-

(a) That you are hereby dismissed from the service of the Kwara State Government pursuant to the provisions of Decree No 17 of

1984. This is necessary because your service is no longer required in the State Civil Service.

(b) That your dismissal is with immediate effect.

(2) You are to surrender every Government property in your custody to your Head of Department.

B *(signed)*

(Alhaji A.H. Kaiama)

Chairman,

Kwara State Civil Service Commission”.

C It is therefore clear from the contents of these two letters that the dismissal of the Respondent was effectively carried out by the Government of Kwara State being the appropriate authority empowered to do so under sections 1- 4 of the Act See: SHITTA-BEY v ATT-GEN FEDERATION & ANOR (1998) 7 SCNJ 264 at 281; N.E.PA
D v. OSOSANYA (2001) FWLR (pt 60) 1441 at 1451 and WILSON v ATT. GEN BENDEL STATE & ORS (1985) 1 NWLR (pt.4) 572

E In these cases, the phrase “Your service is no longer required” as contained in Exhibit 4, has been given judicial interpretation for termination of appointment or dismissal to be perfect and in accordance with section (sic) (1) of the Act so as to enjoy the provision of ouster clause in section 3(3) of the Act.

F The above cases support this position. The trial court had no alternative but to hold that its jurisdiction has been ousted and could not entertain the Respondent’s action challenging his dismissal. The court below was therefore in error in setting aside the judgment of the trial court.

G For the foregoing contribution and fuller reasons outlined in the leading judgment of my learned Brother FABIYI, JSC just delivered with which I agree, I too allow this appeal and set aside the judgment of the court below delivered on 28/10/2004. The Respondent’s suit is struck out. I make no order as to costs.

H