

SUPREME COURT OF NIGERIA

17TH FEBRUARY, 2012. SC. 281/2010

**CORAM:- M. MOHAMMED, W. S. N. ONNOGHEN, C. M.
CHUKWUMA-ENEH, M. S. MUNTAKA-COOMASSIE, O. O.
ADEKEYE, M. U. PETER-ODILI, O. ARIWOOLA, JJSC**

1. HON. JUSTICE RALIAT

ELELU-HABEEB

(CHIEF JUDGE OF KWARA STATE)

2. NATIONAL JUDICIAL COUNCIL APPELLANTS
AND

1. THE HON. ATTORNEY

GENERAL OF THE FEDERATION

2. THE HON. ATTORNEY

GENERAL OF KWARA STATE RESPONDENTS

3. THE HOUSE OF ASSEMBLY
OF KWARA STATE

ACTIONS - Appeals - Parties - Right of appeal - 1999 Constitution s. 233(5) - The right is reserved to party - Aggrieved at decision in a proceeding (H1)

COURTS - Competence - *Madukolu v. Nkemdilim* - Court is competent to entertain a case - When it has unfettered jurisdiction over the subject matter - With a properly constituted judicial membership (H2)

JURISDICTION - Determination of - Basis - Jurisdiction is determined by plaintiff's statement of claim - And not by statement of defence (H3)

COURTS - Jurisdiction - Judges ought to expound - And not expand jurisdiction conferred on their courts (H4)

JURISDICTION - Federal High Court - 1999 Constitution s. 251(1)(q) - The court has jurisdiction over actions - Involving Federal Government or any of its agencies (H5)

COURT PROCESSES - Originating summons - Application - Doherty

v. Doherty - The summons is not available for actions - Where the facts are in dispute - And can be used in interpretation of contracts documents Constitution (H6)

APPEALS - Decisions - Correctness of - Katto v. C.B.N - Court of Appeal as an intermediate court - Rightly proceeded with the appeal - Even though it ruled that Federal High Court lacked jurisdiction (H7)

CONSTITUTIONAL LAW - Constitution - Interpretation - Words used must be given their ordinary meaning - Where they are unambiguous (H8)

CONSTITUTIONAL LAW - National Judicial Council - Powers - 1999 Constitution para. 21(d) of pt.1 of 3rd Schedule - Council can recommend persons for appointment and removal as judicial officers (H9)

CONSTITUTIONAL LAW - State Chief Judge - Removal of - 1999 Constitution s. 292 (1)(a)(ii) - Removal must be based on inability to discharge official functions - Or on misconduct or for contravention of code of conduct (H10)

FACTS

3rd respondent – Kwara State House of Assembly summoned 1st appellant – Justice Elelu-Habeeb to appear at its plenary session, following allegations of inability to discharge official duties, abuse of office and financial impropriety levelled against her by then Governor of the State. 1st appellant failed to appear and consequently the House passed a resolution removing her from office. Dissatisfied, 1st appellant instituted this action at the Federal High Court, Ilorin wherein she filed an originating summons asking the court to interpret the provisions of sections 6, 153(1) paragraph 21 (d) of the 3rd schedule to the Constitution of the Federal Republic of Nigeria 1999 and determine whether the Governor and the House can exercise disciplinary control over her without the input of the National Judicial Council i.e. 2nd appellant. Several reliefs were claimed by 1st appellant towards stalling the decision of the House. On the other hand, defendants/respondents based their defence on section 292(1) of

1999 Constitution and also objected to the jurisdiction of the court to entertain the matter. The court dismissed the objections and granted the reliefs sought by 1st appellant.

Aggrieved, 1st, 2nd and 3rd respondents filed appeal at the Court of Appeal, Ilorin Division. 2nd appellant was initially excluded from the action, but was later enlisted. Respondents raised the issue of jurisdiction of the trial court over the matter. 1st appellant cross appealed. The court unanimously allowed the appeal on the issue of jurisdiction of the trial court. However, the court went ahead to rule that the removal of 1st appellant without any input of 2nd appellant was unconstitutional. Being aggrieved, 1st and 2nd appellants filed separate notices of appeal to Supreme Court against the ruling of Court of Appeal on the issue of jurisdiction of the trial court. While 2nd and 3rd respondents filed separate cross-appeals against the decision of Court of Appeal to hear the matter on merit, after having held that the trial court lacked jurisdiction over same. 2nd and 3rd respondents also raised preliminary objections to the appeal filed by 2nd appellant on the ground that 2nd appellant is not an aggrieved party.

ISSUES FOR DETERMINATION

MAIN APPEAL

“1. Whether the Court of Appeal was right when it declared that the Federal High Court has no jurisdiction to interpret the provisions of the Constitution as contained in the Originating Summons of the Appellant when the interpretation affects exercise of Constitutional powers of the National Judicial Council, a Federal Government agency.”

CROSS-APPEAL

“1. Whether having regard to the myriads of affidavit filed by the parties; this case was not hostile as to render inappropriate the Originating Summons procedure in commencing same.

2. Was the Court of Appeal right in entering judgment on the merits in favour of the 1st Appellant/Cross-Respondent after having held that the trial Court lacked the jurisdiction to adjudicate on the case and that the same ought to be returned to the High Court of Kwara State for proper adjudication?

3. Whether the Court of Appeal correctly interpreted the provisions of Section 292(1)(a)(ii) of the Constitution of the Federal Republic of Nigeria, 1999 in affirming the decision of the trial Court

that the Governor and the House of Assembly of Kwara State cannot remove the 1st Appellant/Cross-Respondent as Chief Judge without recourse to the National Judicial Council.

4. *Whether the Court of Appeal did not err in making pronouncements on the procedure employed in the removal of the 1st Appellant/Cross-Respondent as Chief Judge when that point was neither an issue before it nor even before the trial Court."*

HELD (Unanimously allowing the appeal and dismissing the cross-appeals per **MOHAMMED JSC**)

C Parties - Right of appeal - 1999 Constitution s. 233(5)

1. What has to be determined in these preliminary objections is whether the learned senior Counsel to the preliminary objectors are correct in law in holding out or portraying the 2nd Appellant as a party which is not aggrieved or in anyway affected adversely by the judgment of the Court of Appeal on the issue of jurisdiction in that the trial Federal High Court lacked jurisdiction to hear and determine the claims of the Plaintiff/1st Appellant/Cross-Respondent in the Originating Summons filed in that Court. In the case of *Akinbiyi v. Adelabu* (1956) S.C.N.L.R. 109, Foster-Sutton, F.C.J. of then Federal Supreme Court had this to say on a person entitled to appeal at p. 111-

"The only person entitled to appeal is a person aggrieved. In Ex-parte Sidebotham 14 ch. D465 James L.J., said a 'person aggrieved must be a man who has suffered a legal grievance'"

This decision was cited and applied by this Court in a number of cases including *Mobil Production (Nigeria) Unlimited v. Monokpo* (2003) 18 NWLR (Pt. 852) 346 at 398 - 399 where Uwaifo, JSC put the position of the law thus-

"it is true that the judgment of the trial Court which was affirmed by the Court below was given against only the 2nd Defendant. In effect the first Defendant is not an aggrieved party that can appeal against the judgment of the Court below to this Court simply on the basis that it was a party to the proceedings in which judgment was given in reliance on the provision of Section 233(5) of the 1999 Constitution which says that:

Any right of appeal to the Supreme Court from the decision of the Court of Appeal conferred by "this Section shall be exercisable in the case of civil proceedings at the instance of a party thereto."

That provision must be understood to apply to an aggrieved person or party. A party to the proceedings cannot appeal a decision arrived thereat which does not wrongfully deprive him of an entitlement or something which he had a right to demand. Unless there is such a grievance, he cannot appeal against a judgment which has not affected him since the whole exercise may turn out to be academic. Under no circumstance can it be argued that a party to proceedings who has not been affected by a decision may nevertheless appeal against it merely as a party. B

Applying these decisions to the present case, it is not at all in dispute that the 2nd Appellant, the National Judicial Council was a party in the case at the trial Court as the 1st Defendant or 1st Respondent as the case was began by Originating Summons. It is also undisputed from the record of this appeal that the subject matter of the case brought before the trial Court, included the interpretation of the 1999 Constitution in Sections 153, 292 and paragraphs 20, and 21 of the 3rd Schedule, Part 1 thereof. Although the preliminary objectors in their notices of appeal against the judgment of the trial Court to the Court of Appeal attempted to exclude the 2nd Appellant from the list of parties in the Court of Appeal, the Court of Appeal on an application joined the 2nd Appellant as a necessary party in the appeal before it as the 1st Respondent. As the decision of the Court of Appeal now being challenged in the appeal by the Appellant relates only to the aspect of the decision on the issue of jurisdiction, the Appellant as a party against whom the decision was given, has a right to appeal against it by virtue of Section 233(5) of the Constitution of the Federal Republic of Nigeria 1999. (p. 760 B) C D E F

COURTS - Competence

2. The issue such as this, of when Court has jurisdiction or competence, has long been settled in the jurisprudence of Nigeria from the time of the decision of this Court in the well known and highly celebrated case of *Madukolu & Ors. v. Nkemdilim & Ors.* (1962) All N.L.R. (Pt. 3) 581 at 589 - 590 where the position of the law was laid down thus - G H

“Before discussing those portions of the record; I shall make some observations on jurisdiction and the competence of a Court. Put briefly, a Court is competent when:

1. *It is properly constituted as regard number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and*

2. *The subject matter of the case is within its jurisdiction; and there is no feature in the case which prevents the Court from exercising its jurisdiction; and*

3. *The case comes before the Court of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the jurisdiction.*” (p. 768 C)

JURISDICTION - Courts - Determination - Basis

3. It is indeed a fundamental principle that jurisdiction of a Court of law is determined by the Plaintiff’s claim. That is to say, it is the claim before the Court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the Court.

In *Inakoju v. Adeleke* (2007) 4 N.W.L.R. (Pt. 1025) 427 at 588-589 where Tobi JSC expounded the law on how jurisdiction of a trial Court is determined especially where the action was commenced by Originating Summons supported by affidavit where he said:-

“In determination of whether or not a Court has jurisdiction, the Court process to be used is the pleadings of the Plaintiff, which is the statement of claim; it is the case put up by the Plaintiff that determines the jurisdiction of the Court. In this case, as the action was commenced by Originating Summons, the Court process to be used is the affidavit in support of the summons ...”

Taking into consideration the foregoing authorities and many others too numerous to be listed, it is quite plain that in resolving the lone issue of jurisdiction in the case at hand, the Court processes to be examined are the Originating Summons of the Plaintiff/Appellant containing the questions submitted for determination, the reliefs sought in the Originating Summons to the exclusion of any other processes especially those filed in defence of the action by the Defendants/Respondents. (p. 769 C/G)

COURTS - Jurisdiction

4. It should be emphasized that Judges have no duty and indeed no

power to expand the jurisdiction conferred on their Courts but they have the duty and indeed jurisdiction to expound the jurisdiction conferred on their Courts (p. 769 E)

JURISDICTION - Federal High Court

5. Next for determination is to examine the relevant provisions of Section 251(1)(q) of the 1999 Constitution to see if the Federal High Court has jurisdiction in the matter as found by the trial Court. The Section reads:-

“251(1) 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-

(q.) subject to the provision of this Constitution; the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.”

It is quite clear from the above provisions of Section 251(1.)(q.) of the Constitution that any action which involves the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies, the Federal High Court has jurisdiction to entertain and determine the action. The fact that the provisions of the Constitution in Section 153(1)(i.), 271(1); 292(1)(a)(ii) together with paragraphs 20 and 21 of Part 1 of Third Schedule to the same Constitution, the operation and interpretation of which affects the powers and duties of the National Judicial Council under the Constitution, coupled with the fact that there is no doubt whatsoever that the National Judicial Council is an agency of the Federal Government, the Court below, in my view, was wrong to say that the Federal High Court lacked jurisdiction in the matter. (p. 771 E)

Originating summons - Application

6. The law is indeed well settled that Originating Summons procedure for initiating action is not suitable and therefore not available for action involving hostile proceedings where the facts are seriously in dispute as the case in Adebayo Doherty and Another v. Richard Ade Doherty 1968 N.M.L.R. 241. (p. 777 H)

Decision of Court of Appeal - Propriety

7. The main question for determination in this second issue in the cross-appeal is whether the Court below was right in proceeding to take and determine the substantive case on its merits after deciding that the trial Court lacked jurisdiction in the case that was brought before it by Originating Summons. It is quite clear from the record of this appeal that the 2nd Respondent/Cross-Appellant lost its preliminary objection to the jurisdiction as well as the merits of the case by the ruling and the final judgment of the trial Court. That is why the appeals that came to the Court below were in respect of issues of jurisdiction/competence and the substance of the case on the merit. In situation such as this, the Court below had no option than to be guided by the law as contained in particular the case of *Katto v. Central Bank of Nigeria* {1991} 9 N.W.L.R. (Pt. 214) 126 at 149 where Akpata JSC, (of blessed memory) stated the position of the law thus-
- “As rightly submitted by Mr. Aluko-Olokun, the Court of Appeal ought to have proceeded in the alternative on the basis that the trial Court could have been right, to give its views and decision on the issues raised in the grounds of appeal. Where a trial Court after holding that it had jurisdiction proceeded to determine the matter before it and an intermediate Court of Appeal thinks the trial Court lacked jurisdiction, the said intermediate Court should in the alternative resolve the complaints in the appeal, unless both Counsel, particularly Respondent’s Counsel, concede that the trial Court lacked jurisdiction in the matter. While the Supreme Court, being the final Court of Appeal, can afford not to pronounce on other issues placed before it where it finds that the trial Court lacked jurisdiction, the Court of Appeal whose stance on jurisdiction may be faulted by the Supreme Court should not ignore other issues raised in the appeal. It should pronounce on them. The position now is that issues which ought to have been resolved by the Court of Appeal in its judgment dated 30th January, 1989, about three years ago, will now have to be sent back to it for hearing and determination.”*
- In the instant case therefore when the Court below after deciding that the trial Federal High Court lacked jurisdiction and proceeded in the alternative on the basis that the trial Court could have been right in its decision on the issue of jurisdiction to give its views and decision on the remaining issues raised in the grounds of appeal on the merits

of the case, the Court below in my view, did exactly what this Court mandated it to do in line with the decisions in *Katto v. C.B.N.* (supra) and *Adah v. N.Y.S.C.* (supra). In this respect, the Court below was on a very solid ground and indeed acted prudently by pronouncing on all the issues submitted by the Cross-Appellant in the Appellant's brief of argument for determination of the Court below. In other words, that Court acted within its powers under the law as pronounced by this Court, lawfully in the interest of justice to avoid waste of time and resources in deciding the merits of the case thereby making it possible to place the entire case before this Court for determination on appeal. (p. 779 H)

Constitution - Interpretation

8. The golden rule governing the interpretation of Constitutional provisions is that the words used in the provisions must prima facie be given their ordinary meaning where such words are not ambiguous. The words used in the provisions of the Constitution must also be given liberal interpretation as stated in the leading cases on the subject of Constitutional interpretation in *Nafiu Rabiu v. The State* (1980) 8 - 11 SC 130.

In the present case, there is no doubt whatsoever that the dispute that was brought before the trial Federal High Court in the Originating Summons that was filed before it involves the subject of provisions dealing with the procedure made in the 1999 Constitution for taking disciplinary action against a Chief Judge of a State found wanting in the discharge of his functions to warrant his removal from office. It is therefore necessary in my view to examine all the relevant provisions contained in the Constitution governing the procedure for the appointment and removal of judicial officers. This is because while a Constitutional power should not be used to attain an unconstitutional result, the language of the Constitution, where clear and unambiguous must be given its plain and evident meaning. Although the Cross-Appellant is insisting that in the determination of this 3rd issue, the Court should confine itself to the interpretation of the provisions of Section 292(1)(a)(ii) of the Constitution alone to the exclusion of the other relevant provisions of the same Constitution. I entirely agree with the learned senior Counsel for the Appellants/Cross-Respondents that the Court should examine all the relevant provi-

sions of the Constitution in order to find adequate guidance in arriving at the correct decision. (p. 786 C)

National Judicial Council - Powers

9. What is relevant for determination of this issue is to fish out and
B examine the powers of the National Judicial Council in Paragraph 21 of Part 1 of the Third Schedule to the Constitution

It is quite plain from the provisions of paragraph 21 sub-paragraphs (c) and (d) of Part 1 of the Third Schedule to the Constitution of the
C Federal Republic of Nigeria 1999, that the National Judicial Council is the body that had been assigned the duty and responsibility of recommending to the Governors of the States of the Federation suitable persons for appointments to the offices of Chief Judges of the States and other Judicial Officers in the States. In addition to its role
D in the appointment of Chief Judges of the States and other Judicial Officers, the same National Judicial Council is also empowered under Sub-paragraph (d) of paragraph 21 to recommend to the Governors of the States the removal from office of the Chief Judges of the States and other Judicial Officers of the States and also to exercise disciplinary control over such Chief Judges of the States and other Judicial Officers of the States. Therefore, from these very clear provisions of the Constitution which are very far from being ambiguous, the Governors of the States and the Houses of Assembly of the States cannot exercise disciplinary control touching the removal of
F Chief Judges of States or other Judicial Officers in the States.
(p. 787 C/H)

State Chief Judge - Removal of - Conditions

G 10. Furthermore, the conditions specified under Section 292(1)(a)(ii,) of the Constitution for the exercise of the power of removal must be satisfied before such power can be validly exercised by both the Governor and the House of Assembly. This is because any exercise of power to remove a Chief Judge must be based on his:-

- H
1. Inability to discharge the functions of office or appointment;
 2. The inability to perform the functions of his office could arise from infirmity of the mind or of body
 3. For misconduct or
 4. The contravention of the code of conduct

All these conditions or basis for the exercise of power to remove a State Chief Judge must be investigated and confirmed by credible evidence and placed before the Governor and the House of Assembly before proceeding to exercise their power of removal granted by the Section of the Constitution. For example the ground of removal for inability to perform the functions of his office or appointment cannot be ascertained and confirmed by the Governor or the House of Assembly in the absence of any input from the National Judicial Council under which supervision the Chief Judge discharges his functions as Judicial Officer and which body also is directly responsible for exercising disciplinary control over the said State Chief Judge. It is not difficult to see that for the effective exercise of the powers of removal of a Chief Judge of a State by the Governor and House Assembly, the first port of call by the Governor on his journey to remove a Chief Judge of the State shall be the National Judicial Council which is equipped with the personnel and resources to investigate the inability of the Chief Judge to discharge the functions of his office, the subject of disciplinary action of removal through the Committees of the Council and where the infirmity of the mind or body is involved, the services of a medical board to examine and submit appropriate report on the Chief Judge to be affected could also avail the Council in the process of investigation. (p. 789 G)

REPRESENTATION

Chief A. S. Awomolo (SAN) with O. A. Aiyemowa, for 1st Appellant/
Cross-Respondent F
J. B. Daudu (SAN) with E. O. Maduka (Miss) and O. O. Kehinde, for
2nd Appellant/Cross-Respondent
R. A. Lawal Rabana (SAN) with Aliyu Saiki, for 1st Respondent G
A. O. Adelodun (SAN) with A. Abdulraheem, for 2nd Respondent/
Cross Appellant
Yusuf Ali (SAN) with K. K. Eleja, T. Olurode (Miss), T. E. Akinriade
(Miss) and K. T. Sulaiman (Miss) for 3rd respondent/cross-appellant H

CASES REFERRED TO

Akinbiyi v. Adelabu (1956) S.C.N.L.R. 109
Mobil Production Nig Unltd v. Monokpo (2003) 18 NWLR (Pt. 852)
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- Madukolu v. Nkemdilim (1962) All NLR (Pt. 3) 581
 Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 427
 Doherty & Anor. v. Doherty (1968) NMLR 241
 Keyamo v. L.S.H.A. (2002) 18 NWLR (Pt. 799) 605
 Katto v. Central Bank of Nigeria (1991) 9 NWLR (Pt. 214) 126
 B Nafiu Rabi v. The State (1980) 8 - 11 SC 130
 A-G Bendel State v. A-G Federation (1981) 10 SC 1
 Ishola v. Ajiboye (1994) 7 - 8 SCNJ (Pt. 1) 35
 Ngige v. Obi (2006) All FWLR (Pt. 330) 1041
 C Societe Generale Bank Nig. Ltd v. Afokoro (1999) 11 NWLR (Pt. 628) 521
 Omotesho v. Abdullahi (2008) 2 NWLR (Pt. 1072) 526
 Adeyemi v. Opeyori (1976) 9 - 10 SC 18
 Obi v. INEC & Ors. (2007) 7 SC 268

D

STATUTE REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 4, 128, 153(1)(i) para. 20, 21(a) 3rd Schedule, 197, 233(5), 251(1) (q), 271, 292

E

LEAD JUDGMENT BY MOHAMMED JSC

- The action that gave rise to the present appeal number SC.281/2010 was brought by Originating Summons filed on 6th May, 2009 at the Federal High Court Ilorin by Honourable Justice Raliat Elelu-Habeeb, as the Plaintiff against the National Judicial Council, the Hon. Attorney General of the Federation, the Honourable Attorney General of Kwara State and the House of Assembly of Kwara State as Defendants. The Originating Summons submitted two questions for determination followed by a request of 5 distinct reliefs from the trial
 F Court. The questions for determination are-
 G

- "1. Whether by the combined interpretation of Section 153(1)(i) paragraph 21(a) of the 3rd Schedule and Section 271 of the Constitution of the Federal Republic of Nigeria, 1999, the 3rd Defendant has the power to initiate or carry out any exercise of disciplinary control and or proceedings on the Plaintiff in the exercise of powers, duties and obligation as occupier of the office of the Chief Judge of Kwara State.*
 H

2. Whether the letter of 3rd Defendant dated 4th May, 2009 inviting the Plaintiff to Disciplinary proceeding in matters relating to,

connected with and arising from the exercise of her functions as the Chief Judge of Kwara State does not amount to exercising the powers of the 1st Defendant under Section 153, 3rd Schedule, Part 1, paragraph 21 of the Constitution of the Federal Republic of Nigeria, 1999."

While the reliefs sought are as follows-

"1. Declaration that a combined interpretation of sections 4, 153, 292 and paragraphs 20, 21 of the 3rd Schedule, Part 1 of the Constitution, it is only the 1st Defendant that has the exclusive power and authority to query, command, order or inquire into any complaint against the Plaintiff arising from or connected with the performance of her functions as a Judicial Officer and in her office as the Chief Judge of Kwara State or recommend to the Governor her removal as Chief Judge of Kwara State.

2. A declaration that the letter of the Kwara State House of Assembly dated 4th may, 2009 is in breach and violation of the constitution of the Federal Republic of Nigeria, 1999 in so far as it relates to, connected with the Plaintiff in exercise of her functions in the office of the Chief Judge of Kwara State and therefore null and void.

3. An order setting aside, nullifying and putting away the decision of the 3rd and 4th Defendants (Kwara State House of Assembly) contained in the 3rd Defendant's letter dated 4th May, 2009 and any other steps taken thereon in so far as it relates to the office of the plaintiff, as the chief Judge of Kwara State, the same being inconsistent with sections 153, 197, 271 (2) of the 3rd Schedule of the constitution of the Federal Republic of Nigeria, 1999.

4. An order of Perpetual Injunction restraining the Defendants particularly the 3rd Defendant and the Government of Kwara State by themselves, through their officers, privies or any other persons deriving power, command, authority, instruction or directives from any of the Defendants from acting or relying on, or continuing to rely on, act on, implement, give effect to or do anything to the prejudice of the Plaintiff based on the decision contained in the letter dated 4th May, 2009 in so far as the decision is related to the office of the Plaintiff as the Chief Judge of Kwara State.

5. An order of Perpetual Injunction restraining the Defendants from acting on the decision arising from and connected with the 3rd Defendant letter dated 4th May, 2009 and from taking any actions,

acts, decisions, conclusions, directives, command and such other Deeds geared towards the office of the Plaintiff or doing anything which may have the effect of enforcing, continuing to give effect to, implement or finally putting into effect the conclusions and decision of the Kwara State House of Assembly."

B Although there were preliminary objections raised by the 2nd and 3rd Respondents to the competence of the Plaintiff's action on various grounds touching on the jurisdiction of the trial Court to entertain and determine the action, the learned trial Judge decided to hear the preliminary objections together with the substantive action.

C It is observed that all the Defendants/Respondents to the Plaintiff's Originating Summons except the 1st Defendant/Respondent, raised objections to the competence of the trial Federal High Court to adjudicate on the matter, having regard to the fact that the complaint of

D the Plaintiff was against the Executive and Legislative decisions of the Kwara State Government with no allegation against the Federal Government or any of its agencies. After hearing the parties on the preliminary objections and the Plaintiff's claims on the merit on the various affidavits, further affidavits, counter-affidavits filed by the parties

E in support of their respective stand on the issues raised in the preliminary objections and the Originating Summons, the learned trial Judge in the judgment of the trial Court delivered on 23rd July, 2009, overruled the Preliminary Objections by dismissing them in holding that

F taking into consideration that the case of the Plaintiff involves the interpretation of the provisions of the Constitution of the Federal Republic of Nigeria 1999, the trial Court was conferred with jurisdiction to hear and determine the action. In this respect, the learned trial Judge after considering the claims of the Plaintiff against the

G provisions of the Constitution in support of the claims and the Defendants' opposition of the same came to the conclusion that the Plaintiff was entitled to all the reliefs claimed and preceded to grant them.

The 2nd, 3rd and 4th Defendants/Respondents who were aggrieved with the judgment of the trial Federal High Court immediately lodged their respective appeals against the judgment to the Court of Appeal Ilorin Division. The notices of appeal however excluded

H the 1st Defendant/Respondent at the trial Court from the list of parties in the appeals at the Court of Appeal. However, on the application by the 1st Defendant/Respondent, it was later joined in the ap-

peals on the side of the Respondents. The appeals were heard by a panel of full Court of five Justices of the Court of Appeal having regard to the Constitutional importance of the issues that arose for determination. In a split judgment of 4 to 1, delivered on 2nd July, 2010, that Court came to the conclusion that the trial Federal High Court lacked the jurisdiction to adjudicate upon the case of the Plaintiff and held that the matter ought to have been taken to the High Court of Justice of Kwara State for hearing and determination having regard to the parties and the subject matter of the case. In the same judgment however, the Court of Appeal proceeded to hear the matter on the merit and came to the decision that the trial Federal High Court was right in its decision on the merit of the claims of the Plaintiff and consequently affirmed the decision of the trial Court. It is glaringly clear from the record of the this appeal that all the parties at the Court of Appeal except the Hon. Attorney General of the Federation, were not happy with the judgment of the Court and therefore decided to appeal and cross-appeal to this Court against parts of the judgment that the parties were not satisfied with. B C D

While the Plaintiff at the trial Court and the 1st Defendant/Respondent in that Court, the National Judicial Council who were the Respondents at the Court of Appeal were not pleased with the decision of the Court of Appeal on the issue of jurisdiction of the Federal High Court to entertain and determine the case of the Plaintiff, the 3rd and 4th Defendants/Respondents at the trial Court, who were Appellants at the Court of Appeal, decided to challenge the decision of the Court of Appeal in deciding to hear and determine the matter on the merit in spite of its decision that the Federal High Court lacked jurisdiction to deal with the matter and therefore filed their respective cross-appeals against that part of the decision of the Court of Appeal. The Attorney General of the Federation, who was on the side of the Appellants at the Court of Appeal, has neither filed an appeal nor a cross-appeal, as the cross-appeal earlier filed on his behalf was later withdrawn and struck out before the appeals and the cross-appeals proceeded to hearing in this Court. E F G H

Taking into consideration the position of the parties at the trial Court, the Court of Appeal and in this Court where both Appellants/Cross-Respondents and the Respondent/Cross-Appellants chose to pursue their respective cases separately, I have decided to list the

parties in this single appeal number SC.281/2010 as follows -

"1. Hon. Justice Raliat Elelu-Habeeb - 1st Appellant/Cross-Respondent

2. National Judicial Council- 2nd Appellant/Cross-Respondent

AND

B *1. The Hon. Attorney General of the Federation - 1st Respondent*

2. The Hon. Attorney General of Kwara State - 2nd Respondent/Cross-Appellant

C *3. The House of Assembly of Kwara State - 3rd Respondent/Cross-Appellant. "*

Henceforth in this judgment, the parties shall be referred to according to their respective designations specified above. Before proceeding to deal with the issues arising for determination in the D appeals and the cross-appeals respectively, I shall first tackle the two separate notices of Preliminary objection raised by the 2nd and 3rd Respondents/Cross-Appellants to the appeal filed by the 2nd Appellant, on the grounds that the appeal of the 2nd Appellant as a whole is incompetent, irregular and misconceived and that the same ought E to be struck-out because:-

i. The Appellant is not an aggrieved person within the context of the judgment appealed against.

ii. The decision appealed against is not in any way prejudicial F to any interest of the Appellant.

iii. The decision appealed against has not deprived the Appellant of any right.

For the 3rd Respondent/Cross-Appellant, it was urged by its learned senior Counsel that the appeal by the 2nd Appellant is in- G competent and ought to be dismissed or struck-out on the grounds among others that:-

i. The Appellant had no claim or counter-claim before the trial Court.

ii. No relief was also sought against the Appellant by any of the H parties before the trial Court.

iii. The Court of Appeal in allowing the appeal of the 2nd and 3rd Respondents/Cross-Appellants did not also make any order against the Appellant.

iv. The grievances arising from the decision of the Court of

Appeal were/are referable only to the 1st Appellant whose case before the trial Court was held incompetent on the ground of want of jurisdiction of the trial Federal High Court.

v. The Appellant does not fall within the meaning of an aggrieved person in law to justify its filing an appeal to this Honourable Court against the decision of the Court of Appeal. B

vi. The Appellant has not suffered any legal grievance to justify its filing an appeal.

vii. The appeal by the Appellant is unsupportable in law and it is therefore an abuse of Court process. C

viii. It is in the interest of justice to dismiss or strike-out the Appellant's appeal.

For the 2nd Respondent/Cross-Appellant, it was argued by his learned Counsel that the Notice of Appeal as well as the Appellants brief of argument filed by the Appellant, are misconceived and incompetent, the Appellant not being a person aggrieved by the judgment of the Court of Appeal in the eyes of the law, if the definition of the term - 'person aggrieved' given by this Court in *Ngige v. Obi* (2006) All F.W.L.R. (Pt.330) 1041 at 1088; *Societe Generale bank Nig. Ltd v. Afokoro* (1999) 11 NWLR (Pt. 628) 521 at 537 - 538 and *Sun Insurance Office Ltd v. Ojemuyiwa* (1956) All N.L.R. 1, is taken into consideration; that with the appeal of the 1st Appellant/Cross-Respondent firmly on the ground against the judgment of the Court of Appeal on the issue of jurisdiction, the appeal by the Appellant on the same issue is an abuse of judicial process even on the fact of the pronouncement of the Court of Appeal that the Appellant must also have an input in the removal of the Plaintiff/1st Appellant/Cross-Respondent. Learned senior Counsel in further reliance on the case of *Omotesho v. Abdullahi* (2008) 2 N.W.L.R. (Pt. 1072) 526 at 543 - 544, asserted that the Appellant as a Defendant before the Court below, not having been deprived of something nor wrongfully refused anything to justify its complaint, had no business to appeal against the decision of the Court of Appeal and therefore urged this Court to sustain the preliminary objection and strike out the appeal. H
The learned senior Counsel for the 3rd Respondent/Cross-Appellant also raised similar preliminary objection to the 2nd Appellants appeal virtually on the same grounds as raised by the learned senior Counsel to the 2nd Respondent/Cross-Appellant in that having regard to

the decisions in *Akinbiyi v. Adelabu* (1956) S.C.N.L.R. 109 at 111; *Mobil Production (Nigeria) Unlimited v. Monokpo* (2003) 18 N.W.L.R. (Pt. 852) 346 at 398 - 399, the Appellant is not qualified as a person aggrieved to exercise any right of appeal against the judgment of the Court of Appeal and therefore urged this Court to sustain the preliminary objection.

What has to be determined in these preliminary objections is whether the learned senior Counsel to the preliminary objectors are correct in law in holding out or portraying the 2nd Appellant as a party which is not aggrieved or in anyway affected adversely by the judgment of the Court of Appeal on the issue of jurisdiction in that the trial Federal High Court lacked jurisdiction to hear and determine the claims of the Plaintiff/1st Appellant/Cross-Respondent in the Originating Summons filed in that Court. In the case of Akinbiyi v. Adelabu (1956) S.C.N.L.R. 109, Foster-Sutton, F.C.J. of then Federal Supreme Court had this to say on a person entitled to appeal at p. 111-

"The only person entitled to appeal is a person aggrieved. In Ex-parte Sidebotham 14 ch. D465 James L.J., said a 'person aggrieved must be a man who has suffered a legal grievance'"

This decision was cited and applied by this Court in a number of cases including *Mobil Production (Nigeria) Unlimited v. Monokpo* (2003) 18 N.W.L.R. (Pt. 852) 346 at 398 - 399 where Uwaifo, JSC put the position of the law thus-

"it is true that the judgment of the trial Court which was affirmed by the Court below was given against only the 2nd Defendant. In effect the first Defendant is not an aggrieved party that can appeal against the judgment of the Court below to this Court simply on the basis that it was a party to the proceedings in which judgment was given in reliance on the provision of Section 233(5) of the 1999 Constitution which says that:

Any right of appeal to the Supreme Court from the decision of the Court of Appeal conferred by "this Section shall be exercisable in the case of civil proceedings at the instance of a party thereto."

That provision must be understood to apply to an aggrieved person or party. A party to the proceedings cannot appeal a decision arrived thereat which does not wrongfully deprive him of an entitlement or something which he had a right to demand. Unless there is such a grievance, he cannot appeal against a judgment which has not affected him since the whole exercise may turn out to be academic. Under no circumstance can it be argued that a party to proceedings who has not been affected by a decision may nevertheless appeal against it merely as a party.

Applying these decisions to the present case, it is not at all in dispute that the 2nd Appellant, the National Judicial Council was a party in the case at the trial Court as the 1st Defendant or 1st Respondent as the case was began by Originating Summons. It is also undisputed from the record of this appeal that the subject matter of the case brought before the trial Court, included the interpretation of the 1999 Constitution in Sections 153, 292 and paragraphs 20, and 21 of the 3rd Schedule, Part 1 thereof. Although the preliminary objections in their notices of appeal against the judgment of the trial Court to the Court of Appeal attempted to exclude the 2nd Appellant from the list of parties in the Court of Appeal, the Court of Appeal on an application joined the 2nd Appellant as a necessary party in the appeal before it as the 1st Respondent. As the decision of the Court of Appeal now being challenged in the appeal by the Appellant relates only to the aspect of the decision on the issue of jurisdiction, the Appellant as a party against whom the decision was given, has a right to appeal against it by virtue of Section 233(5) of the Constitution of the Federal Republic of Nigeria 1999.

What remains to be determined in line with the decisions in the cases of Akinbiyi v. Adelabu (supra) and Mobil Production (Nig.) Unltd. v. Monokpo (supra), is whether the Appellant on the facts of this case has satisfied the requirement of being a person aggrieved, or a person who has suffered a legal grievance, or a person against whom a decision has been pronounced which has wrongfully refused him something or wrongfully affected his title to something. See Societe Generale Bank Nigeria Ltd v. Afokoro (1999) 11 N.W.L.R.

(Pt. 628) 521 at 537 - 538. Looking at the 4 grounds of appeal contained in the Appellant's Notice of appeal and the lone issue identified from the grounds of appeal for determination of the Appellant's appeal, the only part of the judgment of the Court of Appeal being appealed against is that part declaring that the trial Federal High Court lacked jurisdiction to adjudicate in the action brought before that Court by the Plaintiff/1st Appellant/Cross-Respondent. Since Section 153 of the Constitution and paragraphs 20 and 21 of Part 1 of the Third Schedule to the same Constitution which deal with the composition of the National Judicial Council and its powers and role in the appointment and discipline of Judicial Officers is the subject of interpretation and application in the case at the trial Court and the Court of Appeal, it is certainly not correct to say that the Appellant is not a person aggrieved in the present case. The Appellant as a party in the case at the trial Court and the Court of Appeal whose decision is the subject of this appeal, is definitely a person who has suffered a legal grievance and a person against whom a decision has been pronounced as to the appropriate Court that has jurisdiction to interpret and apply the provisions of the Constitution in relation to its powers and duties under the Constitution. This case is not on all fours with the case of Mobil Production (Nig.) Unltd v. Monokpo (supra) where the judgment of the trial Court affirmed by the Court of Appeal was given against only the second Defendant thereby turning the first Defendant who sought to appeal to the Supreme Court against the concurrent judgments of the Courts below to a person not aggrieved that can appeal against the judgment of the Court. In the case at hand however, the judgment of the Court of Appeal declaring that the trial Federal High Court which heard and determined the case lacked jurisdiction to adjudicate in the matter, was definitely given not only against the 1st Appellant/Cross-Respondent who was the Plaintiff at the trial Court but also against the 2nd Appellant as well. Thus, for the above reasons, I am of the view that the 2nd Appellant/Cross-Respondent's appeal is quite competent. The preliminary objections of the 2nd Respondent/Cross-Appellant and the 3rd Respondent/Cross-Appellant having failed are hereby dismissed. The Appeals

I shall now proceed to deal with the appeals of the Appellants starting with the 1st Appellant's appeal. The learned senior Counsel

for the 1st Appellant Chief Awomolo in his Appellant's brief of argument, Appellant's reply brief and oral submission, pointed out that from the judgment of the trial Court, it is quite clear that the trial Court confined itself to the claims of the Plaintiff in determining the jurisdiction of the Court under Section 251(1) (q) of the 1999 Constitution. It is for this reason that in the Appellant's brief of argument; only one issue was raised for determination. The issue reads:-

"1. Whether the Court of Appeal was right when it declared that the Federal High Court has no jurisdiction to interpret the provisions of the Constitution as contained in the Originating Summons of the Appellant when the interpretation affects exercise of Constitutional powers of the National Judicial Council, a Federal Government agency."

The learned senior Counsel in arguing this issue asserted that the jurisdiction of Court to exercise judicial powers over any cause or matter is determined by the claims of the Plaintiff as stated in the case of Adeyemi v. Opeyori (1976) 9 - 10 S.C. 18 at 31. With regard to the exclusive jurisdiction of the Federal High Court under Section 251(1), learned senior Counsel called in aid several cases on the subject particularly Ladoja v. INEC and Ors, (2007) 7 S.C. 99 at 160 and Obi v. INEC & Ors. (2007) 7 S.C. 268 at 305 and argued that taking into consideration the parties in the case at the trial Court particularly the National Judicial Council which is directly connected with the appointment, discipline and removal of judicial officers under Section 153 and paragraphs 20 and 21 of part 1 of the Third Schedule to the Constitution, the Court of Appeal was in error in holding that the Federal High Court had no jurisdiction to determine the claims contained in the Originating Summons filed before it. Learned senior Counsel explained that the Appellant did not go to the trial Court to challenge her removal from office as erroneously held by the Court of Appeal but merely to complain against the conduct of the 3rd Respondent in its letter inviting her to the House of Assembly which falls within the jurisdiction of that Court under Section 251(1)(q) to adjudicate in all matters connected-with the interpretation and operation of the Constitution so far as it affects the Federal Government or any of its agencies. Learned senior Counsel concluded by citing the case of NEPA v. Edegero (2003) FW.L.R. (Pt. 139) 1556 to assert that the Federal High Court was right in

holding that it has the jurisdiction to hear and determine the Appellant's claims and therefore urged this Court to allow the appeal, set aside the decision of the Court of Appeal on the issue of jurisdiction and restore and affirm the decision of the trial Court.

In the 1st Respondent's brief of argument filed on behalf of the Hon. Attorney General of the Federation by his learned senior Counsel Lawal Rabbana, the lone issue framed for the determination of the appeal is-

"Whether the lower Court was right in holding that the Federal High Court lacked jurisdiction to entertain and determine the Appellant's case when there was no claim nor cause of action against any agent of the Federal Government."

Learned senior Counsel opened his argument by pointing out that all what is required in resolving the issue for determination is to answer the question of whether the Federal High Court has the jurisdiction to entertain the Appellant's claims under Section 251(1)(q) of the Constitution taking into consideration of the definition of the word 'jurisdiction' in the cases of *D.E.N.R. Ltd v. Trand International Bank Ltd* (2008) 18 NWLR (pt.1119) 388 at 435 and *Oduka v. Government of Ebonyi State of Nigeria & 3 Ors* (2009) 3 - 4 S.C. 154 at 169; that from the questions for determination and the reliefs sought by the Plaintiff in the Originating Summons; it is glaring that the subject matter of the dispute in this suit is the removal from office of the Plaintiff/Appellant as the Chief Judge of Kwara State by the Kwara State House of Assembly and the Governor; that the subject matter of the suit is the office of the Chief Judge of Kwara State created by Section 271 of the 1999 Constitution which does not make it a Federal Government agency and that since the House of Assembly and the Governor of Kwara State whose actions are being challenged are not agents of the Federal Government within the contemplation of Section 251(1)(q) of the Constitution, the Federal High Court lacks jurisdiction over them and the subject matter of the action. Learned senior Counsel while conceding that the National Judicial Council and the Attorney General of the Federation are agents of the Federal Government, but as no cause of action had been disclosed against them to vest jurisdiction in the Federal High Court, the Court below was right in its decision that that Court lacked jurisdiction in the matter if decisions of this Court in *Inakoju v. Adeleke* (2007)

4 N.W.L.R. (Pt. 1025) 427 at 588 - 589; Omomeji v. Kolawole (2008) 14 N.W.L.R. (Pt. 1106) 180 at 206 and Attorney General Kano State v. Attorney General of the Federation (2007) 6 NWLR (Pt. 1029) 164 at 192, are taken into consideration, particularly as in this case where the Plaintiff/Appellant has no claim whatsoever against the 1st Respondent or the 2nd Appellant, the National Judicial Council. B Learned senior Counsel therefore concluded by urging this Court to dismiss the appeal.

For the 2nd Respondent, the Hon. Attorney General of Kwara State, his learned senior Counsel, Adelodun in the Respondent's brief of argument filed on 22nd September, 2010, saw the issue for determination in this appeal as follows- C

"Whether having regard to the nature of this suit, particularly the reliefs sought, the lower Court was not right in holding that the Federal High Court had no jurisdiction to hear and determine the D Appellant's case."

Learned senior Counsel to 2nd Respondent is also of the strong view that the law is well settled that in the determination of the question whether or not a Court has jurisdiction to adjudicate on a matter, the primary consideration is the Plaintiff's statement of claim, E which in this case is the Appellant's Originating Summons showing the reliefs sought as laid down in Adeyemi v. Opeyori (1976) 10 N.S.C.C. 455 at 464, cited and applied in Inakoju v. Adeleke (2007) 4 N.W.L.R. (Pt. 1025) 427 at 588 - 589; including the affidavit F in support of the Originating Summons to the exclusion of any other processes especially those filed by the Respondents. All the same, from the relevant process, the learned senior Counsel argued that the Appellant's complaint and grievance before the trial Court was the action and the decision of the Kwara State Government, epitomized by the Governor and the House of Assembly; that the reliefs G sought by the Appellant have nothing to do with any complaints against the National Judicial Council or the Attorney General of the Federation so as to vest the Federal High Court with jurisdiction in the matter under Section 251(l)(p)(q)(r) as rightly found by the court H below particularly following the decisions of this Court in NEPA v. Edegero (2002) 18 N.W.L.R. (Pt. 798) 79 and Dr. Taiwo Oloruntoba-Oju & 4 Ors. v. Professor Shuaibu O. Abdul-Raheem (2009) 13 N.W.L.R. (Pt. 1157) 83 at 127. The learned senior Counsel relying

on a number of decisions of the Court of Appeal in *Enweremadu v. Ohajuruka* (2001) 43 W.R.N. 53 at 6; *N.N.P.C. v. Okwor & Ors.* (1998) 7 N.W.L.R. (Pt. 559) 637 at 650 and *Minister for Works v. Tommas Nig. Ltd. & Ors.* (2002) 2 N.W.L.R. (Pt. 752) 740 at 788, concluded that the Appellant's case having failed to satisfy the two basic preconditions of the parties being Federal Government or any of its agencies and the subject matter of the action must relate to the validity or otherwise of the action or decision of the Federal Government or any of its agencies, the Court below was right in its decision that the Federal High Court lacked jurisdiction in the matter brought before it by the Plaintiff/Appellant and therefore urged this Court to dismiss the appeal most especially having regard to the cases of *Odiase & Anor. v. Agho & Ors.* (1972) 1 All N.L.R. (Pt.1) 170 and *Nwabueze v. Okoye* (1988) 2 N.W.L.R. (Pt.91) 664, the concurrent findings of fact by the two Courts below that the Appellant's case is one challenging the decision of the Governor and the House of Assembly of Kwara State remains intact in the absence of any appeal against those findings.

For the 3rd Respondent, the Kwara State House of Assembly, in the Respondent's brief of argument filed by its learned senior Counsel, Yusuf Ali on 29th October, 2010, the issue distilled from the 3 grounds of appeal filed by the 1st Appellant reads-

"Whether having regard to the complaints of the (sic) Respondents and the reliefs sought by her in her originating summons, the Court of Appeal was not right and correct in holding that the Federal High Court lacked jurisdiction to hear and determine her case?"

Learned senior Counsel must have inadvertently referred to the Appellant as the Respondent in the above issue identified in the 3rd Respondent's brief. The word 'Respondents' therefore in the issue as identified must be read as the 'Appellant'. As far as the learned senior Counsel is concerned, the questions for determination and the reliefs sought by the Appellant in her Originating Summons reveal quite clearly that the Court of Appeal was right in its decision that the Federal High Court lacked jurisdiction to entertain the suit as formulated on the authority of the cases of *Egbuonu v. B.R.T.C* (1997) 12 N.W.L.R. (Pt. 531) 29 at 43 and *Inakoju v. Adeleke* (2007) 4 N.W.L.R. (Pt. 1025) at 588 - 589, as the Court will not examine the counter-affidavit of the Respondents even where it has been filed;

that from questions for determination and the reliefs claimed in the Originating Summons, the Appellant's case was against the action of the Respondent and the Governor of Kwara State as parties while the subject matter of the suit solely concerned the Government of Kwara State because there was no relief claimed against the National Judicial Council or the Attorney General of the Federation who were merely joined as Respondents without any basis. B

On jurisdiction or competence of Court, learned senior Counsel relying on the leading authority on the subject in the case of *Madukolu v. Nkemdilim* (1962) All N.L.R. (Pt. 3) 581 at 589 - 590, (1962) 2 S.C.N.L.R. 241, argued that the trial Court wrongly entertained the matter since the subject matter of the case being the power of the 2nd and 3rd Respondents to remove the Appellant as the Chief Judge of Kwara State by the Governor and the House of Assembly of Kwara State, is not within the jurisdiction of the trial Court under Section 251 of the Constitution as claimed by the Appellant. Several cases cited in support of this submission include *Onuora v. K.R.P.C. Ltd.* (2005) 6 N.W.L.R. (Pt. 921) 393 at 404 - 405 and *Oloruntoba-Oju v. Abdul-Raheem* (2009) 13 N.W.L.R. (Pt. 1157) 83 at 127. Learned senior Counsel referred to the finding of the trial Court at page 532 of the record to the effect that the Appellant was at the trial Court to challenge the decision of the Governor and the House of Assembly of Kwara State to remove her as the Chief Judge of the State and contended that the subject matter of the suit was clearly outside the jurisdiction of the trial Court and that the cases of *Ladoja v. INEC* (2007) S.C. 99 at 160 and *Peter Obi v. INEC* (2007) 7 S.C. 268, heavily relied upon by the Appellant, are not relevant to the present case. C D E F

With regard to the stand of the Appellant that because the interpretation of the Constitution was involved in the case now at hand, the Federal High Court is the proper forum for the resolution of the dispute by virtue of Section 251(1)(q) and (r) of the Constitution, it is the view of the learned senior Counsel that by virtue of Section 272 of the Constitution, the High Court also has the vires to interpret provisions of the Constitution in cases before the Court. Learned senior Counsel for the 3rd Respondent concluded by pointing out that the cases of *NEPA v. Edeghero* (2003) F.W.L.R. (Pt. 139) 1556 and *Osigwe v. Federal College of Education* (2010) 10 N.W.L.R. G H

(Pt. 1201) 1 at 34 relied upon by the Appellant on the facts, are not relevant to the present case and therefore urged this Court to dismiss the appeal and affirm the decision of the Court below.

Irrespective of the manner in which the issue for determination in this appeal was framed in the Appellant's brief, the 1st, 2nd and 3rd Respondents' briefs of argument respectively as earlier quoted in full in the judgment, the real issue for determination as agreed by all the parties is simply whether having regard to the two questions submitted for determination and the reliefs sought by the Appellant in the Originating Summons, the Court below was right in holding that the Federal High Court lacked jurisdiction to entertain and determine the Appellant's suit.

The issue such as this, of when Court has jurisdiction or competence, has long been settled in the jurisprudence of Nigeria from the time of the decision of this Court in the well known and highly celebrated case of Madukolu & Ors. v. Nkemdilim & Ors. (1962) All N.L.R. (Pt. 3) 581 at 589 - 590 where the position of the law was laid down thus -

"Before discussing those portions of the record; I shall make some observations on jurisdiction and the competence of a Court. Put briefly, a Court is competent when:

1. It is properly constituted as regard number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

2. The subject matter of the case is within its jurisdiction; and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

3. The case comes before the Court of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the jurisdiction."

Applying the above guiding pronouncements on the issue of jurisdiction to the case at hand, it is not difficult to see that there is no problem whatsoever with the Constitution of the trial Court or the qualification of its learned presiding Judge, nor is there any cloud surrounding the requirement that the case of the Appellant was brought before the trial Court upon fulfilment of condition precedent

to the exercise of jurisdiction. However what calls for determination in the present case is whether or not the subject matter of the action is within the jurisdiction of the trial Court and that there is no feature in the case which prevents the Court from exercising its jurisdiction. While the Appellant is asserting that the suit brought to the trial Court was on a subject matter that was within the jurisdiction of that Court, the three Respondents to this appeal are saying that the subject matter of the Appellant's action being essentially the removal of the Appellant from office of the Chief Judge of Kwara State by the 2nd and 3rd Respondents, the subject matter was entirely within the jurisdiction of the State High Court of Justice as found by the Court below that the trial Court lacked jurisdiction in the matter.

It is indeed a fundamental principle that jurisdiction of a Court of law is determined by the Plaintiff's claim. See Izenkwe v. Nnadozie 14 WACA 361 at 363 and Adeyemi v. Opeyori (1976) 9 D - 10 S.C. 51. ***That is to say, it is the claim before the Court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the Court.*** See Western Steel Works v. Iron & Steel Workers (1987) 1 N.W.L.R. (Pt. 49) 284.

It should be emphasized that Judges have no duty and indeed no power to expand the jurisdiction conferred on their Courts but they have the duty and indeed jurisdiction to expound the jurisdiction conferred on their Courts as laid down by this Court in The African Press of Nigeria & Ors. v. The Federal Republic of Nigeria (1985) 1 All N.L.R. 50 at 175; (1985) 2 N.W.L.R. (Pt. 6) 137 at 165. See also some of the leading authorities on the subject of jurisdiction particularly of the Federal High Court vis-a-vis the State High Court in Tukur v. The Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 549; Adetayo v. Ademola (2010) G All F.W.L.R. (Pt. 533) 1806 at 1825- 1826; Ladoja v. INEC (2007) 7 S.C. 99 at 160; Peter Obi v. INEC (2007) 268 and ***Inakoju v. Adeleke (2007) 4 N.W.L.R. (Pt. 1025) 427 at 588-589 where Tobi JSC expounded the law on how jurisdiction of a trial Court is determined especially where the action was commenced by Originating Summons supported by affidavit where he said:-***

"In determination of whether or not a Court has jurisdiction, the Court process to be used is the pleadings of the Plaintiff, which is the statement of claim; it is the case put up

by the Plaintiff that determines the jurisdiction of the Court. In this case, as the action was commenced by Originating Summons, the Court process to be used is the affidavit in support of the summons ...”

Taking into consideration the foregoing authorities and many others too numerous to be listed, it is quite plain that in resolving the lone issue of jurisdiction in the case at hand, the Court processes to be examined are the Originating Summons of the Plaintiff/Appellant containing the questions submitted for determination, the reliefs sought in the Originating Summons to the exclusion of any other processes especially those filed in defence of the action by the Defendants/Respondents.

I have earlier in this judgment quoted in full the two questions submitted by the Plaintiff/Appellant for determination and the reliefs sought. I do not consider it necessary to also quote the various paragraphs of the affidavit in support of the suit as constituted by the Originating Summons because to me the facts that led the Plaintiff/Appellant to seek redress at the trial Court, are not at all in dispute and are not different from the facts of the case I have already narrated.

Although all the three Respondents in this appeal have strongly submitted variously that the Plaintiff/Appellant went to the trial Court to challenge her alleged removal from office as the Chief Judge of Kwara State by the 2nd and 3rd Respondents, the Governor and the House of Assembly of Kwara State respectively, there is nothing in the two questions submitted for determination, the reliefs sought and the affidavit in support of the Originating Summons that talks of the removal of the Appellant from office, particularly in the absence of any copy of the letter of removal from office from the appropriate authority.

Removal of a public officer like the Chief Judge of a State is always signified by a letter to that effect clearly signifying the effective date of removal in the same way the appointment of such a public officer is also always signified by 2 letter of appointment clearly spelling out the effective date of such appointment. It is therefore not correct as erroneously assumed by all the Respondents that the alleged removal of the Plaintiff/Appellant can be inferred from the reliefs sought by the Appellant at the trial Court.

Therefore, quite contrary to the stand taken by the Respondents, from the two questions submitted for determination and the reliefs sought by the Plaintiff/Appellant at the trial Court, it is quite clear that the Plaintiff/Appellant did not go to that Court to challenge her removal from office. Rather, the questions for determination and the three declaratory reliefs and two injunctive reliefs sought are all rooted on the interpretation and operation of the provisions of Section 153(1)(i), 197, 271(2), 292 of the Constitution, paragraphs 20 and 21 of part 1 of the 3rd Schedule to the same Constitution of the Federal Republic of Nigeria, 1999 against the background of the 3rd Respondent's letter dated 4th May, 2009, inviting the Appellant to appear before it. In other words, all the claims of the Appellant in her Originating Summons are rooted or hinged on the Constitutionality or lawfulness of the disciplinary proceedings commenced by the letter of the 3rd Respondent dated 4th May, 2009 against the Appellant. The interpretation and the correct operation of the affected provisions of the 1999 Constitution, was therefore the main subject of the suit of the Plaintiff/Appellant and not her removal from office as asserted by the Respondents.

Next for determination is to examine the relevant provisions of Section 251(1)(q) of the 1999 Constitution to see if the Federal High Court has jurisdiction in the matter as found by the trial Court. The Section reads:-

"251(1) 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-

(q.) subject to the provision of this Constitution; the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies."

It is quite clear from the above provisions of Section 251(1.) (q.) of the Constitution that any action which involves the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies, the Federal High Court has jurisdiction to entertain and determine the action. The fact that the provisions of the Consti-

tution in Section 153(1)(i.), 271(1); 292(1)(a)(ii) together with paragraphs 20 and 21 of Part 1 of Third Schedule to the same Constitution, the operation and interpretation of which affects the powers and duties of the National Judicial Council under the Constitution, coupled with the fact that there is no doubt whatsoever that the National Judicial Council is an agency of the Federal Government, the Court below, in my view, was wrong to say that the Federal High Court lacked jurisdiction in the matter. The power or jurisdiction of the Federal High Court to entertain actions connected with the operations and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies, have been determined in many decisions of this Court such as *Ladoja v. INEC* (2007) 7 S.C. 99 at 160 and *Obi v. INEC & Ors.* (2007) 7 S.C. 268 at 305 just to mention a few. The observations of my learned brother Oguntade JSC in this case which are quite illuminating are-

“I wish to emphasize on indispensability of the jurisdiction of the Court to declaratory judgment in democratic governance. The jurisdiction to interpret the provisions of the Constitution and all statutes generally enables the constituent organ of the states to function smoothly. It is particularly invaluable to citizens whose constitutional rights are threatened with invasions. It seems to me that all the anxieties arising from litigation on a simple case as this is over the interpretation of simple provision of the Constitution, which provision is not in the least recondite and which has culminated in this appeal would have been removed by the interpretative jurisdiction conferred by Section 251(i)(q.) and (r.).”

In the present case therefore which principally involves the procedure for initiating and conducting disciplinary proceedings against a Chief Judge of a State where the National Judicial Council which had been given a role in the appointment and exercise of disciplinary control over judicial officers of the Appellant’s rank under the Constitution, it is not correct as argued by the Respondents that the entire matter in the case was a State Government affair.

The very fact that the operation and interpretation of the provisions of the Constitution affecting the powers and functions of a Federal Government agency is the main subject of this case, the 1st Respondent, the Honourable Attorney General of the Federation as

the Chief Law Officer of the entire Federation appointed under Section 150 of the same Constitution, who is therefore not only the guardian of the Constitution but also the protector of the same, the Appellant's action which sought to protect the violation of the provisions of the Constitution, is certainly not only regarded as an action against the National Judicial Council whose powers and functions were subject of the violation but also against the Honourable Attorney General of the Federation whose role in protecting the provisions of the Constitution from being violated, was in issue in the case. These features of this case are what brought the case within the jurisdiction of the Federal High Court.

I am not unaware of the argument of the learned senior Counsel to the 3rd Respondent that by virtue of the provisions of Section 272 of the Constitution, the High Court of Justice of Kwara State also has jurisdiction to interpret those same provisions of the Constitution placed before the Federal High Court for interpretation. I entirely agree. However, what the learned senior Counsel failed to realize however is the fact that the presence of the 2nd Appellant, the National Judicial Council and the Honourable Attorney General of the Federation as parties in the case, had pulled in a feature in the case which brought it out of the jurisdiction of the High Court taking into consideration the decision of this Court in *Madukolu v. Nkemdilim* (supra) earlier quoted in this judgment.

For the foregoing reasons, this appeal has merit and ought to succeed. Accordingly, the appeal is allowed. The judgment of the Court below declaring that the trial Federal High Court Ilorin lacked jurisdiction to entertain and determine the Appellant's suit, is hereby set aside. The judgment of the trial Federal High Court Ilorin declaring that it has jurisdiction to entertain and determine the matter brought before it by the Plaintiff/Appellant is hereby restored and affirmed.

Appeal of the 2nd Appellant - The National Judicial Council

The appeal by the 2nd Appellant is also against the decision of the Court of Appeal delivered on 2nd July, 2010. In the Appellants brief of argument filed by its learned senior Counsel on 17th January, 2011, the following issue was framed from the 4 grounds of appeal filed by the Appellant. The issue reads-

"Whether the Court of Appeal was correct when it held that the Federal High Court Ilorin lacked the jurisdiction under Section

251 of the 1999 Constitution to entertain a dispute filed by the Chief Judge of Kwara State challenging her purported removal as Chief Judge/Judge by the Governor and House of Assembly of Kwara State and contending in the same action that in matters relating to misconduct by any Judge including the Chief Judge only the N.J.C. can render such determination.”

The 1st Respondent in this appeal the Hon. Attorney General of the Federation did not file a Respondent’s brief in this second appeal filed by the 2nd Appellant, the National Judicial Council although a comprehensive brief was filed in opposing the 1st Appellant’s appeal which I have already determined.

The 2nd Respondent; the Honourable Attorney General of Kwara State however, filed a Respondent’s brief on 14th March, 2011 through his learned senior Counsel who not only responded to the issue of jurisdiction raised in the appeal but also raised a preliminary objection to competence of the appeal which I have earlier resolved in this judgment. The issue as identified in the 2nd Respondents brief is:-

“Was the Court of Appeal right in holding that the mere joinder of the N.J.C and the Attorney General of the Federation as parties is not enough to clothe the Federal High Court with the jurisdiction to adjudicate over the action of the Chief Judge of Kwara State challenging her removal from office, when the two did not play any role in the removal and when there was no reliefs sought against them.”

The learned senior Counsel to the 3rd Respondent; the Kwara State House of Assembly also reacted to this 2nd appeal through a Respondent’s brief of argument also containing a Notice of Preliminary Objection the appeal itself filed on 22 March, 2011. I have already resolved the preliminary objection against the Respondent. The issue distilled in this brief arising from the 4 grounds of appeal filed by the Appellant reads-

“Whether having regard to the complaints of the 1st Appellant and the reliefs sought by her in her Originating Summons, the Court of Appeal was not correct in holding that the Federal High Court lacked jurisdiction to hear and determine her case.”

It is quite obvious that the issues as identified by the parties in the Appellant’s brief of argument, the 2nd and 3rd Respondents’

briefs of argument respectively; are not different from the issues that were considered and determined in the 1st appeal between the same parties, namely - whether having regard to the questions for determination and the reliefs sought by the Plaintiff/Appellant in her Originating Summons, the Court of Appeal was right in its judgment that the Federal High Court Ilorin lacked jurisdiction to hear and determine the Plaintiff/Appellant's case. B

As the facts and the issue for determination in the present 2nd appeal are not different from those facts and issue already considered and determined in the 1st appeal, I hereby resolve the issue in the present appeal by holding that having regard to the fact that the Plaintiff/Appellant's case substantially involves the operation and interpretation of the provisions of the Constitution in relation to the powers and duties of the Appellant in this appeal which undoubtedly is an agency of the Federal Government created under the same Constitution, the Federal High Court definitely is vested with jurisdiction under Section 251(1)(q) to hear and determine the action. This appeal is also hereby allowed. The judgment of the Court of Appeal is set aside and the judgment of the trial Court on the question of jurisdiction is restored and affirmed. C D E

The Cross-Appeals

There are two Notices of Cross-appeals filed by the 2nd and 3rd Respondents in this appeal. The Notice of cross-appeal filed by the 2nd Respondent, the Honourable Attorney General of Kwara State contains 8 grounds of appeal while the Notice of cross-appeal filed by the 3rd Respondent, the House of Assembly of Kwara State contains 12 grounds of appeal. I shall start with the cross-appeal filed by the 2nd Respondent in respect of which a cross-Appellant's brief of argument was filed on 22nd September, 2010 by the learned senior Counsel who also on 10th December, 2010 filed a cross-Appellant's Reply brief to the 1st Appellant's/ Cross-Respondent's brief of argument. From the 8 grounds of appeal filed by the cross-Appellant, 4 issues for the determination of the cross-appeal were formulated. These issues are:- F G H

"1. Whether having regard to the myriads of affidavit filed by the parties; this case was not hostile as to render inappropriate the Originating Summons procedure in commencing same - ground 1.

2. Was the Court of Appeal right in entering judgment on the

merits in favour of the 1st Appellant/Cross-Respondent after having held that the trial Court lacked the jurisdiction to adjudicate on the case and that the same ought to be returned to the High Court of Kwara State for proper adjudication? – grounds 2 and 3

B *3. Whether the Court of Appeal correctly interpreted the provisions of Section 292(1)(a)(ii) of the Constitution of the Federal Republic of Nigeria, 1999 in affirming the decision of the trial Court that the Governor and the House of Assembly of Kwara State cannot remove the 1st Appellant/Cross-Respondent as Chief Judge without recourse to the National Judicial Council - grounds 4, 5 and 6.*

C *4. Whether the Court of Appeal did not err in making pronouncements on the procedure employed in the removal of the 1st Appellant/Cross-Respondent as Chief Judge when that point was neither an issue before it nor even before the trial Court. Grounds 7 and 8"*

In his argument in support of the first issue for determination, learned senior Counsel quoted the questions submitted by the 1st Appellant/Cross-Respondent in the Originating Summons for determination and the five reliefs sought and referred to the affidavit in support of the Originating Summons, two further affidavits in support of the same, counter-affidavit and further counter-affidavit filed in opposing the action by the Defendant/Cross-Appellant and submitted that the Court of Appeal was in grave error in affirming the decision of the trial Court in hearing the matter brought before it by Originating Summons. The cases of *Adeyelu II v. Ajagungbade III* (2007) 14 N.W.L.R. (Pt. 1053) 1 at 10 and *PD.P. v. Abubakar* (2007) 3 N.W.L.R. (Pt. 1022) 515 at 551, were cited in support of the argument; that since the service of the letter written to the 1st Appellant/Cross-Respondent by the Cross-Appellant was in dispute or whether 1st Appellant/Cross-Respondent acted in consonance with her oath of office and the Constitution as alleged by her but denied by the Cross-Appellant or the allegations made against the 1st Appellant/Cross-Respondent were brought to her attention are matter raising disputed facts which made the case not suitable for being commenced by Originating Summons having regard to the decisions in several cases relied upon including *N.B.N. Ltd. & Anor. v. Alakija & Anor*, (1978) N.S.C.C. 470 at 477; *Famja Oil Ltd. v. Attorney-General of the Federation* (2003) F.W.L.R. (Pt. 184) 195 at 205 and *Inakoku v.*

Adeleke (2007) All F.W.L.R. (Pt. 353) 1 at 202.

For the Plaintiff/Appellant/Cross-Respondent, it was submitted that the entire case brought before the trial Court was centered or rooted in the letter dated 4th May, 2009, by the House of Assembly of Kwara State inviting the Plaintiff/Appellant/
Cross-Respondent to appear before it and defend herself; that there is nothing in the counter-affidavits filed in defence of the action to pull out the relevant facts of this case outside the letter of 4th May, 2009, the proof of which requires no pleadings or oral evidence; that since the Cross-Appellant did not find it necessary to apply at the trial Court to call for oral evidence to resolve the alleged conflicting affidavit evidence in line with the cases of Falobi v. Falobi (1976) N.M.L.R. 169 and Noibi v. Fikolati (1987) 1 N.W.L.R. (Pt. 52) 619, it shows that there were no disputed facts in the case that would have made the case unsuitable for hearing and determination by Originating Summons procedure.

In his response to this issue, the learned senior Counsel for the 2nd Appellant/Cross-Respondent, had submitted that taking into consideration the reliefs sought in the Originating Summons revolved around the issue of unconstitutional removal of the 1st Appellant/
Cross-Respondent as a Chief Judge, the procedure by Originating Summons is most suitable for the action at the trial Court particularly when cases such as Keyamo v. L.S.H.A (2002) 18 N.W.L.R. (Pt. 799) 605 at 613 and Pam v. Mohammed (2008) 16 N.W.L.R. (Pt. 1112) 1 at 51, are taken into consideration. Learned senior Counsel therefore urged this Court to affirm the concurrent decisions of the two Courts below which were not perverse on the use of Originating Summons in initiating the present case at the trial Court.

However, in a Cross-Appellant's Reply brief, learned senior Counsel to the 2nd Respondent/Cross-Appellant insisted that the concurrent decisions of the two Courts below were perverse to justify their being set aside relying on Obioha & Ors. v. Duru & Ors. (1994) 8 N.W.L.R. (Pt. 365) 631.

The law is indeed well settled that Originating Summons procedure for initiating action is not suitable and therefore not available for action involving hostile proceedings where the facts are seriously in dispute as the case in Adebayo Doherty and Another v. Richard Ade Doherty 1968 N.M.L.R.

241. This Court has decided in many cases some of which are *Keyamo v. L.S.H.A. (2002.) 18 N.W.L.R. (Pt. 799) 605 at 613* and *Pam v. Mohammed (2005) 16 N.W.L.R. (Pt. 1112) 1 at 51*, that *Originating Summons can be used in matters that involved the interpretation of contracts, documents, Constitution and other statutes where matters or facts are not in dispute.*

In the present case, the real issues raised are centered around the interpretation of the provisions of the 1999 Constitution prescribing the procedure for exercising disciplinary proceedings dealing with the exercise of powers under the same Constitution to remove a Chief Judge of a State from Office. I entirely agree that the two Courts below were on very firm ground that the action at the trial Court was correctly and rightly began by Originating Summons procedure.

The second issue raised by the 2nd Respondent/Cross-Appellant is whether the Court below was right in entering judgment on the merit in favour of the plaintiff/appellant/2nd respondent in that Court after holding that the trial Court lacked jurisdiction in the matter which ought to have been returned to the High Court of Kwara State for hearing. Learned senior Counsel therefore argued that the Court of appeal was in error in proceeding to decide the merit of the case ahead of the High Court of Kwara State which that Court had held as having the jurisdiction to properly adjudicate on the matter, thereby ignoring the principles of stare decisis necessary for judicial discipline in our Courts as stated in *Amaechi v. INEC (2008) 5 N.W.L.R. (Pt. 1080) 227 at 379*, particularly when the cases relied upon by the Court below in deciding to go into the merits of this case, were grossly mis-applied.

It was however pointed out by the learned senior Counsel for the 1st Appellant/Cross-Respondent that the Court below acted in pursuance of its powers under Section 16 of the Court of Appeal Act and several binding decisions of this Court in proceeding to hear the case on its merits after deciding that the trial Court lacked jurisdiction to hear and determine the case; that having regard to several decisions of this Court such as *Okonji v. Njokanma (1991) 7 N.W.L.R. (Pt. 202) 131 at 150* and *Brawah Shipping (Nigeria) Ltd v. F. I. Onwa Dike Co. Ltd. (2000) 11 N.W.L.R. (Pt. 678) 387 at 403*, all lower Courts are enjoined to pronounce, as a general rule, on all issues properly placed before them for determination in order apart from

the issue of fair hearing, so as not to risk the possibility that the only issue or issues decided by them could be faulted on appeal; that there is also the requirement of the law as laid down by this Court in *Alhaji Bello v. Diocesan Synod of Lagos & Ors.* (1973) 3 S.C. 72 at 82, *Katto v. Central Bank of Nigeria* (1991) 9 NWLR (Pt. 214) 126 at 149 and *Adah v. N.Y.S.C.* (2004) 13 N.W.L.R. (Pt. 891) 639 at 643, that since the appeals in this case to the Court of Appeal were in respect of both the issues of jurisdiction or competence and the substantive case on the merits, the Court below not being a final Court, had a duty to decide the merits of the case upon the issues canvassed before it notwithstanding that it resolved the issue of jurisdiction to the effect that the trial Court lacked jurisdiction in the matter. Learned senior Counsel therefore urged this Court to resolve this issue against the 2nd Respondent Cross-Appellant. B
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The stand of the learned senior Counsel for the 2nd Appellant/Cross-Respondent on this issue is that the Court below was quite correct in proceeding to hear the merits of the case after its decision that the trial Court lacked jurisdiction to hear the case; that the Court below was singularly concerned about its Constitutional position as a penultimate Court that does not enjoy the finality that this Court enjoys as the apex Court, there is every possibility that the decision of the Court below on jurisdiction may not be upheld; that in such situation, penultimate Courts are enjoined to render their decisions on those matters hitherto displaced by an earlier but not final decisions. D
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In a Cross-Appellant Reply brief on this issue, learned senior Counsel to the 2nd Respondent/Cross-Appellant contended that having regard to the circumstances of this case, section 16 of the Court of Appeal Act was inapplicable as stated by this Court in *Diapalong v. Dariye* (2007) 8 N.W.L.R. {Pt. 1036} 332 at 404; that the cases relied upon by the Appellants/Cross-Respondents on this issue namely, *Alhaji Bello v. The Diocesan Synod of Lagos & Ors* (supra) and *Katto v. C.B.N* (supra) are not applicable to the present case. G

The main question for determination in this second issue in the cross-appeal is whether the Court below was right in proceeding to take and determine the substantive case on its merits after deciding that the trial Court lacked jurisdiction in the case that was brought before it by Originating Sum- H

mons. It is quite clear from the record of this appeal that the 2nd Respondent/Cross-Appellant lost its preliminary objection to the jurisdiction as well as the merits of the case by the ruling and the final judgment of the trial Court. That is why the appeals that came to the Court below were in respect of issues of jurisdiction/competence and the substance of the case on the merit. In situation such as this, the Court below had no option than to be guided by the law as contained in particular the case of *Katto v. Central Bank of Nigeria* {1991} 9 N.W.L.R. (Pt. 214) 126 at 149 where Akpata JSC, (of blessed memory) stated the position of the law thus-

“As rightly submitted by Mr. Aluko-Olokun, the Court of Appeal ought to have proceeded in the alternative on the basis that the trial Court could have been right, to give its views and decision on the issues raised in the grounds of appeal. Where a trial Court after holding that it had jurisdiction proceeded to determine the matter before it and an intermediate Court of Appeal thinks the trial Court lacked jurisdiction, the said intermediate Court should in the alternative resolve the complaints in the appeal, unless both Counsel, particularly Respondent’s Counsel, concede that the trial Court lacked jurisdiction in the matter. While the Supreme Court, being the final Court of Appeal, can afford not to pronounce on other issues placed before it where it finds that the trial Court lacked jurisdiction, the Court of Appeal whose stance on jurisdiction may be faulted by the Supreme Court should not ignore other issues raised in the appeal. It should pronounce on them. The position now is that issues which ought to have been resolved by the Court of Appeal in its judgment dated 30th January, 1989, about three years ago, will now have to be sent back to it for hearing and determination.” See also the case of *Adah v. N.Y.S.C.* (2004) 13 N.W.L.R. (Pt. 891) 639 at 643 where faced with similar position as in the present case in the issue at hand, Uwaifo JSC said:-

“The Court below not being the final Court had a duty to decide the merits of the case upon issue canvassed before it not issue of jurisdiction to the effect that the Benue State High Court lacked jurisdiction. This is because if on an appeal to this Court, it was re-

served on that issue, it would prevent the necessity of remitting the appeal to it, to resolve the other issues arising from the appeal as originally made to it. The Court below was in error to have failed to resolve all the issues canvassed before it rather than confine itself only to issue of jurisdiction."

In the instant case therefore when the Court below after deciding that the trial Federal High Court lacked jurisdiction and proceeded in the alternative on the basis that the trial Court could have been right in its decision on the issue of jurisdiction to give its views and decision on the remaining issues raised in the grounds of appeal on the merits of the case, the Court below in my view, did exactly what this Court mandated it to do in line with the decisions in Katto v. C.B.N. (supra) and Adah v. N.Y.S.C. (supra). In this respect, the Court below was on a very solid ground and indeed acted prudently by pronouncing on all the issues submitted by the Cross-Appellant in the Appellant's brief of argument for determination of the Court below. In other words, that Court acted within its powers under the law as pronounced by this Court, lawfully in the interest of justice to avoid waste of time and resources in deciding the merits of the case thereby making it possible to place the entire case before this Court for determination on appeal. The second issue is therefore also resolved against the Cross-Appellant.

The 3rd issue in the cross-appeal is whether in affirming the decision of the trial Court that the Governor and the House of Assembly of Kwara State cannot remove the 1st Appellant/Cross-Respondent as Chief Judge without recourse to the National Judicial Council, the Court below correctly interpreted the provisions of Section 292(1)(a)(ii) of the Constitution of the Federal Republic of Nigeria, 1999. Learned senior Counsel to the 2nd Respondent/Cross-Appellant after quoting the provisions of Section 292(10(a)(i), (ii), (b)(i), (ii) of the 1999 Constitution, submitted that whereas the first mode of removal which is provided for by Section 292(i)(a)(ii) of the Constitution deals with Judicial Officers of the status or cadre of Chief Judge of a State, Grand Khadi of Sharia Court of Appeal or President of a Customary Court of Appeal of a State, the second mode, stipulated by Section 292(1)(b) deals with other Judicial Officers of the State who do not hold any of the offices listed under Section

292(1)(a)(ii); that the foregoing interpretation is so logical and lucid as to present no difficulties whatsoever in its acceptance; that the Court of Appeal in affirming the decision of the trial Court on the interpretation of Section 292(1)(a)(ii) of the Constitution wrongly adopted the purposive approach resulting in applying a broad or liberal interpretation by combining the interpretation of Section 292(1)(a)(ii) with other provisions of the Constitution in Sections 271(2), 153(1)(i) and paragraphs 20 and 21(d) and (c) of part 1 of the 3rd Schedule to the Constitution thereby arriving at a wrong decision. Learned senior Counsel considered this approach to the interpretation of Section 292(1)(a)(ii) of the Constitution by the Court of Appeal as gravely erroneous since the words of the Section are quite clear having expressed without any ambiguity the provisions contained therein as stated by this Court in *Aluminium Manufacturing Co. v. N.P.A.* (1987) 2 S.C.N.J. 94 at 115; that since the provisions of the Section shows there are different procedures for the removal of categories of judicial offices such as the Chief Judge of a State from those categories of Judicial Officers like the Judges of the High Court, the reference and reliance by the Courts below on the provisions of Sections 271(2), 153(1)(i) and paragraph 21(d) of the 3rd Schedule to the 1999 Constitution in the interpretation of Section 292 in the guise of a purposive reading of the Constitution, to limit the scope of Section 292(1)(a)(ii), of the Constitution is untenable because all what was required in the interpretation of 2 clear and unambiguous provisions of the Constitution, the duty of the Court is to accord the provision its plain, simple grammatical meaning without any recourse to extraneous aid as held in *Diapalong & Ors. V. Dariye & Anor* (2007) 8 NWLR (Pt. 1036) 239 at 412. Learned senior Counsel concluded that the Court of Appeal had committed grave error in its interpretation of Section 292(1)(a)(ii) of the Constitution to mean that the National Judicial Council must have an input before the powers conferred by the Section can be exercised, because this is not only to read into that Section words that are not contained therein, but indirectly to render the Section superfluous and ineffectual which is not within the powers of the Court and therefore urged this Court to resolve the issue in favour of the Cross-Appellant.

On this 3rd issue in the cross-appeal, learned senior Counsel

to the 1st Appellant/Cross-Respondent contended that the Court below was right in holding that Section 292(1)(a)(ii) of the Constitution cannot be interpreted in isolation because discipline and removal of judicial officers, irrespective of the office they occupied is related, interwoven and all the relevant provisions of the Constitution must be heard and interpreted together quite contrary to the position taken by the Cross-Appellant at the Court below and in this Court that Section 292(1)(a)(ii) and Section 292(2), are independent with one another being related to different categories of judicial officers; that as the removal of any judicial officer is a process and not a concluded act within the powers and bounds of the Governor and the House of Assembly, all the relevant provisions of the Constitution must be read together in line with the decision in *Anya v. Attorney General of Borno State* (1984) N.C.L.R. 225 at 229 - 230. In conclusion, learned senior Counsel agreed with the two Courts below in adopting a holistic interpretation rules, the intendment of the Constitution is made relevant, clearer and purposive and urged this Court to resolve this issue against the Cross-Appellant.

For the 2nd Appellant/Cross-Respondent, its learned senior Counsel in the Cross-Respondent's brief of argument and oral submission, had agreed entirely with the two Courts below in their approach to the interpretation of Section 292(1)(a)(ii) of the Constitution together with other relevant provisions of the same Constitution dealing with the removal from office of a Chief Judge of a State without the involvement, one way or the other, of the 2nd Appellant/Cross-Respondent, the National judicial Council; that the submission of the learned senior Counsel to the Cross-Appellant that the Constitution has prescribed two alternative methods or procedure for the removal of a Chief Judge of a State is not correct as nowhere in the Constitution is this dual mandate approved. Learned senior Counsel observed that since all the parties in this case have set out in their respective briefs relevant provision of the Constitution applicable to the removal of the Chief Judge of a State, there is only one procedure for the exercise especially where the basis of such removal is misconduct; that since our Constitution is unique, tailored along our specific needs- and backed up by our experience through the years, the approach to the interpretation of the provisions of the Constitution mere technical rules of interpretation, more suitable for

ordinary statutes should not be applied in a way as to defeat the principles of government enshrined in the Constitution as outlined by this Court in *Nafiu Rabiu v. The State* (1981) N.C.L.R. 293 at 326; that it is not disputed even by the two Courts below that the Governor of a State has the Constitutional powers to remove the Chief Judge of a State but that the power can only be exercised after compliance with all stipulations and or conditions set out in Section 292(1)(a)(i) and (ii) of the 1999 Constitution. Learned senior Counsel explained that the principal constituent of this provision is not in the manner in which the Chief Judge can be removed but it also rests on the grounds for which he can be removed which in this case according to the allegation revelled against the 1st Appellant/Cross-Respondent herein if proved amounts to proven misconduct. The question is without throwing the entire system of Government into anarchy can the Governor and the House of Assembly, by a simple address and resolution come to the conclusion that the Chief Judge of a State is guilty of misconduct. The answer is obviously in the negative in spite of the provisions of Section 128 of the 1999 Constitution prescribing powers of a State House of Assembly to conduct investigation, asserted the learned senior Counsel who urged the Court to resolve this issue against the Cross-Appellant.

In a Cross-Appellant's Reply brief, learned senior Counsel to the 2nd Respondent/Cross-Appellant had maintained that the Court of Appeal was in manifest error in hiding behind its decision in *Anya v. Attorney General of Borno State* (supra) to refuse to accord Section 292(1)(a)(ii), independent and neutral interpretation and urged this Court to hold that Section 292(1)(a)(ii) ought not to have been interpreted together with other provisions of the Constitution in determining the powers of the Cross-Appellants to remove the 1st Appellant/Cross-Respondent.

The issue for resolution is whether the Court of Appeal was right in its judgment in interpreting the provisions of Section 292(1)(a)(ii) of the Constitution of the Federal Republic of Nigeria, 1999 in affirming the decision of the trial Federal High Court that the Governor and the House of Assembly of Kwara State cannot remove the Chief Judge of the State without recourse to the National Judicial Council.

Over the years of its existence as the apex Court of Nigeria, the

Supreme Court had laid down several guidelines on the interpretation of not only statutes but also the provisions of our Constitution in many of its land mark decisions. In *Attorney-General of Bendel State v. Attorney-General of the Federation* (1981) 10 S.C. 1 (1981) 1 F.N.L.R. 179, Obaseki JSC laid down 12 guidelines to be observed in interpretation of statutes, most especially the provisions of our Constitution as follows:-

1. Effect should be given to every word used in the Constitution.
2. A construction nullifying a specific clause in the Constitution shall not be tolerated, unless where absolutely necessary.
3. A Constitutional power should not be used to attain an unconstitutional result.
4. The language of the Constitution, where clear and unambiguous must be given its plain and evident meaning.
5. The Constitution of the Federal Republic of Nigeria is an organic scheme of Government to be dealt with as an entirety hence a particular provision should not be severed from the rest of the Constitution.
6. While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed, can yield new and further import of its meaning.
7. A Constitutional provision should not be construed in such a way as to defeat its evident purpose.
8. Under the Constitution granting specific powers, a particular power must be granted before it can be exercised.
9. Declaration by the National Assembly of its essential legislative functions is precluded by the Constitution.
10. Words are the common signs that men make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to other means of interpretation of such words.
11. The principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used should measure the purpose and scope of its provisions.
12. Words of the Constitution are, therefore not to be read with "*stultifying narrowness*."

Also in the case of *Ishola v. Ajiboye* (1994) 7 - 8 S.C.N.J. (Pt.

1) at 35, Ogundare JSC (of blessed memory) after adopting the 12 guidelines above, added four other guidelines as follows-

1. Constitutional languages is to be given a reasonable construction and absurd consequences are to be avoided;

B 2. Constitutional provisions dealing with the same subject matter are to be constructed together; -

3. Seemingly conflicting parts are to be harmonized, if possibly so that effect can be given to all parts of the Constitution;

C 4. The position of an article or clause in the Constitution influences its construction.

The golden rule governing the interpretation of Constitutional provisions is that the words used in the provisions must prima facie be given their ordinary meaning where such words are not ambiguous. The words used in the provisions of the Constitution must also be given liberal interpretation as stated in the leading cases on the subject of Constitutional interpretation in Nafiu Rabiu v. The State (1980) 8 - 11 S.C. 130 at 149 and Senate of the National Assembly v. Momoh (1983) 4 N.C.L.R. 269.

E ***In the present case, there is no doubt whatsoever that the dispute that was brought before the trial Federal High Court in the Originating Summons that was filed before it involves the subject of provisions dealing with the procedure made in the 1999 Constitution for taking disciplinary action against a Chief Judge of a State found wanting in the discharge of his functions to warrant his removal from office. It is therefore necessary in my view to examine all the relevant provisions contained in the Constitution governing the procedure for the appointment and removal of judicial officers. This is because while a Constitutional power should not be used to attain an unconstitutional result, the language of the Constitution, where clear and unambiguous must be given its plain and evident meaning. Although the Cross-Appellant is insisting that in the determination of this 3rd issue, the Court should confine itself to the interpretation of the provisions of Section 292(1)(a)(ii) of the Constitution alone to the exclusion of the other relevant provisions of the same Constitution. I entirely agree with the learned senior Counsel for the Appellants/Cross-Respond-***

ents that the Court should examine all the relevant provisions of the Constitution in order to find adequate guidance in arriving at the correct decision.

The National Judicial Council is one of Executive Bodies established for good governance of the Country under Section 153 of the Constitution which states - B

“153(1) There shall be established for the Federation the following bodies, namely-

(a) xxx

(i) National Judicial Council

(2) The composition and powers of each body established by sub-section (1) of this Section are contained in part 1 of the Third Schedule to this Constitution.” C

What is relevant for determination of this issue is to fish out and examine the powers of the National Judicial Council in Paragraph 21 of Part 1 of the Third Schedule to the Constitution which reads- D

“21. The National Judicial Council shall have power to -

(a) recommend to the President from among the list of persons submitted to it by E

(i) the Federal Judicial Service Commission, persons for appointment to the offices of the Chief Justice of Nigeria ...

(ii) xxx

(b) recommend to the President the removal from office of the Judicial Officers specified in sub-paragraph (a) of this paragraph and to exercise disciplinary control over such officers. F

(c) recommend to the Governor from among the list of persons submitted to it by the State Judicial Service Commissions persons for appointment to the offices of the Chief Judges of the States and Judge of the High Courts of States, the Grand Khadis and Khadis of the Sharia Court of Appeal of the States and the Presidents and Judges of the Customary Courts of Appeal of the States. G

(d) recommend to the Governors the removal from office of the judicial officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers.” H

It is quite plain from the provisions of paragraph 21 sub-paragraphs (c) and (d) of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999, that the

National Judicial Council is the body that had been assigned the duty and responsibility of recommending to the Governors of the States of the Federation suitable persons for appointments to the offices of Chief Judges of the States and other Judicial Officers in the States. In addition to its role in the appointment of Chief Judges of the States and other Judicial Officers, the same National Judicial Council is also empowered under Sub-paragraph (d) of paragraph 21 to recommend to the Governors of the States the removal from office of the Chief Judges of the States and other Judicial Officers of the States and also to exercise disciplinary control over such Chief Judges of the States and other Judicial Officers of the States. Therefore, from these very clear provisions of the Constitution which are very far from being ambiguous, the Governors of the States and the Houses of Assembly of the States cannot exercise disciplinary control touching the removal of Chief Judges of States or other Judicial Officers in the States.

Going back to Section 271(1) of the 1999 Constitution, it is also glaringly clear that the National Judicial Council has been given a role to play in the appointment of Chief Judges of the States where the Section states -

“271(1) The appointment of a person to the office of a Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to the confirmation of the appointment by the House of Assembly of the State.”

It can be seen here again, although the Governor of a State has been vested with the power to appoint the Chief Judge of his own State, that power is not absolute as the Governor has to share the power with the National Judicial Council in recommending suitable persons and the State House of Assembly in confirming the appointment. It is in the spirit of the Constitution in ensuring checks and balances between the Three Arms of Government that the role of the Governor in appointing and exercising disciplinary control over the Chief Judge of his State is subjected to the participation of the National Judicial Council and the House of Assembly of the State in the exercise to ensure transparency and observance of the rule of law.

The Cross-Appellant has made heavy weather on the inter-

pretation and application of Section 292(1)(a)(ii) of the 1999 Constitution which is said to have conferred unfettered powers on the Governor of Kwara State and the House of Assembly of Kwara State to remove the Chief Judge of Kwara State from office on an allegation of misconduct. The relevant Section of the Constitution states:-

“292(1) A Judicial Officer shall not be removed from office or appointment before his age of retirement except in the following circumstances:-

(a.) In case of-

(i.) The Chief Justice of Nigeria

(ii) The Chief Judge of a State, Grand Khadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on the address supported by two-thirds majority of the House of Assembly of the State, praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the code of conduct.”

The provisions of Section 292(1)(a)(ii) of the Constitution above also deals with the power of the Governor to remove the Chief Judge of a State in conjunction with the House of Assembly of the State. Although, it is true as argued by the learned senior Counsel to the Cross-Appellant that the above Section 292(1) made no provision for the National Judicial Council to play any role in the removal of a Chief Judge of a State, the fact that the Council has a vital role to play in the appointment, removal and exercising control over a Chief Judge of a State under Section 271(1) of the Constitution and also under paragraph 21 of part 1 of the Third Schedule to the same Constitution is not at all in doubt.

Furthermore, the conditions specified under Section 292(1)(a)(ii.) of the Constitution for the exercise of the power of removal must be satisfied before such power can be validly exercised by both the Governor and the House of Assembly. This is because any exercise of power to remove a Chief Judge must be based on his:-

1. Inability to discharge the functions of office or appointment;

2. The inability to perform the functions of his office could arise from infirmity of the mind or of body

3. For misconduct or**4. The contravention of the code of conduct**

All these conditions or basis for the exercise of power to remove a State Chief Judge must be investigated and confirmed by credible evidence and placed before the Governor and the House of Assembly before proceeding to exercise their power of removal granted by the Section of the Constitution. For example the ground of removal for inability to perform the functions of his office or appointment cannot be ascertained and confirmed by the Governor or the House of Assembly in the absence of any input from the National Judicial Council under which supervision the Chief Judge discharges his functions as Judicial Officer and which body also is directly responsible for exercising disciplinary control over the said State Chief Judge. It is not difficult to see that for the effective exercise of the powers of removal of a Chief Judge of a State by the Governor and House Assembly, the first port of call by the Governor on his journey to remove a Chief Judge of the State shall be the National Judicial Council which is equipped with the personnel and resources to investigate the inability of the Chief Judge to discharge the functions of his office, the subject of disciplinary action of removal through the Committees of the Council and where the infirmity of the mind or body is involved, the services of a medical board to examine and submit appropriate report on the Chief Judge to be affected could also avail the Council in the process of investigation.

It is for the foregoing reasons that I hold the view that in the resolution of the issue at hand, the entire provisions of the 1999 Constitution in Sections 153(1)(i)(2), 271(1), 292(1)(a)(ii) and paragraph 21 of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999 dealing with the appointments removal and exercise of disciplinary control over Judicial Officers, must be read, interpreted and applied together in resolving the issue of whether or not the Governor of a State and the House of Assembly of a State can remove a Chief Judge of a State in Nigeria without any input of the National Judicial Council. This is because the combined effect of these provisions of the Constitution has revealed very clear intention of the framers of the Constitution to give the National Judi-

cial Council a vital role to play in the appointment and removal of Judicial Officers by the Governors and Houses of Assembly of the State. In the result, I entirely agree with the two Courts below that having regard to these relevant provisions of the 1999 Constitution the Governor of Kwara State and the House of Assembly of the State cannot remove the Chief Judge of Kwara State from Office without the participation of the National Judicial Council in the exercise. The 3rd issue therefore is also resolved against the 2nd Respondent/Cross-Appellant. B

The 4th and last issue is whether the Court of Appeal did not err in making pronouncement on the procedure employed in the removal of the 1st Appellant/Cross-Respondent as Chief Judge when that point was neither an issue before it nor even before the trial Court. I am afraid this issue has already been effectively determined and resolved under issue No. 3 which I have resolved against the Cross-Appellant. The entire case in fact principally involves the procedure prescribed under the 1999 Constitution for the removal or taking disciplinary action against a Chief Judge of a State. The Court below was not in error at all in delving into the matter. C D

Coming to the cross-appeal filed by the 3rd Respondent, the House of Assembly of Kwara State, 12 grounds of appeal were filed in the Notice of cross-appeal by its learned senior Counsel from which the following 3 issues were distilled for the determination of the cross-appeal in the Cross-Appellant's brief of argument. The issues are:- E

“(i) Whether having regard to the hostile nature of the proceedings coupled with the hotly contested facts in support of and in opposition to the Originating Summons, the Court of Appeal was not in error in upholding the use of Originating Summons in initiating the case.” F G

“(ii) Whether the Court of Appeal was not in error in delving into the merit of the substantive case after having correctly held that the trial Court lacked jurisdiction and making an order transferring the matter to the Kwara State High Court for hearing on the merit thereby depriving the Kwara State High Court of any opportunity to consider the case on the merit.” H

“(iii) Whether the Court of Appeal was not in error in the way and manner it interpreted the provisions of the Constitution especially Section 292 thereof and in coming to the conclusion that the

2nd and 3rd Respondents/Cross-Appellants cannot remove the 1st Appellant/Cross-Respondent from office as Chief Judge of Kwara State without recourse to and input/participation of the 2nd Appellant/Cross-Respondent, the National Judicial Council and in setting up a new case for the 1st Appellant/Cross-Respondent without hearing the Cross-Appellant herein.”

These three issues in the 3rd Respondent/Cross-Appellant’s appeal have been effectively covered in the four issues identified and resolved in the 2nd Respondent/Cross-Appellant’s cross-appeal. In other words, on the interpretation and application of the provisions of Section 153(1)(i); 271(1); 292(1)(a)(ii) and paragraph 21 of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999, the Governor of Kwara State and the House of Assembly of Kwara State cannot remove the Chief Judge of Kwara State from office without recourse to and input or participation of the National Judicial Council. That is to say for the purpose of emphasis, the Constitution of the Federal Republic of Nigeria 1999, does not give the Governor of Kwara State acting in conjunction with the House of Assembly of Kwara State absolute power to remove the Chief Judge of the State from his/her office or appointment before the age of retirement without the recommendation of the National Judicial Council.

Thus, in the final analysis in the appeals and the Cross-appeals in this matter, the appeals which succeed are hereby allowed, the judgment of the Court below which held that the trial Court lacked jurisdiction in entertaining the action is hereby set aside. The judgment of the trial Court declaring that it has jurisdiction to entertain and determine the matter brought before it by the Plaintiff/Appellant is hereby restored and affirmed. In the same vein the two cross-appeals of the 2nd and 3rd Respondents/Cross-Appellants having failed are hereby dismissed.

Taking into consideration the circumstances of this case, I do not regard it appropriate to make any order on costs.

ONNOGHEN JSC

I have had the privilege of reading in draft the lead judgment of my learned brother MOHAMMED, JSC just delivered.

From the questions/issues placed before the trial court for determination to wit:

“(i) Whether by the combined interpretation of Section 153(1)(i) paragraph 21(a) of the 3rd schedule and section 271 of the Constitution of the Federal Republic of Nigeria, 1999, the 3rd defendant has the power to initiate or carry out any exercise of disciplinary control and or proceedings on the plaintiff in the exercise of powers, duties and obligation as occupier of the office of the Chief Judge of Kwara State.

“(ii) Whether the letter of the 3rd defendant dated 4th May, 2009 inviting the plaintiff to disciplinary proceeding in matters relating to, connected with and arising from the exercise of her functions as the Chief Judge of Kwara State does not amount to exercising the powers of the 1st defendant under Section 153, 3rd Schedule, Part 1, paragraph 21 of the Constitution of the Federal Republic of Nigeria, 1999”.

Flowing from the above questions/issues, 1st appellant sought inter alia, the following reliefs:

“1. Declaration that a combined interpretation of Sections 4, 153, 292 and paragraphs 20, 21 of the 3rd Schedule, part 1 of the Constitution it is only the 1st defendant that has the exclusive power and authority to query, command, order or inquire into any complaint against the plaintiff arising from or connected with the performance of her functions as a judicial officer and in her office as the Chief Judge of Kwara State or recommend to the governor her removal as Chief Judge of Kwara State.

2. A declaration that the letter of the Kwara State House of Assembly dated 4th May, 2009 is in breach and violation of the Constitution of the Federate Republic of Nigeria, 1999 in so far as it relate to, connected with the plaintiff in exercise of her functions in the office of the Chief Judge of Kwara State and therefore null and void etc.”

It is very clear from the above that the action is anchored on the interpretation of the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 hereinafter referred to as the 1999 Constitution. The two questions asked and the reliefs reproduced supra clearly show that the Federal High Court is the proper venue of hearing and determination of the action particularly as Section

251(1)(q) of the 1999 Constitution vests the Federal High Court with jurisdiction to interpret the provisions of the said 1999 Constitution in so far as it affects the Federal Government of Nigeria or any of its agencies - see *Obi vs. INEC & Ors* (2007) 7 SC 268 at 305, 329 - 330. It is settled law that it is the case of the plaintiff as stated in the writ of summons and statement of claim, where the action is commenced by way of writ of summons or the questions, reliefs and supporting affidavit, where the action is commenced by originating summons, that determines the jurisdiction of the court to hear and determine same.

From the record, it is very clear and I hereby hold that the case of the 1st appellant, as plaintiff before the trial Federal High Court called for the determination of the question whether the right, powers and duties constitutionally assigned to the National Judicial Council to appoint, discipline, command, query, interrogate or enquire into allegations of misconduct relating to, connected with and arising from the exercise of powers, functions and duties of the plaintiff as an occupier of the office of the Chief Judge of Kwara State can be exercised by the 3rd defendant having regard to the letter of 4th May, 2009 and the Address of the Governor of Kwara State dated 30th April, 2009.

From the facts and law applicable thereto, it is clear and I agree with my learned brother MOHAMMED, JSC that the Federal High Court is clothed with the requisite jurisdiction to hear and determine the matter and that the lower court was in error when it held the contrary. I however agree that the lower courts are right in their conclusion that having regards to the facts of the case and the constitutional provisions relevant thereto, the Governor of Kwara State and the Kwara State House of Assembly cannot initiate disciplinary proceedings against the 1st appellant as the Chief Judge of Kwara State without the input of the 2nd appellant and that the letter of the said Governor without the recommendations of the said 2nd appellant as well as the letter written by the 3rd respondent are both null and void for failure to comply with the relevant constitutional provisions. Section 153(1)(i) of the 1999 Constitution established the 2nd appellant, National Judicial Council, and by paragraph 21 of Part 1 of the 3rd Schedule to the said constitution clothed it with the following powers:-

“Recommend to the governors the removal from office of judicial officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers”.

Who are the judicial officers mentioned in sub-paragraph (c) of paragraph 21 to whom sub-paragraph (d) applies?

These are the Chief Judges of the states and Judges of the High Courts of the states, the Grand Khadis and Khadis of the Sharia Courts of Appeal of the states and Presidents and Judges of the Customary Courts of Appeal of the states.

It is after the recommendation of the 2nd appellant under paragraph 21(d) of Part 1 of the 3rd Schedule has been made to the state governor that the provisions of section 292(i)(a)(ii) comes into operation. The said section provides as follows:

“(i) A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances-

(a) In the case of-

(ii) Chief Judge of a state, Grand Khadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a state by the governor acting on an-address supported by two - thirds majority of the House of Assembly of the state. Praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention-of the code of conduct.”

From the record it is clear that the steps taken by the 2nd and 3rd respondents in this matter are clearly outside the constitutional provisions and consequently of no legal effect whatsoever.

I therefore agree with the reasoning and conclusion of MOHAMMED, JSC that the appeals are meritorious and should be allowed while the cross appeal be dismissed for lack of merit and order accordingly.

I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeals allowed and cross appeal dismissed.

MUNTAKA-COOMASSIE JSC

By an originating summons filed on 6/5/09 at the Federal High

Court Ilorin by Justice Raliat Elelu-Habeeb Chief Judge Kwara State, against the A-G Federation, the A-G Kwara State and the House of Assembly Kwara State. Two questions were submitted for determination and five distinct reliefs sought from the Federal High Court, herein after referred to as trial court. All the defendants, with the exception of the 1st defendant, Hon. A-G of the Federation, raised an objection one way or the other, as to the jurisdiction of the trial court to entertain and to determine the action by the plaintiff. In their preliminary objections they maintained that since the plaintiff's action relates to an action or complaint against the Executive and legislative decisions of the Kwara State Government with no allegation against the Federal Government or any of its agencies, Federal High Court lacks jurisdiction to hear her case. Various affidavits and further counter-affidavits were filed by all parties in support of their respective stand on the issue raised in the preliminary objections and the originating summons. It was decided by the trial court that all the preliminary objections have no merit and same were dismissed by the trial court on 23/7/2009. That court's reasoning was to the effect that the plaintiff's case involved the serious interpretation of the provisions of the 1999 Constitution; the Federal High Court was therefore conferred with the jurisdiction to hear and determine the action. The trial court then held that the plaintiff, the Hon. C.J, Kwara State, was entitled to all her reliefs claimed and granted them. See pp. 676 at 719 - 720 of the record where learned trial Judge has this to say:-

"That a harmonious interpretation of all the related provisions aforementioned will show that the Governor of the State and the House of Assembly of the State can only exercise their powers of appointment and removal of the State Chief Judge in conjunction with the 1st defendant. It follows therefore that both cannot initiate disciplinary proceedings against the plaintiff as the Chief Judge without the input of the 1st Defendant which is in charge of all judicial affairs in this country. The letters of the Governor to the 3rd defendant which is not based on the recommendation of the 1st defendant and the letters of the 3rd defendant are all a nullity having not complied with the constitutional provisions aforementioned. I answer question one in the negative and question two in the positive. Consequently I hold as follows:-

1. By the combined effect of section 6,153(1)(i), paragraph

(d) of the 3rd schedule to the Constitution, Section 271(1), and Section 292(1)(a)(ii) of the 1999 Constitution, the 3rd defendant has no power to initiate disciplinary proceedings against the plaintiff as the Chief Judge of the Kwara State. The power to initiate such disciplinary proceedings and make recommendations for the removal of the plaintiff as the Chief Judge of Kwara State is conferred by the above provisions of the Constitution to the 1st defendant, the National Judicial Council. B

2. Consequently, the proceedings of the 3rd defendant triggered by the letter of the Governor of Kwara State written to it, and which led to the purported removal of the plaintiff as the chief Judge without the recommendation of the 1st defendant are declared null and void, and hereby set aside. C

3. Any action or decision taken in pursuant of the proceedings of the 3rd defendant aforesaid against the plaintiff as the Chief Judge of Kwara State, without the recommendation of the 1st defendant are hereby declared null and void.

4. The 3rd defendant and the Government of Kwara State represented by the 4th defendant in this case are restrained from further acting on the conclusions reached against the plaintiff based on the letter dated 4th May, 2009" E

Aggrieved by the above decision, 2nd, 3rd & 4th defendants/ Respondents appealed to the Court of Appeal Ilorin Division. The three Notices of Appeal excluded the 1st Defendant/Respondent at the trial court from the list of parties in the appeals. However on a second thought the 1st defendant has applied to be joined on the side of the respondents which application was granted. Full court formed a panel in the Court of Appeal. Split judgments of 4 - 1 were delivered on 2/7/2010. The majority judgment was delivered on 2nd July, 2010 to show that the trial Federal High Court lacked jurisdiction to adjudicate upon the case of the plaintiff and held that the matter ought to have been taken to the High Court of Kwara State for hearing and determination having regard to the parties and subject matter of the action. F

The Court of Appeal proceeded to hear the matter on its own merit and held that the decision they earlier on set aside was after all correctly decided by the trial court and the decision of the trial court was affirmed by the court below. See pp.1370 at 2014, where it was H

held thus:

“I therefore found the complaints of the appellants based on the findings of the trial court and its evaluation of evidence that they did not lead to any perversity in the present case. An appellate court will only interfere with such findings made by the trial court where:-

- B *a. the findings are perverse*
- b. the findings are not supported by evidence*
- c. the findings have not been arrived at as a result of a proper exercise of judicial discretion.*
- C *d. the trial court has not made a proper use of the opportunity of seeing and hearing the witnesses at the trial*
- e. the trial court has drawn a wrong conclusion from the accepted credible evidence*
- f. the trial court had taken an erroneous view of the evidence adduced before it and*
- D *g. the findings were reached as a result wrong application of some principles of substantive law or procedure.*

In my humble view none of the above applies or has been shown to apply to the evaluation of evidence and findings of the trial court challenged by the appellant. Rather the learned judge of the trial court did a very commendable appraisal of the evidence and made an un-perverse findings of facts. The appeal on issue 3 therefore fails and the 3rd issue is resolved in favour of the 2nd respondent.

F *I too hereby dismiss the cross-appeal in its entirety. It is an abuse of court process”.*

All the parties in the Court of Appeal, with the exception of the Hon. A-G of the Federation, were aggrieved and decided to lodge an appeal and cross-appeal to the Supreme Court against parts of the judgment that the parties were not satisfied with, appeal was then lodged to this court. The 1st appellant/cross-respondent is the plaintiff and the National Judicial Council - 2nd appellant/cross respondent. Two other bodies were referred to as 1st and 2nd respondents/cross-appellants were the A-G of the Federation and A-G of Kwara State respectively while the Kwara State House of Assembly is the 3rd respondent/cross-appellant.

I have considered very closely the arguments put forward by the respondents herein i.e. whether or not the 1st appellant/cross-

respondent can be called a plaintiff. The respondents/cross-appellants took a stand, for various reasons, that the Chief Judge cannot be a plaintiff. I pause to express my profound surprise at the submissions of the learned counsel for the respondents. If Raliat Elelu-Habeeb cannot be described as plaintiff who else can be so described? In other words, who is a person entitled to appear or to be called a plaintiff? I think any person who is aggrieved by a decision or party can appeal if he so wishes and can be referred to as a plaintiff. The learned Chief Judge of Kwara State was in many ways adversely affected by the judgment of the full Court of Appeal. Foster-Sutton, FJC in Akinbiyi vs. Adelabu (1956) SCNLR 109, at p.111, which decision was applied in the case of Mobil Production (Nig.) Unlimited v. Monokpo (2003) 18 NWLR Pt.852) 346 at 398 per Uwaifo JSC.

"It is true that the judgment of the trial court which was affirmed by the court below was given against only the 2nd defendant. In effect the first defendant is not aggrieved party that can appeal against the judgment of the court below to this court simply on the basis that it was a party to the proceedings in which judgment was given in reliance on the provision of Section 233(5) of the Constitution 1999 which says that:

Any right of appeal to Supreme Court from the decision of the Court of Appeal conferred by "this section shall be exercisable in the case of civil proceedings at the instance of a party thereto."

That provision must be understood to apply to an aggrieved person or party. A party to the proceedings cannot appeal a decision arrived thereat which does not wrongfully deprive him of an entitlement or something which he had a right to demand. Unless there is such grievance, he cannot appeal against a judgment which he has not affected him since the whole exercise may turn out to be academic. Under no circumstance can it be argued that a party to proceedings who has not been affected by a decision may nevertheless appeal against it merely as a party. Section 233(1)(5) of the Constitution of the Federal Republic of Nigeria 1999 is quite clear. I reproduce same thus:-

"Any right of appeal to the Supreme Court from the decisions of the Court of Appeal conferred by this section shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Court of Appeal or the Supreme Court at the

instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person, or subject to the provision of this constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed”.

That being the case, the court below in its judgment declared that the trial Federal High Court lacked jurisdiction to adjudicate in the sections filed by the plaintiff, now Appellant/Cross-Respondent. The decision of the lower court was given against the 1st appellant/cross-respondent who was the plaintiff at the Federal High Court together with the NJC, the 2nd appellant/cross-respondent. The Hon. C.J, Kwara State the 1st appellant/cross-respondent was a plaintiff at the trial court no more no less.

I was privileged to have read in draft the all encompassing lead judgment just delivered by my learned brother Mahmud Mohammed JSC. The reasons for his decision tally with my understanding of the law as it is, I adopt them, with respect as mine. That being the case, the appeals are meritorious and they both deserve to be allowed. I too allow the appeal, the cross-appeals lack merit same are dismissed. I abide by the consequential orders including that of costs.

ADEKEYE JSC

I had the opportunity to read in draft the judgment just delivered by my learned brother, M. Mohammed JSC. My learned brother in his unique style of judgment writing had meticulously considered every aspect of the issues formulated for determination in the main appeals and cross-appeals before this court. I entirely agree with his scholastic reasoning and conclusion. I shall only add a few words here and there by way of emphasis. I adopt the list of the parties settled by my learned brother in the lead judgment as follows:-

- Hon. Justice Raliat Elelu-Habeeb - 1st Appellant/Cross-Respondent
- National Judicial Council - 2nd Appellant/Cross-Appellant
- Hon. Attorney-General Federation - 1st Respondent
- Hon. Attorney-General of Kwara State - 2nd Respondent/Cross-Appellant

House of Assembly of Kwara State - 3rd Respondent/Cross-Appellant

The 1st appellant, Hon. Justice Elelu-Habeeb was properly and following due constitutional process, appointed the Chief Judge of Kwara State on the 28th of March 2008. On the 30th of April 2009, the Governor of Kwara State forwarded an address to the House of Assembly of Kwara State concerning the 1st appellant based on the exercise of power and discharge of duties of the 1st appellant as Chief Judge and Head of the judiciary of Kwara State. B

The allegations in the address were predicated on five grounds which the Governor claimed he had investigated and found her guilty in her capacity as the Chief Judge of Kwara State. The Governor consequently asked for the approval of the House of Assembly to remove the 1st appellant as the Head of the judiciary, for reason of inability to discharge the functions of her office and that her acts of misconduct contravened the code of conduct for Chief Judicial Officer of a State. C

The House of Assembly of Kwara State, in the exercise of its legislative role, wrote a letter inviting the Chief Judge to appear at its plenary with a view to exercising disciplinary control over her as the Head of the judiciary. She was away from her base at the time the content of the letter was communicated to her, which caused her to demand for another date. The House of Assembly found the allegations established and took steps to remove her as the head of the judiciary of Kwara State in her absence. The notice of her removal as Chief Judge was not communicated to her up to date. D

The 1st appellant however reacted to the procedure adopted by both the Governor and Kwara State House of Assembly to effect her removal on charges of misconduct and other allegations. As she was not given the opportunity to defend herself and being aware of the constitutional complication of such disciplinary proceedings, instituted an action at the Federal High Court whereupon she raised two legal questions and five declaratory reliefs by way of originating summons. E

The legal questions read as follows:-

(1) Whether by the combined interpretation of Section 153(1)(i) paragraph 21(d) of the 3rd schedule and Section 271 of the Constitution of the Federal Republic of Nigeria 1999, the 3rd defendant F

has the power to initiate or carry out any exercise of disciplinary control and or proceedings on the plaintiff in the exercise of her powers, duties and obligations as occupier of the office of the Chief Judge of Kwara State.

B (2) Whether the letter of the 3rd defendant dated 4th May 2009 inviting the plaintiff to disciplinary proceedings in the matters relating to, connected with or arising from the exercise of her functions as the Chief Judge of Kwara State does not amount to exercising the powers of the 1st defendant under Section 153, 3rd schedule part 1 paragraph 21 of the Constitution of the Federal Republic of C Nigeria 1999.

Consequently the declaratory reliefs claimed were-

(1) Declaration that by a combined interpretation of Sections 4,153, 292 and paragraphs 20, 21 of the 3rd schedule, part 1 of the D constitution, it is only the 1st defendant that has the exclusive power and authority to query, command, order or inquire into any complaint against the plaintiff arising from or connected with the performance of her functions as a judicial officer and in her office as the Chief Judge of Kwara State or recommend to the governor her removal as Chief Judge of Kwara State. E

(2) A declaration that the letter of the Kwara State House of Assembly dated the 4th May 2009 is in breach and violation of the constitution of the Federal Republic of Nigeria 1999 in so far as it relates to, connected with the plaintiff in the exercise of her functions F in the office of the Chief Judge of Kwara State and therefore null and void.

(3) An order setting aside, nullifying and putting away the decision of the 3rd and 4th defendants (Kwara State House of Assembly) G contained in the 3rd defendant's letter dated 4th May 2009 and any other steps taken thereon in so far as it relates to the office of the plaintiff as the Chief Judge of Kwara State, the same being inconsistent with sections 153, 197, 271(2) of the 3rd schedule of the Constitution of the Federal Republic of Nigeria 1999.

H (4) An order of perpetual injunction restraining the defendants particularly, the 3rd defendant and the government of Kwara State by themselves, through their officers, privies or any other person deriving power, command, authority, instruction or directives from any of the defendants from acting or relying on, or continuing to rely

on, act on, implement, give effect to or do anything to the prejudice of the plaintiff based on the decision contained in the letter dated 4th May 2009 in so far as the decision is related to the office of the plaintiff as chief Judge of Kwara State.

(5) An order of perpetuate injunction restraining the defendants from acting on the decision arising from and connected with the 3rd defendant's letter dated 4th May 2009 and from taking any actions, acts, decision, conclusions, directives, command and such other deeds geared towards the office of the plaintiff or doing anything which may have effect of enforcing, continuing to give effect to implement or finally putting into effect the conclusions and decision of the Kwara State House of Assembly.

The originating summons was supported with a 23 paragraph affidavit sworn to by the 1st plaintiff/appellant and attachments including the grounds relied upon by the governor of Kwara State to substantiate the allegations of misconduct and letters of invitation to the House of Assembly. Some of the paragraphs of the affidavit explained the role of the National Judicial council in the areas of control and discipline of the 1st appellant as a judicial officer.

The respondents argued that none of the reliefs sought by the 1st appellant related to any breach or infraction by the National Judicial council of the constitution particularly the provisions of section 292(1)(a)(i) and (ii) of the 1999 constitution which stipulate the procedure for the removal of the Chief Judge of a State.

The respondents saw the reliefs claimed and the joinder of the 2nd appellant; the National Judicial Council, as a ploy to give the Federal High Court jurisdiction in the suit. The appellant's contention was that the issue before the trial court involved the interpretation and application of the provisions of the 1999 Constitution in as much as it relates to the discipline of a State Head of Court (Judiciary). Secondly, the question as to who as between the National Judicial Council and the Governor of Kwara State represented in this appeal by the Attorney-General, has the constitutional role to discipline such a judicial officer.

After climbing the hurdles of preliminary objections to the procedural jurisdiction of the court, the trial court proceeded to hear and determine the two areas where parties joined issues namely -

(a) The objection to the jurisdiction of the Federal High Court

to try the matter.

(b) Whether the House of Assembly and the governor possess the vires under the constitution to remove the 1st appellant from her office as the Chief Judge of Kwara State.

The learned trial judge dismissed the ground of objection of the 3rd and 4th defendants before the court to the jurisdiction of the court to try the matter and ruled that the purported removal of the plaintiff as chief judge of Kwara State was unconstitutional, null and void. The appellants appealed to the Court of Appeal. The learned justices with a majority of four to one came to the conclusion that:-

1. The Federal High Court lacked the jurisdiction to adjudicate on the matter. In the alternative and should the Supreme Court require it, decided the case on the merit and came to the conclusion that the removal of the chief judge by the governor and house of assembly without the input of the National Judicial Council was unlawful.

The judgment of the Court of Appeal was like a pendulum which left the parties on each side of the divide struggling for safety. Both parties appealed and cross-appealed to this court. The 1st and 2nd appellants/cross-respondents appealed against the issue of lack of jurisdiction of the Federal High Court to hear the matter and the 2nd and 3rd respondents/cross-appellants appealed against the judgment of the Court of Appeal given in the alternative and arriving at the conclusion that the 2nd and 3rd respondents/cross-appellants cannot effect the removal of the 1st appellant as chief Judge of Kwara State without recourse to the National Judicial Council to determine whether she was guilty of gross misconduct.

I wish at this stage to highlight the constitutional importance of this case as this country practices a constitutional democracy. The parties in this case are:

1. The Governor of Kwara State who is the head of the Executive Arm of the government and by virtue of Section 176(1) & (2) of the Constitution, the Chief Executive of Kwara State.

2. The House of Assembly of Kwara State by virtue of Section 90 of the Constitution, the legislative Arm of the government of Kwara State.

3. The 1st appellant who by virtue of Section 270 was appointed as Chief Judge of the High Court of Kwara State.

The National Judicial Council was joined as a party at the trial court and by order of court, as a party in the Court of Appeal. Section 153(1) of the 1999 Constitution created the National Judicial Council as a Federal Executive Body - a Federal Government Agency. Paragraphs 20 and 21 of the Third Schedule defined the composition of membership and the powers of the National Judicial Council. I shall elucidate on the powers of the National Judicial Council as conferred on it later in this judgment.

Section 150(1) stipulates that there shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the government of the federation. It has been firmly decided in many decided cases of this court that the Federal Attorney-General is the Chief Law Officer of the Federation; he is the custodian and protector of the Constitution. He is competent to be sued in any suit against the Federal Government or any of its agencies. Any case involving the

(1) interpretation of the constitution as it affects our democratic system of governance.

(2) The doctrine of separation of powers entrenched in our constitution, or any suit which poses a threat to the independence of any arm of government, the Attorney-General of the Federation must be an inevitable party.

A-G Kano State v. A-G Federation (2007) 6 NWLR (pt.1029) pg.164, A-G Rivers state v. A-G Akwa Ibom State (2011) g NWLR (pt.1248).

The 1st appellant in the brief filed in this court raised a single issue for determination on the issue of the jurisdiction of the Federal High Court to adjudicate on this suit as follows -

"Whether the Court of Appeal was right when it declared that the Federal High Court has no jurisdiction to interpret the provisions of the Constitution as contained in the Originating Summons of appellant when the interpretation affects exercise of constitutional powers of the National Judicial Counsel, a Federal Government Agency"

The issue raised by the 2nd appellant and the 1st respondent are predicated on the same subject matter. The challenge to the vires of the Federal High Court to adjudicate on this suit had been at the front burner since commencement of the suit. The issue of jurisdiction hits at the foundation of adjudication by a court of law. It is

fundamental and it is the centre pin the entire litigation hinges on. The court will exercise its jurisdiction where the subject matter in a case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. *Madukolu v. Nkemdilim* (1962) 2 SCNLR pg.341, *Skenconsult (Nig.) Ltd. v. Ukey* (1981) SC 6, *Ishola v. Ajiboye* (1994) 6 NWLR (pt.352) pg.506, *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (1996) 3 NWLR (pt.30) pg.617, *Odofin v. Agu* (1992) 3 NWLR (pt.329) pg.350.

C It is trite that the constitution and statutes which set up the courts cloak them with powers and jurisdiction of adjudication which are basically substantive and procedural. *Okulate v. Awosanya* (2000) 1 SC 107, *Messrs NV Scheep v. The M.V. 'S' Araz* (2000) 12 SC (pt.1) pg.164.

D In determining whether the Federal High Court had jurisdiction or not, the court relied on the affidavit in support of the originating summons filed by the 1st appellant. The affidavit declared the nature of the relief sought by the appellant which principally was, that by the combined interpretation of Sections 4, 153, 292 and
E paragraphs 20, 21 of the 3rd Schedule part 1 of the 1999 Constitution, it is only the 1st defendant; the National Judicial Council that has the exclusive power and authority to query, command, order or inquire into any complaint against the plaintiff arising from or connected with the performance of her functions as a judicial officer and
F her office as the Chief Judge of Kwara State. The court looked into the relevant sections of the constitution like Section 153(1) (i) and paragraph 21(a) of the 3rd schedule to decide whether the 3rd defendant had the power to initiate or carry out any exercise of disciplinary control and or proceedings on the plaintiff in the exercise of her
G powers, duties and obligation as occupier of the office of the Chief Judge of Kwara State.

The lower court obviously appreciated certain facts:-

H 1. That the Federal High Court has exclusive though limited powers under the 1999 Constitution. It is endowed with the powers of interpretative jurisdiction in matters in which the Federal Government or any of its agencies is a party. No State High Court would have jurisdiction in such matters notwithstanding the nature of the claim and action by virtue of Decree No. 107 of 1993. *Onuorah v.*

K.R.P.C. (2005) 6 NWLR (pt.921) pg.393, NEPA v. Edeghero (2002) 11 NWLR (pt.798) SC.

2. The court realized that the National Judicial Council has supervisory control and powers of appointment and discipline to the exclusion of any other body over judicial officers and that both the governor of Kwara State and the House of Assembly cannot initiate disciplinary proceedings against the plaintiff as the chief Judge without the input of the council thus affirming the stand of the trial court. B

3. That the National Judicial Council is a Federal government agency by virtue of section 153 of the 1999 Constitution. C

4. In respect of the doctrine of separation of powers under the Constitution, the lower court held at page 95 of its judgment that -

“In the final analysis and on the authority of Anya (supra) the entire procedure adopted by the governor in submitting what he termed an “Address For the Removal of Hon. Justice Raliat O. Elelu-Habeeb As Chief Judge of Kwara State” to the House of Assembly is unknown to the constitution.” D

5. The lower court however derailed in its construction of the constitution and its perception of the Federal High Court’s exclusive jurisdiction in matters on which the Federal Government or any of its agencies is a party. The lower court erred by placing rigid reliance on two cases of this court - NEPA v. Edeghero (2002) 18 NWLR (pt.798) pg.79 SC, Oloruntoba-Oju v. Abdul-Raheem (2009) 13 NWLR 1157 pg. 83 at pg. 127. E

In the two cases, the court relied on the basic elements required to invoke the jurisdiction of the Federal High Court based on the party and the subject matter in the suit. The reasoning was that for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its agencies, or the matter must arise from the operation and interpretation of the constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the federal government or any of its agencies. Section 251(1)(p) (q) (r) (s) of the 1999 Constitution F G H

In this appeal the Court of Appeal was of the impression that there must be a tangible and visible cause of action on ground.

Whereas the Attorney-General of the Federation and the National Judicial Council had not played any role by executive action or administrative decision in the invitation of the 1st appellant by the House of Assembly so as to warrant being condemned and sued.

B There is a remarkable difference between the two cases cited
above and the case of the 1st appellant in the originating summons
before the court. While the subject matter of the two cases related to
the dismissal from employment by employers a completed action; as
at the date the 1st appellant filed her suit, there was no letter from
C the Governor or the House of Assembly conveying her removal as
Chief Judge to her personally. The 1st appellant did not approach
the Federal High Court for a review of her alleged removal as Chief
Judge.

D In the originating summons, the 1st appellant prayed for the
interpretation of constitutional provisions by way of originating sum-
mons as they affect the National Judicial Council. The declarations
and injunctions in her reliefs are complete claims against the National
Judicial Council.

E Contrary to the opinion of the lower court, a litigant can seek
declaration of the Federal High Court on the interpretation of the
Constitution as it affects the Federal Government or its agencies, in
so far as it affects his or her legal right. If any citizen perceives any
threat to his right, access to court for interpretation of the Constitu-
F tion to prevent damage to his right or preserve the right must be free
and without any hindrance. Any citizen must be free to approach the
court where the claim relates to him or in any way touches the power,
authority, obligation and responsibility of the Federal Government
or its agencies.

G The 1st appellant sought the interpretation of the Constitution
on powers of the National Judicial Council, a federal government
agency which is a complete cause of action. She approached the
Federal High Court under Section 251(1)(q) of the 1999 Constitu-
tion. The Federal Government or its agency will be affected by the
H interpretation to be rendered by the Federal High Court. It was the
conclusion of the Court of Appeal that the procedure adopted by the
Governor and the House of Assembly in the removal of the Chief
Judge of Kwara State is unknown to the Constitution. These two
government functionaries failed to go through the proper channel of

reference to the appropriate bodies in the establishment of allegations of misconduct. In short, this court also affirms that it is the Federal High Court which has the vires to interpret the provisions of the 1999 Constitution in so far as it affects the Federal Government or any of its agencies; and to make declaratory and injunctive reliefs as conferred upon it by Section 251(1)(q) and (r) of the Constitution. B This foregoing contention is strengthened by the cases of *Peter Obi v. Independent National Electoral Commission & 6 Ors* (2007) 7 SC pg.268, *Ladoja v. INEC* (2007) 7 SC pg. 99.

Section 251 (1) stipulates 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: C

q. Subject to the provisions of this constitution the operation and interpretation of this constitution in so far as it affects the Federal Government or any of its agencies. D

r. Any action as proceedings for a declaration affecting the validity of any executive or administration action or decision by the federal government or any of its agencies.” E

I resolve the lone issue in favour of the appellants, set aside the decision of the Court of Appeal and affirm the decision of the trial court to the effect that “it is logical that if the 1st defendant (the NJC) F is a necessary party to the proceedings involving appointment and removal of judicial officers, then the Federal High Court will be the court with jurisdiction to determine such matters.

Cross-Appeals

The 2nd respondent/cross-appellant and the 3rd respondent/ G cross-appellant, both cross-appealed against certain aspect of the judgment of the Court of Appeal. The appeals of both cross-appellants were predicated on the fact that the Court of Appeal after upholding the cross-appellants’ objection on the issue of jurisdiction, directed that the case be transferred to the High Court of Kwara State to be H heard on its merit. Afterwards, the Court of Appeal went further to go into the merit of the case. It made pronouncements which pre-empted the State High Court to which the matter had been transferred and left nothing for the court to decide. In delving into the

merits of the case, the Court of Appeal came to the conclusion that the 2nd and 3rd respondents/cross-appellants lacked the vires to initiate removal proceedings against the 1st appellant/cross-respondent from the office of the Chief Judge of Kwara State without recourse to an input of the National Judicial Council. The 2nd and 3rd cross-appellants raised similar issues for determination in their appeals which by way of summary are:-

(1) Whether the Court of Appeal was not in error in upholding the use of originating summons in initiating the case.

(2) Whether the Court of Appeal was not in error in delving into the merit of the substantive case after having correctly held that the trial court lacked jurisdiction and making an order transferring the matter to Kwara State High Court for hearing.

(3) Whether the Court of Appeal was not in error in the way and manner it interpreted the provisions of the constitution especially section 292 thereof and in coming to the conclusion that the 3rd and 4th respondents/cross-appellants cannot remove the 1st appellant/cross-respondent from office as Chief Judge of Kwara State without recourse to and input of the 2nd appellant/cross-respondent without hearing the cross-appellants.

Both respondents submitted that the originating summons procedure adopted by the 1st appellant/cross-respondent in initiating her suit was inappropriate, having regard to the hostile nature of the proceedings and the avalanche of affidavit evidence filed on all sides. The two lower courts had made their views known on this issue by overruling the objection raised as to the mode of commencement of action adopted by the 1st appellant/cross-respondent at the trial Federal High Court.

The use of originating summons is now provided for in the Federal High Court (Civil Procedure) Rules 2009. Order 3 Rules 6-7 stipulate as follows:

Rule 6

“Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of constructing arising under the instrument and for a declaration of the rights of persons interested”.

Rule 7

“Any person claiming any legal or equitable right in a case where the determination of the question whether such a person is entitled to the right depends upon a question of construction of an enactment may apply by originating summons for the determination of such questions of construction and for a declaration as to the right claimed.” B

The merits of the originating summons lie in the fact that proceedings commenced thereby are very expeditiously dealt with as the action is almost invariably ready for hearing after the defendant had filed his counter-affidavit. Pleadings are not filed by the parties; witnesses are rarely examined, while affidavit evidence is used. Proceedings for which it is used therefore usually involve question of law rather than disputed facts. C

An originating summons should not be adopted if the proceedings are hostile proceedings. The questions raised for determination and the declaratory reliefs sought by the 1st appellant/cross-respondent involve interpretation of certain sections of the constitution. The declaratory reliefs were meant to declare the legal state of affairs regarding the removal of the 1st appellant from her post as the chief judge of Kwara State based on grounds of misconduct. Further, whether the procedure adopted by the governor and house of Assembly without the recommendation of the National Judicial Council was not a threat to her legal rights. These are claims within Section 251 (1) (q) (r) of the Constitution and within the jurisdiction of the Federal High Court in which Order 3 rules 6-7 of the Federal High Court Civil Procedure Rules can be invoked. The facts deposed to in the affidavit evidence of the parties were sufficient to support the application. Keyamo v. House of Assembly Lagos State (2003) FWLR (pt.146) pg.925, Doherty v. Doherty (1967) 1 All NLR (pg.260), Osunbade v. Oyewunmi (2007) All FWLR (pt.368) pg.1004, University of Lagos v. Aigoro (1991) 3 NWLR (pt.179) pg.376, Oloye v. Alegbe (1983) 2 SCNLR 35, Ossai v. Wakwah (2006) All FWLR (pt.303) pg.239. D E F

The Court of Appeal gave reasons for delving into the merits of the case after pronouncing that the trial Federal High Court lacked the jurisdiction to adjudicate on the suit and gave an order that the matter be returned to the High Court of Kwara State for proper adjudication. The court said H

“However since this is a penultimate court, we are bound to consider all other issues raised in this appeal in case we are overruled by the Supreme Court should the case proceed on further appeal thereto. We are embarking on this enterprise with the assumption that the lower court had the jurisdiction under section 251 (1) (q) and (r) of the Constitution of the Federal Republic of Nigeria 1999 and in view of our earlier order of joinder of the NJC as a party to this appeal.” The court cited cases in support - *Ebba v. Egado & anor* (1984) 1 SCNLR pg.372, *Osogbue v. Nnubia* (1972) 1 All NLR (pt.2) pg.226 at pg.232, *Jamgbadi v. Jamgbadi* (163) 2 SCNLR pg.311, *Bayo v. Ahamba* (1999) 10 NWLR (pt.381) at pg.392-393, *Ifeanyichuku (Osondu) Co. Ltd. v. Soleh Boneh (Nig.) Ltd.* (2000) 5 NWLR (pt.25) at p.332.

On the interpretation of relevant sections of the Constitution in the originating summons of the 1st appellant/cross-respondent, sections 53 (1), paragraph 21 (d) of the 3rd schedule, section 271 and particularly section 292 of the Constitution, the cross-appellants held that the Court of Appeal was in error in subjugating the provisions of section 292 of the Constitution to any other provision of the Constitution when on the face of that provision, it was independent and self-effacious. The Governor and the House of Assembly could upon a proper construction of Section 292 of the constitution remove the Chief Judge of a State from office without recourse to or input of the National Judicial Council.

I shall restate these relevant sections of the Constitution.

Section 153 (1) (i) reads -

“There shall be established for the Federation the following bodies namely National Judicial Council.

2. The composition and powers of each body established by subsection (1) of this section are as contained in Part 1 of the Third Schedule to this constitution.”

Paragraph 21 part 1 of the Third Schedule to the Constitution reads -

The National Judicial Council shall have power to -

b. Recommend to the governors from among the list of persons submitted to it by the State Judicial Service Commissions persons for appointments to the offices of the Chief Judges of the States and Judges of the High Courts of the States, the Grand Khadis and

Khadis of the Sharia Courts of Appeal of the States and the Presidents and Judges of the Customary Courts of Appeal of the State.

d. Recommend to the governors the removal from office of the judicial officers specified in sub-paragraph (1) of this paragraph and to exercise disciplinary control over such officers.

Section 271

“The appointment of a person to the office of a Judge of a State shall be made by the governor of the state on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State.”

Section 292 (1)

“A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances a in the case of

a (i)

a (ii) Chief Judge of a State, Grand Khadi of a Sharia Court of Appeal or President of a Customary Court of a State by the governor acting on an address supported by two-thirds majority of the House of Assembly of a State praying that he be so removed for his inability to discharge the functions of his office or appointment, whether arising from infirmity of mind or of body or for misconduct or contravention of code of conduct.

b. In any case, other than those to which paragraph (a) of this sub-section applies, by the President or as the case may be, the governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body or for misconduct or contravention of the code of conduct.”

Before I go into the issue of interpretation of these relevant sections of the law, I wish to declare that the schedule to a statute or a constitution can be a useful hand maid in construing the provisions of a statute.

The duty of the court when interpreting a provision of the Constitution is to read and construe together all provisions of the Constitution unless there is a very clear reason that a particular provision of the constitution should not be read together. It is germane to bear it in mind the objective of the Constitution in enacting the

provisions contained therein. A section must be read against the background of other sections of the Constitution to achieve a harmonious whole. This principle of whole statute construction is important and indispensable in the construction of the Constitution so as to give effect to it. A-G Bendel State v. A-G. Federation (1982) 3 NCLR 1,
 B Okogie v. A-G Federation (1981) 2 NCLR 337, Anyah v. A-G Borno State (1984) 5 NCLR.

With the community reading of section 153, paragraphs 21 (c) and (d) Sections 271 (1) and 292 (1) (a) (ii) and (b), the Constitution cannot provide, for a procedure for the appointment of the
 C Chief Judge of a State based on the recommendation of the National Judicial Council and now drop such recommendation in the procedure for the removal particularly based on the allegation of misconduct. The Constitution will never give a right with one hand and
 D remove such right with another hand. The Constitution and the law makers are in favour of running the affairs of the society smoothly. I agree with the pronouncement of the two tower courts that the removal of the Chief Judge of Kwara State cannot be done without the input of the National Judicial Council.

E With fuller reasons given in the lead judgment of my learned brother, M. Mohammed JSC, I agree that the appeals of the 1st and 2nd appellants/cross-respondents are meritorious and same are accordingly allowed. The cross-appeals of the 2nd and 3rd respondents/cross-appellants are dismissed for lacking in merit. I abide the
 F consequential orders in the lead judgment.

PETER-ODILI JSC

G This is an appeal against the decision of the court of Appeal, Ilorin Division delivered on 2nd July, 2010. The appeal is against a portion of the judgment of the lower court as it relates to the jurisdiction of the trial Federal High court to adjudicate on the case of the appellant, the plaintiff at the trial court.

H Briefly the facts relevant for the purpose of this appeal are that on 30th day of April 2009, the Governor of Kwara State as Head of the Executive' forwarded an Address to the House of Assembly in which the Governor concluded that the appellant, the Head of the Judiciary in Kwara State be removed from the office of the chief

Judge of Kwara State for inability to discharge the functions of her office and that her act of misconduct stated above also contravened the code of conduct for Chief Judicial Officer for the State.

The House of Assembly summoned, ordered and directed the appellant to appear at its plenary as part of the process of its exercise of disciplinary control over her. B

The appellant, instituted an action at the Federal High court wherein she asked the court to interpret the provisions of the constitution particularly sections 6, 153(1) paragraph 21(d) of the 3rd schedule to the constitution of the Federal Republic of Nigeria 1999 and determine whether the Governor and the House of Assembly can exercise or constitutionally exercise disciplinary control over her without the input of the National Judicial council, the body exclusively empowered under the constitution to exercise disciplinary control over judicial officers including the chief Judge. C

The respondents in the originating summons were the National Judicial council, the Attorney-General of the Federation, Attorney-General of Kwara State and the House of Assembly of Kwara State. Both the Attorney-General of Kwara State and the House of Assembly Kwara state offered and based their defence on section 292(1) of Constitution. They in addition raised several grounds of objection all revolving round the jurisdiction of the court. The Federal High court dismissed all the objections on jurisdiction and granted all the claims of the appellant. D

At the appeal to the Court of Appeal, the Attorney -General of the Federation the Attorney-General of Kwara state and the House of Assembly of Kwara state raised the issue of jurisdiction of the Federal High court among others. The appellant cross appealed. E

The Court of Appeal allowed the appeal on the issue of jurisdiction of the Federal High court but held that the removal of the appellant without any input of the National Judicial council was wrong and unconstitutional. On the 28/11/11 date of hearing, Mr. Yusuf Ali SAN informed the court that the 3rd respondent filed a preliminary objection on the 22/3/11 and asked for leave to file cross-appellants brief, which was granted and that brief of argument was deemed properly filed and served. F

The cross-appeal by the Hon. Attorney-General of the Federation was withdrawn by Chief Lawal Rabana SAN learned counsel G

H

for the 1st respondent, Chief Awomolo for the appellant adopted their brief of argument filed on 3/8/2010 and in it was formulated a single issue viz:

Whether the Court of Appeal was right when it declared that the Federal High Court has no jurisdiction to interpret the provisions of the constitution as contained in the originating summons of the appellant when the interpretation affects exercise of constitutional power of the National judicial council, a Federal Government Agency.

For the 2nd appellant, Mr. Daudu SAN asked the court to discountenance the preliminary objection and also filed an appellant's brief also containing their cross-respondent brief. In the brief was couched a sole issue for determination which is as follows:

Whether the Court of Appeal was correct when it held that the Federal High Court Ilorin lacked jurisdiction under section 251 of the 1999 Constitution to entertain a dispute filed by the Chief Judge of Kwara State challenging her purported removal as Chief Judge/Judge by the Governor and House of Assembly of Kwara State and contending in the same action that in matters relating to misconduct by any Judge including the Chief Judge only the NJC can render such determination?

The 1st respondent had their brief filed on 8/10/11 adopted by learned counsel on their behalf, Chief Lawal Rabana. In that brief was crafted a single issue viz:

Whether the lower court was not right in holding that the Federal High Court lacked jurisdiction to entertain and determine the appellant's case when there was no claim or cause of action against any agent of the Federal Government.

The 2nd respondent/cross-appellant had his brief of argument filed on 22/9/10 adopted by Mr. Adelodun SAN. They also called attention to their preliminary objection on the appeal of the National Judicial council (NJC). In the brief was distilled one issue for determination which is:

Whether having regard to the nature of this suit, particularly the reliefs sought, the lower court was not right in holding that the Federal High Court had no jurisdiction to hear and determine the appellant's case.

Chief Awomolo learned senior counsel for the appellant, Hon. Justice Rafiat Elelu-Habeeb relying on the dicta of the trial Federal

High court submitted that the court understood the cause and exercised properly her constitutional powers under section 251(i)(q) of the constitution 1999. That she did not concern herself with purported exercise of the powers by the Governor through his address and the House of Assembly acting on same. That the trial court relied on the claims of the plaintiff upon which the jurisdiction of the court was derived. He cited the case of Chief Numogun Sam Adeyemi & 4 Ors v. Emmanuel Opeyori (1976) 9 - 10 SC. 18 at 31; Peter Obi v. INEC & 6 Ors (2007) 7 SC. 268.

That the appellant's case before the Federal High court called for determination of whether the right, powers and duties constitutionally assigned to the National Judicial council to appoint, discipline, command, query, interrogate or inquire into allegations of misconduct relating to, connected with and arising from the exercise of powers, functions and duties of the plaintiff as an occupier of the office of the Chief Judge of Kwara State can be shared with, assumed, appropriated or exercise by the 3rd defendant in view of the letter dated 4th May 2009 and based on the content of the fetter (address) of the Governor of Kwara State dated 30th April, 2009. That the answer to that poser is that the National Judicial Council does not share its powers aforesaid with any state judicial body or authority including the Governor and the state Legislature. He cited Ladoja v. INEC & 3 Ors. (2007) 7 SC 99.

Chief Awomolo, said that the Court of Appeal had erred in holding that the Federal High court lacked jurisdiction to adjudicate based on the premise that the court was trying to inquire into the conduct or otherwise of the Governor and state Legislature in an area purely within the ambit of the state High court. That the Court of Appeal failed or neglected to consider the entirety of section 251(i) of the constitution and its proviso. He cited NEPA v Edegbere (2003) FWLR (Pt.139) 1556; (2010) 10 NWLR (Pt.1201) 1 at 34.

Mr. J. B Daudu SAN for the other appellant, the National Judicial council contended that the jurisdiction of the Federal High court was invoked by Justice Elelu-Habeeb based on section 251(i) - (q) and (r) permitting that court to exercise jurisdiction in the operation and interpretation of this constitution in so far as it affects the validity of any executive or administrative action or decision by the Federal Government or any of its agencies so long as it is brought by way of

declaratory action or injunction. He submitted further that the letter of the Governor of Kwara state to the state House of Assembly wherein the former determined that the state chief Judge was guilty of misconduct or was guilty of a “*serious misconduct*” without the impute of the NJC was sufficient to invoke the jurisdiction of the Federal High Court as the question as to what the exact mode of discipline of a Judge had arisen.

Chief Lawal Rabana SAN disagreeing with the views of the appellants submitted for the 1st respondent, the Federal Attorney-General that from the questions and reliefs sought by the plaintiff / appellant as contained in the originating summons that the subject matter of the dispute in this suit is the removal from office of the plaintiff/appellant as the chief Judge of Kwara State by the Governor and the Kwara State House of Assembly and the relevant constitutional provision in section 271 of the 1999 Constitution and it not within the adjudicating powers of the Federal High Court, rather it was a Kwara State High court matter and section 251 of the Constitution did not apply. He cited: *D.E.N.R. Ltd v. Trade Bank International Bank Ltd* (2008) 18 NWLR (Pt.1119) 388 at 435; *Oduko v. Government of Ebonyi State of Nigeria & 3 Ors* (2009) 34 SC 154 at 169; *Oloruntoba-Oju & 4 Ors v. Abdul-Raheem & 3 Ors* (2009) 5 - 6 SC (Pt.11) 57; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt.1025) 427 at 588;

Onomeji v. Kolawole (2008) 14 NWLR (Pt.1106) 180 at 206.

That the presence of the Federal Attorney-General was required for the court to answer to the questions raised in the originating summons.

Mr. Yusuf Ali SAN, learned counsel for the 3rd respondent, the Kwara state House of Assembly contended that to determine whether or not the court has jurisdiction, it is the pleadings of the plaintiff where the action is initiated by way of writ of summons where as in this case, the action was initiated by originating summons then that originating summons and supporting affidavit are what is considered. That when those are considered in this case it would be seen that 1st appellant was calling on the court to determine the grouse of the appellant against the action of the House of Assembly, Kwara State and the Governor of the same state. That in fact there was no cognisable action against the other defendant including the 2nd appellant

and other respondents. He cited *Egbonu v. BRTC* (1997) 12 NWLR (Pt.531) 29 at 43; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt.1025) 423 at 588 - 589.

Mr. Ali SAN went on to say that the jurisdiction of the trial court is not at large but circumscribed by the provision of section 251 of the 1999 constitution of the Federal Republic of Nigeria and it applies to vest jurisdiction in the Federal High court when the action initiated affects the validity of any executive or administrative action or decision by the Federal Government or any of its agencies where such is brought by way of declaration or injunction. He stated that *Ladoja v. INEC* (2007) 12 NWLR (Pt.1047) 119 does not apply. He referred to *Madukolu v. Nkemdilim* (1962) All NLR (Pt.3) 581.

That the trial court wrongly entertained the matter since the subject matter of the case i.e. the power of the 2nd and 3rd respondents on the removal of the 1st appellant as chief Judge of Kwara State by the Governor and House of Assembly of Kwara State is not within the jurisdiction of the trial court that is the Federal High court. That it is not enough that a defendant is an agency of Federal government but that the subject matter is within the purview of section 251, of the Constitution which is not the case herein. He cited *Onuora v. KRPC Ltd* (2005) 6 NWLR (Pt.921) 393 at 404 - 405.

Mr. Ali of counsel for the 3rd respondent said the two conditions above stated must co-exist for the invocation of the jurisdiction of the Federal High Court. He referred to *Oloruntoba - Oju v. Abdul-Raheem* (2009) 13 NWLR (Pt.1157) 83 at 127.

He stated further that whereas it is the plaintiff's claims that determine jurisdiction of the court, the 1st appellant had no claim against the 2nd appellant and 1st respondent who are touted as Federal agencies and on the premises of whose presence the 1st appellant tried albeit in vain to foist jurisdiction on the trial court. That the Court of Appeal was therefore right to hold that the proper forum for trial is the State High Court. He cited *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 549; *F.B.N. Plc v. Abraham* (2008) 18 NWLR (Pt.118) 172 at 199.

For the 2nd respondent, that is the Attorney-General of Kwara State, Mr. Adelodun SAN, said that the Federal High court lacked jurisdiction to adjudicate on this matter despite the inclusion of the NJC and the Federal Attorney General as parties when the two agen-

cies had no role to play in the removal of the 1st appellant from office of chief Judge of Kwara State That the law is trite that a plaintiff cannot sue a defendant against whom he has no cause of action. He relied on *Military administrator, Akwa Ibom State v. Obong* (2001) 1 NWLR (Pt.694) 214 at 236. That the Federal High court can only be approached properly even for declaratory reliefs where the Federal agency sued has triggered the cause of action. He cited *National Union of Electricity Employees & Anor v. Bureau of Public Enterprises* (2010) ALL FWLR (Pt.525) 201 at 219.

In reply on points of law, learned counsel for the 1st appellant, Chief Awomolo contended that the appellant's claim before the Federal High Court Ilorin was an invitation to interpret the provisions of the constitution particularly section 153(1) (i), paragraph 21(a) of the 3rd schedule and section 271 of the 1999 constitution as regards the powers of the 3rd respondent to initiate, carry out and exercise any disciplinary control and or proceedings on her. Whether the House of Assembly has the power to invite, summon, order or direct the appellant the chief Judge and Head of the Judiciary to appear before it on matters relating to or connected from the exercise of her office as chief Judge and whether doing any of the above would not be tantamount to exercising or sharing the powers of the National Judicial Council.

The preliminary objection of the Attorney-general of Kwara State as argued in the Brief of Argument of 2nd respondent settled by Adebayo O. Adelodun SAN and the ground being that the National Judicial council was not an aggrieved person within the context of the judgment appealed against and had no business appealing therefore. That was also the position of the Kwara state House of Assembly as 3rd respondent whose preliminary objection was argued in their brief of argument of 22/3/2011 which were along the same fines that the NJC was not a party to the proceedings at the trial court and had nothing to do with the appeal.

These objections are stemming clearly from very wrong premises and not buttressed by the facts on ground. They are not sufficient to stifle this appeal in limine, the objections being obviously premature and so the earlier those objections are thrown out the better so that the court can look into the dispute between the parties before it. The cases of *Ngige v Obi* (2006) ALL FWLR (Pt.330) 1041

at 1088; *Akinbiyi v. Adelabu* (1956) SC NLR 109 at 111; *Societe Generale Bank Nig. Ltd. v. Afokoro* (1999) 11 NWLR (Pt. 628) 521 cited by counsel, Mr. Adelodun SAN and Mr. Yusuf Ali SAN do not support their objections, rather the principles enunciated in those judicial authorities are in favour of the National Judicial Council. This is because in the questions posed by the other appellant, Elelu-Habeeb C.J, the role of the National Judicial Council is imbued therein. It cannot properly be said that in a situation where the scope of the powers of the NJC are called to question as to its role or otherwise in the removal from office of the chief Judge of a State is situated at the fore, that such a party would not be aggrieved or want to know the outcome not as a spectator but as a participant in the proceedings. The preliminary objections being improperly raised, lack merit and I dismiss them so as to go into the main cause.

Getting into the appeal proper and making a long story short, the point of view of the respondents, the Attorney General of Kwara State and the Kwara State House of Assembly is that in the matter of the removal of the Hon. Justice Raliat Elelu-Habeeb, the Chief Judge of Kwara State was a purely a domestic matter of Kwara State which would be carried out by the Governor with the support of the State Assembly. That for that reason the matter was only justiciable at the initial stage of the High court of Kwara State and not any other court including the Federal High court. This the respondents felt was anchored under section 292 of the 1999 constitution.

The Federal Attorney- General represented by Chief Lawal Rabana in their own view do not see why the Federal Attorney- General should be brought in, in the first place and that they are not involved.

In contrast the appellants disagree with the above stated view points and strongly posit that since the appointment of the Chief Judge or even any Judge must be from the National Judicial council, that council must be involved in the removal of such an officer. That section 292 of the constitution cannot be read in isolation of the other related provisions of the constitution. Also that what was in issue is not the appellants challenging the powers or authority of the Governor, or State Assembly in their roles within those capacities but merely to ask certain question on the constitutionality or otherwise of their roles in seeking to remove the Chief Judge.

To further simplify the dispute between the parties, what is at stake is the jurisdiction of the Federal High court in the adjudication of this matter. While the Kwara State Attorney - General and the Kwara State House of Assembly contended that the Federal High court or the trial court for our purpose here has no jurisdiction. The appellants, Justice Elelu-Habeeb and the National Judicial council say with gusto that that court and not the Kwara State High court have the vires to adjudicate. It is now trite that jurisdiction is found by the consideration of the claims in the pleadings where there is a writ of summons or originating summons. For clarity I shall quote the reliefs in the originating summons herein and as follows:

“Declaration that a combined interpretation of sections 4,153,292 and paragraphs 20, 21 of the 3rd schedule, part I of the constitution, it is only the 1st defendant that has the exclusive power and authority, to query, command, order or inquire into any complaint against the plaintiff arising from or connected with the performance of her functions as a Judicial officer and in her office as the chief Judge of Kwara State or recommend to the Governor her removal as Chief Judge of Kwara State.

A declaration that the letter of the Kwara State House of assembly dated 4th May, 2009 is in breach and violation of the Constitution of the Federal Republic of Nigeria, 1999 in so far as it relates to, connected with the plaintiff in exercise of her functions in the office of the Chief Judge of Kwara State and therefore null and void.

An order setting aside, nullifying and putting away the decision of the 3rd and 4th defendants (Kwara State House of Assembly) contained in the 3rd defendant letter dated 4th May, 2009 and any other steps taken therein in so far as it relates to the office of the plaintiff, as the chief Judge of Kwara State, the same being inconsistent with sections 153, 197, 271 (2) of the 3rd schedule of the constitution of the Federal Republic of Nigeria, 1999.

An order of perpetual injunction restraining the defendants particularly the 3rd defendant and the Government of Kwara State by themselves, through their officers, privies or any other person deriving power’ command, authority instruction, or directives from any of the defendants from acting or relying and or continuing to rely on, act on, implement, give effect to or do anything to the prejudice of the plaintiff based on the decision contained I the letter dated

4th May, 2009 in so far as the decision is related to the office of the plaintiff as the chief judge of Kwara State.

An order of perpetual injunction restraining the defendants from acting on the decision arising from and connected with the 3rd redundant letter dated 4th May, 2009 and from taking any actions, act, decisions, conclusions, directives, command and such other deeds geared towards the office the plaintiff or doing anything which may have the effect of enforcing, continuing to give effect to, implement or finally putting into effect the conclusions and decision of the Kwara State House of Assembly.”

The Learned trial Judge observed thus:

“The plaintiff has already submitted two questions which she requires this court to determine and so I am going to restrict myself to those questions submitted for a party. The two questions submitted for determination are both to the effect whether having regards to section 153(1)(i), paragraph 21 to the 3rd schedule to the constitution, the Kwara State House of Assembly can initiate and carry out any exercise of disciplinary control and/or proceedings on the plaintiff in the exercise of her duties as occupier of the office of the Chief Judge of Kwara State.”

The conclusion of the trial Judge is as follows:

“Both cannot initiate disciplinary proceedings against the plaintiff as the Chief Judge without input of the 1st defendant which is in charge of all judicial affairs in this country. The letter of the Governor to the 3rd defendant which is not based on the recommendation of the 1st defendant and the letter of the 3rd defendant are all a nullity having not complied with the constitutional provisions aforementioned.”

By the combined effect of sections 6, 53(1) (i), paragraph 21 (d) of the 3rd schedule to the constitution, section 271 (1), and section 292 (1) (a) (ii) of the 1999 Constitution, the 3rd defendant has no power to initiate disciplinary proceedings against the plaintiff as the Chief Judge of Kwara State. The power to initiate such disciplinary proceedings and make recommendations for the removal of the plaintiff as the Chief Judge of Kwara State is conferred by the above provisions of the constitution on the 1st defendant the National Judicial Council. Please see pages 720 – 721.

And she concluded in these clear words:

“By the combined effect of Section 6, 153(1)(i), paragraph 21(d) of the 3rd schedule to the Constitution, Section 271(1), and Section 292(1)(a) (ii) of the 1999 Constitution, the 3rd defendant has not power to initiate disciplinary proceedings against the plaintiff as the Chief Judge of Kwara State. The power to initiate such disciplinary proceedings and make recommendation for the removal of the plaintiff as the Chief Judge of Kwara State is conferred by the above provisions of the constitution to the 1st defendant the National Judicial Council.

Consequently, the proceedings of the 3rd defendant triggered by the letter of the Governor of Kwara State written to it, and which led to the purported removal of the plaintiff as the Chief Judge without the recommendation of the 1st defendant are declared null, void, and hereby set aside.

Any actions or decisions taken in pursuant of the proceedings of the 3rd defendant aforesaid against the plaintiff as the Chief Judge of Kwara State, without the recommendation of the 1st defendant are hereby declared null and void.

The 3rd defendant and the Government of Kwara State represented the 4th defendant in this case are restrained from further acting on the conclusions reached against the plaintiff based on the letter dated 4th May, 2009.”

On the appeal to the Court of Appeal, that court below made certain germane and the salient findings but went off course propelled by faulty radar and thereby fell into error. It may be clearer when the findings of the court below are stated verbatim and as follows:

“A careful perusal of the averment in the affidavit further affidavit in support of the originating summons, particularly paragraphs 1 - 5, 12, 13, 14, 15, 16, 17, 18 - 22 of the affidavit in support and the annexure thereto and paragraph 1- 15 of the further affidavit would reveal that there is a dispute between the plaintiff/2nd respondent following her invitation by a letter dated 4th May, 2009 to appear before the 1st appellant upon allegation of misconduct and breach of the code of conduct for Chief Judicial Officers...”P. 61

On the power of the House of Assembly to invite the Chief Judge for the purpose of investigation allegations, that court below said:

*“From the above provisions regarding the Code of Conduct for public officers which the Chief Judge is one, the House of Assembly has no power whatsoever to invite the Chief Judge for purposes of investigating him on any allegation of the breach of the code, by the mandatory provisions of Articles 1(3) (9) of Part 1 to the Third Schedule of 1999 Constitution...”*Page 95. B

“Hold the view that by arrogating itself the power to investigate allegation of misconduct, corruption, embezzlement of fund and breach of the code of conduct, the Kwara State House of Assembly now 2nd appellant in this case, has not only usurped the authority of the court and code of Conduct Tribunal ay the National Judicial-Council but has breached not only the Constitutional provision or the doctrine of separation of power but the 2nd respondent’s right to fair hearing. C

*The same is applicable to His Excellency, the Governor’s Address for the removal of Hon. Justice Raliat Elelu-Habeeb as Chief Judge of Kwara State dated 30th day of April 2009 (exhibit AH1), particularly where in after enumerated allegations of misconduct, corruption, abuse of office, embezzlement of funds and breach of the Code of Conduct for Judicial Officers...”*Page 97. D E

In the final analysis and in the authority of Anya (supra) the entire procedure adopted by the Governor in submitting what he termed an *“ADDRESS FOR THE REMOVAL OF HON. JUSTICE RALIAT O. ELELU - HABEEB AS CHIEF JUDGE OF KWARA STATE to the House of Assembly is unknown to the Constitution....”*Page 99. F

The law as it stands now is that to vest the Federal High Court with jurisdiction there must be the simultaneous existence of both party and subject matter, jurisdiction involving the Federal Government or any of its agencies and or the challenge of the validity of any execute or administrative action or decision of the Federal Government or any of its agencies. Even where interpretation of the Constitution is concerned, such interpretation must relate to the breach of the Constitution by the Federal Government or the Administrative or Executive action or decision of any of its agencies or vice versa. A clear example is where the Federal Government or any of its agency has sued a party (for instance the Federal Attorney-General or NJC suing the 1st and 2nd appellants for usurping the powers of the NJC H

in the removal of a Chief Judge) or where a party like the Chief Judge sues NJC for an unwarranted adverse report to 1st and 2nd appellants the report which had led to her removal. P. 1427 vol. 2.

A lot was said about the application or not of Section 251 (1) (q) (r) of the Constitution of the Federal Republic of Nigeria 1999

B and that subsection reads:

“(q) Subject to the provision of this constitution, the operation and interpretation of this Constitution so far as it affects the Federal Government or any of its agencies”.

C The proviso to that Section above stated is as follows:

“Provided that nothing in the provisions of paragraphs (p)(q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction is based on any enactment, law or equity.”

D Also provided in the Constitution is Section 153 thereof which provided for the establishment of the National Judicial Council Paragraph 21 (d) of the third Schedule to the Constitution provided the empowerment of the National Judicial Council thus:

E *“(2) Recommend to the Governor the removal from office of the judicial officers specified in sub-paragraph (c) of this paragraph and to exercise disciplinary control over such officers.”*

F Applying these constitutional provisions Adekeye JCA (as she then was) in similar circumstances as the present had this to say in *Isuama v. Governor of Ebonyi State (2006) 6 NWLR (pt.975) 184 at 196 -197:*

G *“The 3rd defendant (i.e. the NJC) was joined by an order of this court as proper party because of its role under the Constitution in respect of the appointment and removal of superior court Judges of all cadres in the country, vide sections 153 and part 1, then 21 paragraphs (a) of the 3rd schedule of the 1999 constitution of the Federal Republic of Nigeria.*

H *The 3rd respondent, National Judicial Council is a proper party to an application for judicial review for removal of a High court Judge from office. The 1st and 2nd respondents and even the appellant are State functionaries -Ebonyi State. In the circumstances of this case’ the Court will have to decide whether NJC is a Federal or State agency. Parties relied heavily on the case of NEPA v. Edeghero (supra) which has suddenly become the locus classicus for the proper court for in-*

stituting actions against a Federal Government agency. I would like to add that the case arose from the unlawful dismissal of the respondent - Edegbero based on a contract of employment. The Supreme Court of Nigeria held that it is the Federal High Court that has jurisdiction to entertain the suit. The case thereby established the new doctrine and concept of party jurisdiction, which in effect means that where parties are agencies of the Federal Government irrespective of whatever the claim, whether for declaration or injunction or damages, it is the Federal High Court that has jurisdiction."

It can be seen from the Isuama's case (supra) as well articulated by Adekeye JCA (as she then was) that the Kwara State House of Assembly and the Governor of that State acting solely upon the provisions of section 292(i)(a) (ii) of the 1999 Constitution in removing from office, Hon. Justice Elelu-Habeeb as Chief Judge did so upon a narrow and short sighted focus since that Section 292(i) (a) (ii) cannot be operated independently but must carry along the provisions of Sections 153, 251 and with its subsections (p) (q) (r) and the proviso. Therefore the Governor of Kwara State and the House of Assembly of Kwara State acted outside their powers since they arrogated onto themselves the powers of the National Judicial Council which they had no authority to do. When the Constitution has stated steps that must be taken before an action can proceed then omitting to do so would render such an act one made in futility. The Governor of a State must await the recommendation of the NJC before proceeding to act with the State Assembly on the removal of a Judicial Officer including, the Chief Judge.

For a fact clearly that Court of Appeal was in error with its conclusion and decision and the High Court had a better grasp of the situation and had the necessary vires in saying so. From the above and the better reasoning of Mahmud Mohammed JSC in the lead judgment, I allow the appeal and restore the judgment of the trial Federal High Court.

CROSS-APPEAL

The 3rd respondent, the House of Assembly, Kwara State Cross-appealed sequel to a Notice of Cross-Appeal filed on 5th day of August, 2010. The grouse of the Cross-appellant is whether the Court of Appeal was not in error when it affirmed the use of originating summons as the proper procedure for the initiation of the action and

thereafter entered into the merits of the substantive case holding that the trial court lacked jurisdiction and proceeded to remit the matter to the Kwara State High Court for the matter to be heard on the merits.

Mr. Yusuf Ali SAN in arguing this cross-appeal said the Court of Appeal after holding that the Federal High Court lacked the jurisdiction to entertain the suit ought not to have entered into the merits of the case. That the two lower courts were wrong in their view that originating summons was appropriate as from the affidavit evidence before the court, the facts were contentious, hostile, disputed and to be contested. That it was a writ of summons procedure that the situation called for. That in the case at hand the interpretation of certain provisions of the constitution, certain facts were seriously in dispute like whether or not the appellant was made aware of the allegations against her culminating into her removal from office. Also there were conflicts in the affidavit evidence which could only be resolved by oral evidence. He cited *Pam v. Mohammed* (2008) 16 NWLR (Pt.1112) 1 at 51.

Also canvassed for the cross-appellant -is-whether-the- Court of Appeal in finding that the Federal High Court lacked jurisdiction was right in entertaining the merit of the case and consequently remitting it to the state High Court to be heard on the merit. That the proper order should have been striking out by the Court of Appeal and not going further by sending the matter to the Kwara State High Court for trial on the merits. He referred to the cases *Adetayo v Ademola* (2010) ALL FWLR (Pt. 533) 1809; (2008) 17 NWLR (Pt.1115) 149 at 193; *Akinbobola v Plusson Fisko* (1991) 1 NWLR (pt.167) 270 at 285.

For the cross-appellant was also canvassed that the Court of Appeal went outside the issue before it formulated a new issue as to procedure for generating an address under Section 292 of the Constitution without giving the parties the opportunity to be heard in that regard. He referred to *Oro v. Falade* (1995) 5 NWLR (pt.391) 382; *Oshatoba v Olutitan* (2000) 5 NWLR (pt. 655) 159 at 170.

That the court should hold that the cross-appellant acting in concert with the Kwara State Governor could validly remove the appellant/cross-respondent from office of chief Judge without recourse to the National Judicial Council.

The Attorney-General of Kwara State had also cross-appealed vide Notice of Appeal with 8 grounds filed on 12th August, 2010. Mr. Adelodun SAN said there was a myriad of conflicts from the affidavit evidence and so it was imperative that pleadings ought to have been ordered and filed, with witnesses thereafter examined and cross-examined in verification of salient facts as a threshold for the court granting or refusing the reliefs sought. That the originating summons procedure deployed was wrong. He cited *Alamieyeseigha v Igoniwari (No.2) (2007) 7 NWLR (Pt.1034) 524 at 589; N. B. N. Ltd v Alakija & Anor (7978) NSCC 470 at 477.*

Mr. Adelodun SAN further said that the Court of Appeal erred in deciding the merits of the appeal after it had held that the trial court lacked jurisdiction. That a dispassionate consideration of the entirety of Section 292 of the Constitution would show that it was for the Kwara State Assembly and the Governor to effect the removal of the Chief Judge of that state without recourse to the National Judicial Council. That there was no conflict between Section 292 (i) (a) (ii) and Section 153 1(i) or paragraph 21 of the 3rd Schedule to the Constitution.

Chief Awomolo responding said that from the so called avalanche of affidavit and counter-affidavits there was no serious or contentious), disputes notable on all the relevant facts. That in fact the parties were agreed on the relevant facts. He cited *Falobi v. Falobi (1976) NMLR 169; Pam v. Mohammed (2008) 16 NWLR (pt.1112) 1 at 88; Noibi v Fikolati (1987) 1 NWLR (pt.52) 619.* That the Court of Appeal was properly seised of the appeal which was not an interlocutory one but a full decision on all preliminary objections and the substance of the plaintiffs claims, both of which were resolved against the cross-appellant. He cited *Adah v. NYSC (2004) 13 NWLR (pt. 891) 639 at 643.* Chief Awomolo went on to say that the cross-appellant and the governor mis-applied the duty and obligation arising from section 292 (i) (a) (ii) of the constitution. That where the constitution provides for the procedure of doing a thing or taking a step, any step or act done not as so provided is null and void and that is the situation in the purported removal of the plaintiff.

This cross-appeal seems to have been answered in the main appeal. But to fulfil all righteousness I would say without difficulty that nothing debarred the Hon. Justice Habeeb from initiating the

process at the trial High court by originating summons. The conflicts necessitating oral evidence to clear the issues are not available especially since what was required or asked for were answers to questions about the applicable constitutional provisions which did not need any oral evidence to explain the provisions which had been written in the constitution in black and white juxtaposed against the address of the State House of Assembly or the Governor in the quest to have removed the appellant. It is not disputed that a letter was written by the Governor to the state Assembly seeking the removal. It is not also in dispute the various constitutional provisions in relation thereto, therefore one is at a loss on what the contradictions or conflicts or gray areas which needed to be cleared by evidence for which this matter should have been commenced by writ of summons.

This attempt in the cross-appeal is a misconception or maybe a fishing adventure gone wrong. The long and short of which is that the attempt has failed. The cross-appeal lacking in merit and considering the fuller reasoning in the lead judgment of Mahmud Mohammed JSC is dismissed.

I abide by the consequential orders in that lead judgment.

ARIWOOLA JSC

I had the privilege of reading the draft of the lead judgment of my learned brother, Mahmud Mohammed, JSC.

The action that culminated into this appeal was initiated by the 1st Appellant with an Originating Summons filed on 6th May, 2009 at the Federal High court Ilorin Division. The Honourable Justice Raliat Elelu-Habeeb commenced the action as plaintiff against the following as Defendants:-

1. National Judicial Council,
2. The Hon. Attorney General of the Federation,
3. Hon. Attorney General of Kwara State
4. House of Assembly of Kwara State.

By the originating summons, the following questions were submitted for determination by the trial court:-

“1. whether by the combined interpretation of section 153(1) (i) paragraph 21 (a) of the 3rd schedule and section 271 of the constitution of the Federal Republic of Nigeria, 1999, the 3rd Defendant

has the power to initiate or carry out an exercise of disciplinary control and or proceedings on the plaintiff in the exercise of powers, duties and obligation as occupier of office of the Chief Judge of Kwara State.

2. Whether the letter of 3rd Defendant dated 4th May, 2009 inviting the plaintiff to Disciplinary Proceedings in matters relating to, connected with and arising from the exercise of her functions as the Chief Judge of Kwara state does not amount to exercising (sic) the powers of the 1st Defendant under section 153, 3rd schedule, Part 1, para.21 of the constitution of the Federal Republic of Nigeria, 1999.” C

The Plaintiff sought the following Reliefs in the determination of the above questions:

“1. Declaration that a combined interpretation of sections 4,153,292 and paragraphs 20, 21 of the 3rd schedule, part 1 of the constitution, it is only the 1st Defendant that has the Exclusive power and authority to query, command, order or inquire into any command, order or inquire into any complaint against the plaintiff arising from or connected with the performance of her functions as a judicial officer and in her office as the Chief Judge of Kwara state or recommend to the Governor her removal as Chief Judge of Kwara State. E

2. A declaration that the letter of the Kwara State House of Assembly dated the 4th May 2009 is in breach and violation of the constitution of the Federal Republic of Nigeria 1999 in so far as it relates to, connected with the plaintiff in the exercise of her functions in the office of the Chief Judge of Kwara State and therefore null and void. F

3. An order setting aside, nullifying and putting away the decision of the 3rd and 4th defendants (Kwara State House of Assembly) contained in the 3rd defendant’s letter dated 4th May 2009 and any other steps taken thereon in so far as it relates to the office of the plaintiff as the Chief Judge of Kwara State, the same being inconsistent with sections 153, 197, 271(2) of the 3rd schedule of the Constitution of the Federal Republic of Nigeria 1999. H

4. An order of perpetual injunction restraining the defendants particularly, the 3rd defendant and the government of Kwara State by themselves, through their officers, privies or any other person deriving power, command, authority, instruction or directives from

any of the defendants from acting or relying on, or continuing to rely on, act on, implement, give effect to or do anything to the prejudice of the plaintiff based on the decision contained in the letter dated 4th May 2009 in so far as the decision is related to the office of the plaintiff as chief Judge of Kwara State.

B 5. *An order of perpetuate injunction restraining the defendants from acting on the decision arising from and connected with the 3rd defendant's letter dated 4th May 2009 and from taking any actions, acts, decision, conclusions, directives, command and such other*
 C *deeds geared towards the office of the plaintiff or doing anything which may have effect of enforcing, continuing to give effect to implement or finally putting into effect the conclusions and decision of the Kwara State House of Assembly."*

D It is noteworthy that both the Attorney General of the Federation, the Attorney General of Kwara State and the House of Assembly, Kwara State - 2nd, 3rd and 4th Defendants raised Preliminary objections to the competence of the plaintiffs action before the trial court on jurisdiction, being a Federal High Court with specific jurisdictional coverage. The trial court took the argument of counsel on
 E the preliminary objection and went ahead to hear the matter on the merit.

In its final reserved judgment, the trial court overruled the preliminary objections and dismissed same. The court then granted all
 F the reliefs sought by the plaintiff.

Dissatisfied with the decision of the trial court, the 2nd, 3rd and 4th Defendants filed their respective Notices of Appeal to the said judgment. It is pertinent to note that the 1st Defendant, that is, National Judicial council was joined as a Respondent to the Appeals
 G filed against the decision of the trial court. The appeals were heard by a full panel of the Ilorin Division of the Court of Appeal. In the majority decision of the court below, the Federal trial court was said to lack the jurisdiction to entertain the plaintiff's case. It was held that the State High Court was the appropriate court to have heard and determined the case. The court below however proceeded to consider the
 H merit of the case and finally came to the conclusion that the Federal High Court was right and correct in granting the plaintiff's reliefs sought. The decision of the court below led to the instant appeals and cross appeals.

Parties filed and exchanged briefs of argument. In the 1st Appellant's brief of argument filed by Chief A. S. Awomolo, SAN, a sole issue was formulated for determination as follows:

"whether the Court of Appeal was right when it declared that the Federal High court has no jurisdiction to interpret the provisions of the constitution as contained in the originating summons of the Appellant when the interpretation affects exercise of constitutional powers of the National Judicial council, a Federal Government Agency."

In the brief of argument filed for the 1st Respondent, the Attorney General of the Federation, a sole issue was also formulated for determination as follows:-

"Whether the lower court was right in holding that the Federal High court lacked jurisdiction to entertain and determine the Appellant's case when there was no claim or cause of action against any agent of the Federal Government."

For the 2nd and 3rd Respondents in their separate brief of argument, each party distilled a sole issue for determination of the appeal respectively, as follows:

2nd Respondent's Issue:-

"Whether having regard to the nature of this suit, particularly the reliefs sought, the lower court was right in holding that the Federal High court had no jurisdiction to hear and determine the Appellant's case."

3rd Respondent's Issue:-

"Whether having regard to the complaint of the Respondents (sic) and the reliefs sought by her in her originating summons, the Court of Appeal was not right and correct in holding that, the Federal High court lacked jurisdiction to hear and determine her case."

It is conceded that both senior counsel to the Appellants and the three Respondents argued their respective issues in their brief of argument very vigorously and admirably. They cited various decided authorities to support their stand. While the appellant urged this court to allow her appeal, set aside the decision of the court below on the issue of jurisdiction, restore and affirm the trial court's decision, each of the Respondents urged the court to dismiss the appeal.

Upon careful perusal of all the various documents and processes filed in this case from the inception, there is no doubt and it is

reasonably deducible that the only issue for determination is:

“Whether the court below was right in holding that the Federal High Court lacked jurisdiction to adjudicate upon the Plaintiff/Appellant’s Originating Summons.”

In other words, the issue generally, is which court between the Federal High Court and the Kwara State High Court, has competence to hear and determine the Plaintiff/Appellant’s case as couched or formulated in her Originating Summons including the reliefs sought.

Jurisdiction is the pillar upon which the case before the court stands. When an action is brought before a court, it certainly presupposes that the court has jurisdiction or that it is competent to hear and determine the matter. Therefore, the moment a defendant or respondent as the case may be, satisfies the court that it has no jurisdiction; the foundation of the case is destroyed. In other words, the court is prevented from adjudicating on the matter and cannot hear the parties any longer. See: SLB Consortium Limited vs. Nigerian National Petroleum Corporation (2011) 5 SCM 187.

However, there are conditions precedents that must be met before a court is said to have jurisdiction or is competent to adjudicate on a matter placed before it. This issue has long been settled and established by the court in its case of Madukolu v. Nkemdilim (1962) All NLR (Pt.3) 581 at 589, (1962) 2 SCNLR 241.

“A court is competent when:-

(a) it is properly constituted as regards the number and qualifications of its members of the bench, and no member is disqualified for one reason or another.

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(c) The case comes up before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity, however well conducted and decided; the defect is extrinsic to the jurisdiction.”

The question is what document(s) should the court consider or took at to determine whether or not it has jurisdiction to entertain the matter brought before it? This has also long been settled by the

court, that it is the plaintiff's claim as contained in the Writ of Summons and Statement of Claim or the originating Summons and Affidavit filed in support as the case may be, that must be examined by the court. See; Adeyemi vs Opeyori (1976) 9-10 SC 51; Izenkwe Vs. Nnadozie (1953) 14 WACA 362, (1989) 4 NWLR (Pt.117), 517; Inakoju Vs. Adeleke & ors (2007) 1 SCM 1, (2007) 4 NWLR (pt.1025) 423, Senator Ladoja Vs. INEC & ors (2007) 12 SCM (Pt.2 364. (2007) 12 NWLR (pt.1047) 97, Adetona & Ors vs. Igele (2011) 1 SCM 1 at 12. In the instant case, the documents to be examined to see whether or not the trial court had jurisdiction to adjudicate on the Appellant's claim are the Originating Summons, the Relief sought and the supporting affidavit which stands as the statement of claim in an action initiated by writ of summons. B C

It has been stated earlier in this judgment the two questions placed before the trial court for determination, and the reliefs sought by the plaintiff. This means that the court was being asked to interpret the provisions of the Constitution. There is no doubt and the law is clear, that the Federal High Court has jurisdiction to interpret the provisions of the Constitution. See; Section 251 (1) (q) and (r) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Ladoja Vs INEC & ors (supra). In Ladoja's case, which was also commenced by an Originating Summons, this court, per Katsina -Alu, JSC (as he then was) opined as follows: D E

"...it is crystal clear that the Federal High court has the jurisdiction to interpret the provisions of the constitution and to make declaratory and injunctive reliefs as conferred upon it by section 251 (1) (q) and (r) of the constitution. One does not require a soothsayer to see that the Federal High court has the jurisdiction to hear and determine the present claim." F G

From the processes filed by the Respondents and the submissions of counsel, it is clear that they all stand on the fact that what the Plaintiff/Appellant went to the Federal High Court to challenge or contest was her removal from office as the Chief Judge of Kwara State by the Governor of the State hence the suit against the 2nd and 3rd Respondents. But this stand, to say the least, is a misconception of the case put up by the Plaintiff/Appellant. H

It should be stated clearly now that certain facts are not in dispute and therefore they need no further proof as they are deemed

admitted and established. See; Indian General Insurance Co. Ltd. Vs. Tharwadan (1978) 3 SC 143 at 149; A.C.B. Ltd. Vs. Alhaji Umaru Gwagwada (1990) 5 NWLR (Pt.942) 25/42 Sabru Ltd. Vs. Rajab Ltd (2002) 10 NSCQR 120 at 136 & 142.

The facts are as follows:-

B That the Plaintiff was the Chief Judge when the action was commenced before the trial court. It is not part of her claim that she has been wrongly or unlawfully removed from office. There was and there is still no letter from either the 2nd Respondent the Governor of Kwara State, served on the plaintiff stating that she was removed from office. The only letter purportedly served on the plaintiff through the Chief Registrar of her court is the letter dated 4th May, 2009 written by the 3rd Respondent inviting her to appear before the House.

D Therefore, what the Plaintiff/Appellant sought before the trial court was the court's interpretation of the Constitutional provisions in relation to the constitutionality or legality of the disciplinary proceedings commenced by the 3rd Respondent with its letter of invitation (supra) sent to the plaintiff. It is clear that she did not challenge her removal from office as a chief Judge.

Section 251 (1) (q) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which gives the trial court power in the instant case reads thus:

F *"251(1) 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 cases and matters..."*

G *(q) Subject to the provisions of this constitution, the operation and interpretation of this constitution in so far as it affects the Federal Government or any of its agencies."*

H From the above, it is clear that the Federal High Court shall have jurisdiction and be competent to adjudicate over an action involving the interpretation and operation of the constitution *"in so far as it affects the Federal Government or any of its agencies."*

It is pertinent to note that the Governor of a State does not just appoint a Chief Judge or Judges of his State entirely by himself. It is a responsibility saddled with three different bodies. The State Judicial

Service Commission shall compile and produce a list of appointable persons, submit the list to the National Judicial Council which shall recommend to the Governor among the list of persons submitted to it for appointment to the offices of the Chief Judge of a State and Judges of the High Court of the State, among others.

In the same vein, it is the National Judicial Council, in the exercise of its power over such judicial officers that shall recommend to the Governor the removal from office of the Judicial officers specified in the Constitution, such as, Chief Judges and Judges of the High Court of States. See Paragraph 21 (c) and (d) of the 3rd schedule to the Constitution (supra). This in my view is to ensure that too much power does not lie in the hand of only one person or body of persons in respect of the appointment and discipline of judicial officers.

As the saying goes, power corrupts, absolute power corrupts absolutely. If the Governor alone is allowed to, in exercise of his Executive power, appoint directly, and discipline judicial officers of his State, this may, no doubt, lead to avoidable corruption and prevent judicial officers from carrying out their functions freely and without any intimidation by the Executive. Judicial Officers may become stooges of the Governor of the State for fear of been removed from office unceremoniously.

By issuing the letter dated 4th May, 2009 by the 3rd Respondent, the proceeding was being set in motion to discipline the plaintiff without resort to the body constitutionally recognized to exercise disciplinary control over the officer. By doing that, the function of the 1st Defendant before the trial court was being usurped. Therefore, the interest of the National Judicial Council was at stake if indeed justice was to be seen as done.

Without any further ado, having shown that the National Judicial Council is a necessary party in the case, the jurisdiction of the Federal High court was properly invoked and the court below was therefore wrong to have held that the trial court lacked jurisdiction to entertain the plaintiff's matter. And with the involvement of the 1st and 2nd Respondents before the trial court, the State High Court could not have had jurisdiction over the matter.

In view of the above reasons and the fuller and detail reasons given in the lead judgment, I agree entirely with my learned brother,

Mahmud Mohammed, JSC that the appeal has merit and should be allowed, and is hereby allowed. Consequently, the judgment of the Court below which declared the trial court as lacking jurisdiction to entertain the Appellant’s action is erroneous and is hereby set aside. The judgment of the trial court is affirmed. The cross appeals lack merit and are accordingly dismissed.

I abide by the consequential orders contained in the said lead judgment including the order on costs.

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