

SUPREME COURT OF NIGERIA

23RD MARCH, 2012. SC. 214/2007

CORAM:- **W. S. N. ONNOGHEN, I. T. MUHAMMAD,
J. A. FABIYI, O. O. ADEKEYE, B. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI, JJSC**

A-G NASARAWA STATE APPELLANT
AND

A-G PLATEAU STATE RESPONDENT

STATUTES - Interpretation - States Creation & Transitional Provisions Act s.7(1) - A-G Ondo State v. A-G Ekiti State - Since the enabling provision is unambiguous - Same should be given its ordinary meaning (H1)

CONTRACTS - Estoppel by contract - Principle - A person is barred from denying term - Arising from contract that he has entered into (H2)

ESTOPPEL - Estoppel by conduct - Principle - Evidence Act s.151 - Party who falsely induced another to act in a certain way - Is estopped from taking advantage of that other person (H3)

JUDICIAL PRECEDENTS - Authorities - Distinction - A-G Plateau State v. A-G Nasarawa State - Since facts of the case law is different from that of present action - Holden therein cannot be relied upon as res judicata (H4)

FACTS

Nasarawa State was created out of the former Plateau State by virtue of Section 1 (1) of States (Creation and Transitional Provisions) Decree No. 36 of 1996. A committee was thus set up by the Federal Government of Nigeria on the sharing of assets and liabilities between the two States. The committee came up with a formula to be adopted by the two States in respect of the sharing of the assets in the proportion of 53% to Plateau State and 47% to Nasarawa State. As follow up, another joint committee was set up by the two States

with the same mandate given to the former. The latter also came up with its recommendations. Subsequently, a meeting was held at the Presidential Villa, Abuja on the implementation of shared assets between the two States. At the meeting, the then Military Administrator of Plateau State resolved to release certain landed properties in Jos metropolis to Nasarawa State in the spirit of equity, fairness and in conformity with the Federal Government directive.

In furtherance of this, an agreement - Exhibit NAS 4 was reached between the two States. Contrary to the agreement, Plateau State gave up possession of some of the landed properties to Nasarawa State but refused to give up vacant possession of some other, contending in its letter - Exhibit NAS 9 that the agreement was made in error. Plateau State further took steps to recover possession of all the landed properties listed in Exhibit NAS 4. Aggrieved by this breach of agreement, Nasarawa State instituted this action as plaintiff against Plateau State as defendant at the Supreme Court. Defendant filed notice of preliminary objection contending that the court lacks jurisdiction to entertain the action. The ground of its objection is that the present action is *res judicata* having been litigated upon in *A-G Plateau State v. A-G Nasarawa State* (2005) All FWLR (pt. 266) 1227 at 1237.

ISSUES FOR DETERMINATION

“1. Whether having regard to the provisions of section 7(1) of the State (Creation and Transitional Provisions) Act 1996, the meeting of 19th March, 1998 with the then Head of State and Commander-in-chief on the implementation of shared assets between Nasarawa and Plateau States (as evidenced in Exhibit NAS 3), and, the entire facts of this case” the defendant is not estopped from contesting the agreement dated 6th April, 1998 i.e. Exhibit NAS 4 or any portion thereof, which transferred “certain - properties including buildings within Jos metropolis to the plaintiff.

2. Whether the plaintiff is entitled to the reliefs sought.”

HELD (Unanimously granting plaintiff’s reliefs per **FABIYI JSC**)
STATUTES - Interpretation

1. The enabling law in respect of this matter is the States (Creation and Transitional Provisions) Act, 1996. Section 7 (1) of the Act is of paramount importance.

The above provision has been interpreted by this court in the case of Attorney-General Ondo State v. Attorney-General Ekiti State (supra). I am at one with the views ably expressed therein. It is basic that where the words of a statute are plain and free from ambiguity, same should be given their ordinary grammatical meaning. The initial transfer provided by section 7(1) enures only to the benefit of the new State - the plaintiff herein. There is no provision anywhere in the law that the plaintiff is not entitled to any other immovable property or chattel elsewhere apart from those provided for under section 7(1). One should not read into the Act what is not provided therein. I feel that any property not covered by section 7(1) remains the joint property of Plateau State and Nasarawa State. It was with this in view that the Federal Government set up the assets sharing committee. (p. 1022 D/G)

Estoppel by contract - Principle

2. The plaintiff has contended that the defendant is estopped from denying the validity of Exhibit NAS 4 and from backing out from same. I need to try and show the defendant the futility of the stance posed by him. There is the doctrine of estoppel by contract. This is a bar that prevents a person from denying a term, fact or performance arising from a contract that the person has entered into.

There is also the principle of Pacta Sunt Servanda which means agreements of a party to a contract which are not fraudulent are to be observed. Same should be honoured by gentlemen. This should apply more especially in the art of governance of States as herein even where there is a change of the Chief Executive. Such will provide the much needed requisite atmosphere for peace, tranquility and concord between the two sister States. (p. 1026 E/1027 B)

Estoppel by conduct - Principle

3. There is what is referred to as equitable estoppel. This is a doctrine preventing one party from taking unfair advantage of another when through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. It is termed estoppel by conduct or estoppel in pais. I need to further remind the defendant that Section 151 of the Evidence Act clearly incorporates the

doctrine of equitable estoppel. (p. 1026 G)

JUDICIAL PRECEDENTS - Authorities - Distinction

4. The defendant tried to liken this case with that in Attorney-General Plateau State v. Attorney-General Nasarawa State (2005) All
B FWLR -part 266 page 1227 at 1237 C-F. A clear reading of the case
shows that the issue therein is not remotely connected with the facts
of this case. The issue that came up for determination in that case was
C whether debts outstanding on projects executed by the old Plateau
State that were located in Nasarawa State and which became vested
in the new Nasarawa State by virtue of section 7 (1) of the Act were
to be paid by Plateau State. This court held that the liability is that of
Nasarawa State. Same has nothing to do with the facts of the present
action which have to do with sharing of assets located in Jos Me-
D tropolis. The defendant desires to rely on a plea of res judicata which
means a thing adjudged between the same parties or their privies by
a competent court. It has been shown that the subject matter in his
'joker' is not the same as in this present case. (p. 1027 E)

NOTABLE POINT OF INTEREST
MUHAMMAD JSC

1. Facts admitted need not be proved

The above pungent averments by the plaintiff in its counter-claim
have not been countered. They are accepted to be true and correct.
F They require no further elaboration as the law is very certain and
clear that facts admitted require no further proof. (p. 1034 G)

REPRESENTATION

G Rotimi Oguneso Esq., with O. Balogun (Miss) and W. Muoneke (Miss),
for Appellant
F. B. Lotben (Mrs.) (DCL) with J. D. Longden (A.D.PP), for Re-
spondent

CASES REFERRED TO

A-G Plateau State v. A-G Nasarawa State (2005) ALL FWLR (Pt.
266) 1227
A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (Pt. 743) 706
Sonnar Ltd. v. Nordind (1987) 4 NWLR (Pt. 66) 520

A-G Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 557

Ogunride v. Ajamogun (1992) 6 NWLR (pt.246) 156

Dakubo v. Omoni (1999) 8 NWLR (pt.616) 647

Olowofoyeku v. A-G Oyo State (1996) 10 NWLR (Pt. 477) 190

Basinco v. Woermann - Line (2009) 6 SCNJ 222

Alao v. ACB Ltd. (2000) FWLR (Pt. 11) 1358

B

Adisa v. Oyinwola (2000) FWLR (Pt. 8) 1349

Odu'a Investment Co. Ltd. v. Talabi (1997) 10 NWLR (Pt. 535) 1

Ude v. Nwara & Anor. (1993) 2 NWLR (Pt. 278) 638

Joe Iga & Ors. v. Ezekiel Amakiri & Ors (1978) 11 SC 11

C

A-G Rivers State v. A-G Akwa Ibom State (2011) 3 SC 1

Obikoya v. Wema Bank Ltd. (1989) 1 NWLR (Pt.96) 157

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 232

D

States (Creation and Transitional Provisions) Act No. 36 of 1996, ss.

1 (1), 7(1) (2)

Evidence Act, ss. 75, 151

BOOK REFERRED TO

E

Blacks Law Dictionary 9th Edition p. 630

LEAD JUDGMENT BY FABIYI JSC

This suit was filed in this court pursuant to its original jurisdiction as conferred on it by Section 232 of the Constitution of the Federal Republic of Nigeria, 1999. Each Attorney-General is representing his State, in the main. The plaintiff filed the 'Civil Summons' against the defendant on 25th July, 2007. As contained in paragraph 21 of the attached Statement of Claim, the plaintiff's claims read thus: -

"21. Whereupon the plaintiff claims against the defendant as follows:-

(1) A Declaration that by virtue of the State (Creation and Transitional Provisions) Act 1996, the Reports of the Plateau State and Nasarawa States' Joint Committee Appraisal of Assets and Liabilities, and the Agreement reached between the parties to this suit on 6th April, 1998, Nasarawa State is the beneficial owner of the properties listed below situate in Plateau State:-

- (a) *No. 31 Ibrahim Taiwo Road, Jos*
- (b) *Tourism Corporation Headquarters, Jos*
- (c) *Bus Terminus Tafewa Balewa Road, Jos*
- (d) *No. 3 Old Bukuru Road*
- (e) *No. 3 Hospital place*
- (f) *No. 45 NNDC Quarters*
- (g) *No. 43 NNDC Quarters*
- (h) *No. 4 Liberty Boulevard, Jos*
- (i) *No. 27 Ibrahim Taiwo Road, Jos*
- (j) *No. 3 Rest House Road, Jos*
- (k) *No. 2 Commissioners Quarters, Miango Road, Jos*
- (l) *No. 6 Commissioners Quarters Miango Road, Jos; and*
- (m) *No. 3, Aliyu Makama Road, Jos.*

(2) *An Order of this Honourable court directing the defendant to hand over all title documents relating to the said properties or, to otherwise transfer the said properties to the plaintiff forthwith.*

(3) *An Order of perpetual injunction restraining the defendant, its servants, agents, officers and or privies from interfering with the plaintiffs right to peaceful occupation and enjoyment of the properties afore-listed.*

(4) *Costs of this action."*

In support of his case, the plaintiff filed an affidavit of ten (10) paragraphs with annexures attached to same. It was deposed to by Isaac Adebojale Aderogba, a legal practitioner in the law firm of the plaintiff's counsel. The facts of the matter as stated on behalf of the plaintiff are that Nasarawa State constituted part of old Plateau State until it was created as a State of the Federal Republic of Nigeria by virtue of Section 1 (1) of the States (Creation and Transitional Provisions) Act 36 of 1996 on 1st October, 1996. As provided in Section 7(1) and (2) of the Act, all immovable properties and chattels which, immediately before the commencement of the Act, were situated in the area comprised in the new Nasarawa State and held by a body corporate directly established by law/edict of the old Plateau State vest in the plaintiff.

After the creation of the plaintiff as a State, the Federal Government set up an Assets and Liabilities Sharing Committee for Plateau and Nasarawa States. The Committee came up with a formula to be adopted in the sharing of the assets of the old Plateau State and

put same at 53% and 47% to Plateau State and Nasarawa State respectively. This fact is contained in Exhibit NAS 1 - the Summary of Execution of Government White Paper on the Assets and Liabilities sharing between the two States. A joint committee was set up by the two States and inaugurated on October 21st, 1996 to carry out an appraisal of the assets and liabilities. The joint committee worked in line with the formula given it by the Assets and Liabilities/Sharing Committee and submitted a report to the two States wherein it made recommendations on, how the assets and liabilities were to be shared. On 19th March, 1998 officials of the two States held a meeting under the chairmanship of General Sani Abacha the then Head of State and Commander in Chief of the armed Forces (HoS and CinC). At that meeting, the Military Administrator of the defendant stated the resolve of the defendant to release the properties in contention to the plaintiff. The minutes of the meeting of 19th March, 1998 is contained in Exhibit NAS 3.

In consonance with the above, the two States entered into an agreement dated 9th April, 1998 whereby some landed properties, which include the ones being claimed herein, were handed over by Plateau State to Nasarawa State. The said agreement is Exhibit NAS 4. The defendant gave vacant possession of some of the immovable properties listed in Exhibit NAS 4 but refused to yield vacant possession of -

1. No. 31 Ibrahim Taiwo Road, Jos as Government Lodge.
2. Tourism Corporation Headquarters Jos; and
3. Bus Terminus Tafewa Balewa Road, Jos.

The plaintiff maintained that all efforts to recover or secure those properties proved abortive. Instead of giving possession of the properties, the defendant, in its letter of 5th November, 2004 (Exhibit NAS 9) contended that the agreement entered into by the two States - Exhibit NAS 4 was made in error. The defendant further took steps to recover possession of all the landed properties located within Plateau State listed in Exhibit NAS 4 from the plaintiff by issuing notice of intention to recover premises to the plaintiff's tenants. The defendant, in essence, repudiated Exhibit NAS 4 extant in his letter - Exhibit NAS 9. By Exhibit NAS 10, the defendant notified the plaintiff of its intention to recover all landed properties within Plateau State placing reliance on the decision of this court in Attorney-Gen-

eral Plateau State v. Attorney-General Nasarawa State (2005) 9 NWLR (Pt. 930) 421.

The defendant's statement of defence which contains 15 paragraphs was filed on 6th September, 2007. A Notice of Preliminary Objection was also filed on 2nd November, 2007. The defendant maintained that the defence rest on salient issues to wit: while the defendant admits the assertion in paragraphs 1-7 of the plaintiff's statement of claim, the defendant denies other averments- and contended that the joint committee must work in line with the formula given to it except the insertion of paragraph 'Q' which contradicted paragraph 'P' of the sharing formula which says - 'each State should take over in its entirety all Government buildings, offices and staff quarters located within its own territory. The properties Nos. 1-12 being claimed by the plaintiff are Government buildings, offices and staff quarters located in the defendant's territory. The defendant further contended that from the minutes of the meeting with the then Head of State on 19th March, 1998, the ten residential houses and two offices being claimed by the plaintiff were only released temporarily to serve as transit camp to the plaintiff's then Military Administrator. The defendant maintained that there is no house with number 45 NNDC Quarters as the numbering of NNDC Quarters ends with 43 as the indication of No. 45 on the Notice to Quit was an error on the part of the defendant's counsel. The defendant also denied the assertion that the then Military Administrator of Plateau State agreed to share ten residential houses and two office blocks to the plaintiff as same is contrary to the sharing formula, undemocratic and partial. The defendant felt that the position is confirmed by the chairman on buildings committee who told the sub-committee that they had no business in the sharing of houses and yet, the said committee went ahead and shared ten residential houses and two offices to the plaintiff contrary to the sharing formula which, gave the plaintiff undue advantage over the defendant. He felt that same amounted to approving and reprobating at the same time. The defendant maintained that the plaintiff placed reliance on Exhibit NAS 4 while on his part, it is contended that the said agreement in so far as it relates to properties within the defendant's territory is contrary to paragraph 'P' of the sharing formula which to that extant is null and void. The defendant maintained that based on the foregoing, he took neces-

sary steps to eject persons who are in illegal occupation of the defendant's premises, He feels that the position is fortified by the decision of this court in the case of Attorney-General Plateau State v. Attorney-General Nasarawa State (2005) ALL FWLR (Pt.266) 1227 AT 1237 C - F.

On 23rd January, 2012 when this case was heard, learned counsel on both sides of the divide adopted and relied on their respective brief of argument, Learned counsel for the plaintiff urged that the plaintiff's claims be granted. On the other hand, learned counsel for the defendant urged that the plaintiff's claims should be dismissed.

Two issues were submitted on behalf of the plaintiff for determination. They read as follows:-

"1. Whether having regard to the provisions of section 7(1) of the State (Creation and Transitional Provisions) Act 1996, the meeting of 19th March, 1998 with the then Head of State and Commander-in-chief on the implementation of shared assets between Nasarawa and Plateau States (as evidenced in Exhibit NAS 3), and, the entire facts of this case" the defendant is not estopped from contesting the agreement dated 6th April, 1998 i.e. Exhibit NAS 4 or any portion thereof, which transferred "certain - properties including buildings within Jos metropolis to the plaintiff.

2. Whether the plaintiff is entitled to the reliefs sought."

On behalf of the defendant, two issues were also couched for determination. They read as follows:-

"(i). Whether having regards to the clear and unambiguous provisions of paragraph 'P' of the Extract from the Report of the Assets and Liabilities Sharing Committee same being fortified by this Honourable Court's decision in Attorney-General of Plateau State v. Attorney-General Nasarawa State (2005) All FWLR -part 266 page 1227 at 1237 C-F the plaintiff is entitled to the reliefs sought.

(ii) Whether the plaintiff is entitled to claim the properties listed in Exhibit 4 attached to its affidavit when same was reached ultra vires the provisions of the State Creation and Transitional Provisions) Decree, 1976 (sic) for the ownership of the properties being claimed."

Arguing issue No.1, it was observed by learned counsel for the plaintiff that the defendant is not contesting the entire properties released to the plaintiff in Exhibit NAS 4. What the defendant is con-

testing are those landed properties which are located in Jos metropolis within the territory of the defendant. Learned counsel maintained that Nasarawa State is one of the States created in 1996 with its enabling law being the States (Creation and Transitional Provisions) Act 1996. He referred to section 7(1) of the Act which has been considered by this court in the case of Attorney-General Ondo State v. Attorney-General Ekiti State (2001) 17 NWLR (Pt. 743) 706 at 756-757. He submitted that nothing in section 7 of the Act vests anything in the defendant. Learned counsel submitted that in this case, the sharing of the assets and liabilities of the old Plateau State was done with the active participation of the defendant and its officials. The official position of the defendant was stated by its then Military Administrator, Col. I. Shuaibu in Exhibit NAS 3. Thereafter, the parties entered into a formal agreement - Exhibit NAS 4. Learned counsel stressed that the agreement is consistent with the spirit and letter of the formula of the Assets and Liabilities sharing committee for Plateau and Nasarawa States which followed the model employed in the case of Attorney-General Ondo State v. Attorney-General Ekiti State (supra). Learned counsel observed that the defendant desires to resile from some of the contents of the agreement contained in Exhibit NAS 4 which had long been settled. The defendant claimed that the agreement was entered into in error. Learned counsel submitted that the defendant is estopped by law from repudiating or denying the agreement or any portion thereof. He maintained that the principle of *Pacta sunt servanda* applies to this case. He felt that agreement which is neither contrary to law nor fraudulently entered into must be adhered to in every manner and in every detail. He cited *Sonnar Ltd. v. Nordind* (1987) 4 NWLR (Pt. 66) 520 at 543. Learned counsel opined that the defendant appeared to be labouring under the impression that because the properties are in Jos, those properties belong to it naturally. He again submitted that there is nothing in section 7(1) of the Act that vested anything in the defendant. He observed that it is a cardinal principle of statutory interpretation that where the words of a particular statute are plain and free from ambiguity, the statute should be accorded or given its ordinary plain and grammatical meaning. He cited *Attorney-General Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 111) 557; *National Bank of Nigeria Ltd. v. Weiden Co. Nig. Ltd.* (1996) 8 NWLR (Pt. 465) 150 at

165; Shell Petroleum Development Co. (Nig.) Ltd. v. Federal Board of Inland Revenue (1996) 8 NWLR (Pt. 466) 256 at 285. Learned counsel maintained that looking at the ordinary words of section 7 of the Act, it is plain and obvious that the section did not vest anything in the defendant. He further maintained that in view of the agreement reached by the parties, it is wrong for the defendant to proceed to lay claim to those properties located in Jos simply because of territorial advantage. He opined that the philosophy underlying the ownership of the assets of a dissolved State is that save for the one vested by section 7, all other assets remain joint properties of the successor States, until shared by them. He cited *Olowofoyeku v. Attorney-General Oyo State* (1996) 10 NWLR (Pt.477) 190 at 219, 222-223, *Attorney-General Ondo State v. Attorney-General Ekiti State* (supra) at page 784. B C

Learned counsel finally observed that the defendant appeared to be basing his actions on the decision of this court in *Attorney-General Plateau State v. Attorney-General Nasarawa State* (supra). He submitted that the issue in that case is not remotely connected with the facts in the case. He pointed it out that the issue that came up for determination in the case and resolved by this court was whether debts outstanding on projects executed by the old Plateau State, that were located in Nasarawa State and which had become vested in Nasarawa State by virtue of section 7 (1) of the Act were to be paid by Plateau State. This court held that the liability is that of Nasarawa State. Learned counsel urged that this issue should be resolved in favour of the plaintiff. He urged the court to hold that the defendant is estopped from denying or contesting the agreement dated 6th April, 1988 which inter alia, transferred the properties being claimed to the plaintiff. D E F

On behalf of the defendant, it was observed that the properties claimed by the plaintiff, by virtue of their location within the territory of the defendant and in consonance with the provision of paragraph 'P' of the Committee's Report, ownership of same vests in the defendant. Learned counsel felt that where the provisions of a statute or a document are clear and unambiguous, the court is enjoined to give it, it's "*natural and ordinary meaning and not to resort to any external aid in a bid to*" construe same. Learned counsel cited the cases of *Basinco v. Woermann* - Line (2009) 6 SCNJ 222 at 240; G H

Attorney-General Plateau State v. Attorney-General Nasarawa State (2005) All FWLR (Pt. 266) 1227 at 1237 C-F. Learned counsel placed heavy reliance on the case of Attorney-General Plateau State v. Attorney-General Nasarawa State; presumably to put up a plea of res judicata and urged on us not to depart from the decision therein. He cited the cases of Alao v. ACB Ltd. (2000) FWLR (Pt. 11) 1358 at 1373 C-G; Adisa v. Oyinwola (2000) FWLR (Pt. 8) 1349 at 1374-1375 'H'. Learned counsel submitted that the signing of Exhibit NAS 4 by the then Military Administrator was done in error and in violation of guidelines and same rendered the agreement null and void in law. He cited the case of Odu'a Investment Co. Ltd. v. Talabi (1997) 10 NWLR (Pt. 535) 1. Learned counsel urged that the two issues be resolved in favour of the defendant. He urged that the plaintiff's claim be dismissed with substantial costs to the defendant.

The enabling law in respect of this matter is the States (Creation and Transitional Provisions) Act, 1996. Section 7 (1) of the Act is of paramount importance. It provides as follows:-

"7 (1) Subject to subsection (2) of this section any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised of a new State created by this Decree and was held by a body corporate directly established by an Edict of the Military Administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall be payable in respect of any transfer effected by this section."

The above provision has been interpreted by this court in the case of Attorney-General Ondo State v. Attorney-General Ekiti State (supra). I am at one with the views ably expressed therein. It is basic that where the words of a statute are plain and free from ambiguity, same should be given their ordinary grammatical meaning. The initial transfer provided by section 7(1) enures only to the benefit of the new State - the plaintiff herein. There is no provision anywhere in the law that the plaintiff is not entitled to any other immovable property or chattel elsewhere apart from those provided for under

section 7(1). One should not read into the Act what is not provided therein. I feel that any property not covered by section 7(1) remains the joint property of Plateau State and Nasarawa State. It was with this in view that the Federal Government set up the assets sharing committee.

It appears to me that learned counsel for the defendant failed to realize the above position of the law. All arguments made on behalf of the defendant in laying ownership to the properties shared to the plaintiff in Jos metropolis - defendant's territory failed to hit the target. It is extant in Exhibit NAS 3 - minutes of meeting held with the then Head of State and Commander-In-Chief attended by officials of both States that the Military Administrator of both States made their representations known. As contained on page 5 of Exhibit NAS 3, Plateau State position goes as follows:-

"The MILAD said in the circumstance and in fairness to both parties and in the spirit of equity, fairness, justice, brotherliness and conformity with the Federal Government directive that Plateau State should release to Nasarawa:

- a. A Government Lodge.
- b. Two (2) blocks of offices
- c. Ten (10) residential quarters.

The - following are hereby released to Nasarawa State as required:

(1) No. 31 Ibrahim Taiwo Road as Governors Lodge in place of Tudun Wada Government Lodge which should be retained by Plateau State as offices for Bureau for Political and Local Government Administration and for obvious reasons.

(2) Two (2) blocks of offices released thus:

(i) Plateau State - Tourism Corporation office along Yakubu Gowon Way, Jos.

(ii) Bus Terminal on Tafewa Balewa Street, Jos.

(3) Ten (10) residential quarters are released as follows:-

(i) No.3 Old Bukuru Road

(iii) No.4 Liberty Boulevard (White House)

(iv) No. 43 NNDC Quarters

(v) No. 45 NNDC Quarters

(vi) No. 27 Ibrahim Taiwo Road

(vii) No.3 Rest House Road

(viii) No. 2 Commissioner Quarters

(ix) No. 6 Commissioners Quarters

(x) No. 3 Aliyu Makama Road.”

On page 10 of Exhibit NAS 3, paragraph 53 of the minutes goes as follows:-

B “53 Finally, the HoS and CinC directed that the 2 MILADS must be physically involved in the sharing and transferring of items to the States and to report back to him in 45 days that all decisions have been implemented.”

C The above minutes is dated 26th March, 1998. With due precision, it seems that the above directive led to the agreement in Exhibit NAS 4 which was personally signed by the two Military Administrators of both States. The agreement which is contained in Exhibit NAS 4 reads as follows:-

D “SHARING OF LANDED PROPERTY BETWEEN PLATEAU AND NASARAWA STATES

An Agreement made this 6th day of April, 1998 BETWEEN, Plateau and Nasarawa State Governments on the sharing of landed property located in Jos, Kaduna and Lagos.

E WHEREAS:

Nasarawa State was created out of Plateau State which creation is gazetted vide Decree No. 36 of 1996 States (Creation Transitional Provisions) Decree 1996.

F AND WHEREAS:

The Federal Government set up an Asset Sharing Implementation Committee headed - by Commodore S. A. Afolayan (herein-after referred to as the Federal Committee) shared the Assets and Liabilities between the two States

G AND WHEREAS:

The Federal Committee and representatives of Plateau and Nasarawa States met, deliberated and agreed that certain office blocks and residential houses in Plateau State be given to Nasarawa State as specified in the schedule hereto.

H NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The Plateau State gives and Nasarawa State takes all the landed property listed in the schedule hereto.

2. The two States shall co-operate with each other to ensure a smooth hand over and take over of the property.

3. That Nasarawa State may through a separate agreement let any or some of its property to Plateau State on such terms and condition as may be agreed upon by the parties.

4. That on signing of this agreement, the titles of the property shall vest in Nasarawa State without any further assurance. Nasarawa State shall thereafter perfect the titles with the Bureau for Lands Survey and Town Planning.

SCHEDULE

1. BUILDINGS WITHIN JOS METROPOLIS

- (i) No.31 Ibrahim Taiwo Road (MILAD'S Guest House)* C
- (ii) No.3 old Bukuru Road*
- (iii) No.3 Hospital Place*
- (iv) No. 45 NNDC Quarters*
- (v) No. 43 NNDC Quarters*
- (vi) No.4 Liberty Boulevard (White House)* D
- (vii) No. 27 Ibrahim Taiwo Road*
- (viii) No.3 Rest House Road, Jos.*
- (ix) No.2 Commissioners Quarter Miango Road*
- (x) No.6 Commissioner Quarters Miango Road*
- (xi) No.3 Aliyu Makama Road, Jos.* E

OFFICE BLOCKS ACCOMMODATION

- (i) Tourism Corporation Head, Quarters, Jos.*
- (ii) Bus Terminal Tafawa Balewa Road, Jos.*

2. LAGOS LIASON OFFICE

- The Under-listed office block were shared to Nasarawa State:-* F
- 1. Plateau Liaison Office (Block A)*
- 2. Plateau Liaison Office (Block B)*
- 3. No.31 Oluwole Street Apapa, Lagos.*

KADUNA LIASON OFFICE

- 1. No. 23 Katuru Road*
- 2. No. 12 Lamido Road*
- 3. No.5 Fufura Road*
- 4. No. 56 Ribadu Road*
- 5. No.7 Fufura Road.* H

IN WITNESS whereof the parties hereto have set their hands the day and year first above written.

PLATEAU STATE **NASARAWA STATE**
SIGNED BY **SIGNED BY**

.....
Col. H. I. Shuaibu	Wing Commander
Abdulahi Ibrahim	Abudulahi Ibrahim
Military Administrator	Military Administrator
of Plateau State	of Nasarawa State
B For and on behalf of the	For and on behalf of the
Plateau State	Nasarawa State
Government	Government
In the Presence of	In the Presence of
C Name: Susan R. Janfa	Name: Husaini Z.
(Mrs.) mni Akwanga	
Signature	Signature.....
Designation SSG/HCS	Designation SSG
Plateau State	Nasarawa State
D Date: 6th April, 1998.	Date: 6th April, 1998."

Despite the above agreement entered into by the then Military Administrators of the two States, learned counsel for the defendant, with the circumstance surrounding the agreement still maintained that same was entered into in error, and that, the agreement is null and void. The assertion beats my imagination as it runs against the current of logic and the applicable law.

The plaintiff has contended that the defendant is estopped from denying the validity of Exhibit NAS 4 and from backing out from same. I need to try and show the defendant the futility of the stance posed by him. There is the doctrine of estoppel by contract. This is a bar that prevents a person from denying a term, fact or performance arising from a contract that the person has entered into. Blacks Law Dictionary/Nineth Edition page 630.

There is what is referred to as equitable estoppel. This is a doctrine preventing one party from taking unfair advantage of another when through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. It is termed estoppel by conduct or estoppel in pais. I need to further remind the defendant that Section 151 of the Evidence Act clearly incorporates the doctrine of equitable estoppel. In Ude v. Nwara & Anr. (1993) 2

NWLR (Pt. 278) 638 at 662, this court pronounced that by operation of the rule of estoppel a man is not allowed to blow hot and cold, to affirm at one time and deny at the other, or, as it said to approbate and reprobate. See: also Joe Iga & Ors. v. Ezekiel Amakiri & Ors (1978) 11 SC 11, (1976) 11 SC (Reprint) 1.

There is also the principle of Pacta Sunt Servanda which means agreements of a party to a contract which are not fraudulent are to be observed. Same should be honoured by gentlemen. This should apply more especially in the art of governance of States as herein even where there is a change of the Chief Executive. Such will provide the much needed requisite atmosphere for peace, tranquility and concord between the two sister States.

In my opinion, it is not right for the defendant to attempt to back out from the agreement in Exhibit NAS 4. The defendant cannot retrace his steps in the prevailing circumstance, Estoppel, as discussed above, operates against the defendant. He is estopped from backing out from the terms of the agreement in Exhibit NAS 4. See: Attorney-General Rivers State v. Attorney-General Akwa Ibom State (2011) 3 SC 1 at 33, 138.

The defendant tried to liken this case with that in Attorney-General Plateau State v. Attorney-General Nasarawa State (2005) All FWLR -part 266 page 1227 at 1237 C-F. A clear reading of the case shows that the issue therein is not remotely connected with the facts of this case. The issue that came up for determination in that case was whether debts outstanding on projects executed by the old Plateau State that were located in Nasarawa State and which became vested in the new Nasarawa State by virtue of section 7 (1) of the Act were to be paid by Plateau State. This court held that the liability is that of Nasarawa State. Same has nothing to do with the facts of the present action which have to do with sharing of assets located in Jos Metropolis. The defendant desires to rely on a plea of res judicata which means a thing adjudged between the same parties or their privies by a competent court. It has been shown that the subject matter in his 'joker' is not the same as in this present case.

Lastly, the counsel for the defendant put up a puerile show by

saying that No.45 NNDC Quarters does not exist. Learned counsel maintained that the number surfaced as a result of the mistake of their counsel who drafted their ill-tuned Notice to quit. Such a ploy is most unbecoming of a State as it can be likened to a game of hide and seek. The defendant both in Exhibits NAS 3 and NAS 4 - the agreement signed by the then Military Administrator and witnessed by the Secretary to State Government/Head of Service on 6th April, 1998, have the stated number inserted in them. No reasonable court of record will take the defendant seriously in his recent stance that No. 45 NNDC Quarters does not exist as that will be making a mockery of their past highly placed officials. The defendant should trace No.45 NNDC Quarters carefully and locate it.

The plaintiff has directly by evidence and the applicable law proved the case properly against the defendant. As per paragraph 21 (1) (2) and (3) of the Statement of Claim quoted at the beginning of this exercise, judgment is hereby entered in favour of the plaintiff against the defendant. The reliefs therein are accordingly granted. No costs awarded for the sake of peace, cordiality and concord between the two sister States which should mend their fences and put this matter behind them once and for all in the interest of generations yet unborn.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother **FABIYI, JSC** just delivered. I agree with this reasoning and conclusion that the plaintiff has proved its case on the balance of probabilities and deserve judgment being entered in his favour.

This case exposes the insincerity of some government officials when dealing with agreements freely entered into by the representatives of the government and lack of respect for the provisions of the law. The sharing of asserts and liabilities between newly created states has always been governed by statutory provisions and agreement entered into between the representatives of the states concerned in line with the sharing formula provided in the relevant Law/Act creating the states. The instant action would not have been necessary if the defendant had seen the need and wisdom in abiding by the law

and the agreement reached. It is rather very unfair for the defendant to do everything to deprive the plaintiff of the right to the properties in question.

My learned brother has exhaustively dealt with the issues for consideration in the case as a result of which I have nothing useful to add.

I therefore enter judgment for the plaintiff in terms of the lead judgment and abide by the consequential orders made in the said lead judgment including the order as to costs. Judgment for the plaintiff.

MUHAMMAD JSC

This is a civil matter in which the Original Jurisdiction of this court has been invoked. The dispute is between one of the states of the Federation, Nasarawa State and another, Plateau State. History has it that these two States, were, prior to 1996, one State known and constitutionally called and identified as Plateau State. New States were created on 1st October, 1996, by the Military Administration of General Sani Abacha (of blessed memory), including the plaintiff, Nasarawa State by virtue of section 1(1) of the states (Creation and Transitional Provisions) Decree No.36 of 1996. Consequent upon that State creation the plaintiff claimed in its Statement of Claim that the Federal Government of Nigeria (FGN) set-up Asset and Liabilities Sharing Committee (the Committee herein) between the two states. The committee, as claimed by the plaintiff, came up with a formula to be adopted by the two states in respect of the sharing of the assets i.e. 53%: 47% to Plateau State and Nasarawa State respectively. Sequel to the foregoing, a joint committee was set up by the two States which was inaugurated on 21/10/1996 saddled with the task of carrying out APPRAISAL of their Assets and liabilities. The Joint Committee worked in line with the formula given to it by the committee and submitted its Reports to the two states with recommendations on how the Assets and Liabilities were, to be shared.

At a meeting between the officials of the two States held on 19/3/98, in the presence of the then Head of State and Commander-in-Chief of the Armed Forces, General Sani Abacha, the then Military Administrator of the defendant, Col. H. Shuaibu, stated the resolve of the defendant to release and thereby released to the plaintiff

the following properties situate in Jos, Plateau State:

1. No. 31 Ibrahim Taiwo Road, Jos as Governors Lodge;
2. Plateau State Tourism Corporation Office along Yakubu Gowon Way, Jos;
3. Bus Terminal on Tafawa Balewa Street, Jos;
- B 4. No.3, Old Bukuru Road, Jos;
5. No.3, Hospital Place, Jos;
6. No. 43, NNDC Quarters, Jos;
7. No. 45, NNOC Quarters, Jos;
- C 8. No.4, Liberty Boulevard, Jos;
9. No. 27, Ibrahim Taiwo Road, Jos;
10. No.3, RestHouse Road, Jos;
11. No.2, Commissioners Quarters, Miango Road, Jos;
12. No.6, Commissioners Quarters, Miango Road, Jos and
- D 13. No.3, Aliyu Makama Road, Jos.

The two States thereafter entered into a written Agreement dated 6th April, 1998, whereby some landed properties were agreed to be handed over by the defendant to the plaintiff. These properties are set out in the schedule to the Agreement including buildings identified in Jos Metropolis, Lagos Liaison Office and Kaduna Liaison office. The plaintiff claimed further, that although the defendant yielded vacant possession of some of the immovable properties listed in the schedule to the Agreement, it refused or failed to vacate or cause its officials, agents and or persons in occupation to vacate the immovable property situate at No.31 Ibrahim Taiwo Road, Jos as Governor's Lodge. (2) Tourism Corporation Headquarters, Jos, and (3) Bus Terminal - Tafawa Balewa Road, Jos, for the plaintiff to take physical possession.

G When amicable efforts at securing possession of the said properties proved abortive, the plaintiff through its solicitors, wrote several letters of demand to the Executive Governor and again to the Administrator of the defendant to no avail, until November 2004 that the defendant replied plaintiff's demand letter of 5th November, H 2004 wherein the defendant contended that the Agreement between the parties made on 6th April, 1998, pursuant to the meeting held at the Council Chambers, Presidential Villa, Abuja, on 19/3/08 in which the late Head of State was present, was made in error. The defendant therefore refused to hand over the said properties as demanded.

The plaintiff averred further that on the 7th November, 2006, the defendant wrote to the plaintiff purportedly acting under a judgment of the Supreme Court in suits Nos.SC.225/2000 and SC.269/2002 delivered on 22/4/05, seeking to recover all the properties listed above. It also issued notices of intention to recover premises on occupants of the properties. A letter dated 9/1/07 was served on the defendant by the plaintiff wherein it debunked the defendant's contention in its letter of 7/11/06: Further, on 16/7/07, the defendant caused a "seven day Notice to quit" emanating from a Senior District Judge in Jos to be served on the plaintiff for the recovery of the thirteen (13) properties listed. The plaintiff contended that the defendant cannot rely on the decision of this court referred to above to lay claim to any of the (13) thirteen properties listed and that the plaintiff is entitled to all the properties given to it by the Agreement of 6th April, 1998. The plaintiff, finally, made the following claims against the defendant:

"1. A DECLARATION that by virtue of the state (Creation and Transitional Provisions) Act, 1996, the Reports of the Plateau and Nasarawa States Joint Committee Appraisal of Assets and Liabilities, and the Agreement reached between the parties to this suit on 6th April, 1998, Nasarawa State is the beneficial owner of the properties listed below situate in Plateau State:

- a) No.31 Ibrahim Taiwo Road, Jos;
- b) Tourism Corporation Headquarters, Jos;
- c) Bus Terminus, Tafawa Balewa Road, Jos;
- d) No. 3, Old Bukuru Road, Jos;
- e) No.3, Hospital Place;
- f) No.45, NNDC Quarters
- g) No.43, NNDC Quarters
- h) No.4, Liberty Boulevard, Jos;
- i) No.27, Ibrahim Taiwo Road, Jos;
- j) No.3, Rest House Road, Jos;
- k) No.2, Commissioners Quarters, Miango Road, Jos;
- l) No.6, Commissioners Quarters, Miango Road, Jos and
- m) No.3, Aliyu Makama Road, Jos.

2. AN ORDER of this Honourable court directing the defendant to hand over all title documents - relating to the said properties or, to otherwise transfer the said properties to the plaintiff forthwith.

3. AN ORDER of perpetual injunction restraining the defen-

dant, its servants, agents, officers and or privies from interfering with the plaintiff's right to peaceful occupation and enjoyment of the properties afore-listed.

4. *Costs of this action.* ”

In support of its claims, the plaintiff filed an affidavit of 10 paragraphs. A memorandum of Conditional Appearance was entered on 2/8/07 by the defendant. A Notice of Preliminary Objection was also filed by the defendant on 2/11/07. A statement of Defence was later filed on 6/9/07 by the defendant in which the defendant denied each and every allegation of fact contained in the statement of claim except where a fact is expressly admitted, A counter affidavit of 21 paragraphs was also filed by the defendant against the plaintiff's Claim. In its Statement of Defence, the defendant recounted its version of the case which is that the joint committee worked in line with the formula given to it except the insertion of paragraph Q which contradicted paragraph P of the sharing formula which says *“Each State should take over in its entirety all Government buildings, offices and staff quarters located within its own territory.”* Nos. 1 - 2 being claimed by the plaintiff are Government buildings, offices and staff quarters located in the defendants territory. That in furtherance of the above, and from the minutes of the meeting with the then Head of State on the 19th of March, 1998, 10 residential houses and the 2 offices being claimed by the plaintiff were released to serve as transit camp to the plaintiff's then Military Administrator. That the Military Administrator of the defendant did not agree to the sharing of the residential houses and the office blocks to the plaintiff. It is defendant's pleading that the sharing of the said houses to the plaintiff was arbitrary contrary to the sharing formula and it was partial and undemocratic. The said formula Q gave the plaintiff undue advantage over the defendant to approbate and reprobate. That the said agreement is so far as it related to properties located within the defendant's territory is contrary to paragraph P of the sharing formula which is null and void. That contrary to the assertion of the plaintiff, the defendant has not yielded possession of any of the said properties to the plaintiff and the Notice to quit served on the plaintiff is aimed at taking legal steps to eject persons who are in illegal occupation of the defendant's premises. Lastly, a defence of res judicata is raised by an objection by the defendant.

This is so much of the history of the suit as contained in the parties' pleadings. I shall take a look at the affidavit evidence. But first, let me consider the Preliminary Objection raised by the defendant. The Notice of Preliminary Objection reads as follows:

"TAKE NOTICE that the defendant shall at the hearing of this suit contend that this Honourable Court lacks the jurisdiction to entertain same and urge this court to dismiss the suit in its entirety. GROUND OF THIS OBJECTION.

This suit is res judicata having, been litigated upon in suit No. SC.255/2000 Attorney General of Plateau State and Attorney General of Nasarawa State."

Paragraph 14 of the Statement of Defence re-affirmed this preliminary objection and added that this court lacks jurisdiction to revisit same A-G Plateau State v. A-G Nasarawa State SC.255/2000, SC.269/2002. An affidavit in support of the Preliminary Objection was also filed. A counter affidavit was filed by the plaintiff in opposing the Preliminary Objection. The affidavit in support of the Notice of Preliminary Objection, which was sworn to by one Hauwa Samuel, a Litigation Secretary in the Chambers of the Attorney General states as follows:

"3...

a) That in the year 2000 the defendant took out an originating summons against plaintiff on the sharing formula between the parties.

b) That this court gave judgment in favour of the defendant (Plateau State) especially the contributions of former Chief Justice of Nigeria, Justice Alfa Belgore."

In its counter affidavit to the affidavit in support of defendants Preliminary Objection, the plaintiff averred as follows:

"5 (e) As a result of the judgments entered against Plateau State by the High Court of Plateau State in Suits No. PLD/J/368/93 in respect of the Obi-Awe Tunga Road project and the Doma Water Projects, all of which are situated in Nasarawa State, the Defendant, as plaintiff filed two separate suits before the Honourable Court, i.e. suits No.SC.255/2000 and SC.269/2002.

(f) In suits No.SC.255/2000 and SC.269/2002, the Defendant herein, as plaintiff sought declarations that in view of the guidelines on the sharing of assets and liabilities between the two states, projects

located in each state automatically vest in such state and that liabilities for such projects located in Nasarawa State passed onto Nasarawa State. Lastly, the plaintiff in those suits sought a declaration that liability for the liquidation of the judgment debts arising from the judgments of the High Court in Suits No.PLD/J/187/92 and PLD/J/368/B 93 vested automatically in Nasarawa State after its creation in 1996.

(g) This Honourable Court consolidated the two suits and in a considered judgment delivered on Friday 22nd April, 2005 delivered its judgment wherein it entered judgment in favour of the Defendant herein based on paragraph (ff) of the summary, which had C been admitted in evidence as EXHIBIT B in those proceedings.

(h) Contrary to the depositions in paragraph 3 of the affidavit in support of the defendant's Preliminary Objection, the two suits D judgment debts arising from executed projects which are now in Nasarawa State and the interpretation of paragraph (ff) of the summary.

(i) In neither suit No.SC.255/2000 nor SC.269/2002 did the defendant herein raise or argue the issue of ownership of any of the E landed properties claimed by the plaintiff in this instant suit either directly or otherwise.

(j) Likewise, this honourable court did not consider or determine the ownership of any of the properties claimed in this action and or the effect of paragraph (21) of the summary in its judgment F of 22nd April, 2005.

(k) The subject matter of this instant suit and the issues arising therefrom are different from the subject matter and issues in Suit No.SC.255/2000 and SC.269/2002,"

G The above pungent averments by the plaintiff in its counter-claim have not been countered. They are accepted to be true and correct. They require no further elaboration as the law is very certain and clear that facts admitted require no further proof. See section 75 of the Evidence Act. *Din v. African Newspapers* (1990) 3 NWLR H (Pt.139) 392; *Daniel v. Iroeri* (1989) 1 NWLR (Pt.3) 541; *Obikoya v. Wema Bank Ltd.* (1989) 1 NWLR (Pt.96) 157. Thus, the judgment of this court in those suits: SC.255/2000 and SC.269/2002, was completely on different subject matters, although between same parties. The plea of res judicata, therefore, cannot succeed. The Preliminary

Objection lacks merit and it is accordingly dismissed.

On the main suit, I need not duplicate efforts. My learned brother, Fabiyi, JSC, has done full justice to the suit by entering judgment in favour of the plaintiff. I am in complete agreement with my learned brother. If mutual agreements entered by parties to it shall be treated lavishly, and that any party shall be allowed to unilaterally B
resile from commitment both parties have signed to bind themselves, then, the essence of any agreement or mutual contract is woefully defeated. The agreement between the two parties herein is very plain and clear. It received the blessing of the then Head of State. It will appear to me now to be an act of betrayal of trust and confidence C
reposed in each of the State Governments, if any would decide at a later date not to honour its own part of the agreement. The doctrine of PACTA SUNT SERVANDA has encapsulated the necessity of honouring undertakings which are legally enforceable. D

In conclusion, judgment is hereby entered as the claim set out in the Statement of Claim in favour of the plaintiff. I make no order as to costs.

E

ADEKEYE JSC

The parties; Nasarawa and Plateau States are two neighbouring States of the thirty-six (36) States in the Federal Republic of Nigeria. Nasarawa State was created out of the former Plateau State on the 1st of October, 1996 by virtue of Section 1 (1) of the States (Cre- F
ation and Transitional Provisions) Decree No. 36 of 1996. The two States are represented in this suit by their respective law officers. At the time of the State creation, the Federal Government set up a committee on the sharing of assets and liabilities between the two States G
on the 30th of October, 1996. The Assets and Liabilities Sharing Committee came up with a formula to be adopted by the two States in respect of the sharing of the assets in the proportion of 53% to Plateau State and 47% to Nasarawa State. Consequently, a joint com- H
mittee set up by Nasarawa and Plateau States was inaugurated on the 21st October, 1996 with the task of carrying out an appraisal of their assets and liabilities. The latter joint committee worked in line with the formula of the Federal Government Committee and submitted its reports to the two states with recommendations on how the

Assets and Liabilities were to be shared. The document produced and submitted to both states was titled “*Summary of Execution of Government White Paper on Assets and Liabilities sharing Between Plateau and Nasarawa States - The Summary.*”

Paragraph FF of the Summary provided that each of the two States shall inherit all assets and liabilities on projects situated within it. Paragraph 9 of the Summary approved the transfer of the landed properties claimed by the plaintiff in this suit together with the furniture, installations and equipment therein by Plateau State to Nasarawa State. A meeting was held on 19th March, 1998 at the Council Chambers of the Presidential Villa with the then Head of State and Commander-in-Chief of the Armed Forces, Late General Sani Abacha on the implementation of shared asset between Plateau and Nasarawa States. There was a presentation by the Military Administrator Plateau State with the Military Administrator Nasarawa State in attendance. The Military Administrator Plateau State, Colonel H. Shuaibu resolved to release certain properties to Nasarawa State in the spirit of equity, fairness, justice, brotherliness and in conformity with the Federal Government directive. These properties within Jos metropolis are -

1. No. 31 Ibrahim Taiwo Road, Jos as Governor’s lodge.
 2. Plateau State Tourism Corporation Office along Yakubu Gowon Way, Jos.
 3. Bus terminal on Tafawa Balewa Street, Jos.
 4. No.3 Old Bukuru Road, Jos.
 5. No.3 Hospital Place, Jos.
 6. No. 43 NNDC Quarters, Jos.
 7. No. 45 NNDC Quarters, Jos.
 8. No.4 Liberty Boulevard, Jos.
 9. No. 27 Ibrahim Taiwo Road, Jos.
 10. No.3 Rest House Road, Jos.
 11. No.2 Commissioners Quarters, Miango Road, Jos.
 12. No.6 Commissioners Quarters, Miango Road, Jos.
 13. No. 3 Aliyu Makama Road, Jos.
- B. Lagos Liaison Office
1. Plateau Office (Block A)
 2. Plateau Liaison Office (Block B)
 3. No. 31 Oluwole Street Apapa, Lagos

C. Kaduna Liaison Office

1. No. 23 Katuru Road
2. No, 12 Lamido Road
3. No.5 Futura Road
4. No. 56 Ribadu Road
5. No.7 Futura Road.

B

The two States entered into a written agreement dated the 6th of April, 1998 whereby the above mentioned landed properties were to be handed over by Plateau State to Nasarawa State. As a result of the above agreement, Plateau State yielded vacant possession of some of the immovable properties listed above to Nasarawa State but it encouraged its officials and agents in occupation not to vacate the immovable properties situate at -

1. No. 31 Ibrahim Taiwo Road, Jos as Governor's lodge.
2. Tourism Corporation Headquarters, Jos.
3. Bus Terminus Tafawa Balewa Road, Jos.

D

When all efforts made by Nasarawa State government to take possession of these properties failed, the government briefed the firm of Messrs Abdullahi Ibrahim & Co to assist in recovering the properties. However Plateau State government in suits No. SC.255/2000 and SC.269/2002 went to court against the Nasarawa State government claiming declarations that in view of the guidelines on the sharing of assets and liabilities between the two States, projects located in each State automatically vest in such State and that liabilities for such projects located in Nasarawa State, passed onto Nasarawa State. Also that liability for liquidation of the Four Million Naira judgment debts arising from the judgments of the High Court in suits No. PLA/J/187/92 and PLA/J/368/93 vested automatically in Nasarawa State after its creation in 1996. The Supreme Court consolidated the suits SC.255/2000 and SC.269/2002 and in the judgment delivered on Friday 22nd April, 2005 entered judgment in favour of Plateau State. The suit is now reported as A-G. Plateau State v. A-G Nasarawa State (2005) 9 NWLR part 930 pg.421 at pgs. 433-434 where the court held that -

H

“The normal principle in state creation is that all structures entirely within a state and to the exclusive use or benefits of that state, belong to that state, which must be responsible for the liabilities incurred in establishing or constructing the structures. In other words, it

is the state in which a project is situated that bears responsibility for meeting the outstanding on such project.

In cases where a structure such as a dam or an electricity sub-station is situated in one state but for use in another state having the structure on its soil but not using it will not have to participate in servicing the loan, this will be borne by the state using the facility. But in the case where the facility is enjoyed by both states, the repayment of loan will be subject to a negotiated agreement usually based on proportion of use. In the instant case, the structure procured by the loans are entirely within the territory of Nasarawa State and are far more removed from any use by Plateau State. Therefore the defendant is entirely responsible to pay the loan used to establish the structure or facility."

Plateau State rather than returning the three properties listed in the correspondence of the counsel to the Nasarawa State in its letter of 5th November, 2004 replied that the agreement executed between both parties on the 6th of April, 1998 whereby some landed properties were to be handed over by Plateau State to Nasarawa State was made in error. Plateau State referred to all the landed properties and further took steps to recover possession of all the landed properties located within Plateau State from the plaintiff by issuing notice of intention to recover premises to Nasarawa State government tenants. The Plateau State government served Notice of Owner's intention to apply to recover possession and seven (7) days Notice to quit on the Secretary to Nasarawa State Government. Nasarawa State had no other option but to file this action claiming reliefs as Plaintiff against Plateau State as follows -

1. A declaration that by virtue of the State (Creation and Transitional Provisions) Act 1996, the Report of the Plateau and Nasarawa State Joint Committee on Appraisal of Assets and Liabilities and the Agreement reached between the parties to this suit on 6th April, 1998, the plaintiff is the beneficial owner of the properties listed below in Plateau State -

- a. No. 31 Ibrahim Taiwo Road, Jos.
- b. Tourism Corporation Headquarters
- c. Bus Terminus, Tafawa Balewa Road, Jos
- d. No. 3 Old Bukuru Road, Jos
- e. No.3 Hospital Place, Jos

- f. No. 43 NNDC Quarters, Jos
- g. No. 45 NNDC Quarters, Jos
- h. No.4 Liberty Boulevard, Jos
- i. No. 27 Ibrahim Taiwo Road, Jos
- j. No.3 Rest House Road, Jos
- k. No.2 Commissioners Quarters, Miango Road, Jos
- l. No.6 Commissioners Quarters, Miango Road, Jos
- m. No.3 Aliyu Makama Road, Jos

B

2. An order of this honourable court directing the defendant to hand over all title documents relating to the said properties to the plaintiff forthwith. C

3. An order of perpetual injunction restraining the defendant, its servants, agents, officers and or privies from interfering with the plaintiff's right to peaceful occupation and enjoyment of the properties afore listed. D

Parties - Nasarawa State as plaintiff and Plateau State as defendant in the suit No.SC.214/2007 filed the requisite processes. The plaintiff filed the writ of summons on 25/7/2007 - the affidavit in support of the plaintiff's case, the statement of claim, the brief of argument, reply to statement of defence and the plaintiff's counter-affidavit to the affidavit in support of defendant's notice of preliminary objection. E

The defendant - Plateau State relied on the defendant's counter affidavit against the plaintiff's claim and brief of argument of the defendant and statement of defence. F

On the 2nd of November, 2007, the defendant Plateau State filed a notice of preliminary objection brought under the inherent jurisdiction of this honourable court contending that this court lacks the jurisdiction to entertain this suit and same must be dismissed in its entirety. The ground of this objection is that this suit is Res judicata having been litigated upon in Suit No. SC.255/2000 Attorney-General Plateau State v. Attorney-General Nasarawa State. The proper citation of the abovementioned suit is A-G Plateau State v. A-G Nasarawa State (2005) All FWLR (pt.266) pg.1227 at 1237. H

The defendant contended that from the clear provision of paragraph P of the Extract from the Report of the Committee which is comprised as follows-

"Each State should take over in its entirety all government

buildings, offices and staff quarters located within its own territory.”

The properties now claimed by the plaintiff in this case by virtue of their location are within the territory of the defendant and in accordance with the clear and unambiguous provision of the committee’s report, vest their ownership in the defendant. In the case of A-G Plateau State v. A-G Nasarawa State (2005) All FWLR (pt.266) pg.1227 at pg.1237, Belgore JSC (as he then was) held that-

“The normal principle in State succession is that all structures entirely within a state and to the exclusive use or benefit of that State belong to that State which must be responsible for the liabilities incurred establishing or constructing the structure.”

The defendant urged this court not to overrule or set aside its previous judgment between the parties. The defendant held that the agreement NAS 4 in so far as it relates to properties within the defendant’s territory is contrary to paragraph P of the sharing formula which to that extent is null and void. The defendant thereafter took necessary steps to eject persons who are in illegal occupation of the defendant’s premises. Exh. NAS 4; the agreement between entitled parties was ultra vires of the clear and unambiguous provisions of the Committee’s Report which formed the guideline for sharing of the properties listed in Exhibit 4. The defendant contended that the signing of the agreement on the 6th of April, 1998 by the then Military Administrator was done in violation of the guidelines for sharing the properties and thereby rendered null and void in law. The defendant gave the definition of “*ultra vires*” according to Black’s Law Dictionary by Brian A. Garner Eight Edition at pg. 1559 as “*unauthorized beyond the scope of powers allocated or granted by a corporate charter or by law*”

Exhibit 4 was done beyond the scope of powers allocated or granted by the Enabling Law - the States Creation Transitional Provision Act No.36 1996 which resultant effect is that the agreement is null and void and therefore without any legal effect in law. The defendant cited cases as follows Owners v. Insurance (2008) 5 SCNJ pg.109 at pg.122, Odu’a Investment Co. Ltd v. Talabi (1997) 10 NWLR (pt.535) pg.1 at pg.617. This court is urged to dismiss the suit based on the preliminary objection.

The plaintiff’s reply to the preliminary objection explained the

nature of the defendant's claim in SC.255/2000 and SC.269/2002 which formed the basis for the preliminary objection. In the consolidated suits, the defendant as plaintiff before this court sought declarations that in view of the guidelines on sharing of assets and liabilities between the two States, projects located in each state automatically vest in such state and liabilities for such projects located in Nasarawa State passed on to Nasarawa State. The defendant as plaintiff also sought a declaration that liability for the liquidation of the judgment debts arising from the judgments of the High Court in Suits Nos. PLA/J/187/92 and PLA/J/368/93 vested automatically in Nasarawa State after its creation in 1996. The Supreme Court entered judgment in favour of Plateau State. The plaintiff emphasised that the two suits determined by this court related to responsibility for payment of judgment debts arising from executed projects which are now in Nasarawa State and the interpretation of paragraph (FF) of the Summary. The plaintiff amplified the two judgments SC.225/2000 and SC.269/2002 that the defendant did not raise or argue the issue of ownership of any of the landed properties claimed by the plaintiff in the instant suit. In effect, the subject matter of this instant suit and the issues arising therefrom are different from the subject matter and issued in suits SC.225/2000 and SC.269/2002. This court is called upon to overrule the defendant's Notice of preliminary objection in the interest of justice. The core issue to determine in the defendant's preliminary Objection is whether this court lacks the jurisdiction to entertain this suit on the ground of Res judicata having been litigated upon in suit SC.225/2000; SC.269/2002 (consolidated)- A-G Plateau State v. A-G Nasarawa State (2005) All FWLR (pt.266) pg.1227. The vital legal question to ask in the circumstance of this objection is in what circumstance can a plea of Res judicata be raised?

Estoppel per rem judicatam otherwise known as estoppel by record arises where an issue of fact has been judicially determined in a final manner between the parties by a court or a tribunal having jurisdiction, concurrent or exclusive in the matter and the same issue comes directly in question in subsequent proceedings between the parties or their privies. The parties affected are stopped from bringing a fresh action before any on the same case and on the same issue already pronounced upon by the court in a previous action. For the plea to succeed, a party relying on it must establish the following facts

a. That the parties or their privies involved in both the previous and the proceedings in which the plea is raised are the same.

b. That the claim or issue in dispute in both proceedings are the same.

B c. That the Res or the subject matter of the litigation in the two cases is the same.

d. That the decision relied upon to support the plea is valid, subsisting and final.

C e. That the court that gave the previous decision relied upon to sustain the plea was a court of competent jurisdiction.

The burden is on the party who sets up the defence of estoppel per rem judicatam to establish the above pre-conditions conclusively. Balogun v. Ode (2007) 4 NWLR (pt.1023) pg.1. Dagaci of D Dere v. Dagaci of Ebuwa (2006) 7 NWLR (pt.979) pg.382, Igwego v. Ezeugo (1992) 6 NWLR (pt.249) pg.501, Dakubo v. Omoni (1999) 8 NWLR (pt.616) pg.647, Oshodi v. Eyifunmi (2000) 7 SC (pt.11) pg. 145, Ogunride v. Ajamogun (1992) 6 NWLR (pt.246) pg.156.

The plea of Res judicata is used as a shield and not as a sword. E As a successful plea constitutes a bar to any fresh action as between the parties or their privies. It is as a plea, a bar and as evidence it is conclusive. Once a plea of Res judicata has been established, the jurisdiction of the court would be ousted. Where the plea of estoppel per rem judicatam is raised, the court in determining whether the F issues, the subject matter of the two cases and the parties are same is permitted to study the pleadings, the proceedings and the judgment in the previous proceedings. The court may also examine the reasons for the judgment and other relevant facts to discern what was in G issue in the previous case. It is therefore a question of fact whether the parties and their privies, the fact in issue and the subject matter of the claim are the same in both the previous and the present case.

I shall proceed to examine the judgment in the previous proceedings of this court particularly the pleadings, the proceedings and H the judgment and the reasons for the judgment in the suit A-G Plateau State v. A-G Nasarawa State SC.255/2000 and SC.269/2002 (consolidated).

In the suit SC.255/2000 the plaintiff claims the following reliefs

a. A declaration that by the guidelines on the sharing of assets and liabilities between the plaintiff and the defendant projects located in each state automatically vest in such state.

b. A declaration that liabilities for such projects vest in such state.

c. A declaration that the judgment in Suit No.PLA/J/435/94^B delivered in 1994 against the then Plateau State Government for projects executed in areas that are now in Nasarawa State automatically vested on the defendant after its creation in 1996.

d. A declaration that the plaintiff is entitled to be refunded the 4 Million paid to the judgment creditor for the defendant.^C

In the suit SC.269/2002, the plaintiff claims the following reliefs -

1. A declaration that by the guidelines on the sharing of assets and liabilities between the plaintiff and the 1st defendant, projects^D located in each state automatically vest in each state.

2. A declaration that liabilities for such projects automatically vest in each State.

3. A declaration that the judgment in Suit No.PLA/J/368/93^E delivered in 1993 against the then Plateau State government for projects executed in areas that are now in Nasarawa State automatically vested on the 1st defendant Nasarawa State after its creation in 1996.

Parties in the suit were ad idem on the following facts -

1. That Nasarawa State constituted a part of the Plateau State^F until 1996 when it became a State on its own.

2. That the project which is the subject matter of the plaintiff's first suit was sited in and remains in Nasarawa State.

3. The judgment was given against the plaintiff in 1994 in respect of the said project for the sum of N10,474,725.52.^G

4. That following an execution process levied against it by the judgment creditor in the judgment referred to in (3) above, the plaintiff paid N4 Million out of the judgment debt.

The court made the following orders in respect of Suit Nos. H SC.255/2000 and SC.369/2002 -

“(d) I declare that by the guideline on the sharing of assets and liabilities as between the plaintiff and the defendant, the projects sited in each of the two states vest in the state where the project is situate

and it is the State in which a project is situate that bears the responsibility for meeting the outstanding liability of such project. Consequently, Nasarawa State was directed to pay over to Plateau State the sum of N10,474,725.52 being the judgment debt arising from Suit No.PLA/K/187/92 which represents the Obi Awe-Tunga Road project now in Nasarawa State. Since it has not been disputed that Doma Water Projects are in Nasarawa State, responsibility for the liability on the project must attach to Nasarawa State.”

In the instant suit SC.214/2007 between the parties, the plaintiff Nasarawa State took out writ of summons together with statement of claim seeking reliefs as per paragraph 21 against the defendant

“(a) A declaration that by virtue of the State (Creation and Transitional Provisions) Act 1996, the Reports of the Plateau and Nasarawa States Joint Committee Appraisal of Assets and Liabilities and the agreement reached between the parties to this suit on the 6th of April, 1998, Nasarawa State is the beneficial owner of the properties listed below -

a. Situate in Plateau State

i. No. 31 Ibrahim Taiwo Road, Jos

ii. Tourism Corporation Headquarters, Jos

iii. Bus Terminus Tafawa Balewa Road, Jos

iv. No.3 Old Bukuru Road, Jos

v. No.3 Hospital Place, Jos

vi. No. 45 NNDC Quarters, Jos

vii. No. 27 Ibrahim Taiwo Road, Jos

viii. No.3 Rest House Road, Jos

ix. No.2 Commissioners Quarters Miango Road, Jos

x. No.6 Commissioners Quarters Miango Road, Jos

xi. No.3 Aliyu Makama Road, Jos

b. An order Of this Honourable Court directing the defendant to hand over all title documents relating to the said properties or to otherwise transfer the said properties to the plaintiff forthwith.

c. An order of perpetual injunction restraining the defendant, its servants, agents, officers and or privies from interfering with the plaintiff’s right to peaceful occupation and enjoyment of the properties aforesaid.”

The defendants defence is that the sharing formula must be

strictly adhered to which is that -

“Each state should take over in its entirety all government building office and staff quarters located within its own territory. The properties Nos.1-12 being claimed by the plaintiff are government buildings, offices, staff quarters located in the defendant’s territory.”

Hence the defendant took necessary steps to eject persons who are in illegal occupation. On a close examination of the consolidated suits SC.225/2000 and SC.369/2002 against the current suit SC.314/2007 - this court concludes as follows:-

a. The parties in the two suits are same.

b. The claims in dispute are different in the two suits.

The suit SC.225/2000 and SC.269/2002 settled the issues of the financial obligation in respect of projects vested in each state-ment. The suit SC.214/2007 is about ownership of government build-ings, offices and staff quarters located in the defendant’s territory already shared out according to the Reports of the Plateau State and Nasarawa State Joint Committee Appraisal of assets and liabilities and the agreement reached between the parties on the 6th of April, 1998 that Nasarawa State is the beneficial owner.

c. The Res of litigation are not the same while Suit SC.214/2007 is all about immovable properties based in Plateau State. The subject matter of litigation in SC.255/2000 and SC.269/2002 are government projects situated in Nasarawa State - Doma Water projects and Awe Tunga-Obi road construction.

In the decision relied upon in SC.255/2000 and SC.269/2002 in A-G Plateau State v. A-G Nasarawa State (2005) 9 NWLR (pt.930) pg.421 at pg.435 the concurring judgment of Belgore JSC (as he then was) was quoted out of context and not applicable to this case.

The relevant portion reads -

“The normal principle in state succession is that all structures entirely within a state and to the exclusive use or benefit of that state belong to that state which must be responsible for the liabilities incurred establishing or constructing the structure.”

It is apparent that all structures referred to by my lord are Doma Water Projects and Awe Tunga-Obi road construction the subject matter of the dispute in the consolidated suits. The burden is on the defendant in this suit to establish pre-conditions already enumerated above in this judgment conclusively. The defendant only established

one factor -that the parties are same. It is a question of fact whether the parties, the fact in issue and the subject matter of claim are the same in both the previous and the present case. In sum I conclude that the plea of Res judicata cannot avail the defendant in the circumstance of this case. The preliminary objection is hereby over-ruled.

The main reliefs of the plaintiff are predicated on a statute, Section 1(1) State Creation and Transitional Provisions Act No.36 1996 and

2. Summary of execution of Government White Paper on Assets and Liabilities sharing between Plateau and Nasarawa States.

3. Meeting at the Presidential Villa with General Sani Abacha on the 19th March, 1998.

4. Agreement reached between the parties on the 6th of April, 1998.

The defendant is now making effort to wriggle out of the foregoing agreement by calling a different tune. It is the contention of the defendant that the above factors relate to properties located within the defendant's territory which is contrary to paragraph P of the sharing formula and consequently null and void. The circumstance of event between the two parties is a convenient scenario to invoke and apply the doctrine of estoppels. The defendant is estopped from disclaiming her acts. The doctrine of estoppel by conduct, though a common law principle has been enacted into Nigerian body of laws particularly our Law of Evidence. By virtue of Section 151 of the Evidence Act, when one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon, such belief, neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or such persons representative in interest, to deny the truth of that thing. Estoppel by conduct, a common law principle has gained statutory acceptance in Nigeria. It forbids a person from leading his opponent from believing in and acting upon a state of affairs only for the former to turn around and disclaim his act or omission. Ude v. Uwara (1993) 2 NWLR (pt.278) pg.638, Ige v. Arnakiri (1976) 11 SC 1, Fakorede v. A-G Western State (1972) 1 All NLR (pt.1) pg.178, Odu'a Investment Co. Ltd. v. Talabi (1991) 1 NWLR (pt.170) pg.761, Koiki v. Magnusson (1999) 8 NWLR (pt.615) pg.492. The

case of A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (pt.743) pg.706 at pgs.773-774, 794 paragraphs (b)-(f) referred to by the plaintiffs in support of their case, I must agree is on all fours with the instant case. On the 1st of October, 1996, Ekiti State was created by the States Creation and Transitional Provisions Decree No.36 of 1996. Ondo State and Ekiti State emanated from the creation of a new State out of the entire area which comprised what was the former Ondo State before Decree No.36 of 1996. In order to facilitate the smooth take off of the new State, the Federal Government constituted a committee on the sharing of assets and liabilities between Ekiti and Ondo States. The governments of Ondo and Ekiti States constituted a joint committee on the sharing of assets and liabilities of Ondo State. A sharing formula of 53.87 and 46.13 to Ondo and Ekiti States respectively was agreed upon and approved by the Federal Government in the sharing of the assets and liabilities of the Old State. A sharing formula was executed by the parties in respect of the moveable properties within the state and the companies belonging to the former Ondo State to be jointly managed. Ondo State breached the agreement of the two States. The problem started when the Military Administration ended and the civilian administration came to power. Ondo State made it impossible for the defendant - Ekiti State to participate in the management of certain companies and ventures jointly owned by them and decided by the joint Assets and Liabilities Committee. Ondo State filed an originating summons at the Supreme Court invoking the original jurisdiction of the court. The germane issue in the suit was primarily on the construction of Section 7 (1) of the States (Creation and Transitional Provisions) Decree No. 36 of 1996 which states as follows-

“Subject to subsection (2) of this section, any immovable property and any chattel which immediately before the commencement of the Decree was situate in the area comprised in a new State created by this Decree was held by a body corporate directly established by any Edict of the Military Administrator of the state out of which the new state is created or an instrument having effect as such Edict shall, by virtue of this section and without further assurance than this section vest in the Military Administrator of the new state concerned and be held by him for purpose of the government of that state and no compensation shall be payable in respect of any transfer effected

by this section.”

The Supreme Court warned itself of the cardinal principles governing the interpretation of constitutional provisions as enunciated in the case of *Rabiu and the State* (1980) 8-11 SC pg.130, that the court should whenever possible and in the interest of justice lean to the broader interpretation unless there is something in the text or the rest of the constitution indicating that the narrower interpretation will best carry out the objects and purposes of the Constitution. The court came to the conclusion from the reading of the words of Section 7 (1) subject to subsection 2 that they are concerned with the transfer of -

a. Any immovable property and any chattel.

b. Situate in the area comprised in the new states created by the Act.

c. Held by a body corporate established by an Edict of the Military Administrator of the State out of which the new state is created in this case Ondo State or an instrument having that effect. The section goes on to vest such property in the Military Administrator of the new state concerned, to be held by him for the purpose of the Government of the State. Analysis of the section demonstrates that it is concerned only with vesting in the new state the property prescribed therein and held by a body corporate directly established by a law or an instrument with legal effect of the state out of which the new is created. The intention of the section is to vest in the new state created out of an existing state all immovable properties, or any chattels situate in the area comprised in the new state.

In the lead judgment of Kutigi JSC (as he then was) he held at pg.756-757 that

“Being guided by the above principles of interpretation it is not difficult for me to see that the property or properties transferred to the defendant Ekiti State are as provided for under Section 7 (1) as set out above. The transfer in this case are to the new state defendant only. There is clearly no transfer of any property to the plaintiff Ondo State under the section. I have strenuously read through the whole of Decree 36 of 1998 over and over again and I am unable to find any provision anywhere whereby any property or chattel was vested in the plaintiff as was done for the defendant under Section 7 (1). What I am saying in short is that Section 7 (1) does not or did not

vest transfer or give any immovable property or chattel anywhere to the plaintiff as at 30th September, 1996 or at any time at all. There is no provision under Section 7 or anywhere in Decree 36 of 1996 that the defendant is not entitled to any other immovable property or chattel elsewhere apart from those provided for under Section 7 (1) that will amount to reading into the Section or Decree what is not provided therein. I cannot do that. I repeat that Section 7 (1) vested no immovable property or chattel in the plaintiff anywhere.” B

Ayoola JSC (as he then was) made it plain in the same judgment that a party is estopped and precluded from contesting in court an issue which had previously and long been settled with that party as a participant. In other words, it does not lie in the mouth of the defendant in this suit to declare the decisions of the Assets and Liabilities Sharing Committee as unconstitutional, null and void as such will result in chaos and confusion which should not be allowed to happen. In the interpretation of Section 7 (1) of the States (Creation and Transitional Provisions) Act, 1996, no reasonable court or Tribunal will impute any absurd and unjust consequences to a statute or imply in a statute consequences that will lead to absurdity and injustice. The above mentioned reasoning and conclusion in the case A-G Ondo State v. A.G Ekiti State (2001) 17 NWLR (Pt.743) pg.706 is applicable to this suit and it is thereby adopted. D E

With fuller reasons given by learned brother J. A. Fabiyi JSC in his lead judgment, I agree that there is substance in the plaintiff's claim. The claim succeeds. I adopt the consequential orders in the lead judgment as mine. F

NGWUTA JSC

I have had the privilege of reading in draft the lead judgment of my learned brother, Fabiyi, JSC. G

The resolution of the dispute between the parties rests on the interpretation of s.7 (1) of the States (Creation and Transitional Provisions) Act of 1956. It provides: H

“S. 7 (1): Subject to subsection (2) of this Section, any immovable property and any chattel which, immediately before the commencement of this Decree, was situate in the area comprised of a new State created by this Decree and was held by a body corporate

directly established by an Edict of the Military Administration of the State out of which the new State is created or an instrument having effect as such Edict shall by virtue of this Section vest in the Military Administrator of the new State concerned and be held by him for the purpose of the Government of that State and no compensation shall
 B *be payable in respect of any transfer effected by this section.”*

By the above provision at the creation of Nasarawa State, all immovable property in the area constituting the new State vested in the new State. There is no provision that immovable property in the
 C mother State will vest in that State to the exclusion of the new State. The so-called normal principle of succession referred to in AG Plateau State v. AG Nasarawa State (2005) All FWLR (Part 266) page 1227 at 1237 cannot override the provision of Section 7 of the Act. That case dealt with payment for assets in the State. The authority is
 D inapplicable to this case.

For the above and the fuller reasons in the lead judgment, I agree that the plaintiff proved its case against the defendant. Consequently, I also enter judgment for the plaintiff. I adopt the consequential orders in the lead judgment.

E

PETER-ODILI JSC

This is a suit being taken at this Court in its original jurisdiction
 F and I would quote verbatim, the Statement of Claim and the State of Defence for a clear picture of what is at stake.

STATEMENT OF CLAIM:

1. The plaintiff is the Chief Law Officer of Nasarawa State of Nigeria and is by law empowered to institute and prosecute court
 G cases for and on behalf of the State and has instituted this action as a representative of Nasarawa State.

2. The Defendant is the Chief Law Officer of Plateau State and is by law empowered to institute, prosecute and defend court cases for and on behalf of Plateau State of Nigeria. The Defendant is hereby
 H sued as a representative of Plateau State.

3. Nasarawa State and Plateau State are two of the thirty-six (36) States of the Federal Republic of Nigeria and are listed as such in Part 1 of the First Schedule to the Constitution.

4. The Plaintiff avers that Nasarawa State was created by virtue

of Section 1 (1) of the States (Creation and Transitional Provisions) Decree No.36 of 1996, out of the former Plateau State on 1st October, 1996.

5. Consequent upon the aforesaid State creation, the Federal Government set up a Committee on the sharing of assets and Liabilities between the Plaintiff and the Defendant. B

6. The Assets and liabilities Sharing Committee (hereinafter referred to as "the Committee") came up with a formula to be adopted by the two States in respect of the sharing of the assets i.e. 53%: 47% to Plateau State and Nasarawa State respectively. C

7. The Plaintiff says that sequel to the foregoing, a joint Committee was set up by Nasarawa State and Plateau State and inaugurated on 21st October, 1996 with the task of carrying out an appraisal of their Assets and Liabilities.

8. The Plaintiff further says that the Joint Committee worked D in line with the Formula given to it by the Committee and submitted its Reports to the two states with recommendations on how the Assets and liabilities were to be shared. The Reports of the Joint Committee are hereby pleaded and shall be relied upon at the trial of this suit. E

9. At a meeting which held between officials of the two states on 19th March, 1998 in the presence of the then Head of State and Commander-in-Chief of the armed Forces, General Sani Abacha, the then Military Administrator of Defendant to release and thereby F released the following properties situate in Jos, Plateau State to the plaintiff:

1. No.31 Ibrahim Taiwo Road, Jos as Governor's Lodge;
2. Plateau State Tourism Corporation Office along Yakubu Gowon Way, Jos; G
3. Bus Terminal on Tafawa Balewa Street, Jos;
4. No.3 Old Bukuru Road, Jos;
5. No.3 Hospital Place, Jos;
6. No. 43 NNDC Quarters, Jos;
7. No.45 NNDC Quarters, Jos; H
8. No.4 Liberty Boulevard, Jos;
9. No. 27 Ibrahim Taiwo Road, Jos;
10. No.3 Rest House Road, Jos;
11. No.2 Commissioners Quarters, Miango Road, Jos;

12. No.6 Commissioners Quarters, Miango Road, Jos;

13. No.3 Aliyu Makama Road, Jos.

The Minutes of the said meeting and particularly Page 5 thereof, are hereby pleaded.

B 10. Consequent upon the averment in Paragraphs 5 - 9 above, the two States entered into a written Agreement dated 6th April, 1998 whereby some landed Properties were handed over by Plateau State to Nasarawa State. The said Agreement is hereby pleaded.

C 11. The landed properties handed over to Nasarawa State are set out in the Schedule to the Agreement as follows:-

1. BUILDING WITHIN JOS METROPOLIS:

- i) No.31 Ibrahim Taiwo Road (Milad's Guest House);
- ii) No.3 Old Bukuru Road;
- iii) No.3 Hospital Place;
- D iv) No. 45 NNDC Quarters
- v) No. 43 NNDC Quarters
- vi) No. 4 Liberty Boulevard, Jos;
- vii) No. 27 Ibrahim Taiwo Road, Jos;
- viii) No.3 Rest House Road, Jos;
- E ix) -No.2 Commissioners Quarters, Mianga Road, Jos;
- x) No. 6 Commissioners Quarters, Miango Road, Jos;
- xi) No.3 Aliyu Makama Road, Jos.

2. OFFICE BLOCK ACCOMMODATION:

- F i. Tourism Corporation Headquarters, Jos;
- ii. Bus Terminus - Tafawa Balewa Road, Jos.

3. LAGOS LIAISON OFFICE:

The under-listed office blocks were shared to Nasarawa State.

- 1. Plateau Liaison Office (Block A)
- G 2. Plateau Liaison Office (Block B)
- 3. No. 31 Oluwale Apapa, Lagos.

4. KADUNA LIAISON OFFICE

The following Properties were shared to Nasarawa State

- 1. No. 23 Katuru Road;
- H 2. No. 12 Lamido Road;
- 3. No.5 Fufura Road
- 4. No. 56 Ribadu Road;
- 5. No.7 Furura Road.

12. Though Plateau State yielded vacant possession of some

of the immovable properties listed in Paragraph 11 above to Nasarawa State, it refused or failed to vacate or cause its officials, agents and/or persons in occupation to vacate the immovable property situate at:

1. No. 31 Ibrahim Taiwo Road, Jos as Governor's Lodge;
2. Tourism Corporation Headquarters, Jos; and
3. Bus Terminus - Tafawa Balewa Road, Jos

B

To Nasarawa State despite several demands to that effect.

13. The Plaintiff avers that when Nasarawa State's amicable efforts at securing possession of these Properties proved abortive, it briefed the firm of Messrs Abdullahi Ibrahim & Co. (hereinafter referred to as "the Solicitors" to assist in recovering the said Properties.

C

14. Pursuant to the Plaintiffs instruction, the Solicitors wrote a letter of demand dated 6th May, 2004 to the Executive Governor of Plateau State and owing to his failure or refusal to reply, the Solicitors further wrote letters dated 28th May, 2004, 12th August, 2004 and 25th October, 2004 to the then Administrator of Plateau State all with a view to recovering the Properties listed in Paragraph 12 above together with compensation for loss of use of the properties since 6th April, 1998 when titles in the properties became vested in Nasarawa State. The Solicitors letters are hereby pleaded and the Defendant is hereby given notice to produce them at the trial.

E

15. It was not until November 2004 that the Defendant replied the Solicitors' letter vide his letter of 5th November, 2004 wherein the Defendant contended that the Agreement between the parties made on 6th April, 1998 pursuant to the meeting held at which the late Head of State was present referred to in paragraphs 9 and 10 above, was made in error. Plateau State therefore refused to hand over the said properties as demanded. The said letter of 5th November, 2004 is hereby pleaded.

F

G

16. On the 7th November, 2006, the Defendant wrote to Nasarawa State purportedly acting under a Judgment of this Honourable Court in Suits Nos. SC.255/2000 and SC.269/2002 delivered on 22nd April, 2005 and seeking to recover all the properties listed in Paragraphs 9 and 11 (1) and (2) above. It also issued notices of intention to recover premises on occupants of the properties.

H

17. The Plaintiff says that upon his instruction, the Solicitors wrote and served on the Defendant a letter dated 9th January, 2007

wherein it debunked the Defendant's contention in his aforesaid letter of 7th November, 2006. The Solicitors' letter is hereby pleaded. Notice is hereby given to the Defendant to produce the original thereof.

B 18. Between 9th January, 2007 and 15th July, 2007, neither the Plaintiff nor his Solicitors heard from the Defendant. However, on 16th July, 2007, the Defendant caused a "*SEVEN(7) DAYS NOTICE TO QUIT*" emanating from a Senior District Court in Jos to be served on Nasarawa State for the recovery of the thirteen (13) properties referred to in Paragraphs 9 and 11 (1) and (2) above. The said C Notice is hereby pleaded.

19. The Plaintiff shall contend that Plateau State cannot rely on the decision of this Court referred to in paragraph 16 above to lay claim to any of the thirteen (13) Properties listed above.

D 20. The Plaintiff shall further contend that by all existing laws, Nasarawa State is entitled to all the properties given to it by the Agreement of 6th April, 1998.

21. WHEREUPON the Plaintiff claims against the Defendant as follows:-

E 1. A DECLARATION that by virtue of the State (Creation and Transitional Provisions) Act 1996, the Reports of the Plateau and Nasarawa States' Joint Committee Appraisal of Assets and Liabilities, and the Agreement reached between the parties to this suit on 6th F April, 1998, Nasarawa State is the beneficial owner of the Properties listed below situate in Plateau State:-

- a) No. 31 Ibrahim Taiwo Road, Jos
- b) Tourism Corporation Headquarters, Jos
- c) Bus Terminus Tafawa Balewa Road, Jos
- G d) No.3 Old Bukuru Road;
- e) No.3 Hospital Place
- f) No. 45 NNDC Quarters
- g) No. 43 NNDC Quarters
- h) No.4 Liberty Boulevard, Jos
- H i) No. 27 Ibrahim Taiwo Road, Jos
- j) No.3 Rest House Road, Jos
- k) No.2 Commissioners Quarters, Miango Road, Jos
- l) No.6 Commissioners Quarters, Miango Road, Jos; and
- m) No.3 Aliyu Makama Road, Jos.

2. AN ORDER of this Honourable Court directing the Defendant to hand over all title documents relating to the said properties or, to otherwise transfer the said properties to the plaintiff forthwith.

3. AN ORDER of perpetual injunction restraining the Defendant, its servants, agents, officers and or privies from interfering with the Plaintiff's right to peaceful occupation and enjoyment of the properties afore-listed. B

4. Costs of this action.

STATEMENT OF DEFENCE:

SAVE and except as it is herein expressly admitted the Defendant deny each and every allegation of fact contained in the statement of claim as if each were set out and denied seriatim. C

1. The Defendant admits paragraph 1-7 of the claim.

2. The Defendant in answer to paragraph 8 of the claim aver that the Joint Committee worked in line with the formula given to it D except the insertion of paragraph Q which contradicted paragraph P of the sharing formula which says *"Each State should take over in its entirety, all Government buildings, offices and staff quarters located within its own territory."* Nos. 1- 12 being claimed by the plaintiff are Government buildings, offices and staff quarters located in the Defendant's territory. E

3. In further answer to paragraph 8 of the claim, from the minutes of the meeting with the then Head of State on the 19th of March, 1998, 10 residential houses and the 2 offices being claimed F by the plaintiff were released temporarily to serve as transit camp to the Plaintiff's then Military Administrator.

4. The Defendant further avers that there is no house as Number 45 NNDC Quarters, the Numbering of the NNDC Quarters ends with 43. The indication-of No.45 on the Notice to Quit was an error G on the part of the Defendant.

5. The Defendant vehemently deny the assertion in paragraph 9 of the claim that the then Military Administrator of Plateau State agreed to share 10 residential houses and 2 office blocks to the Plaintiff. On the contrary the Defendant referred to the arbitrary sharing H of the said houses to the Plaintiff contrary to the sharing formula as undemocratic and partial.

6. In further answer to paragraph 9 of the claim, the Chairman on Buildings told the Sub-Committee that they had no business

in the sharing of houses, yet the said Committee went ahead and shared 10 residential houses and 2 offices to the plaintiff. The minutes of the Meeting with the then Head of State and Commander-in-Chief dated 19th March, 1998 is hereby pleaded and shall be relied upon at the trial. The summary of the sharing formula between the Plaintiff and the Defendant is also pleaded and shall be relied upon at the trial.

7. That in further answer to paragraph 9 of the claim, the said formula Q gave the plaintiff undue advantage over the Defendant to apportion and re-portion. The Plaintiff while laying claim to the Defendant's properties in the Defendant's territory under formula Q retained all Government buildings, offices and staff quarters in its own territory. A letter by the Plaintiff's then Military Administrator to the Chief of General Staff on the issue is hereby pleaded and shall be relied upon at the trial.

8. That in answer to paragraph 10 and 11 of the claim the Defendant avers that the said agreement in so far as it related to properties located within the Defendant's territory is contrary to paragraph P of the sharing formula which is null and void.

9. That contrary to the assertion of the Plaintiff, the Defendant has not yielded possession of any of the said properties to the Plaintiff. The Notice to Quit served on the Plaintiff is aimed at taking legal steps to eject persons who are in illegal occupation of the Defendant's premises.

10. The Defendant avers in answer to paragraph 13 and 14 of the claim that all the correspondences of the Plaintiff's Solicitor were fully replied to by the Defendant, copies of same are hereby pleaded and shall be relied upon by the Defendant. The Plaintiff is hereby given notice to produce the original.

11. The Defendant admits paragraph 15 in part and deny the assertion of the Plaintiff that it was not until November, 2004 that the Solicitor's letter was replied. The defendant's averment in paragraph 7 above is reiterated.

12. The Defendant admits paragraph 15- 16 of the claim.

13. The Defendant denies paragraphs 19 and 20 of the claim and shall at the trial put the Plaintiff to the strictest proof thereof.

14. TAKE NOTICE that at the hearing of this case the Defendant shall raise a preliminary objection on the grounds that this case

is res judicata and the Court lacks jurisdiction to revisit same.

ATTORNEY-GENERAL OF PLATEAU STATE v. ATTORNEY-GENERAL NASARAWA STATE- SC.255/2000, SC.269/2002.

15. WHEREOF the Defendant shall urge this Honourable Court to dismiss the case as lacking in merit, and as an abuse of the court's process. B

On the Reply to the Statement of Defence I shall recast it below as follows:-

REPLY TO STATEMENT OF DEFENCE:

The Plaintiff joins issues with the Defendant on each and every material allegation contained in his Statement of Defence dated 6th September, 2007, save and except as it consists of admissions of the allegations in the Statement of Claim. C

1. In further answer to paragraph 2 of the Statement of Defence, the Plaintiff says there is no contradiction in the sharing formula adopted by the Joint Committee and that it was a formula which ensured equity and fairness to all the parties. D

2. That Plaintiff denies that the 10 Residential houses and the 2 offices being claimed in this suit were only released temporarily to the Nasarawa State Government to serve as a transit camp and puts the Defendant to the strictest proof of this averment. E

3. The Plaintiff says in further response to paragraph 4 of the Statement of Defence that there is a house known as "*Number 45, NNDC Quarters*", this property had featured in all documents in the Assets and liability sharing exercise. F

4. In further answer to paragraphs 5, 6, 8 and 9 of the Statement of Defence, the Plaintiff says that at the meeting of officials of the two State Governments with the then Head of State held on 19th March, 1998, the then Military Administrator of Plateau State had in the opening remarks of his presentation, inter alia, complained of the way and manner the buildings were shared which he indeed described as "*not rational, undemocratic and partial*". He further stated the areas of the disagreement of Plateau State Government before he openly clearly and unambiguously stated the properties which Plateau State Government agreed should be released to Nasarawa State and voluntarily went ahead to declare that they were "hereby released to Nasarawa State". It was pursuant to this that the two States entered into the Agreement of 6th April, 1998. G H

5. The Plaintiff says the Defendant is in the circumstances stopped from denying that the properties were released to the Nasarawa State Government.

6. In answer to paragraph 7 of the Statement of Defence, the Plaintiff denies that it is aprobating and reprobating on the issue of sharing Assets and Liabilities.

7. WHEREOF the Plaintiff shall urge this Honourable Court to reject and or dismiss the contention of the Defendant in his Statement of Defence and enter judgment for the Plaintiff.

On the 23/1/12 date of hearing the learned counsel for the Plaintiff adopted the Plaintiff's Brief of Argument settled by Alhaji Abdullahi Ibrahim SAN. In the Brief were distilled two issues for determination which are as follows:-

1. Whether having regard to the provisions of Section 7 (1) of the States (Creation and Transitional Provisions) Act 1996, the meeting of 19th March, 1998 with the then Head of State and Commander-in-Chief on the implementation of Shared assets between Nasarawa and Plateau State (as evidenced in Exhibit NAS 3), and the entire facts of this case, the Defendant is not stopped from contesting the agreement dated 6th April, 1998 i.e. Exhibit NAS4, or any portion thereof, which transferred certain properties including buildings within Jos metropolis to the Plaintiff.

2. Whether the Plaintiff is entitled to the reliefs sought.

In a Defendant's Brief of Argument settled by F. B. Lotben Esq. Director Civil Litigation, Ministry of Justice, Plateau State. In the Brief were formulated two issues for determination, viz:-

1. Whether having regards to the clear and unambiguous provisions of paragraph P of the Extract from the Report of the Assets and Liabilities sharing committee same being fortified by this Honourable Court's decision in A.G. Plateau State v. A.G. of Nasarawa State (2005) All FWLR Pt.266, page 1227 at 1237 paras C - F the Plaintiff is entitled to the reliefs sought.

2. Whether the Plaintiff is entitled to claim the properties listed in Exhibit 4 attached to its affidavit when same was reached ultra vires the provisions of the States (Creation and Transitional Provisions) Decree, 1996 and the Federal Government White Paper Report which the guidelines for the ownership of the properties being claimed.

Arguing these two issues, learned counsel for the Plaintiff said the defendant is not contesting the entire properties released to the Plaintiff under Exhibit NAS 4. That what Defendant is contesting are those landed properties which are located in its metropolis within the territory of the Defendant. He said Nasarawa State being one of the States created in 1996, the enabling law is the States (Creation and Transitional Provisions) Act 1996 and Section 7(1) in particular. He said that law has been interpreted by this Court in *A.G. Ondo State v A.G. Ekiti State* (2001) 17 NWLR (Pt. 743) 706 at 756 - 757. B

Learned counsel for the Plaintiff further contended that in the case in hand the sharing of the assets and liabilities of the Old Plateau State was done with the active participation of the Defendant and its officials. That the official position of the Defendant was stated by its then Military Administrator Col. I. Shuaibu in Exhibit NAS 3 and it was thereafter that the parties entered into a formal agreement Exhibit NAS 4 which agreement is consistent with the spirit and letter of the formula of the Assets and Liabilities Sharing Committee for Plateau and Nasarawa States which followed the model of previous Assets Sharing Committees referred to in *A.G. Ondo State v A.G. Ekiti State* (supra). C D E

It was canvassed for the Plaintiff that the Defendant now wants to resile from some of the contents/agreement contained in Exhibit NAS4 which had long been settled which repudiation the Defendant is stopped by law from doing. He cited *Sonnar Ltd v Nordinol* (1987) 4 NWLR (pt.66) 520 at 543; *A.G. Lagos State v Dosunmu* (1989) 3 NWLR (Pt. 11) 557 etc. That Section 7 (1) of the Act did not vest any property in the Defendant and in view of the agreement reached by the parties, it is wrong for the Defendant to proceed to lay claim to those properties located in Jos simply because of the territorial advantage. He said the philosophy underlying the ownership of the assets of a dissolved State is that save for the one vested by Section 7, all other assets remain joint properties of the successor States, until shared by them. He cited *Olowofoye v A.G. Oyo State* (1996) 10 NWLR (Pt.477) 190 at 219; *A.G. Ondo State v A.G. Ekiti State* (supra) P. 784. He said reliefs being sought are consequential to issue number 1 argued above and a consequential order is one which gives effect to the judgment it follows. Consequential reliefs can be granted even where they are not specifically claimed and that is not F G H

the case here. He referred to *Iloria v Dakwo* (2003) 11 NWLR (Pt.830) 53 at 87; *Alao v C.O.P.* (1987) NWLR (Pt.64) 199 at 206.

For the Defendant, learned counsel on their behalf stated that the clear provision of paragraph P of the Extract from the Report of the Committee which is comprised in this phrase:

B *“Each State should take over in its entirety all Government buildings, offices and staff quarters located within its own territory”.*
He referred to paragraphs 2 and 3 of Our Statement of Defence. That the position of the law is that, where the provisions of a statute
C or a document are clear and unambiguous as in this instance, the Court is enjoined to give its natural and ordinary meaning and not to resort to any external aid in a bid to construe the provisions of same. He cited *Basinco v. Wonemann - Line* (2009) 6 SCNJ 222 at 240; *Plateau State v A.G. of Nasarawa State* (2005) All FWLR (Pt.266)
D 1227 at 1237.

For the Defendant, it was submitted that Exhibit 4 attached to the Plaintiff’s affidavit was reached ultra vires the clear and unambiguous provisions of the Committees’ Report which formulated the guidelines for the sharing of the properties listed in Exhibit “4” being
E claimed by the sharing of the Plaintiff. That the signing of the Agreement on 6th of April, 2006 by the then Military Administrator was done in violation of these guidelines which thus renders same null and void in law. That there was no basis for Exhibit 4 attached to the
F Plaintiff’s affidavit other than doing same beyond the scope of powers allocated or granted by the Enabling Law (in this case) the States Creation Transitional Provisions) Act No. 36, 1996 which resultant effect is that, the agreement is null and void and therefore without
G any legal effect in Law. That as the position of the Law is that, where an act is void, then it’s in Law a nullity. He cited *Owners v Insurance* (2008) 5 SCNJ 109 at 122; *Odu’a Investment Co Ltd v. Talabi* (1997) 10 NWLR (Pt.535) 1 at 617. The doctrine of *Res Judicata* upon which the defendant based their Preliminary Objection has not been shown to avail the defendant. The supporting affidavit of the Preliminary
H Objection being a short 4 paragraph averments are reproduced below thus:-

AFFIDAVIT IN SUPPORT:-.

1. That I am a litigation Secretary in Chambers of the Attorney-General and by virtue of my position, I am conversant with this

(sic) facts of the case.

2. That I know as a fact that the Honourable Attorney-General and team are handling this matter.

3. That L. I. Walle of counsel is of the Honourable Attorney - General's team members informed me in the Chambers of the Attorney-General on 29th October, 2007 at about 11 am and i verily B believed him to be true as follows:-

(a) That in the year 2000 the defendant took out an originating summons against the Plaintiff on the sharing Formula between the Parties.

(b) That this court gave judgment in favour of the defendant C (Plateau State) especially the contributions of former Chief Justice of Nigeria, Justice Alfa Belgore.

4. That I swear to this Affidavit in good faith believing the contents thereof to be true in accordance with the Oaths Act, 1990. D

This affidavit in support really says nothing and not sufficient, since it lacks particulars and no linkage between the suit aforesaid and this current one under consideration. The Preliminary Objection lacks merit and is hereby dismissed.

MAIN SUIT: E

The Defendant's standpoint is that Exhibit 4, the Agreement reached by both parties - was got outside of the powers provided in the clear and unambiguous provisions of the Committee's Report which formed the guidelines for the sharing of the properties listed in that Exhibit. That the signing of the Agreement aforesaid on the 6th F April, 2006 by the then Military Administrator was done in violation of those guidelines which rendered same null and void in law. That the said agreement was beyond the scope of powers allocated or granted by the Enabling Law (in this case) the State Creation Transitions Provisions) Act NO.36, 1996. G

The Plaintiff's position is that the Defendant is stopped from contesting the agreement aforesaid ie. Exhibit NAS 4 since it was within the ambit of the enabling law being the State (Creation and Transitional Provisions) Act, 1996 Section 7 (1) thereof in particular H which stipulates as follows:-

"Subject to subsection (2) of this Section, any immoveable property and any Chattel which, immediately before the commencement of this Decree, was situate in the area comprised of a new State

created by this Decree and was held by a body corporate directly established by an Edict of the Military administrator of the State out of which the new State is created or an instrument having effect as such Edict shall, by virtue of this Section, vest in the Military Administrator of the new State concerned and be held by him for the purpose of the government of that State and no compensation shall be payable in respect of any transfer effected by this section”.

The above provision has been interpreted in settled terms by this court in Attorney-General Ondo State v. Attorney-General Ekiti State (2001) 17 NWLR (Pt.743) 706 in circumstances similar to the one under discourse. I see it very useful to quote excerpts from that judgment with the contributions from the various justices in order that the full implication of the law is on full display without any clouds. Kalgo JSC at page 777 stated thus: - A.G. ONDO STATE v A.G. EKITI STATE (Supra) at page 777, Kalgo JSC stated -

“I now come back to the interpretation of Section 7 (1) of the decree. There is no doubt in my mind that on the strict interpretation of Section 7(1), only Ekiti State was vested with some properties and that the new Ondo State was not. But on the liberal interpretation of constitutional provisions following Nafiu Rabi'u's case and the Tukur's case, it is my respectful view that the old Ondo State as the mother State, originally owned everything, and it is the intention of the law makers that the properties owned by the old Ondo State, less what Section 7(1) vests in Ekiti State. This interpretation would be consistent with the smooth working of the system. It is common ground that the case of Ondo and Ekiti States was just one of many States created under the 1999 Constitution. And the fact that the Plaintiff and Defendant agreed on the sharing formula as shown in the affidavit evidence filed by the defendant is not inconsistent with the Constitution, since both parties agreed to do so and is binding on them”.

“When the composition of the community comprising a State changes as fundamentally as in this case by a redefinition of the areas comprising the State, it will be legalism carried to rather absurd limits to hold that the old order remains. What is real is that the old state is dissolved and new entities are created, none of them representing and exclusively succeeding to the assets and liabilities of the dissolved State” Per Ayoola JSC at page 792 in the same case: - A.G. Ondo State v A.G. Ekiti State (supra) per Katsina-Alu, JSC (as he then was)

at page 784 where he stated.

“I think any property not covered by Section 7 (1) remains the joint property of Ondo State and Ekiti State surely it was in realization of this that the Federal Government set up the assets sharing Committee.”

This Court as shown above has stated through the justices a settled position in the interpretation of Section 7 (1) of that State (Creation and Transitional Provisions) Act 1996 upon the basis that the language was plain, clear and unambiguous and should be given its interpretation accordingly making sure that no absurdity was allowed into the outcome. Furthermore was established in that case of A.G. Ondo State v A.G. Ekiti State (supra), is that it was not open to any of the parties to resile from the agreement reached between them. In that regard it is easy to see that it cannot be as Defendant wants this court to accept, an optional or for them to seek to re-interpret or translate an agreement reached by the leader of their team, being the Military Administrator of their State at the material time and acting on their behalf. Worse still for the Defendant’s attitude and wish is the fact that the agreement was reached, concluded and signed in the presence and chairmanship of the Head of State with his officers in attendance. This attempt by the defendant is reckless with capacity to encourage lawlessness and disobedience to constituted authority and the Rule of Law which outcome would not rule out chaos. People or those in charge of institutions or government at every level should be cautious and wary of taking steps that are definitely not in keeping with the peace and order of this nation. The Defendants are bound and stopped from going against that Agreement, Exhibit NAS 4.

From the foregoing and the fuller reasons of my learned brother, John Afolabi Fabiyi JSC, I find for the Plaintiff who is entitled to the reliefs sought. I abide by the consequential orders in the lead judgment.