

SUPREME COURT OF NIGERIA
FRIDAY 7TH DECEMBER, 2012. SC. 179/2001
CORAM:- M. S. MUNTAKA-COOMASSIE,
J. A. FABIYI, B. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC

DR. ADEWUNMI ADEYEMI-BERO APPELLANT
(Substituted by order of court dated
17th November 2008)

AND

1. LAGOS STATE DEVELOPMENT
PROPERTY CORPORATION

2. REGISTRAR OF TITLES RESPONDENT

STATUTES - Interpretation - Role of Judge - FBN v. Mainada - A Judge should be firm and pungent in interpretation of law - But should be short of being a legislator (H1)

APPEALS - Court of Appeal - “Nemo dat quod non habet - Use of - The doctrine was not wrongly used - As the court rightly clarified the effect of Decree 21 of 1996 - Which amended error in Decree 54 of 1993 (H2)

SUPREME COURT - Judgment - Review - For the Court to depart from its previous decision - There must be real likelihood of injustice - That the decision was given per incuriam - And that the issue of public policy is involved (H3)

JURISDICTION - Interpretation - Ouster clause - As Decree 21 of 1996 contains such clause - Effect must be given to the clause - And court is to decline jurisdiction (H4)

PROPERTY LAW - Property right - Decrees 54 & 21 - Validity of - As Decree 54 vested property rights in appellant - Removal of those rights were valid under Decree 21 - Which vested the rights in respondents (H5)

JUDGMENTS - Actions - Res judicata - Application - Since the judgment upon which estoppel per rem judicatam was based is void - The doctrine cannot be applied in present suit (H6)

FACTS

The original appellant (substituted by present appellant in the Supreme Court) was a former Permanent Secretary in Lagos State and had initially been the owner of the landed properties located at Plot 177 Victoria Island- Lagos, No. 25, Cooper Road, Ikoyi-Lagos and No. 1, Obanikoro Road Ikoyi, Lagos. Upon his indictment by an investigation Panel, the properties were forfeited to the State Government by virtue of the Public Officers and other Persons (Forfeiture of Assets Order) 1976 Legal Notice No, 23 of Lagos State 1976, etc. Consequently, the said properties were vested in 1st respondent. Sometime in 1993, Gen. I. B. Babangida promulgated the Forfeiture of Assets (Release of Certain Properties) Decree No. 54 of 1993 with a commencement date of 23/08/93. By Section 1 of this Decree, several properties forfeited to the Federal and State Governments were released to their owners. The properties of appellant were included in the latest directive. Appellant therefore demanded for the release of the aforementioned properties. The State Government released one of the forfeited properties: No. 1, Obanikoro Road, Ikoyi, but declined to release the other two properties.

Being dissatisfied, appellant on the 05/06/95 instituted suit No. M/415/95 before the State High Court, claiming that the remaining two properties have reverted to him. In his judgment on 11/06/1996, Ilori J granted the claims of appellant. However, the Federal Military Government under Gen. Sani Abacha promulgated the Forfeiture of Asset (Release of Certain Forfeited Properties, etc) (Amendment) Decree No. 21 of 1996. The Decree had a retrospective commencement date of 6th June 1995. This latest Decree amended item 2 of the former Decree and nullified any judgment in civil proceedings brought in respect of the subject matter of the Decree. Thereafter, 1st respondent instituted suit no. M/249/97 claiming for a declaration that the judgment in suit no. M/415/95 is null and void by virtue of Decree No. 21 of 1996 and for a declaration that by virtue of Decree No. 21 of 1996, the ownership of the properties in question remains in 1st respondent. Appellant on his part argued that the claims of 1st

respondent were res judicata as a result of the judgment in suit no. M/415/95. In his judgment, Alabi J dismissed the claims of 1st respondent on the basis of res judicata. Aggrieved, 1st respondent filed appeal in the Court of Appeal, Lagos. The court allowed the appeal. Not satisfied, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Was the correctness of the decision of Ilori, J. in Suit M/415/95 an issue for determination before the Court of Appeal and if it was, was the Court of Appeal right in holding that Ilori J. was wrong in his interpretation and application of the provisions of Decree 54 of 1993.

2. Was the Court of Appeal right in upholding the validity and or constitutionality of Decree 21 of 1996 having regard to the provisions of section 40 of the 1979 Constitution (now Section 44 of the 1999 Constitution) and the division of legislative and judicial powers as between the legislature and the Judiciary?

3. If the answer to Issue 2 is in the affirmative, was the Court of Appeal right in holding that the provisions of Decree 21 of 1996 rendered the judgment of Ilori J. a nullity and that Alabi J. should have so pronounced?

4. Was the Court of Appeal right in holding that the jurisdiction of Ilori J. to entertain the Appellant's case was ousted by virtue of the provisions of decree 21 of 1996?

5. Was the Court of Appeal right in holding that the judgment of Ilori J. does not constitute estoppel per rem judicatam as between the Appellant and the Respondents?

6. Was the Court of Appeal right in holding the deletion of the Appellant's name from the Schedule to Decree 54 of 1993 by Decree 21 of 1996 had the effect of vesting Title to the properties in dispute in the respondent having regard to the provisions of Section 6 of the Interpretation Act, Laws of the Federation of Nigeria 2004.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

STATUTES - Interpretation - Role of Judge

1. I would like to say at this point to leave no room for uncer-

tainty and that is that Ilori J. was correct to do what he did, at the time he did so and in the context of the prevailing legislation that is Decree 54. This is so because all he did was to state the effect of that Decree and no more. I would like to anchor on what my learned brother, Fabiyi, JSC said in the lead Judgment in First Bank of Nigeria Plc v. Alhaji Salmanu Mainada in the Unreported case of this Court in SC 204/2002 of 25th May, 2012. He stated

“I agree that a Judge should be firm and pungent in the interpretation of the law but such should be short of a judge being a legislator.” (p. 3761 A)

Court of Appeal - “Nemo dat quod non habet - Use of

2. Also learned counsel for the Appellant had concern over what he termed the Court of Appeal’s wrong importation of the concept of “Nemo Dat Quod Non Habet” in its overruling the interpretation of Decree 4 by Ilori J. The Court of Appeal in bringing in that principle of Nemo Dat Quod Non Habet had applied the provisions of the Federal government (Supremacy and Enforcement of Powers) Decree 13 1984.

The Court of Appeal was right in what it did in properly clarifying the effect of Decree 21 of 1996 since that Decree amended error in Decree 54 of 1993 in that it stated that the Federal Government ought not to have made the release of the said properties to the Appellant same having been forfeited by a process of the Lagos State Government within its authority which authority the Federal Government recognised and went along with, that is the Legal Notices Nos. 13 and 33 of 1977 and 1978. Therefore the use of the doctrine, “Nemo Dat Quod Non Habet” was neither an importation nor wrongly used. (pp. 3761 C/3762 C)

SUPREME COURT - Judgment - Review

3. The point has to be made and quickly too and that is that indeed this court has the power and is entitled to depart from its earlier decision when it is called upon to effect a review of such a decision and departure therefrom but the conditions have to be right for such a radical action. Those conditions

have been held to be:

(1) that the previous decision is clearly wrong and there is real likelihood of injustice being perpetrated;

(2) that the earlier decision was given per incuriam

(3) that a broad issue of public policy was involved.

(p. 3767 D)

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STATUTES - Interpretation - Ouster clause

4. It needs be said that where a Decree as that of 21 of 1996 contains an ouster clause the non negotiable path is that effect to that ouster clause is given and the court is only wise to decline jurisdiction. That is the right way to go even in keeping with Constitutionalism.

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Also to be dealt with is the fact that Decree 21 was promulgated pursuant to the legislative powers vested in the Head of state as an amendment to cure the defect or error in Decree 54 of 1993. That the effect of that Decree is akin to nullifying the effect of the judgment of Ilori J. and looked like a legislative judgment or given a backdated effect changes nothing from the stature of the Decree which stands solid and cannot be pushed around. (p. 3771 A)

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STATUTES - Property right - Decrees 54 & 21 - Validity of

5. From all that was said under Issue 2, the questions raised in issues 3, 4 and 6 have been effectively answered save to say that I do not see from where the Appellant got his idea of a partial repeal of the Decree 54. This is because what I see before me was a Decree 54 promulgated in 1993 by the Head of State then within his powers and that Decree being amended by the Head of State who was in power in 1996 by Decree 21. Just as effect was given to Decree 54 which validity could not be questioned in the same manner is the Decree 21 valid and cannot be inquired into and should be given effect to. It is in that light that I would say that just as Decree 54 vested the property rights to the appellant, the removal of those rights were valid under Decree 21 which then vested the rights in the Respondents and that is the end to it. The three questions or issues are answered positively. (p. 3773 E)

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Res judicata - Application

- 6. It can be discerned from what has been said earlier, that Alabi J. should have gone on to declare invalid or null and void and of no effect, the judgment of Ilori J. which judgment and proceedings had been nullified by Decree 21 of 1996. If the intervening Decree 21 had not taken place and a suit based on Decree 54 with the same parties and subject matter then the new suit would have been caught up by the principle of estoppel per rem judicatam but something fundamental had happened in between the two suits and Alabi J. ought to have held the bull by the horns and made the necessary declaration of nullity on the judgment of Ilori J.**
- It is my considered view, with the greatest respect, that since the judgment upon which the doctrine of estoppel per rem judicatam was based is a void one, the doctrine cannot operate or be applied to this suit.**
- I adopt what the Court of Appeal said and I agree totally with it in this issue, that a judgment declared invalid cannot operate as a res judicata. (p. 3774 C)**

REPRESENTATION

- A. B. Kasunmu, for the Appellant
- A. A. Adegbonmire, Cephas Caleb for the 1st Respondent
- Lawal Pedro SAN - Solicitor General, Lagos State, S. Y. Kolawole (Mrs.) - Director Civil Litigation, Justine I. Jacob - Senior State Counsel, for the 2nd Respondent

CASES REFERRED TO

- Onwuka v. Maduka (2002) 9-10 SC 142
- Ajao v. Alao (1986) 5 NWLR (pt. 45) 805
- Okulate v. Awosanya (2000) 2 NWLR (pt. 646) 530
- Din v. A-G Federation (1988) 4 NWLR (Pt. 876) 147
- Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134
- Emuze v. V.C. Uniben (2002) 8 NWLR (Pt. 828) 378
- Adesanoye v. Adewole (2000) 5 SC 124
- Bucknor-Maclean v. Inlaks Ltd (1980) 8-11 S.C. 1
- Odi v. Osafire (1985) 1 NSCC 14

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

Lakanmi v. A-G Western Region (1970) 6 N.S.C.C 143

A-G Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552

Osadebey v. A-G Bendel State (1991) 1 NWLR (Pt. 169) 525

FRN v. Ifeagwu (2003) 15 NWLR (Pt. 842) 113

Cardoso v. Daniels (1986) 2 NWLR (Pt. 20) 1

B

STATUTES REFERRED TO

Forfeiture of Assets (Release Certain Forfeited Properties etc.) Decree No. 21 of 1996, s. 2(3)

Forfeiture of Assets (Release of Certain Properties) Decree No. 54 of 1993, s. 1

Federal Government (Supremacy & Enforcement of Powers) Decree 13 1984, s. 1(2)(b)(i)

Interpretation Act LFN 2004, s. 6

Evidence Act, ss. 52, 53

Constitution of Federal Republic of Nigeria 1999, ss. 6(6), 44

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LEAD JUDGMENT BY PETER-ODILI JSC

The original appellant in this appeal, Chief J. O. Adeyemi-Bero was the 1st respondent in the Court of Appeal, Lagos Division. The 1st Respondent in this appeal, Lagos State Development & Property Corporation had appealed to the Court of Appeal against the judgment of the Lagos Judicial division of the High Court of Lagos State delivered on the 15th day of September, 1998 by the Honourable Justice Ade Alabi as he then was. The said judgment dismissed the claims sought by the 1st Respondent's Originating summons dated the 14th day of May, 1997 as amended, pursuant to the leave of the trial Court issued on the 30th day of June, 1998. The 1st Respondent's claim was in the main for a declaration nullifying a previous judgment delivered by the Honourable Justice S. O. Ilori in Suit No. M/415/95: a declaration of title to the properties located at Plot 177 Victoria Island, Lagos and No. 25, Cooper Road, Ikoyi Lagos under and by virtue of the Forfeiture of Assets (Release Certain Forfeited Properties etc.) (Amended) Decree No. 21 of 1996; consequential declarations and other injunctive reliefs.

The Respondents' claims were dismissed on the grounds that:

(ii) They could not be entertained as they were *res judicata*

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and

(ii) It would amount to the High Court adjudicating as an Appeal Court over its own decision.

The facts would be stated hereunder for a fuller understanding of the background of this appeal.

B **FACTS:**

The original Appellant in this appeal was a former Permanent Secretary who was in the employment of the Lagos State Government and had initially been the owner of the landed properties located at Plot 177 Victoria Island, Lagos, No. 25, Cooper Road, Ikoyi, Lagos and No. 1, Obanikoro Road Ikoyi, Lagos. On the indictment of the original Appellant by an investigation Panel set up by the Lagos State Government in 1976, these properties were forfeited to the Lagos State Government by virtue of the Public Officers and other Persons (Forfeiture of Assets Order) 1976 Legal Notice No. 23 of Lagos State 1976, Determination of Interests in State Lands (No. 1) Order LSLN 9 of 1976 made pursuant to Section 1 of the Determination of Certain interests in Land Edict No.3 of 1976. The Lagos State Government, subsequent to the forfeiture of the said properties, vested the properties in the Lagos State Development and Property Corporation (the 1st Respondent"). See pages 79-86 of the record for the copy of Certificate of Occupancy vesting Plots 175-178 in the 1st Respondent. Sometime in 1993, the Federal Military Government of General Ibrahim Badamasi Babangida, the then Head of State, promulgated the Forfeiture of Assets (Release of Certain Properties) Decree No. 54 of 1993 ("Decree No. 54 of 1993"), with a commencement date of 23rd August 1993. By Section 1 of this Decree, several properties forfeited to the Federal and State Governments as identified in the second column of the schedule to the Decree, were released to the persons in the first the schedule. The original Appellant's name was included as item 3 of the schedule with the corresponding properties of Plot 177 Victoria Island Lagos, No. 25, Cooper Road, Ikoyi, Lagos and No. 1, Obanikoro Road Ikoyi, Lagos.

H After the promulgation of the said Decree, the original appellant demanded the release of the aforementioned properties from the Lagos State Government, through an application made to the Military Administrator of the State. The Lagos State Government released one of the forfeited properties: No. 1, Obanikoro Road, Ikoyi,

but declined to release the other two properties. The original Appellant being dissatisfied with this instituted Suit 5 No. M/415/95 against the Military Administrator of Lagos State, the Attorney- General of Lagos State and the Registrar of Titles, by an Originating Summons filed on the 7th July, 1995. By this Originating Summons the original Appellant claimed principally for a declaration that under and by virtue of decree 54 of 1993, the properties at Plot 177 Victoria Island, Lagos, and No. 25, Cooper Road, Ikoyi, Lagos had reverted to him and are vested in him as owner.

The Honourable Justice S. O. Ilori delivered judgment in that suit on the 11th day of June, 1996 and answered the question in the affirmative thereby granting a declaration that the properties reverted to the original Appellant by virtue of the provisions of Decree 54 of 1993. Subsequent to the delivery of this judgment on the 3rd of July, 1996, the Federal Military Government of General Sani Abacha, promulgated the Forfeiture of Asset; (Release of Certain Forfeited Properties etc) (Amendment) Decree No. 21 of 1996 ("Decree No. 21 of 1996"). This Decree had a retrospective commencement date of 6th June, 1995, a date before the institution of the action in Suit No. M/415/95. Decree No. 21 of 1996 amended Decree No. 54 of 1993 by deleting item 2 of the earlier Decree. Item 2 contained the name of the original Appellant and the above-named properties. The Decree under Section 2 nullified any judgment delivered in civil proceedings brought in respect of the subject matter of the Decree.

After the 1st Respondent had instituted Suit No. M/249/97 which has given rise to this appeal by an Originating Summons dated 14th May, 1997, leave to amend the Originating Summons was granted by order of the learned trial Judge, Honourable Justice Ade Alabi on 1st July, 1998. By the Amended Originating summons, the 1st Respondent sought two main reliefs and other consequential reliefs. The first main relief being a declaration that the judgment in the earlier Suit No. M/415/95 is null and void by virtue of Decree No. 21 of 1996, while the second main relief was for a declaration that by virtue of decree No. 21 of 1996, the ownership of the properties in question remains in the 1st Respondent. The other reliefs were, in substance, consequential declarations and injunctive reliefs. The original Appellant initially filed a Notice of Intention to Rely on Preliminary Objections dated 16th March, 1998 (see page 26 of the record)

to the Summons, on the ground that the action is res judicata, amounts to judicial review and is unconstitutional, However, on the 29th day of April, 1998, Mr. Kehinde Sofola, SAN (now of blessed memory, counsel to the original Appellant informed the Court that he no longer wished to move the Notice of Preliminary Objection and was ready
B for the argument on the substantive application. The Notice of Preliminary Objection was therefore struck out by the High Court.

At the hearing of arguments on the Originating Summons, Mr. Sofola, SAN, in his response to the 1st Respondent's arguments
C in support of the Originating summons, argued that the Court had no jurisdiction to entertain the Respondent's claims for the reasons that it would amount to sitting on appeal over Ilori's judgment and that the claims were res judicata as a result of the previous judgment in Suit No. M/415/95. Honourable Justice Ade Alabi dismissed the
D claims of the 1st Respondent in his judgment for the above reasons urged by Mr. Kehinde Sofola, SAN. The 1st Respondent claims being dismissed with the said judgment of the learned trial Judge, appealed to the Court of Appeal by a Notice of Appeal dated the 18th day of December, 1998 and amended pursuant to the order of the lower
E Court made on the day of September, 2000.

THE DECISION OF THE COURT OF APPEAL:

At the Court of Appeal, parties filed their respective briefs, 1st Respondent (then as Appellant), filed its Appellant's Brief, while the original Appellant (then the 1st Respondent) also filed his brief. The
F 1st Respondent also filed a Reply Brief to the said brief. This Reply Brief is the whole of the Supplementary Record of Appeal. The Court of Appeal allowed the 1st Respondent's Appeal and held among others, that the Honourable Justice Ade Alabi (as he then was) was wrong
G to have held that the doctrine of res judicata was applicable to the 1st Respondent's case and for failing to hold that the effect of Decree 21 of 1996 was a reversal of the decision of Ilori's J decision. The judgment of the Court of Appeal is at pages 211-243 of the Record.

THE APPELLANT'S APPEAL:

H Being dissatisfied with the said decision, the original Appellant appealed to this Honourable Court. On the 17th of November, 2008, and upon an application made by Dr. Adewunmi Adeyemi-Bero, this Honourable Court granted him leave to be substituted as the Appellant in this Appeal by reason of the fact that the original

Appellant, Chief J. O. Adeyemi-Bero died on the 15th day of August. 2008. References to the “Appellant” in this Brief Judgment shall be references to Dr. Adewunmi Adeyemi-Bero. On the 25th of September, 2012 date of hearing, learned counsel for the Appellant adopted the Amended Appellant’s Brief of argument filed on 12/1/09. In it were crafted six (6) issues for determination as follows:-

1. Was the correctness of the decision of Ilori, J. in Suit M/ 415/95 an issue for determination before the Court of Appeal and if it was, was the Court of Appeal right in holding that Ilori J. was wrong in his interpretation and application of the provisions of Decree 54 of 1993.

2. Was the Court of Appeal right in upholding the validity and or constitutionality of Decree 21 of 1996 having regard to the provisions of section 40 of the 1979 Constitution (now Section 44 of the 1999 Constitution) and the division of legislative and judicial powers as between the legislature and the Judiciary?

3. If the answer to Issue 2 is in the affirmative, was the Court of Appeal right in holding that the provisions of Decree 21 of 1996 rendered the judgment of Ilori J. a nullity and that Alabi J. should have so pronounced?

4. Was the Court of Appeal right in holding that the jurisdiction of Ilori J. to entertain the Appellant’s case was ousted by virtue of the provisions of decree 21 of 1996?

5. Was the Court of Appeal right in holding that the judgment of Ilori J. does not constitute estoppel per rem judicatam as between the Appellant and the Respondents?

6. Was the Court of Appeal right in holding the deletion of the Appellant’s name from the Schedule to Decree 54 of 1993 by Decree 21 of 1996 had the effect of vesting Title to the properties in dispute in the respondent having regard to the provisions of Section 6 of the Interpretation Act, Laws of the Federation of Nigeria 2004.

For the 1st Respondent, learned counsel on its behalf adopted their Amended 1st Respondent’s Brief of argument filed on 30/9/09 and utilized the issues as couched by the Appellant. The learned counsel for the 2nd Respondent adopted their Brief filed on 12/5/09 and deemed filed on 8/10/09. He also used the issues as framed by the appellant.

It seems to me proper to utilize the issues as put forward by the

Appellant and adopted by the Respondents in order to avert a possible confusion in me attempting to redraft issues in this appeal so as to allow a free flow of the submissions from either the Appellant, 1st Respondent or the 2nd Respondent.

ISSUE NO.1

B Was the correctness of the decision of Ilori J. in Suit M/415/95 an issue for determination before the Court of Appeal and if it was, was the Court of Appeal right in holding that Ilori J. was wrong in his interpretation and application of the Provisions of Decree 54 of 1993.

C Arguing along the lines of the Appellant's Brief settled by Prof. A. B. Kasunmu, SAN, learned counsel on Appellant's behalf contended that the comments of the learned Justices of the Court of Appeal we wrongly made especially in their importation of the concept of "Nemo Quod Non Habet" to the facts of this case. That the court below was wrong as it failed to appreciate that the Appellant's properties were forfeited under two separate legal provisions. That the appellant's properties No. 25 Cooper Road, Ikoyi, Lagos and No. 1 Obanikoro Street Ikorodu and Plot 306 Victoria Island, were the subject matter of forfeiting the Investigation of Assets (Public Officers and other Persons) Decree of 1968. The properties are item No. 4 in the Lagos State Legal Notice No, 1976, which was made pursuant to the 1968 Decree. He stated that it is to be noted that the preamble to this Legal Notice is instructive since it underscores the fact of the Lagos State Government acting as an agent and under the authority of the Federal Government. That if the Federal Military Government gave authority for the forfeiture, it follows that Federal Government can release the properties from Forfeiture which the Federal Government did in this instance under Decree 54 of 1993

F Learned counsel for the Appellant further submitted that under a Military Regime as enshrined by Section 1 of Decree 1 of 1984 the Federal Military government has powers to legislate over all matters within the Federation. He stated on that the trial court, per H Ilori J. had the power to interpret a statute so as to give effect to the intention of the Legislature especially when the words used therein do not give full effect to the clear intention of the legislation. That it was in keeping with that legal principle that the trial judge was right to give effect to the intention of the Federal Government in its legislative

duty in the release of the properties listed in the Schedule to the persons so named pursuant to Decree 54 of 1993.

Mr. Adegbonmire had the 1st Respondent's Brief settled and it was therefore argued for the 1st Respondent that by the provisions of Decree 54 of 1993, the properties covered by Legal Notice No. 23 of 15 1976 are not among those released to anybody except those of the 1st Respondent which was done in an obvious error, which error was corrected by Decree 21 of 1996. That the argument of the Appellant in respect of the "consent" in the preamble of the Legal Notice was misconceived. He said the word "consent" signifies a concurrence of wills or an agreement between the State and Federal governments to confiscate the properties listed in the Legal Notice for the benefit of the people of Lagos State as opposed to the word "authorise" which connotes "to empower" to give a right or authority to the act" which was not operative in the case in hand.

Learned counsel for the 1st Respondent went on to contend that the preamble to the Legal Notice rather than support the case of the Appellant actually lent support to the case of the 1st Respondent as to the apparent error on the face of Decree No. 54 of 1993 which Decree No. 21 of 1996 corrected. That to question the powers of the Federal Military Government to promulgate Decree No. 21 of 1996 is also to question its powers to promulgate Decree No. 54 of 1993 which the Appellant is relying upon as his root of title. He referred to First Bank of Nigeria Plc & Ors. V. Alhaji Salmanu Mai wada, an unreported judgment of this court delivered on 25th May, 2012.

The learned counsel for the 2nd Respondent, Lawal Pedro SAN, Solicitor-General of Lagos State, coasting along the submissions in their brief settled by himself submitted that the validity of the judgment of Ilori J. (as he then was) in Suit No. M/145/95 was an issue before the trial court presided over by Alabi, J. (as he then was) and in the subsequent appeal in Court below which Court was right to have considered the validity or otherwise of the said judgment. He cited *Onwuka v Maduka* (2002) 9 - 10 SC 142 at 148; *Ajao v. Alao* (1986) 5 NWLR (pt. 45) 805 at 821; Sections 52 and 53 of the Evidence Act; *Witt & Busch Ltd. v. Dale Power System Plc* (2007) 5 - 6 SC 121 at 143. The learned Solicitor General went on to contend that when the action before Ilori, J. was commenced in 1995, Decree 13 of 1984 titled "*Federal Government (Supremacy and En-*

forcement of Power's) Decree No. 13 of 1984" was a subsisting law. He referred to Section 1 (2) (b) (i) of the Decree thereof. That Ilori J. lacked the jurisdiction to enter into the matter concerning Decree 54 of 1993 since Decree 13 of 1984 was in existence. That Alabi, J. (as he then was) should have set aside the 11 judgment of Ilori J. This anomaly the Court of Appeal rectified by the annulment of the judgment of Ilori J. He concluded by stating that the right purportedly vested in the Appellant by Decree 54, pursuant to which he commenced the action before Ilori, J. was withdrawn by the amendment to the said Decree by Decree No. 21 of 1996.

In answer to the question herein posed as to whether the correctness of the judgment of Ilori J. in Suit M/415/95 was an issue for determination before the Court of Appeal, even though what came on appeal before the Court of Appeal was an appeal against the subsequent judgment of Alabi J. in Suit No. M/249/97. This scenario impels my needing to recapture the substance of the decision by Ilori J. (as he then was) shown at page 56 of the Record which is thus:-

"Both the learned senior counsel for the Applicant, Kehinde Sofola Esq. SAN and the learned Director of Civil Litigation Lagos State Ministry of Justice, Mrs. Okuwobi concede the basic principle, that the Federal Government under the dispensation at the time Decree 54 of 1993 was made was empowered to make law for the whole Federation or for any State thereof directly by Decree. Consequently it is within the legislative competence of the Federal Military Government to release by Decree any assets forfeited by the Federal or State Government from any citizen. The elementary principles that in interpreting a statute, the Court's duty is to discover the intention of the legislator and give effect to it is also not in dispute. I will not expend further energy on these vital points conceded rightly by both parties..."

Even if I am wrong in this conclusion, the question must still be asked whether the Decree should be interpreted without regard to its obvious purpose...

The clear intention of Decree No. 54 of 1993 is to release to and vest in the people mentioned in column 1 of the Schedule, property listed in the 2nd Schedule thereto. If the instruments of forfeiture of those properties are either improperly described or totally omitted, it will be legitimate for the court to correct, supply or substitute

the proper details of such instruments. My decisions on this issue are:

“(i) That the intention of Decree No. 54 of 1993 is to release to the plaintiff and vest in him the property forfeited from him situated at No. 25 Cooper Road, Southwest Ikoyi and Plot 177 Victoria Island.

(ii) That there is no error, inconsistency, or ambiguity on the face of the Decree. Since it applies to properties forfeited by some States of the Federation and by the Federal Government, it is intended to be read with necessary modifications to carry out the Decree intentions in the States. The modifications will permit in each State where Decree applies addition to the appropriate part of the Decree, the State instruments by which forfeiture of the properties mentioned in the Decree was made in that State.

(iii) Since the intention of the Decree is clear, unambiguous and indisputable, the Court must carry it out and avoid defect of the purpose of the Decree.”

The above as earlier stated is the substance of what Ilori, J. said it becomes necessary to see the link with the matter that came before Alabi, J. later on in which the 1st Respondent before Ilori J. was the plaintiff. The claims are as shown below thus:

“1. A declaration that under and by virtue of Decree No. 21 of 1996 the judgment delivered by His Lordship, Honourable Justice S.O. Ilori in Suit No. M/415/95 between Chief J.O. Adeyemi-Bero and the Military Administrator & 2 Ors. in which judgment the court transferred interest in the properties to Chief J.O. Adeyemi-Bero, is null and void and of no effect whatsoever.

2. A declaration that under and by virtue of Decree No. 21 of 1996 the provisions of Decree No. 54 of 1994 are no longer applicable to the properties known as:

(a) Plot 177 Victoria Island, Lagos (also known as Block B Eko Court complex)

(b) No. 25 Cooper Road, Ikoyi (both hereinafter referred to as “the properties” and that the ownership status of the properties remains as it was prior to the promulgation of Decree 54 of 1994 by the Federal Military Government.

3. A declaration that the provisions of the Determination of certain interests in Land Edict No.3 of 1976 which vested the properties in the plaintiff and Lagos State notices No. 9 and 23 of 1976 are

still valid and subsisting.

4. A declaration that the effect of Decree No. 21 of 1996 on Decree No. 54 of 1993 is that the properties still remain vested in the plaintiff under the Lagos State Notices No. 9 and 23 of 1976 respectively.

B 5. An order of perpetual injunction restraining the first defendant, his servants, agents, privies etc., whosoever or whatsoever from dealing with the property in any manner or form or dealing with any of the tenants resident in any of the properties.”

C Alabi, J. in Suit No. M/249/97 which claims have been re-stated above ruled as follows:

“In this case, I am satisfied that the relevant facts upon which the first defendant can raise the plea of Estoppel per rem judicatam have been properly and adequately deposed to in the counter affidavit of the first Defendant deposed to on 27th October 1997, particularly paragraphs 16,17,18,19,.20 & 21 of the affidavit aforesaid. I am also satisfied that the parties in the earlier suit and the present suit are the same . The Plaintiff is not only privy in law to the First Defendant in the earlier case (the Plaintiff the case having been created by the First Defendant in the earlier case) the Plaintiff is also privy in estate to that earlier case.

I am satisfied that the issues in the two cases are the same relating as they are to the validity or otherwise of Decree No. 54 of 1993 and the validity of Justice Ilori’s judgment. I am satisfied that the subject matter in the earlier case and this case are the same both relating as they are, to the properties located at Plot 177 Victoria Island Lagos and No. 25 Cooper Road, Ikoyi, Lagos. There is also no dispute on the fact that the Judgment in the earlier case is final, valid and subsisting, the Judgment aforesaid has not been set aside and no retrial has been ordered. Indeed, the judgment has not been appealed up till this point in time.

H It is my Judgment that the Judgment in Suit NO. M/415/95 operates (as an estoppel per rem judicata to prevent the Plaintiff this case from making the claims as contained in Legs 2,3, & 4 of the amended originating summons dated 2nd July 1998. The Plaintiff is estopped from making those claims. Claims 5, 6 and 7 in the amended originating summons are ancillary claims which arise from the substantive claims. A Court cannot adjudicate over ancillary claims if it

has no jurisdiction to entertain the main claim and if the ancillary claims inevitably involve a discussion of the main claims... the originating summons lacks merits. It is accordingly dismissed."

That judgment the main part thereof quoted above is what came before the Court of Appeal and which court's decision can be seen at pages 273 - 274 of the record as follows: B

"Respectfully, I think Ilori J., hurriedly jumped boat by his conclusion which is pegged clearly on Decree No. 54 of 1993. The intention of the legislature in making forfeiture of Assets (Release of Certain Forfeited Properties etc) Decree 1993 can easily be deduced from Section 1 of the Decree. It reads thus: "As from the commencement of this Decree all the properties specified in the second column to the Schedule to this Decree, properties being properties forfeited to the Federal Government and some State Governments under the Public Officers (Forfeiture of Assets) Order 1977 and the Public Officers (Forfeiture of Assets) Order 1978 are hereby released to the persons named in the first column to the Schedule to this Decree." C

It is clear from the above that the property intended to be released to the people whose assets were forfeited to either Federal or State Governments were by virtue of Public Officers (Forfeiture of Assets) Order LN 13 of 1977 as well as Public Officers (Forfeiture of Assets) Order LN 33 of 1978 - Mr. J.O. Adeyemi-Bero is number 2 on the Schedule and his assets are set out in the second column of the Schedule. Mr. Adeyemi-Bero's three properties were forfeited to the Lagos State Government by virtue of The Determination of Interests in State Land No. I, Order LSLN 9 of 1976 made pursuant to Section 1 of The Determination of Certain Interests in Land Edict No. 3 of 1976." D

There is nowhere in the Forfeiture of Assets Release of Certain Forfeited Properties, etc) Decree No. 54 of 1993 which commenced on 23rd August 1993 authorizing the release of the property forfeited by dint of The Determination of Interests in State Lands (NO. 1) Order LSLN 9 of 1976. It is my respectful opinion that a person including Federal Military Government cannot give what it does not have. This is encapsulated in the Latin words Nemo dat quod non habet." E

At page 275 of the Record, the Court of Appeal also continued as follows:- F

“The learned Judge had no business straining the words of the statute. The words of Decree No. 54 of 1993 had no intention to strip Lagos State Development and Property Corporation of its interest in the forfeited property. The ambiguity in the Statute, in the interest of justice ought to have been resolved in favour of the Corporation and against Adeyemi-Bero who has the onus of producing an amended Decree No. 54 of 1993 or otherwise.”

Clearly from the claims in the 1st Respondent’s Originating summons reproduced earlier that the validity or otherwise of the decision of Ilori, J in Suit. No, 415/95 was very much in issue. This is because in the first claim in the subsequent trial that is the one before Alabi. J. was the Plaintiff in suit No. M/249/97 asking that Court to have the judgment of Ilori J. declared null and void and of no effect, such having been made without the competition of the court. That no one went on appeal over Ilori, J’s judgment is neither here nor there, since an intervening process that is the promulgation Decree 21 of 1996 came up bringing about the suit before Alabi J. Therefore the roping in the matter that had been dealt with in the earlier judgment of Ilori, J. during the appeal to the Court below be faulted, a different coloration having taken place in the new legislation amending Decree 54 which had been the matter before Ilori J. but with the same parties and subject matter.

In answer to the Issue 1 raised, I would say without difficulty that it is positive and that is that the correctness of the decision of Ilori, J. in Suit M/145/95 was an issue well positioned for determination before the Court of Appeal and that court was within its right to hold that Ilori, J. was wrong in his interpretation and application of the provisions of Decree 54 of 1993.

However I would want to leave the correctness of what the Court of Appeal did in its decision for later in this judgment when other facts of what had arisen would be fully and adequately gone into so that the clear picture of the situation on ground in relation to the two Decrees and other legislations would have been considered in the light of what a court should do when faced with interpretation of laws albeit in this instance the matter of what should be when the legislations would have been considered in the light of what a court should do when the legislations are Decrees under a Federal Military Government.

I would like to say at this point to leave no room for uncertainty and that is that Ilori J. was correct to do what he did, at the time he did so and in the context of the prevailing legislation that is Decree 54. This is so because all he did was to state the effect of that Decree and no more. I would like to anchor on what my learned brother, Fabiyi, JSC said in the lead Judgment in First Bank of Nigeria Plc v. Alhaji Salmanu Mainada in the Unreported case of this Court in SC 204/2002 of 25th May, 2012. He stated

“I agree that a Judge should be firm and pungent in the interpretation of the law but such should be short of a judge being a legislator.”

Also learned counsel for the Appellant had concern over what he termed the Court of Appeal’s wrong importation of the concept of “Nemo Dat Quod Non Habet” in its overruling the interpretation of Decree 4 by Ilori J. The Court of Appeal in bringing in that principle of Nemo Dat Quod Non Habet had applied the provisions of the Federal government (Supremacy and Enforcement of Powers) Decree 13 1984.

I would here refer to that portion of the judgment of the Court of Appeal as follows:-

“Before closing this issue may I take advantage of this medium to remind ourselves of Section 1 (2) (b) (i) of the Federal Government (Supremacy and Enforcement of Powers) Decree 13 of 1984. It reads as follows:-

‘(2) It is hereby declared also that:

(a) XXXX

(b) With a view to assuring effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria.

(i) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before or after the commencement of this Decree the proceedings shall abate, be discharged and made void.

The words of Section 1 (2)(b)(i) of Decree 1 of 1984 are clear, unambiguous and unequivocal. It is settled that where the words of

an enactment are clear and unequivocal it should be given literal and grammatical meaning. The Forfeiture of assets (Release of certain Forfeited Properties etc) Decree No of 1993, is clearly within the contemplation of Decree No of 1984. This Decree ousts the jurisdiction of a court in respect of any act, matter or thing done or alleged to have been done pursuant of any Decree or Edict. The Forfeiture Assets (Release of Certain Forfeited Properties etc) Decree No 54 of 1993 is clearly Decree within the contemplation of Decree No. 1 of 1984. It was in force at the time material to the filing of Suit No. M/415/95 by Mr. J. O. Adeyemi-Bero. The High Court of Lagos State had no jurisdiction to inquire or entertain Ilori J., ought not to have taken cognizance of the suit and the strength of this Decree”.

The Court of Appeal was right in what it did in properly clarifying the effect of Decree 21 of 1996 since that Decree amended error in Decree 54 of 1993 in that it stated that the Federal Government ought not to have made the release of the said properties to the Appellant same having been forfeited by a process of the Lagos State Government within its authority which authority the Federal Government recognised and went along with, that is the Legal Notices Nos. 13 and 33 of 1977 and 1978. Therefore the use of the doctrine, “Nemo Dat Quod Non Habet” was neither an importation nor wrongly used.

ISSUE NO. 2

Was the Court of Appeal right in holding the validity and or constitutionality of Decree 21 of 1996 having regard to the provision of Section 40 of the 1979 Constitution (Now Section 44 of the 1999 Constitution) and the division of legislative and judicial powers as between the Legislature and Judiciary.

Learned counsel for the Appellant urged this court to consider its decision in Lakanmi v. A. G Western state and all other cases based on the decision with a view to departing from its decision in those cases and/or distinguishing the facts of this case from the decision in the Lakanmi’s case. That the Appellant is specifically asking this court to determine the following:-

(a) The scope of the legislative and Executive Powers vested in the Federal Military Government.

(b) Whether the laws under which the Federal Military Gov-

ernment has set out to govern allows the Federal Military Government to interfere with the role of the judiciary and to make laws encroaching on the Judicial Powers of the Courts.

(c) Whether the Federal Military Government can legislate to oust the jurisdiction of the Court even when it operates outside the scope of its *legislative* and executive competence. B

Learned counsel for the Appellant posits that the issues slated above were dealt with properly by this court to enable a challenge to the constitutionality of a Decree or validity can be made if the Decree goes outside the constitutional framework laid by the Military Government for governing the country. That what the Federal Military Government under Decree No. 21 of 1996 did was a usurpation of the judicial powers of the court thus robbing the judiciary of its independence Appellant through learned counsel further submitted that there was a breach of the Constitution especially under Section 44 thereof in the promulgation and implementation of Decree of 1996 which can only apply or operate under a Decree properly so called which Decree 21 cannot be so described. C D

Responding, learned counsel for the 1st Respondent, Mr. Adegbonmire stated that for the departure from a previous decision such as the Lakanmi v. Attorney General Western Region (1970) 6 NSCC 143 5 and such like certain conditions must be established viz; E

(a) The previous decision is clearly wrong and there is a real likelihood of injustice being perpetrated; or F

(b) The previous decision was given per incuriam; or

(c) Abroad issue of public policy was involved.

He cited Okulate v. Awosanya (2000) 2 NWLR (pt. 646) 530 at 543. That the Appellant did not meet any of the three above stated criteria for a departure from a previous decision and so that posture 11 of his should be ignored. G

For the 1st Respondent, it was put forward that the power of the Military Government to order the forfeiture of any assets pursuant to the provisions of a Decree cannot in any event be questioned by any court and this was the position of this court in Din v. Attorney General Federation (1988) 4 NWLR (Pt. 876) 147 H

Mr. Lawal Pedro SAN for the 2nd Respondent submitted that Appellant's issue No. 2 raises a fresh point or issue not raised considered in the court below and the conditions to so take that fresh issue

here and now has not been met. The reason being;

(a) There is before the Supreme Court all the evidence where needed to completely support the new contention.

(b) The point of law if argued in the Court below would have been decisive. Also that for the fresh issue to be argued, leave of court must first be sought and obtained and that has not happened? He cited *Abaye v. Ofili* (1986) 1 NWLR (Pt. 15) 134; *A Ejeagwu* (2000) 12 SC (Pt. 1) 99.

Learned Senior Advocate went on to say that in tin-Court is satisfied that Issue No. 2 is competent then he was submitting that the provision of Decree 21 of 1996 is an amendment to the provision of Decree 54 of 1993 which relates to release of forfeited properties not acquisition of properties. That in that regard, the provision 21 of 1996 are not inconsistent with the provision of Section 44 of the Constitution and even if it were that by virtue of section 2 (3) of Decree 21 of 1996 the jurisdiction of the Court to question the validity of the Decree was excluded. He referred to *Attorney General Lagos State v. Hon. Justice Dosunmu* (1989) 3 NWLR (pt. 111) 552. Mr. Pedro SAN further submitted that there is no basis to disregard the ouster clause in Decree 21. He cited *Nwosu v Imo State* (1990) 2 NWLR (pt. 135); *Emuze v. C. Uniben* (2002) 8 NWLR (Pt. 828) 378 at 397.

He stated on that the fact that the provisions of a statute completely nullified the effect of a judgment does not in anyway amount to the usurpation of the function of the court. He referred to *Attorney-General Adamawa State v. Attorney General Federation* (2005) 12 SC (Pt. 11) 132 at 173 -174; *Attorney-General of the Federation v. Attorney General Abia State & Ors* (No. 2); *Adesanoye v. Adewole* (2000) 5 SC 124. That Decree 21 of 1996 was enacted before the commencement of the 1999 Constitution and therefore falls within the bracket of an existing law made after January 1966 and before the commencement of the Constitution. That the competence of the Head of State and Commander-In-Chief of the Armed Forces to promulgate Decree 21 cannot be questioned or inquired into in any Court of Law. To consider the issues above raised, I would want to first reproduce the Decrees in issue being Decree 54, the fulcrum of the 'interpretation of Ilori J. in Suit No. M/415/95 and it is as follows: Decree 54 of 1993:

“Forfeiture of Assets (Release of Certain Forfeited Properties etc) Decree 1993 Decree No. 54 23^d August 1993 (commencement)

The Federal Military Government hereby Decrees as follows:

(1) As from the commencement of this Decree all the properties specified in the second column to the Schedule to this Decree, properties being properties forfeited to the federal Government and some State Governments under the Public Officers (Forfeiture of Assets) Order 1977 and the Public (Forfeiture of Assets) Order 1978 are hereby released to the persons named in the first column to the schedule to this Decree.

(2) Accordingly, all the rights, interests obligations and liabilities of the Federal Military Government or a State Government in the properties referred to in Section 1 of this Decree, shall by virtue of this Decree and without any further assurance be vested in the persons specified therein.

(3) This Decree may be cited as the Forfeiture of Assets (Release of Certain Forfeited properties etc) Decree 1993.

Schedule: Section 1

(1) Brigadier S. O. Ogbemudia Rtd

(a) Palm Royal Motel, Ugbowo, Benin City

(b) No. 27B Equadase Street, Benin

(c) All Farms land

(2) Mr. J. O. Adeyemi-Bero

(a) Plot 177 Victoria Island

(b) 25 Cooper Road, Ikoyi

(c) 1 Obanikoro Road, Ikoyi.

Made at Abuja this 23rd day of August 1993

General I. B. Babangida

*President, Commander-In-Chief of the Armed Forces,
Federal Republic of Nigeria.”*

The Decree 21 of 1996 basis of the suit in M/249/97 before Alabi J. Is stated thus:-

“Forfeiture of Assets (Release of Certain Forfeited properties etc) (Amendment) Decree 1996 6th June 1995 (commencement)

WHEREAS the Federal Military Government promulgated the Forfeiture of Assets (Release of Certain Forfeited Properties, etc) Decree 1993.

AND WHEREAS by the Forfeiture of Assets (Release of Cer-

tain Forfeited Properties etc) Decree 1993, item 2 of the Schedule released certain properties to Mr. J. O. Adeyemi-Bero.

AND WHEREAS the Lagos State Government has petitioned the Federal Military Government on the matter of the aforementioned release of properties to the said Mr. J.O. Adeyemi-Bero on the
 B *ground that the said properties were never forfeited to the Federal Government under Legal Notices Nos. 13 and 33 of 1977 and 1978 respectively.*

AND WHEREAS consequent upon a further consideration of the matter and in the interest of justice and fair play, the Federal
 C *Military Government finds it expedient to resolve the irregularity created hitherto.*

NOW THEREFORE THE FEDERAL MILITARY GOVERNMENT hereby Decrees as follows:

D *(1) The preamble to this Decree is hereby affirmed and declared as forming part of this Decree*

(2) Accordingly, the Forfeiture of Assets (Release of Certain Properties etc) Decree 1993 is amended in the Schedule thereto by deleting item 2.

E *(2) (1) No civil proceedings shall lie or be instituted in any court or tribunal on account of or in respect of anything done by the Federal Military Government by or under this Decree, or in respect of any act, matter of thing done or purported to be done by the*
 F *Federal Military Government with regard to the subject matter of this Decree or any act, matter or thing whatsoever, done or purported to be done under or pursuant to this Decree by the Federal Military Government and if any such proceedings are instituted before, on or after the commencement of this Decree, the proceedings shall abate,*
 G *be discharged and made void and of no effect, and any right, interest or privilege accruing, obtained or granted or purported to have accrued, been obtained or granted thereby is hereby extinguished*

(2) Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree shall
 H *by virtue of this Decree, be made null and void and of no effect whatsoever.*

(3) For the purposes of this section, the question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria, 1979 as amended or the African Charter on Hu-

man and People's Right (Ratification and Enforcement) Act has been, is being or would be contravened by anything done, being done or proposed to be done in pursuance of this Decree shall not be inquired into by any court of law or tribunal, and accordingly no provision of the Constitution shall apply in respect of any such question.

(3) This Decree may be cited as the Forfeiture of assets (Release of Certain Forfeited Properties, etc) (Amendment) Decree 1996.

Made at Abuja this 3rd day of July, 1996 General Sani Abacha. Head of State, Commander-In-Chief of the Armed Forces, Federal Republic of Nigeria."

From the stand point of the Appellant is for this court to depart from its earlier decisions which recognised the complete ouster of the courts' jurisdiction to inquire into the validity or otherwise of a Decree under a Military Government. The Respondents retort that the conditions upon which such a departure or review of earlier decisions can be made are not prevailing here.

The point has to be made and quickly too and that is that indeed this court has the power and is entitled to depart from its earlier decision when it is called upon to effect a review of such a decision and departure therefrom but the conditions have to be right for such a radical action. Those conditions have been held to be:

(1) that the previous decision is clearly wrong and there is real likelihood of injustice being perpetrated;

(2) that the earlier decision was given per incuriam

(3) that a broad issue of public policy was involved.

See the Judgments of this Court in Okulate v. Awosanya (2000) 2 NWLR (pt. 646) 530; Bucknor-Maclean v. Inlaks Ltd (1980) 8-11 S.C. 1; Odi v. Osafire (1985) 1 NSCC 14; Bronik Motors Ltd v Wema Bank (1983) 6 S.C. 158.

To be exact the decisions which the appellant is urging this court to depart from are that of the celebrated Lakanmi v. A-G Western Region (1970) 6 N.S.C.C 143 and any such cases where the Supremacy of Decrees and ouster of inquiry into the validity of such decree can be gone into. In referring to the Lakanmi case, this court had stated as follows at pp. 220-221 A-G Federation v. Guardian Newspapers (1999) 9 NWLR (pt. 618) 187.

"There was again, the question whether three Decrees pro-

mulgated to validate the order of forfeiture of some properties as a result of an inquiry into the activities of public officers of the Western State were themselves valid. This regarded them as legislative judgments in that case. I think Chief Williams seems to have been prepared to accept in oral before us that when there has been a commission or tribunal of inquiry there is a law (Decree) to give effect to the decision of the tribunal that law may not quite be regarded a legislative judgment. In the present case there is no evidence that there was a tribunal which looked into the affairs of the respondents and whose decision was sought to be given legal backing and enforced. So on these two factors the decision in Lakanmi and what happened to it by way of reaction by the Federal Military Government could be regarded as of peculiar circumstances."

Learned counsel for the appellant anchored tenaciously in the case of *Guardian Newspaper Limited v. Attorney General Federation* (1999) 9 NWLR (Pt. 618) 187 at 212, mainly the lead judgment of Uwaifo JSC. Learned counsel for the Appellant however failed to read that decision fully to appreciate the fact that while this court made a distinction in legislative decree and legislative judgment, it did not go into the validity or otherwise of a Decree whatever colour it bore. This is because the Supreme Court considered the effect of a Decree sacrosanct and not an area for the investigative powers of the Courts. Therefore just like this court held in the *Lakanmi v. A-G Western Region* (supra) as in this justice even though the Decree is akin to a legislative judgment, it is a Decree which Supremacy must be respected and duly acknowledged as such. Therefore hanging onto the snippets of the *Guardian Newspaper* case as the Appellant is doing and thereby going out of context does not change anything nor can it persuade this court to depart from *Lakanmi* case in relation to Decree 28 of 1970 which content is like Decree 21 of 1996 and so just like the Decree of 1970 in effect neutralized the judgment of the court in the *Lakanmi* case and this court upheld the Decree as superior, the promulgation of Decree 21 has effectively stamped out of existence the decision of Ilori J. and that is the position of things. The appellant bringing into focus 1999 Constitution particularly Section 44 or 6(6) is an act in futility.

For a clearer picture, Section 44 of the 1999 Constitution provides as follows:-

“(2) Nothing in subsection (1) of this section shall be construed as affecting any general law..

(b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence”.

Section 6(6) (d) of the 1999 Constitution provides thus; B

“(6) The judicial powers vested in accordance with the foregoing provisions of this section -

(d) Shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing C law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or persons to make any such law.”

The provisions above that is Section 6(6)(d) of 1999 Constitution can be taken to have been interpreted in *Din v. A.G. Federation* (1988) 4 NWLR (Pt. 87) 147 wherein Section 6(6) (d) of the 1979 Constitution, *impari materia* with the provisions of Section 1(6)(d) of 1999 Constitution thus:-

“In the present case the cause of action arose in 1970 or in 1974 - as the appellant would prefer it. The appellant did not challenge the forfeiture at that time but waited for nearly 13 or 9 years, as the case may be, to sue on the 29th day of September, 1983. Now the action had been brought under the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 1980 which prescribe the practice and procedure to be followed in respect of the contravention of any of the fundamental rights provided in Chapter IV of the 1979 Constitution. The appellant is not challenging the infringement of his fundamental rights under the 1979 Constitution. Apart from this irregularity there is the vital point that the substantive claim is for a declaration that an action taken, that is the forfeiture of the land in dispute, in 1970 or 1974 is unconstitutional, null and void The forfeiture was made under the Recovery of Public Property (No.2) Act, 1970 which is an existing law under the 1979 Constitution. Section 6 of the 1979 Constitution, which gave to State High Courts general jurisdiction, ousted the power of the High Courts to entertain any action in the nature of the present case. The ouster provisions of the Section read as follows:-

“6 (6) The judicial powers vested in accordance with the fore-

going provisions (of section...

(d) shall not, as from the date when this section comes into force, extend to action or proceedings relating to any existing law made on or after 15 January 1966 for determining any issue or question as to the competence of authority or person to make any such laws". Obaseki, J.S.C. in the same Din's case at page 170 stated:-

"This leads me to an examination of the Recovery of Public Property Decree, 1970 No. 58 as amended by Decree No. 22 of 1972. If the Decree forfeited the assets of the appellant, the claim that the forfeiture be declared unconstitutional, null and void is a direct challenge to the validity of the Decree and the competence of the Federal Military Government to promulgate the Decree. The court cannot and has no judicial powers by virtue of section 6 (6)(d) of the Constitution of the Federal Republic of Nigeria 1979 to decide the issue. This constitutional provision has received judicial interpretation in the case of *Uwaifo v Attorney-General of Bendel State* (1982) 7 SC. 127; and *Wilson v Attorney General of Bendel State & Ore.* (1985) 1 NWLR (Pt. 4) P. 572."

I would cite Section 44 of the 1999 Constitution:-
Section 44(1) of the 1999 Constitution provides as follows:-

"No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that" among other things:-

(a) Requires the prompt payment of compensation therefore; and

(b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria. The same constitution makes exception to this general law when in section 44 (2) provides as follows:-

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law:-

(a) For the imposition or enforcement of any tax, rate or duty;

(b) For the imposition of penalties or forfeitures for the breach

of any law, whether under civil process or after conviction of an offence.”

It needs be said that where a Decree as that of 21 of 1996 contains an ouster clause the non negotiable path is that effect to that ouster clause is given and the court is only wise to decline jurisdiction. That is the right way to go even in keeping with Constitutionalism. I would rely on Attorney-General Lagos State v. Hon. Justice Dosunmu (1989) 3 NWLR (Pt. 111) 552. ***Also to be dealt with is the fact that Decree 21 was promulgated pursuant to the legislative powers vested in the Head of state as an amendment to cure the defect or error in Decree 54 of 1993. That the effect of that Decree is akin to nullifying the effect of the judgment of Ilori J. and looked like a legislative judgment or given a backdated effect changes nothing from the stature of the Decree which stands solid and cannot be pushed around.*** See Attorney General Adamawa State v Attorney General of the Federation (2005) 12 SC (Pt. II) 132 at 173 -174.

I cannot end without stating that the issue raised by the Appellant about the Decree 21 eroding into or usurping the powers of court is an argument for an academic debate and not for our purpose here and has not affected the validity of that Decree. Also that the Decree was retrospective in effect has not changed the fact that its validity is a no go area for this court or any court for that matter. I would place reliance on the following cases:- Adesanoye v. Adewole (2000) 5 SC 124; Osadebey v. Attorney General Bendel State (1991) 1 NWLR (Pt. 169) 525.

The conclusion therefore is that there is no basis for a departure of Lakanmi and such like cases, the conditions for departure being completely absent. There is also no inter-relationship between the validity of Decree 21 to the adverse application of Section 44 of the Constitution 1999. This Issue is answered positively and that is that the Court of Appeal was right in upholding the validity of 25 Decree 21 and the constitutionality of it.

ISSUES NOS 3, 4 AND 6

ISSUE NO. 3

Was the Court of Appeal right in holding that the provisions of

Decree 21 of 1996 rendered the judgment of Ilori J. a nullity and that Alabi J. should have so pronounced?

ISSUE NO. 4

Was the Court of Appeal right in holding that the jurisdiction of Ilori J. to entertain the Appellant's case was ousted by virtue of the Provisions of Decree 21 of 1996?

ISSUE NO. 6

Was the Court of Appeal right in holding that the deletion of the Appellant's name from the Schedule to Decree 54 of 1993 by Decree of 1993 by Decree 21 of 1996 had the effect of vesting title to the properties in dispute in the Respondent having regard to the provisions of Section 6 of the Interpretation Act, Laws of the Federation of Nigeria 2004.

Prof. Kasunmu SAN for the Appellant contended that from the preamble to Decree 21 of 1996 that its sole purpose was to rectify what was conceived to be an error or mistake in the release of properties listed in the schedule to Decree 54 of 1993 to the Appellant. That the properties were released to the Appellant on the 23rd August 1993 by virtue of Decree 54 of 1993 and the release was confirmed by a Court Judgment in favour of the Appellant on the 11th of June 1996. That it is clear that the promulgation of Decree 21 of 1996 was at the instance of the Respondents.

The learned Senior Counsel for the Appellant went on to state that what is being considered under the issue are:-

(a) Whether Section 2 of Decree 21 of 1996 renders Ilori's judgment a nullity and Alabi J. should have so pronounced.

(b) Whether the partial repeal of Decree 54 of 1993 by Decree 21 of 1996 by the deletion of the name of the Appellant from the schedule thereto had the effect of setting aside the judgment of Ilori J and divesting the title in the properties thereto from the Appellant and vesting them in the 1st Respondent.

(c) Whether the enactment of Decree 21 of 1996 had the effect of divesting Ilori J. of jurisdiction to adjudicate on the Appellant's case before him on the interpretation of Decree 54 of 1993.

For the Appellant was submitted that it is illogical to talk of the abatement of an action that was concluded before the enactment of the law by backdating its commencement date to 6th of June 1995. He said that upholding such an illogical legal proposition will

result in holding that the action before Ilori J. could be abated simply by backdating the commencement date of Decree 21 of 1996.

Mr. Adegbonmire of counsel for 1st Respondent contended that 1st Respondent never challenged anything that was done pursuant to the Decree, rather the 1st Respondent by their suit sought to confirm and put judicial imprimatur to a thing that was done under the Decree. That the suit is not caught by the prohibition clause contained in the Decree and what the Court of Appeal did cannot be faulted. This being so, as the Decree affected all cases whether instituted before, on or after the promulgation of the Decree as can be seen from the clear and express words of the Decree. That the interpretation Act is not applicable to the situation on ground.

Lawal Pedro SAN for the 2nd Respondent on their part said it was not correct as fronted by the Appellant that it was a partial appeal of Decree 54 of 1993 by Decree 21 of 1996, rather what took place was an amendment. That even though the commencement date of Decree 21 was made retrospective, it is valid and the court is obliged to give effect to it. He referred to Adesanoye v. Adewole (supra).

From all that was said under Issue 2, the questions raised in issues 3, 4 and 6 have been effectively answered save to say that I do not see from where the Appellant got his idea of a partial repeal of the Decree 54. This is because what I see before me is a Decree 54 promulgated in 1993 by the Head of State then within his powers and that Decree being amended by the Head of State who was in power in 1996 by Decree 21. Just as effect was given to Decree 54 which validity could not be questioned in the same manner is the Decree 21 valid and cannot be inquired into and should be given effect to. It is in that light that I would say that just as Decree 54 vested the property rights to the appellant, the removal of those rights were valid under Decree 21 which then vested the rights in the Respondents and that is the end to it. The three questions or issues are answered positively.

ISSUE NO. 5

Was the Court of Appeal right in holding that Ilori's judgment does not constitute res judicata by Alabi J.

For the Appellant was canvassed that Ilori J's judgment is not a

nullity and based on the submission made under Issues 3,4 and 6 that a finding in favour of the Appellant should be made.

Responding, Mr. Adegbonmire for the 1st Respondent said the judgment of Ilori J. was no longer valid since a validly passed enactment had invalidated the said judgment. That, it being so a judgment that has been held to be invalid cannot operate as *res judicata*. He cited *FR.N. v. Ifeagwu* (2003) 15 NWLR (Pt. 842.) 113.

For the 2nd Respondent was contended on their behalf by Lawal Pedro SAN that estoppel cannot operate to make up for lack or absence of jurisdiction of a court since a previous decision that would operate as estoppel must be a decision emanating from a competent court. He referred to *Cardoso v. Daniels* (1986) 2 NWLR (Pt. 20) 1.

It can be discerned from what has been said earlier, that Alabi J. should have gone on to declare invalid or null and void and of no effect, the judgment of Ilori J. which judgment and proceedings had been nullified by Decree 21 of 1996. If the intervening Decree 21 had not taken place and a suit based on Decree 54 with the same parties and subject matter then the new suit would have been caught up by the principle of estoppel per rem judicatam but something fundamental had happened in between the two suits and Alabi J. ought to have held the bull by the horns and made the necessary declaration of nullity on the judgment of Ilori J. I would like to quote the decision of the Court of Appeal per Salami JCA (as he then was) in the appeal over the decision of Alabi J. and it is as follows:-

“On the issue of application of the doctrine of estoppel per rem judicatam to the present suit does not arise. It is clearly manifested that the High Court of Lagos State had no jurisdiction to entertain the suit No. M/425/95. It is equally a common ground that the principle of estoppel per rem judicatam can only be found on a valid judgment. In this connection the learned trial judge in the instant appeal found as follows:-

“Thirdly, the judgment which is to operate as an estoppel must be a final, valid and subsisting one. No judgment which has been set aside and in respect of which a retrial has been ordered can operate as an estoppel.”

It is my considered view, with the greatest respect, that

since the judgment upon which the doctrine of estoppel per rem judicatam was based is a void one, the doctrine cannot operate or be applied to this suit.

I adopt what the Court of Appeal said and I agree totally with it in this issue, that a judgment declared invalid cannot operate as a res judicata. See Federal Republic of Nigeria v. Ifeagwu B (2003) 15 NWLR (pt. 842) 113.

From all that I have stated above, I see no reason for not going along with what the Court of Appeal did and so I dismiss this appeal and affirm the decision and orders of the Court of Appeal. I award costs of N100,000.00 to each of the Respondents. C

MUNTAKA-COOMASSIE

The original appellant was a former permanent Secretary in D the employment of the Lagos State Government and owner of the landed properties located at -

a. Plot 177 Victoria Island, Lagos

b. No. 25, Cooper road, Ikoyi, Lagos

As a result of indictment by the report of the investigation Panel E set up by the Lagos State Government his properties were forfeited. He took an action in the High Court of Lagos State. The Lagos State Government after forfeiting the properties of the said permanent secretary, the said Government vested the properties in themselves and everything was gazetted. In 1993 a Decree was promulgated namely F the Forfeiture of Assets (Release of Certain Properties) Decree No. 54 of 1993 ("Decree No. 54 of 1993) to take effect on 23rd August, 1993. The original appellant, late Chief J. O. Adeyemi-Bero benefited from the said Decree by getting back one of his three properties G confiscated. It is No. 1 Obanikoro Road, Ikoyi. When the appellant found that the Government will not release the other two he demanded for their release to him. When the Lagos State Government refused to release the other Chief Adeyemi-Bero went to court H in suit No. M/415/95. He approached that court by filing originating summons in which he asked for a declaration that under and by virtue of Decree No. 54 of 1993, the properties at Plot 177 Victoria Island, Lagos and No. 25 Cooper Road, Ikoyi, Lagos had reverted to him and are vested in him as owner. At the end of the trial in the

High Court, all the questions asked in the originating summons were answered affirmatively.

For the avoidance of any possible doubt, the trial court entered judgment on 11/6/96 in favour of the original appellant. The court per Ilori J. granted declaration that the properties claimed reverted to the original appellant by virtue of the provisions of Decree 54 of 1993. Soon after the delivery of the judgment by Ilori J. the Federal Military Government of General Sani Abacha on 3/7/96 promulgated the forfeiture of assets (release of certain forfeiture properties etc) Amendment Decree No. 21 of 1996 with a retrospective commencement date of 6/6/1995 - 5 days to the judgment date. That Decree No 21 has effectively amended earlier Decree No. 54 of 1993 by deleting item 2 of the earlier Decree which contains the name of the Original Appellant and the said parties named therein. D Moreso the said Sani Abacha amendment Decree No. 21 had legally nullified the decision of Ilori J of the High Court of Lagos. Hon. Justice Alabi granted the application to amend the originating summons filed by the 1st respondent. In support of this argument by the 1st respondent they contended that the court had no jurisdiction to entertain the respondents claims for the reason that it would amount to Justice Alabi sitting on appeal over Justice Ilori's judgment in suit No. M/415/95. Justice Alabi succumbed to this argument put forward by Sofola SAN, and declined jurisdiction and dismissed the claims of the 1st respondent, being unhappy with the judgment of Alabi J. had F successfully appealed to the Court of Appeal. The Court of Appeal unanimously allowed the 1st respondent's appeal. It was the clear position taken by the lower court that Honourable Justice Alabi was wrong in his interpretation to have held that the doctrine res judicata G applied to the 1st respondent's case and for failing to hold that the effect of Decree No. 21 of 1996, under the Government of General Sani Abacha, was a reversal of Ilori's J decision. See pp. 221 -243 of the record. Being dissatisfied the 1st respondent now the original appellant appealed to the Supreme Court on a notice of Appeal containing grounds of appeal. The appellant adopted his Brief of argument containing six issues for determination. The respondents adopted the issues formulated by the appellant herein.

I was opportuned to have read in a draft form the all encompassing lead judgment of my learned brother, Peter-Odili, JSC, just

delivered. I am entirely in agreement with the reasons and conclusions herein adumbrated. In fact, I with tremendous respect adopt them as my own, for the brilliant reasons relied upon by Peter-Odili JSC in dismissing this appeal. I too entirely agree with my lord Peter-Odili JSC that the appeal lacks merit and same is hereby dismissed. The decision of the court below is restored and affirmed. No order as to costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother, Peter-Odili, J.S.C. I agree with all the reasons therein ably advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

I seek leave to chip in a few words of my own in support. After the promulgation of Decree No. 54 of 1993, the Lagos State Government released one out of three choice property of the original appellant forfeited pursuant to Order No. LSLN No. 7 of 1976 vide Edict No. 3 of 1976 to him. The refusal to release the other two led to the Originating Summons - Suit No. M415/95 which was granted by Ilori J. on 11/6/1996. The Military Authority promulgated Decree No. 21 of 1996 which was made effective from 6/6/95 which amended Decree No. 54 of 1993 by deleting item 2 upon which Ilori J. rested his judgment. Decree No. 21 of 1996 also voided any judgment delivered in respect of the subject matter of the Decree.

The 1st respondent filed an Originating Summons - Suit No. M/ 249/97 which, in the main, was for declaration nullifying Ilori J's judgment on ground of nullity along with other injunctive reliefs. Alabi, J. dismissed same as he found that it could not be entertained on ground of being res judicata and that it would amount to the court adjudicating as an appeal court over its own decision. The appeal of the 1st respondent to the Court of Appeal was allowed. The 1st respondent at the court below has decided to appeal to this court.

I wish to limit my comments to the appellant's issue 2 which reads as follows:-

"2. Was the Court of Appeal right in upholding the validity and constitutionality of Decree 21 of 1996 having regard to the provisions of section 40 of the 1979 Constitution (now section 44 of the

1999 Constitution) and the division of legislative and judicial powers as between the legislative and the judiciary?”

It seems that the crux of the appellant’s arguments on this issue is that Decree No. 21 of 1996 amounts to judicial pronouncement in the guise of a decree. He contended that the Decree amounts
B to judicial legislation. This stance appears to have prominence in the academic realm. As submitted by the learned counsel for the 1st respondent, it is a recognized part of our jurisprudence that the Legislature, by sheer act of legislative enactment, can change the effect of
C a judicial decision, even that of the Apex Court of the land as done in *Lakanmi & Anor. v. Attorney-General Western Region* (1970) 6 NSCC 143 where it was held that Decree 28 of 1970 effectively reversed same.

The appellant in a rather fast manner appears to be inviting
D this court to depart from its decision in *Lakanmi’s* case where this court upheld the supremacy of Decree promulgated by the Military when in power. I dare say that such an invitation is a Herculean task. It is an uphill task, in the main. This is because in a long line of authorities this court has laid it down that before it can consider whether
E or not to depart from any of its previous decisions, the party seeking such an indulgence must show that:

- (a) The previous decision is clearly wrong and there is a real likelihood of injustice being perpetrated, or
- (b) The previous decision was given per incuriam, or
- (c) A broad issue of public policy was involved.

For the above, the cases of *Okulate v. Awosanya* (2000) 2 NWLR (pt. 646) 530 at 543, *Rossek v. ACB Ltd.* (1993) NWLR (pt. 312) 382 at 477, *Ewete v. Gyang* (2003) 6 NWLR (pt. 816) 345 at
G 374; *Adegoke Motors Ltd. v. Adesanya* (1 989) 3 NWLR (pt. 109) 30 250 at 275 and *Attorney-General Federation v. Guardian Newspaper Ltd. & Ors.* (1999) 9 NWLR (pt. 618) 187 are in point.

The appellant failed to depict, in concrete terms, that the decision in *Lakanmi v. Attorney-General Western Region* (supra) is wrong
H in law. I cannot surmise a real likelihood of injustice being perpetrated. The appellant failed to show that the decision was given per incuriam. I cannot trace the issue to the domain of public policy. In short, it must be stated that this court will not depart from its decision in *Lakanmi’s* case. In effect, since Decree No. 21 of 1996 being con-

sidered in this appeal has the same texture and purport with Decree 28 of 1970 which was confirmed as being in order by this court in Lakanmi's case, by parity of reasoning, Decree No. 21 of 1996 remains valid and inviolate. I restore the issue in favour of the respondents.

For the above remarks and the reasons adumbrated by my learned brother, I too feel that the appeal is devoid of merit and warrants to be dismissed. I order accordingly and endorse all the consequential orders contained in the lead judgment without any equivocation.

C

RHODES-VIVOUR

Mr. J. O. Adeyemi-Bero, a one time Permanent Secretary in the Lagos State Government acquired the following properties: D

1. Plot 177 Victoria Island, Lagos
2. No. 25 Cooper Road, Ikoyi, Lagos and
3. No. 1 Obanikoro Road, Ikoyi, Lagos

He owned them. In 1976 an investigating panel set up by the Lagos State Government indicted Chief Adeyemi-Bero. By virtue of that indictment these properties were forfeited to, and acquired by the Lagos State Government. See the Public Officers and other persons (forfeiture of Assets Order) 1976. The reason for the forfeiture is not relevant in this appeal.

In 1993 the Federal Military Government promulgated the forfeiture of Assets (Release of certain properties) Decree No. 54 of 1993 with a commencement date 23/8/93. Relevant sections of Decree No. 54 of 1993 read: F

1. As from the commencement of this Decree all the properties specified in the second column to the schedule to this Decree, properties being properties forfeited to the Federal Government and some state Governments under the Public Officers (Forfeiture of Assets) Order 1977 and the Public Officers (forfeiture of Assets) Order 1978 are hereby released to the persons named in the first column to the schedule to this Decree. G H

2. Accordingly, all the rights interest, obligations and liabilities of the Federal Military Government or a state Government in the properties referred to in section 1 of this Decree shall by virtue of this

Decree and without any further assurance be vested in the persons specified therein.

The name Mr. J. O. Adeyemi-Bero is listed among other names in the schedule and besides that name the three properties listed, owned by Mr. J. O. Adeyemi-Bero, are listed beside his name in the second column to the schedule. By virtue of the combined provisions of sections 1 and 2 of Decree No. 54 of 1993, as from the 23rd of August 1993 the Federal Government of Nigeria returned the three properties acquired by the Lagos State Government to Mr. J. O. Adeyemi-Bero. Rather than comply with Decree No. 54 of 1993 the Lagos State Government released to Mr. J. O. Adeyemi-Bero, No. 1 Obanikoro Road, Ikoyi but refused to release plot 177 Victoria Island, Lagos, and No. 25 Cooper Road Ikoyi, Lagos. Due to the Lagos State Government refusal to release Mr. J. O. Adeyemi-Bero's two other properties i.e. Plot 117 Victoria Island, and No. 25 Cooper Road, Ikoyi, he filed suit No. 19/415/95 against the Lagos State Government. In that suit, he asked for a declaration that by virtue of Decree 54 of 1993 he was the owner of Plot 177 Victoria Island, Lagos and No. 25 Cooper Road, Ikoyi, Lagos. The suit was heard by S. O. Ilori J (as he then was). On 11/6/96 the learned trial judge entered judgment in favour of Mr. J. O. Adeyemi-Bero that is to say his Lordship granted a declaration that the properties in question reverted to Mr. J. O. Adeyemi-Bero by virtue of the provisions of Decree 54 of 1993.

On the 3rd of July, 1996, the Federal Military Government promulgated the forfeiture of Assets (Release of Certain Forfeited Properties etc) (Amendment) Decree No. 21 of 1996. The Decree had a retrospective commencement date of 6th June, 1995. That means that Decree No. 21 of 1996 was in force five days before judgment was entered by Ilori J (as he then was) on 11/6/96. Relevant sections of Decree No. 21 of 1996 reads:

(1) The preamble to this Decree is hereby affirmed and declared as forming part of this Decree.

(2) Accordingly, the Forfeiture of assets (Release of Certain Properties etc) Decree 1993 is amended in the Schedule thereto by deleting item 2.

(2)(1) No civil proceedings shall lie or be instituted in any court or tribunal on account of or in respect of anything done by the

Federal Military Government by or under this Decree, or in respect of any act, matter of thing done or purported to be done by the Federal Military Government with regard to the subject matter of this Decree or any act, matter or thing whatsoever, done or purported to be done under or pursuant to this Decree by the Federal Military Government and if any such proceedings are instituted before, on or after the commencement of this Decree, the proceedings shall abate, be discharged and made void and of no effect, and any right, interest or privilege accruing, obtained or granted or purported to have accrued, been obtained or granted thereby is hereby extinguished. B

(2) Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree shall by virtue of this Decree, be made null and void and of no effect whatsoever. C

(3) For the purposes of this section, the question whether any provision of Chapter IV of the constitution of the Federal Republic of Nigeria, 1979 as amended or the African Charter on Human and People's Right (Ratification and Enforcement) Act has been, is being or would be contravened by anything done, being done or proposed to be done in pursuance of this Decree shall not be inquired into by any court of law or tribunal, and accordingly no provision of the Constitution shall apply in respect of any such question. E

(3) This Decree may be cited as the Forfeiture of assets (Release of Certain Forfeited Properties, etc) (Amendment) Decree 1996. F

It has long been settled that when interpreting statutes any provision that takes away the jurisdiction of the courts on any matter must be strictly construed. The court must at all times in such a case adopt a very narrow interpretation. See *A-G Bendel State v. A-G Federation* (1981) 10 SC 1; *Barclays Bank v. CBN* (1976) 1 All NLR G 409. The intention of the legislature is explicitly expressed in legislation. Decree No. 21 of 1996 is intended to deprive superior courts of the jurisdiction which it already possessed over the subject matter in the Decree, i.e. Forfeiture of Assets. Thus no court has jurisdiction to adjudicate over anything done by the Federal Military Government under Decree No. 21 of 1996, as from the 6th of June 1995. H

It is clear to my mind that Decree No. 21 of 1996 was made to apply retrospectively, and affect litigations in court provided a judgment has not been delivered as at the 6th of June 1995. It is only suits

that were concluded before the 6th of June 1995 that are not affected by Decree No. 21 of 1996. Superior courts possessed jurisdiction by virtue of Decree No. 54 of 1993 to resolve issues of forfeited assets of individuals, etc. By virtue of Decree No. 21 of 1996 superior courts were deprived of that jurisdiction, consequently Ilori J judgment delivered on the 11th of June 1996 ordering forfeited properties of Mr. J. O. Adeyemi-Bero returned to him was wrong, as at the time of judgment the court was divested of jurisdiction by virtue of Section 2(1) of Decree 21 of 1996. That in effect means that Ilori J acted without jurisdiction. Accordingly, judgment in suit No. M/415/95 is null and void.

Finally, Decrees are supreme by virtue of the judgment of this court in *Lakanmi v. A-G Western Region* (1970) 6 NSCC p. 143. They can only be reviewed by the legislature and such an exercise can never affect acts already done under them.

Retrospective provision in legislation is always done with some ulterior motive or hidden agenda by those in power. As at the time when Ilori J (as he then was) acted under Decree 54 of 1996 to return properties to Mr. J. O. Adeyemi-Bero, he had jurisdiction. Now, the Military Government at the time, clearly with some ulterior motive simply promulgated Decree No. 21 of 1996 and fixed its commencement date as 6th of June 1995. The aim being to render Ilori J judgment a nullity. It succeeded. This can only be done by a Military Government. This is a clear case of democracy being necessary due to man's inclination to injustice. A democratic Government ought not to benefit from Decree No. 21 of 1996 bearing in mind that justice for all, the hallmarks of a democratic Government makes democracy possible.

For this and the comprehensive reasoning and conclusions in the leading judgment prepared by my learned brother, Peter-Odili, J.S.C. which I was privileged to read in draft, the Court of Appeal was correct. Appeal is dismissed.

H

NGWUTA JSC

Having had the privilege of reading in advance the lead judgment delivered by My Lord, Peter-Odili, J.S.C., CFR, I entirely agree with the reasoning and conclusion therein. His Lordship meticulously

dealt with the facts of the case, the issues for determination as well as argument of learned counsel for the parties before arriving at the conclusion dismissing the appeal.

There is no reason to repeat what has been clearly and adequately dealt with in the lead judgment. I will nonetheless take the liberty of making just a few comments for the purpose of emphasis. B The effect of Decree No. 54 of 1993 was to release to the original appellant the property forfeited by the Lagos State Government pursuant to Order No. LSLN No. 7 of 1976 made pursuant to Edict No. 3 of 1976. The property was vested in the 1st respondent by the C Lagos State Government. The refusal to release two of the property pursuant to the Decree No. 54 of 1993 resulted in the commencement, by way of Originating Summons, of Suit No. M/415/95. On 11/6/96 Ilori J granted the reliefs in the originating summons. The judgment was predicted on the provision of Decree No. 54 of 1993. D

It would appear that Decree No. 21 of 1996 promulgated on 3/ 7/96 but made retrospective to 6/6/95, a day before the commencement of Suit No. M/415/95 was targeted at the proceedings and judgment in the said suit. Decree No. 21 of 1996 effective from 6/6/95 amended Decree No. 54 of 1993 by deleting therefrom Item E 2 pursuant to which Ilori, J delivered judgment in favour of the original appellant in Suit No. M/415/95. Apart from amending Decree No. 54 of 1993, s. 2 of Decree No. 21 of 1996 expressly voided or nullified any judgment delivered in *“any civil proceedings in respect F of the subject matter of the Decree, i.e. No. 21 of 1996 effective from 6/6/95,”*

It appears from the above picture, more clearly and graphically painted in the lead judgment, that the then Military Government, being the supreme law making authority in Nigeria at the material time, intended to, and did, take back the property released to the appellant by virtue of Decree No. 54 of 1993 which property reverted to the Lagos State Government to which it was forfeited pursuant to Order No. LSLN 7 of 1976 pursuant to Edict No. 3 of 1976. In addition the Supreme Law Maker ensured, by s. 2 of Decree No. 21 of 1996 effective from 6/6/95, that the judgment of Ilori, J, correct under Decree No. 54 of 1993 is rendered a nullity. This H being the case, the court in the later case in Suit No. M/249/97 could not have rightly held that the judgment in Suit No. M/415/95 was res

judicata, the reason being that at the time judgment was given in Suit No. M/249/97 the judgment in Suit No. M/415/95 had been rendered a nullity by s. 2 of Decree No. 21 of 1996 effective from 6/6/95.

The court cannot depart from its judgment in *Lakanmi v. A.G Western Region* (1970) 6 NSCC 143 upholding the supremacy of Decrees promulgated by the Military when in power. The sanctity of the said Decrees was preserved by the constitution of the Federal Republic of Nigeria 1999. Section 6(6) (d) of the 1999 Constitution, in pari materia with s.6(6)(d) of the 1979 Constitution provides:

“S.6(6): The judicial powers vested in accordance with the foregoing provisions of this Section - (d) shall not, as from the date when this Section comes into force, extend to any action or proceedings relating to any existing law made in or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.”

Thus, it is clear that the 1999 Constitution, mid-wifed by the Military, prohibits, in its supremacy, a review of any Decree promulgated by the Military. A departure from *Lakanmi*’s case is tantamount to setting aside Decree No. 21 of 1996 particularly s.2 thereof.

Based on the above and the more comprehensive reasoning in the lead judgment, I also dismiss the appeal and adopt the consequential orders in the lead judgment.

ARIWOOLA JSC

The original appellant was Chief J. O. Adeyemi Bero. He had died on the 15th of August, 2008 and was substituted with the present Appellant by the order of this court made on the 17th November, 2008. The Appellant was the plaintiff before the trial court in the Lagos State High Court in suit No. M/ 5 415/95. The deceased Appellant was a retired Public Servant of the Lagos State Government. In a Legal Notice published as LSLN 9 of 1976, three of his properties were forfeited to the Lagos State Government following an enquiry carried out by the Lagos State Government by which the original appellant was indicted. The said properties so forfeited were:-

- (a) Plot 177 Victoria Island, Lagos.
- (b) 25 Cooper- Road Ikoyi, Lagos.

(c) 1 Obanikoro Road, Yaba, Lagos.

As a result of petitions to the Federal Government by the deceased and 15 other persons whose assets were also forfeited to some State Governments and the Federal Government, the Federal Government by its Decree, NO.54 of 1993 released the properties so forfeited to the persons listed in the said Decree. The Lagos State Government complied only partly with the Order of Release by releasing only the property at No. 1 Obanikoro Road, Yaba, Lagos, to the deceased. Failure to release other properties of the deceased led him to institute the action in which judgment was delivered by the Hon. Justice S. O. Ilori (as he then was), hereinafter referred to as Ilori, J. on 11th day of June, 1996. In the said action, which was commenced by an Originating Summons, the plaintiff had prayed, inter alia, as follows:

“A declaration that under and by virtue of Decree No.54 of 23^d August, 1993 the properties lying, being and situate at:-

(a) Plot 177 Victoria Island, Lagos and

(b) No. 254 Cooper Road, Ikoyi, have reverted to the plaintiff and are vested in him, as owner thereof.”

It is noteworthy that the action was against the Military Administrator of Lagos State, the Attorney General, Lagos State and the Registrar of Titles as Defendants respectively. The trial court per Ilori, J. in its considered judgment held on the first relief sought by the plaintiff, inter alia, as follows:

“This court doth this day declare that pursuant to the provisions of the forfeiture of Assets (Release of Certain Properties, etc) Decree 1993 No.54, the properties lying, being, situate and known as Plot 177, Victoria Island, Lagos and 25 Cooper Road, Ikoyi, listed in the Schedule to the said Decree were released to the plaintiff and became vested in him as owner thereof with effect from 23 August 1993. All the rights, obligations interests and liabilities of the Lagos State Government in the said properties became vested in the plaintiff with effect from 23^d August, 1993”

It is interesting to note, that there was no appeal against the above decision of Ilori J. However, the instant 1st Respondent, Lagos State Development and Property Corporation proceeded to the Lagos State High Court with an Originating Summons which was amended by an Order of the trial court on 1st July, 1998. The following reliefs

were sought in the said amended Originating Summons:-

B “1. A declaration that under and by virtue of Decree NO.21 of 1996 the judgment delivered by his Lordship, Honourable Justice S. O. Ilori in Suit No.M/41/95 between Chief J.O. Adeyemi Bero and the Military Administrator & 2 Others in which judgment the court transferred interest in the properties to Chief J. O. Adeyemi Bero, is null and void and of no effect whatsoever.

C 2. A declaration that under and by virtue of Decree No.21 of 1996, the provisions of Decree No.54 of 1993 are no longer applicable to the properties known as:-

(a) Plot 177 Victoria Island, Lagos (also known as Eko Court Complex)

D (b) No.25 Cooper Road, Ikoyi (both hereinafter referred to as “the properties”) and that the ownership status of the properties remains as it was prior to the promulgation of Decree 54 of 1994 by the Federal Military Government.

E 3. A declaration that the provisions of the Determination of certain interests in Lands Edict No.3 of 1976 which vested the properties in the Plaintiff and Lagos State Notices Nos. 9 and 23 of 1976 are still valid and subsisting.

F 4. A declaration that the effect of Decree No.21 of 1996 on Decree 54 of 1993 is that the properties still remain vested in the Plaintiff under the Lagos State Edict No.3 of 1976 and Lagos State Notices Nos.9 and 23 of 1976 respectively.

G 5. An order of perpetual injunction restraining the first Defendant, his servants, agents, privies etc. whosoever or whatever from dealing with the property in any manners or form or dealing with any of the tenants resident in any of the properties.

G 6. An order of perpetual injunction restraining the first defendant through his agent, privies or anyone deriving title under him from exercising or purporting to exercise any right of ownership in whatever form or shape in respect of the properties aforesaid.

H 7. An order of perpetual injunction restraining the Registrar of Titles either by his agents, privies or anybody whatever and whosoever claiming interest with them from effecting any change in the ownership of the property as vested in 1976.

8. Further and other reliefs.

9. That provision be made for the most of this application.”

The trial court per, Hon. Justice A. Ade Alabi (as he then was), hereinafter referred to as Ade Alabi, J., in its judgment though described as Ruling delivered on Tuesday 15th September, 1998 concluded that, the Originating Summons was lacking in merit and accordingly dismissed same with costs in favour of the 1st Defendant. Dissatisfied with the decision of Ade Alabi, J, the Plaintiff who is now the 1st Respondent, appealed to the court below. In its amended Notice of Appeal which was filed on 16/10/2000, the appeal was based on the following three grounds of appeal.

GROUNDS OF APPEAL:

"1. The learned trial Judge erred in law when he held that he ...lacks the jurisdiction to make pronouncement one way or the other on the judgment of his lordship the Hon. Justice S. O. Ilori in Suit No. M415/95 and that to do so will amount to sitting on appeal over that judgment.

Particulars of Error

(i) The Plaintiff's action in the lower court as (sic) for, inter alia, a declaration that the judgment in Suit No. M/415/95 is null and void.

(ii) The High Court has an inherent power to set aside its own judgment where such judgment is a nullity;

(iii) The proper question that the learned trial Judge ought to have adverted his mind to therefore, is not whether the High Court can sit on appeal over the judgment in Suit No., M/415/95, but whether in the circumstances, the effect of Decree No.21 of 1996 is to render that judgment a nullity.

2. The learned trial Judge erred in law when he held that the point this court is being called upon to decide in this case is to the validity or otherwise of the judgment of a court of co-ordinate jurisdiction.

Particulars of Error

Although the first relief sought by the Plaintiff in the lower court was a declaration that the judgment in suit No. M/415/95 is null and void, there were nevertheless other prayers sought by the Plaintiff, the merits of which could have been decided without touching upon the validity of the judgment in Suit No. M/415/95.

3. The learned trial Judge erred in law when he held that "...the judgment in Suit No. M/415/95 operates as an estoppel per rem

judicata to prevent the Plaintiff in this case from making the claims as contained in legs 2,3 and 4 of the Amended Originating Summons.”

Particulars of Error

(i) *The judgment in Suit No.M/415/95 declared the legal effect of Decree No.54 of 1993 on the Plaintiff’s title to the disputed property.*

(ii) *At the time the judgment in Suit No. M/415/95 was given (on the 11th day of June, 1996), Decree No.21 of 1996 had not been enacted, that Decree subsequently amended Decree No.54 of 1993 on which the decision in Suit No.M/415/95 was based;*

(iii) *The instant suit sought a declaration as to the legal effect of the latter legislation (Decree No. 21 of 1996) on the Plaintiff’s title to the disputed property;*

(iv) *In the premises, the facts/issues in the instant suit (viz the effect of Decree No.21 of 1996 on the Plaintiff’s title to the disputed property) were not (a) in issue (directly or indirectly) in suit No. M/415/95 or (b) actually decided by the court in suit No M/415/95 to be the ground on which that judgment was based, these being the necessary conditions in which Suit No. M/415/95 could preclude the instant suit on the principle of res judicata. (v) The principle of estoppel per rem judicatam cannot be invoked on the basis of a null judgment.”*

The following relief was sought in the said appeal:

“AN ORDER reversing the decision of the lower court and granting all the reliefs sought in the plaintiff’s Amended Originating Summons filed in the lower court.”

The appeal was heard by the Lagos Division of the Court below which in its considered decision came to the following conclusion:-

“Having resolved all the issues in this appeal in favour of appellant, the appeal succeeds and it is allowed the decision of Alabi, J. (as he then was) refusing to set aside the decision of High Court of Lagos State in suit M/415/95 is hereby set aside.”

It is noteworthy that pursuant to the provisions of Section 16 of the Court of Appeal Act with which the court below is endowed with sufficient power to exercise the powers and function of the trial court, the court below acceded to the request of the Appellants praying that the decision of High Court of Lagos State in suit No. M/415/

95 be set aside and the property vested in Mr. J. O. Adeyemi-Bero by virtue of the judgment of Ilori, J be reversed and same be re-vested in the appellant. The court below granted specifically, reliefs 1, 2, 5, 6 and 7 as sought before the trial court. Parties were to bear their respective costs. The decision above of the court below led to the instant appeal by the deceased - Chief J. O. Adeyemi-Bero with a Notice of Appeal dated 30th December, 2004. The said Notice of Appeal was amended and further amended finally before the appeal was argued on 25th September, 2012. B

Parties filed their respective brief of arguments and duly adopted same as their arguments in support of their respective cases. In the appellant's Amended brief of argument, the appellant distilled the following six issues for determination by this court. C

"(1) Was the correctness of the decision of Ilori J. in Suit No. M/415/ 95 an issue for determination before the Court of Appeal and if it was, was the Court of Appeal right in holding that Ilori, J. was wrong in his interpretation and application of the provisions of Decree 54 of 1993. D

(2) Was the Court of Appeal right in upholding the validity and or constitutionality of Decree 21 of 1996 having regard to the provisions of Section 40 of the 1979 Constitution (now Section 44 of the 1999 Constitution) and the decision of legislative and judicial powers as between the legislature and the judiciary. E

(3) If the answer to Issue 2 is in the affirmative, was the Court of Appeal right in holding that the provisions of Decree 21 of 1996 rendered the judgment of Ilori J, a nullity and that Alabi J, should have so pronounced. F

(4) Was the Court of Appeal right in holding that the jurisdiction of Ilori J, to entertain the Appellant's case was ousted by virtue of the provisions of Decree 21 of 1996 G

(5) Was the Court of Appeal right in holding that the judgment of Ilori J. does not constitute estoppels per rem judicata as between the appellant and the respondents.

(6) Was the Court of Appeal right in holding that the deletion of the Appellant's name from the Schedule to Decree 54 of 1993 by Decree 21 of 1996 had the effect of vesting title to the properties in dispute in the Respondent having regard to the provisions of Section 6 of the Interpretation act, Laws of the Federation of Nigeria, 2004." H

The 1st and 2nd Respondents in their respective brief in a way adopted the Issues for determination of the appellant though slightly differently couched. My learned brother Mary Peter-Odili, JSC in the leading judgment actually impressively treated all the issues as formulated by the Appellant. It is noteworthy that the main Issue for consideration of the court was -

“whether the trial court (that is, Ade Alabi J.) could correct its earlier decision in the light of the new enactment.”

There is no doubt that the 1st respondent’s case in its Originating Summons before the trial court and in the address of counsel in the court was premised on the contention that the judgment of Ilori, J, in the earlier suit No. M/415/95 was rendered null and void by the statutory provisions of Decree No. 21 of 1996. It therefore only sought in the later suit, the setting aside of the judgment of the same court given in the earlier case for been a nullity.

In arguing his issues 3, 4 and 6, the appellant had contended that the court below was wrong when it held that Decree No. 21 of 1996 has the effect of rendering the proceedings before Ilori, J and the judgment therefrom a nullity. The said Issues 3, 4 and 6 read thus:-

“(3) Was the Court of Appeal right in holding that the provision of Decree 21 of 1996 rendered the judgment of Ilori J a nullity and Alabi, J should have so pronounced.

(4) Was the Court of Appeal right in holding that the jurisdiction of Ilori J. to entertain the Appellant’s case was ousted by virtue of the provision of Decree 21 of 1996.

(6) Was the Court of Appeal right in holding that the deletion of the Appellant’s name from the Schedule to Decree 54 of 1993 by Decree 21 of 1996 had the effect of vesting Title to the properties in dispute in the Respondent having regard to the provisions of Section 6 of the Interpretation Act, Laws of the Federation of Nigeria, 2004.”

It is equally of note that the 1st Respondent never went to court before Ade Alabi, J on account or in respect of anything done by the Federal Military Government by or under the Decree. As earlier stated and which is evident on its Originating Summons, the plaintiff’s case before the trial court was *“geared towards obtaining the court’s pronouncement on the validity”* or otherwise by the decision of the same High Court, presided over by Ilori, J, in view of the

provisions of Decree 21 of 1996. The Appellant had argued that Decree 21 of 1996 was expressed to be retrospective hence it would not affect the case which was filed by the Appellant before Ilori, J, as, according to the Appellant, the case was instituted after the Decree came into being by the commencement date. This contention, to say the least, is a misconception. The provision of the said decree was so clear and covers all grounds. It reads thus:-

Section 2 of Forfeiture of Assets (Release of Certain Properties etc) Amendment) Decree No. 21 of 1996.

“2(1) No civil proceedings shall lie or be instituted in court or tribunal on account of or in respect of anything done by the Federal Military Government by or under this Decree or in respect of any act, matter or thing done or purported to be done by the Federal Military Government with regard to the subject matter of this Decree or any act, matter or pursuant to this Decree by the Federal Military Government and if any such proceedings are instituted before, on or after ‘the commencement of this Decree, the proceeding: shall abate, be discharged and made void and of no effect and any right, interest or privilege accruing, obtained or granted or purported to have accrued, been obtained or granted thereby is hereby extinguished.”

(2) Accordingly, any judgment or order of any court or tribunal delivered on or before the commencement of this Decree shall, by virtue of this Decree be made null and void and of no effect.” (Underlining supplied)

There is no doubt and it is very clear from the provisions of the Decree stated above, that the proceedings conducted before the trial court of Lagos State and the judgment of Ilori J. were declared null and void and of no effect. In other words, the law had uprooted the entire basis of the judgment of Ilori. J and this is fundamental as it affected the competence and jurisdiction of the court to have entertained the claim of the plaintiff before it, in the first instance. As a result, the entire proceedings including the judgment of Ilori, J is liable to be set aside either by Ilori, J himself or any other Judge of the same High Court of Lagos State of coordinate jurisdiction. This would not have amounted to a review of the said judgment. It was not a matter in which the court was competent, but decided the matter wrongly or erroneously. It was a matter in which the court’s competence was ousted by the Decree. In other words, Alabi, J ought to

have clearly and competently assumed jurisdiction to entertain the Originating Summons of the 1st Respondent and apply the prevailing legislation, set aside the Ilori J's judgment having been declared null and void. As a result, pursuant to the enabling provision of section 16 of the Court of Appeal Act, the court below rightly assumed jurisdiction to set aside the decision of Ilori, J in suit No. M/415/95 and grant the reliefs as sought in the Originating Summons of the 1st respondent.

Furthermore, another important issue worthy of mentioning is whether the court below was right in holding that the judgment of Ilori J does not constitute estoppel per rem judicatam as between the Appellant and the Respondents. In its judgment, the court below on this point had held, inter alia, thus:

"... application of the doctrine of estoppel per rem judicatam to the present suit does not arise. It is clearly manifested that the High Court of Lagos State had no jurisdiction to entertain the suit No. M/415/95. It is equally a common ground that the principle of estoppel per rem judicatam can only be found on a valid judgment ... since the judgment upon which the doctrine of estoppel per rem judicatam was based is a void one, the doctrine cannot operate or be applied to the suit."

By "res judicata" it means a thing adjudicated. In other words, it means *"an issue that has been definitively settled by judicial decision"*. The three essential elements of this doctrine therefore are:-

- (1) an earlier decision on the issue,
- (2) a final judgment on the merits, and
- (3) the involvement of the same parties or parties in privy with the original parties. See Black's Law Dictionary Ninth Edition p. 1425.

It is already settled law that in order to sustain a plea of "res judicata" the party who is pleading it must satisfy the required conditionalities which are:

1. The parties (or their privies as the case may be) are the same in the present case as in the previous case;
2. That the issue and subject matter are the same in the previous suit as in the present suit;
3. That the adjudication in the previous case must have been given by a court of competent jurisdiction; and

4. That the previous decision must have finally decided the issues between the parties. See; *M. O. Odutola v. Chief Z. Oderinde & Ors* (2004) 6 SCMJ 161 at 167, (2004) 12 NWLR (Pt. 888) 574, (2004) 30 WRN I, (2004) 18 NSCQR 577, *Nkanu & Ors. v. Onum & Ors.* (1977) 5 SC 11, *Dzungwe v. Gbishe* (1985) 2 NWLR (pt. 8) 528, *Udo v. Oboto* (1989) 2 NWLR (pt. 95) 59; *S. O. Ntuks & Ors. v. Nigerian Ports Authority* (2007) 11 SCMJ 127, (2007) 13 NWLR (pt. 1050) 392. B

However, whenever any of the above conditions is not met in a plea of *res judicata*, then the plea must fail and be so decided by the court. There is no doubt, in the instant case, that the issue in the previous suit before *Ilori J.* and the one before *Ade Alabi, J* are not the same. But more importantly, it is clear that the adjudication in the previous case before *Ilori, J.* could not be said to have been given by a court of competent jurisdiction, in the face of the prevailing legislation, that is, Decree 21 of 1996 which clearly ousted the court's jurisdiction in the matter. As a result, the court below was right to have held that the judgment of *Ilori, J.* did not constitute estoppel *per rem judicatam* as between the Appellant and the respondents. C D E

For the above reason and the fuller reasons given by my learned brother, *Mary Peter-Odili, JSC*, which I adopt as mine, I also hold that this appeal is unmeritorious and liable to be dismissed. Accordingly, same is dismissed by me, as I affirm the decision of the court below. I abide by the order of costs. F

MUHAMMAD JSC

I have read in draft the lead judgment of my learned brother, *Peter-Odili, J.S.C.* delivered. I entirely agree with the reasonings, articulated in the judgment and the conclusion arrived at that the appeal lacks merit. The thorough consideration of the questions raised by the appeal in the lead judgment leaves room for one's contribution only for the sake of emphasis. G H

I am amazed by the number of issues formulated by both sides as having arisen for the determination of the appeal. It is indeed unnecessary for parties to formulate many issues as appeals succeed

not on the basis of the number of issues distilled for their determination but the potency of such issues.

The crucial question this appeal raises is as to the impact of the two Decrees, the Forfeiture of Assets (Release of certain properties) Decree No. 54 of 1993, with 23rd August, 1993 as its commencement date and the forfeiture of Assets (Release of Certain forfeited properties etc) (Amendment) Decree No. 21 of 1996, with a retrospective commencement date of 6th June 1995, on the fortunes of the parties to the appeal.

The original appellant, a Permanent Secretary in the employment of the then Military Government of Lagos State, consequent to an 5 indictment, forfeited to his employers his landed properties situate at Plot 177 Victoria Island and No. 25, Cooper Road, Ikoyi Lagos. Following the promulgation of the forfeiture of Assets (Release of certain properties) Decree No. 54 of 1993, the said properties in addition to No. 1 Obanikoro Road, Ikoyi, Lagos, reverted to the appellant. The Lagos State Government released the latter property to the original appellant but withheld the other two. Interest in the two had been vested in the Lagos State Development and Property Corporation, the 1st Respondent herein. Persistent refusal of the Lagos State Government to release the two properties led the appellant to commence suit No. M/415/95 against the State Attorney General and the Registrar of Titles. The originating summons was filed on 7th June 1995 by which date the forfeiture of assets (release of certain properties etc) (Amendment) Decree No. 21 of 1996, with the commencement date of 6th June 1995 had retrospectively come into effect. The Decree did clearly oust the jurisdiction of courts pertaining the subject matter it provided for. Yet Ilori J. who presided over Suit No. M/415/95 granted the appellant the reliefs he canvassed and ordered the release of appellant's two other properties as provided under Decree No. 54 of 1993.

The respondents herein by an originating summons dated and filed on 14th May 1997 instituted suit No. M/249/97 on which the instant appeal predicates. The respondents' prayers in the suit includes the nullification of the judgment of Ilori J. in suit No. M/415/95 and declaration that by virtue of Decree No. 21 of 1996 the properties Ilori J. ordered to be released to the appellant remains in the 1st Respondent. Alabi J. declined jurisdiction on the grounds that suit

No. M/415/95 constitutes estoppel per rem judicatam against 1st respondent's claim and that he would be sitting on appeal over Ilori J's judgment.

Aggrieved by the trial court's decision, the respondents appealed to the Lagos Division of the Court of Appeal which allowed the appeal and nullified Ilori J's judgment. The instant appeal by the respondents at the court below arises from the court's judgment as contained at pages 211-243 of the record of appeal. In allowing the appeal before it, the court set-aside Alabi J's judgment. B

I shall limit my determination of the appeal to the validity of C Ilori J's judgment which the respondents by their originating summons in suit No. M/249/97 urged Alabi J to nullify. It seems to me that the submissions of Lawal Pedro SAN, Solicitor General Lagos State and learned senior counsel to the 2nd Respondent is most devastating to appellant's fortunes. He submits that by the time the appellant commenced suit No. M/415/95 before Ilori J. in 1995 the D Federal Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984 was a subsisting legislation. Section 1(2)(b)(i) of the 15 Decree, learned senior counsel contends, had ousted Ilori J's jurisdiction in the very case he proceeded to pronounce upon on the E basis of Decree 54 of 1993. The purport of suit No. M/249/97 instituted by the respondents, learned senior submits, is to have Alabi J. set aside the judgment of Ilori J. given without jurisdiction. It is this anomaly which Alabi J. refused to that the Court of Appeal rectified F by annulling Ilori J's judgment. In any event, learned senior counsel concludes, the right purportedly vested in the appellant under Decree 54 of 1993 has been withdrawn by Decree No. 21 of 1996.

The court below had entertained the same arguments from parties herein and made findings thereon. The appellant considers G the court's findings erroneous. Part of the findings of the court below complained against in this appeal read thus:-

"Before closing this issue may I take advantage of this medium to remind ourselves of Section 1(2)(b)(i) of the Federal Government (Supremacy and Enforcement of Powers) Decree 13 of H 1984. It reads as follows:-

"(2) It is hereby declared also that:

(a) XXX

(b) With a view to assuring effective maintenance of the terri-

torial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria.

(i) *No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before or after the commencement of this Decree the proceedings shall abate, be discharged and made void.*

The words of Section 1 (2) (b) (i) of Decree 1 of 1984 are clear, unambiguous and unequivocal. It is settled that where the words of an enactment are clear and unequivocal it should be given its literal and grammatical meaning. The Forfeiture of Assets (Release of certain Forfeited Properties etc) Decree No. 54 of 1993. is clearly within the contemplation of Decree No. 1 of 1984. This Decree ousts the jurisdiction of a court in respect of any act, matter or is thing done or alleged to have been done pursuant of any Decree or Edict. The Forfeiture of Assets (Release of Certain Forfeited Properties etc) Decree No. 54 of 1993 is clearly Decree within the contemplation of Decree No.1 of 1984. It was in force at the time material to the filing of Suit No. M/415/95 by Mr. J. O. Adeyemi-Bero. The High Court of Lagos State had no jurisdiction to inquire or entertain same, Ilori J. ought not to have taken cognizance of the suit ab initio on the strength of this Decree.” (Underlining supplied for emphasis)

The foregoing finding of the court is unassailable. The trial court’s decision that Ilori J’s judgment in suit No. M/415/95 operates as estoppels per rem judicata is manifestly perverse. Only valid subsisting judgment between the same parties and/or their privies and in respect of the same subject matter do. See *Fadiora v. Gbadebo* (1978) 3 SC 219 at 228; *Olafunmise v. Falana* (1987) 1 NWLR (pt. 47) 64 at 70 and *Madukolu v. Nkemdilim* (1962) ALL NLR 587.

Again it is not the law that a court cannot, in certain circumstances set aside its own judgment. Respondents’ desire by their suit No. 249/97 is to have Alabi J. set aside the null and void judgment of Ilori J. in suit No. M/415/95 which the trial court, on the authorities is empowered to do. The principle is that a person affected by the judgment of a court which is a nullity is entitled to have the very court set it aside *Ex debito justitiae*. The court in its inherent jurisdiction has the power to set-aside its own judgment or order made without juris-

dition or if same has been fraudulently obtained. In such a circumstance, an appeal for the purpose of having the null judgment or order cannot be said to be necessary. See *Bello v. INEC & 2 Others* (2010) 8 NWLR (pt. 1196) 342, *Odojin v. Olabanji* (1996) 3 NWLR (pt. 435) 126 and *Ogola v. Ogolo* NSCQLR (2006) (Vol. 25) 423. In the instant case, firstly, Decree No. 13 of 1984 had by s. 1(2)(b)(i) has ousted the jurisdiction of the trial court as presided by Ilori J. in respect of matters covered by Decree No. 54 of 1993. B

Secondly, Decree No. 21 of 1996 has further taken the bottom off the court and the proceedings before it having commenced during the subsistence of the Decree, retrospective thought it is, and in relation to appellant's properties, is null and void. The power of the Military Government that promulgated the two Decrees is never in doubt. See *Lakanmi v. A.G Western Region* (1970) 6 NSCC and *Attorney General Lagos State v. Hon. Justice Dosunmu* (1989) 3 D NWLR (pt. 111) 552. The court below by virtue of s. 15 of the Court of Appeal Act is empowered to do that which the trial court is asked and empowered but failed to do. The court cannot, for that reason, err in the exercise of the

powers the law clearly vests in it. I am unable to proceed beyond this point because the same Decree 13 of 1984 by Section 1(2)(b)(i) thereof which disabled the trial court presided over by Ilori J. in suit No. M7415/95 to enquire into any matter under Decree No. 54 of 1993, equally disentitled the respondents herein from seeking any relief arising from any enquiry pursuant to and by virtue of Decree No. 21 of 1996. In practical terms, parties remain in the positions they were prior to the promulgation of Decree No, 54 of 1993 with the nullification of Ilori J's judgment by the court below which decision I hereby affirm. E F G

It is particularly for the foregoing and more so the fuller reasons adumbrated in the lead judgment that I dismiss the appeal and abide by the consequential orders made in the lead judgment.