

SUPREME COURT OF NIGERIA
14TH DECEMBER, 2012. SC. 44/2010
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-
ODILI, O. ARIWOOLA, K. B. AKAHS, JJSC**

OLUSEGUN EGUNJOBI APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

JURISDICTION - Definition - Jurisdiction is court's power to decide case or issue a decree - And it is the charge before court - That determines the jurisdiction thereof (H1)

ACTIONS - Courts - Competence - Basis - Court's competence in a case depends on - The suit being initiated by due process of law - Before a properly constituted panel - With no feature preventing exercise of jurisdiction (H2)

JURISDICTION - Fundamentality of - Jurisdiction should be determined when raised - Since if court lacks jurisdiction in a matter - The proceedings thereof remain a nullity ab initio (H3)

JURISDICTION - Appeals - Supreme Court - Issue of jurisdiction can be raised any time even before Supreme Court - And court can suo motu raise same - But parties must be heard before decision is taken (H4)

JURISDICTION - Banking - Failed banks tribunal - Crime - By s.3(1)(b)(c)(d) of Decree No.18 1994 - The tribunal can try new offences specified under Pt.111 - As well as existing offences under other enactments (H5)

APPEALS - Courts - Evidence - Evaluation - Trial court ascribes probative value to evidence - And appellate court does not interfere - Unless for compelling reasons (H6)

CRIMINAL PROCEDURE - Arraignment - Failure to prosecute co-accused - Non-prosecution of others who counter-signed cheques

FACTS

The case of prosecution/respondent is that 1st accused and 2nd accused/appellant as the Branch Manager and Branch Accountant respectively of Nigeria-Arab Bank Ltd, granted overdraft credit facilities to the tune of N45,341,466.35 to a company (3rd accused), which was an unsecured loan and in a breach of the rule and regulations contained in the Bank's Operation Manual. Consequently, appellant was arraigned before the Failed Banks Tribunal, Calabar, on a nine-count charge particularly in counts one and two, for grant of the over-draft credit facilities. At the trial, respondent called six witnesses and tendered a large chunk of documentary exhibits against appellant. Respondent maintained that cheque presented by the company in purported part payment of the said overdraft was dishonoured for lack of funds. Appellant in his defence admitted that the account in question was overdrawn through cheques signed by 1st accused some of which were counter-signed by him while other officers of the Branch counter-signed the other cheques.

Appellant maintained that he had no power to grant overdraft on any account and that by counter-signing some of the cheques, he was merely carrying out his official duties as directed by 1st accused. He maintained that some other cheques forming part of the withdrawal instruments were not counter-signed by him but by other officers who were not charged by respondent. At the end of trial, the tribunal rejected the defence of 1st accused and appellant and found them guilty on counts 1, 2, 7 and 9. Each of them was sentenced to 5 years imprisonment on counts 1, 7 and 9 with sentences to run concurrently and 3 years imprisonment in respect of count 2. Being dissatisfied, appellant appealed to the Court of Appeal, Calabar. The court set aside the conviction and sentence of appellant in counts 7 and 9 and affirmed the convictions on counts 1 and 2. The sentences passed on appellant in counts 1 and 2 by the trial tribunal were reduced to a fine of N20,000.00 or six months imprisonment in count 1 and a fine of N50,000.00 or 18 months imprisonment in count 2. Still dissatisfied, appellant filed appeal to Supreme Court.

ISSUES FOR DETERMINATION

"4.01 Whether considering the law and the circumstances of

this case, the learned Justices of the Court of Appeal were justified in holding that the Failed Bank Tribunal had jurisdiction to try the accused/appellant on counts 1 and 2 of the charge against the appellant.

4.02 Whether upon a proper evaluation and consideration of the evidence at the trial court and the concurrent findings by the Court of Appeal, the learned Justices of the Court of Appeal were justified in affirming the conviction of the appellant on counts 1 and 2 of the charge against the appellant”

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

JURISDICTION - Definition

1. Jurisdiction is simply defined as ‘a court’s power to decide a case or issue a decree’. It is basic that it is the charge before the court which determines the jurisdiction of the court to entertain same. (p. 4269 E)

Courts - Competence - Basis

2. Let me reiterate the points that for a court or Tribunal to be competent to entertain a case, the suit must be initiated by due process of the applicable law, before a panel that is properly constituted and there is no feature in the case which prevents the court from exercising its jurisdiction. (p. 4269 G)

JURISDICTION - Fundamentality of

3. The issue of jurisdiction is very fundamental and radical. It should be determined at the earliest opportunity when it is raised. It forms the foundation or bedrock of adjudication and where a court lacks jurisdiction, there is want of competence to try the matter. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. This is because a defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication. (p. 4269 H)

JURISDICTION - Appeals - Supreme Court

4. Point relating to jurisdiction can be raised at any time by a party even on appeal before this court. It can be raised by the court itself but parties must be afforded the chance to address on same before a decision is taken. (p. 4270 C)

B

JURISDICTION - Banking - Failed banks tribunal

5. The jurisdiction of the Tribunal as established by Decree No. 18 of 1994 is specified in section 3 (1) (b) (c) and (d) which provides as follows:-

C

“3 (1) The Tribunal shall have power to -

(b) try the offences specified in Part 111 of the Decree;

(c) try the offences specified in the Banks and Other Financial Institutions Decree 1991 and the Nigeria Deposit Insurance Corporation Decree 1988 and;

D

(d) try other offences relating to the business or operation of a bank under any enactment.”

The court below, rightly in my view, found that the jurisdiction of the tribunal may be classified under two headings viz:

E

1. Jurisdiction to try newly created offences under the Decree i.e. those specified under Part 111 of the Decree.

2. Jurisdiction over existing offences created under other enactments.

F

With respect to 2 above, the court below got it right when it felt that the Tribunal has the jurisdiction to try such offences created under other enactments regardless of the time they were committed. In effect, Count 1 of the charge was preferred based on an existing offence under another enactment, to wit Criminal Code Act. The Tribunal, no doubt, was vested with the toga of jurisdiction to try Count 1 of the charge. To find otherwise will not be in tandem with the dictate of the law as envisaged by the Law Maker. It is not the business of the court to create an escape route for the appellant as strenuously urged on his behalf. (p. 4271 C)

G

H

Courts - Evidence - Evaluation

6. Learned counsel submitted that the court below ought not to have affirmed the findings of the trial Tribunal in respect of Counts 1 and 2. He felt that the court below did not properly review the findings of fact accordingly. Learned counsel for the respondent submitted that the court below properly and extensively reviewed the findings of fact of the trial Tribunal before it affirmed same. Generally, an appellate court should not ordinarily substitute its own views of fact for those of the trial court; except where wrongly applied to the circumstance of the case or the conclusion reached was perverse or manifestly wrong. This is because ascription of probative value to the evidence of witnesses is pre-eminently the business of the trial court which saw and heard the witnesses. An appeal court will not interfere with same unless for compelling reasons. (p. 4273 D)

CRIMINAL PROCEDURE - Arraignment

7. The appellant did not show that he took proper steps before counter-signing most of the cheques-Exhibits G-G180 which led to the colossal unauthorized and unsecured facilities to the 4th accused. If he had taken proper steps by refusing to counter-sign the vast majority of those cheques, the story would have been different. The appellant's contention that the evidence of PW2 and PW3 raise doubts as to the role played by him rests on quick sand. It has no foundation. The 1st accused and the appellant herein know the rules contained in Exhibits J and H series which they flouted and granted unauthorized facilities to the 4th accused. The point of discrimination raised on behalf of the appellant when it was maintained that others who counter-signed cheques like the appellant were not prosecuted is a non-issue. It has to do with public policy. The Attorney-General is in charge of his official duties and it is presumed that he knows what to do in any given situation without any undue prompting. In this respect, I was not taken in by the ploy embarked upon by the appellant who should dance to the tune dictated by him. (p. 4276 G)

NOTABLE POINT OF INTEREST

FABIYI JSC

1. Dismissal of criminal appeal with cost is unknown to rules of court

- B Chief Philip Umeh, learned counsel for the respondent urged that the appeal be dismissed with substantial costs. This is the first time I will read such a thing in a brief of argument dealing with a criminal matter. Learned counsel should know better. The rules of the court did not touch on same. It is unheard of and should not be repeated.
- C (p. 4277 G)

REPRESENTATION

- C. V. C. Ihekweazu, for the Appellant
- Philip N. Umeh with A. B. Tase and Joy Ebeledike (Mrs.), for the
- D Respondent

CASES REFERRED TO

- Akinfolarin v. Akinfolarin (1994) 4 SCNJ 30
- E Izenkwe v. Nnadozie (1953) 14 WACA 361
- Adeyemi v. Opeyori (1976) 9-10 SC 31
- Madukolu v. Nkemdilim (1961) N.S.C.C. (Vol. 2) 374
- Tukur v. Taraba State (1997) 6 SCNJ 81
- Katto v. CBN (1991) 9 NWLR (Pt. 214) 126
- F Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296
- Jeric Nig. Ltd. v. U.B.N Plc. (2000) 15 NWLR (Pt. 691) 447
- Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508
- Labiya v. Anretiola (1992) 8 NWLR (pt. 358) 129
- Onagoruwa v. The State (1992) 2 NWLR (Pt. 221) 33
- G Akegbejo v. Ataga (1998) 1 NWLR (pt. 534) 459
- Ogundipe v. Akinloye (2000) 10 NWLR (Pt. 775) 312
- Oloriode v. Oyebe (1984) 1 SCNLR 390
- Ezomo v. Oyakhire (1985) 1 NWLR (Pt. 2) 195

STATUTES REFERRED TO

- Criminal Code Cap 77 LFN 1990, ss.7(c), 516
- Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 1994 (as amended), s.3(1)(b)(c)(d)

Banks & other Financial Institutions Decree No. 25 1991, s.18(2)
 Constitution of Federal Republic of Nigeria 1999, s.36(8)

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Calabar Division ('the court below' for short) delivered on 26th April, 2001. Therein, the appellant's appeal against the judgment of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal holden at Calabar ('the trial Tribunal' for short) delivered on 24th March, 1999 was allowed in part as the appellant's conviction in respect of counts 1 and 2 was upheld while he was discharged and acquitted in respect of counts 7 and 9 contained in the charge sheet.

For a proper appreciation of the issues canvassed in this appeal, it is apt to assemble the relevant facts with due emphasis on the appellant's complaints in respect of his conviction and sentence in the stated counts 1 and 2. The 2nd Accused/Appellant was on the 16th of November, 1999 arraigned with three others before the trial Tribunal. They were arraigned and tried together for various offences in a Nine (9) count charge. For the purpose of this appeal, the particulars of counts 1 and 2, which are of moment, read as follows:-

COUNT 1:

That you Samuel B. Apata and you Olusegun Egunjobi, being the Branch Manager and the branch Accountant respectively of Nigeria-Arab Bank Limited (now Assurance Bank Limited) Broad Street Branch, Lagos and you Otta Akhibi, being the Managing Director of Axtro Film Limited customer of the Nigeria-Arab Bank Limited (now Assurance Bank Limited), Broad Street Branch, Lagos operating Account No. 1310116474-2 between July, 1994 and December, 1995 at Lagos, conspired to commit felony to wit granted various credit facilities totalling =N=45,341,466.35K in favour of AXTRO FILM LIMITED without lawful authority and in contravention of the rules and regulations of the Nigeria-Arab Bank Limited (now Assurance Bank Limited) and thereby committed an offence punishable under section 516 of the Criminal Code, Cap. 77 Laws of the Federal Republic of Nigeria 1990 read in conjunction with section 3 (1) (c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended).

COUNT 2:

That you Samuel B Apata and you, Olusegun Egunjobi, being the Manager and the Branch Accountant respectively, of the Broad Street Branch of Nigeria-Arab Bank Limited (now Assurance Bank Limited), between July, 1994 and December 1995 at Lagos, granted various credit facilities totalling =N=45,341,466.35K in favour of AXTRO FILM LIMITED without lawful authority and in contravention of rules and regulations of Nigeria-Arab Bank Limited (now Assurance Bank Limited) and thereby committed an offence contrary to section 18 (1) (b) and punishable under section 18 (2) of the Banks and other Financial Institutions Decree No. 25 of 1991 read in conjunction with section 3 (1) (c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended).

On 16/11/1998, the pleas of each of the accused persons were taken. The appellant pleaded not guilty to the five counts against him; counts 1 and 2 inclusive. To sustain the charge, the prosecution called six witnesses and tendered a large chunk of documentary exhibits. The 1st accused and the 2nd accused/appellant testified in their defence. The facts as assembled by the appellant's counsel and adopted by the respondent's counsel with which I am at one with both of them are as follows-

The appellant was engaged as an officer of Nigeria-Arab Bank Limited on 10th April, 1989. He worked in various branches of the Bank and was posted from Daleko Branch, Isolo, Lagos to Broad Street Branch of the Bank as an Accountant in June, 1994. There, he met Samuel B. Apata, the 1st accused as the Manager. The 1st accused became Principal Manager in 1996. Otta Akhibi (3rd Accused) was the Managing Director of Axtro Films Limited (4th Accused) which was a customer of the Branch where it maintained a current account No. 3101164726. The 3rd accused's company (the 4th Accused) was by a letter dated 5th July, 1994 granted through the Bank a Six Years Term Loan by the National Economic Reconstruction Fund (NERFUND). The loan was in the sum of \$1,276,680.00 (One Million, Two Hundred and Seventy-Six Thousand, Six Hundred and Eighty United States Dollars only) and =N=2,212,000.00 (Two Million, Two Hundred and Twelve Thousand Naira Only) which was for the importation and installation of machinery

for the manufacture and production of the required plant and machinery. The case of the prosecution was that the 1st accused and the appellant as the Branch Manager and Branch Accountant respectively, granted overdraft credit facilities to the tune of ₦45,341,466.35K to the 3rd accused's company, the 4th accused, which was unsecured and in a breach of the rule and regulations contained in the Bank's Operation Manual as amended from time to time by the Head Office Circulars. The prosecution maintained that the cheque presented by the 3rd accused person in purported part payment of the said overdraft after much pressures was dishonoured for lack of funds. The appellant in his defence admitted that the account in question was overdrawn through cheques signed by the 1st accused some of which were counter-signed by him while other officers of the Branch counter-signed the other cheques. He maintained that he had no power to grant overdraft on any account and that by counter-signing some of the cheques, he was merely doing so as part of his schedule of duties and in obedience to the instruction given to him by the 1st accused person. He maintained that some other cheques forming part of the withdrawal instruments were not counter-signed by him but by other officers who were not charged by the respondent. He admitted seeing the Bank's Operation Manual but denied knowledge of the Head Office Circulars which were directed to the Branch Manager. At the conclusion of the trial, counsel on both sides submitted written addresses to the Trial Tribunal which in its reserved judgment delivered on 24th March, 1999 rejected the defence of the 1st accused and the appellant. It found them guilty on counts 1, 2, 7 and 9. Each of them was sentenced to 5 years imprisonment on counts 1, 7 and 9 with sentences to run concurrently and 3 years imprisonment in respect of count 2. Sentences were also dished out to the 3rd and 4th accused persons in absentia.

The appellant herein felt dissatisfied and appealed to the court below which heard the appeal and handed out its judgment on 26th April, 2001. It set aside the conviction and sentence of the appellant in counts 7 and 9 and affirmed the convictions on counts 1 and 2. The sentences passed on the appellant in counts 1 and 2 by the trial Tribunal were reduced to a fine of ₦20,000.00 or six months term of imprisonment in count 1 and a fine of ₦50,000.00 or 18

months imprisonment in count 2. The fines were made cumulative and the prison terms, concurrent. The appellant was ordered to be released from prison having served over 18 months in prison custody. The appellant still felt dissatisfied with the stance of the court below and appealed to this court vide a Notice of Appeal which contained three grounds of appeal.

On 4th October, 2012, the appeal was heard by this Court. Learned counsel to the appellant adopted and relied on the appellant's brief of argument filed on 8th July, 2011 and appellant's reply brief filed on 28th August, 2012 both of which were deemed filed on 04/10/2012. He made oral submissions and urged that the appeal be allowed. Learned counsel for the respondent also adopted and relied on the respondent's brief filed on 31/05/2012 but deemed filed on 04/10/2012. He equally made oral submissions in amplification and urged that the appeal be dismissed. From the three grounds of appeal filed by the appellant two issues were formulated for determination and same were adopted by the learned counsel to the respondent without much ado. The two issues for determination by consensus of both sides read as follows:-

"4.01 Whether considering the law and the circumstances of this case, the learned Justices of the Court of Appeal were justified in holding that the Failed Bank Tribunal had jurisdiction to try the accused/appellant on counts 1 and 2 of the charge against the appellant (Ground 1)

4.02 Whether upon a proper evaluation and consideration of the evidence at the trial court and the concurrent findings by the Court of Appeal, the learned Justices of the Court of Appeal were justified in affirming the conviction of the appellant on counts 1 and 2 of the charge against the appellant" (Grounds 2 and 3)

Arguing issue 1, learned counsel for the appellant submitted that the Justices of the court below erred in law when they held that the trial Tribunal had jurisdiction to try the appellant on counts 1 and 2 of the charge. He maintained that it is settled, that it is the charge before the court that determines the jurisdiction of the court or Tribunal to entertain the charges. He cited the cases of *Akinfolarin v. Akinfolarin* (1994) 4 SCNJ 30 at 43; *Ajaka Izenkwe & Ors. v. Nnadozie* (1953) 14 WACA 361 AT 363; *Adeyemi v. Opeyori* (1976) 9-10 SC. 31. Learned counsel submitted that a court or Tribunal can only be

competent if, among other things, the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. He cited the cases of *Madukolu v. Nkemdilim* (1961) N.S.C.C. (Vol. 2) 374 at 379; *Tukur v. Taraba State* (1997) 6 SCNJ 81. Learned counsel further submitted that the issue of jurisdiction which is defined by statute is so fundamental and radical that it forms the foundation of adjudication as any judgment or proceeding, however well conducted without jurisdiction is a nullity. He cited *Katto v. CBN* (1991) 9 N.W.L.R (Pt. 214) 126. Learned counsel asserted that the issue of jurisdiction can be raised at any time by a party even on appeal before the apex court for the first time. He cited *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296; *Jeric Nig. Ltd. v. U.B.N Plc.* (2000) 15 NWLR (Pt. 691) 447 at 457.

Learned counsel for the respondent agreed with the Submissions made on behalf of the appellant that it is the charge before the court that determines the jurisdiction of the court to entertain the same. He also concurred with the submission that a court or Tribunal can only be competent if, among other things, the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. He maintained that it is trite that the issue of jurisdiction is so fundamental that it forms the foundation of adjudication.

Jurisdiction is simply defined as ‘a court’s power to decide a case or issue a decree’. It is basic that it is the charge before the court which determines the jurisdiction of the court to entertain same. This is as clearly pronounced by this court in *Adeyemi v. Opeyori* (supra) cited by the learned counsel to the appellant.

Let me reiterate the points that for a court or Tribunal to be competent to entertain a case, the suit must be initiated by due process of the applicable law, before a panel that is properly constituted and there is no feature in the case which prevents the court from exercising its jurisdiction. This is as pronounced by this court decades ago in *Madukolu v. Nkemdilim* (supra) at page 379 and restated in *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508. ***The issue of jurisdiction is very fundamental and radical. It should be determined at the earliest opportunity***

when it is raised. It forms the foundation or bedrock of adjudication and where a court lacks jurisdiction, there is want of competence to try the matter. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. This is

B because a defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication. See Labiyi v. Anretiola (1992) 8 NWLR (pt. 358) 129 at 169; Onagoruwa v. The State (1992) 2 NWLR (Pt. 221) 33 at 42; Katto v. CBN (supra).
C Akegbejo v. Ataga (1998) 1 NWLR (pt. 534) 459; Ogundipe v. Akinloye (2000) 10 NWLR (Pt. 775) 312.

Point relating to jurisdiction can be raised at any time by a party even on appeal before this court. It can be raised by the court itself but parties must be afforded the chance to address on same before a decision is taken. The cases of Bronik Motors Ltd. v. Wema Bank Ltd. (supra) and Jeric (Nig.) Ltd. v. U.B.N. Plc (supra), both cited by the appellant's counsel, are of moment here. See: also Oloriode v. Oyebi (1984) 1 SCNLR 390, Ezomo v. Oyakhire (1985) 1 NWLR (Pt. 2) 195.

E Let me now move to the real issue in respect of the jurisdiction of the trial Tribunal which the appellant has challenged. Learned counsel observed that the appellant was charged in counts 1 and 2 with offences under the Criminal Code Act, Cap. 77 Laws of the Federation 1990 and the Banks and other Financial Institution Decree No. 25 of 1991 (now Banks and Other Financial Institutions Act, Cap B2, LFN, 2004).
F Learned counsel observed that in order to arraign the appellant before the trial Tribunal, the charges were read along with section 3 (1) (c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (now Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Cap F2, LFN 2004).
G Learned counsel further submitted that it is section 3 of Decree No. 18 of 1994 that clothes the trial Tribunal with the garb of jurisdiction to entertain the charge against the appellant.
H He submitted that for the trial Tribunal to have the power to entertain Count 1 under Section 3 (1) (c) of Decree No. 18 of 1994, the offence charged must be cognisable under the Banks and Other Financial Institutions Decree No.25 of 1991 (now CapB2, LFN 2004). Learned counsel submitted that the offence of conspiracy to commit

a felony under Section 516 of the Criminal Code, not being an offence under Decree No. of 1991, the trial Tribunal lacked jurisdiction to entertain it and the court below erred when it held that the trial Tribunal had jurisdiction to try the appellant on Count 1.

On behalf of the respondent, learned counsel observed that the criminal jurisdiction of the Tribunal is as specified in Section 3 (1) (b) (c) and (d) of Decree No. 18 of 1994. He maintained that the offence in Count 1 constitutes an offence by virtue of Section 3 (1) (d) of the Decree. He felt that the offence of conspiracy under Section 516 of the Criminal Code was within the jurisdiction of the Tribunal as an existing offence under another enactment. He relied on the decision of this court in *Onwudiwe v. FRN* (2006) 10 NWLR (Pt. 988) 392.

The jurisdiction of the Tribunal as established by Decree No. 18 of 1994 is specified in section 3 (1) (b) (c) and (d) which provides as follows:-

“3 (1) The Tribunal shall have power to -

(b) try the offences specified in Part 111 of the Decree;

(c) try the offences specified in the Banks and Other Financial Institutions Decree 1991 and the Nigeria Deposit Insurance Corporation Decree 1988 and;

(d) try other offences relating to the business or operation of a bank under any enactment.”

The court below, rightly in my view, found that the jurisdiction of the tribunal may be classified under two headings viz:

1. Jurisdiction to try newly created offences under the Decree i.e. those specified under Part 111 of the Decree.

2. Jurisdiction over existing offences created under other enactments.

With respect to 2 above, the court below got it right when it felt that the Tribunal has the jurisdiction to try such offences created under other enactments regardless of the time they were committed. In effect, Count 1 of the charge was preferred based on an existing offence under another enactment, to wit Criminal Code Act. The Tribunal, no doubt, was vested with the toga of jurisdiction to try Count 1 of the charge.

To find otherwise will not be in tandem with the dictate of the law as envisaged by the Law Maker. It is not the business of the court to create an escape route for the appellant as strenuously urged on his behalf.

In respect of Count 2, learned counsel for the appellant contended that he cannot be tried under the count since section 3 (1) (c) of Decree No. 18 of 1994 has no retrospective effect to accommodate an offence committed between July, 1994 and December, 1995. Learned counsel observed that courts frown at enactments that have retrospective effect. He cited *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 61) 377 at 406 and *Afolabi v. Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734. Learned counsel referred to Section 36(8) of the 1999 Constitution and maintained that statutes which overreach the citizen's right of access to court are subject to very strict interpretation. He cited *Rabiu v. The State* (1950) 8 - 11 SC 130 at 149. Learned counsel further submitted that Section 3 (1) (c) of Decree No. 18 of 1994 (as amended) contravenes Section 36 (8) of the 1999 Constitution and by virtue of Section 1(3) of same, is null and void to the extent of the inconsistency. He cited *FRN v. Ifeagwu* (2003) 15 NWLR (Pt. 847) 113; *Sofekun v. Akinyemi* (1950) 5-7 SC (Reprint) 1. Learned counsel for the respondent maintained that Count 2 is not based on Section 3 (1) (c) of Decree No. 18 of 1994 and that it was preferred under the Banks and Other Financial Institutions Decree No.25 of 1991. He opined that the Tribunal cannot be divested of jurisdiction which is ordinarily imbued in it. Learned counsel again referred to *Onwudiwe v. FRN* (supra) at page 427. The court below pronounced, rightly in my view, that Count 2, amongst others, was preferred based on offence under an existing enactment to wit, Banks and other Financial Institutions Decree No. 25 of 1991 which was already in force before July 1994 and December 1995 when the appellant was alleged to have committed the offence for which he was charged under Count 2. The appellant tried to cling to fair hearing principle under Section 36 (8) of the 1999 Constitution. As stated earlier on, the Decree vests the Tribunal with the requisite power to enforce other existing penal statutes. That resulted in the appellant being charged under Decree No. 25 of 1991 which was promulgated before the appellant was charged. I cannot fathom any violation of Section 36 (8) of the 1999 Constitution being touted on

behalf of the appellant as the act or omission of the appellant which resulted in Count 2 was in respect of an existing penal enactment. See: Onwudiwe v. FRN (supra) at page 427. In short, I resolve issue 1 in favour of the respondent. I sustain the stand taken by the court below without any equivocation.

Issue 2, put briefly, is whether the learned Justices of the court below were justified in affirming the conviction of the appellant on Counts 1 and 2 of the charge. Learned counsel for the appellant observed that this court does not make it a practice to interfere with the concurrent findings of fact by the two lower courts except where the findings are manifestly perverse or wrongly applied to the circumstances of the case or where the conclusion reached was wrong. He cited the cases of Musa v. The State (2009) 15 NWLR (pt. 1165) 467 at 488-490; Alamu v. The State (2009) 10 NWLR (pt. 1148) 31 at 53 and Amachi v. Chinda (2009) 10 NWLR (pt. 1148) 107 at 13.

Learned counsel submitted that the court below ought not to have affirmed the findings of the trial Tribunal in respect of Counts 1 and 2. He felt that the court below did not properly review the findings of fact accordingly. Learned counsel for the respondent submitted that the court below properly and extensively reviewed the findings of fact of the trial Tribunal before it affirmed same. Generally, an appellate court should not ordinarily substitute its own views of fact for those of the trial court; except where wrongly applied to the circumstance of the case or the conclusion reached was perverse or manifestly wrong. This is because ascription of probative value to the evidence of witnesses is pre-eminently the business of the trial court which saw and heard the witnesses. An appeal court will not interfere with same unless for compelling reasons. See: Ebba v. Ogodo (1984) 1 SCNLR 372; Balogun v. Agboola (1974) 1 ALL NLR (Pt. 2) 66; Ogbechie v. Onochie (1998) 1 NWLR (Pt. 470) 370; as well as Musa v. The State (supra) and Almu v. The State (supra) cited by the learned counsel for the appellant. Learned counsel felt that the trial Tribunal and the court below placed undue reliance on the confessional statement of the appellant; to wit Exhibit C; the testimonies of PW2, PW3, Pw4 and PW5 and the counter-signing of most of Exhibits G-G180 in arriving at their decision in convicting the appellant in Counts 1 and 2. Learned counsel submitted that there is

nothing that can be said to be confessional in Exhibit ‘C’ and that the appellant maintained that he counter-signed most of the cheques in question in the ordinary course of his official duties. Learned counsel maintained that same negative any mens rea necessary for the proving of the offence of conspiracy under Count 1 as there was no common intention on the part of the appellant and any person whatever to prosecute any unlawful purpose. He cited the case of *Mbang v. The State* (2009) 12 SC (Pt. 111) 193 at 211- 214. Learned counsel for the respondent maintained that the evidence adduced by PW2, PW3, PW4 and PW5 corroborated the confession made by the appellant in Exhibit ‘C’. He asserted that the counter-signing of most of Exhibits G-G180 by the appellant wrongly along with the 1st accused constituted the actus reus which established conspiracy.

I wish to express it pointedly here that conspiracy is often hatched in utmost secrecy. To unravel same, the circumstance of the matter should be adequately considered. About four decades ago, this court per G.B.A Coker, JSC (of blessed memory) pronounced as follows in *Patrick Njovens v. The State* (1973) 1 NMLR 331-

“When it is proposed to give evidence of happenings inside hell it is only a matter of common sense to call one of the inmates of that place or one whose business is carried out in reasonable propinquity to hell and it must be surprising indeed to find even a lone angel fit and qualified for the assignment. Indeed, it would be preposterous to look for such evidence in other directions.”

The court below, in treating the issue, found that most of the cheques - Exhibits G-G180 which facilitated the undue huge credit facility in the sum of ₦45,341, 466.35 made to the 4th accused were signed by the 1st accused and counter-signed by the appellant. The court below found that it was not necessary to lead direct evidence to establish the agreement of the accused persons to grant the overdraft facilities as the cheques - Exhibits G-G180 most of which contain the signatures of the accused persons (appellant’s own inclusive) constitute the overt act or actus reus which established the agreement. See: *Paul Onochie v. The Republic* (1966) NMLR 307. The appellant did not deny counter-signing the cheques. The court below observed that the appellant testified at page 193 of the record thus:-

“I counter-signed majority of Exhibits G-G180 except a few

number of five to ten in the course of my normal duties.”

The court below rejected the appellant’s defence as being untenable. It was obvious that in the absence of his counter-signature, majority of those cheques could not have been paid. The court below referred to the appellant’s answers to questions as recorded on page 199 of the record which read as follows:-

B

Question: As a banker and as counter-signing officer, before you append your signature to any cheque already signed by the 1st accused are you supposed to take any step?

Answer: Yes, My Lord, because I will confirm if the signature is not forged. I will check the balance in the account.

C

Question: Why do you have to check the balance in the Account?

Answer: To check if there is sufficient fund to pay the cheque. I will go to the Manager (sic) whether he actually authorised the payment. If he says yes, I will ask him if there is authority. He would answer yes or no.

D

Question: If he answers No, what happens?

Answer: If he answers that there is no authority, I will not counter-sign the cheque.

E

The court below found that there was overwhelming evidence to sustain the conviction of the appellant in count 1 of the charge. From the circumstance of the matter as carefully considered by the court below, I have no cause to interfere with the balanced appraisal made. I affirm the position taken by the court below and resolve the point touching on conspiracy against the appellant and in favour of the respondent.

F

On Count 2, learned counsel for the appellant maintained that the prosecution failed to establish the offence. He submitted that the ingredients that must be established by cogent evidence for the prosecution to succeed on Count 2 are:-

G

1. That loans or credit facility were granted to the 4th accused by the 2nd accused in the sum involved.

2. That the grant of the loan or credit facility was unauthorized and unsecured.

H

3. That in granting the loan or credit facility, the 2nd accused contravened rules and regulations of the Bank.

Learned counsel cited the case of FRN v. Sheriff (1998) 2

FB.TLR 109 at 128 - 129 and submitted that the above ingredients must be proved conjunctively and not disjunctively. Learned counsel maintained that the appellant did not approve any credit facility to the 4th accused. He asserted that other officials who like the appellant, counter-signed a few of the cheques along with the first accused
B were not charged, and touted a point of discrimination against the appellant. He urged that the appellant be discharged and acquitted.

Learned counsel for the respondent submitted that the 1st accused admittedly granted the unauthorized facilities but he was aided and abetted by the appellant who is equally guilty by virtue of Sec-
C tion 7 (c) of the Criminal Code Act Cap 77 Laws of the Nigeria 1990. Learned counsel submitted that it is common knowledge that without the counter-signature of the appellant on most of the cheques Exhibits G-G180 the various sums could not have been withdrawn
D merely on the signature of the 1st accused person.

The response made by the learned counsel for the respon-
dent is clearly of moment here. As stated by the court below, it is common knowledge that without the appellant's counter- signature on most of the cheques-Exhibits G-G180, the sums therein stated
E could not have been withdrawn merely on the signature of the 1st accused alone. Although it was his schedule of duties to counter-sign cheques signed by the Manager he was not a robot. Let me state it further that he was not a 'Zombie'. Admittedly, the 1st accused was
F the person granting the unauthorized facilities contrary to section 18 (1) (b) of BOFID No. 25 of 1991, but in doing so he was aided and abetted by the appellant who is equally guilty of the offence by virtue of Section 7 (c) of the Criminal Code Act, Cap 77 Laws of Nigeria, 1990. The court below further found that the documents
G Exhibits L5, A, A2 and J2 referred to by learned counsel to the appellant cannot by any stretch of the imagination be evidence of the authority of the Head Office of the Bank for the over-draft facilities. The stance taken by the court below is without blemish.

***The appellant did not show that he took proper steps
H before counter-signing most of the cheques-Exhibits G-G180 which led to the colossal unauthorized and unsecured facilities to the 4th accused. If he had taken proper steps by refusing to counter-sign the vast majority of those cheques, the story would have been different. The appellant's contention***

that the evidence of PW2 and PW3 raise doubts as to the role played by him rests on quick sand. It has no foundation. The 1st accused and the appellant herein know the rules contained in Exhibits J and H series which they flouted and granted unauthorized facilities to the 4th accused. The point of discrimination raised on behalf of the appellant when it was maintained that others who counter-signed cheques like the appellant were not prosecuted is a non-issue. It has to do with public policy. The Attorney-General is in charge of his official duties and it is presumed that he knows what to do in any given situation without any undue prompting. In this respect, I was not taken in by the ploy embarked upon by the appellant who should dance to the tune dictated by him. B C

Without much ado, I am at one with the stance taken by the trial Tribunal and the court below. With respect to the two counts for which the appellant was convicted and sentenced, the appellant failed to exculpate himself. He failed to extricate himself; in the main. I resolve issue 2 against the appellant and in favour of the respondent as well. This is clearly a case where the trial Tribunal and the court below made concurrent findings of fact on virtually all the issues that were seriously canvassed. They also considered the applicable laws properly in an admirable fashion. This court will not interfere as there are no reasons shown to justify same. See: Kale v. Coker (1982) 12 SC 252; Musa v. The State (supra) and Almu v. The State (supra). D E F

On the whole, I come to the conclusion that the appeal lacks merit and it is hereby dismissed. The conviction in respect of counts 1 and 2 and the reduced sentence made by the court below are hereby affirmed.

Chief Philip Umeh, learned counsel for the respondent urged G that the appeal be dismissed with substantial costs. This is the first time I will read such a thing in a brief of argument dealing with a criminal matter. Learned counsel should know better. The rules of the court did not touch on same. It is unheard of and should not be repeated. H

MUHAMMAD JSC

My learned brother, Fabiyi, JSC, permitted me graciously, to

read before now, his leading judgment just delivered. I am in agreement with him in his conclusion that the appeal lacks merit and it should be dismissed.

The appellant, I would say, is quite a lucky man for, somehow, escaping heavy punishment provided for the offences he was, along with others, alleged to have committed. The appellant was the 2nd accused at the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal holden at Calabar (the trial Tribunal for short). The appellant and one other accused were employees of the Nigeria-Arab Bank Ltd. (now Assurance Bank Ltd.) The 3rd accused was the Managing Director of Axtro Film Ltd. The 4th accused was Axtro Film Ltd - a customer to the Nigeria-Arab Bank Ltd. The office of the Federal Attorney-General filed a charge containing nine (9) counts against the accused persons as set out by my brother in his judgment.

The 3rd and 4th accused persons were absent and not represented at the trial. The pleas of the 1st and 2nd accused were taken. The 2nd accused (as appellant) pleaded not guilty to all the counts levied against him. The prosecution called six (6) witnesses and tendered a large volume of documentary exhibits. The 1st and the 2nd accused persons testified in their own defence. Facts which emerged from the record of appeal show further that the 2nd accused/appellant was engaged as an officer of Nigeria-Arab Bank Limited on 10th April, 1989. He worked in various branches of the Nigeria-Arab Bank Limited and was posted from Daleko Branch, Isolo, Lagos to Broad Street Branch of the Bank as an Accountant in June, 1994 wherein he met Samuel B. Apata (1st accused at the trial Tribunal) as the manager of Broad Street Branch of Nigeria-Arab Bank. The 1st accused later became the Principal Manager of the Branch in 1996. Otta Ahibi (3rd Accused) was the Managing Director of Axtro Films Limited (4th accused) which company was a customer of the branch in which it maintained current account No. 3101164762. The 3rd accused's company (the 4th accused) was by a letter dated 5th July, 1994 granted through the Bank a Six Year Term Loan by the National Economic Reconstruction Fund (NERFUND). The loan was in the sum of \$1,276,680.00 (One Million, Two Hundred and Seventy Six Thousand, Six Hundred and Eighty United States Dollars only) and N2,212,000.00 (Two Million, Two Hundred and Twelve Thou-

sand Naira Only) and was for the importation and installation of machinery for the manufacture and production of plastic containers. Letters of credit were duly established for the importation of the required plant and machinery.

The case of the prosecution was that the 1st Accused and the appellant as the Branch Manager and Branch Accountant granted overdraft credit facilities to the tune of N45,341,466.35k to the 3rd accused's Company, the 4th accused, which was unsecured and in breach of the rules and regulations contained in the Bank's Operation Manual as amended from time to time by the Head Office circulars. The prosecution also alleged that the cheque presented by the 3rd accused person in purported part repayment of the said overdraft after much pressures was dishonoured for lack of funds. The appellant in his defence admitted that the account in question was overdrawn through cheques signed by the 1st accused some of which were counter-signed by him while other officers of the Branch counter-signed the other cheques. He stressed that he had other officers of the Branch counter-signed the other cheques. He stressed that he had no power to grant an overdraft on any account and that by counter-signing some of the cheques, he was merely doing so as part of his schedule of duties and in obedience to the instruction given to him by the 1st Accused person. In fact, some of the other cheques forming part of the withdrawal instruments were not counter-signed by the appellant but by other officers who were not charged by the respondent. He admitted seeing the Bank's Operation Manual but denied knowledge of the Head Office circulars, since according to him, they were directed to the Branch Manager.

At the conclusion of the trial and after counsel had submitted their written addresses, the trial Tribunal in a reserved judgment delivered on 24th March, 1999 rejected the defence of the 1st accused and the appellant and found them guilty of counts 1, 2, 7 and 9 sentencing each to 5 years imprisonment on each counts 1, 7 and 9 with sentences to run concurrently and 3 years imprisonment in respect of count 2. The 3rd accused was sentenced in counts 1,4,5,7 and 8 to 5 years, 2 years, 5 years and 3 years imprisonment respectively; the sentences were to run concurrently. The 4th accused was sentenced in each of counts 4 and 6 to a fine of N5,000.00. Dissatisfied with the conviction and sentence the 2nd accused appealed to

the Court of Appeal, Calabar Division (court below) on nine (9) grounds of appeal. He distilled nine corresponding issues. In its judgment of 26/4/2001, the court below allowed the appeal in part. It set aside the conviction and quashed the sentence of the appellant in counts 7 and 9 while it affirmed his convictions on counts 1 and 2.

B However, the sentences in counts 1 and 2 passed on the appellant were set aside and in substitution thereof, the appellant was now sentenced by the court below to a fine of N20,000,00 (Twenty Thousand Naira only) or six months imprisonment on count 1 and a fine of N50,000.00 (Fifty Thousand Naira only) or 18 months imprisonment on count 2. The fines were made cumulative and the sentences concurrent. The appellant was ordered to be released from prison having served over 18 months in prison custody. The 2nd accused/appellant was again dissatisfied with the judgment delivered by the court below. He filed his Notice of Appeal which contained two grounds of appeal. Briefs were settled. Learned counsel for the appellant couched the following issues for determination:

E *“1. Whether considering the law and circumstances of this case, the learned Justices of the Court of Appeal were justified in holding that the Failed Bank Tribunal had jurisdiction to try the Accused/Appellant on counts 1 and 2 of the charge against the appellant (Ground 1).*

F *2. Whether upon a proper evaluation and consideration of the evidence at the trial court and the concurrent findings by the Court of Appeal, the learned Justices of the Court of Appeal were justified in affirming the conviction of the appellant on counts 1 and 2 of the charge against the appellant. (Grounds 2 and 3).”*

G The respondent adopted the above issues. My lords, the issue of jurisdiction of the trial tribunal was the first issue raised by the learned counsel for the appellant at the court below. The court below made a finding and held that the trial tribunal had jurisdiction to try the appellant on the offences charged. The learned counsel for the appellant again repeated his submission that the appellant was charged H in counts 1 and 2 with offences under the Criminal Code Act, Cap.77 LFN, 1990 and the Banks and Other Financial Institutions Decree No.25 of 1991 (now Banks and Other Financial Institution Act Cap. 82, LFN, 2004; and in order to arraign the appellant before the Failed Banks Tribunal, the charges were read along and together with

section 3[1][c] of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 (now Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act Cap. F2, LFN, 2004.) That for the tribunal to have the power to entertain the count under section 3(1)(c) of Decree No.18 of 1994, the offence for which the accused/appellant was charged, must be cognizable under the Banks and Other Financial Institutions Decree No. 25 of 1991 (now Cap. B2, LFN, 2004). The offences, it is further argued, for which the appellant would stand trial under count 1, must constitute an offence under Decree No. 18 of 1994. Any contrary view, including part of the decision of the court below, would offend section 36[12] of the 1999 which prohibits a person being convicted of a criminal offence where the offence is not defined and the penalty thereof prescribed in a written law. The offence of conspiracy, it was argued further, not being an offence under Decree No.25 of 1991, the trial tribunal lacked jurisdiction to entertain it and the court below was clearly in error when it held that the tribunal had jurisdiction.

Permit me my lords, to reiterate the principle of the law which, for long, has been settled on the issue of jurisdiction. Jurisdiction is the life wire of adjudication. It is so fundamental and radical that it forms the foundation of adjudication. Where a court lacks jurisdiction, it as well lacks the necessary competence to try the issue/matter at all. A defect in competence is fatal to the proceedings as same are rendered null and void ab initio, however well conducted and well decided they may otherwise be. I call in support, cheaply, the cases of *Madukolu & Ors v. Nkemdilim* (1961) NSCC (Vol. 2) 374 at p.39; *Oloba v. Akereyin* (1983) 3 NWLR (Pt.84) 508; *Labiya v. Anretiola* (1992) 3 NWLR (Pt.258) 129 at p.169. A challenge to the jurisdiction of any court can be made at any stage of the proceedings and can be taken at anytime even for the first time before an appeal court and or suo motu by the appeal court. However, where it is the court that raises the issue of jurisdiction, it will then call upon the parties to address it on same. Or, where it discovered that it acted without jurisdiction, then, without much ado, it will fall back on its inherent jurisdiction to set aside its own decision in the matter. See: *Sokoto State Government v. Kamdex Nig. Ltd.* (2007) 7 NWLR (Pt.1034) 466.

The issue of jurisdiction of the trial tribunal to treat the counts contained in the charge, is beyond dispute that the Failed Bank Tri-

bunal was established by the Failed Bank Decree No. 18 of 1994. Its commencement date was the 9th of November, 1994. Section 3[1][b][c] and [d] provide as follows:

“3[1] Tribunal shall have power to

b) try the offences specified in Part III of the Decree,

B *(c) try the offences specified in the Banks and Other Financial Institutions Decree 1991 and the Nigeria Deposit Insurance Corporation Decree 1988 and*

C *d) try other offences relating to the business or operation of a bank under any enactment.”*

The court below considered the above provisions and made its finding as follows:

“From the above provisions, it seems to me that the criminal jurisdiction of the Tribunal may be classified under two headings viz:

D *1. Jurisdiction to try newly created offences under the Decree i.e. those specified under Part III of the Decree.*

2. Jurisdiction over existing offences created under other enactments.”

E Edozie, JCA (as he then was), who delivered the leading judgment of the court below held as follows:

“With respect to the latter, that is (2) above, it seems the Tribunal has the jurisdiction to try such offences regardless of the time when they were committed. In the case in hand, counts 1 to 8 of the charge were preferred based on existing offences under other enactments i.e. Criminal Code, Banks and other Financial Institutions Decree No. 25 of 1991 and Dishonoured Cheques (offences) Act Cap 102, Laws of Nigeria, 1990. I am of the firm view that the Tribunal is vested with jurisdiction to try counts 1 to 8 of the charge.

G *With regard to the jurisdiction of the Tribunal to try newly created offences under the Decree, it seems to me that its jurisdiction is limited to acts or omissions which constituted offences at the time they were committed. It is trite law that the courts frown at retrospective and retroactive legislations. Ojokolobo v. Alamu (1987) 3 NWLR (Pt.61) 377 at 406; Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt 9) 734. Although under Nigeria Law, there is a presumption against retrospectivity, where a retrospective operation is clearly spelt out, that legislation must not be declared incompetent; Adegbanu v. Akintola (1963) 2 SCNLR 216; Adeshina v. Lemomu (1965) 1 All*

NLR 233; The Swiss Air Transport Co. Ltd v. African Continental Bank Ltd (1971) 1 All NLR 37; Attorney-General East Central State v. Ugwu (1975) 5 SC 13. In the case in hand count 9 of the charge was laid under section 19[1][c] of the Failed Bank Decree No. 18 of 1994 as amended which provided:

'19[1] Any director, manager, officer or employee of a bank who -

[c] grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility to any other person in contravention of any law for the time being in force, any regulation, circular or procedure as laid down from time to time by the regulatory authorities or by the banks; or... is guilty of an offence under this Decree."

But the pertinent question to ask is whether the act prohibited by section 19[1][c] of the Failed Bank Decree *supra* is an offence under any other law in existence prior to that decree. If it was not, then since the decree came into existence on 9-11-94 and has no retrospective effect, the acts constituting an offence under section 19[1][c] of the decree quoted above became criminal only from the date the Decree No. 18 of 1994 became effective, that is, 9/11/94. Such acts committed prior to that date was no offence and therefore such acts committed in July, 1994 as specified in count 9 did not amount to any offence under the law to be tried by the Tribunal. By section 33[12] of the 1979 Constitution, now section 36[12] of the 1999 Constitution, save as otherwise provided therein, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law such as an Act of the National Assembly or a law of a State, any subsidiary legislation or Instrument under the provisions of a law.

If the acts prohibited in section 19[1][c] of Decree No. 18 of 1994 as amended under which count 9 of the charges was laid was not an offence defined in any written law as at July 1994 as specified in the count, the appellant could not be tried for such act. In the said count 9 of the charge, the offence therein alleged was committed between July 1994 when Decree No. 18 of 1994 as amended had not come into force and December, 1995 after the decree had become operative. Since it is not possible to sever the acts committed before and after the Decree had become effective, the appellant could

not be tried and convicted on count 9 of the charge. I have arrived at that conclusion on the supposition that the offences created by Section 19[1(c)] of the Failed Bank Decree are not offences under existing laws made before the Decree. If they are, then the Tribunal would have the jurisdiction to try the offences notwithstanding that they were committed before the Failed Bank Decree came into force. A reading of count 2 of the charges shows that the granting of unauthorized credit facility by officers of a bank is an offence under Section 18(1)(b) of the Banks and Other Financial Institutions Decree No. 25 of 1991.

I am in agreement with the court below in its reasoning and conclusion as above. There is no doubt that counts 1 - 8 of the Charge Sheet fell squarely within the scope of existing laws by the time the offences were committed and the accused persons tried and punished appropriately. Count 9 as found by the court below, was wrongly tried and the accused/appellant wrongly convicted and sentenced on same. This is by reason of the laws that prohibit retrospectively in trying or punishing a person alleged to have committed a crime when that crime was not defined by a written law. See: Section 36(12) of the Constitution of the Federation, 1999 (as amended) (Section 33(12) of the 1979 Constitution); see *Afolabi v. Governor of Oyo State* (1985) 2 NWLR (Pt.9) 134; *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377 at p.406. Therefore, it is my view as well that the trial Tribunal had the jurisdiction to try the appellant in respect of the offences as held by the court below.

On the 2nd issue framed by the appellant it is overwhelmingly clear from the finding of the court below as contained in the record of appeal, that both counts were properly taken and conviction of the trial tribunal rightly affirmed by the court below. Without adding a word from my own side Record of Appeal speaks so eloquently for itself:

"In the case on hand, the 1st accused, appellant and 3rd accused were in count 1 charged with conspiracy to grant unauthorized credit facility totaling N45,341,466.35k. As the evidence disclosed, the overdraft facilities were granted to the 4th accused through its Managing Director the 3rd accused by means of cheques Exh. G-G 180 drawn by 3rd accused on the 4th accused's account with the bank which cheques were signed by the 1st accused as the Branch

Manager of the bank and countersigned by the appellant as the Branch Accountant. It is not necessary to lead direct evidence to establish the agreement of the accused persons to grant the overdraft facilities. The cheques Exh. G-G 180 most of which contain the signatures of the accused persons constitute the overt act or actus reus which established that agreement. The appellant did not deny counter-signing the cheques. At page 193 of the record, he testified thus:

'I countersigned majority of Exhs. G-G180 except a few number of five to ten in the course of my normal duties.'

The main thrust of the appellant's defence is that it was the 1st accused, the branch manager who had the responsibility to grant overdraft and that he had no such power and further that his counter-signatures on the cheques in question were made in the normal course of his official duties as the Branch Accountant. This defence is not tenable. It was obvious that in the absence of his counter-signature, the cheques could not have been paid. He also was aware that from the circumstances in which the cheques were countersigned they could not have been so endorsed. This is evident from the appellant's answers to questions as recorded on p.199 of the record which read as follows:

"Question: As a banker and as counter-signing officer, before you append your signature to any cheque already signed by the 1st accused are you supposed to take any steps?"

Answer: Yes, My Lord, because I will confirm if the signature is not forged. I will check the balance in the account.

Question: Why do you have to check the balance in the account?"

Answer: To check if there is sufficient fund to pay the cheque. I will go to the Manager (sic) whether he actually authorized the payment. If he says yes, I will ask him if there is authority. He would answer yes or no.

Question: If he answer No, what happens?"

Answer: If he answers that there is no authority I will not counter-sign cheque.

From the above questions and answers, it is manifest that without authority from the appropriate authority, the Branch Manager could not allow a customer to overdraw and consequently, the

appellant ought not to have appended his counter-signature on the cheques in question.”

Two things stand clear to my mind from the above excerpts:
 (1) there is nothing to show that the appellant was compelled/coerced to counter-sign the cheques he admitted to have counter-signed.
 B (2) the appellant was hale and hearty, not sick physically or mentally. Thus, all his official activities including the signing of cheques would be taken to be done when he was in a state of soberness and alertness. If the appellant was not up to something, why should he go the
 C extra mile to sign official documents which he fully knew that it would be wrong for him to sign in view of lack of authority from the Management and in view of the circulars directed to their branch of the Bank? It appears naive and no reasonable mind would back-up that abuse of official privilege/opportunity. The court below, at the end,
 D relied on some extenuating circumstances to reduce the sentences imposed on the appellant by the trial Tribunal. Edozie, JCA (as he then was) stated inter alia:

“Persuaded as I am by these considerations, I think there are good grounds for mitigating the sentence passed on the appellant.
 E *The record shows that the appellant had been in prison custody for the offences the subject matter of this appeal since 24/3/98 when he made his statement to the police Exh. C and had remained there till his conviction on 24/3/99, which is exactly one year. I am of the view*
 F *that the Tribunal below ought to have taken this period of one year into account in the term of imprisonment passed on the appellant: See Chukwueke v. State (1991) 7 NWLR (Pt.205) 604 at 624. The Appellant was subsequently granted bail and released about 2/12/99 which means that he was altogether in prison custody for a total of*
 G *over 18 months.*

The appeal is partially allowed. The conviction and sentence of the appellant in counts 7 and 9 are set aside. The appellant is discharged and acquitted in counts 7 and 9. The conviction of the appellant in counts 1 and 2 are affirmed. The sentences passed on
 H *the appellant in counts 1 and 2 are set aside and in substitution therefore the appellant is sentenced to a fine of N20,000.00 or 6 months term of imprisonment in count 1 and a fine of N50,000.00 or 18 months imprisonment in count 2. Fines are cumulative and sentences concurrent and reckoned from 24/3/98. The appellant having been*

in prison custody for over 18 months, he has fully served his term of imprisonment.”

I am satisfied with the exposition of the law done by both the trial Tribunal and the court below and I totally agree with the decision of the court below. Mine as above, is just a tip of the iceberg of the lucid judgment of my learned brother, Fabiyi, JSC, just delivered. I agree with him entirely. I dismiss the appeal and abide by all consequential orders made by him.

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, John Afolabi Fabiyi JSC. In that support I would like to put some of my views.

This is an appeal against the judgment of the Court of Appeal, Calabar Division, Coram: D. O. Edozie, C. Opene and S. O. Ekpe JJCA delivered on the 26th day of April, 2001 allowing in part the Appellant's Appeal against the judgment of the failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal holden at Calabar (hereinafter referred to as the trial Tribunal) and upholding the Appellant's conviction in respect of counts 1 and 2. The judgment was delivered on the 24th day of March, 1999.

FACTS BRIEFLY STATED:

The 3rd and 4th accused persons were absent and not represented at the trial. The Pleas of each of the accused persons were taken and the 2nd accused/appellant pleaded NOT GUILTY to all the Counts against him. To sustain the charge, the prosecution called six witnesses and tendered a large volume of documentary exhibits and the 1st and 2nd accused persons in their defense. The 2nd accused/appellant was engaged as an officer of Nigeria-Arab Bank Limited on 10th April, 1989. He worked in various branches of the Nigeria-Arab bank Limited and was posted from Daleko Branch, Isolo, Lagos to Broad Street Branch of the Bank as Accountant in June, 1994 wherein he met Samuel B. Apata (1st Accused at the trial Tribunal) as the Manager of Broad Street Branch of Nigeria-Arab Bank. The 1st accused latter became the Principal Manager of the Branch in 1996. Otta Akhibi (3rd Accused) was the Managing of Axtro Films Limited (4th Accused) which company was a customer of the branch

in which it maintained current account No. 3101111164762. The 3rd accused's company (the 4th accused) was by a letter dated 5th July, 1994 granted through the Bank a six Year Term Loan by the National Economic Reconstruction Fund (NERFUND). The loan was in the sum of \$1,27,680.00 (One Million, Two Hundred and Seventy-six Thousand, six Hundred and Eighty United States Dollars Only) and N2,212,000.00 (Two Million, Two hundred and Twelve Thousand Naira only) was for the importation and installation of machinery for the manufacture and production of plastic containers.

B Letters of Credit were dully established for the importation of the required plant and machinery. The case of the prosecution was that the 1st accused and the appellant as the Branch Manager and Branch Accountant granted overdraft credit facilities to the tune of N45,341,466.35k to the 4th Accused's Company, the 4th accused,

C which was unsecured and in breach of the rules and regulations contained in the Bank's Operation Manual amended from time to time by the Head Office circulars. The prosecution also alleged that the Cheque presented by the 3rd accused person in purported part repayment of the said overdraft after much pressure was dishonoured for lack of funds. The appellant in his defence admitted that the account in question was overdrawn through cheques signed by the 1st accused some of which were counter-signed by him while other officers of the branch counter-signed the other cheques. He stressed

E that he had no power to grant an overdraft on any account and that by counter-signing some of the cheques, he was merely doing so as part of his schedule of duties and in obedience to the instruction given to him by the 1st accused person. In fact, some of the other cheques forming part of the withdrawal instruments were not counter-

F signed by the appellant but by other officers who were not charged by the respondent. He admitted seeing the Bank's Operation Manual but denied knowledge of the Head Office circulars, since according to him, they were directed to the Branch Manager.

G

H At the conclusion of the trial and after counsel had submitted their written Addresses, the trial Tribunal in a reserved judgment delivered on 24th March, 1999 rejected the defence of the 1st accused and the appellant and found them guilty on counts 1, 2, 7, and 9 sentencing each to 5 years imprisonment on each counts 1, 7 and 9 with sentences to run concurrently and 3 years imprisonment in re-

spect of count 2. The 3rd accused was sentenced in counts 1, 4, 5, 7 and 8 to 5 years and 3 Years imprisonment respectively; the sentences were to run concurrently. The 4th accused was sentenced in each of counts 4 and 6 to a fine of N5,000.00. Dissatisfied with this conviction and sentence, the appellant appealed to the Court of Appeal, Calabar Division by a Notice of Appeal dated 29th March, 1999^B on nine grounds of appeal. The Court of Appeal allowed the appeal in part, setting aside the conviction and sentence of the appellant in counts 7 and 9 while affirming the convictions on count 1 and 2. The sentence passed on the appellant in counts 1 and 2 were also set^C aside and in substitution thereby the appellant was sentenced to a fine of N20,000.00 or 6 months terms of imprisonment in count 1 and a fine of N50,000.00 or 18 months imprisonment in count 2. The fines were made cumulative and the sentences concurrent. Still dissatisfied with the judgment of the Court of Appeal the appellant^D has filed a Notice of Appeal to this court dated 24th May, 2001 containing two grounds.

On the 4th October, 2012 date of hearing the appellant through counsel on his behalf Mr. C.V.C. Ihekweazu adopted their brief filed on 8/7/11 in which were crafted two issues for determination, viz:^E

1. Whether considering the Law and circumstances of this case, the learned Justices of the Court of Appeal were justified in holding that the Failed Bank Tribunal had jurisdiction to try the Accused/appellant on counts 1 and 2 of the charge against the appellant.^F

2. Whether upon a proper evaluation and consideration of the evidence at the trial court and the concurrent findings by the Court of Appeal, the learned Justices of the Court of Appeal were^G justified in affirming the conviction of the appellant on counts 1 and 2 of the charge against the appellant.

Learned counsel for the Respondent adopted the brief settled by Chief Philip Ndubuisi Umeh which brief was filed on the 31/5/12 and deemed filed on 4/10/12. The learned counsel for the Respondent^H adopted the issues as formulated by the appellant.

The appellant had also filed a Reply Brief on the 28/8/12 and deemed filed on the 4/10/12.

The issues as framed by the appellant and utilized by the

respondent suffice for the purposes in the determination of the appeal.

ISSUE ONE

Whether considering the law and circumstance of this case, the learned Justices of the Court of Appeal were justified in holding that the Failed Banks Tribunal had jurisdiction to try the accused/appellant on counts 1 and 2 of the charge against the appellant.

Learned counsel for the appellant, Mr. Ihekweazu submitted that it is settled that it is the charge before the court that determines jurisdiction of the Court or Tribunal to entertain the charges. That a court or a Tribunal can only be competent if, among other things, the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. He cited the case of *Akinfolarin v Akinfolarin* (1994) 4 SCNJ 30 at 43; *Ajaka Izenkwe & Ors. v. Nnadozie* (1953) 14 WACA 361 at 363; *Adeyemi v Opeyori* (1976) 9 -10 SC 31; *Madukolu v. Nkemdilim* (1961) NSCC (Vol. 2) 374 Page 379; *Tukur v Taraba State* (1997) 6 SCNJ 81. Mr. Ihekweazu further contended that the issue of jurisdiction which is defined by statute is so fundamental and radical that it forms the foundation of adjudication for the reason that any judgment or proceeding, however well conducted, if given without jurisdiction is a nullity and amounts to nothing. Also that the issue of jurisdiction can be raised at anytime by a party even on appeal in the Supreme Court for the first time. He referred to the cases of *Katto v CBN* (1991) 9 NWLR (Pt. 214) 126; *Bronik Motors Ltd. v. Wema Bank Ltd* (1983) 1 SCNLR 296; *Jerik (Nig.) Ltd v. UBN Plc.* (2000) 15 NWLR (Pt. 691) 447 at 457.

It was further canvassed for the appellant that the appellant was charged in counts 1 and 2 of the charge in issue with offences under the Criminal Code Act Cap 77 Laws of the Federation 1990 and the Banks and Other Financial Institutions Decree No.25 of 1991 (now Banks and Other Financial Institutions Act Cap B2, LNN, 2004). That in order to arraign the appellant before the Failed Banks Tribunal, the charges were read along and together with section 3(1) (c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (now Failed Banks) (Recovery of Debts) and Financial Malpractices in Banks Act cap . F2, LFN 2004) He stated that it was under Section 3(1)(c) of Decree No.18 of 1994

(now Section 1(1) (c) of Cap F2, LFN 2004) that the trial Tribunal assumed jurisdiction to entertain counts 1 and 2 against the appellant. Mr. Ihekweazu of counsel said the Trial Tribunal can only exercise jurisdiction if the offences also constitute offences and are therefore cognizable by such other enactments. He cited section 36(12) of the 1999 constitution. That a court retaining jurisdiction over statutorily defined offences has limited jurisdiction and can only exercise it within the prescription of the statutes defining the jurisdiction. That any extension beyond its powers will give effect and lead to a nullity under the circumstances as every court established by law must act within the enabling law. He said appellant was charged under count 1 for conspiracy to commit a felony to wit granting various credit facilities worth over 45 million naira to AXTRO FILMS LIMITED without lawful authority contrary to section 516, of the Criminal Code. He said the offences so crafted in one under Section 516 of Criminal code, not being an offence under Decree No.25 of 1991, the trial Tribunal lacked jurisdiction to entertain it and the court below was clearly in error when it held that the trial tribunal had jurisdiction to try the appellant on count 1. That the court should quash the conviction and sentence of the appellant on count 1.

In respect to count 2 the learned counsel for the appellant said the appellant cannot be tried under count 2 since Section 3(1) (c) of Decree No.18 of 1994 (as amended) has no retrospective effect to accommodate an offence committed between July 1994 and December, 1995. That the law is that the courts frown at legislation or enactments that have a retroactive effect as it offends the right to fair hearing of the citizen or litigant under Section 36(8) of the 1999 Constitution. That it is settled law that statutes which overreach the citizen's right to access court are subject to very strict interpretation. He cited *Ojokolobo v Alamu* (1987) 3 NWLR (Pt.61) 377 at 406; *Afolabi v Governor of Oyo State* (1985) 2 NWLR (Pt. 9) 734; *Afolabi v Governor of Oyo State* (supra) *Rabiu v State* (1980) 8 - 11 SC 130 at 149; *Kalango v Governor Bayelsa State of Nigeria & 2 Ors.* (2009) 1 - 2 SC. (Pt. II).

Learned counsel for the appellant said this court should interpret the said section 3(1) (c) of Decree No.18 of 1994 with a view to protecting the constitutionally guaranteed right of the appellant. That the framers of Decree No.18 of 1994 never intended that it

would have a retroactive effect to offences committed when the Decree had not yet come into force i.e. between July 1994 and December, 1995. That assuming that this was the position that Section 3(1) (c) of Decree No.18 of 1994 (as amended) is contrary to or contravenes section 36(8) of the 1999 Constitution and by virtue of Section 1(3) of the 1999 Constitution is null and void to the extent of that inconsistency. He referred to *FRN v Ifeagwu* (2003) 15 NWLR (Pt. 847) 113; *Sofekun v. Akinyemi* (1980) 5-7 SC (Reprint) 1. That the trial Tribunal lacked the requisite jurisdiction to try and convict the appellant under counts 1 and 2 and the court below was wrong in affirming the conviction of the appellant and holding in favour of the respondent on grounds of jurisdiction.

For the respondent, Chief Umeh said the jurisdiction of the Failed Banks Tribunal to entertain offences was therefore derived from section 3(1) (a), (b) (c) and (d) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 18 of 1994. By virtue of Section 3(1) b - d of that Decree, the Failed Banks Tribunal could in addition to trying offences in part III of the Decree, try offences specified in BOFID and NDIC Decrees and also try other offences relating to the business or operation of a Bank under any other enactment. That the attempt of the appellant to restrict the jurisdiction of the Tribunal to entertain counts 1 to Section 3(1) (c) of Decree No 18 of 1994 by contending that in order to entertain count 1, the offence for which the appellant was charged in count 1 must be recognisable under the Banks and Other Financial Institutions Decree No 25 of 1991 lacks merits. Chief Umeh submitted further that the appellant's contention that the offence under count 1 does not constitute an offence under Decree No.18 of 1994 is faulty. That the offence under count 1 constitute an offence under the said Decree by virtue of section 3 (1) (d). He said the criminal jurisdiction of the tribunal was limited to section 3(1) (c) is faultless. That the offence of conspiracy under section 516 of the Criminal Code was within the jurisdiction of the Tribunal as an existing offence under another enactment. That the court below was right when it held that counts 1 to 8 of the charge were preferred based on existing offences under other enactments i.e. The criminal code, Banks and other Financial Institutes Decree No.25 of 1991 and Dishonoured Cheques (offences) Act Cap 102, laws of Nigeria 1990.

On count 2, Chief Umeh for the respondent said the count was preferred under the Banks and other Financial Institutions Decree No.25 of 1991 which was already in force between July 1994 and December 1995 when the appellant was alleged to have committed the offences for which he was charged under count 2. That the mere addition of the statement read in conjunction with section 3 (1) (c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 (as amended) cannot have the effect of divesting the tribunal of jurisdiction over an offence which it will ordinarily possess without that phrase. He cited Onwudiwe v FRN (2006) 10 NWLR (Pt. 988) 382. B
C

Learned counsel for the respondent said the appellant's belated complaint since he did not show that he was misled by the particulars of the offence at the time the charge was read to him at the trial. He referred to Agbo v State (2006) 6 NWLR (Pt.977) 545; Section 167 of Criminal Procedure Act; Ndukwe v. LPDC (2007) 5 NWLR (Pt. 1026) 1; Amadi v FRN (2008) 18 NWLR (Pt. 1119) 259. D

The complaint of the appellant in respect of this Issue One is quite straight forward and that is that the appellant was charged and convicted in counts 1 and 2 under enactments not in existence at the time of the commission of the offence, apart from the other arguments. That the appellant was being visited retroactively on the basis of laws in operation of the purported offence which put differently is that the offence of conspiracy under Section 516 of the Criminal Code has to be only cognizable under the Banks and Other Financial Institutions Decree No.25 of 1991 for the tribunal to have jurisdiction to try the appellant for counts 1 and 2. To attend to the submission of the appellant above which has been countered by the respondent by going into related legislations in order to shed light as to the true position. E
F
G

Section 3(1) (b) (c) and (d) of the banks and Other Financial Institutions Decree No.25 of 1991 provides as follows:

"3(1) The Tribunal shall have power to

(b) Try the offences specified in part III of the Decree H

(c) Try the offences specified in the Banks and Other Financial Institutions Decree 1991 and the Nigerian Deposit Insurance Corporation Decree 1988 and

(d) Try other offences relating to the business or operation of a

bank under any enactment”

On the matter of the criminal jurisdiction of the Tribunal under Section 3(1) of the Decree No.18 of 1994 provides as follows:

1. Jurisdiction to try newly created offences under the Decree that is those specified under part III of the Decree.

B 2. Jurisdiction over existing offences created under other enactments.

C It is evident from the above that offences as at 1994 which are not covered by the 1994 Act could be well sheltered and enforceable, the tribunal or court utilizing any existing criminal law even if the charge had been made under this non existing law. In reliance of the above statement, a few judicial authorities of this court would lend support. See the case of Onwudiwe v. FRN (2006) 10 NWLR (Pt. 988) 382 where the Supreme Court held thus:

D *“The provision of section 3(i) (d) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 confers jurisdiction on the Failed Banks Tribunal to try any other offences relating to the business or operation of a bank under any enactment. This simply means that where the facts of a case reveal*
 E *that the transaction complained of relates or deals with bank business or operation in the ordinary course of events, which constitutes an offence that offence can be tried by the Failed Banks Tribunal. The offence needed not have arisen under the Decree No.18 of 1994.*
 F *Even if it rose or was created under any other enactment, the Tribunal would have jurisdiction to try the offence in so far as it related to business or operation of a bank. In effect, the provisions confer jurisdiction and power on the Tribunal to try other offences not specified in the Decree, Section 3(1) (i) of the Decree vested in the Tribunal*
 G *power to enforce other existing penal statutes”*

Kalgo JSC had further stated in the case, Onwudiwe v FRN (supra) as follows:

H *“Taking further the issue of jurisdiction learned counsel for the appellant submitted that the constitutional guarantee against retrospective punishment on retroactive trial and punishment is violated. Citing section 35 (3) of the 1979 constitution learned counsel submitted that as at 23rd August 1994 when the offence was allegedly committed in count 6 there was no written law, a Decree No. 18 of 1994, under which the appellant was charged, was not promul-*

gated. He relied on section 35(3) of the 1979 Constitution.

With respect, the submission is thoroughly misplaced. In the first place, counsel is wrong in relying on section 35(3). The subsection has nothing to do with his submission. The subsection dealt with right to freedom of religion. I think he meant section 33(8) of the 1979 constitution. I will take the submission in the light of section 33(8) and not section 35(3). B

It is a misconception to say that the appellant was charged under Decree No.18 of 1994. As I said earlier, Section 3(1) of the Decree vested in the Tribunal power to enforce other existing penal statutes. That resulted in the appellant charged under the criminal code, the Recovery of public Property (Special Military Tribunal) Act, as amended. Certainly these enactments were promulgated before the appellant was charged on 23rd August 1994. That was not a violation of section 35(8) of the 1979 Constitution because the act or omission of the appellant which resulted in count 6 or any other count was in respect of existing penal enactment. ” C

Learned counsel for the appellant had made a huge fuss over the phrase, “read in conjunction with section 3 (1) (d) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 (as amended) and his interpretation is that conspiracy must be specified under the banks and other Financial Institutions Decree No.25 of No.25 of 1991 for the Tribunal to be endowed with jurisdiction. That interpretation cannot stand in view of what the law and practice really are. I would refer to section 166 of that the Criminal Procedure Act thus: E

“No error in stating the offence or particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission. G

That was the basis for this court holding in *Agbo v State* (2006) 6 NWLR (Pt. 977) 545 that where the appellant as in the case in hand failed to show that he was misled by what he perceived as a defect in the charge read to him at the trial he does complain too late at the appeal state. This is in keeping with the follow up section of 167 of the same Criminal Procedure Act thus” H

“Any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read

over to the accused and not later”

I refer to *Ndukwe v LPDC* (2007) 5 NWLR (pt. 1026) 1; *Amadi v. FRN* (2008) 18 NWLR (Pt. 119) 259. For emphasis no matter how defective the section of law or even the legislation itself is, an accused cannot be heard to say that because he was charged
B under a wrong law, the infraction upon which he is held is covered by an existing law, the prosecution and conviction will stand based on the proper law different from that under which he has taken plea. That is the law and the appellant is not in a position to change it. The
C issue is resolved against the appellant.

ISSUE TWO

Whether upon a proper evaluation and consideration of the evidence at the trial court and the concurrent findings by the Court of Appeal, the learned Justices of the Court of Appeal were justified
D in affirming the conviction of the accused/appellant on counts 1 and 2 of the charge against the appellant.

Mr. Ihekweazu for the appellant stated that the Supreme Court does not make it a practice of interfering with the concurrent findings of fact by lower courts except where the finding is manifestly per-
E verse or wrongly applied to the circumstances of the case or where the conclusion reached was wrong. That the Court of Appeal upon examination of the Trial Tribunal’s evaluation of the evidence before it ought not to have affirmed the findings of the trial tribunal with
F respect to the conviction of the accused/appellant in counts 1 and 2. That the court below fell into this error because it did not properly review the findings of the trial tribunal on its application of the law in its evaluation of the evidence before it vis-a-vis the ingredients of the offences in counts 1 and 2 provided in the law.

That a perusal of the judgments of the two courts below will disclose that both courts placed undue reliance on the alleged con-
G fessional statement of the appellant, the testimonies of PW2, PW3, PW4 and PW5 and the counter-signing of Exhibits G-G 180 in arriv- ing at their decision in convicting the counts 1 and 2. He cited *Musa*
H *v. State* (2009) 15 NWLR (1165) 467 at 488 490; *Alamu v. State* (2009) 10 NWLR (1148) 31 at 53; *Amadi v Chinda* (2009) 10 NWLR (Pt.1148) 107 at 130.

For the appellant was further put across that the court below ought to have re-evaluated the findings of the trial tribunal regarding

the evidence of PW2 and PW3 which raised so much doubt as to the role of the appellant in the offence to support the affirmation of the conviction of the Appellant. That this is because the evidence are contradictory and raise a huge doubt which ought to have been resolved in favour of the appellant at the court below. He referred to Mallam Zakari Ahmed v. The State (1999) 5 S.C. (Pt.11) 39 at 47. B That at the time the appellant was counter-signing those cheques, he was acting in the belief that the 1st accused had the due authorization of PW2, the Executive Director. That this bona fide belief played on the mind of the accused/appellant when he was counter-signing those cheques and this negated any "mens rea" necessary for the proving C of the offence of conspiracy under count 1. That there was neither a meeting of the minds in respect of count 1 nor a common intention on the part of the appellant and any person to prosecute any unlawful purpose. He cited Mbang v. State (2009) 12 SC (Pt.III) 193. D

Learned counsel for the appellant said the lower court erred in holding that the confessional statement of a co-accused was relied upon to convict the accused without sufficient corroboration. He cited state v. Onyeukwu (2004) 7 SC (Pt. 1) 1 at 31. That there was enough basis upon which this court can interfere with the concurrent findings E of the trial tribunal which is perverse and occasioned a miscarriage of justice and therefore called for the interference of the court below which they failed to do. Therefore this court should. He relied on Afegbai v. A. G. Edo state (2001) 7 SC (Pt. II) 1 at 8; FRN v. Sheriff F (1998) 2 FBTLR 109 at 128 - 129.

Responding, Mr. Umeh for the respondent said there was enough evidence to convict the appellant on count 1 even without Exhibits B, C, and E. That in respect to count 2 the prosecution proved the ingredients of the offence in count 2 beyond reasonable G doubt. That there is no justification for interfering with the decision of the lower court and the concurrent findings of the two courts below should not be interfered with. He cited Oshoboja v Amida (2009) 18 NWLR (Pt. 1172) 188; Mafimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 384 at 433; Edjekpor v. Osia (2007) 8 NWLR (Pt. 1037) 635 H at 673; Agbomeji v. Bakare (1998) 1 NWLR (Pt. 564) 1; Ometa v. Numa (1935) 11 NLR 18; Aro v Fabolude (1983) 2 SC 75 at 83; Adigin v. Secretary, Iwo Local Govt (1999) 8 NWLR (Pt.613) 30.

Having stated the summary of the submissions of counsel on

either side, I would like to quote excerpts of the Trial Tribunal judgment as follows:

“Exhibits B and C are confessional to the conspiracy charge. I noted attempts by the 1st and 2nd accused to retract certain portions of Exhibits B and C. I reject the retractions. They were after thought... Evidence of PW2, 3, 4, and 5 referred to in this judgment corroborated these confessional statements 1st 2nd and 3rd accused conspired to commit the offences in counts 1 and 7 in the Charge Sheet”

The trial Tribunal evaluated the evidence including the exhibits before it and came to the conclusion that the offences had been established, that there was enough proof that the appellant gave unauthorised credit of over N45 million naira. That tribunal proceeded to convict and sentence. On appeal by the same appellant, the Court of Appeal had no difficulty in affirming the findings of the Tribunal holding firmly that it was unable to hold that the prosecution had not carried out its duty as required by law that is beyond reasonable doubt. It is at this point that it needs be said that those concurrent findings of the two court having been done without any iota of perversity or oversight but were done in clear and commendable process buttressed by the facts and evidence on ground, this court had neither the business nor the mandate to interfere. This is because intervening without justification is not allowed by law and no amount of persuasion by the appellant would change the situation. *Edjekpo v. Osia* (2007) 8 NWLR (Pt. 1037) 635 at 673; *Agbomeji v. Bakare* (1998) 9 NWLR (Pt. 564) 1; *Ometa v. Numa* 1935) 11 NLR 18. The answer to the question posed herein from the foregoing and the better articulated reasoning in the lead judgment as delivered by my learned brother, John Afolabi Fabiyi JSC. I abide by all the consequential orders in the lead judgment.

ARIWOOLA JSC

I had read in advance the Lead judgment of my learned brother, Fabiyi, JSC and I am in total agreement with the reasoning and conclusion therein. I adopt same as mine. The appeal for lacking in merit is also dismissed by me.

AKA'AH'S JSC

My learned brother, FABIYI JSC made available to me the draft of the judgment. The appellant was arraigned along with others before the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal at Calabar on a two count charge of conspiracy and the granting of various credit facilities totaling N45,341,466.35 in favour of AXTRO FILMS LIMITED without lawful authority and in contravention of the rules and regulations of Nigeria-Arab Bank Limited (now Assurance Bank Limited) and thereby committed an offence contrary to section 18(1)(b) and punishable under section 18(2) of the Banks and other Financial Institutions Decree No. 25 of 1991 read in conjunction with section 3(1)(c) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No.18 of 1994 (as amended). He was sentenced to 5 years imprisonment on count 1 and 3 years imprisonment on count 2. The sentences were to run concurrently. He appealed to the Court of Appeal (herein to be referred to as the court below) which allowed the appeal in part by substituting the sentences with fines of N20,000.00 and N50,000.00 or six months and eighteen months in counts 1 and 2 respectively. The fines were made cumulative and the sentences to run concurrently. Still the appellant was not satisfied and has appealed to this Court on two grounds from which two issues were raised.

My learned brother dealt with the two issues at great length and I adopt his reasoning and conclusion as my own. There is no room for sentiments as to who should be charged to court for committing an offence. What a prosecutor is concerned with is to adduce evidence to prove the offence allegedly committed by the accused. The fact that other officers who have committed similar infractions have not been charged cannot be a justification for letting the appellant off the hook once the elements of the offence for which he was arraigned have been found proved beyond any reasonable doubt. I entirely agree that there is no merit in the appeal and I also dismiss it.