

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH JANUARY, 2014. SC. 40/2006  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, J. A. FABIYI, S. GALADIMA, N. S.  
NGWUTA, O. ARIWOOLA, K. M. O. KEKERE-EKUN, JJSC**

MOHAMMED ABACHA ..... APPELLANT  
V.  
FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

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STATUTES - Interpretation - Principle - Where provisions of statute are clear and unambiguous - Court is to give the provisions their ordinary interpretation without more (H1)

STATUTES - Forfeiture - Decree No. 53 of 1999 - Appellant whose properties were confiscated pursuant to the decree has no action to take - As to be indemnified in respect of dealings with the properties forfeited (H2)

STATUTES - Decree No. 53 of 1999 - Person aggrieved - By instituting the criminal proceedings - Respondent cannot be described as person aggrieved under the decree - As its legal right was not invaded by the forfeiture order (H3)

CRIMINAL PROCEDURE - Commencement - Validity - Decree No. 53 of 1999 neither absolved appellant from prosecution - Nor amounted to Executive promise not to prosecute - Persons listed in the schedule to the decree (H4)

CRIMINAL PROCEDURE - Institution - Powers of AG Federation - Charges filed against appellant were in compliance with AG's powers under the Constitution s. 174(3) - To carry out public prosecution in the interest of justice (H5)

CRIMINAL PROCEDURE - Jurisdiction - Allegations contained in the 123 counts charge against appellant - Cannot be determined by CA or SC - But by the trial court before which proof of evidence had been filed (H6)

CRIMINAL PROCEDURE - Nolle prosequi - Respondent can by this means give legal notice that lawsuit or prosecution has been abandoned - But this is neither acquittal nor equivalent to pardon (H7)

CRIMINAL PROCEDURE - Institution of - Immunity - Limit - Immunity enjoyed by appellant's father while in office is not available to him - Hence appellant is liable to face his trial at trial court (H8)

### ***FACTS***

Before the High Court of the Federal Capital Territory Abuja, accused/appellant and one other were arraigned on four counts charges relating to offences of conspiracy, receiving stolen property dishonestly and concealing stolen money, all pursuant to sections 97(i), 317 and 319 of the Penal Code, respectively. The Attorney-General of the Federation filed the charges pursuant to his powers under section 174(3) of the Constitution of Federal Republic of Nigeria 1999. Prosecution/respondent's case is that appellant had while his father – Late Gen. Sani Abacha was in office as the President of the Federal Republic of Nigeria between 1993 and 1998, conspired with the other to launder the country's financial resources into various foreign bank accounts. At the sudden demise of his father, Gen. Abdusalami Abubakar who took over power set up a Special Investigation Panel to look into activities of the administration of late Gen. Abacha.

The said panel was to investigate and recover monies illegally acquired by public officials and their agents. The panel investigated part of the case and recovered monies, properties and assets which led to the promulgation of Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999. By the said Decree, both appellant and his late father forfeited their assets to the Federal Government. The panel was still investigating when the military handed over power to civilian administration of Chief Obasanjo which continued the investigation and recovery. At the trial and before his plea could be taken, appellant raised objection to the jurisdiction of the trial court to try him. The court dismissed the objection and assumed jurisdiction in the matter. Dissatisfied, appellant appealed to the Court of Appeal, with an application for inter alia, an order quashing the charges and terminating all criminal proceedings against him on the ground that by

section 5 of the aforementioned Decree, no criminal proceedings shall lie against accused persons who have already complied with the prevailing law. The court dismissed the appeal and found against him. Hence, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 did not absolve the Appellant, Mohammed Abacha and all other persons mentioned in the schedule to the said law from further prosecution in the face of the clearer wordings of the said legislation and the previous interpretation given in identical circumstances to the said law by the State?

2. Whether the court below can be said to be correct when it rejected the Appellant's submission that the totality of the effect of Decree No. 53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the schedule to the said Decree (Appellant inclusive) and that Government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue?

3. Whether the court below was right when it held that the office of the late Head of State - General Sani Abacha (deceased) the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and allegations that prima facie do not constitute any of the offences alleged?

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

*STATUTES - Interpretation - Principle*

**1. In the interpretation of statutes, the cardinal rule is that where the provisions of a statute is clear and unambiguous, the duty of the court is to simply interpret the clear provision by giving the plain wordings their ordinary interpretation without more. It is not the function of a court of law to bend backwards to sympathize with a party in a case in the interpreta-**

**tion, of a statute merely for the reason, that the language of the law seems harsh or is likely to cause hardship. (p. 43 B)**

*STATUTES - Forfeiture - Decree No. 53 of 1999*

**2. The phrase - “deal with “ means “to take action on, to be  
B about or concern with “ - See: Chambers Dictionary. I there-  
fore agree with the court below in holding that the Appellant  
had nothing to do and had no action to take with regard to the  
properties listed against his name in the Schedule after they  
C had been forfeited to the Federal Republic of Nigeria. In other  
words, after confiscating or seizing the said properties from  
the Appellant in the manner it did by the Decree, the Appel-  
lant was not entitled to any compensation whatsoever. In the  
same vein, it stands to reason that the law makers did not and  
D could not have had in mind the Appellant and others, whose  
properties were forfeited pursuant to the Decree, as entitled  
to be indemnified in respect of the dealings with the proper-  
ties forfeited. (p. 43 G)**

*STATUTES - Decree No. 53 of 1999 - Person aggrieved*

**3. Furthermore, the Appellant had argued that by instituting  
the criminal proceeding on the 123 counts charge, the Re-  
spondent has put itself in the position of the person aggrieved  
referred to in Section 5 of the Decree (supra). In other words,  
F the Appellant contended that the Federal Government which  
forfeited his property pursuant to Decree No.53 of 1999 is  
the person aggrieved in the Decree. This, with the greatest  
respect to the learned senior counsel to the Appellant, is to  
G say the least, an embarrassing misconception of the law. To  
be aggrieved, a person must have legal rights that are adversely  
affected, having been harmed by an infringement of legal rights.  
A person aggrieved must be a person who has suffered a legal  
grievance, a person against whom a decision has been pro-  
H nounced which has wrongfully deprived him of something or  
wrongfully refused him something or wrongfully affected his  
title to something.**

**The court below was therefore correct in holding that in the  
instant context, the expression “person aggrieved” refers to**

**any person whose legal right was invaded by the forfeiture order, whose financial interest was directly and adversely affected by the said Decree and whose right or property may be established or divested. The Respondent herein cannot come under these descriptions.** (p. 44 C)

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*CRIMINAL PROCEDURE - Commencement - Validity*

**4. Further still the Appellant had argued that the totality of the effect of Decree No.53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the Schedule to the said Decree, Appellant inclusive, and that government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue. I am unable to see in any part of Decree No.53 of 1999 on Forfeiture of Assets Etc., (Certain Persons) where the Government did promise or can be said to have promised or undertaken not to prosecute any person including the Appellant for any offence.**

**Without any further ado, issues 1 & 2 argued together are hereby resolved against the Appellant. In other words, the court below was right when it held that Decree No.53 of 1999 did not absolve the Appellant - Mohammed Abacha and all other persons mentioned in the Schedule to the said law from prosecution. The court below is also correct in rejecting the Appellant's submission that the totality of the effect of Decree No.53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the Schedule to the said Decree (Appellant inclusive). The government is not stopped from prosecuting on the indictment of the Appellant as it stands.** (pp. 44 H/45 C/H)

*CRIMINAL PROCEDURE - Institution of - Powers of AG Federation*

**5. As earlier stated, the charges filed against the Appellant relate to:- offences of conspiracy, receiving stolen property dishonestly and concealing stolen money, all pursuant to the provisions of the Penal Code. There is no doubt, the criminal proceeding was instituted or commenced by the Attorney General of the Federation pursuant to Section 174 of the 1999**

**Constitution which empowers him to carry out public prosecution. And his power was being carried out in compliance with subsection 3 of Section 174 of the Constitution having regard to the public interest, the interest of justice and the need to prevent abuse of legal process. (p. 45 A)**

B

*CRIMINAL PROCEDURE - Jurisdiction*

**6. Neither the court below nor this court can determine the allegations contained in the 123 counts charge preferred against the Appellant before the trial court at this stage. Indeed, only the trial court before which court the proof of evidence had been filed has the competence to consider same. (p. 45 D)**

D *CRIMINAL PROCEDURE - Nolle prosequi*

**7. However, the only way by which Respondent can stop the prosecution is to give legal notice that a lawsuit or prosecution has been abandoned. That is what, in Latin words is called “*nolle prosequi*.” This is a formal entry on the record by the prosecuting officer by which he declares that he will not prosecute the case further, either as to some of the counts of the indictment, or as to part of a divisible count, or as to some of the persons Accused or altogether. It is a judicial determination in favour of Accused and against his conviction, but it is not an acquittal nor is it equivalent to a pardon. (p. 45 E)**

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*CRIMINAL PROCEDURE - Institution - Immunity - Limit*

**8. There is certainly no doubt that the Appellant is the person who is charged with various offences of alleged crimes committed against the State. He is entitled to make a “no case submission” after the Prosecution would have closed its case and he is called upon to put up his defence if he has any. The Appellant’s father is not on trial at all. It is true that the Constitution confers absolute immunity on the President, Vice President, Governor and Deputy Governor in respect of civil or criminal matters during their tenure in office. See: Section 308 of the 1999 Constitution. Indeed, the provision clearly suspends the right of action or the right to judicial relief of an**

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H

**aggrieved party during the tenure of office of the officials mentioned therein. The immunity does not extend beyond the tenure in office, after which the official shall be liable to face trial. I therefore cannot agree more with the court below as stated above. As the late Head of State, General Sani Abacha is not on trial, the Appellant who is on trial should go and face the music at the trial court and then adduce whatever defence he considers available to him. Whatever immunity the father had when he was in office could not be made available for the Appellant.** (p. 46 H) B

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## NOTABLE POINTS OF INTEREST

### **ARIWOOLA JSC**

#### ***1. Forfeiture – Meaning of***

The word “forfeiture” means - “the divestiture of property without compensation. The loss of a right, privilege or property because of a crime, breach of obligation, or neglect of duty.” It follows that, “title in those assets and properties forfeited is instantaneously transferred to another, such as the government.” (p. 42 E) D

E

#### ***2. Indemnify – Meaning of***

To indemnify is to reimburse another for a loss suffered because of a third party’s or one’s own act or default. Or to promise to reimburse another for such a loss. (p. 44 B) F

### **REPRESENTATION**

J. B. Daudu, SAN., with Bunmi Alasi and Mariam Ojiah, for the Appellant

D. C. Enwelum, for the Respondent G

### **CASES REFERRED TO**

Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139

Agwuna v. A-G Federation (1995) 5 NWLR (pt. 396) 418 H

UniJos v. Carlen Limited (1992) 5 NWLR (pt. 241) 352

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

Bronik Motors Ltd v. Wema Bank Ltd (1983) 6 SC (Reprint) 94

Arubo v. Aiveleru (1993) 2 SCNJ 90

- Sofolahan v. Fowler (2002) 3 SC 89  
 African Reinsurance Corporation v. Fantaye (1986) 6 SC (Reprint) 212  
 Oduko v. Govt. of Ebonyi State (2009) 3-4 SC 154  
 Enyadike v. Omehia (2010) 11 NWLR (pt. 1204) 92  
 B Awolowo v. Shagari (1979) 6-9 SC 51  
 Oyegun v. Nzeribe (2010) 5-7 (pt. II) 44  
 Triama Ltd. v. Universal Trust Bank Plc. (2009) 12 NWLR (pt. 1155) 313  
 C Ugbane v. Hussen (2009) NWLR (Pt. 1135) 530  
 Rabi v. A-G Kano State (1980) 8-11 SC 130

### **STATUTES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999, ss. 174, 295(2),  
 D 308  
 Penal Code, ss. 97(i), 317, 319  
 Forfeiture of Assets Decree No. 53 of 1999, ss. 2, 5, 6

### **BOOKS REFERRED TO**

- E Black's Law Dictionary Ninth Edn. pp. 722, 837  
 Chambers Dictionary

### **LEAD JUDGMENT BY ARIWOOLA JSC**

- F This is an appeal against the judgment of the Court of Appeal, Abuja Division, delivered on the 18th day of April, 2005 whereby it resolved against the Appellant, the questions that were referred to it by the High Court of the Federal Capital Territory, Coram: Justice Saleh, CJ.

- G The situation that culminated into this appeal briefly is as follows:

- The Respondent through its Honourable Attorney General, in exercise of his powers under Section 174 of the 1999 Constitution had filed four (4) different charges against the Appellant and one  
 H Abubakar Atiku Bagudu, (now a Senator of the Federal Republic of Nigeria) at the High Court of the Federal Capital Territory, Abuja.

The said charges were;

- (a) Charge No. CR/21/2000 of 33 counts
- (b) Charge No. CR/22/2000 of 9 counts

(c) Charge No. CR/23/2000 of 45 counts

(d) Charge No. CR/24/2000 of 33 counts

The charges relate mainly to offence of conspiracy, receiving stolen property dishonestly and concealing stolen money, all pursuant to Sections 97 (1), 317 and 319 of the Penal Code respectively.

Before the plea of the Accused could be taken by the trial court, the Appellant and the other filed couple of applications, including one challenging the jurisdiction of the trial court. That application was dismissed and the trial court affirmed that it has jurisdiction to adjudicate on the matter. In yet another application, the Applicants sought reference to the court below by the trial court. I shall come back to this anon.

The reliefs sought had been -

(a) An order quashing the charges in Charge No. CR/24/2000 and terminating all criminal proceedings connected therewith on the ground that based on Section 5 of Decree No. 53 of 1999, no criminal proceedings shall lie against any of the Accused persons who have already complied with the prevailing law.

(b) An order terminating the instant criminal proceedings against the Applicant on the ground that based on Decree No. 107 of 1993 and other Decrees in that regard, the former Head of State was empowered to act as he did in the circumstances leading to these charges.

The fact of this case goes thus:

The Appellant is the second son of late General Sani Abacha who was the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. While in office between 17th November, 1993 and 8th June, 1998 the Appellant's father was alleged to have instructed one Alhaji Ismaila Gwarzo, who was then National Security Adviser to the Head of State to apply for various sums of monies to be withdrawn from the Central Bank of Nigeria for "*Security Reasons*." The late General Abacha approved the said various sums. In the result, the sum of \$156,684,317.03 and £416,472,000 were withdrawn from the Central Bank of Nigeria through the Appellant and one Abubakar Atiku Bagudu into their private foreign accounts in various countries. The said funds were delivered to the late General by Alhaji Gwarzo while the Appellant collected from his father and transferred same to Abubakar Atiku

Bagudu who carried the money abroad and lodged into their said various foreign bank accounts where the Appellant and Bagudu were the only signatories. The said monies lodged in the foreign accounts were still in the accounts when the above charges were filed and the accounts were frozen.

B Upon the demise of General Sani Abacha, General Abdulsalam Abubakar came into power. His government lasted up till 29th May, 1999 when after a general election, he handed over power to the civilian Head of Government - Chief Olusegun Obasanjo.

C During the period General Abdusalam Abubakar was in office, he set up a Special Investigation Panel to look into activities of the administration of late General Sani Abacha. The said panel was to investigate and recover monies illegally acquired by public officials and their agents. The panel investigated part of the case and recovered monies, properties and assets which led to the promulgation of D Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999. By the said Decree, both the Appellant and his father, the late General forfeited their assets to the Federal Government. The said forfeited assets are contained in the Schedule to the Decree. The panel E was still investigating when the military handed over power to civilian administration of Chief Obasanjo which continued the investigation and recovery.

The recovery and forfeiture led the Hon. Attorney General of the Federation to file the four criminal charges (supra) against the F Appellant and Abubakar Atiku Bagudu. The Appellant and Abubakar Atiku Bagudu filed various interlocutory applications the last of which was a motion on notice dated 28th March, 2001 in which they prayed for the suspension of consideration of the application and delivery of G its ruling thereof by the trial court and to refer to the Court of Appeal three questions of law. Notwithstanding the objection to the reference, by the Respondent, the trial court granted the application on 9th April, 2001 and referred the following questions pursuant to Section 295(2) of the 1999 Constitution, to the court below.

H The Questions:-

1. As it relates to the 123 counts in CR/21-24/ 35 2000 upon which the Applicants, presently standing trial before the High Court of the Federal Capital Territory, Abuja, whether the same court can exercise its judicial powers under Section 6(6)(a) of the 1999 Consti-

tution of the Federal Republic of Nigeria to determine the Civil Rights and Obligations of the Application (sic) by putting him on a trial in view of the provisions for Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999, an existing law and an Act of the National Assembly which he has resolved the issues of criminal liability arising out of those charges? B

2. What is the effect of Decree No. 53 of 1999 on the innocence or otherwise of the Applicant as it relates to the 111 counts in this trial. Have the criminal issues the high court is seeking to determine not been concluded therein and if answered in the affirmative, does this court possess the jurisdiction to hear criminal allegations on an issue that has been resolved by an Act of Parliament? C

3. Since the tread that runs through the 123 counts in the trial of the Applicant as presently standing before this honourable court is that the Applicant received stolen property from the late Head of State, whether any fund dealt with by the latter in his capacity as the Head of State, can be questioned by another administration in the face of all the Decrees that enabled him to exercise unlimited powers and in that vein, whether the charges based as they are on receiving stolen properties can be entertained by the high court. D E

Pursuant to the rules of the court below, parties filed and exchanged briefs of argument. They adopted their respective briefs and relied on same. In its considered judgment, the court below answered the above questions referred to it in the negative and against the Appellant. F

Being dissatisfied led to the instant appeal to this court by the Appellant on nine (9) grounds of appeal.

On the 24th October, 2013 when the appeal was argued, learned senior counsel for the Appellant - J.B. Daudu, SAN., referred to the Appellant's brief of argument filed on 13th March, 2012 which by the order of court was deemed filed and served on 08th May, 2013. In response to the Respondent's brief of argument, the Appellant filed a reply brief of argument on 11th October, 2013. He adopted the two briefs of argument and relied on them to urge the court to allow the appeal, set aside the answers posed by the court below and substitute therewith positive and affirmative answers. G H

Mr. Enwelum of counsel for the Respondent referred to the brief of argument filed for the Respondent on 4th October, 2012 but

later deemed as properly filed and served on 8th May, 2013. He adopted and relied on the said brief of argument to urge the court to dismiss the appeal.

In the Appellant's brief of argument settled by J.B. Daudu, SAN., the following three (3) issues were distilled for determination:

B Issues for Determination

1. Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 did not absolve the Appellant, Mohammed Abacha and all other persons mentioned in the schedule to the said law from further prosecution in the face of the clearer wordings of the said legislation and the previous interpretation given in identical circumstances to the said law by the State? (Grounds 1, 2 and 3)

2. Whether the court below can be said to be correct when it rejected the Appellant's submission that the totality of the effect of Decree No. 53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the schedule to the said Decree (Appellant inclusive) and that Government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue? (Grounds 4 and 5)

3. Whether the court below was right when it held that the office of the late Head of State - General Sani Abacha (deceased) the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and allegations that prima facie do not constitute any of the offences alleged? (Grounds 6, 7, 8 and 9)

The Respondent in its brief of argument settled by D.C. Enwelum, Esq., adopted the above three issues formulated by the Appellant to argue the appeal.

In arguing the appeal the Appellant took Issues 1 and 2 together.

Issues 1 and 2:

H Learned senior counsel contended that the court below had, in its judgment rejected the Appellant's submissions on the applicability or otherwise of Decree No. 53 of 1999 promulgated by the Abdulsalam Government. He summarised what he thought was the grounds why the court below took its said decision as follows:

*“The wordings of the said legislation specifically the phrases “persons aggrieved” in Section 5 do not apply to the Appellant and did not confer any advantage on him or impose an obligation on the State that Appellant is exempt from prosecution on account of his compliance with the demand of the said legislation.”*

Learned senior counsel referred to the decision of the court below on Page 456 of the record concerning the phrase - ‘Persons aggrieved’ and to Sections 1, 2, 5 and 6 and Part Two of Decree 53 of 1999. He submitted that the court below was wrong for holding that Decree No. 53 of 1999 is inapplicable to the Appellant. He contended that the fundamental constitutional question flowing from the decision of the court below is whether a person can be subjected to trial and or criminal judicial process by a succeeding government when the existing law passed by the preceding government precludes persons of his ‘class’ from standing trial over conduct that had been dealt with in the Decree. Learned senior counsel submitted that the interpretation accorded to Decree No. 53 of 1999 by the court below is erroneous. He submitted that in a Military Government, the laws legislated by it is through Decrees and Edicts. That, Decrees on their own were supreme legislations superior to the unsuspended portions of the 1979 Constitution and all other laws were subjected to them on account of their inferiority. He relied on: *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139; *Agwuna v. Attorney General of the Federation* (1995) 5 NWLR (Pt. 396) 418.

Learned senior counsel digressed and submitted that indeed, there was sufficient evidence on record linking the funds, subject matter of the charges against the Appellant, to the funds that were recovered pursuant to Decree No. 53 of 1999. He referred to the affidavit in support and the documents annexed at Pages 151-179 of the printed record. He referred to Exhibits A–E thereof by which voluntary disclosures were made by the Central Bank of Nigeria, Union Bank of Nigeria and Inland Bank in order to assist the Federal Government recover funds transferred out of the country on the instructions of the preceding administration.

Learned senior counsel contended that it is not in dispute that the monies forfeited under the said Decree No. 53 of 1999 are the same as those that form the substance of the charges the Appellant is standing trial for. He referred specifically to Paragraphs 20 and

21 of the said affidavit.

Learned senior counsel submitted that the effect of Decree No. 53 of 1999 was to provide that no civil or criminal proceedings would be commenced or continued in respect of any of the conduct which led to the acquisition of or dealing with the assets disclosed, transferred or forfeited under it. He submitted that, that is the only interpretation that could be accorded to the provisions of the Decree.

Learned senior counsel gave an analysis of the Decree, in particular, Sections 1, 2, 3, 4, 5 and 6. He submitted that the court below was in error in holding that the Respondent could neither be an ‘aggrieved person’ in any manner whatsoever with regard to the compliance or anticipated compliance with a Decree it promulgated nor could ‘deal’ with assets recovered there under. He submitted that the court below failed to read the Decree as a whole. He contended that, had the court accorded the said legislation a comprehensive examination, it would have been apparent that the Respondent was not a person above the law. He contended further that the ‘*person aggrieved*’ referred to in the law is not limited to Registrars of Titles and other similar government officials.

Learned senior counsel submitted that the Appellant was one of those who could be punished for failing to comply with the provisions of the Decree. He contended that it is apparent from Sections 2 and 6 of Decree No. 53 of 1999 that the forfeiture of assets covered by the Decree was not self executing but required the Appellant to deal with the assets before the property in the said assets could rest in the Respondent. Learned senior counsel submitted that throughout the Appellant’s submissions on the reference before the court, he never held himself out as someone entitled to be indemnified for any breach by the Respondent but had contended that having taken steps to return the monies as stipulated in the Decree. Section 5 thereof precluded the Respondent as party aggrieved in any ways or manner from instituting a suit or other proceedings against him. He submitted that the Appellant was a person covered in all ramifications by the provisions of the Decree and all its exemptions.

In order to demonstrate that the provisions of Sections 2 and 6 of Decree No. 53 of 1999 applied to the Appellant, the Appellant referred to the set of questions and answers that were formulated in the Appellant’s reply brief at the court below which, learned senior

counsel contended were acknowledged by the court below but not pronounced upon or applied. He submitted that the Decree legislated on the conduct of the Appellant vis-a-vis the scheduled properties or funds and has stipulated the appropriate sanction to be, forfeiture or imprisonment as contained in Section 6 of the Decree.

Learned senior counsel contended that the Appellant has been found by the Decree to be in compliance hence the latter part of Section 5 comes into play by ousting any other proceedings at the instance of any person aggrieved. He contended further that, by commencing the trial with 123 counts charge against the Appellant, the Federal Government of Nigeria was clearly portraying itself as a person aggrieved, dissatisfied with the measure of quantum of punishment meted to the Appellant by the provisions of Section 6 of the Decree. He stated that the Federal Republic of Nigeria through the Federal Government of Nigeria was a party to the entire process. He referred to Section 1 of the Decree and contended that the phrase '*any person*' includes the Respondent - He referred to Section 18 (1) of the Interpretation Act as defining 'person' as including any Body of Persons Corporate or unincorporated and relied on: *Unijos v. Carlen Limited* (1992) 5 NWLR (Pt. 241) 352. He submitted that the jurisdiction of the trial court is clearly excluded or ousted by the clear terms of the said Decree.

The Appellant contended that Decree No. 53 was exhaustive on the issue of security votes fund. That the legislature at that time was satisfied that the circumstances of the entire transaction was such that (i) required an ad hominem legislation to deal with, clearly implying or admitting that the existing law which includes the provisions of the Penal and Criminal Codes (under which the Appellant is now being tried) were either unsuited or inapplicable to the circumstances herein, (ii) that if provisions of Decree No. 53 of 1999 did not in its mind resolve the issue conclusively, it would have tried the Appellant in addition to the forfeiture and (iii) or provided penalty in the said Decree No. 53 for the conduct being punished, which is clearly not stealing or receiving stolen property but possession of government funds in circumstances that can only be considered irregular and not unlawful - there being no law rendering illegal the keeping of government funds in accounts other than government accounts.

Learned senior counsel submitted that a court of law has an

inherent power to do justice and apply doctrines of equity. That where legislation had imposed a duty to act, or imposes conditions and provides a penalty for non-compliance, it is not open to the State to go back on the clear provisions of the legislation and claim that an offence had been committed by reliance on the same facts upon which the legislation is based. He submitted further that the provisions of Decree No. 53 and the facts leading to this appeal stopped the State from prosecuting the Appellant for complying with the provisions of existing law.

Further still, based on the foregoing, the Appellant submitted that Decree No.53 of 1999 constitutes statutory estoppel and acts as a bar against further prosecution in respect of those funds returned by the Appellant and others covered by the Decree. He concluded that the Appellant had acquired a vested right under the Decree, which could not be taken away by a succeeding administration. He relied on: *A. G. Lagos v. A. G Federation* (2003) 6 S.C. (Pt.I) 24.

The Appellant referred to a number of letters of request which he claimed emanated from the office of the Honourable Federal Attorney General, extracts of which were said to have been annexed to the application to quash, the basis of this reference.

Learned senior counsel submitted that the court below was in error when it failed to affirm that the Respondent could no longer resile from the position of immunity for those who complied with Decree No. 53 having regard to (a) effect of Decree No. 53 of 1999 and (b) on persons who were also named in the Schedule to the said Decree and who had in compliance with the said legislation returned monies just as the Appellant and his family had done and the Decree in those instances was interpreted as granting immunity from prosecution.

On estoppel by conduct or estoppel in pais and admission or something equivalent to an admission in respect of which the party affected will not be allowed to plead against or adduce evidence to contradict, the Appellant relied on: *A.G. of Rivers State v. A.G. of Akwa Ibom State* (2011) 3 S.C. 1.

It was submitted that the proposed charges that are now the subject of the application for quashing and other serious constitutional objections all relate to the conduct of the Defendant in connection with assets that were disclosed on 29th September, 1998 and 2nd October, 1998 and forfeited under Decree No. 53 of 1999. The

Appellant concluded that the preferment of the charges, in the circumstances would breach the undertaking or promise derived from Decree No. 53 that there would be no such prosecution. Reliance was placed on: *R. v. Croydon JJ exp Dean* QB 769; *Chu Piu Wing v. A.G.* (1984) HKLR 411; *R. v. Bloomfield* M9971 1 Cr. App. 135; *Reg v. Milnes and Green* 33 SASR 211 at 226. B

The Appellant finally submitted that the end result of the infraction of Decree No. 53 by the Respondent is to create a situation where there is no controversy between the Appellant and Federal Republic of Nigeria, as Respondent. It was contended that the absence of controversy deprives the court of the quintessential judicial power necessary for adjudication. Meaning that the criminal charges in the High Court of the Federal Capital Territory were ab initio non-starters. Reliance was placed on: *Bronik Motors Limited & Anor. v. Wema Bank Limited* (1983) 6 S.C. (Reprint) 94; *Arubo v. Aiveleru* D (1993) 2 SCNJ 90 at 102; *Sofolahan v. Fowler* (2002) 3 S.C. 89. C

Learned senior counsel urged the court to resolve Issues 1 & 2 in favour of the Appellant. D

### Issue No. 3

This issue was said to have been distilled from Grounds 6, 7, 8 E and 9 of the notice of appeal. Learned senior counsel submitted that there was a grave misapprehension of the Appellant's arguments by the court below. He conceded that it is true that the Appellant's brief of argument made copious reference to (a) the nature of a military regime (b) the powers of a Head of State under such dispensation, F (c) the allegations made against the Appellant and finally the impossibility or non-disclosure of any offence allegedly committed by the Appellant. He referred to Page 463 of the printed record on the findings of the court below as contained in its judgment and submitted that the court below misconceived the arguments of Appellant. G

Learned senior counsel referred to Page 462 of the printed record where the court below identified the offences of conspiracy and receiving stolen property punishable under Section 317 of the Penal Code and concealing stolen money punishable under Section 318 of the Penal Code. He submitted that the substance of this issue is that no offence has been disclosed against the Appellant because, H according to him, the acts which are alleged to constitute the offence have nothing to do with stealing of government funds because the

available evidence show that the funds were legally taken out of the Central Bank of Nigeria.

Learned senior counsel submitted that the late Head of State had powers to deploy public funds from consolidated revenue fund or elsewhere, in the exercise of the executive authority of the Federal Republic of Nigeria. He relied on Section 6(1) and (2) of the Constitution (Suspension and Modification) Decree No. 107 of 1993.

On doctrine of sovereign immunity for the Appellant's father, he relied on the House of Lord's case of: *R. v. Bow Street Metropolitan Stipendiary Magistrate & Ors.. Ex Parte Pinochet Ugarte Annesty International & Ors. Intervening* (No. 30 (1999) 2 All ER HL) 97 at 111/112 and 114/115 to buttress the point that General Sani Abacha's acts while in office were immune from prosecution and so were those who carried out his instructions. He cited: *African Reinsurance Corporation v. Fantaye* (1986) 6 S.C. (Reprint) 212.

Learned senior counsel submitted that the Appellant cannot be tried for any of the charges in the printed record as they are all linked to the allegation that the monies given to him were stolen property. He submitted further that the nature of the charges is such that they do not disclose an offence that can be said to have been committed by the Appellant. He stated that the law is clear that no one should be needlessly and oppressively put on trial that he ought not to stand. He relied on: *Abacha v. State* (2002) 7 S.C (Pt. I) 1.

Learned senior counsel contended that the consequence of the state of affairs is to deprive the High Court of the Federal Capital Territory of judicial power and or competence to determine the charges/obligation against the Appellant. He submitted that the position of the law as it relates to the immunity conferred on the former Head of State renders the charges incapable of being prosecuted under any of the existing laws. He cited: *F.S. Uwaifo v. Attorney General of Bendel State & Ors.* (1982) 7 S.C. 124; (1982) 7 S.C (Reprint) 58.

He finally urged the court to resolve Issue No.3 in favour of the Appellant and finally urged the court to allow the appeal, set aside the decision of the court below and in its place resolve the three questions constituting the reference in the Appellant's favour. As earlier stated, the Respondent adopted the three issues the Appellant distilled from the grounds of appeal he filed. The mode or argument

adopted by the Appellant was equally adopted by the Respondent.

In arguing Issues 1 and 2 together, the Respondent contended that they call for a close and thorough consideration of Decree No. 53 of 1999 alongside Section 6(6) of the 1999 Constitution. Learned counsel reproduced the said relevant provisions of the Decree and Constitution. B

On judicial power and jurisdiction of courts, learned counsel relied on: *Bronik Motors & Anor. v. Wema Bank Limited* (1983) 6 S.C. (Reprint) 94; *Osuu S.C. Oduko v. Government of Ebonyi State & 3 Ors.* (2009) 3-4 S.C. 154. *Ashley Emenike Enyadike & 1 Or. v. Sir Celestine Ngozichim Omehia & 4 Ors.* (2010) 11 NWLR (Pt. 1204) 92 at 112-113. C

Learned counsel referred to the contention of the Appellant that the Respondent is estopped from prosecuting the Appellant on the same facts as dealt with by the said Decree. He contended that the charges pending now before the Federal Capital Territory, High Court from which reference was made to the court below all relate to the conduct of the Appellant in connection with assets that were disclosed on 29th September, 1998 and 2nd October 1998 and forfeited under Decree No. 5 of 1999 and therefore the charges filed breached the undertaking or promise as stated in Section 5 of the Decree that there would be no prosecution as a result of the forfeiture. Learned counsel referred to Section 1 of the Decree and Part 1 of the Schedule to the Decree. He also referred to Section 2 on persons in possession of the properties stated in Parts 1 and 2 of the Decree. D E F

Learned counsel submitted that the properties in question were characterized by the Decree itself as:- "*properties acquired corruptly and illegally.*" G

And the said properties were by the force of the Decree forfeited to the Federal Government of Nigeria free of all encumbrances and without any further assurances other than the Decree. He contended that by characterizing the properties as corruptly and illegally acquired, the Decree meant that the persons yielding up possession were engaged in corrupt practices in their acquisition of the properties. He concluded that the Decree divested the said persons of the properties and vested same in the Federal Republic of Nigeria; that by Section 1 of the Decree, the legal title of the said properties be- H

came vested in the Federal Government of Nigeria.

Learned counsel referred to Section 2 of the Decree and contended that same is consequential to Section 1 in that, the title in the said properties have been vested in the Federal Government of Nigeria by the force of the said Decree, persons in possession of the  
B properties shall merely yield up possession within fourteen (14) days.

Learned counsel contended that Sections 1 and 2 of the law do not command any dealings by the Appellant or indeed any person mentioned therein. He defined the word “*deal*” to mean “*to have to do with*,” And that by Section 1 of the Decree the properties  
C were already forfeited to Federal Government of Nigeria while Section 2 commands the yielding up of possession, again by the force of the Decree within 14 days and by virtue of Section 6, were liable to two years imprisonment for default or refusal. Learned counsel submitted that the Appellant and indeed any other person mentioned in  
D the Decree therefore had nothing to do with the property after forfeiture. The forfeiture itself being by the force of the Decree.

Learned counsel contended that the forfeiture was not by any agreement, co-operation, compliance or acquiescence by the persons mentioned in the Decree including the Appellant. The said properties were already said to have been corruptly and illegally acquired and were therefore forfeited without any further assurance other than the Decree. He submitted that they could not deal with the properties to entitle them to an indemnity under Section 5 of the Decree.  
E  
F

Learned counsel referred to Sections 3 and 4 of the Decree which deal with the registration of the affected properties by the Registrar of Deeds in Federal or State Lands Registry and the rectification of the record by the Registrar General of Corporate Affairs Commission and the Secretary of the companies affected are the sections that  
G provide for dealing with the forfeited properties. He contended that the act to be done under Sections 3 and 4 of the Decree comes after the forfeiture as provided in Section 1 of the Decree. He submitted that as no co-operation, compliance, agreement or acquiescence was  
H required or made by the Appellant or any of the parties before the forfeiture under Section 1 of the Decree, none of them could have dealt with the properties in compliance before the forfeiture.

Learned counsel referred to Section 5 of the Decree and contended that it must be taken to refer to the person dealing with the

properties after forfeiture and not before. He contended further that the Appellant did not deal with the properties to facilitate the forfeiture in any manner, and even after the forfeiture he had nothing to do with the properties.

Learned counsel referred to Part 2, No.2 of the Schedule to the said Decree to show that what was listed under the Appellant was N250,000,000 and same was confiscated and forfeited by Section 1 of the Decree. He contended that the said property was already in the possession of the Respondent when the Decree was promulgated into law. He submitted that the Appellant did not deal with the said property to entitle him to the indemnity provided by Section 5 of the Decree. The said money had by dint of effort of the Special Investigation Panel (SIP) been recovered, from the Appellant, confiscated and forfeited to the Federal Government before the said Decree was promulgated.

Learned counsel submitted that the wordings of Decree No.53 of 1999 are clear and unambiguous and therefore should be given ordinary meaning. He relied on: Chief Awolowo v. Alhaji Shagari & 2 Ors. (1979) 6-9 S.C. 51; (1979) 6-9 S.C. (Reprint) 37; Chief John Oyegun v. Chief Francis Arthur Nzeribe (2010) 5-7 (Pt. II) 44; Triama Ltd, v. Universal Trust Bank Plc. (2009) 12 NWLR (Pt. 1155) 313 at 342; Hon. Aliyu Ugbanne v. Ismaila Hussien (2009) NWLR (Pt. 1135) 530 at 544.

Learned counsel contended that the entire Decree No.53 of 1999 with the properties enumerated in Parts 1 and 2 of the Schedule to the Decree and these properties including the sums of money were forfeited to the Federal Government of Nigeria by Section 1 of the Decree. He submitted that by the use of the term forfeiture in Section 1 of the Decree, the Appellant and others mentioned in the Decree were divested of the properties listed against their names to the Schedule and title instantaneously transferred to the Federal Government of Nigeria.

Learned counsel submitted that the Appellant and his family did not return the money listed against their names in compliance with the provision of Sections 2 and 3 of Decree No.53 of 1999. The said monies were recovered from them through the efforts of the Special investigation Panel (SIP) before the Decree No.53 was promulgated. He submitted further that indeed after the forfeiture of the

properties to the Respondent the Appellant had no action to take by virtue of Section 7 of the Decree. The Appellant was therefore not in a position to deal with the said properties in any way that will bring him within the indemnity offered by Section 5 of the Decree. Learned counsel contended that the word indemnity which the Appellant seeks under Section 5 of the Decree means the right of an injured party to claim reimbursement for its loss, damage, or liability from a person who has such a duty. He submitted that the word indemnity used in Section 5 of the Decree has no bearing or relevance with any criminal proceeding as is at present pending before the trial court.

Learned counsel submitted that Decree No.53 of 1999 is not and can never amount to statutory estoppel, neither can it act as a bar against prosecution in the circumstances of the present case. For a plea of a bar to criminal prosecution to succeed he submitted, the Claimant must come within the provisions of Section 36(9) of the 1999 Constitution. This constitutional provision is not applicable to the Appellant's case. Relying on: *Nafiu Rabiu v. A.G. Kano State* (1980) 8-11 S.C. 130; (1980) 8-11 S.C. (Reprint) 85, learned counsel submitted that the provisions of Section 36(9) of the 1999 Constitution is simply the doctrine of double jeopardy which demands that no person shall be subjected to trial twice for the same offence to be put in jeopardy of life or limb.

Learned counsel contended that the powers of the Attorney General of the Federation to institute and undertake a criminal proceeding against the Appellant is contained in Section 174 of the 1999 Constitution. He submitted that the Decree No.53 of 1999 is inferior to the 1999 Constitution and the court cannot enquire into the exercise of such powers. The only restraint in the exercise of such powers, he submitted, is in regard to the public interest, the interest of justice and the need to prevent abuse of legal process. He relied on: *The Comptroller General Nigeria Prison Service v. Adekanye* (1999) 5 NWLR (Pt.602) 167 at 175 *State v. Ilorin* (1983) 2 S.C. (Reprint) 107.

Learned counsel submitted that since the Appellant has not shown this court that he had earlier been tried, convicted and sentenced or acquitted on the facts of this case, he cannot urge the court to stop the Attorney General of the Federation from exercising his power as conferred on him by Section 174 of the 1999 Constitution.

He contended that the basis of the forfeiture of properties under Decree No.53 of 1999 is that the properties were acquired corruptly and illegally by the persons mentioned in the Decree including the Appellant.

He finally urged the court to resolve Issues 1 & 2 in favour of the Respondent but against the Appellant. B

### Issue No.3

This issue as formulated by the Appellant and adopted by the Respondent once again is whether the court below was right when it held that the office of the late Head of State - General Sani Abacha, the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and allegations that prima facie do not constitute any of the offences alleged. C D

The Respondent submitted that the above issue is based on the following two planks as argued by the Appellant. That going by the facts of the case, the acts of the late Head of State, General Sani Abacha in moving the monies out of the Central Bank to foreign private accounts of the Appellant and others cannot constitute an offence as they are official State acts, *“even if he had followed an unorthodox procedure.”* He was incapable of stealing funds in his possession which he dealt with in his official capacity. Therefore the Appellant who deployed his order cannot be indemnified. E F

Secondly, the argument sought to demonstrate that since the General was a Military Head of State, he acted within the scope of the surfeit of powers vested in him by the very nature of the means by which he acquired power and the torrent of Decrees that kept the Administration in authority. It was contended by the Appellant that General Sani Abacha enjoyed sovereign immunity while he was Head of State and that this concept extended to cover his official act even after his demise. G

The Respondent submitted that the first limb of the Appellant’s argument is not one on a point for reference. Learned counsel referred to the findings of the lower court at Page 546 of Vol.2 of the records and submitted that the Appellant’s argument on the point is not a constitutional issue and that the main suit can be resolved without it as a constitutional point. It was contended that it touches on H

the ingredients of the offence of theft.

Learned counsel contended that the question of whose possession the funds were and the legitimacy of the dealings with them are for the trial court to determine as shown in two of the ingredients of theft, during the trial and after the Prosecution has called its witnesses and closed its case. And as ingredients of the offence, they can be determined without reference as a constitutional question. To do otherwise, it was submitted, would amount to determining the case before the trial court at this stage.

Learned counsel contended that, assuming without conceding that the point raised here is worthy of consideration as a reference, he submitted that under Section 74 of the 1979 Constitution (as amended) by Decree No. 107 of 1993, all revenues or other monies raised or received by the Federation shall be paid into and form part of the Consolidated Revenue Fund of the Federation. Section 74(2), (3) and (4) specified the type of money that could or could not be withdrawn from the consolidated revenue Fund or any fund of the Federation in a manner prescribed by an Act of National Assembly or by Decree. Indeed, unless there was an appropriation made under the relevant Appropriation Decree no money could be withdrawn from the Consolidated Revenue Fund. He submitted that there was no Decree that authorized the late Head of State to withdraw or divert funds from the Consolidated Revenue Fund of the Federation as held by the Central Bank of Nigeria into private foreign bank accounts of the Appellant.

On the second limb of the Appellant's argument, the Respondent submitted that Sections 16 and 17 of Decree 107 of 1993 retained all existing laws subject to such modifications as was necessary. Among the laws that were retained was Section 267 of 1979 Constitution. With reference to the provisions of 35 Section 267 of the 1979 Constitution, learned counsel submitted that the only immunity offered the late Head of State was during his period in office. It does not extend to any period after his tenure of office. Learned counsel referred to Section 308 of the 1999 Constitution as a repeat of Section 267 of 1979 Constitution and cited: *Bola Tinubu v. IMB Securities Plc.* (2001) 9-10 S.C. 49; *Gani Fawehinmi v. I.G.P & Ors.* (2002) 5 S.C. (Pt. I) 63; *Abacha v. Fawehinmi* (2000) 4 S.C. (R II) 1.

Learned counsel submitted that there is no such principle of

law known as “*Sovereign Immunity*” or “*State Act*” in the Nigeria domestic law protecting the late Head of State, from facing trial for acts done whilst in office. He submitted further that if the late Head of State cannot enjoy any such immunity under our laws, the Appellant who is a private citizen cannot therefore claim such immunity. The plea of State immunity or any immunity whatever cannot avail the Appellant. He urged the court to resolve Issue 3 in favour of the Respondent and answer the questions raised positively against the Appellant. B

Finally, he urged the court to dismiss the appeal and uphold the decision of the lower court. C

As stated earlier, the Appellant in response to the brief of argument filed by the Respondent, filed a reply brief of argument meant to supply response on points of law only. It referred to the argument of the Respondent on the provisions of Decree No.53 of 1999 in relation to Issues 1 and 2 raised for determination of this appeal and submitted that the approach of the Respondent and the lower court was manifestly incorrect. The Appellant further submitted that the Decree anticipated compliance from those it targeted, like the Appellant, members of his family and other associates, not that the Decree is self-effectuating or self-enforcing, meaning that it does not require any other act or effort on the part of anyone (least of all, the Appellant) to cause a forfeiture of the properties and monies listed in the schedule to the Decree. D E

The Appellant submitted that the entire appeal is not about ownership or transfer of possession of the subject matter of the Decree, that is, monies and properties but the legal consequences of being a person who in intended compliance with the Decree, handled same in one way or the other. And that the consequence, as earlier argued in the main brief of argument is that they can no longer be prosecuted by the Respondent. F G

On whether the Federal Government of Nigeria can be a person aggrieved under Section 5 of the Decree, the Appellant submitted that the section is for the protection of persons who had complied with either the transfer of possession of the scheduled assets or who have dealt with the properties or who rectifies any register or other record and the effect is that they shall be immune from any civil or criminal action. H

On the concept of estoppel by conduct, the Appellant contended that the Respondent has not denied that it interpreted the provisions of Decree No. 53 in the letters emanating from the office of the Attorney General of the Federation in respect of persons who returned monies in exactly the same manner as the Appellant had done. It was submitted that having regard to the position taken by the Government through the Attorney General of the Federation as to the effect of Decree No.53 of 1999 on persons who have returned "*corruptly acquired monies*" which is that they will not be prosecuted, Government is estopped from any further prosecution.

On the reference to Section 33(9) of the 1999 Constitution by the Respondent on double jeopardy, the Appellant contended that it has no relevance to this appeal. The reason being that the Appellant at no time made reference or place reliance on the said provisions or its 1979 equivalent provisions in support of his case and the said provision does not apply to the facts of this appeal, as its application contemplates an earlier criminal trial, which has either resulted into a conviction or an acquittal.

He urged the court to discountenance the arguments preferred on behalf of the Respondent on Issues 1 and 2.

On Issue No.3, as argued by the Respondent, learned Appellant's senior counsel referred to findings and holdings of the lower court on the reference to the court at Pages 443-444 of the printed record and submitted that except the Respondent cross-appeal against the said portion of the judgment of the court below, the Respondent cannot at this stage surreptitiously challenge the correctness of the statement of the court below. He contended that the nature of the proceedings that gave rise to this appeal is from a reference. He submitted that the questions posed are meant to be answered so that the court initiating the reference would when deciding the substantive case before him, have had the benefit of the final decision of this court.

On the reference to Sections 16 and 17 of Decree No. 107 of 1993 by the Respondent, learned senior counsel to the Appellant submitted that there is a world of difference between the immunity enjoyed by a Military Head of State and that enjoyed by a President under the 1979 and 1999 Constitutions. He contended that, aside from the immunity provisions available to a Military Head of State,

Decree No. 107 contains vast ouster clauses that prevent challenge of the powers of the Head of State to act as he did even if purportedly under the said or other Decree and also prevents an inquiry into the source and nature of his powers. He submitted that all the cases relied on by the Respondent on Issue No.3 do not support their argument hence he urged the court to discountenance them and finally urged the court to allow the appeal in favour of the Appellant. B

As I stated earlier, the appeal is against the decision of the Abuja Division of the Court of Appeal which resolved against the Appellant, the three questions that were referred to the court for its opinion. C Three issues were formulated by the Appellant from the nine grounds of appeal filed and these were adopted without any amendment by the Respondent. The mode of argument of the said issues by the Appellant was equally adopted by the Respondent, that is issues 1 and 2 were taken together while the 3rd issue was separately argued. D

However, before I proceed further in the judgment, I desire to state that certain facts are not in dispute, having been established or conceded; hence they need no further proof. The said facts are as follows:

1. That the Appellant - Mohammed Abacha was standing trial E before the High Court of the Federal Capital Territory.

2. There were four different charges filed by the Federal Attorney General of a total of 123 counts relating to offences of conspiracy, receiving stolen property dishonestly and concealing stolen money, all pursuant to Sections 97(1), 317 and 319 of the Penal F Code respectively.

3. Up till today, 17/01/2014 the plea of the Appellant had not been taken before the trial court to adjudicate on the matter, which was overruled by the trial court. G

4. The Appellant is a son of late Military Head of State of the Federal Republic of Nigeria, General Sani Abacha, who ruled between 11/1993 and 8/6/1998.

5. Upon sudden demise of General Sani Abacha as the Head of State and Commander-in-Chief of the Armed Forces, he was succeeded by Genera] Abdulsalami Abubakar as Head of State, whose government lasted till 29/5/1999 when after a general election, he handed over power to the Civilian Head of Government - Chief H Olusegun Obasanjo.

6. During the period, General Abdulsalami Abubakar was in office, his administration set up a Special Investigation Panel (SIP) to look into the activities of the administration of late General Sani Abacha.

B 7. The said panel was to investigate and recover monies which were illegally acquired by and in possession of public officials and their agents.

C 8. The said General Abdulsalami Abubakar administration promulgated Forfeiture of Assets etc. (Certain Persons) Decree No.53 of 1999.

9. By the said Decree No.53 of 1999 (supra) the Appellant and his father, late General Sani Abacha forfeited their assets to the Federal Government.

D 10. The said forfeited assets are contained in the schedule to Decree No.53 of 1999.

E From the three questions that were referred to the court below and which were answered in the affirmative against the Appellant and the three issues formulated by the Appellant for the determination of this appeal, there is no doubt that the central issue is the interpretation of the provisions of the forfeiture of Assets etc., (Certain Persons) Decree No.53 of 1999 vis-à-vis the constitutional powers of the court to adjudicate over the charges preferred against the Appellant.

F What does the said Decree say? - It provides inter-alia as follows:-

“Section 1:-

(a) *The properties specified in Part 1 of the 10 Schedule to this Decree; and*

G (b) *The various sums of money and other assets specified in Part II thereof, being properties acquired corruptly and illegally, by the persons mentioned therein are hereby forfeited to the Federal Republic of Nigeria free of all encumbrances without any other assurance other than the Decree ....*

H Section 2:

*Any person who holds any of the properties referred to in Section 1 of the Decree shall within 14 days from the making of this Decree yield up possession of such property to the Secretary of the Government of the Federation or any person acting on his behalf...*

*Section 5: 30*

*Any person who in intended compliance with this Decree deals with any of the properties, various sums of money and other assets affected by this Decree or who rectifies any register or other records relating to any such property or assets shall stand indemnified in respect thereof and no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance.* B

*Section 6:*

*Any person who contravenes or fails to comply with any of the provisions of Sections 2, 3 or 4 of this Decree commits an offence and is liable on conviction to imprisonment for a term of two years without any option of fine.”* C

Under this Schedule, the Late General Sani Abacha and family in compliance with the provisions of Sections 2 & 3 of Decree 53 of 1999 returned US \$625,263,187.19, £75,306,886.93 pounds sterling and N100,000,000 while the Accused person returned N250,000,000.00.

As earlier stated, the first two issues for determination argued together are issues 1 and 2. E

1. Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No.53 of 1999 did not absolve the Appellant - Mohammed Abacha and all other persons mentioned in the Schedule to the said Law from further Prosecution in the face of the clearer wordings of the said legislation and the previous interpretation given in identical circumstances to the said Law by the State. And F

2. Whether the court below can be said to be correct when it rejected the Appellant's admission that the totality of the effect of Decree No.53 of 1999 amounted to Executive or State promise not to prosecute any of the 5 persons listed in the Schedule to the said Decree (Appellant inclusive) and that Government was thereby stopped from prosecuting in respect of any issue arising from compliance with the Law in issue. G

The court below had in the consideration of the opposing views of the parties on the import of Decree No.53 of 1999 on which it was asked to give an opinion opined as follows:

*“...the object of all interpretation is to discover the intention of* H

the law makers, which is deducible from the language used. Where a Statute is clear and unambiguous the court in the exercise of its interpretative jurisdiction must stop where the Statute stops. In other words, a court of law has no jurisdiction to rewrite a Statute to suit the purpose of one of the parties or both parties, in which case, the intention of the law maker is thrown overboard and the court changes places with the lawmaker, and that will not do at all, that would be against the doctrine of separation of powers entrenched in the Constitution. See: *Awuse v. Odili* (2003) 11 S.C. 128; and *Adefemi v. Abegunde* 2004) 15 NWLR (Pt.895) 1.”

As earlier noted, there is no dispute and both parties agreed that the General Abdulsalami Abubakar Administration that came after the death of Late General Sani Abacha promulgated the Forfeiture of Assets Etc., (certain persons) Decree No.53 on the 26th May, 1999 and that the terms of the said law ordered the return to the Government of the Federation all real properties and moveable assets as well as monies that were, in the wordings of the law, “*acquired corruptly and illegally.*” It is noteworthy that Section 1 (b) of the Decree was quite clear and specific. It says that, “*the properties so acquired are hereby forfeited to the Federal Republic of Nigeria free of all encumbrances without any other assurance other than the Decree,*”

The word “forfeiture” means - “*the divestiture of property without compensation. The loss of a right, privilege or property because of a crime, breach of obligation, or neglect of duty.*” It follows that, “*title in those assets and properties forfeited is instantaneously transferred to another, such as the government.*” See Black’s Law Dictionary Ninth Edition Page 722.

The Appellant had argued that having been found to be in compliance with the Decree by giving up the property, the latter part of Section 5 ousted any other proceedings at the instance of any person aggrieved against him. As a result, it was submitted that Decree No.53 of 1999 constitute statutory estoppel and acts as a bar against further prosecution in respect of those funds he returned and others covered by the Decree.

The provisions of the law upon which the Appellant hinged his claim to entitlement to being indemnified, is Section 5 of the law (supra) and it reads:-

*“Any person who in intended compliance with this Decree deals with any of the properties, various sums of money and other assets affected by this Decree or who rectifies any register or other records relating to any such property or assets shall stand indemnified in respect thereof and no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance.”* B

***In the interpretation of statutes, the cardinal rule is that where the provisions of a statute is clear and unambiguous, the duty of the court is to simply interpret the clear provision by giving the plain wordings their ordinary interpretation without more. It is not the function of a court of law to bend backwards to sympathize with a party in a case in the interpretation, of a statute merely for the reason, that the language of the law seems harsh or is likely to cause hardship.*** See: Kraus D Thompson Organisation v. National Institute for Policy and Strategic Studies NIPSS (2004) 5 S.C. (Pt. I) 16. C

The Respondent had submitted and I believe rightly too that the persons affected with forfeiture of properties and those holding the properties indeed had no discretion, choice or an option in the matter. The forfeiture provision had robbed them of any right or entitlement on the said properties and assets. Hence, failure to give up would have earned any such person upon conviction a two year term of imprisonment without an option of fine. E

While the law talks about *“any person who in intended compliance with this Decree deals with any of the properties etc.”* It does not refer to those from whom the said properties had been forfeited to the government, including the Appellant, as they can no longer deal with the properties that are not theirs but government’s property. F

***The phrase - “deal with “ means “to take action on, to be about or concern with “ - See: Chambers Dictionary. I therefore agree with the court below in holding that the Appellant had nothing to do and had no action to take with regard to the properties listed against his name in the Schedule after they had been forfeited to the Federal Republic of Nigeria. In other words, after confiscating or seizing the said properties from the Appellant in the manner it did by the Decree, the Appel-*** H

**lant was not entitled to any compensation whatsoever. In the same vein, it stands to reason that the law makers did not and could not have had in mind the Appellant and others, whose properties were forfeited pursuant to the Decree, as entitled to be indemnified in respect of the dealings with the properties forfeited.**

To indemnify is to reimburse another for a loss suffered because of a third party's or one's own act or default. Or to promise to reimburse another for such a loss.] See: Black's Law Dictionary. Ninth Edition Page 837.

**Furthermore, the Appellant had argued that by instituting the criminal proceeding on the 123 counts charge, the Respondent has put itself in the position of the person aggrieved referred to in Section 5 of the Decree (supra). In other words, the Appellant contended that the Federal Government which forfeited his property pursuant to Decree No.53 of 1999 is the person aggrieved in the Decree. This, with the greatest respect to the learned senior counsel to the Appellant, is to say the least, an embarrassing misconception of the law. To be aggrieved, a person must have legal rights that are adversely affected, having been harmed by an infringement of legal rights. A person aggrieved must be a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. See: In Re: Alhaja Afusat Ijelu & Ors. v. Lagos State Development & Property Corporation & Ors. (1992) NWLR (Pt. 266) 414; (1992) LPELR 1464. The court below was therefore correct in holding that in the instant context, the expression "person aggrieved" refers to any person whose legal right was invaded by the forfeiture order, whose financial interest was directly and adversely affected by the said Decree and whose right or property may be established or divested. The Respondent herein cannot come under these descriptions.**

**Further still the Appellant had argued that the totality of the effect of Decree No.53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the Schedule to the said Decree, Appellant inclusive, and that**

**government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue.**

**As earlier stated, the charges filed against the Appellant relate to:- offences of conspiracy, receiving stolen property dishonestly and concealing stolen money, all pursuant to the provisions of the Penal Code. There is no doubt, the criminal proceeding was instituted or commenced by the Attorney General of the Federation pursuant to Section 174 of the 1999 Constitution which empowers him to carry out public prosecution. And his power was being carried out in compliance with subsection 3 of Section 174 of the Constitution having regard to the public interest, the interest of justice and the need to prevent abuse of legal process.**

**I am unable to see in any part of Decree No.53 of 1999 on Forfeiture of Assets Etc., (Certain Persons) where the Government did promise or can be said to have promised or undertaken not to prosecute any person including the Appellant for any offence. Neither the court below nor this court can determine the allegations contained in the 123 counts charge preferred against the Appellant before the trial court at this stage. Indeed, only the trial court before which court the proof of evidence had been filed has the competence to consider same.**

**However, the only way by which Respondent can stop the prosecution is to give legal notice that a lawsuit or prosecution has been abandoned. That is what, in Latin words is called "*nolle prosequi*." This is a formal entry on the record by the prosecuting officer by which he declares that he will not prosecute the case further, either as to some of the counts of the indictment, or as to part of a divisible count, or as to some of the persons Accused or altogether. It is a judicial determination in favour of Accused and against his conviction, but it is not an acquittal nor is it equivalent to a pardon. See Black's Law Dictionary. Ninth Edition Page 1147.**

**Without any further ado, issues 1 & 2 argued together are hereby resolved against the Appellant. In other words, the court below was right when it held that Decree No.53 of 1999 did not absolve the Appellant - Mohammed Abacha and**

***all other persons mentioned in the Schedule to the said law from prosecution. The court below is also correct in rejecting the Appellant's submission that the totality of the effect of Decree No.53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the Schedule to the said Decree (Appellant inclusive). The government is not stopped from prosecuting on the indictment of the Appellant as it stands.***

On the 3rd issue - whether the court below was right when it held that the office of the late Head of State, General Sani Abacha, the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant. I am of the firm view that the court below was right. Whatever immunity was enjoyed by the Appellant's father while he was in office before his demise, cannot be enjoyed by the Appellant to prevent the Respondent from prosecuting him for his indictment.

The learned senior counsel for the Appellant had submitted that the substance of this issue is that no offence has been disclosed against the Appellant. The reason he gave is that the acts which are alleged to constitute the offence have nothing to do with stealing of government funds because, according to him, the available evidence showed that the funds were legally taken out of the Central Bank of Nigeria.

In answering Question 3 posed for the court below, in relation to the Appellant, the court had opined as follows:

*"it is pertinent to make it clear in unequivocal terms that the plea of State immunity or any other immunity so called is not available to the Appellant. The provision of Section 308 of the 1999 Constitution is a policy legislation designed to confer immunity from civil suits or criminal process on the public officers named in Section 308 (3) and these are limited to persons "holding the office of President or Vice President, Governor or Deputy Governor." What this means is that even if the late Head of State were alive today, the immunity enjoyed by him would not have extended to his son, who would have had to sink or swim in any criminal trial without the lifeboat of immunity."*

***There is certainly no doubt that the Appellant is the per-***

**son who is charged with various offences of alleged crimes committed against the State. He is entitled to make a “no case submission” after the Prosecution would have closed its case and he is called upon to put up his defence if he has any. The Appellant’s father is not on trial at all. It is true that the Constitution confers absolute immunity on the President, Vice President, Governor and Deputy Governor in respect of civil or criminal matters during their tenure in office. See: Section 308 of the 1999 Constitution. Indeed, the provision clearly suspends the right of action or the right to judicial relief of an aggrieved party during the tenure of office of the officials mentioned therein. The immunity does not extend beyond the tenure in office, after which the official shall be liable to face trial.** See: Alhaji Jibrin Bala Hassan v. Dr. Babangida Aliyu & Ors. (2010) 7-12 S.C. 21; Global Excellence Comm. Ltd. & Ors. v. Duke (2007) 7 S.C. (Pt.II) 162; Tinubu v. IMB. Securities Plc. (2001) 9-10 SC 49.

**I therefore cannot agree more with the court below as stated above. As the late Head of State, General Sani Abacha is not on trial, the Appellant who is on trial should go and face the music at the trial court and then adduce whatever defence he considers available to him. Whatever immunity the father had when he was in office could not be made available for the Appellant.**

In the circumstance, Issue No.3 is hereby resolved against the Appellant. The court below was right when it held that the office of the late Head of State, General Sani Abacha, the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant.

In the final analysis, the three issues having been resolved against the Appellant, the appeal is adjudged unmeritorious and vexatious. Accordingly, it is hereby dismissed. The decision of the court below given on 8th April, 2005 is affirmed.

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### ONNOGHEN JSC

This is an appeal against the judgment of the lower court on points of reference in Appeal No. CA/A/100/2001 delivered on 18th April, 2005 in which the court answered the referred questions in the

negative resulting in the instant appeal.

The questions referred to the lower court are as follows:-

“1. As it relates to the 111 (sic) 123 counts in CR/21 - 24/2000 upon which Appellant is -standing trial before the High Court of the Federal Capital Territory Abuja, whether the same court can exercise its judicial power under Section 6-6(a) of the 1999 CFRN to determine the civil rights and obligations of the application by putting him on a trial in view of the provisions of Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 an existing law and an Act of the National Assembly which has resolved the issue of criminal liability arising out of those charges?

2. What is the effect of Decree No. 53 of 1999 on the innocence or otherwise of the Application as it relates to the 111 (sic) 123 counts in this trial. Have the criminal issue the high court is seeking to determine not been concluded herein and if answered in the affirmative does this court possess the jurisdiction to hear criminal allegation on an issue that has been resolved by an Act of Parliament?

3. Since the thread that runs through the 111 (sic) 123 counts in the trial the Applicant is presently standing before this honourable court is that the Applicant received stolen property from the late Head of State, whether any fund dealt with by the latter in his capacity as the Head of State, can be questioned by another administration in the face of all the Decrees that enabled him to exercise unlimited powers and in that vein, whether the charges based as they are on receiving stolen property can be entertained by the high court.”

In resolving the above issues, the lower court held that the provisions of Decree No. 53 of 1999 do not bar the prosecution of Appellant and others in his class for being in possession of State funds without lawful authority and that the Decree does not stop the State from initiating the said prosecution and that the phrase “*person aggrieved*” in Section 5 of Decree No. 53 of 1999 did not apply to the Federal Government of Nigeria as the monies identified in the schedule to the said Decree had been appropriated by government without any further assurance and that Appellant was not one of those envisaged in the Decree to be in a position to deal with the scheduled funds; etc., etc.

Learned senior counsel for Appellant, J.B. Daudu, SAN., has formulated three issues for the determination of the appeal in the

Appellant's brief deemed filed on 8/5/13, as follows:

1. *Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 did not absolve the Appellant, Mohammed Abacha and all other persons mentioned in the schedule to the said law from further prosecution in the face of the clear wordings of the said legislation and the provisions interpretation on given in identical circumstances to the said law by the State?* B

2. *Whether the court below can be said to be correct when it rejected the Appellant's submission that the totality of the effect of Decree No. 53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the schedule to the said Decree (Appellant inclusive) and that Government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue?* C D

3. *Whether the court below was right when it held that the office of the late Head of State General Sani Abacha (deceased), the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and alterations that prima facie do not constitute any of the offences alleged?"* E

The above issues were adopted and relied upon by learned counsel for the Respondent, D.C. Enwelum, Esq., in the Respondent's brief also deemed filed on 8/5/13. F

The facts of the case have been fully stated in the leading judgment and I do not intend to repeat them herein except as may be needed to emphasize the point(s) being made.

Learned senior counsel for Appellant argued Issues 1 and 2 G together and submitted that the lower court was in error in holding that Decree No. 53 of 1999 is inapplicable to the Appellant because a person cannot be subjected to trial and or criminal judicial process by a succeeding government when the existing law passed by the preceding government precludes persons of his 'class' from standing H trial over conduct that had been dealt with in the Decree: that Decrees were supreme legislations superior to the unsuspended portions (sections) of the 1979 Constitution and all other laws/legislations, referring to *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139;

Agwuna v. A.G. Federation (1995) 510 NWLR (Pt.396) 418 S.C.

It is the further submission of learned senior counsel that the effect of the provisions of Decree No. 53 of 1999 was to provide that no civil or criminal proceedings would be commenced or continued in respect of any of the conduct, which led to the acquisition of, or  
B dealing with the assets disclosed, transferred or forfeited under it; that Section 1 of the Decree deals with three items namely: monies and properties specified in Part 1 of the Schedule to the Decree as being forfeited, the persons mentioned in schedule as being in pos-  
C session of the monies and properties corruptly and illegally acquired and thirdly the Federal Government of Nigeria; that Section 2 directs those entire ‘persons’ indicted in the Decree to yield up possession within 14 days to the Secretary of Government all properties referred to in the Decree; that Sections 3 and 4 deal with registration  
D and rectification of titles.

It is the further contention of learned senior counsel that the pivot of the case of Appellant in the issues under consideration lies in the provision of Section 5 which covers any person “*who in intended compliance with the Decree*” deals with any of the scheduled proper-  
E ties or monies or who rectifies any register or record relating to such property or assets and such class or person shall be indemnified in respect of their conduct thereof; that the second point of the said Section 5 deals with exemption from prosecution as it provides that  
F no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance or rectifi- cation; that the conduct of the Respondent as it relates to the persons covered by Decree No. 53 amounts to estoppel by conduct and rep-  
G resentation which robs the Respondent of the right to institute any criminal action against Appellant and any other person dealt with by the Decree and also robs the court of any judicial power to adjudicate on any such criminal charges.

On his part, learned counsel for Respondent submitted that the provisions of Decree No. 53 of 1999 do not support the conten-  
H tion of Appellant as the properties forfeited by the Decree are described as corruptly and illegally acquired and that the persons yielding up possession thereof were engaged in corrupt practices in the acquisition of the said properties. It is the further contention of counsel that Appellant and others like him in possession of the properties

concerned had no duty to perform except to hand over the possession of same within 14 days to the Federal Government; that the sum of N250,000,000.00 was recovered by the Special Investigation Panel and not returned voluntarily by Appellant before the promulgation of Decree No. 53 of 1999, that the word indemnity as used in Section 5 of Decree No. 53 of 1999 does not apply to Appellant as it means the right of an injured party to claim reimbursement or compensation which Appellant does not possess since the sum of N250,000,000.00 forfeited to the State was corruptly and illegally acquired.

Finally it is the contention of counsel that Decree No. 53 of 1999 cannot stop the Attorney General of the Federation from exercising the powers conferred on it by Section 174 of the 1999 Constitution.

I have carefully gone through the issues raised and argued in this appeal and the provisions of Decree No. 53 of 1999. The relevant sections of the Decree are 1, 2, 3, 4, 5 and 6 which provide as follows:-

1.” The-

(a) *Property specified in Part 1 of the Schedule to this Decree;* and

(b) *the various sums of money and other assets specified in Part II thereof, being properties acquired corruptly and illegally by the persons mentioned therein are hereby forfeited to the Federal Republic of Nigeria and shall vest in the Federal Government of Nigeria free of all encumbrances without any further assurance other than this Decree.*

2. *Any person who holds any of the properties referred to in Section 1 of this Decree shall, within 14 days from the making of this Decree, yield up possession of such property to the Secretary to the Government of the Federation or any person acting on his behalf.*

3. *The Registrar of Deeds in the Federal or State Lands Registry, as the case may be, or any other person in charge of registration of lands instruments, deeds or rights affecting land, shall, upon presentation to him by the Attorney General of the Federation or any person acting on his behalf of a copy of this Decree, expunge from the relevant register the name of any person in whose name any interest is registered in respect of any property by this decree and*

*substitute therefore the Federal Republic of Nigeria.*

4. (1) *The Secretary to the Government of the Federation shall cause a copy of this*

*Decree to be served on the secretary or other officer or agent of the company having charge of, or control over the register of members of the company and the secretary or other officer or agent aforesaid shall strike out the name of the holder of any share to which Section 1 of this Decree relates and substitute therefore the name of the Federal Republic of Nigeria.*

(2) *The Secretary to the Government of the Federation shall also cause a copy of this Decree to be served upon the Registrar General of the Corporate Affairs Commission who shall cause his records relating to the names of the members of the company to be rectified accordingly.*

5. *Any person who in intended compliance with this Decree deals with any of the properties, various sums of money and other assets affected by this Decree or who rectifies any register or other records relating to any such property or assets shall stand indemnified in respect thereof and no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance or rectification.*

6. *Any person who contravenes or fails to comply with any of the provisions of Sections 2, 3 or 30 4 of this Decree commits an offence and is liable on conviction to imprisonment for a term of two years without the option of fine."*

From the above, it is clear that while Section 1 stated that properties specified in Part 1 of the Schedule to the Decree and various sums of money and other aspects specified in Part 2 thereof being properties acquired corruptly and illegally by the person mentioned therein were forfeited to the Federal Republic of Nigeria and vested the said properties and sums of money and assets in the Federal Government of Nigeria "*free of all encumbrances without any further assurance other than in this Decree.*" Section 2 states that person's in possession of the properties stated in Parts 1 and 2 of the Decree shall within 14 days of the Decree yield up possession of such properties to the Secretary to the Government of the Federation or any person acting on behalf.

In other words, Section 1 vests the legal title of the properties

and assets in the Federal Government of Nigeria same having been forfeited by the Decree while persons in possession of the said properties/assets are by operation of Section 2 commanded to yield up possession of same within 14 days.

On the other hand, Sections 3 and 4 deal with registration of the affected properties by the Registrar of Deeds in the Federal or State Land Registry and the rectification of the record by the Registrar General of Corporate Affairs Commission and the Secretary of the Companies affected. The above two sections therefore make provisions for the process of “*dealing*” with the forfeited properties.

In respect of the phrase/expression “*persons aggrieved*” and “*deals with the assets*” as used in Section 5 of the Decree, the lower court, at Pages 456, inter alia as follows:-

*“It is absurd to say the least, to conceive of the Federal Republic of Nigeria being the person aggrieved... By the terms of the said Decree, the properties were forfeited and vested in the Federal Republic of Nigeria. The Decree did not stop there; it also roped in all those who had possession of such property. The Decree itself was its own assurance; there was no need for any other requirement or formalities - any person who had possession of the forfeited properties had to yield up possession within 14 days from the 26th May, 1999 or face the long arms of the law; two years imprisonment without an option of fine. The expression “person aggrieved” obviously refers to any person whose legal right was invaded by the forfeiture order whose financial interest was directly and adversely affected by the said orders, and whose right of property may be established or divested; the Respondent cannot be so described.”*

*“...The Appellant also argued that the protection offered by Section 5 of the Decree extended to the Appellant who, in compliance with the Decree, dealt with the forfeiture of properties. A fallacious argument I must say, because Section 5 of the Decree speaks of any person who in intended compliance with the Decree deals with any of the forfeited properties, and the dictionary meaning of “deal with” is “to have to do with, so treat of; to take action in regard to” see the Chambers Dictionary. The Appellant had nothing to do with, and had no action to take with regard to the properties listed against his name after they were forfeited to the Federal Republic of Nigeria. Free of all encumbrances.”*

I am in complete agreement with the above Interpretation assigned the expressions.

The reasoning and conclusion of the lower court on the matter cannot be faulted in anyway. I adopt same as mine. The above being the case Issues 1 and 2 have no merit.

B On the third issue, the question of immunity of a Head of State from civil or criminal proceedings ensures to the President or Head of State during his period of office and not thereafter. The purpose of the immunity is to allow the incumbent President or Head of State, or Vice President, Governor or Deputy Governor, a completely free hand and mind to perform his or her duties and responsibilities while in office; to protect the incumbent from harassment.

The immunity, however, does not extend or cover the period immediately after leaving office neither does it extend to include his family members during and after the period of his incumbency. It follows therefore that even if General Sani Abacha was to be alive the immunity he enjoyed under the law and Constitution is personal to him and limited to his period of office as he can be proceeded against immediately he left office for offences committed while occupying the office of Head of State. His immunity, however, would not, in any circumstance cover his son, the Appellant in this case so the argument to the contrary is clearly misconceived and without legal foundation. See Section 267 of the Constitution of the Federal Republic of Nigeria, 1979 or Section 308 of the Constitution of the Federal Republic of Nigeria, 1999.

The other aspect of the submission of learned senior counsel for Appellant on the question as to whether the charges before the trial court discloses any offence known to law cannot be treated in this judgment as same is premature. It is only the trial court that is clothed with the jurisdiction to conduct a trial on the charges that will decide same, one way or the other, after hearing evidence.

It is for the above reasons and the more detailed reasons assigned in the leading judgment of my learned brother, Ariwoola, JSC, that I too find no merit whatsoever in the appeal and consequently dismiss same. I abide by the consequential orders made in the said leading judgment. Appeal dismissed.

**MUNTAKA-COOMASSIE JSC**

This appeal is against the decision of the Court of Appeal, Abuja, herein called court below which court answered some questions referred to it by the High Court of the Federal Capital Territory, Abuja. The resolutions happened to-be against the position taken by the Appellant, thus, this appeal to the Supreme Court of Nigeria. B

I have gone through the reasons and conclusions ably presented to us by my learned brother, Ariwoola, JSC, and find that his Lordship has competently and correctly too thrashed out the issues sent to us for deliberation. C

There is therefore no need to have gone deep into the matter. I agree that there is no visible merit in this appeal. Same is hereby dismissed. The judgment (in answers to the reference for the court below) is therefore correct and is affirmed: Appeal is dismissed. D

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**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - Ariwoola, JSC. I completely agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and deserves an order of dismissal. E

I wish to chip in a few words in support. The Appellant desires to take cover under the indemnity clause contains in Section 5 of Decree No. 53 of 1999. He felt that no court can prosecute him since he returned the properties and money stated in the Decree. A clear reading of the law shows that same protects any person who dealt with the properties after same was forfeited and vested in the Federal Republic of Nigeria, or who rectified any register or records relating to any such property or assets stood indemnified. No suit or proceedings would lie against him in any court of any action taken pursuant to the dictate of Section 5. And by Section 7 of the Decree, any proceedings instituted before the commencement of the Decree shall abate; be discharged and made void. F G

It sounds ludicrous that the Appellant surmised that he was covered by indemnity provided by Section 5 of the Decree which has no bearing with his situation. The Appellant is of the view that the law can be made to wall on its head. I am afraid; it cannot. H

The Appellant also tried to cling to the doctrine of double jeop-

ardly which is that no person shall be subject for the same offence to be tried twice and put in jeopardy of life or limb. See: *Nafiu Rabi v. A.G. Kano State* (1980) 8-11 S.C. 130; (1980) 8-11 S.C. (Reprint). Same is also captured by the provision of Section 36(9) of the 1991 Constitution of the Federal Republic of Nigeria. The Appellant did not show that he has been tried before any court of competent jurisdiction or tribunal on the facts of this case and was either acquitted or convicted. He cannot, with clear conscience, take cover under the stated doctrine.

The Appellant tried to say that he was covered by State immunity. By the provision of Section 308 of the 1999 Constitution, it was his late father - General Sani Abacha - the then Head of State who had State immunity during the period that he was in office and no more than that. The Appellant was not an official of the State. The immunity enjoyed by his father did not extend to him. He was not on a firm ground when he attempted to lay claim to immunity. He was not covered by any shred of immunity.

Let me stop here. My learned brother in the leading judgment said it all. I seek leave to adopt the reasons adumbrated by him. I too feel that the appeal has no merit and should be dismissed. I order accordingly and abide by the consequential orders contained in the leading judgment.

F

### **GALADIMA JSC**

I have had the privilege of reading, in draft, the judgment just delivered by my learned brother, Ariwoola, JSC. I am in agreement with him that the appeal is devoid of any merit and it should be dismissed. I chip in a few words of my own in support of the said judgment.

This appeal is from the judgment of the Court of Appeal, Abuja Division, delivered on the 18th day of April, 2005 in which the questions referred to it by the High Court of the Federal Capital Territory, were resolved in favour of the Respondent.

The facts briefly are as follows:

The Honourable Attorney General of the Federation, in exercising his powers under Section 174 of the 1999 Constitution had filed four different criminal charges containing 123 counts, against

the Appellant and one Abubakar Atiku Bagudu. The charges relate mainly to the following:

- (i) Conspiracy under Section 97(1) of the Penal Code,
- (ii) Receiving stolen property dishonestly under 5 Section 317 of the Penal Code: and
- (iii) Concealing stolen property under S. 319 Penal Code. B

The Accused persons challenged the jurisdiction of the trial High Court of the Federal Capital Territory on the ground that having regards to the peculiar facts leading to those charges, it would be need- less putting the Accused persons on trial as no offence had been disclosed in the supporting proofs of evidence and that even if of- fences were disclosed, no prima facie case had been made against the said Accused persons to warrant their trial. C

Before the objections referred to above could be taken by the trial court, the Appellant brought another application pursuant to D Section 295 of the 1999 Constitution for the salient issues in the case to be referred to the court below by way of a case stated.

The three questions are:

*“1. As it relates to the 111 counts in CR/21-24/ 2000 upon which the Applicants, presently standing trial before the High Court of the Federal Capital Territory, Abuja, whether the same court can exercise its judicial powers under Section 6(6)(a) of the 1999 CFRN to determine the civil rights and obligations of the application by put- ting him on a trial in view of the provisions of Forfeiture of Assets, etc., (Certain Persons) Decree No. 53 of 1999, an existing law and an Act of the National Assembly which has resolved the issues of crimi- nal liability arising out of those charges? E*

*2. What is the effect of Decree Number 53 of 1999 on the innocence or otherwise of the Appellant as it relates to the 111 counts in this trial. Have the criminal issues the high court is seeking to deter- mine not been concluded therein and if answered in the affirmative, does this court possess the justification to hear criminal allegations on an issue that has been resolved by an Act of parliament? G*

*3. Since the thread that runs through the 111 counts in the trial of the Applicant is presently standing before this honourable court is that the Applicant received stolen property from the late Head of State, whether any fund dealt with by the latter in his capacity as Head of State can be questioned by another administration in the H*

*face of all the Decrees that enable him to exercise unlimited powers and in that view, whether the charges based as they are on receiving stolen properties can be entertained by the high court. ”*

At the lower court, the parties filed and adopted their respective briefs. In a considered judgment the full panel of five justices of the court answered all the three questions in the negative and against the Appellant. The court held thus:

*“In the final analysis there is nothing in the provision of Decree Number 53 of 1999 which inhibits the High Court of FCT, Abuja from exercising its judicial power to try the Appellant for the various criminal offences contained in the four (4) charges brought before it by the Attorney General of the Federation.”*

Still not satisfied, Appellant filed a notice of appeal in this court out of which three issues for determination were raised as follows:

*“(i). Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No.53 of 1999 did not absolve the Appellant Mohammed Abacha and all other persons mentioned in the schedule to the said law from further prosecution in the face of the clear wordings of the said legislation and the previous interpretation given in identical circumstances to the said law by the State? (Grounds 1, 2, and 3)*

*(ii). Whether the court below can be said to be correct when it rejected the Appellant’s submission that the totality of the effect of Decree No. 53 of 1999 amounted to executive or State promise not to prosecute any of the persons listed in the Schedule to the said Decree (Appellant inclusive) and that Government was thereby stopped from prosecuting in respect of any issue arising from compliance with the law in issue? (Issue No. 2) (Grounds 4 & 5)*

*(iii). Whether the Court below was right when it held that the office of the late Head of State General Sani Abacha (deceased) the nature of his government, the privileges and immunity enjoyed by him, did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and allegations that prima-facie do not constitute any of the offences alleged?”*

The Respondent has adopted the three (3) issues submitted to this court for determination by the Appellant. In addition they filed a reply brief on 11/10/2013.

The full panel of this court heard this appeal on 24/10/2012. Learned senior counsel for the Appellant, J. B. Daudu, SAN., having adopted and relied on the Appellant's brief of argument urged the court to allow the appeal, whilst the learned counsel for the Respondent, D.C. Enwelum, Esq., urged the court to dismiss the appeal in the Respondent's brief and to affirm the decision of the Court of Appeal by resolving the 3 questions against the Appellant. B

In Appellant's brief, Issues 1 and 2 were argued together. The grouse of the Appellant is that the court below had rejected his submissions on the applicability of Decree No.53 of 1999, promulgated by the regime of General Abdulsalam. That court held that the wordings of the legislation "*persons aggrieved*" and "*deals with the assets*" in Section 5 do not apply to the Appellant and did not confer any advantage on him or impose an obligation on the State that the Appellant is exempt from prosecution on account of his compliance with the demands of the said legislation. C D

At this juncture, it is necessary to set out the forfeiture of Assets (Certain Persons) Decree No.53 of 1999.

*"Section 1:*

*(a) The properties specified in Part 1 of the schedule to this Decree: And E*

*(b) The various sums of money and other assets specified in Part II thereof being properties acquired corruptly and illegally by the persons mentioned therein are hereby forfeited to the Federal Republic of Nigeria and shall vest in the Federal Government of Nigeria free of all encumbrances without any further assurance other than the Decree. F*

*Section 2:*

*Any person who holds any of the properties referred to in Section 1 of the Decree shall, within 14 days from the making of this Decree yield up possession of such property to the Secretary to the Government of the Federation or any person acting on his behalf. G*

*Section 5:*

*Any person who in intended compliance with this Decree deals with any of the properties, various sums of money and other assets affected by this Decree or who rectifies any register or other records relating to any such property or assets shall stand indemnified in respect thereof and no suit or other proceedings shall lie at the instance H*

*of any person aggrieved for anything done in respect of such compliance.*

*Section 6:*

*Any person who contravenes or fails to comply with any of the provisions of Sections 2, 3, or 4 of this Decree commits an offence and is liable on conviction to imprisonment for a term of two years without an option of fine."*

**Part Two of Decree 53:**

Under this schedule, the Late General Sani Abacha and family in compliance with the provisions of Sections 2 and 3 of Decree 53 of 1999 returned US\$625,263,187.19, 75,306,886.93 Pounds Sterling and N 100,000,000.00 while the Accused person returned N250,000,000.00.

Section 6(1) of the 1999 Constitution has vested the judicial powers in the court to which the section relates. Judicial power has been interpreted in: *Bronik Motors & Anor. v. Wema Bank Ltd.* (1983) 6 S.C. (Reprint) 94 to mean the power which every sovereign authority must of necessity possess to enable it settle and decide controversies between its subjects. Judicial power is co-extensive with the power of the State to make laws and execute them.

Jurisdiction in contrast to judicial power is the authority or legal weapon which a court must possess to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. See: *Enyadike v. Omehia & 4 Ors.* (2010) 11 NWLR (Pt.120 ) 92 at 112.

The Appellant is contending that by virtue of the provisions of Decree No.53 of 1999, the Respondent is estopped from prosecuting him on the same fact as dealt with by the Decree. In other words, that by the force and acts of the said Decree the Appellant has complied with the Decree and therefore Section 5 has given him immunity from any prosecution, in any cause or matter over which its judicial process under Section 6(6)(b) of the 1999 Constitution. It is also contended that the charges pending now before the High Court of the Federal Capital Territory from which reference was made to the court below all relate to the conduct of the Appellant in connection with assets that were disclosed on 29th September, 1998 and 2nd October, 1998 and forfeited under Decree No.53 of 1999, and therefore that the charges filed breached the undertaking or promise

as stated in Section 5 of Decree: that there would be no prosecution as a result of the forfeiture.

I shall now make brief reference to the salient provisions of the Decree No.53 1999. Section 1 of the Decree stated clearly that properties specified in Part 2 of the Schedule to the Decree and various sums of money and other assets specified in Part 2, thereof which were properties acquired “*corruptly*” and “*illegally*” by the persons mentioned therein were forfeited to the Federal Government of Nigeria. Section 2 provides that persons in possession of the properties stated in Parts 1 and 2 of the Decree shall within 14 days of the Decree yield up possession of such properties to the Secretary to the Government of the Federation or any person acting on his behalf. I proffer further explanation. Section 2 of the Decree is consequential to Section 1, that is, the titles to the said properties have been vested in the Federal Government by the force of the Decree. Persons in possession of the said properties shall merely yield up possession within 14 days. Clearly, the Appellant, or indeed any other person in possession have no duty to perform other than “*title holder*,” that is the Federal Government. Ordinarily, the word “*deal*” means “*to have to do with*.” Sections 1 and 2 of the Decree do not command any dealings by the Appellant or indeed any persons mentioned therein. By Section 1, a person who forfeits must, by the provision of Section 2, yield up possession, otherwise by Section 6 of the Decree, he will be liable to two years imprisonment for default or refusal. With greatest respect to the learned counsel for the Appellant, I do not agree that the Appellant, or any person mentioned in the Decree have anything to do with the property after forfeiture. The forfeiture itself was by the force of the Decree. It was not by any agreement, co-operation, compliance or acquiescence by those persons listed in the Decree including the Appellant; once it has been shown that the properties “*were corruptly and illegally acquired and were therefore forfeited without any further assurance other than this Decree*.” The Appellant could not therefore deal with the properties to entitle him to an “*indemnity*” under Section 5 of the Decree.

Learned counsel for the Respondent has put up an interesting argument on Sections 3 and 4 of the Decree. I am swayed. It is to the effect that those sections deal with the registration of the affected properties by the Registrar of Deeds in Federal or State Land Registry

and the rectification of the record by the Registrar General of the Corporate Affairs Commission. Essentially Section 4 deals with rectification of the register so as to strike out the name or names of any shareholder of a company and to transfer the shares in the name of the Federal Government. The act to be done under Sections 3 and 4 of the Decree comes after the forfeiture as provided in Section 1 of the said Decree. If I may emphasis the point that as no co-operation, compliance, agreement or acquiescence was made by the Appellant or any of the parties before the forfeiture, they could not have dealt with the properties before the forfeiture. The sum of N250,000,000,00 was registered on Part 2 of the Schedule to the Decree against the Appellant and the said sum was confiscated and forfeited.

The term to “*forfeit*” means to “*divest*” of property, or the loss of right privilege because of a crime or neglect of duty. The Appellant and others mentioned in the Decree cannot be deemed to deal with properties of which they have been divested without compensation and the title in those properties transferred to the Federal Government.

It is note worthy that under Part 2 of the Schedule, the Late General Sani Abacha and his family failed to return the money listed against their names in compliance with Sections 2 and 3 of Decree No. 53 of 1999. It is on record, (See: Pages 87-89; 105-106 Volume 1 of the record) that those sums of money were recovered through the efforts of the Special Investigation Panel (SIP) before the said Decree No. 53 was promulgated. In the circumstance, the Respondent could not be said to be “*a person aggrieved*,” in the real context of Section 5 of the Decree. It is any one whose pecuniary or property rights have been adversely affected by another person’s action or by a Decree or judgment. It is any one, such as those mentioned in Sections 3 and 4 of the Decree who might have cause to deal with any of the forfeited properties by virtue of their official duties. In case at hand, the Respondent by virtue of Section 1 of the Decree seized N250.000.000 from the Appellant. The Appellant was not entitled to any compensation and he was not in a position to deal with the seized properties in any way that will bring him within the indemnity donated by Section 5 of the Decree.

Furthermore, Decree No. 531999 can never amount to statutory estoppel and cannot be a bar against prosecution, in the circum-

stances of this case. For a plea of a bar to criminal prosecution to succeed the Claimant must place himself within the provisions of Section 36(9) of the 1999 Constitution. The section states as follows:

*“No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.”*

From the foregoing provision and applying it to the facts and circumstances of this case the Appellant, to my mind, has not shown that he has either been earlier tried and convicted or acquitted by *“any court of competent jurisdiction or tribunal”* of the criminal offences of receiving stolen properties, dishonestly under Section 317; concealing money under Section 319; of the Penal Code respectively. Appellant has not shown this court that the Attorney General of the Federation has no powers to institute and undertake criminal proceeding against him.

This court cannot enquire into the exercise of such powers under Section 174 of the 1999 Constitution.

Having resolved Issues 1 and 2 in favour of the Respondent, needless going into the elaborate discourse by the parties in respect of Issue 3.

On the whole, this appeal is devoid of merit and it is dismissed. The decision of the lower court is accordingly affirmed.

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### **NGWUTA JSC**

I read before now the exhaustive judgment just delivered by My Lord, Ariwoola, JSC., and I agree with the reasoning and conclusion therein, and based on same I agree that the lower court was right in its answers to the three questions referred to it.

Accordingly, I also dismiss the appeal and affirm the decision of the court below. Appeal dismissed.

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### **KEKERE-EKUN JSC**

This is an appeal against the decision of a full panel of the Court of Appeal (lower court) delivered on 18/4/2005 unanimously

resolving all the questions referred to it by the High Court of the Federal Capital Territory, Abuja in favour of the Respondent. The genesis of the referral is as follows: The Hon. Attorney General of the Federation filed four different charge sheets against the Appellant and Abubakar Atiku Bagudu at the High Court of the Federal Capital Territory, Abuja. The counts in the said charges, numbering 123, are broadly in three categories, to wit:

- a. Receiving stolen property punishable under Section 317 of the Penal Code;
- b. Conspiracy to assist in concealing stolen property punishable under Section 97(1) of the Penal Code; and
- c. Concealing stolen property under Section 319 of the Penal Code.

Before their plea could be taken, the Accused persons filed several applications. Some were dismissed. However by an application dated 29th September, 2000, the Appellant urged the court to quash the charges on the ground that the existing proof of evidence and the witnesses' statements did not disclose any offence. In another application dated 23rd October, 2000 he prayed the lower court for the following orders -

(i) An order quashing the charges in Charge No. CR/24/2000 and terminating all criminal proceedings connected therewith on the ground that based on Section 5 of Decree No. 53 of 1999. No criminal proceedings shall lie against any of the Accused persons who have already complied with the prevailing law.

(ii) An order terminating the instant criminal proceedings against the Applicant on the ground that based on Decree No. 107 of 1993 and other Decrees in that regard, the former Head of State was empowered to act as he did in the circumstances leading to these charges.

The applications were argued together but before the ruling could be delivered, the Appellant filed an application for suspension of the ruling, and a referral to the lower court of the three questions of law set out below, to wit:

- i. As it relates to the 111 (sic) 123 counts in CR/21-24/2000 upon which the Applicant is standing trial before the High Court of the Federal Capital Territory, Abuja, whether the same court can exercise its judicial power under Section 6 (6)(a) of the 1999 CFRN to determine the civil rights and obligations of the application by putting

him on a trial in view of the provisions of Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 an existing law and an Act of the National Assembly which has resolved the issues of criminal liability arising out of those charges?

ii. What is the effect of Decree No. 53 of 1999 30 on the innocence or otherwise of the Applicant as it relates to the 111 (sic) 123 counts in this trial. Have the criminal issue the high court is seeking to determine not been concluded therein and if answered in the affirmative does this court possess the jurisdiction to hear criminal allegations on an issue that has been resolved by an Act of Parliament?

iii. Since the thread that runs through the 111 (sic) 123 counts in the trial the Applicant is presently standing before this honourable court is that the Applicant received stolen property from the late Head of State, whether any fund dealt with by the latter in his capacity as Head of State, can be questioned by another administration in the face of all the Decrees that enabled him to exercise unlimited powers and in that vein, whether the charges based as they are on receiving stolen property can be entertained by the high court?

As observed earlier, the lower court answered all the questions in the Respondent's favour, hence the instant appeal.

The parties before this court duly filed and exchanged their respective briefs of argument. The Appellant's brief was settled by J.B. Daudu, SAN., while the Respondent's brief was settled by D.C. Enwelum, Esq. Out of the nine grounds of appeal filed, the Appellant formulated 3 issues for determination as follows:

i. Whether the Court of Appeal was right when it held that the Forfeiture of Assets Etc., (Certain Persons) Decree No. 53 of 1999 did not absolve the Appellant Mohammed Abacha and all other persons mentioned in the schedule to the said law from further prosecution in the face of the clear wordings of the said legislation and the previous interpretation given in identical circumstances to the said law by the State?

ii. Whether the court below can be said to be correct when it rejected the Appellant's submission that the totality of the effect of Decree No. 53 of 1999 amounted to Executive or State promise not to prosecute any of the persons listed in the schedule to the said Decree (Appellant inclusive) and that Government was thereby estopped from prosecuting in respect of any issue arising from compli-

ance with the law in issue?

iii. Whether the court below was right when it held that the office of the late Head of State, General Sani Abacha (deceased), the nature of his government, the privileges and immunity enjoyed by him did not have any bearing on the charges filed by the State against the Appellant in this matter to the extent that they are made up of facts and allegations that prima facie do not constitute any of the offences alleged?

Both parties argued Issues 1 and 2 together. According to J.B. Daudu, SAN., learned senior counsel for the Appellant, the salient issues that arise from the questions referred to the lower court are:

(1) Whether Decree No.53 of 1999 has not resolved the issues of criminal liability arising out of the charges before the High Court of 30 the FCT and therefore the high court has no jurisdiction to try him for the said offences.

(2) Whether the high court has the jurisdiction to hear criminal allegations on an issue that has been resolved by an Act of Parliament? What is the effect of the Decree on the innocence or otherwise of the Applicant?

(3) Whether any fund dealt with by the late Head of State in his capacity as Head of State can be questioned by another administration in the face of all the Decrees that enabled him to exercise unlimited powers and whether the charges based on receiving stolen property can be entertained by the high court?

Sections 1-7 of the Forfeiture of Assets, Etc., (Certain Persons) Decree No. 53 of 1999 (hereinafter referred to a Decree 53) and Part II of the Schedule thereto provides:

*“The Federal Military Government hereby decrees as follows:*

1. The-

(a) *properties specified in Part 1 of the Schedule to this Decree, and*

(b) *the various sums of money and other assets specified in Part II thereof being properties acquired corruptly and illegally by the persons mentioned therein are hereby forfeited to the Federal Republic of Nigeria and shall vest in the Federal Government of Nigeria free of all encumbrances without any further assurance other than this Decree.*

2. *Any person who holds any of the properties referred to in*

*Section 1 of this Decree shall within 14 days from the making of this Decree, yield up possession of such property to the Secretary to the Government of the Federation or any person acting on his behalf.*

*3. The Registrar of Deeds in the Federal or State Lands Registry, as the case may be, or any other person in charge of registration of lands, instruments, deeds or rights affecting land, shall upon presentation to him by the Attorney General of the Federation or any person acting on his behalf of a copy of this Decree, expunge from the relevant register the name of any person in whose name any interest is registered in respect of any property by this Decree and substitute therefore the name of the Federal Republic of Nigeria.*

*4. (1) The Secretary to the Government of the Federation shall cause a copy of this Decree to be served on the secretary or other officer or agent of the company and the secretary or other officer or agent aforesaid shall strike out the name of the holder of any share to which Section 1 of this Decree relates and substitute therefore the name of the Federal Republic of Nigeria.*

*(2) The Secretary to the Government of the Federation shall also cause a copy of this Decree to be served upon the Registrar General of the Corporate Affairs Commission who shall cause his records relating to the names of the members of the company to be rectified accordingly.*

*5. Any person who in intended compliance with this Decree deals with any of the properties, various sums of money and other assets affected by this Decree or who rectifies any register or other records relating to any such property or assets shall stand indemnified in respect thereof and no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance or rectification.*

*6. Any person who contravenes or fails to comply with any of the provisions of Sections 2, 3 or 4 of this Decree commits an offence and is liable on conviction to imprisonment for a term of two years without the option of fine.*

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

(2) *The question whether any provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria has been, is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be inquired into in any court of law and accordingly no provision of that Constitution shall apply in*  
 B *respect of any such question.*

*Part 11*

*1. Late General Sani Abacha and family*

(a) *US \$625,263,187.19 5*

C (b) *£75,306,886.93*

(c) *N100,000,000.00*

*2. Mohammed Sani Abacha N250,000,000.00"*

The reference to the lower court centred on the interpretation of the provisions of this Decree and its effect on the jurisdiction of the  
 D trial court to entertain the charges before it. Section 6(6)(1) of the 1999 Constitution (as amended) provides for the vesting of judicial powers in the superior courts of record set out in subsection 6(5)(a) to (i) thereof. "*Judicial powers*" means the authority of the court to  
 E adjudicate upon and decide any matter before it, which is within its jurisdiction. The jurisdiction of the court is determined by the Constitution or by statute. Jurisdiction may be limited as to the kind and nature of actions which a particular court may entertain or as to, the area over which its judicial powers extend, or both. See: N.B.N. Ltd,  
 F v. Shoyoye & Anor. (1977) 5 S.C. 181; (1977) 5 S.C. (Reprint) 110; Halsbury's Laws of England 4th Edition Paragraph 715 Page 323; Bronik Motors & Anor. v. Wema Bank Ltd. (1983) 6 S.C. (Reprint) 94.

The purpose of the interpretation of statutes is to discover the  
 G intention of the lawmaker, which is usually deducible from the language used. Where the words of the statute are clear and unambiguous they must be given their natural and ordinary meaning, unless to do so would lead to absurdity. It is also trite that in the exercise of its interpretative function the court must stop where the statute stops.  
 H Another guide to the interpretation of statutes is that the legislation must be read as a whole. See: Ibrahim v. Barde (1996) NWLR (Pt.474) 513 at 577 B-C per Uwais, CJN., (as he then was); Ojokolobo v. Alamu (1987) 7 S.C. (Reprint) (Pt.I) 89; Ahmed v. Kassim (1958) SCNLR 28 at 30; Kuusu v. Udom (1990) 2 S.C. 138.

The circumstances that led to the promulgation of Decree No. 53 have been fully stated in the leading judgment. I do not deem it necessary to repeat the facts here. Suffice it to say that Section 1 of the Decree reproduced earlier in this judgment explains the purport of its enactment. It is to provide for the forfeiture of certain properties and various sums of money acquired “*corruptly and illegally*” by the persons mentioned in Parts I and II of the Schedule thereto. It was the contention of learned counsel for the Appellant that the Appellant could not be subjected to trial and/or criminal judicial process by a succeeding government when an existing law passed by the preceding government excludes persons of his “*class*” from standing trial over conduct that had been dealt with in the Decree. Specifically, the crux of the Appellant’s submission is that the Appellant is one of the persons within the contemplation of Section 5 of the Decree, which covers any person “*who in intended compliance with the Decree*” deals with any of the scheduled properties or monies or who rectifies any register or record relating to such property or assets and which provides that such class of persons shall be indemnified in respect of their conduct relating thereto. He also contended that the second part of the section, which provides that “*no suit or other proceedings shall lie at the instance of any person aggrieved for anything done in respect of such compliance*” also ensures to the benefit of the Appellant on the ground that in the context of the provision the Respondent is the “*person aggrieved*.” He also referred to Section 6, which imposes a punishment of two years’ imprisonment without an option of fine on “*any person who contravenes or fails to comply with any of the provisions of Sections 2, 3 or 4 of the Decree*” and contended that the section provided the sanction that would be meted out to the Appellant in the event that he failed to comply with the relevant sections.

It was contended on behalf of the Respondent that having regard to the fact that the properties in question were characterized in the Decree as properties acquired corruptly and illegally, it was the intention of the lawmakers that the persons who so acquired them should be divested thereof forthwith by operation of the Decree and by virtue of Section 1 of the Decree vested title of the properties in the Federal Government of Nigeria. Learned counsel argued that in the circumstances neither the Appellant nor any other mentioned in

the Decree could have dealt with the properties in compliance with the provision before the forfeiture. He argued that Section 5 of the Decree was enacted to provide indemnity to any of the persons described in Sections 3 and 4 who might have to deal with the properties after forfeiture against any claim in damages that might be brought against them by the registered owner or person in possession. He also argued that Respondent could not, by any stretch of the imagination be referred to as an aggrieved person in the context of Section 5 of the Decree.

As observed earlier, in interpreting the provision of the Decree, the court must consider the intention of the lawmaker, as far as can be discerned from the words used. Learned counsel for the Respondent had rightly submitted that from the outset, Decree No. 53 in Section 1 declares that the properties and various sums of money specified in Parts I and II of the Schedule thereto were corruptly and illegally acquired by the persons mentioned therein. Thus all the properties referred to in Part I as well as the monies and vehicles listed in Part II stand forfeited and “*shall vest in the Federal Government of Nigeria free of all encumbrances without any further assurance other than this Decree.*” The Appellant was specifically mentioned in Part II as having forfeited the sum of N250,000,000.00 (two hundred and fifty million Naira) to the Respondent.

Section 2 orders any person holding any of the properties referred to in Section 1 i.e., either the real property (Part I) or the various sums of money or assets (Part II) to yield up possession thereof within 14 days from the making of the Decree to the Secretary to the Government of the Federation or any person acting on his behalf. Section 6 provides the penalty for failure to comply with any of the provisions of Sections 2, 3 or 4. In relation to the Appellant, the sum of money referred to in Part II had been forfeited to the Respondent automatically. There was therefore no further dealing that could take place in respect thereof by him. The forfeiture was by operation of the Decree. However since Section 1(a) relates to real property, motor vehicles, shares in companies etc., it follows that persons other than those who forfeited the properties by force of the Decree might have had cause to deal with the affected properties in compliance with the Decree e.g., estate agents, contractors, banks, including the persons referred to in Sections 3 and 4, i.e., Registrar of Deeds, Company

Secretaries, Registrar General of the Corporate Affairs Commission. It is such persons who would be liable to the punishment provided for in Section 6 if they contravened the provisions of Section 2. The Appellant, having already forfeited the sum of money referred to in Part II, would not come within the purview of Section 2 or liable to the sanction in Section 6. With due respect to learned senior counsel for the Appellant, the punishment provided for in Section 6 is restricted to failure to comply with Section 2 of the Decree and cannot be construed as being in lieu of criminal prosecution for the corrupt and illegal acquisition of the property or monies mentioned in the Schedule. B  
C

The lower court per Augie, JCA., held thus at Pages 559-560 of Volume 2 of the record:

*“The Appellant also argued that the protection offered by Section 5 of the Decree extended to the Appellant, who, in compliance with the Decree, dealt with the forfeited properties. A fallacious argument, I must say, because Section 5 of the Decree speaks of any person who in intended compliance with the decree, deals with any of the forfeited properties, and the dictionary meaning of “deal with” is “to have to do with, to treat of; to take action in regard to” - See; The Chambers Dictionary. The Appellant had nothing to do with, and had no action to take with regard the properties listed against his name after they were forfeited to the Federal Republic of Nigeria. In seizing the said properties from him in the manner it did, via Decree No. 53 of 1999, the Appellant was not entitled to any compensation, and by the sheer promulgation of the Decree, without more, the forfeited properties became vested in “the Federal Republic of Nigeria free from all encumbrances.”* D  
E  
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*With the Appellant divested of all rights to the forfeited properties, which now belonged to the Federal Republic of Nigeria, he was not in a position to deal with the said properties in any way that would bring him within the purview of Section 5 of the Decree, which contains an indemnity clause.”* G

I think His Lordship fully captured the meaning and intentment of Section 5 of the Decree. I completely agree with the view expressed above. H

This brings me to the issue of “*indemnity*” referred to in Section 5 of the Decree, which learned senior counsel for the Appellant

has argued the Appellant would be entitled to in respect of any steps taken by him in dealing with the monies affected by the Decree in “*intended compliance*” therewith and further that no suit or other proceedings could be brought against him at the instance of any “*person aggrieved*” for anything done in respect of such compliance. The whole purpose of this ad hominem legislation, as clearly stated in Section 1 of the Decree, was to recover from the persons named therein properties and monies acquired corruptly and illegally by them. Bearing in mind that in interpreting a statute, the court must avoid absurdity, it is necessary to juxtapose the term “*forfeiture*” with “*indemnity*” to ascertain the intention of the lawmaker. Black’s Law Dictionary, 8th Edition at Page 677 defines “*forfeiture*” thus:

- “1. The divestiture of property without compensation.
2. The loss of a right, privilege or property because of a crime, breach of obligation or neglect of duty.”

It goes on to say “*title is instantaneously transferred to another, such as the govt., a corporation or a private person.*”

Therefore forfeiture connotes punishment for a crime committed and its effect is instantaneous.

“*Indemnity*” is defined at Page 784 (*supra*) as

1. A duty to make good any loss, damage or liability incurred by another.
2. The right of an injured party to claim reimbursement for its loss, damage or liability from a person who has such a duty...”

“*Indemnity*” and “*forfeiture*” are clearly diametrically opposed to one another. A person who has forfeited property on the basis of a crime cannot be entitled to indemnity. Forfeiture is a form of punishment. There is no indemnity in our criminal procedure.

The phrase “*any person who in intended compliance...*” used in Section 5 is important in determining whom the section relates to. As far as the Appellant or any other person referred to in Section 1 is concerned, there is no “*intended compliance*” with the Decree because all the properties mentioned in Parts I and II of the Schedule to the Decree stand forfeited to the Federal Government by force of that section. Its effect is instantaneous. It follows, as rightly held by the lower court, that the persons covered by the section are those persons other than those mentioned in Parts I and II of the Schedule who by virtue of their duties might have had cause to deal with the

properties in the process of complying with the Decree. Thus a “*person aggrieved*” cannot refer to the Respondent to whom all the properties and monies referred to in the Decree have been forfeited. A “*person aggrieved*” is anyone who might be adversely affected by the act of any person complying with the Decree by virtue of their duties. B

Section 7 of the Decree specifically excludes civil proceedings from being instituted on account of anything done or purported to be done pursuant to the Decree. If it were the intention of the law-maker to exclude criminal proceedings it would have been specifically provided for. It was argued on behalf of the Appellant that certain letters had been written by the Hon. Attorney General of the Federation in respect of other persons who had returned monies to the effect that by virtue of Decree No, 53 off 1999 no criminal proceedings would be brought against them. It is important to note that the interpretation of laws is the duty of the court and not the Hon. Attorney General of the Federation. Therefore, a wrong Interpretation of the law by him cannot hold force of law or act as estoppel. The basis of the Appellant’s argument on statutory estoppel is the contention that Decree No.53 amounts to a promise by the Federal Government not to prosecute persons who comply with its provisions. Having found I that Section 5 does not absolve the Appellant, the issue j of statutory estoppel does not arise. E

On the whole Issues 1 and 2 are resolved against the Appellant. F

With respect to Issue 3, it is contended on behalf of the Appellant:

(a) That moving the funds as he did to “*fulfill the need to keep money in foreign bank accounts to take care of uncertainties associated with government*” was an official act and not an act of stealing. G

(b) That as Military Head of State, late General Sani Abacha acted within the scope of the powers vested in him by the very means by which he acquired power and the series of Decrees that kept his administration in authority. H

(c) That the late General Abacha enjoyed sovereign immunity while he was Head of State and this concept extended to cover his official act even after his demise. Learned senior counsel submit-

ted that the Appellant, not being a public officer, could not be tied to the acts of governance and dealt with as if he were a servant of Government obeying, if established, what amounts to legal orders.

(d) That “*official acts*” initiated by a Military Head of State cannot be treated by another administration as criminal actions triable in the domestic courts for whatever reason.

There is no doubt that Issues (a), (b) and (d) are issues that can only be considered after evidence has been led in the case.

With regard to Issue (c), the concept of sovereign immunity as advanced by the Appellant is not what is in issue here. The Issue is whether the late Head of State was protected by the immunity provided by Section 267 of the 1979 Constitution (retained by Decree 107 of 1993) and the extent of such immunity. The immunity only protected him while in office. Once out of office he could be tried for any offence allegedly committed by him while in office. Furthermore the immunity he enjoyed as Head of State could not in any way extend to the Appellant either while he was in office or after his demise. This issue is also resolved against the Appellant.

For the above and more detailed reasons ably advanced in the leading judgment of my learned brother, Ariwoola, JSC, just lacking in merit and accordingly dismiss it. I also affirm the decision of the court below given on 18th April, 2005.

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