

SUPREME COURT OF NIGERIA
FRIDAY 9TH MAY, 2014. SC. 194/2005
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, M. U. PETER-ODILI,
J. I. OKORO, JJSC

E. A. UTOMUDO APPELLANT
AND	
1. MILITARY GOVERNOR	
OF BENDEL STATE	
2. ATTORNEY-GENERAL	
OF BENDEL STATE	
3. THE CIVIL SERVICE COMMISSION	
OF BENDEL STATE	
4. THE ATTORNEY-GENERAL	
OF EDO STATE	
5. THE ATTORNEY-GENERAL	
OF DELTA STATE RESPONDENTS

COURTS - Action - Ouster clause - By virtue of Decree 17 of 1984 - Courts have no jurisdiction to adjudicate on anything done - Or purported to have been done pursuant to the Decree (H1)

STATUTES - Interpretation - Ouster clause - FCDA v. Sule - Any statute ousting jurisdiction of court - Must be construed strictly - As such statute cannot be questioned in any court of law (H2)

WORDS & PHRASES - Words - Legal meaning of - If any word or expression has been statutorily or judicially defined - Its legal meaning supersedes the ordinary (H3)

WORDS & PHRASES - Public officer - Meaning of - The expression has been defined to include - Any person who holds or has held office in public service of a State - Which includes serving or retired officers (H4)

ADMINISTRATIVE LAW - Public officer - Dismissal of appellant - Can be proved by oral evidence - As it is not every instruction by

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military governor to his subordinates - That must be in writing to render evidence on it acceptable (H5)

ADMINISTRATIVE LAW - Public officer - Dismissal - Authority - Under Decree 17 of 1984 - Military governor may direct the removal of public officer - Or may delegate someone to do so (H6)

FACTS

Plaintiff/appellant instituted this action before the High Court of Edo (then Bendel) State Benin City, seeking for a declaration that his dismissal from the civil service of the State was null and void and that he is still entitled to his remuneration and emoluments as a public servant. The allegation leading to the dismissal of appellant is that while in the service, he issued a Road Worthiness Certificate in respect of a vehicle without seeing or inspecting the vehicle. It was further alleged that he forged the document. He was charged to the Magistrate Court. While the matter was pending at the court, appellant was dismissed from service. However, the court later discharged and acquitted appellant.

On this basis, appellant initiated the action challenging his dismissal from the civil service of the State. Upon hearing evidence from the parties, the learned trial judge held that the court lacked jurisdiction to entertain the matter having found that appellant was dismissed by the Military Governor of Bendel State in line with section 1(a-d) and section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984 which ousts the jurisdiction of the court to entertain the matter. Dissatisfied, appellant appealed to the Court of Appeal Benin City Division. The decision of the trial court was affirmed and the appeal dismissed. Aggrieved again, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

1. Were the Honourable Justices of the Court of Appeal, Benin City right in holding that the Appellant was dismissed from public office of Bendel State by the Military Governor pursuant to Decree No. 17 of 1984 and as a result dismissing Appellant's appeal on the ground of lack of jurisdiction of the trial Court?

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

Action - Ouster clause

1, By virtue of Section 3(3) OF THE SAID Decree, the Courts have no jurisdiction to adjudicate on anything done or purported to have been done pursuant to the Decree.

Once the Court is satisfied that the retirement of a Public Officer, such as the appellant in this case, is in compliance with Section 1(1) of Decree NO. 17 of 1984, its jurisdiction is automatically ousted by virtue of Section 3 (3) which provides that 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 by any person under the Decree, and if any such proceedings have been or are being instituted before or after the coming into force of the Decree, the proceedings shall abate, be discharged and made void.

(pp. 2242 G/2251 A)

STATUTES - Interpretation - Ouster clause - FCDA v. Sule

2. In Federal Capital Development Authority v. Sule (1994) 15 LRCN 221, the Supreme Court held that any statute ousting the jurisdiction of the Court must be construed strictly as clear words are required to oust the jurisdiction of a court more so when such an act cannot be questioned in any Court of law. (p. 2243 D)

WORDS & PHRASES - Words - Legal meaning of

3. In law words have their ordinary meaning if and only if no legal meaning has been attached to them. If any word or expression has been either statutorily or judicially defined, then, the legal meaning supersedes the ordinary meaning. When words have been legally or judicially defined, their ordinary meaning will surely give way to their meaning as legally or judicially defined. (p. 2248 F)

WORDS & PHRASES - Public officer - Meaning of

4. Thus, the expression “Public Officer” has been defined in Section 7(1) of the Public Officers (Special Provision) Decree NO. 10 of 1976 to include any person who holds or has held any office in the Public Service of a State etc and is wide enough to comprehend and include both serving or retired officers, as well as officers who resigned or who were dismissed. (p. 2248 G)

ADMINISTRATIVE LAW - Public officer - Dismissal of appellant

5. It would not accord with normal official relationship to expect that every instruction given by a Military Governor or Chief Executive, for that matter, to the Secretary to the Military Government or other subordinates of his must of necessity be in writing to render evidence on it capable of acceptance. To hold otherwise, will be tantamount to ignoring Section 75 of the Evidence Act which provides as follows:-

“All facts, except the contents of documents, may be proved by oral evidence.”

There is another related provision in Section 75(b) of the Evidence Act which is thus:-

“76: Oral evidence must, in all cases:

(b) if it refers to a fact which could be heard, it must be the evidence of witness who says he heard that fact”.

Bearing these provisions above stated in mind, it is to be said that the 1st Respondent gave some instructions to the relevant officials on the matter of the dismissal of the Appellant can be proved by oral evidence proffered by the 1st Respondent or the officers who carried out the instructions. Therefore, whether those orders or instructions were carried out fully to the letter is an entirely different pot of tea which is resolvable by evidence. (p. 2249 A)

ADMINISTRATIVE LAW - Public officer - Dismissal - Authority

6. For a fuller picture, it is to be said that under the said Decree 17 of 1984, the Military Governor as the appropriate authority, may direct the removal of a public officer from office, or may delegate someone to do so and when that has

been established the Court's jurisdiction to entertain any claim to contest such removal from office is completely ousted.

"Authorized" means to give formal approval and so there is no distinction between the words 'approve' and 'authorize'.

From all that I have been trying to say within the ambit of the law, and in this instance, it is that Decree 17 of 1984 in relation to what happened to the Appellant in the dismissal that was visited on him, there is clearly no grey area as to the authority from which that dismissal came about. The directive to have him dismissed from office came from the Governor as evidenced by Exhibit G. His grouse or the attempt at pushing forward that the Governor was not involved in the action and so Decree 17 would not apply, is a kite that cannot fly. Exhibit G1 though stating that the Government had decided that Appellant should be dismissed was a mere confirmation of the action exhibited in Exhibit G. The Exhibit J talked of Executive Council being aware of the action taken against the Appellant. (p. 2249 H)

REPRESENTATION

A.B. Odiete for Appellant and with P.B.A. Adeni-Akpeto, S. Ikezaku, M. Utomudo, for the Appellant

Adewale Atake for the 1st - 4th Respondents and with Izuchukwu Ohajinwa

S. O. Monye, DCL, N. B. Emakpor (Mrs.) SSC both of Ministry of Justice, Delta State for the 5th Respondent

CASES REFERRED TO

A-G v. Lockwood (1842) GM & W 378

Becke v. Smith (1836) 2 M & W 191

Adesanya v. Aderonmu (2000) 79 LRCN 3246

Olorunfemi v. Asho (2000) 74 LRCN 45

Niger Construction Ltd v. Okugbeni (1987) 4 NWLR (pt. 67) 787

FCDA v. Sule (1994) 15 LRCN 221

P.H.M.B. v. Ejitaghia (2000) 79 LRCN 2024

Wilson v. A-G Bendel State (1985) 1 NACC Vol. 16 (Pt. 1) 191

Garba v. F.C.S.C. (1988) 1 NWLR (pt. 71) 449

Anyia v. Iyayi (1988) 2 NWLR (pt. 82) 359

Faroly Establishment v. NNPC (2001) 5 NWLR (pt. 1241) 457

Ebohon v. A-G Edo State (1994) 6 NWLR (pt. 349) 190

Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt. 135) 688

Omo v. Judicial Service Commission (2000) FWLR (pt. 20) 698

B Shitta-Bey v. A-G Federation (1998) 10 NWLR (pt. 510) 302

STATUTES REFERRED TO

Public Officers (Special Provisions) Decree No. 17 of 1984, ss. 3(3), 4(2)

C States (Creation & Transitional provisions) (NO.2) Decree No. 41 of 1991, s. 5(2)

Evidence Act 2011, ss. 122(1)(2)(a), 168

Constitution (suspension and modification) Act Cap. 64 LFN, s. 9(1)

D

LEAD JUDGMENT BY PETER-ODILI JSC

The Plaintiff now Appellant instituted Suit No. B/347/87 in the High Court of Justice, Benin City in the former Bendel State, now Edo State against the Defendants now Respondents. The learned trial judge, Oni-Okpaku J (as she then was) dismissed the suit holding a lack of jurisdiction to entertain the suit. The plaintiff appealed to the Court of Appeal or Court below for short which in turn dismissed the appeal upholding the decision of the trial High Court. The Appellant, dissatisfied has come before the Supreme Court on appeal.

F

BACKGROUND FACTS:

The facts are, in my humble view best exposed by recourse to the Statement of Claim of the Appellant which I shall restate hereunder, viz:-

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STATEMENT OF CLAIM:

1) The Plaintiff is a Nigerian, a senior Technical Officer (Mechanical) functioning as a Vehicle Inspection Officer, Ministry of Works Irukekpen until on or about the 6th of July, 1984 when he was purportedly dismissed by the 1st Defendant for doing no wrong.

H

2) The 1st Defendant is the Head of the Military Governor of Bendel State. The 2nd defendant is the officer of the government of Bendel State who represents the government in actions in Court. The 3rd defendant is the arm of the government of Bendel State responsible for the employment, promotion and discipline of public

officers working for the government of Bendel State.

3) The Plaintiff avers that in the month of December, 1976, he was employed into public service of Bendel State as a Technical Officer (Mechanical). At the hearing of this action the plaintiff will rely and found upon the letter of employment. The plaintiff will also rely on a letter dated the 11th of July, 1977 by which the public service commission offered the plaintiff a probationary Appointment to the post of a Technical officer (Mechanical). B

4) The Plaintiff avers that on or about the 12th of January, 1981, his appointment was confirmed by a letter from the Establishment Division of the Ministry of Work. At the hearing of this action, the plaintiff will rely and found upon the said letter. C

5) On the 23rd of March, 1981, the plaintiff was promoted to the position of a Higher Technical Officer Ministry of Works and Transport. At the hearing of the action, the plaintiff will rely and found upon the letter of promotion dated the 23rd March, 1981. The plaintiff was later promoted a Senior Technical Officer (Mechanical) Ministry of "*Works of Bendel State*". D

6) The Plaintiff avers that as in June, 1984, he was a Senior Technical Officer Mechanical serving as a V.I.O. at the Ministry of Works and Transport Iruokpen. E

7) The Plaintiff avers that on or about the 19th of June, 1984, some Police Officers came to meet him the plaintiff in his office at Iruokpen and told the plaintiff that they were investigating a case of forgery of a Road Worthiness Certificate No. 58546. The plaintiff on seeing the said certificate told the Police that the certificate was not forged and it was issued by him to the plaintiff on the 12th of June, 1984 in respect of vehicle No. BD 1533 BF which the plaintiff had earlier before inspected and passed for the certificate. F

8) The Plaintiff avers that on the 25th of June, 1984, he and two others were charged to the Chief Magistrate Court Ekpoma for forgery of Road Worthiness Certificate No. 58546, conspiracy and stealing in charge No. MEK/207C/84. The Chief Magistrate after hearing evidence dismissed the charge and discharged and acquitted the plaintiff. At the hearing of this case, plaintiff will rely and found upon the ruling of the Chief Magistrates dated 30/10/84 to prove the fact of trial and acquittal. G

9) The Plaintiff avers that about 3 days after the case, i.e. Charge H

MEK/207C/84 had been charged to Court and it was still pending, the plaintiff was surprised to receive a letter dated the 6th of July, 1984 in which the plaintiff was purportedly dismissed from the service of Bendel State Government. At the hearing of this case, the Plaintiff will rely and found upon the said letter and all the other documents thereto attached.

10) The Plaintiff avers that the purported dismissal is null and void and of no legal effect. The purported dismissal is against the principle of natural justice.

11) The Plaintiff avers that he had never been queried for anything since he joined the service to the time of his purported dismissal.

12) The Plaintiff avers that after the purported dismissal he the plaintiff caused his lawyer Mr. Uhunmwagho to write a protest letter dated 19/7/84 to the Secretary to the Military Government which letter was not replied. The plaintiff also wrote many other letters to the Military Government and to the Permanent Secretary Ministry of Work and Transport asking to be reinstated. The plaintiff will at the hearing rely and found upon these letters. The plaintiff will also rely and found upon the letter dated the 2nd of July, 1985 from the Permanent Secretary Ministry of Work and Transport in which letter the Defendants say that the plaintiff would not be reinstated.

13) The Plaintiff avers that the Civil Service Technical Workers Union of Nigeria, Bendel State, of which the plaintiff is a member also wrote the Permanent Secretary Ministry of Works and Transport asking for the plaintiff to be reinstated as the plaintiff had committed no wrong. The plaintiff will rely and found upon the said letter.

14) The plaintiff avers that his employment with the defendant is permanent and pensionable until the age of 55 years by which time he would retire compulsorily. The plaintiff was only 37 years old at the time of the purported dismissal and that he the plaintiff still had 19 years still to serve before he could be retired, At the trial of this action, the plaintiff will rely and found upon the civil and or public service Regulations of 1978.

15. The Plaintiff avers that as the time he the plaintiff was purportedly dismissed, he was on a salary of N5598.00 per year. He was also entitled to N192.00 as leave transport grant and N1,158.00 rent and transport allowance. The total emoluments per year the

plaintiff was entitled as at 1984 was N684.00.

16) The Plaintiff was never given the opportunity of being heard and neither was he queried by any of the defendants before the purported dismissal. No allegation of any kind was made against the plaintiff by the defendants and there was no charge of wrong doing were served or the plaintiff before the purported dismissal. The said dismissal is null and void and of no legal effect as same was against the principles of natural justice. B

17) WHEREFORE the plaintiff claims against the defendants jointly and severally as follows:-

(a) A declaration that the purported dismissal of the plaintiff a Senior Technical Officer (Mechanical) in the Ministry of Works and Transport, Bendel State from the Civil Service of Bendel State of Nigeria by a letter dated 6th of July, 1984 and or the press release dated the 28th of June, 1984 is null and void and of no legal effect. D C

(b) A declaration that the plaintiff is still in the Bendel State Civil Service and that he is still entitled to his full remuneration and or emoluments as a public servant in the Bendel State Civil Service.

(c) A declaration as a public servant in the Bendel State Civil Service. E

The versions of the Respondents are contained in the statement of defence and I would state the salient parts as follows:-

4. ...the Defendants contend that the Plaintiff's averment that he was charged to the Magistrate Court for forgery is not true but arose as a result of the plaintiffs dereliction of duty as a vehicle Inspection Officer. The Defendants further contend. F

(a) That on the 28th June, 1984, the Civil Service Commission was informed by the Secretary to the Military Government and Head of Service that the Plaintiff in his capacity as a Vehicle Inspection Officer issued a Road Worthiness Certificate in respect of one Datsun 120 Y Car with registration Number 123BF on the 12th June, 1984 without seeing or inspecting the vehicle. G

(b) That this negligence or the performance of the plaintiff's duty led to his arrest and trial in a Court. H

(c) That the State Executive Counsel deliberated on the matter and having been satisfied with the police Report vis-a-vis the plaintiff's neglect of duty decided that the plaintiff be dismissed from the service.

(d) That this decision was conveyed to the Commission vide letter NO. CMS/2/13/Vol.IV/T2/4 of 28th June, 1984 and

(e) That the Commission vide letter No. PC.13237/81 of 4th July, 1984 noted the dismissal and appropriate Gazette action was taken accordingly (Copies of these letters would be founded upon B trial of this case).

5. In specific answer to paragraph 10 of the plaintiff's statement of claim, the defendants aver that:

(a) Under Regulation 44 of the Public Service Regulations, 1978, C the Commission is empowered to take any disciplinary proceedings on any officer upon any grounds involved in a criminal charge and such disciplinary action includes dismissal.

(b) The Defendants also aver that under Rule 49 Public Service Commission Regulations, 1978, the Commission has the right to D dismiss any officer from Service, notwithstanding that such officer was acquitted of a Criminal Charge in a court of Law.

6. In specific reply to paragraph 16 of the plaintiff's statement of claim, the defendants aver that the plaintiff was given an adequate opportunity to be heard. The defendants will further reply for this E contention on the plaintiff's averment in paragraph 7 of his statement of claim.

7. WHEREOF the defendants aver that the plaintiff is not entitled to any of the prayers sought in paragraphs 17(a) (b) and (c) F of his Statement of Claim and that this matter is speculative, vexatious and an abuse of the process of the Court and should be dismissed with substantial costs.

On the 10th day of February 2014 date of hearing, learned counsel for the Appellant, Mr. A.B. Odiete adopted the Brief of G Argument, he settled and filed on 27/1/06. The Brief was deemed properly filed on the 22/11/06 and in it were couched three issues for determination which are as follows:-

1. Were the Honourable Justices of the Court of Appeal, Benin City right in holding that the Appellant was dismissed from public H office of Bendel State by the Military Governor pursuant to Decree No. 17 of 1984 and as a result dismissing Appellant's appeal on the ground of lack of jurisdiction of the trial Court?

2. Was the dismissal of the Appellant from the public service of the former Bendel State not against the principles of natural justice?

3. Were the Honourable Justices of the Court of Appeal, Benin City correct to hold that the trial Court was right to have dismissed the Appellant's case for want of jurisdiction when the proper order to make is that of striking out?

Adewale Atake Esq, learned counsel for the 1st to 4th Respondents adopted their Brief of Argument which he settled and filed on the 1/2/13 which was deemed duly filed on 8/10/13. In the Brief were distilled three issues for determination thus:-

1. Whether in view of the provision of Section 5(2) of Decree No. 41 of 1999, the Appellant has any claim against the 4th Respondent.

2. Whether the Appellant can maintain any action against the defunct 1st to 3rd Respondents.

3. Whether this Honourable Court should disturb the concurrent findings of fact of the trial court and the Court of Appeal that the Appellant was lawfully dismissed from the employment of the Civil Service of the defunct Bendel State?

For the 5th Respondent, Mr. S.O. Monye, Director Civil Litigation of the Delta State Ministry of Justice adopted their Brief of Argument filed on 11/5/07 and deemed filed the same day. He crafted two issues for determination which are as follows:-

1. Whether the Appellant was dismissed by the Military Governor of Bendel State pursuant to the Public Officers (Special Provisions) Decree No. 17 of 1984 and thereby ousted the Court of its jurisdiction to entertain the matter.

2. Whether in view of the provisions of the Public Officers (special provisions) Decree No. 17 of 1984 the rules of natural justice would be applicable in the circumstances of this case.

Issue No. 1 of the Appellant or of the respondents is sufficient to settle the appeal and there is no point in going into the other issues. Issues 2 and 3 of the 1st - 4th Respondent and 2 of the 5th Respondent are clearly outside the grounds of appeal and therefore liable to be discountenanced.

ISSUE NO. 1:

Were the Honourable Justices of the Court of Appeal, Benin City right in holding that the Appellant was dismissed from public office of Bendel State by the Military Governor pursuant to Decree No. 17 of 1984 and as a result dismissing Appellant's appeal on the

ground of lack of jurisdiction of the Court.

Learned counsel for the Appellant referred to related paragraphs of the Respondents' statement of defence and said the admission by the respondents that it was the State Executive Council which dismissed the Appellant notwithstanding, the respondents averred
B further in their respective pleadings that the appellant was dismissed by the Governor pursuant to Decree No. 17 of 1984. That the Appellant had averred in paragraph 9 of his Amended Statement of Claim that none of the Respondents signed his dismissal letter nor
C authorized the signing of his dismissal letter.

It was stated that there was no evidence from the respondents witnesses that it was the Governor or any person authorized by the Governor that dismissed the Appellant. It was further submitted that from the pleadings and evidence of the respondents that it was the
D Executive Council which took the decision to dismiss the Appellant and so the trial Court found. That it was out of place for the Court of Appeal to have held that it was the governor that effected the dismissal, which governor, the Court below held had the power to delegate the authority to another. Learned counsel said by so holding, the Court
E below set up a defence not raised in the evidence of the respondents. He said the Executive Council did not fall within the definition of appropriate authority as provided in Section 4(2) of Decree NO. 17 of 1994 which can dismiss the Appellant under the Decree. He cited
F Attorney-General v Lockwood (1842) GM & W 378 at 398; Becke v Smith (1836) 2 M & W 191 at 195.

Mr. Odiete of counsel for the appellant submitted that the respondents, appellants and the Lower court are bound by pleadings. In that vein that the respondents had averred in pleadings that it was
G the Executive Council which dismissed the Appellant and the Respondents did not proffer evidence in support of the assertion that it was the Governor who dismissed the appellant. That it was in the counsel's address for the respondents that the claim was made that it was the Governor who dismissed the Appellant. He relied on the
H cases as follows:- Adesanya v Aderonmu & Ors (2000) 79 LRCN 3246 at 3255; Olorunfemi & Ors v Asho & Ors (2000) 74 LRCN 45 at 60; Niger Construction Ltd v Chief Okugbeni (1987) 4 NWLR (Pt. 67) 787 at 792.

It was canvassed for the Appellant that the contents of Exhibits

G, G1 and J properly considered would show that the Lower Court's conclusion was perverse. He referred to Exhibit G1 titled, "*Press Release Special Government Announcement*". That the exhibit was not dated. Mr. Odiete said it cannot be the intendment in the making of Decree No. 17 of 1984 that a public servant in Nigeria can be removed from service through a radio or television message. That such a media message must flow from a separate document sent to the officer being addressed as laid off. That in the absence of such a separate document as in this case, the dismissal cannot stand. B

Going on, learned counsel for the Appellant said Exhibit J was addressed to the permanent Secretary, Civil Service Commission, Benin City for the attention of one Mr. V. A. Ayetuoma for the 3rd respondent to take action and the implication is that it was the civil service commission that was dismissing the Appellant since it was not therein, stated that the Governor directed the removal from office of the Appellant. He referred to Exhibit G, 'NOTICE OF DISMISSAL' which document he said the Ministry of Works had no authority to issue. C D

Mr. Odiete of counsel said Decree No. 17 of 1984 should have been strictly and narrowly construed. He cited Federal Capital Development Authority v Joshua Gyuhu Sule (1994) 15 LRCN 221 at 254. E

It was further submitted that the respondents have given evidence that the Appellant was dismissed by the Executive Council which is not an appropriate authority in Decree No. 17 of 1984, the only option left for this Court is to allow the Appellant's appeal and grant all the reliefs claimed as clearly he was wrongfully and prematurely terminated or illegally dismissed. He relied on P.H.M.B. v. E.O. Ejitagha (2000) 79 LRCN 2024 R 2036; Wilson v A.G. Bendel State (1985) 1 NACC Vol. 16 (Pt. 1) 191; Garba v F.C.S.C. (1988) 1 NWLR (Pt. 71) 449; Anya v Iyayi (1988) 2 NWLR (Pt. 82) 359. F G

For the Appellant was contended that a party whose defence is that a civil servant was dismissed by a Governor pursuant to Decree NO. 17 of 1984 must give a direct, specific and unequivocal evidence in support of same and so any conflict or contradiction in his evidence should be treated as material and be resolved in favour of such a civil servant. That since the Governor in this instance did not dismiss the Appellant nor did the Governor authorize Appellant's dismissal, the H

appeal should be allowed and the decision of the Court below set aside.

Responding, Mr. Adewale Atake for the 1st to 4th Respondents stated that the Appellant's suit and resultant appeal against the 4th respondent before this Court is misconceived and runs contrary to Section 5(2) of the States (Creation and Transitional provisions) (NO.2) Decree of 1991 also referred to as Decree 41 of 1991. That the provision of Decree 41 of 1991 was promulgated after the Appellant was dismissed from the service of the defunct Bendel State. He said the implication is that the Appellant being from Delta State, there is no basis for bringing in Edo State or 4th Respondent into the Continuation of the suit being the current appeal. He cited Section 122(1) and (2)(a) of the Evidence Act 2011 which obligates the Courts to take judicial notice of the laws in force in Nigeria and which is in pari materia with Section 74(1) and (2)(a) of the Old Evidence Act; *Faroly Establishment v NNPC* (2001) 5 NWLR (Pt.1241) 457 at 475.

Mr. Atake of counsel went on to contend for 1st - 4th respondents that a combined reading of Exhibits G, J and G5 reveal that the terms 'Military Governor; 'Government' and 'State Executive Council' were used interchangeably and as such a reference to any of these authorities was actually a reference to the Military Governor. That it is common knowledge that the Military Governor of a State was statutorily recognised as the Chairman of the state Executive Council as far back as 1983 prior to the Appellant's dismissal from office and so it cannot be argued the State Executive Council did not have the authority of the Military Governor to make the decision to dismiss the appellant. He referred to Section 9(1)(a) of the Constitution (Suspension and Modification) Act, Cap 64, Laws of the Federation of Nigeria, 1990; *Ebohon v. Attorney-General of Edo State* (1994) 6 NWLR (Pt.349) 190 at 213.

Learned counsel concluded by saying that Exhibits G, J and G1 enjoy the presumption of regularity secured under Section 168(1) and (2) of the Evidence Act, 2011 which is equivalent to Section 150 of the old Evidence Act.

For the 5th Respondent, learned counsel submitted that from the pleadings of the 5th Defendant and the evidence led, the Appellant was dismissed from the public service of Bendel State which decision to dismiss was that of the Military Governor and the Executive Coun-

cil. He referred to paragraphs 6 and 9 of the Statement of Defence of the 5th Defendant and the evidence of the 1st witness of the 5th Defendant, Monina Mathias, an administrative officer in the Delta State Civil Service Commission. Therefore, counsel said in determining whether or not the Appellant was dismissed by the appropriate authority, the Court must consider not only the wordings of the letter of dismissal but also the surrounding circumstances of the case which led to the dismissal of the Plaintiff. That from the opening paragraph of Exhibit G, what is clear is that the dismissal of the Appellant was based on the directive of the Military Governor. Also, that the contents of Exhibits G, G1 and J and from the facts and circumstances of this case the dismissal was done within the contemplation of Decree NO. 17 of 1984. B C

It was further submitted for the 5th Respondent that it is not mandatory or necessary for the Military Governor to expressly state, when carrying out or doing an act, that the act was done under the decree before the provisions of Decree No. 17 can be said to apply. That it is sufficient if the act that was carried out or done was within the contemplation of Decree No. 17. He cited *Nwosu v Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt.135) 688 at 733; *Ebohon v Attorney-General of Edo State* (1994) 6 NWLR (Pt. 349) 190 at 213; Section 9(1) of the Constitution (suspension and modification) Act Cap. 64, Laws of the Federation; *Omo v. Judicial Service Commission* (2000) FWLR (Pt. 20) 698; *Shitta-Bey v Attorney-General Federation* (1998) 10 NWLR (Pt.510) 302 at 416. D E F

Mr. Monye, Director, Civil Litigation for the 5th Respondent stated that the Military Governor did not need to sign the letter of dismissal himself as it is sufficient that there is evidence to show that the Military Governor authorized or gave approval to the dismissal. He referred to *Nwosu v Imo State Environmental Sanitation Authority* (supra). That the Appellant was dismissed from public Service by the Military Governor of Bendel state pursuant to the Decree No. 17 of 1984 and the jurisdiction of the trial Court was ousted from entertaining the matter and so the two Lower courts were right in so holding. G H

I would want to firstly deal with the issue which is whether the concurrent findings and decisions of the two Courts below, trial and appellate, can be upset by this court. The Appellant is of the strong view that there is sufficient ground(s) upon which this Court would

interfere and come to a different conclusion which the Respondents are vehemently resisting. The salient part of the judgment of the trial High Court per Oni-Okpako J (as she then was) would be set out below thus:-

“Thus, after this acute scrutiny of the facts and law in this case, I am satisfied that it was the Military Governor of Bendel State at the time, who as the appropriate authority directed the removal of Utomudo, the plaintiff from his public office, when he delegated to his office the issuing of Exhibits G and G1, and I so hold. In conclusion, I am satisfied that the removal from public office of Utomudo by the Military Governor of the then Bendel State, on 28th June, 1984 according to Exhibits G, G1 and J was in compliance with Decree NO. 17 in Section 1(1) and as such, I cannot on any ground question, query or look into the validity of that removal and the reasons given for it, because the jurisdiction of this Court to do so, is ousted by the following provisions of Section 3(3) of Public Officers (Special Provisions) Decree 1984 NO. 17 now Act:

3 (3) No civil proceedings shall lie or be instituted in any court on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before or after the making of this Decree, the proceedings shall abate be discharged and made void.”

Also see ratio 17 in Shitta-Bey’s case (supra) page 4338. Consequently, the plaintiff’s claim is dismissed. Each party is to bear his own costs.”

The Court of Appeal per R.D. Muhammad JCA, perusing the relevant three exhibits namely: Exhibit G, Notice of Dismissal sent to the Appellant, Exhibit G1, the Press Release and Exhibit J, a Letter from the Secretary to the Military Government & Head of Service came to the conclusion, captured below as follows:-

“A careful appraisal of the three Exhibits would reveal that the cumulative effect of the three Exhibits is that it was the Military Governor that approved the dismissal of the Appellant... The Military Governor as the appropriate authority has the power to dismiss or retire any public officer within the Civil Service of a State. The Military Governor has also the right to delegate his powers... It is not necessary for a Military Governor to say expressly when doing an act that it was

done under Decree No. 17 of 1984 before provisions of the Decree can apply to the act provided what is done is within the contemplation of the Decree. It is my considered opinion that considering the circumstances of this case and the contents of Exhibits G, G1 and J, the dismissal of the Appellant was done within the contemplation of Decree NO. 17 of 1984 and as such the Court have no jurisdiction to entertain the matter.” ^B

In the second issue, i.e. the dismissal of the Appellant was against the principle of natural Justice...

Earlier in this judgment, I held that Decree NO. 17 of 1984 applies to our present case and Section 3(4) of Decree 17 of 1984 provides:- ^C

“Chapter IV of the Constitution of the Federal Republic of Nigeria 1979 is hereby suspended for the purposes of this Decree and the question whether any provisions thereof has been, is being or would be contravened by anything done or purported or proposed to be done in pursuance of this Decree shall not be inquired into In any Court of law.” ^D

“The above provision is very clear and unambiguous. The application of Chapter IV of the 1979 Constitution of the Federal Republic of Nigeria, which contains provisions of fair hearing and adherence to the principles of natural justice, has been suspended in relation to the said Decree and consequently resort cannot be had to the provisions of Section 33 of the 1979 Constitution guaranteeing fundamental right to fair hearing. I therefore answer the second Issue in the affirmative because the principles of natural justice have been suspended.” ^E ^F

Within the reviewing powers of this Court in its appellate jurisdiction, I shall quote the three Exhibits considered by the trial Court below for consideration as to whether or not the two Courts below were within firm ground to dismiss the suit or claim of the Appellant either as Plaintiff or Appellant. ^G

“Exhibit G

MINISTRY OF WORKS & TRANSPORT ^H

(ADMIN. DIVISION

BENIN CITY

BENDEL STATE OF NIGERIA

Your Ref:

Our Ref: NO. CP3813/24 6th July, 1984.

Mr. Emmanuel Utomudo

Senior Technical Officer

U.F.S. The Controller of Transport Services,

Ministry of Works,

B *Benin City.*

NOTICE OF DISMISSAL

C *I am directed to forward herewith a copy of the press release made recently on the Instruction of the Military Governor regarding your dismissal from the services of Bendel State with effect from Thursday, 28th June, 1984.*

2. On receipt of this letter, you should please hand over any Government property in your possession to the Head of your Division.

SGD

D *(F. O. OKUOMROBO)*

For: Permanent Secretary

Ministry of Works

Benin City.

E *The copy of the Press Release mentioned in Exhibit G, is Exhibit G1 which reads:*

- PRESS RELEASE

SPECIAL GOVERNMENT ANNOUNCEMENT

F *In a recent Special Government Announcement, the Military Governor directed that Mr. Emmanuel Utomudo, a Vehicle Inspection Officer attached to the Ministry of Works and Transport, Irukep in Okpebho Local Government Area should be removed as Vehicle Inspection Officer and be replaced by the Ministry of Works & Transport for allegedly issuing a Road Worthiness Certificate in respect of a Datsun Saloon Car without seeing nor inspecting the vehicle. He was also detained by the police for further investigations.*

H *2. The police have completed their investigations following which Mr. Emmanuel Utomudo has been charged to court. Government had decided that Mr. Utomudo should be dismissed from the service of Bendel State with effect from today the 28th of June, 1984 in the hope that this action will serve as a deterrent to all Vehicle Inspection Officers who may wish to indulge in such malpractice.*

SGD

(Chief S.I. Ebomoyi)

*For: Secretary to the Military Government & Head of Service.
Exhibit J.*

*“MILITARY GOVERNOR’S OFFICE
ADMINISTRATION DEPARTMENT
BENIN CITY
BENDEL STATE OF NIGERIA*

B

28th June, 1984.

No. CSM.2/13/Vol.IV/T2/14

*The Permanent Secretary
Civil Service Commission
Benin City,*

C

(For the attention of Mr. V. A. Ayetuoma)

*MR, EMMANUEL UTOMUDO VEHICLE INSPECTION OFFICER
(VI.O.) GRADE LEVEL 09: DISMISSAL*

*I am directed to inform you that Mr. Emmanuel Utomudo, a D
Vehicle Inspection Officer attached to the Ministry of Works &
Transport at Irukepken, Okpebho Local Government Area issued a
Road Worthiness Certificate in respect of one Datsun 120Y Car with
registration number BD 1533 BF on 12th June, 1984 without seeing E
nor inspecting the vehicle. He was consequently arrested by the Police
and charged to court for the crime. The matter was deliberated upon
at today’s meeting of Executive Council (Exco) where, it was discussed
at length and having been satisfied with the police report that Mr.
Utomudo really committed the crime, decided that he should be F
dismissed from the service. Government also decided that considerable
publicity should be given to the dismissal.*

*2. I am directed therefore to request you to place the matter
before the Civil Service commission for further necessary action,
please.*

G

SGD

(J.A. Otutu)

*For: Secretary to the Military
Government & Head of Service.”*

Exhibit J

H

*...Government has decided that Mr. Utomudo should be
dismissed from service of Bendel State with effect from 28th day of
June, 1984.”*

Back to the matter of the concurrent findings of the two Courts

below as to what is expected of this Court. It is to be said that concurrent findings of fact of both the trial Court and the Court of Appeal would not be disturbed by the Supreme Court except there are cogent and compelling reasons shown to justify disturbing the findings of fact, such as, where the findings cannot be supported by evidence or are perverse, patently erroneous, where there is a miscarriage of justice or not the result of a proper exercise of judicial discretion. See *Harka Air Service Ltd. v. Keazor Esq.* (2011) 6 SCM 38 at 60 - 61 per Adekeye JSC.

At this point, the necessity to bring in focus this resonating Decree 17 of 1984 with the relevant provisions and I shall quote hereunder, viz:-

“1(1) Notwithstanding anything to the contrary in any law, the appropriate authority if satisfied that:

(a) It is necessary to do so in order to facilitate improvements in the organization of the department or service to which a public officer belongs; or

(b) by reason of age at ill-health or due to any other cause a public officer has been inefficient In the performance of his duties; or

(c) the public officer has been engaged in corrupt practices or has in any way corruptly enriched himself or any other person; or

(d) the general conduct of a public officer in relation to the performance of his duties has been such that his further or continued employment in the relevant service would not be in the public interest, the appropriate authority may at any time after 31st December, 1983

-
(i) dismiss or remove the public officer summarily from his office; or

(ii) retire or require the public officer to compulsorily retire from the relevant public service.”

By virtue of Section 3(3) OF THE SAID Decree, the Courts have no jurisdiction to adjudicate on anything done or purported to have been done pursuant to the Decree. Section

3(3) provides:

“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 by any person under this Decree and if any such proceedings have been or are instituted before, on, or after the

making of this Decree, the proceedings shall abate, be discharged and made void.”

Having stated above the communications between the Military Governor or officials under him or officials in related establishments in conjunction with what has been provided as the operating law or Decree at the time, it is needed here to go into what guides this apex Court and even the Court of Appeal had laid down as the path to follow when faced with circumstances such as the present.

What is in issue here, if I may humbly venture, is the ouster of jurisdiction of the Court in a given situation and for our purpose, is the dismissal of the Appellant done by an authority which the Appellant says is not the appropriate authority to boot him out of office, while the Respondents say it is the correct authority with the enabling powers to get him out of office by dismissal and so no cause of action will arise. ***In Federal Capital Development Authority v. Sule (1994) 15 LRCN 221, the Supreme Court held that any statute ousting the jurisdiction of the Court must be construed strictly as clear words are required to oust the jurisdiction of a court more so when such an act cannot be questioned in any Court of law.*** Attorney-General Lagos State v. Dosunmu (1989) 2 NSCC 545; Anya v. Iyayi (1993) 9 SCNJ 53.

In the discernment of the appropriate authority, the Court of Appeal had held in the case of Ebohon v. Attorney-General Edo State (1994) 6 NWLR (Pt.349) 190 as follows:-

1. The appropriate authority for the purpose of exercising the powers under the Public Officers (Special Provisions) Decree is the Military Governor of a State or any person authorized by him, in the case of a State and the Head of the Federal Military Government or any person authorized by him or the Supreme Military Council, in the case of the Federation.

2. In determining whether a public officer was dismissed or terminated by an “appropriate authority” under Decree NO. 17 of 1984, the Court must consider not only the wordings of the letter of dismissal but also all the surrounding circumstances leading to the dismissal of the public officer.

3. When an act is shown to have been done with the approval of the appropriate authority, the Military Governor in the instant case, the court will have no option but to decline jurisdiction in the light of

Section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984.

The case of *Nwosu v Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt. 135) 688 is relevant here and I shall quote Belgore JSC (as he then was) thus:-

B *“Similarly, as in military regimes, decrees of the Federal Military Government clearly ousts the Court’s jurisdiction, there is no dancing around the issue to found jurisdiction that has been taken away. Lawyers trained and groomed under the notion of civil liberty frown*
C *on ouster provisions in any act of parliament; so do the Judges of similar background. But it must be remembered that Armed Forces Ruling Council is not a parliament, neither does it pretend to be one. We have lived with their Decrees (whether by Supreme Military Council or Armed Forces Ruling Council, in fact nomenclature is not*
D *relevant) for long now that there should be no doubt as to the meaning of their ouster provisions. Their Decrees, they always emphasize for avoidance of doubt, are supreme even to the Constitution. It is for that purpose that legal practice will attract more confidence if administrative avenues are pursued rather than journey of discovery*
E *inherent in court action in such matters.”*

The ratio decidendi of *Nwosu v Imo State Environmental Sanitation Authority* (supra) would be stated in full for a clearer picture and perhaps to be seen in context not outside the matter under review.

F In *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt. 135) 688, this Court held as follows:-

1. The Decree NO. 17 of 1984 enables the Military Governor to dismiss, terminate, retire, etc a public officer and goes further to oust the jurisdiction of the Courts from adjudicating on anything done
G or purported to have been done pursuant to the Decree, per Nnaemeka-Agu, JSC at 724.

2. Under Decree NO. 17 of 1984 the Military Governor of a State is not required to set up a Panel of Inquiry at all in acting under the Decree. All that is necessary is that he be satisfied from materials
H placed before him that he should act.

3. If the instrument by which an appropriate authority does an act or matter or thing does not say on the face of it that it is done under the Decree, but it has the effect of bringing the act or thing or matter done within the contemplation of the Decree, then the act,

thing or matter is purported to be done under the Decree.

4. Although, the Courts are strict in requiring that statutory power shall be exercised by persons on whom it is conferred, and by no one else, they make liberal allowance for the working of the official hierarchy at least so far as it operates within the sphere of responsibility of the minister. This is embodied in the Latin maxim: "*qui facit per alium facit per se*," meaning "he who does an act through another is deemed in law to do it himself. PP 718 - 719 per Nnaemeka-Agu JSC.

Nwosu v Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt. 135) 688. C

FACTS:

The Plaintiff's claim was that he was a civil servant and chief executive of the 1st defendant. He was appointed a civil servant in May, 1965, became secretary of the 1st defendant on 12/9/80 and its General Manager/Chief Executive from 2/2/82. D

On 12/2/82, the 3rd defendant, Imo State Commissioner for Local Government directed the plaintiff to proceed on leave because a junior staff of the 1st defendant had petitioned against the plaintiff for misconduct. The leave had been extended twice. During the period, a 5 man ministerial panel under the Chairmanship of the 4th defendant was appointed to investigate the allegations in the petition. Several witnesses had been called; but the plaintiff was not called to give evidence. Another panel, an audit panel was also set up under the Chairmanship of the 3rd defendant. But it did not find anything against him. As his leave was being extended still, he had to petition the Military Governor. Suddenly, on 15th June 1985, he saw an advertisement in the Nigerian Statesman Newspaper signed by the 2nd defendant, for the post of General Manager of the 1st defendant, even though he had not been dismissed or his appointment terminated. His petitions and letter to the Military Governor inquiring whether he had been dismissed/terminated were not replied to. It was only in an application after he had instituted this action that a letter dismissing him was exhibited even though he had not been served the letter before then. There had been no query earlier issued to him. E F G H

The trial High Court struck out the matter, declining jurisdiction. The Court of Appeal Enugu Division dismissed the appeal. The

Supreme Court upheld the decisions of the two Lower Courts.

In *Garba v. Federal Civil Service* (1988) Vol. 19 (P1) NSCC 306, this Court set out in my humble opinion to explain the *raison d'être* of this Decree and stated thus:-

1. Decree NO. 17 of 1984 was not intended to be a penal
B legislation. A regime that comes in corrective stance and legislates to
correct the ills and stamp out the corrupt practices and inadequacies
of the past regime would not mean to make a law that would reduce
a Public Officer to a status of not being worthy of his livelihood. The
C tenor of that Decree was to safeguard the Military Government from
avalanche of litigation that might necessarily follow acts of dismissal,
removal or compulsory retirement of officers for reason of inefficiency
due to age of officers engaged in corrupt practices or who have
corruptly enriched themselves.

D 2. That for the words "*such proceedings*" in Section 3(3) Decree
NO. 17, 1984 to have meaning and escape from obscurity, it must
be clear that the proceedings which are sought to be abated
thereunder must be proceedings in respect of any act, matter or thing
done or purported to be done during the life of the Decree which
E commenced on 31st December, 1963 long after the action in this
case was commenced. Section 1(2) of the Decree puts it beyond per
adventure that the decree would only apply to anything done or
could only be in regard to anything done after 31st December, 1983.
F Any act or interdiction that took place, or any court proceedings that
followed the act, before 31st December, 1983 could never be covered
by the decree.

3. That whether or not Decree NO. 17 of 1988 covers
interdiction is in any event academic once it is held as has been held
G that the action or proceedings in this case fall outside the Decree. If
the converse had been held, it would still have been the opinion of
the Court that Section 1(1) of the Decree limited the power of the
"*appropriate authority*" only to "*dismissing*" or "*summarily removing*"
the public officer from his office or "*requiring the public officer to*
H *retire compulsorily*" from service.

In that case, *Garba v. Federal Civil Service Commission* (supra),
the appellant was interdicted by his employers following a charge of
murder preferred against him as a result of a fire incident which took
place at "NECOM HOUSE" on 24th January, 1983 in which two

persons died. The appellant as the officer of the Federal Fire Service claimed to have put out the fire. The charge was subsequently quashed upon an application in that behalf by the appellant under the Fundamental Rights (Enforcement Procedure) Rules, in the Lagos High Court on 16th February 1983. The interdiction which was first issued on 21st February, 1983 was renewed on 6th April, 1983. On the 25th May, 1983, the appellant filed an action to set aside the interdiction. While the action was still pending, the appellant was dismissed on 11th April, 1984 and on June 27th, 1984, Decree No. 17 - Public Officers (Special Provisions) Decree was passed and made applicable as from 31st December 1983.

The issue that arose was whether the Decree NO. 17 applied to actions commenced and pending before its commencement date. The Supreme Court held that the Decree did not apply to such actions.

The Appellant had sought to use the case of *Wilson v Attorney-General Bendel State & Ors* (1985) 16 NSCC (Pt.1) p.191, a decision of this Court to support his position and I would cite it for clarity and may be to show that it is not of use for either the Appellant or for the Court since it cannot be applicable here, the circumstances being different from the appeal at hand.

In *Wilson v Attorney-General, Bendel State & Ors* (1985) 1 NSCC 191, the Supreme Court held:-

‘There was nothing whatsoever in the letter of dismissal to indicate that the act of dismissal of the appellant was an act of the appropriate authority nor was there evidence either that he authorized or directed any person to dismiss him. The respondents did not adduce any evidence connecting the appropriate authority with the letter. The contents of the letter clearly show that it was the Public Service Commission that decided to amend the appellant’s retirement to dismissal and though the commission falls within “any person” used in Section 6(3) of the 1976 Decree, its purported action of dismissal can only be protected by that section if that action can be shown to have been taken under the Decree. There is no evidence of this.

By Section 7(2) of the 1976 Decree, appropriate authority was defined as being the Military Governor of a State or any person authorized by him. The same definition applied to all subsequent Decrees In relation thereto.”

In interpretation of statutes, there are guides which the court

must adhere to, so as not to be lost in a possible mesh of uncertainties as to what a particular law is all about. That stated, a summary of the three exhibits would be restated to emphasize that the facts herein are opposite those of *Wilson v A.G. Bendel State* (supra). This is because the letters or documents of dismissal clearly showed the clear
B instruction or directive of the Governor.

EXHIBIT G:

“NOTICE OF DISMISSAL

*I am directed to forward herewith a copy of the press release
C made recently on the instruction of the Military Governor regarding your dismissal from the services of Bendel state with effect from Thursday, 28th June, 1984.*

F.O. Okumorobo

For: Permanent Secretary”

D EXHIBIT G1:

PRESS RELEASE:

SPECIAL GOVERNMENT ANNOUNCEMENT

*In a recent Special Government Announcement, the Military Governor directed that Mr. Emmanuel Utomudo... should be
E removed as Vehicle Inspection Officer....., for allegedly issuing a Road Worthiness Certificate in respect of a Datsun Saloon Car without seeing nor inspecting the vehicle.”*

‘EXHIBIT J

*Government has decided that Mr. Utomudo should be
F dismissed from service of Bendel State with effect from 28th day of June, 1984.”*

***In law words have their ordinary meaning if and only if no legal meaning has been attached to them. If any word or
G expression has been either statutorily or judicially defined, then, the legal meaning supersedes the ordinary meaning. When words have been legally or judicially defined, their ordinary meaning will surely give way to their meaning as legally or judicially defined. Thus, the expression “Public Officer” has
H been defined in Section 7(1) of the Public Officers (Special Provision) Decree NO. 10 of 1976 to include any person who holds or has held any office in the Public Service of a State etc and is wide enough to comprehend and include both serving or retired officers, as well as officers who resigned or who***

were dismissed. Wilson v Attorney-General Bendel State & Ors (1985) 1 NSCC 191 at 221 per Oputa JSC.

It would not accord with normal official relationship to expect that every instruction given by a Military Governor or Chief Executive, for that matter, to the Secretary to the Military Government or other subordinates of his must of necessity be in writing to render evidence on it capable of acceptance. To hold otherwise, will be tantamount to ignoring Section 75 of the Evidence Act which provides as follows:-

“All facts, except the contents of documents, may be proved by oral evidence.”

In the same vein, Section 148(1) of the Act stipulates thus:

“148: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case and in particular the Court may presume:-

(c) that the common course of businesses has been followed in particular cases.”

There is another related provision in Section 75(b) of the Evidence Act which is thus:-

“76: Oral evidence must, in all cases:

(b) if it refers to a fact which could be heard, it must be the evidence of witness who says he heard that fact”.

Bearing these provisions above stated in mind, it is to be said that the 1st Respondent gave some instructions to the relevant officials on the matter of the dismissal of the Appellant can be proved by oral evidence proffered by the 1st Respondent or the officers who carried out the instructions. Therefore, whether those orders or instructions were carried out fully to the letter is an entirely different pot of tea which is resolvable by evidence.

Following on the heels of the above is that an act compulsorily retiring a public officer under the Public Officers (Special Provisions) Decree No. 17 of 1984 does not need to state expressly in the letter of dismissal that the act was done pursuant to the Decree.

For a fuller picture, it is to be said that under the said Decree 17 of 1984, the Military Governor as the appropriate

authority, may direct the removal of a public officer from office, or may delegate someone to do so and when that has been established the Court's jurisdiction to entertain any claim to contest such removal from office is completely ousted. See Omo v Judicial Service Committee, Delta State & Ors (2000) FWLR (Pt. 20) 676 at 692, 696, 697 which has been a guide in this matter.

"Authorized" means to give formal approval and so there is no distinction between the words 'approve' and 'authorize'. Omo v Judicial Service Committee, Delta State (supra) 698 SC.

From all that I have been trying to say within the ambit of the law, and in this instance, it is that Decree 17 of 1984 in relation to what happened to the Appellant in the dismissal that was visited on him, there is clearly no grey area as to the authority from which that dismissal came about. The directive to have him dismissed from office came from the Governor as evidenced by Exhibit G. His grouse or the attempt at pushing forward that the Governor was not involved in the action and so Decree 17 would not apply, is a kite that cannot fly. Exhibit G1 though stating that the Government had decided that Appellant should be dismissed was a mere confirmation of the action exhibited in Exhibit G. The Exhibit J talked of Executive Council being aware of the action taken against the Appellant.

The facts stated in the evidence including that of the plaintiff himself in testifying is that he had himself written to the Military Governor protesting his dismissal which show that the Appellant knew very well from where the authority of his dismissal emanated from. In the light of that, these distinctions he now presses forward that it was not the Governor who had him dismissed either by himself or through a delegated official is just a splitting of hairs over semantics and a futile effort to produce meanings of 'Government', 'Executive Council' and 'Military Governor' in a way to support his stance that it was not the Military Governor as provided for by Decree 17 of 1984 who effected the dismissal.

The emptiness of that position of the Appellant is embedded in Section 6(a) of the Constitution and suspension and modification Decree NO. 1 of 1984 which stipulates as follows:-

"Any executive function which by virtue of any such delegation

as is mentioned in sub-section 8 above is exercisable by the Military Governor of a State may, subject to any condition imposed under sub-section 6 above exercisable by him either directly or through person or authorities subordinate to him."

Once the Court is satisfied that the retirement of a Public Officer, such as the appellant in this case, is in compliance with Section 1(1) of Decree NO. 17 of 1984, its jurisdiction is automatically ousted by virtue of Section 3 (3) which provides that 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 by any person under the Decree, and if any such proceedings have been or are being instituted before or after the coming into force of the Decree, the proceedings shall abate, be discharged and made void. Shitta-Bey v Attorney-General Federation (1998) 10 NWLR (Pt. 570) 392 at 435 per Oguegbu JSC.

I have my duty cut off for me at this point of reaching a conclusion and that is, that in the circumstances, the facts and the empowering or operating Decree NO. 17 of 1984 under which the dismissal was made, that indeed there was due compliance with that Decree and enough from which it is seen to have been done by the Military Governor even if the communication to the Appellant was done through officials working under the Governor. Therefore, the operation of Decree 17 came with its full force not only in determining with finality, the further employment of the Appellant in the Civil service but also the ouster of the jurisdiction of the Court to inquire into the rightness or wrongness of the act of the Military Governor of the then Bendel State. That is the end of the matter and so what anyone feels is of no moment. I place reliance on *Omo v. Judicial Service Commission* (2000) FWLR (Pt.20) 698; *Shitta-Bey v. Attorney-General Federation* (1998) 10 NWLR (Pt. 510) 302 at 416; *Ebohon v. Attorney-General of Edo State* (1994) 6 NWLR (Pt. 349) 190 at 213; *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt. 135) 688 at 733.

At the risk of repetition, this is one of the classic examples of an appellate Court not interfering or trying to upset or disturb the concurrent findings and decision arrived thereat by the Lower Courts as there is nothing on which such an interference can be anchored

on as there is no perversity in the course of the findings or a miscarriage of justice or a wrong interpretation of the law whether substantive or procedural. See *Harka Air Service (Nig.) Ltd v. Keazor* (2011) 13 NWLR (Pt. 1264) 320 at 348; *Eze v Spring Bank Plc* (2011) 18 NWLR (Pt. 1278) 113 at 135.

B From all the above, I have reached the conclusion that the decisions and the findings of the two Courts below are unassailable and I am comfortable with them and follow in their path way. The questions raised in this appeal are resolved in favour of the
C Respondents and against the Appellant. That being the case with the unmeritorious appeal, it is only right that it be dismissed and I hereby dismiss the appeal and affirm the judgment of the Court of Appeal which in turn had affirmed what the trial Court did.

I make no order as to costs.

D

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother PETER-ODILI J.S.C. just delivered.

E I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

There is no doubt at all that appellant was dismissed from the public service of the then Bendel State by the Military Governor of
F the said state as found by the trial Judge and affirmed by the lower court at pages 176 to 177 of the record. The question that follows is: What is the legal effects of the above finding having regards to the provisions of Decree No. 17 of 1984 a.k.a. Public Officers/Special Provisions) Decree?

G By the provisions of Section 3(3) of the said Decree No. 17 of 1984 the jurisdiction of the court is ousted in any action instituted to contest the dismissal of appellant from the civil service of the then Bendel State. The Section provides, inter alia, as follows:-

H *“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 by any person under this Decree and if any such proceedings have been or are instituted before, on, or after the making of this Decree, the proceedings shall abate, be discharged and made void”*

I hold the considered view that the issue dealing with the question as to whether appellant was dismissed under Decree 17 of 1984 and the consequences flowing from that dismissal constitute the main/fundamental issue in the appeal as its resolution against appellant puts an end to the appeal; the other issues will thereby be rendered hypothetical. The issue touches and concerns the jurisdiction of the court to hear and determine the matter as constituted; it is a peripheral matter that goes to the root of the complaint. B

In dealing with the issue the lower court, at page 177 of the record, concluded as follows:-

"It is my considered opinion that considering the circumstances of this case and the contents of Exhibits G, G1 and J. the dismissal of the appellant was done within the contemplation of Decree No. 17 of 1984 and as such the court has no jurisdiction to entertain the matter. My answer to the first issue is therefore in the affirmative. The learned trial Judge was right in holding that the appellant was dismissed from public office of Bendel State by the Governor pursuant to Decree No. 17 and that the court lacks jurisdiction to entertain the matter". C D

The above findings are concurrent and the attitude of this court, as laid down in very many cases, remains that the Supreme Court will not disturb concurrent findings of fact of the lower courts unless appellant demonstrates special circumstances, warranting an interference with the findings - See Harka Air Service (Nig.). Ltd. Vs Keazor (2011) 13 NWLR (Pt. 1264) 3210 at 348; Eze Vs Spring Bank PLC (2011) 18 NWLR (Pt. 1278) 113 at 135. Some of the special circumstances which may influence this court to interfere with concurrent findings of fact by the lower courts have been held to include where the findings are shown to be perverse or not supported by evidence on record or that they have occasioned a miscarriage of justice on the appellant etc. E F

The question is whether appellant has established the existence of any of the special circumstances? The answer is emphatically no. H

It is therefore clear that with the above holding the other issues formulated for determination of the appeal become hypothetical and there is no jurisdiction in the court to go into them.

It is for the above reasons that I too hold that the appeal is

devoid of merit and therefore deserves to be dismissed and I order accordingly.

I abide by the consequential orders made in the lead Judgment including the order as to costs.

Appeal dismissed.

B

GALADIMA JSC

C I have had the privilege of reading in draft the judgment delivered by my brother PETER-ODILI, JSC. I agree with the reasoning and conclusion leading to the dismissal of the appeal, and affirming the judgment of the court below.

D It is plain from the facts of this case that the Appellant was dismissed from the Public Office of the then Bendel State by then Military Governor, pursuant the Public Officers (Special Provisions) Decree No. 17 of 1984 and thereby clearly ousted the jurisdiction of the court to entertain the Appellant's complaint, that he was wrongfully dismissed. He was not entitled to prayers sought in paragraphs 17(a)(b) and 9(c) of his statement of claim. I make no order as to costs.

E

RHODES-VIVOUR JSC

F I have had the advantage of reading in draft the leading judgment of my learned brother, Peter-Odili, JSC. I agree on the point which arises in this case, jurisdiction and in view of the importance of the jurisdiction issue I will add a few words of my own.

G When there is a successful military coup Democratic Government no longer exists. The Executive and Legislature no longer function. The judiciary remains but with limited jurisdiction. The Constitution or parts of it are suspended. In its place are Decrees. The Military Government rules by Decrees. Decrees are superior to the Constitution. The jurisdiction of the courts to hear certain matters are usually taken away by provisions in these Decrees called ouster clauses. A gentle reminder that political power flows through the barrel of the gun.

H

Section 3(3) of Decree No.17 of 1984 is an ouster clause. It reads:

“3(3) No Civil proceedings shall lie or be instituted in any court on account of or in respect of any act matter or thing done or purported to be done by any person under this Decree and if any such proceedings have been or are instituted before or after the making of this Decree, the proceedings shall abate, be discharged and made void.” B

Where the words in a statute are and free from any ambiguity they should be read and understood as they are without any embellishments. See *Toriola v. Williams* 1982 7 SC p.27, *Mobil v. FBIR* 1877 3 SC p. 53. C

Applying section 3(3) supra to the facts of this case once a Military Governor is satisfied that a public officer has displayed inappropriate or infamous conduct, e.g. corrupt practices, etc, acting under Decree 17 of 1984, the Public Officers (Special Provisions) Decree, the Military Governor can dismiss, terminate, or retire the public officer, and the courts have no jurisdiction to inquire into what the Military Governor did. The disgruntled public officer cannot seek redress from the court even if his action was brought to court before the Decree came into force. See *Nwosu v. Imo State Environmental Sanitation Authority* 1990 2 NWLR Pt. 135 p. 688 E
Garba v. Federal Civil Service 1988 Vol. 19 (Pt.1) NSCC p. 306.

Mr. E. A. Utomudo, the appellant was employed by the now defunct Bendel State in the early eighties as a vehicle inspection officer. In the course of his duties he issued road worthiness certificate No. 58546 for vehicle with registration No. BD15533 BF The certificate turned out to be fake, complete forgeries. His infamous act was brought to the attention of the appropriate authorities. The Military Governor of Bendel State exercising his powers under Decree No. 17 of 1984 dismissed the appellant from service. F G

He brought an action before a Benin City High Court for:

1. that his dismissal is null and void.
2. that he is still entitled to his remuneration, and emoluments as a public servant.

This appeal brings into focus the sweeping powers conferred on Military Governors by Decree No.17 of 1984 to dismiss erring public officers. The issue is: H

Whether the courts have jurisdiction to entertain complaints from dismissed public officers who had their carriers bought to an

end by the said Decree.

The learned trial judge was of the view that the jurisdiction of the court was ousted by section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984. Hear the learned trial judge.

"I am satisfied that the removal from public office of Utomudo by the Military Governor of the then Bendel State on 28th June, 1984 according to Exhibits G, G1 and J was in compliance with Decree No. 17 in section 1(1) and as such I cannot on any ground question, query or look into the validity of that removal and the reasons given for it because the jurisdiction of this court to do so is ousted by the following provisions of section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984."

The Court of Appeal made similar findings when it said:

"A careful appraisal of the three Exhibits would reveal that the cumulative effect of the three exhibits is that it was the Military Governor that approved the dismissal of the appellant... It is my considered opinion that considering the circumstances of this case and the contents of exhibits G, G1 and J the dismissal of the appellant was done within the contemplation of Decree No. 17 of 1984 and as such the court has no jurisdiction to entertain the matter."

I agree with both courts below that the jurisdiction of the courts were ousted by section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984. The Military Governor is conferred with power under Decree No.17 of 1984 to dismiss, terminate, retire erring public officers in the Civil Service of the State and no court has jurisdiction to question such an act by the Military Governor. In exercising his powers he can delegate them if he so desires. Exhibits G, G1, and J are conclusive documentary evidence that it was the Military Governor who approved the dismissal of the appellant from the Civil Service of the defunct Bendel State. Section 3(3) supra takes away the jurisdiction of the courts to look into the removal of the appellant. Section 3(4) supra suspends Chapter IV of the 1979 Constitution. These are the fundamental rights provisions which guarantee fair hearing and natural justice. The resultant effect is that the appellant cannot complain of denial of fair hearing or natural justice since he was dismissed under Decree No.17 of 1984 which suspended those supposedly inalienable rights.

Sadly, the appeal has no merit. The courts have no jurisdiction

to hear the appellant's case.

For this, and the more detailed reasoning in the leading judgment, I also dismiss the appeal.

OKORO JSC

B

I read in draft the judgment just delivered by my Learned Brother Mary Ukaego Peter-Odili, JSC. I agree with the reason and the conclusion reached that this appeal lacks merit and ought to be dismissed.

C

The Appellant herein was a civil servant in the civil service of the defunct Bendel State having been employed in December, 1976. While in the service, it was alleged that he issued a Road Worthiness Certificate No. 58546 in respect of vehicle with registration No. BD 15533 BF without seeing or inspecting the said vehicle. It was further alleged that he forged those documents. He was charged to the Magistrates Court. While the matter was pending, he was dismissed from service. The Appellant was, however, later discharged and acquitted by the Magistrate's Court. Consequent upon the facts above, the Appellant filed the suit giving birth to this appeal at the High Court of former Bendel State for a declaration that his dismissal was null and void amongst other sundry Prayers.

E

Upon hearing evidence from the parties, the learned trial judge held that the court lacked jurisdiction to entertain the matter having found that the Appellant was dismissed by the Military Governor of Bendel State in line with Section 1(a) a - d and Section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984 which ousts the jurisdiction of the court to entertain the matter.

F

Dissatisfied, the Appellant appealed to the Court of Appeal which affirmed the decision of the trial court that the Appellant was dismissed by the Military Administrator of Bendel State and as such the trial court had no jurisdiction to hear the case. The appeal was dismissed. The Appellant has further appealed to this court.

G

Issue one, formulated by the Appellant relates to the jurisdiction of the trial court to entertain this appeal. It states:

H

"Were the Honourable Justices of the Court of Appeal, Benin City right in holding that the Appellant was dismissed from Public Officer of Bendel State by the Military Governor pursuant to Decree

No, 17 of 1984 and as a result dismissing Appellant's appeal on the ground of lack of jurisdiction of the trial court?"

Without much ado, it is my opinion that this issue is key to the determination of this appeal. This is so because jurisdiction is the life wire of a court as no court can entertain a matter where it lacks the jurisdiction to do so. Issue of jurisdiction can be raised at any time and even for the first time on appeal in this court. See CHIEF ETUEDOR UTIHE & ORS V. JACOB UMURHURU ONOYIRWE & ORS (1991) 1 NWLR (pt 166) 166, (1991) 1 SC (Pt. 1) 61; F.A. AKINBOBOLA V. PLISSON FISCO NIGERIA LTD & ORS (1991) 1 NWLR (Pt.167) 270.

In this case, there are concurrent findings of both the trial court and the Court of Appeal that the Appellant was dismissed by the Military Governor of Bendel State. This finding has not been shown to be perverse in any material particular. The attitude of the Supreme Court to concurrent findings of fact by the two lower courts has always been that it will not disturb such findings unless they are shown to be perverse or there is a substantial error apparent on the record of proceedings or there is miscarriage of justice. Where there is sufficient evidence supporting such concurrent findings, this court will not disturb same. See ENANG V. ADU (1981) 11 - 12 SC, 25, NJOKU V. EME (1973) 5 SC 293, ARE V. IPAYE (1990) 2 NWLR (Pt.132) 298, ATUYEYE V. ASHAMU (1987) 1 NWLR (Pt.49) 267.

It is very clear that by Exhibits G, G1 & J, the dismissal of the Appellant was directed or ordered by the Military Governor of the defunct Bendel State. And by Section 3(3) of the Public Officers (Special Provisions) Decree No. 17 of 1984, the trial court had no jurisdiction to entertain the matter, its jurisdiction having been ousted by the said Decree. The opening paragraph of Exhibit "G" states as follows:-

"I am directed to forward herewith a copy of the press release made recently on the instructions of the Military Governor regarding your dismissal from the service of the Bendel State with effect from 28th' June, 1984."

I think it was not mandatory for the Military Governor to expressly state when carrying out or doing an act that the act was done under the decree before the provisions of Decree No. 17 of 1984 can be said to apply. It is sufficient if the act was carried out or done within the contemplation of the said Decree. It is also my view that a

directive by the Military Governor under the Decree which was carried out by another did not derogate from the provisions of the Decree.

On the whole, I am satisfied that the Court below was right to uphold the decision of the trial court that it was the Military Governor who dismissed the Appellant and that based on Section 3(3) of Decree No. 17 of 1984, the trial court lacked the jurisdiction to entertain the case, its jurisdiction having been ousted. Based on the above and fuller reasons in the lead judgment of my learned brother, Mary Ukaego Peter-Odili, JSC, I agree that this appeal lacks merit and is also dismissed by me. I also make no order as to costs.

D

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