

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH JULY, 2009. SC. 242/2002  
**CORAM:- A. I. KATSINA-ALU, M. MOHAMMED,**  
**W. S. N. ONNOGHEN, C. M. CHUKWUMA-ENEH,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

1. DA KABIRIKIM (DU DISTRICT HEAD)  
2. BITRUS SHA DUNG ..... APPELLANTS  
(For themselves and on behalf  
of the People of Du District)  
AND  
1. HON. JUSTICE LUKE EMEFOR  
2. ALHAJI IBRAHIM SHEHU  
3. D.S.P. JONATHAN ATTAH ..... RESPONDENTS  
4. ATTORNEY GENERAL  
& COMMISSIONER FOR JUSTICE,  
PLATEAU STATE  
5. PLATEAU STATE GOVERNMENT  
6. A. K. IBI  
7. UJAH JAURO MAGAJI  
(District Head of Gwong: for himself and  
on Behalf of the people of Gwong District).
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WORDS & PHRASES - Or - Interpretation of - By virtue of Interpretation Act s. 18(3) - The word 'or' and 'other' shall in any enactment - Be construed disjunctively and not as implying similarity (H1)

ADMINISTRATIVE LAW - Governor - Powers of - Powers conferred on Governor by Commission of Inquiry Law s. 2(1) is wide - Hence to apply ejusdem generis rule to the section - Is to restrict the Governor's powers (H2)

ADMINISTRATIVE LAW - Commission of Inquiry - Function - Limit - The Commission of Inquiry appointed under s. 2(1) with terms of reference - Does not interfere with jurisdiction of High Court (H3)

COURTS - Justice - Upholding of - Court being an impartial arbitrator - Must always consider both sides of a case before coming to a

conclusion - As to do otherwise will result in grave injustice (H4)

APPEALS - Issue - Formulation by court - Appellant's issue 1 and the issue 2 formulated by Court of Appeal are the same - The court simply added some words to state the obvious (H5)

APPEALS - Evidence - Evaluation - Issue as to whether party proved his claim - Cannot be determined without evaluating evidence - Hence CA rightly proceeded to evaluate the evidence and considered exhibits tendered (H6)

### **FACTS**

This action was instituted at the High Court of Plateau State Jos by plaintiffs/appellants against defendants/respondents, claiming for the following reliefs inter alia, a declaration that the power conferred on the Military Governor of Plateau State by section 2(1) of the Commission of Inquiry Law Cap. 25 Laws of Northern Nigeria (applicable in Plateau State) did not entitle the said Governor to commission 1<sup>st</sup> to 3<sup>rd</sup> and 6<sup>th</sup> respondents to inquire into the matters set out in the terms of reference and to determine ownership of some wards and that the setting up of the commission of Inquiry and its terms of reference are unconstitutional, null and void.

The terms of reference of the commission include determination of the ownership of the disputed areas in the districts, making any recommendation that the Commission might consider necessary and to diffuse land disputes in general within Jos Metropolis. Appellants contend that the terms of reference is null and void as the same infringe on the jurisdiction of the State High Court to determine land matters. Respondents' contention on the other hand is that 5<sup>th</sup> respondent is empowered to set up the commission. In its judgment, the court held that 5<sup>th</sup> respondent has the power to set up the Commission of Inquiry. Appellants' claims were dismissed. Aggrieved, appellants appealed to the Court of Appeal Jos Division. The appeal was dismissed and consequently, appellants have appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) Whether the Learned Justices of the Court of Appeal were right in holding that the phrase “any matter or thing” used in S. 2 of*

*the Commission of Inquiry Law, Cap 25 of the Laws of Northern Nigeria, 1963 cannot be read ejusdem generic to the specific matters mentioned in the section?*

*(ii) Whether the Learned Justices of the Court of Appeal were right in holding that Governor of Plateau State did not act ultra vires section 2(1) of the Commission of Inquiry Law, Cap. 25 Laws of Northern Nigeria, 1963 in appointing and authorizing the commission to inquire into ownership of the three villages?*

*(iii) Whether the 2nd issue formulated and determined by the Learned Justices did not lead to a miscarriage of justice of this case?"*

**HELD** (Unanimously dismissing the appeal per

**ONNOGHEN JSC)**

*WORDS & PHRASES - Or - Interpretation of*

**1. It is now settled law that the word "or" is disjunctive depending on the context as under certain circumstances the word "and" would be read in place of "or" so as to carry out the intention of the legislature. For the general interpretation of the word "or", see section 18(3) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990 which states that "the word "or" and the word "other" shall, in any enactment, be construed disjunctively and not as implying similarity. (p. 2920 B)**

*ADMINISTRATIVE LAW - Governor - Powers of*

**2. From the provisions of section 2(1) of Cap 25 supra, it is clear that items (a) - (e) exist independent of each other and do not constitute a class or category into which other similar things or items can be classified or fitted into so as to make the ejusdem generic rule of construction of statute applicable to the facts of this case.**

**It must be noted that the powers conferred on the Governor under the said section 2(1) is as wide as it is subjective in nature and intent. It is a power to be employed for the public welfare in the opinion of the Governor. I therefore agree with the lower courts that the expression "any other matter in**

**respect of which in his opinion an inquiry would be for the public welfare” is very much independent of the preceding items and that the interpretation of that expression does not require the application of the principles of Ejusdem generic rule of interpretation of statute. To apply the ejusdem generic rule to section 2(1) supra, is to restrict the wide scope of powers conferred by the legislature therein on the Governor for the peace and good governance of the state. It follows therefore that the expression “any matter” used in section 2(1) of Cap 25 does not relate to nor is it limited to “any matter” ancillary to matters earlier mentioned in the said section 2 sub-section 1 supra. (p. 2920 D)**

**ADMINISTRATIVE LAW - Commission of Inquiry - Function - Limit**  
**3. However, it is also very clear from section 2(1) of Cap 25 supra that the Governor of Plateau State has the power to appoint a Commission of Inquiry to inquire into any matter including ownership of disputed land forming part of an administrative area in respect of which, in his opinion, an inquiry would be for the public welfare. It is my further view that a Commission of Inquiry appointed with the terms of reference as in the instant case does not interfere with the jurisdiction of the High Court as conferred by section 236(1) of the 1979 Constitution. (p. 2921 H)**

**COURTS - Justice - Upholding of**  
**4. To begin with, it is not correct that the issues before the lower court as formulated by the appellants did not include evaluation of evidence. Issues are formulated from the grounds of appeal filed. In the instant case, appellants did not abandon any of the seven grounds of appeal filed out of which learned Counsel for the appellants himself formulated four issues. The question is: How can a court “properly and/or adequately” consider the claim(s) of a party without resort to evaluation of the evidence produced at the trial in relation to the claim(s). There is no way issue (i) can be resolved properly and satisfactorily without evaluating the evidence called by the parties at the trial. It is very clear, therefore that appellant’s issue (i)**

**called for evaluation of evidence including exhibits 2 to 6 tendered by the appellants and exhibits 8 and 9 tendered by the respondents in addition to oral testimonies of the witnesses.**

**The court, being an impartial arbitrator must always consider both sides of a case before coming to a conclusion not just the case of one of the parties as to do so will result in grave injustice.** (p. 2923 A) B

*APPEALS - Issue - Formulation by court*

**5. The next question is whether the issue 2 formulated by the lower court is really different from issue 1 formulated by the learned Counsel for the appellants and reproduced earlier in this judgment.** C

**It should be noted that the lower court even indicated the grounds of appeal from which the issue in question arose. It is not the case of the appellants that the said issue 2 so formulated by the lower court does not arise from the grounds of appeal filed by the appellants. In any event, it is settled law that an appellate court has the duty to formulate issues different from those formulated by the parties if it will serve the ends of justice.** D

**Now looking at appellant's issue 1 earlier reproduced in this judgment and issue 2 formulated by the lower court supra, are the two issues not the same in reality? The answer is very much in the affirmative. They are the same. What the lower court did was simply to add the following words to appellants' issue 1 to, wit: "and the totality of the evidence led by the parties" to state the obvious.** (p. 2923 F) E

*Evidence - Evaluation* G

**6. As stated earlier in this judgment, you cannot determine the issue as to whether a party established his claim without evaluating the evidence both oral and document, any tendered in prove and defence of the claim.** H

**It is in resolving the issue before it that the lower court proceeded to evaluate the evidence and in fact considered exhibits 2 to 6 which were tendered by the appellants and exhibits 8 and 9 tendered by the respondents.**

***I agree with the lower court completely as the above exercise and conclusion cannot be faltered in any way having regards to the evidence on record. It is therefore clear that the issue under consideration has no merit and is consequently resolved against the appellants.*** (pp. 2924 D/2925 B)

B

## NOTABLE POINTS OF INTEREST

### **ONNOGHEN JSC**

#### ***1. Ejusdem generis Rule – Meaning of***

C Before determining the issue of the applicability of the ejusdem generis rule to the facts of this particular case, we need to know what is meant by ejusdem generis rule.

In Blacks Law Dictionary, 8th Edition, defines the rule thus:-

D *“Under ejusdem generis cannon of statutory construction where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.”* (p. 2919 A)

#### ***2. State High Court – Unlimited jurisdiction***

E There is no doubt at all that by the above provisions, the High Court of a State is constitutionally clothed with unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability privilege, interest, obligation or claim, is in issue or to hear and determine any criminal proceedings F involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. It is equally clear that the unlimited jurisdiction so conferred includes the jurisdiction to hear and determine land ownership when properly brought G before the court. (p. 2921 F)

### **REPRESENTATION**

Charles A. Ajuyah Esq., SAN for the Appellants, with him are Messrs. B. G. L. Ghoji and E. Emakpor, for the Appellants

H E. Pwajok Esq, A-G Plateau State with him F. B. Lotben (Mrs.) DCL Plateau State., C. U. Ekomaru Esq., with Z. C. Obi Esq, for the Respondents

**CASES REFERRED TO**

- Barclays Bank DCO v. Adigun (1967) 1 ANLR (pt. 3) 536  
Onasile v. Sami (1962) NSCC 196  
F.R.N v. Ifegwu (2003) 5 SCNJ 217  
Ndoma-Egba v. Ogor (2004) 2 SCNJ 117  
Edem v. Cannon Balls Ltd (2005) All FWLR (pt. 276) 693 B  
Ogunbiyi v. Ishola (1996) 6 NWLR (pt. 452) 12  
Ejowhomu v. Edok-Eter Mandillas Ltd (1986) 5 NWLR (pt. 39) 1  
Oro v. Falade (1995) 5 NWLR (pt. 396) 385  
Buhari v. Yusufu (2003) 14 NWLR (pt. 841) 446 C  
Onakoya v. FRN (2002) 11 NWLR (pt. 779) 595/647  
Gaffar vs. Governor of Kwara State (2007) 4 NWLR (pt. 1024) 375

**STATUTES REFERRED TO**

- Commission of Inquiry Law Cap. 25 Laws of Northern Nigeria (ap- D  
plicable to Plateau State), s. 2(1)  
Constitution of the Federal Republic of Nigeria 1979, ss. 6(6), 236  
Interpretation Act Cap 192 LFN 1990, s. 18(3)

**BOOK REFERRED TO**

- Blacks Law Dictionary 8<sup>th</sup> Ed.

**LEAD JUDGMENT BY ONNOGHEN JSC**

This is an appeal against the judgment of the Court of Appeal, F  
Holden at Jos in appeal NO. CA/J/76/99 delivered on the 22nd day  
of November, 2000 in which the court dismissed the appeal of the  
present appellants against the judgment of the High Court of Plateau  
State, Holden at Jos, in suit No.PLD/J382/91 delivered on the 6th  
day of April, 1996 against the appellants who were the plaintiffs in G  
that court.

By paragraph 11 of their statement of claim, the present ap-  
pellants, as plaintiffs, claimed the following reliefs:

*“WHEREFORE the plaintiffs claim against the Defendants jointly H  
and severally:-*

*(a) A Declaration that the power conferred on the Military  
Governor of Plateau State by section 2(1) of the Commission of In-  
quiry Law Cap. 25 Laws of Northern Nigeria applicable in Plateau  
State of Nigeria did not entitle the Military Governor to commission*

*the 1st to 3rd and 6th Defendants to inquire into the matters set out in the terms of reference and to decide or determine ownership of Kabong Ward, Tudun Wada, Dong Wards and Kabong, Dong Wards.*

*(b) A Declaration that the setting up of the Commission of Inquiry and its terms of reference are unconstitutional, null and void and is of no effect whatsoever in that:-*

*(i) There is no dispute whatsoever as to what district the three (3) villages Kabong, Tudun Wada and Dong belong.*

*(ii) determination of ownership of the three (3) villages is not within the competence of a Commission of Inquiry*

*(c) An order setting aside the instrument constituting the Commission of Inquiry with respect to the terms of reference set out therein.*

*(d) An order of injunction restraining the 1st to 3rd and 6th Defendants from submitting any report to the 4th and 5th Defendants or the Military Governor of Plateau State pursuant to the Commission complained of.*

*(e) An order of injunction restraining the 4th and 5th Defendants from acting on or in any way taking any action on any report submitted by the 1st to 3rd and 6th Defendants in respect of the Commission complained of”*

The terms of reference of the Commission included:

*(1) To determine the ownership of the disputed areas in the three districts, and (ii) To make any recommendation that the Commission might consider necessary, to diffuse land disputes in general within Jos Metropolis.”*

The Commission of Inquiry assigned the above terms of reference was established by the Military Governor of Plateau State under the powers conferred on him by the provisions of section 2(1) of the Commission of Inquiry Law Cap. 25 Laws of Northern Nigeria applicable to Plateau State.

It is the case of the appellants that the above quoted terms of reference is ultra vires the Commission of Inquiry and therefore null and void in so far as it infringes on the jurisdiction of the High Court of Justice of Plateau State under the Constitution which has the jurisdiction to inquire into and determine ownership of land in Plateau State.

On the other hand, the respondents contend that the 5th respondent has unfettered power to set up the Commission of Inquiry



to look into the disputed area of Du, Gwong and Gyel Districts; that there has been disputes as to under which district the three wards of Tudun Wada, Kabong and Dong belong which has adversely affected effective administration of the area in terms of collection of taxes, census and demarcation of election wards; that it is for the public welfare and peace that the 5th respondent had to constitute the Commission of Inquiry. B

Now, section 2(1) of the Commission of Inquiry Law; Cap 25 Laws of Northern Nigeria applicable to Plateau State provides as follows:-

*“The Governor may, whenever he shall deem it desirable, issue a commission appointing one or more commission, and authorizing such commissions, or any quorum of them therein mentioned, to hold a Commission of Inquiry into the conduct of any officer in the Public Service of Northern Nigeria or of any chief or the management of any department of the public service or any Local Institutions or into any matter in respect of which in his opinion, an inquiry would be for public welfare.” C*

In determining the suit, the trial court found and held at pages 170-171 of the record, inter alia, as follows:- E

*“From the evidence before me as given by PW1, PW2, PW3, DW1, DW2, and DW3 I cannot pretend that there have not been disputes as to how the village area or wards of T/Wada, Kabong and Dong can be effectively administered or managed by the District Head of Du (PW2) Gwong (DW2) and Gyel. I do not agree with the plaintiffs that there is no dispute whatsoever as to what district the three villages of Tudun Wada, Kabong and Dong belong. It is not the determination of the ownership per se that should be seen as the pre-occupation or concern of the 5th defendant. The question is the nature of the dispute in the three villages that has made the Commission of Inquiry necessary to go into the conduct of the claim of the three Districts of Du, Gwong and Gyel. That they made this claim of ownership is amply (sic) exemplified in the frustration during trial census of 1990 and Local Government of (sic) election of 1991. They were never held in the area because of the existing dispute, collection of community and cattle taxes suffered because of this. F*

*References were being meticulously made to Exhibits 2 - 5, 6, 7 8 and 9 as if this court is to decide and confirm the ownership of H*

*the village areas in dispute. No, I am to decide whether in view of the contents of those documents the 5th defendant is justified by law to establish the Commission of Inquiry.*

*Having held that the 5th defendant has the power to set up the Commission of Inquiry, it is needless to pronounce on the jurisdiction of the High Court as provided by S.6(b) and S.236 of the 1979 Constitution of the Federal Republic of Nigeria, as amended. These sections do not oust the jurisdiction of the Commission of Inquiry as set up and given Terms of Reference...*

The appellants, who were the plaintiffs at the trial court were not satisfied with the decision of the trial court dismissing their claims and appealed to the Court of Appeal which formulated two issues out of the many issues formulated by the parties for determination of the appeal. The two issues are as follows:-

*(1) Whether the Military Governor of Plateau State had powers to set up the Commission of Inquiry under section 2(1) of the Commission of Inquiry Law Cap. 25 of the Laws of Northern Nigeria, 1963 with the terms of reference to determine the ownership of Kabong, Tudun Wada and Dong. See grounds 4, 5, 6 and 7 of the appeal.*

*(2) Whether the Learned Trial Judge properly and/or adequately considered the claim of the plaintiffs and the totality of the evidence led by the parties before dismissing the plaintiff's claim. See grounds 1, 2, 3 and 4 of the appeal."*

The lower court resolved the above issues against the appellants and consequently dismissed the appeal resulting in the instant further appeal to this Court. The issues for the determination of which have been formulated by C. A. AJUYAH, ESQ, learned counsel for the appellants in the appellant's brief of argument filed on 21/4/04 and adopted in the argument of this appeal on the 24th day of April, 2009, as follows:-

*(i) Whether the Learned Justices of the Court of Appeal were right in holding that the phrase "any matter or thing" used in S. 2 of the Commission of Inquiry Law, Cap 25 of the Laws of Northern Nigeria, 1963 cannot be read ejusdem generic to the specific matters mentioned in the section?*

*(ii) Whether the Learned Justices of the Court of Appeal were right in holding that Governor of Plateau State did not act ultra vires*

*section 2(1) of the Commission of Inquiry Law, Cap. 25 Laws of Northern Nigeria, 1963 in appointing and authorizing the commission to inquire into ownership of the three villages?*

*(iii) Whether the 2nd issue formulated and determined by the Learned Justices did not lead to a miscarriage of justice of this case?"*

F. B. LOTBEN (MRS.), learned counsel for the 1st, 2nd, 3rd, 4th, 5th and 6th respondents also formulated three issues similar to those by the appellants, while the learned Senior Counsel for the 7th respondent, G. OFODILE OKAFOR Esq., SAN in his brief of argument filed on 13/10/04 adopted the three issues formulated on behalf of the appellants.

In arguing issues 1 and 2 together, learned Counsel for the appellants referred to the provisions of section 2(1) of the Commission of Inquiry Law and the terms of reference and submitted that section 2(1) of Cap 25, Laws of Northern Nigeria, 1963 does not confer jurisdiction on the Governor to appoint and authorize a commission to enquire into the ownership of land; that the subjects for which an enquiry can be appointed are clearly stated in S.2(1) of the Law which do not include ownership of land; that the phrase "any matter or thing" relates to "any matter or thing" ancillary to the matters or thing earlier referred to in the subsection; that by the canons of construction, a sentence must be read as a whole with each part being dependent on the other; that since section (2)1 consists of one sentence which gives single power, it has to be construed as a whole, relying on *Barclays Bank DCO vs Yesufu Alabi Adigun* (1967) 1 ANLR (pt. 3) 536. Finally, learned Counsel submitted that by sections 6(6) and 236 of the Constitution of the Federal Republic of Nigeria, 1979, it is the High Court of a state that has jurisdiction to hear and determine the issue of ownership of land and urged the court to resolve the issues in favour of the appellants.

On behalf of the 1st - 6th respondents, it is the submission of F. B. LOTBEN (MRS) in the brief of argument filed on the 24th day of October, 2005 that by the provisions of section 2(1) of the Commission of Inquiry Law, Cap 25, Laws of Northern Nigeria, applicable in Plateau State, the Governor has the powers to constitute a Commission of Inquiry to look into any issue for public welfare; that the ejusdem generis rule of interpretation is inapplicable to the provisions of section 2(1) of the said Cap 25 in that each item listed therein is

independent of the other due to the use of the word “or” after each item, relying on section 18(3) of Cap 192, Laws of the Federation of Nigeria, 1990; that there is no category or class into which things of the same kind as specified in the section can be fitted, relying on *Onasile vs Sami* (1962) NSCC 196 at 197; *FR.N vs Ifegwu* (2003) 5 B SCNJ 217 at 229; *Ndoma - Egba vs Ogor* (2004) 2 SCNJ 117 at 123; that the Governor can constitute a Commission of Inquiry to look into any issue that is a threat to peace and order in the state which may include disputes over communal land.

C On the issue as to the powers of the commission to determine ownership of land, learned Counsel submitted that the terms of reference of the commission was not to determine the ownership of individual/village land but to determine what districts the disputed land areas fell, for ease of administration; that the combined effects D of sections 6(5) (h), 6(6) (b), 6(4) (a) and 236 (1) of the 1979 Constitution point to the fact that the Governor of Plateau State can set up a Commission of Inquiry to look into ownership of disputed land areas under section 2(1) of Cap 25 supra to avoid any rift detrimental to the state and urged the court to resolve the issues against the E appellants.

On his part, G. OFODILE OKAFOR Esq, SAN, learned Senior Counsel for the 7th respondent agrees with the submission of learned Counsel for the 1st - 6th respondents that each item mentioned in section 2(1) of Cap 25, supra is independent of the others and that F the ejusdem generic rule is not applicable to the facts of this case; that section 236 of the 1979 Constitution does not confer exclusive jurisdiction on the High Court of a State, but unlimited jurisdiction; that the commission was established to determine under which district or G districts the three villages of Kabong, Tudun Wada and Dong belong, not ownership of a particular piece of land by any of the villages; that the determination is more administrative than judicial and urged the court to resolve the issues against the appellants.

H The two issues under consideration are the main issues in the appeal.

I had earlier in this judgment reproduced the provisions of section 2(1) of Cap 25 and the terms of reference of the Commission of Inquiry. The issue is simply whether the ejusdem generis rule of interpretation applies to the provisions of section 2(1) of Cap 25.

The lower courts have held that it does not.

Before determining the issue of the applicability of the ejusdem generis rule to the facts of this particular case, we need to know what is meant by ejusdem generis rule.

In Blacks Law Dictionary, 8th Edition, defines the rule thus:-

*“Under ejusdem generis cannon of statutory construction where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.”* B

There is however an exception to its application as stated in the said dictionary as follows:- C

*“The rule however does not necessarily require that the general provision be limited in its scope to the identical things specifically named. Nor does it apply when the context manifest a contrary intention. In the case of Buhari vs Yusuf (2003) 14 NWLR (pt. 841) at 486 - 487 this court, per Uwaifo, JSC stated the position of the rule as follows:-*

*“Ejusdem generic rule is an interpretative rule which the court would apply in an appropriate case to confine the scope of general words which follows special words used in a statutory provision or document within the genus of those special words. In the construction of statutes therefore, general terms following particular ones apply to such persons or things as are ejusdem generic with those understood from the language of the statute to be confined to the particular terms.”* E  
F

At the risk of repetition, let's take a close look at the provisions of section 2(1) of Cap 25, which calls for interpretation. It reads:-

*“The Governor may whenever he shall deem it desirable, issue a commission appointing one or more commissioners or quorum of them therein mentioned to hold a Commission of Inquiry into the conduct of any officer in the public service of Northern or of any chief or the management of any department of the public service or of any local institution or any matter in respect of which in his opinion an inquiry would be for the public welfare”* (emphasis supplied by me). G  
H

From the above provisions, it is clear that the Governor is empowered to appoint and authorize a commission to inquire into the conduct of:-

(a) any public officer in the public service of Northern Nigeria or

(b) any chief or

(c) the management of any department of the public service,

or

B (d) any local institution or

(e) any matter in respect of which in his opinion an inquiry would be for the public welfare.

***It is now settled law that the word “or” is disjunctive depending on the context as under certain circumstances the word “and” would be read in place of “or” so as to carry out the intention of the legislature. For the general interpretation of the word “or”, see section 18(3) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990 which states that “the word “or” and the word “other” shall, in any enactment, be construed disjunctively and not as implying similarity.***

***From the provisions of section 2(1) of Cap 25 supra, it is clear that items (a) - (e) exist independent of each other and do not constitute a class or category into which other similar things or items can be classified or fitted into so as to make the ejusdem generic rule of construction of statute applicable to the facts of this case.***

***It must be noted that the powers conferred on the Governor under the said section 2(1) is as wide as it is subjective in nature and intent. It is a power to be employed for the public welfare in the opinion of the Governor. I therefore agree with the lower courts that the expression “any other matter in respect of which in his opinion an inquiry would be for the public welfare” is very much independent of the preceding items and that the interpretation of that expression does not require the application of the principles of Ejusdem generic rule of interpretation of statute. To apply the ejusdem generic rule to section 2(1) supra, is to restrict the wide scope of powers conferred by the legislature therein on the Governor for the peace and good governance of the state. It follows therefore that the expression “any matter” used in section 2(1) of Cap 25 does not relate to nor is it limited to “any matter” ancillary***

**to matters earlier mentioned in the said section 2 sub-section 1 supra.**

It is the submission of learned counsel for the appellants that the provision of section 2(1) of Cap 25 does not empower the Governor to appoint a Commission of Inquiry to inquire into ownership of land as the power to inquire into land ownership belongs exclusively to the Court under sections 6(6) and 236(1) of the 1979 Constitution.

Now sections 6(6) (b) and 236 of the 1979 Constitution provide as follows:-

*“6(6) (b):*

*The judicial powers invested in accordance with the foregoing provisions of this section -*

*(b) Shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person ....”*

*“236(1):*

*Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a state shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty forfeiture, punishment or other liability in respect of an offence committed by any person.”*

There is no doubt at all that by the above provisions, the High Court of a State is constitutionally clothed with unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability privilege, interest, obligation or claim, is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. It is equally clear that the unlimited jurisdiction so conferred includes the jurisdiction to hear and determine land ownership when properly brought before the court.

***However, it is also very clear from section 2(1) of Cap 25 supra that the Governor of Plateau State has the power to***

***appoint a Commission of Inquiry to inquire into any matter including ownership of disputed land forming part of an administrative area in respect of which, in his opinion, an inquiry would be for the public welfare. It is my further view that a Commission of Inquiry appointed with the terms of reference as in the instant case does not interfere with the jurisdiction of the High Court as conferred by section 236(1) of the 1979 Constitution.***

On issue 3, learned Counsel for the appellants submitted that the lower court was in error when it formulated the second issue which it used in determining the appeal; that the formulation of that issue led to a miscarriage of justice; that the issue raised by the appellants in the lower court did not call for evaluation of evidence but whether exhibits 2 to 6 truly established the district to which the three villages belonged and that since the trial court failed to consider those exhibits, the lower court was under a duty to do so; that exhibits 2 to 6 clearly show that there is no dispute as to where the three villages belong and urged the court to resolve the issue in favour of the appellants.

On the other hand, learned Counsel for the 1st - 6th respondents submitted that the issue in question was formulated by the lower court having regard to the pleadings of the parties and the evidence thereon; that the court is empowered to formulate issues if it would serve the ends of justice, relying on *Edem vs Cannon Balls Ltd* (2005) All FWLR (pt.276) 693; that the lower court did consider exhibits 2 to 6 in its judgment particularly at page 267 of the record and urged the court to resolve the issue against the appellants.

Learned Senior Counsel for the 7th respondent submitted that the Court of Appeal is at liberty to formulate issues different from those formulated by the parties if that will serve the end of justice, relying on *Ogunbiyi vs Ishola* (1996) 6 NWLR (pt. 452) 12 at 24; that some of the grounds of appeal before the lower court, particularly grounds 1, 4, 6 and 7 questioned the evaluation of evidence by the trial court, contrary to the submission of learned Counsel for the appellants; that the lower court carefully evaluated the evidence on record and did find that exhibits 2 to 6 were tendered to show the districts to which Tudun Wada, Kabong and Dong belong, but that exhibits 8 and 9 show that there is dispute as to that fact and urged



the court to resolve the issue against the appellants.

**To begin with, it is not correct that the issues before the lower court as formulated by the appellants did not include evaluation of evidence. Issues are formulated from the grounds of appeal filed. In the instant case, appellants did not abandon any of the seven grounds of appeal filed out of which learned Counsel for the appellants himself formulated four issues.** B

The most important issue relevant to the question of evaluation of evidence is issue(i) which complains as follows:-

*“(i) Whether the Learned Trial Judge properly and/or adequately considered the claim of the plaintiffs before dismissing it?”* C

**The question is: How can a court “properly and/or adequately” consider the claim(s) of a party without resort to evaluation of the evidence produced at the trial in relation to the claim(s). There is no way issue (i) can be resolved properly and satisfactorily without evaluating the evidence called by the parties at the trial. It is very clear, therefore that appellant’s issue(i) called for evaluation of evidence including exhibits 2 to 6 tendered by the appellants and exhibits 8 and 9 tendered by the respondents in addition to oral testimonies of the witnesses.** D E

**The court, being an impartial arbitrator must always consider both sides of a case before coming to a conclusion not just the case of one of the parties as to do so will result in grave injustice.** F

**The next question is whether the issue 2 formulated by the lower court is really different from issue 1 formulated by the learned Counsel for the appellants and reproduced earlier in this judgment.** Since learned Counsel for the appellants is not complaining against issue 1 formulated by the lower court, it is irrelevant and therefore not reproduced. What is relevant is issue 2, which is as follows:- G

*“2 Whether the Learned Trial Judge properly and/or adequately considered the claim of the plaintiffs and the totality of the evidence led by the parties before dismissing the plaintiff’s claim.”* See grounds 1, 2, 3 and 4 of the appeal. H

**It should be noted that the lower court even indicated the grounds of appeal from which the issue in question arose.**

**It is not the case of the appellants that the said issue 2 so formulated by the lower court does not arise from the grounds of appeal filed by the appellants. In any event, it is settled law that an appellate court has the duty to formulate issues different from those formulated by the parties if it will serve the ends of justice.** See Ogunbiyi vs Ishola (1996) 6 NWLR (pt. 452) 12 at 24.

**Now looking at appellant's issue 1 earlier reproduced in this judgment and issue 2 formulated by the lower court supra, are the two issues not the same in reality? The answer is very much in the affirmative. They are the same. What the lower court did was simply to add the following words to appellants' issue 1 to, wit: "and the totality of the evidence led by the parties" to state the obvious.**

**As stated earlier in this judgment, you cannot determine the issue as to whether a party established his claim without evaluating the evidence both oral and document, any tendered in prove and defence of the claim.**

**It is in resolving the issue before it that the lower court proceeded to evaluate the evidence and in fact considered exhibits 2 to 6 which were tendered by the appellants and exhibits 8 and 9 tendered by the respondents.** The court found, inter alia, as follows:-

**"In this case, the appellants in proving their case, called evidence and tendered Exhibits 2 to 6 to show that the Districts to which Tudun Wada, Kabong and Dong belong had been defined; and that there was no dispute as to ownership in the three districts. The respondents called evidence in rebuttal and tendered Exhibits 8 to 9, showing details of protests, petitions and complaints received by the 5th Respondent from different various interest groups with respect to the areas in dispute."**

The court held that **"while it is true that Exhibits 2 to 6 tendered by the Appellants are subsidiary legislations showing or defining the Districts to which Tudun Wada, Kabong and Dong belong, that fact does not rule out the fact that there can now (sic) be dispute and indeed that there are now disputes, be it in respect of administration or ownership of the areas..."**

**Faced with Exhibit 2 to 6 and the volume and variety of com-**

*plaints and petitions contained in Exhibit 9, I do not think the 5th Respondent could reasonably and responsibly close his eyes to the disputes. He must do something and which he did by way of setting up the Commission of Inquiry now being challenged. On the whole, I think the Learned Trial Judge properly and adequately considered the claims of the Appellants and the totality of evidence before the court...*" See pages 267- 268 of the record. B

***I agree with the lower court completely as the above exercise and conclusion cannot be faltered in any way having regards to the evidence on record. It is therefore clear that the issue under consideration has no merit and is consequently resolved against the appellants.*** C

In conclusion, I find no merit whatsoever in this appeal which is consequently dismissed by me with N50, 000.00 costs in favour of each set of the respondents against the appellants. D

Appeal dismissed.

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### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother, Onnoghen JSC. I agree with it and for the reasons he has given I also find no merit whatsoever in this appeal which I hereby dismiss with N50,000.00 costs in favour of each set of respondents. E

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### **MOHAMMED JSC**

This appeal is against the decision of the Court of Appeal, Jos Division given on 22nd November, 2000, affirming the decision of the High Court of Justice Plateau State, Jos, on the interpretation and application of the provisions of Section 2 of the Commission of Inquiry Law of the Laws of Northern Nigeria applicable in Plateau State with regard to the powers of the Military Governor to establish a Commission of Inquiry under the law. The subject matter of the dispute was three wards or villages of Kabong, Tudun Wada and Dong. Two Districts in two Local Government Areas of Jos North and Jos South respectively of the State were each laying claim to the three wards or villages. The Military Governor of the State therefore G  
H

constituted a Commission of Inquiry under the Law with terms of reference to submit report to him. The Appellants, who felt aggrieved by the exercise of the powers of the Governor, challenged it at the High Court contending that having regard to the nature of the dispute, the provisions of the law were not applicable. The Respondents were of contrary view. The trial High Court after hearing the parties, found for the Defendants/Respondents. The Plaintiffs/Appellant's appeal to the Court of Appeal was dismissed hence, the present appeal.

The powers conferred on the Governor by Section 2 of the Law having regard to the subject matters upon which the Commission of Inquiry could be established are very wide particularly taking into consideration of the general powers to do so by the Governor – *"on any matter in respect of which in his opinion an inquiry would be for the public welfare."*

With this position of the law which is quite clear, I am in full agreement with my learned brother Onnoghen, JSC in his lead judgment just delivered, that the two Courts below were right in their interpretation and application of the law. Therefore, I also dismiss this appeal with, N50,000.00 costs to each set of the Respondents.

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### **CHUKWUMA-ENEH JSC**

I have read before now the judgment in this matter prepared by my learned brother Onnoghen, JSC and I entirely agree with him that the appeal has no merit and should be dismissed. I also dismiss it and endorse the order as to costs in the said judgment.

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### **MUNTAKA-COOMASSIE JSC**

I have read the lead judgment of my learned brother Onnoghen, JSC. I think it has been legally heart-warming reading in draft the painstaking, exhaustive and analytical lead judgment of my learned lord, Walter Onnoghen JSC.

The facts of the case leading to this appeal before us are clearly stated in the lead judgment. It will be a fruitless effort to attempt to reproduce and repeat them in my judgment. My learned brother Onnoghen, JSC, has done justice to the appeal to my admiration,

and in my view, has arrived at the correct decision. I only need, if I am permitted, to add a few complementary comments to highlight the genesis of the problems inherent in the nature of this type of matters.

After pleadings were filed and exchanged by the parties, the plaintiffs called three (3) witnesses, the respondents called two (2) witnesses. At the conclusion of the hearing and addresses by the learned counsel to the parties, the trial High Court dismissed the plaintiff's case. In dismissing the plaintiff's claim, the trial court found at pages 169 - 171 of the Record thus:-

*"That is where words or phrases used in the provision of a statute are clear and unambiguous. The Governor shall constitute a Commission of Inquiry to look into the conduct of any public service or any chief or the Management of any Department of the Public Service or of any local Institutions."* The phrases here, underlined are elastic and accommodative of further instances. For instance the phrase local Institutions will clearly cover for example. Local School Board, Local Governments, etc. the governor may set up commission of inquiry to look into any matter which in his opinion an inquiry would be for public welfare. To my mind, the phrase "any matter" is suggestive of those matters and problems, which in his opinion, enquiry would be for public welfare. For the public welfare to be achieved in any community there must be peaceful co-existence amongst the members of such community. There must be peace and tranquility, orderliness, obedience to constitute authorities etc.

From the evidence before me as given by PW1. PW2, DW3. DW1 and DW2 and DW3, I cannot pretend that there has not been disputes as to how the Village area or wards of T/Wada, Kabong and Dong can be effectively administered or managed by the District Head of Du (PW2) Gwong (DW1) and Gyez. I do not agree with the plaintiffs that there is no dispute whatsoever as to what district the three Villages of Tudun Wada, Kabong and Dong belong. It is not the determination of the ownership per se that should be seen as the main pre-occupation or concern of the 5th defendant. The question is the nature of the dispute in the three Villages that has made the commission of Inquiry necessary to go into the conduct of the claim of the three Districts of Du. Gwong and Gyel. That they made this claim of ownership is amply exemplified in the frustration during Trial

Census of 1990 and Local Government of election of 1991. They were never held in the area because of the existing dispute, collection community and cattle taxes suffered because of this. References were being meticulously made to Exhibits 2 - 5, 6, 7, 8 and 9 as if this court is to decide and confirm the ownership of village areas in dispute. No, I am to decide whether in view of this (sic) contents of those documents the 5th defendants is justified by law to establish the commission of Inquiry. Exhibit 8 and 9 provide details of such disputes, protests, petitions and complaints in the areas in the past. I particularly refer to evidence of the 6th Defendants who testified as DW2 and particularly to exhibit 9 and the following pages 167 - 173, 175 - 177, 182, 183, 187 - 197, 217 - 219, 223- 224, 237 - 243. 244 - 251, 268 - 269, 317 - 324.

Having held that the 5th Defendant has the power to set up the commission of inquiry, it is needless to pronounce on the jurisdiction of the high Court as provided by S. 6(6) and S. 236 of the 1979 Constitution of the Federal Republic of Nigeria, as amended. These sections do not oust the jurisdiction of the commission of Inquiry as set up and given terms of Reference” Per Galadima J. as he then was.

Being dissatisfied with the decision of the trial High Court, the plaintiffs appealed to the Court of Appeal, Jos, hereinafter called the lower court. After hearing both parties and their counsel, the lower court dismissed the appeal and affirmed the decision of the trial court. The court below says, Per Obadina JCA, at p 257 of the Record of proceedings:-

*“In the circumstances, it is my view that section 2(1) of the Commission of Inquiry Law. Cap 25. Laws of Northern Nigeria, 1963 confers jurisdiction on the Governor to appoint and authorise Commission to inquire into any matter including ownership of disputed areas (sic) I think the words, “such other courts as may be authorised by Law in section 6(5)(h) of the 1979 Constitution, within the context, covers and includes Commissions of Inquiry and tribunals as may be set up under a Law of a House of Assembly of a State; and it includes the Commission of Inquiry set under the Commission of Inquiry Law. Cap 25. Laws of Northern Nigeria in this case In that regard, it is my view that the Military Governor of Plateau State had powers to set up the Commission of Inquiry under section 2(1) of the Commission of Inquiry Law, Cap 25, Laws of Northern Nigeria*

*1963, as he did in this case, with the terms of reference to determine the ownership of Kabong, Tudun-Wada and Dong. My understanding of the terms of reference of the Commission of inquiry is that the Commission should find out to which District or Districts the areas in dispute, namely. Kabong, Tudun-Wada and Dong belong. The terms of reference do not seem to show that the Governor authorized or intended to authorize the Commission to declare the ownership of any of the disputed areas".* I shall revisit both decisions of the trial court below anon.

The Appellants who were again aggrieved with the judgment of the lower court which unanimously dismissed the appeal appealed to this court and filed a Notice of appeal containing six (6) grounds of appeal dated 18/12/2000. Both parties filed and exchanged their respective Briefs of argument, as could be recalled, the Appellants filed seven (7) grounds of appeal out of which they distilled three (3) issues for the consideration of the appeal. While the Respondents equally formulated three (3) issues for the determination of this appeal. In addition, the 7th Respondent (UJAH JAURO MAGAJI) distilled one (1) issue for the determination of this appeal.

On the issue of evaluation of evidence by the lower court and whether or not the lower court's formulation of issues was different from issue (i) of the Appellants were competently discussed by my learned brother adequately from pp 20 - 24 of the lead judgment. I do not think it is appropriate to reproduce the issues here. I shall only briefly comment on the issues in line with the treatment of them by my learned brother.

It is clear that the 1st set of Respondents i.e. 1st - 6th respondents, did not formulate any issue for determination, but argued the appeal on the basis of issues 1 and 3 formulated by the appellants in their brief of argument, whilst the 7th Respondents adopted the three issues formulated by the Appellant in his brief of argument dated 11/10/2004 and filed on the 13/10/2004.

At the hearing of this appeal, learned counsel for the Appellant, Mr. Ajuah, SAN, argued all the issues together after adopting his brief. He urged this court to allow the appeal. In respect of issues No.1 and 2 which he argued together, learned counsel cited the provisions of Section 2(1) and (2) of the Commission of Inquiry Law and submitted that the section does not confer jurisdiction on the

Government to appoint and authorise a commission to inquire into the ownership of land. The general power given to the Governor under Section 2 (i) does not include matters or things outside the jurisdiction of the Governor and outside the jurisdiction of the Commission. The phrase “any matter or things” relates to any matter which  
 B is ancillary to the matters or things referred in the subsection. Section 211 consists of one statement, it would have been different if each power were set out in separate subsection, he submitted.

It was also his contention that by normal canons of construction, a sentence must be read as a whole, each part of it being dependent upon the other. The case of Barclays Bank D. C. O. vs. Yusufu Alabi Adigun (1967) 1 All NLR (pt. 3) 536 was cited. It was his submission also that reference to Section 6 (4) and 5(1) of the 1979 Constitution of the Federal Republic of Nigeria and construing  
 D it as to contemplate a commission of inquiry as a court or Tribunal are erroneous. The Section did not contemplate the setting up of a commission of inquiry and did not vest the Governor the power to set up the commission of inquiry to determine ownership of the three villages.

On the third issue, the learned counsel submitted that the issue suo motu framed by the Justices of the lower court did not arise from the grounds of appeal filed and this has occasioned a miscarriage of justice. The issue raised by the plaintiff for determination in Court of Appeal, counsel continues, did not call for evaluation of the evidence  
 F but whether Exhibits 2 - 6 only established the Districts to which the three Villages belonged. Thus, the appeal was determined on issues not argued before them i.e., evaluation of evidence; and thereby dismissed the appeal on wrong premises. The cases of Ejowhomu vs. Edok - Eter Mandillas Ltd (1986) 5 NWLR (pt. 39) 1; and Chief  
 G Adekunle Oro vs. Joseph Akanbi Falade (1995) 5 NWLR (pt. 396) 385 at 402 were cited.

The counsel to the 1st - 6th Respondents devoted 3 - 7 pages of his Brief into reproducing all the grounds of appeal filed before the  
 H lower court. For which purpose, I do not know. What he called the facts of case were the said grounds of appeal. I must say, with the greatest respect, that the importance of a good Brief cannot be overstressed here. Not only that it helps us to understand the case presented by the parties, it also aids in the quick dispensation of cases.



Brief writing had been in practice for more than 25 years in our appellate courts and any solicitor/counsel who seriously desires to practice and appear before our appellate courts should by now know what a brief should contain amongst others:-

(1) Introduction - This will include a brief history of the case up to the point of appeal; B

(2) The facts of the case - This will include a brief statement of facts that happened in the lower court/court below, with specific references to the pages of the records;

(3) Issue or Issues for determination - This includes the issues framed for determination which must relate to the grounds of appeal and which, in the opinion of the counsel, are germane to the determination of the appeal; C

(4) Arguments on the issues formulated; and

(5) Conclusions and prayers. D

These items are by no means exhaustive, as other issues or subjects may be raised, i.e. preliminary objection etc. matters that are not relevant to the determination of the appeal should not be included in the Brief as the counsel to the 1st - 6th respondents did in this case. E

Now back to the arguments and submissions of the learned counsel in their respective Briefs. On issue one, which is the same as issue one (1) framed by the Appellants, the learned counsel submitted that by virtue of Section 2(1) of the Commission of Inquiry Law, the Governor has powers to constitute a Commission of Inquiry to look into any issue for public welfare. Counsel submits that each item specified in the Section is independent of the other as the word "Or" is issued, which means same should be construed disjunctively as provided by section 18(3) of Cap 192 LFN 1990 which states "the word "Or" and the word "Other" shall in any enactment be construed disjunctively and not as implying similarity. The cases of OWASILE vs. SANI (1962) NSCC, 196 at 197, and NDOMA-EGBA vs. CHUKWU OGOR (2004) 2 SCNJ 117 at 123 were cited. Counsel further submits that the phrase which states that "Or into any matter in respect of which, in his opinion an Inquiry would be for the public welfare" has given the Governor a wide power to exercise his powers as such which includes setting up a Commission of Inquiry to look into disputes between communities in the state especially when F G H

the Government received various petitions from different communities in the state complaining that another or other communities were claiming or trespassing into their own Land.

On the second issue, counsel referred to Section 6(4) of the Constitution of the Federal Republic of Nigeria 1979 as amended and submitted that the Governor has power to constitute a Commission of Inquiry. It was his contention that the terms of reference of the Commission was not to determine the Ownership of individual Villages Land but to determine what Districts the disputed land area fell for ease of administration.

On the 3rd issue, the learned counsel submitted that the lower court confined itself to the issues before it, as it meticulously looked into the grounds and issues formulated before deciding to re-formulate the issues. This he said is valid if it is necessary to serve the end of justice. See *Paul Eden vs. Cannon Balls Ltd & Anor* (Supra). The counsel points out that out of total nine (9) issues formulated two issues can effectively and adequately determine the appeal.

The two issues framed by the lower court covered all the issues framed, for example, counsel referred to Exhibits 2-6 tendered before the trial court which the court below found as a fact that the said Exhibits were tendered by the Appellants to show that the Districts to which Tudun Wada, Kabong and Dong belong had been defined and that there was no dispute as to their ownership. While the Respondents tendered Exhibits 8-9 to show that there were petition, protest and complaints to the 5th respondent, (Plateau State Government) with respect to the areas in dispute hence, the lower court was correct when it held that the 5th respondent had justification for setting up the Commission of Inquiry as he has power to do so. Learned counsel to the 7th respondent in respect to issue one (1) contended that each of the items stated in Section 2(1) of the Commission of Inquiry Law is independent of others. The powers are distinct and the clause “any matter in respect of which in his opinion an Inquiry would be for public welfare” cannot be read ejusdem generis. Counsel cited the cases of *Buhari vs. Yusufu* (2003) 14 NWLR (pt. 841) 446 at 496 - 497 and *Onakoya vs. FRN* (2002) 11 NWLR (pt.779) 595/647.

Learned counsel further submitted that the use of the words “any matter” in the said Section of the Commission of Inquiry Act

does not give room for ejusdem generic rule of Interpretation. See *Ndoma-Egba vs. Chukwuogor* (2004) 6 NWLR (pt. 869) 382 at 409.

Learned Senior Counsel submits further that the phrase “Or into any matter in respect of which in his opinion an Inquiry would be for Public Welfare” is sufficiently wide in scope to include Setting up a Commission of Inquiry into the dispute among communities in the state. Public Welfare invariably comprises such matter as peaceful and harmonious co-existence of members of different communities. Learned Senior Counsel refers to Section (2) of the Interpretation Act Cap 192 LFN, 1990 and submitted that power to maintain peace between warring communities is concomitant with ensuring Public Welfare. He then concluded that the combinations of Section 4(7) of the Constitution of the FRN 1979 clearly indicates that Government could constitute a Commission of Inquiry into any matter that threatens the peace and Order in its domain.

On the 2nd issue, Learned Senior Counsel submits that Commission of Inquiry Law Cap 25 is an existing Law by virtue of Section 274(1) of the 1979 Constitution.

Counsel referred to page 8 last paragraph where the Appellant argued that section 6(4) and 5(h) of the 1979 Constitution did not contemplate setting up of commission of Inquiry and did not authorise the Governor to set up the commission of Inquiry now in question. This argument, the counsel submits, is contrary to the case presented by the Appellants for adjudication, he referred to paragraph 11(a) of the claim at page 15 of the Record of proceedings, where it was conceded that the Governor was empowered to set up Commission of Inquiry but not the type set up with the impugned terms of reference. He then submitted that the Appellants could not be allowed, at this stage, to contend to the contrary.

On the 3rd issue, Senior Counsel after referring to the number of grounds of appeal and the 9 issues formulated submitted that the court below found as a fact that Exhibits 2-6 were tendered to show that the Districts to which Tudun Wada, Kabong and Dong belong had been defined but that by Exhibits 8 and 9, there are petitions and complaints received by the 5th respondent and the lower court therefore rightly concluded that 5th respondent had justification for setting up the Commission of Inquiry.

From the evidence of the witnesses to the parties in this appeal, there is claim and counter-claim as to where the four villages belong. While the Appellants tendered exhibits 2-6 to prove that there is no doubt as to where the Villages belong, the Respondents tendered Exhibits 7-8 to show that there was outcry and objections which  
 B have led to services of protest and petition forwarded to the 5th Respondent.

The trial court at page 170 of the records found thus:-

*"I do not agree with the plaintiffs that there is not dispute whatsoever as to what district the three Villages of Tudun Wada. Kabong and Dong belong. It is not the determination of the ownership per se that should be seen as the main pre-occupation or concern of the 5th defendant. The question is the nature of the dispute in the three Villages that has made the commission of Inquiry necessary to go into  
 C the conduct of the claim of the three Districts of Du, Gwong and Gyel". See p. 170 of the Record of proceedings.*

The lower Court in this respect also found as follows:

*"In this case, the Appellants in proving their case, called evidence and tendered Exhibits 2-6 to show that the Districts to which  
 E Tudun Wada. Kabong and Dong belong had been defined: and that there was no dispute as to ownership in the three districts. The Respondents called evidence in rebuttal and tendered Exhibits 8 to 9, showing details of protests, petitions and complaints received by the 5th Respondent from different various interest groups with respect to  
 F the areas in dispute.*

*While it is true that exhibit 2-6 tendered by the Appellants are subsidiary Legislations showing or defining the Districts to which Tudun Wada. Kabong and Dong belong, that fact does not rule out the fact  
 G that there can now be dispute and indeed that there are now dispute, be it in respect of administration or ownership of the areas".*

Now, these concurrent findings were not challenged before this court, and I therefore agree and hold that there were disputes as to which districts the three Villages in dispute belong. The question  
 H that comes to mind now is, has the 5th respondent the power to set up the Commission of Inquiry to investigate which districts the three Villages rightly belong, or to use the disputed language, which district has the ownership right over the villages?. The Appellants have strenuously argued that the 5th respondent has not power to set up a Com-

mission of Inquiry with the terms of reference to determine the ownership right over any of the villages, particularly when such head of claim was not provided for in Section 2(1) of the Commission of Inquiry Law Cap 25 Law Northern Nigeria that the general phrase “Or any other matter” is not independent of the instances stated in the Section. The respondents argued otherwise, not only that the 5th respondent has the power to set up the Commission of Inquiry but also to vest it with the power to investigate into the ownership of the three villages as it relates to issues of “a Public Welfare” as provided in Section 2(1) of the Law.

Section 2(1), for the avoidance of any doubt, of the Commission of Inquiry Law Cap 25 Law of Northern Nigeria provides as follows:-

*“2(1) The Governor may whenever he shall deem it desirable, issue a Commission. appointing one or more Commissioners or any quorum of them therein mentioned, to hold a Commission of Inquiry into the conduct of an officer in the Public Service of Northern Nigeria or any Chief or the management of any department of the Public Service, or of any local institution or into any matter in respect of which in his opinion, an inquiry would be for Public Welfare. The Governor may appoint a Secretary to the Commission who shall perform such duties as the Commission shall prescribe.”*

As to the purport of these provisions, the lower court held as follows:-

*“A breakdown of the provisions of Section 2(1) of the Law, as quoted above shows that the law empowers the Governor to appoint and authorise a Commission of Inquiry to hold a Commission of Inquiry:-*

*(i) into the conduct of any Public Officer in the Public Service of Northern Nigeria.*

*(ii) into the conduct of any Chief or;*

*(iii) into the management of any department of the Public Service, or*

*(iv) into the conduct of any local institution, or*

*(v) into any matter in respect of which in his opinion, an Inquiry would be/or Public Welfare.*

*In my considered View, the lower court was right in its interpretation or exposition of Section 2(1) of the law and I agree entirely*

*that there is no doubt that the 5th respondent has power to set up a Commission of Inquiry to look into the matters set out in Section 2(1) of the law, but the question is the issue of ownership of the three villages in this case within the matters set out in that provisions”.*

B As to the power of the 5th Respondent to set up a Commission of Inquiry, it is my view that section 2(1) of the Commission gives the 5th Respondent power to look into all the areas listed in the Section. In *Gaffar vs. Governor of Kwara State* (2007) 4 NWLR (pt.1024) 375 at 410 - 411, this court held as follows:-

C *“The Commission of Inquiry was set up by the 1st respondent principally, or merely to investigate the purpose of which two (2) different funds were used. In the first place, a State government has powers to set up a Board of Commission of Inquiry. See Section 7, Commission of Inquiry Law Northern Nigeria, 1963, applicable to*  
D *Kwara State. The 1st Respondent accepted the report and recommendations of the Commission and even issued a white paper in respect thereof. So pursuant to Cap. 25 the Laws of Northern Nigeria Vol. 1 1963 at page 329 also applicable to Kwara State. As amended by Edict No.4 of 1984, the Commission of Inquiry so set up, was, so*  
E *to speak of the State Law”. A creation ...”* Per Ogbuagu, JSC.

The Commission of Inquiry Law Cap 25 of the Law of Northern Nigeria 1963 applicable to Plateau State and being an existing Law by virtue of Section 274 of the 1979 Constitution is a State Law  
F under which the 5th respondent derived its power to set up the Commission of Inquiry.

The main point of contention of the appellants is that the issue of ownership of the villages is not one of the items listed in Section 2(1) of the law, and it cannot be covered by the phrase “into any  
G matter in respect of which in his opinion an Inquiry would be for Public Welfare” The provision being a single sentence, cannot be broken down into subheads and it is conjunctive, he cited the case of *Barclays Bank Ltd vs. Adigun* (Supra).

H While the Respondents argued that with the word “or” at the end of each item listed therein, the provisions are disjunctive, and that the determination of which three Villages the Districts belong would be for “Public Welfare”.

In my view, the word ‘Or’ used in a statute is constructed disjunctively while the word “and” is used conjunctively. The word “Or”

is used to create each item or subhead in a statute and it is therefore disjunctively used. In the case of *Ndoma-Egba vs Chukwuogor* (2004) 2 SCNJ 117 at 123, this court held Per Uwaifo JSC, as follows:-

*“In ordinary usage, the word “or” is disjunctive and “and” is conjunctive. But it is conceded that there are situations which would make it necessary to read “and” in place of “or” and vice versa. This may occur in order to carry out the intention of the legislature. See Maxwell on The Interpretation of Statutes, 12th Edn. Pages 232-234. Instances can be found in such cases as John G. Stein & Co. Ltd. v. O’Hanlon [1965] A.C. 890; R. v. Oakes [1959] 2 Q.B 350; and Re Mills [1967] 2 W.L.R. 580. Such interpretation may be quite useful in order to avoid absurd or impracticable results. Short of such dilemma, it is the law that the literal rule is the golden mate wand of interpretation when the words of a statute are plain and unambiguous. It is a fundamental rule that such words should be given their ordinary plain meaning. It is not such circumstances permissible to return from its meaning, even though it gives in reasonable or unfair result, and to go outside what the words themselves actually convey in an attempt to consider what other things they ought to be capable of meaning”.* See also Section 18(3) of the Interpretation Act Cap 192 LFN. 1990.

Applying the above principles enunciated, it is my considered view that the provisions of Section 2(1) of the Commission of Inquiry Law Cap 25 of the Law of Northern Nigeria 1963 should be read disjunctively and given its ordinary plain meaning, as it was not ambiguous.

Now, to the vex issue of whether the phrase “into any matter in respect of which in his opinion an Inquiry would be for Public Welfare” admit the issue of the ownership of the three villages in this case, we have to first know what does the word “Public Welfare” mean. In Black Law Dictionary, 8th Edition at page 1625, the word “Public Welfare” was defined as follows:-

*“A society’s well-being in matters of health, safety, order, morality, economic and politics”.*

As I have stated earlier in this judgment, there is no doubt that there is dispute as to which districts the three villages belong, this has led to protests which has threatened the peaceful co-existence of the Communities. Then, would it not be for Public Safety and Order for

this dispute to be resolved? I have no slightest doubt in my mind that the resolution of this dispute would be for Public Welfare. What I have been laboring to state is that by virtue of the provisions of section 2(1) of the Commission of Inquiry Cap 25 of the Laws of the Northern Nigeria 1963, the 5th Respondent has the power to set up  
 B a Commission of inquiry in respect of all the matters stated therein, and in all matters that may affect the Public Welfare of the people of the State, the subject matter of the power to set up a Commission of Inquiry vested on the 5th respondent is not restricted to the items  
 C listed in the said Section, but also apply to all matters in respect of which the State House of Assembly is competent to legislate on as provided in Section 4(7) of the 1979 Constitution of the Federal Republic Nigeria, which is in pari-materia with Section 4(7) of the 1999 Constitution which provides thus:-

D *“The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say”-*

*(a) any matter not included in the Exclusive Legislative List set out in part 1 of the Second Schedule to this Constitution;*

E *(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and (c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitu-*  
 F *tion”.*

It is for the above reasons that I resolve issues 1 and 2 in favour of the respondents.

On the 3rd issue, the lower court, having perused the grounds  
 G of appeal filed before it, and the issues for determination framed by all the parties, framed two issues on its own which were utilised in determining the appeal before it. The issue that is subject of attack by the Appellants is issue number two (2) which was framed thus:-

H *“Whether the learned trial Judge properly and/or adequately considered the claim of the plaintiffs and the totality of the evidence led by the parties before dismissing the plaintiff’s claims”. See grounds 1, 2, 3 and 4 of the appeal”.*

I have carefully gone through the grounds of appeal before the lower court and it is my considered view that the issues as framed



by the lower court captured the appellant's complaints and grudges. For instance, grounds 1 and 2 alleged on the part of trial court for not considering the reason i.e. the terms of reference of the Commission of Inquiry set up by the 5th respondent, and Exhibits 2 - 7 tendered by the appellants, while ground 3 alleged a misdirection on the part of the trial court for considering only Exhibits 8 - 9 tendered by the respondents without considering Exhibits 2 - 6 tendered by the appellant, and ground IV is on the alleged non-consideration of the appellant's witnesses evidence. B

It is absolutely correct as submitted by the appellants in their Brief that an appellate court is bound to consider all the issues put forward for determination by the parties, but this does not preclude an appellate court, where possible, to compress and merge the issues together for the neater, effective and easier determination of the case before it. C D

In the instant case, the lower court before compressing the issues into two said:

*"A critical analysis of all the issues formulated by the parties to this appeal seems to show that all the issues can be condensed into two effective issues that will adequately and sufficiently dispose of the appeal"* E

As I have stated earlier in this judgment, the issues as formulated by the lower court was reflective of the appellant's complaints as disclosed in the Notice of Appeal. It must also be noted that the court did not decide the case on this issue based on its opinion but on the submission of the learned counsel as contained in their respective briefs of argument. It is therefore a misconception for the appellants, with respect, to submit that the lower court dismissed the appeal on irrelevant issue which was not argued by the parties. F G

On this point, I hold that an appellate court is at liberty to formulate issues or reformulate issues different from those formulated by the parties if that will serve the end of justice and provided that the issues so formulated relate to the grounds of appeal and covered by the arguments of the parties in their respective briefs of argument. I am fortified by the decision of the Supreme Court in the case of Ogunbiyi vs. Ishola (1996) 6 NWLR (pt. 452) 12 at 24, Per Onu, JSC. H

For these humble reasons and the fuller reasons contained in

the highly educative lead judgment of my learned brother, Onnoghen, JSC, I agree that the appeal is devoid of any merit. I shall also accordingly dismiss the appeal I endorse the order as to costs.

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