

ALHAJI SHEHU ABDUL GAFAR
v.
THE GOVERNMENT OF KWARA STATE
THE MILITARY ADMINISTRATOR OF KWARA STATE
THE ATTORNEY-GENERAL OF KWARA STATE
SUPREME COURT OF NIGERIA

SC. 71/2002

Aloysius Iyorgyer Katsina-Alu JSC (Presided)
Mariam Aloma Mukhtar JSC
Mahmud Mohammed JSC (Read the Leading Judgment)
Walter Samuel Nkanu Onnoghen JSC
Ikechi Francis Ogbuagu JSC

9th February 2007

FUNDAMENTAL RIGHTS – Action for enforcement of Fundamental Rights -
Concurrent Jurisdiction of both State and Federal High Courts under 1979
Constitution

FUNDAMENTAL RIGHTS – Enforcement of – Claim brought under section 42(1) of the
1979 Constitution and Order 1, Rule 2 of the Fundamental Rights (Enforcement
Procedure) Rules, 1979 – Need for Principal Claim to emanate from fundamental
rights cause of action.

FUNDAMENTAL RIGHTS - Jurisdiction – Issue of –Effect of court lacking same

Issue:

Whether the Court of Appeal was right having regard to the reliefs sought by the
Appellant, to have held that the trial Federal High Court lacks the jurisdictional
competence to entertain the case.

Mohammed, JSC., (Delivering the Leading Judgment): This appeal against the
judgment of the Court of Appeal, Kaduna Division of 7-5-1997, arose from the
ruling of the Federal High Court, Ilorin delivered on 2-8-1995 dismissing a
preliminary objection raised challenging its jurisdiction in the following terms:-

- “1. The court lacks jurisdiction to grant the reliefs being sought by the
Applicant.”

Federal High Court, Ilorin under section 42(1) of the 1979 Constitution and Order 1, rule 2(1) and (6) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 by filing an ex parte application dated 29-5-1995 for leave to enforce his rights. Leave was granted by the trial court on 5-6-1995 while the main application on notice was fixed for hearing on 19-6-1995.

However, the Respondents on being served with the Appellant's application on notice, promptly filed a notice of preliminary objection challenging the jurisdiction of the trial Federal High Court to entertain the action. Consequently, the parties were duly heard on the preliminary objection on 19-6-1995 and in a considered ruling delivered on 2-8-1995, the learned trial Judge dismissed the Respondent's preliminary objection and held that the trial court has jurisdiction to entertain the action. Part of this ruling at page 71 of the record reads

"Earlier in this ruling, I found and held that the 1st and 2nd Applicants/Respondents are agents of the Federal Government and the 3rd Applicant is an agent of the 2nd Applicant/Respondent. In view of the foregoing, I find and hold that by virtue of section 230(1)(q),(r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993, this court has jurisdiction to entertain this action as filed.."

Dissatisfied with this ruling, the Respondent then appealed to the Court of Appeal, Kaduna, which after hearing the parties on a number of issues, allowed the appeal after considering the issue of jurisdiction alone. Umaru Abdullahi JCA (as he then was) in the lead judgment after thoroughly examining the issue of jurisdiction of the trial court having regard to the reliefs claimed by the Appellant in his action against the Respondents, came to the conclusion thus at pages 165 - 166 of the records:-

"In this appeal, the principal reliefs arose from the activities of a Commission of Inquiry established by Kwara State Government under its laws. I cannot find any statutory provisions conferring on the Federal High Court, jurisdiction to entertain the reliefs sought by the Respondent. I already found that the attempt by the learned trial Judge to expand the jurisdiction of his court to entertain the suit was based on complete misconception. In my view, the correct forum for the Respondent to seek his reliefs is the Kwara State High Court.

In the circumstances, the appeal is allowed. The order of the trial Federal High Court assuming jurisdiction to enter the suit is hereby set aside.

In its place, an order is hereby made that the matter be transferred to the Kwara State High Court through the Chief Judge of Kwara State for assignment.”

The present further appeal to this court by the Appellant is against the judgment of the court below.

From the seven grounds of appeal filed by the Appellant to question the decision of the Court of Appeal, a single issue for determination was framed in the Appellant’s brief thus-

“1. Whether the court below was right having regard to the claims of the Appellant, the state of the law and in all the circumstances of the case to have held that the trial court had no jurisdiction to entertain the case of the Appellant which was principally concerned with the complaint of lack of fair hearing and the observance of the rule of natural justice.

- (a) Whether the doctrine of covering the field was unavailing in the circumstances of the case
- (b) Whether from the totality of the facts, it could be said that the 2nd and 3rd Respondents were not agents of the 1st Respondent, in other words, whether there was true federalism in Nigeria at all times material.”

The Respondents in their brief of argument also identified only one issue for determination as follows:-

“Whether having regard to the reliefs sought by the Appellant the lower court was right to have held that the trial Federal High Court lacks the necessary jurisdictional competence to entertain the Appellant’s case.”

Taking into consideration that this appeal arose from a ruling on the preliminary objection challenging the jurisdiction of the trial Federal High Court to entertain the action of the Appellant having regard to the circumstances of the case and the reliefs claimed therein, the only real issue for determination in this appeal is, which of the two courts below is right – the Federal High Court which said it has

jurisdiction to hear the action or the Court of Appeal which ruled that the trial court has no jurisdiction.

However, before proceeding to resolve this issue, it will be helpful to recount the facts that forced the Appellant to run to the Federal High Court for remedy arising from the dispute with the Respondents. The Appellant was in the service of the government of Kwara State, the 1st Respondent, as its secretary to the government. While he was in the service, the Federal Government made grants to the Kwara State Government in the sum of N76 Million and N120 Million respectively to tackle ecological problems in the State as well as the expansion of the Ilorin Water Scheme. The handling and use of these grants was the subject of a Commission of Inquiry set up by the 1st Respondent, Kwara State Government. The first Commission of Inquiry was set up in April 1994 headed by Hon. Justice Ibiwoye. This Commission concluded its work but could not submit its report to the appointing authority. This led to the setting up of another Commission of Inquiry under Hon. Justice Salami to investigate the handling and use of the grants. The Salami Commission of Inquiry succeeded in completing its assignment and submitted its report to the government. The government considered the report and came out with a white paper on the report, which indicted the Appellant and directed him to pay the sum of N2 Million to the Kwara State Government, the 1st Respondent or on the failure to do so forfeit his personal assets.

Dissatisfied with the directive in the white paper, the Appellant decided to challenge it in the Ilorin Federal High Court where he filed his action under the Fundamental Rights (Enforcement Procedure) Rules, 1979, for redress asking for a total of 10 reliefs arising from the decision of the 1st Respondent in the white paper.

The lone issue on jurisdiction formulated in the Appellant's brief is virtually the same as that formulated in the Respondents' brief in support of the issue, learned Appellant's counsel after quoting the reliefs sought by the Appellant in his action, pointed out that the claims of the Appellant were mainly on the enforcement of his threatened fundamental rights. The Appellant maintained that his complaint in the action is that the Respondents or their agents, lacked the *vires* to try him for criminal offences except through the observance of due process, lacked the power to find him guilty of any criminal offence without due observance of the due process, find him guilty of any criminal offence without a proper or any trial at all, issue a white paper purporting to accept the finding of guilt against him without affording him any hearing on the said report; order the forfeiture of his assets without any hearing and be the complainants, the prosecutors and Judges all rolled into one in the matter. Relying on the cases of

Adeyemi v. Opeyori (1976) 9 - 10 SC 31 at 51; *Attorney-General, Kwara State v. Olawale* (1993) 1 NWLR (Pt. 272) 645 at 663 and *Anya v. Iyayi* (1993) 7 NWLR (Pt. 305) 290 at 663 - 664, learned Appellant's counsel argued that since it is the claim of the plaintiff that determines the jurisdiction of the trial court and not the interpretation placed on the claim by the opponent, the claim of the Appellant in the present case is within the jurisdiction of the trial court as found by that court having regard to section 42 of the 1979 Constitution which gave the trial Federal High Court and State High Courts concurrent jurisdiction on matters concerning Fundamental Rights. Commending the trial court for jealously guarding the jurisdiction under the Federal High Court (Amendment) Decree No. 60 of 1991 and section 230(1)(q), (r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993, learned counsel maintained that the trial court has the jurisdiction to entertain the case of the Appellant. The cases of *Ekekeugbo v. Fiberesima* (1994) 3 NWLR (Pt. 335) 707 at 726; *Okafor v. Attorney-General, Anambra State* (1991) 6 NWLR (Pt. 200) 659 at 679 and *Nalsa & Team Associates v. N.N.P.C.* (1991) 8 NWLR (Pt. 212) 652 at 677 were cited in support of his argument by the learned counsel for the Appellant who urged this court to allow the appeal.

For the Respondents, their learned counsel opened their argument by observing that parties cannot by connivance, acquiescence or collusion confer jurisdiction on a court if the decision in the case of *Okolo v. U.B.N. Plc* (2004) All FWLR (Pt. 197) 981, (2004) 1 SCNJ 113 is taken into consideration. Learned counsel further contended that since the report of the Commission of Inquiry set up by the 1st Respondent and the White Paper issued from the report forms the bedrock of the Appellant's claim, to which the claim relating to alleged breach of fundamental rights was appended, only the State High Court has jurisdiction to entertain the Appellant's action. Relying on the cases of *Ibrahim v. Ojomo* (2004) All FWLR (Pt. 199) 1285, (2004) 1 SCNJ 309; *Awuse v. Odili* (2004) All FWLR (Pt. 212) 1611; *Adebusuyi v. Oduyoye* (2004) 1 NWLR (Pt. 854) 406 and *Omoyemi v. Governor, Edo State* (2004) 5 NWLR (Pt. 865) 175. Respondents' counsel observed that the provisions of section 230(1)(q),(r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993, are quite plain requiring no further interpretation, stressing that these provisions nowhere conferred jurisdiction on the Federal High Court to entertain the Appellant's action. Concluding his submission on this issue, learned counsel maintained that since the claims of the Appellant arose out of the operation of Kwara State legislation, the Commission of Inquiry Law, which the State High Court can conveniently take together with the complaint on the alleged breach of fundamental rights, on the authority of the case of *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 547,

the trial court lacked jurisdiction to entertain the Appellant's case. Learned counsel therefore urged this court to dismiss the appeal.

The enforcement of fundamental rights under which the Appellant brought his action at the Federal High Court is provided for in Chapter IV of the 1979 Constitution which was then in force at the time of filing the action. Section 42 thereof confers special jurisdiction on the High Court.

This section states:-

“42 (1) Any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provision of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any rights to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.”

It is quite clear from the above provisions of the 1979 Constitution that enough provisions have been made in Chapter IV for the enforcement of fundamental rights. By these provisions, a person whose fundamental right is breached, being breached or about to be breached, may apply to a High Court in that State for redress. However, by Order 1, Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979, made by the Chief Justice of Nigeria under subsection (3) of section 42 of the 1979 Constitution quoted above which came into force on 1-1-1980, defines the word 'court' as 'the Federal High Court or the State High Court'. By this definition, in all matters dealing with the enforcement of fundamental rights, both the Federal High Court and the High Court of State within which the violation of these rights have been alleged to occur, have concurrent jurisdiction in such matters. An application may therefore be brought either to the Judicial Division of the Federal High Court in the State or the High

Court of the State in which the breach occurred, is occurring or about to occur. See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517. Therefore, in the instant case, as far as the law is concerned, on the complaint of the Appellant of an alleged breach of his fundamental right in Ilorin within Kwara State, the Federal High Court has concurrent jurisdiction with the State High Court to hear and determine the Appellant's complaint of any breach of such rights.

However, what had arisen in this appeal is whether or not having regard to the reliefs claimed by the Appellant in his action at the Federal High Court, that court has jurisdiction to entertain the action by virtue of section 230(1) of the 1979 Constitution as amended by the provisions of Decree No. 107 of 1993. The Appellant, pursuant to the leave granted him on 3-6-1995 by the trial court to enforce his fundamental rights, brought an application to enforce these rights and asked for the following reliefs:-

- "1. A declaration that the Respondents, jointly and severally have no right in law or under the Constitution to try and find the Applicant guilty of grave criminal offences without affording the Applicant a right to a hearing and without the observance of the Applicant's constitutional right to fair hearing and the rules of natural justice and that the purported guilt of the Appellant as found by the Justice Issa Ayo Salami's Commission of Inquiry (hereinafter referred to as the Commission) and confirmed in a white paper issued by the Respondent sometime in May 1995 is unconstitutional, against the rules of natural justice, against the African Charter of Human and Peoples Right (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria, 1990 and is therefore null, void and of no effect whatsoever.
2. A declaration that the Respondents have no power under the law and Constitution to purport to find the Applicant guilty of misappropriation of funds when the Respondents are the accusers, the prosecutors and the Judges all rolled into one.
3. A declaration that the Respondents cannot lawfully order the forfeiture of the Applicant's property or order him to pay money as a reparation for an offence of misappropriation of funds or criminal breach of trust without the observance of the due process and a pronouncement of guilt by a court of competent jurisdiction on the point.

4. A declaration that the purported trial and conviction of the Applicant by the Respondents and their agents when he was never accused of any offence nor any valid criminal allegation or charges levied against him is unlawful, unconstitutional, illegal, against the rules of natural justice and an affront to all standards of justice and is therefore null and void.
5. A declaration that the Applicant, as a citizen of Nigeria, cannot be made to suffer any disability in his property or person without the observance of due process and observance of his right to fair hearing.
6. A declaration that having regard to the mandatory provisions of section 2 of the Public Officers Protection Act, Cap. 379 Laws of the Federation of Nigeria, 1990, the Respondents or their agents have no power in law to inquire into, investigate or in any other way look into the official actions of the Applicant more than 18 months after ceasing to be a public officer in the employment of the Respondents.
7. An order directing the Respondents jointly and severally not to enforce, give effect to, carry out or in any other manner enforce the sanction contained in the white paper they issued on the purported findings of the Commission.
8. An injunction restraining the Respondent, jointly and severally, by themselves, their agents, privies, servants, panel, commission or any other person or body of persons howsoever, from implementing, enforcing, carrying out or in any other manner carry into effect the decisions contained in the white paper they issued as it affects the Applicant until the determination of this action.
9. An injunction restraining the Respondents, jointly and severally, by themselves, their agents, privies, servants, panels, commission or any person or body of persons however from taking any further steps that will affect, derogate from or in any way hinder the fundamental rights of the Applicants to a fair hearing, right of liberty and right against compulsory acquisition of his properties, moveable and immovable, as preserved under the Constitution of the Federal Republic of Nigeria, 1979 and the African Charter of Human and Peoples Rights aforesaid.

10. An order of this honourable court made pursuant to the provisions of Order 1, Rule 2(6) of the Fundamental Rights (Enforcement Procedure) Rules, 1979.”

With these reliefs sought by the Applicant at the trial court, learned counsel to the Appellant strongly argued that quite apart from the concurrent jurisdiction shared by the trial court with the High Court of Kwara State in the reliefs claimed by the Appellant under section 42 of the 1979 Constitution, the trial court also has jurisdiction to entertain the Appellant’s action by virtue of section 230(1)(q), (r) and (s) of the same 1979 Constitution as amended by Decree No. 107 of 1993 which radically expanded the jurisdiction of the Federal High Court. Learned counsel observed that the changes brought about to the jurisdiction of the Federal High Court by Decree No. 107 have resulted in making the decision of this court in *Tukur v. Government of Gongola State (supra)* completely irrelevant to the present case. What this court decided in that case per Obaseki JSC at pages 546 – 547 is –

“Thus, on the interpretation which I have given, any of the fundamental rights guaranteed by the provisions in Chapter IV of the Constitution if threatened or breached by any person in matters in respect of which the Federal High Court has jurisdiction in a State can be enforced and redress given by the Federal High Court in that State as such exercise will be within the jurisdiction granted by section 42(2)... Since the jurisdiction conferred by section 42(2) of the Constitution is a special jurisdiction and made subject to the provisions of the Constitution, the enforcement of the fundamental rights in matters outside the jurisdiction of the Federal High Court is not within and cannot be in the contemplation of the section. If any consideration and determination of the civil rights and obligations in matters outside the jurisdiction of the Federal High Court inextricably, involves a consideration and determination of the breach or threatened breach of any of the fundamental rights’ provisions, the exercise of jurisdiction which the Federal High Court does not possess is a nullity. The lack of jurisdiction inexorably nullifies the proceedings and judgment. It is therefore an exercise in futility.”

The question now is whether the amendment to section 230(1) of the 1979 Constitution by Decree No. 107 of 1993 has altered the law as stated in *Tukur v. Government of Gongola State (supra)*. This amended section 230(1) of the Constitution provides –

230(1)Notwithstanding anything to the contrary contained in this Constitution and in addition to such other

jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from -

- (q) The administration or the management and control of the Federal Government or any of its agencies;
- (r) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.
- (s) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.”

From the facts of this case which are not at all in dispute, the reliefs claimed by the Appellant in his application to enforce his fundamental rights at the trial court are centred on the recommendation of the Justice Issa Ayo Salami’s Commission of Inquiry established by the Kwara State Government in exercise of its powers under section 2 of the Commission of Inquiry Law of the State. The Appellant is not only quarrelling with the report of the Commission of Inquiry submitted to the Kwara State Government but also with the white paper issued by that government towards the implementation of the recommendation of the Commission of Inquiry. For this reason, I cannot see how the Appellant’s fundamental rights complained of in the present action can be satisfactorily enforced without the determination of the Appellant’s main complaint against his indictment by the report of the Hon. Justice Issa Ayo Salami’s Commission of Inquiry and the 1st Respondent’s government white paper issued on the report asking the Appellant to refund some amount of money or forfeit his assets to the 1st Respondent. All these complaints of the Appellant have their roots in the lawful exercise of the powers of the 1st Respondent as a State Government in the operation of the law applicable in the State. For this reason, it is not possible for

these main complaints of the Appellant to be brought within the expanded jurisdiction of the Federal High Court under section 230(1) of the Constitution as amended by Decree No. 107 of 1993. Although one of the reasons given by the learned trial Judge in holding that the trial court has jurisdiction to entertain the action of the Appellant, was his regarding of the Respondents as agencies of the Federal Government within the meaning of paragraphs (q), (r) and (s) of subsection (1) of section 230 of the 1979 Constitution as amended, it is quite clear that the learned trial Judge has no support for this rather strange view under the Constitution or any enactment. With due respect to the learned trial Judge, the 1st Respondent, Kwara State Government which constituted the Commission of Inquiry and issued a white paper on the report thereof, is not an agency of the Federal Government. For the same reason, the second and third Respondents who are operators of the machinery of the government of Kwara State, the 1st Respondent, cannot be regarded as agents of the Federal Government to justify the trial court assuming jurisdiction to entertain the Appellant's action. Quite contrary to the misconceived views of the learned trial Judge and the learned counsel for the Appellant on the effect of the expanded jurisdiction of the Federal High Court brought about by Decree No. 107 of 1993, that the decision of this court in *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 is not relevant to the present case. That decision is indeed very relevant and was rightly in my view, applied by the court below in allowing the Respondents' appeal, because the trial court has no jurisdiction to entertain the Appellant's action having regard to the nature of the dispute between the parties and the reliefs sought.

I have earlier in this judgment reproduced the 10 reliefs sought by the Appellant in his application brought under section 42(1) of the 1979 Constitution and Order 1, rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979. It is the law as decided by this court in a long line of cases on the subject that when an application is brought under the rule, a condition precedent to the exercise of the court's jurisdiction is that the enforcement of fundamental rights or the securing of the enforcement thereof should be the main claim and an accessory claim. That where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot be properly exercised as it will be incompetent. See *Madukolu & Ors. V. Nkemdilim* (1962) 2 SCNLR 314, (1962) 1 All NLR 587 at 595; *Basil Egbuonu v. Borno Radio Television Corporation* (1997) 12 NWLR (Pt. 531) 219 and *Tukur v. Government of Taraba State* (1997) 6 NWLR (Pt. 510) 549. The law in this respect is also trite that where ancillary or incidental or accessory claim or claims are so inextricably tied to or bound up with the main claims before the court in a suit, a court cannot

adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must necessarily involve a consideration or determination of the main claims. See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 546 - 547. In the instant case, it is not possible to determine the Appellant's claim that his fundamental rights have been breached by the Respondents without necessarily wading into the indictment of the Appellant in the report of the Commission of Inquiry and the white paper issued on the report by the 1st Respondent which is the main complaint of the Appellant in his action against the Respondents as the result of his being asked to refund N2 Million or forfeit his personal assets. For this reason, I entirely agree with the court below that the trial High Court lacks jurisdiction to hear and determine the Appellant's action as brought before that court. This being the position, the court below is also right in sending the case to the High Court of Kwara State which has the necessary jurisdiction to hear and determine all the claims of the Appellant.

In the result, this appeal fails and the same is hereby dismissed. The judgment of the court below and the orders made therein including the order of transfer of the Appellant's case to the High Court of Justice of Kwara State which has jurisdiction to hear and determine it, are hereby affirmed.

There shall be N10,000.00 costs to the Respondents against the Appellant.

Katsina-Alu, JSC: I have read before now in draft, the judgment delivered by my learned brother, Mohammed JSC in this appeal. I entirely agree with it and for the reasons he has given I also dismiss the appeal I abide by the order as to costs.

Mukhtar, JSC: I have had the advantage of reading in advance the lead judgment delivered by my learned brother, Mohammed JSC. I am in entire agreement with the reasoning and conclusion reached in the judgment, that the appeal lacks merit and substance and should be dismissed. The appeal is hereby dismissed. I am also in agreement with the consequential orders made in the lead judgment.

Onnoghen, JSC: The Appellant was the plaintiff before the Federal High Court holden at Ilorin in suit No. FHC/IL/M1/95 in which he claimed the following reliefs under the Fundamental Rights (Enforcement Procedure) Rules:

- "1. A declaration that the Respondents, jointly and severally have no right in law or under the Constitution to try and find the Applicant guilty of grave criminal offences without affording the Applicant a

right to a hearing and without the observance of the Applicant's constitutional right to fair hearing and the rules of natural justice and that the purported guilt of the Appellant as found by the Justice Issa Ayo Salami's Commission of Enquiry (hereinafter referred to as the Commission) and confirmed in a white paper issued by the Respondent sometime in May 1995 is unconstitutional, against the rules of natural justice, against the African Charter of Human and Peoples Right (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria, 1990 and is therefore null, void and of no effect whatsoever.

2. A declaration that the Respondents have no power under the law and Constitution to purport to find the Applicant guilty of misappropriation of funds when the Respondents are the accusers, the prosecutors and the Judges all rolled into one.
3. A declaration that the Respondents cannot lawfully order the forfeiture of the Applicant's property or order him to pay money as a reparation for an offence of misappropriation of funds or criminal breach of trust without the observance of the due process and a pronouncement of guilt by a court of competent jurisdiction on the point.
4. A declaration that the purported trial and conviction of the Applicant by the Respondents and their agents when he was never accused of any offence nor any valid criminal allegation or charges levied against him is unlawful, unconstitutional, illegal, against the rules of natural justice and an affront to all standards of justice and is therefore null and void.
5. A declaration that the Applicant as a citizen of Nigeria cannot be made to suffer any disability in his property or person without the observance of due process and observance of his right to fair hearing.
6. A declaration that having regard to the mandatory provisions of section 2 of the Public Officers Protection Act Cap. 379 Laws of the Federation of Nigeria, 1990, the Respondents or their agents have no power in law to inquire into, investigate or in any other way look into the official actions of the Applicant more than 18 months

after ceasing to be a public officer in the employment of the Respondents.

7. An order directing the Respondents jointly and severally not to enforce, give effect to, carry out or in any other manner enforce the sanction contained in the white paper they issued on the purported findings of the Commission.
8. An injunction restraining the Respondents, jointly and severally, by themselves, their agents, privies, servants, panel, commission of any other person or body of persons howsoever from implementing, enforcing, carrying out or in any other manner carry into effect the decisions contained in the white paper they issued as it affects the Applicant until the determination of this action.
9. An injunction restraining the Respondents, jointly or severally, by themselves, their agents, privies, servants, panels, commission or any person or body of persons howsoever from taking any further steps that will affect derogate from or in any way hinder the fundamental rights of the Applicant to a fair hearing, right of liberty and right against compulsory acquisition of his properties, moveable and immovable, as preserved under the Constitution of the Federal Republic of Nigeria, 1979 and the African Charter of Human and Peoples Rights aforesaid.
10. An order of this honourable court made pursuant to the provisions of Order 1, Rule 2(6) of the Fundamental Rights (Enforcement Procedure) Rules, 1979."

From the above, it is clear that the action arose from the recommendations of a Commission of Inquiry instituted by the Respondents, which recommendations were against the Appellant.

The Respondent filed a notice of preliminary objection challenging the jurisdiction of the trial court to entertain the matter on the following grounds:

- "1. All the claims and reliefs being sought by the Applicant are accessory rights arising from the report of Commission of Inquiry constituted by the 1st Respondent under section 2 of the Commission of Inquiry Law, Cap. 25 Laws of Northern Nigeria as amended by Kwara State Edict No. 4 of 1994.

2. The Applicant is challenging the legality of the said Commission of Inquiry set up by the first Respondent.
3. The Applicant is also challenging the validity and justification of the report of the said Commission.
4. The Respondents also allege that the report is a breach of the rules of natural justice.”

After hearing arguments, the learned trial Judge found no merit in the objection which he accordingly dismissed, resulting in an appeal to the Court of Appeal holden at Kaduna in Appeal No. CA/K/42/96, which was allowed on the 7th day of May, 1997. The present appeal is therefore against the said judgment of the Court of Appeal. In the Appellant’s brief of argument filed on 21/3/02, learned counsel for the Appellant, Yusuf O. Ali Esq., SAN has identified the following single issue for determination:

- “1. Whether the court below was right having regard to the claims of the Appellant, the state of the law and in all the circumstances of the case to have held that the trial court had no jurisdiction to entertain the case of the Appellant which was principally concerned with the complaint of lack of fair hearing and the observance of the rules of natural justice.
 - (a) Whether the doctrine of covering the field was unavailing in the circumstances of the case.
 - (b) Whether from the totality of the facts it could be said that the 2nd and 3rd Respondents were not agents of the 1st Respondent, in other words whether there was true federalism in Nigeria at all times material.”

It is clear that issues (a) and (b) are subsidiary ones, the main issue being as stated earlier. On the other hand, learned counsel for the Respondents in the Respondents’ brief of argument deemed filed on 11/10/06 by Saka A. Isau Esq. now SAN, Attorney-General of Kwara State, the following simple issue is identified for the determination of the appeal.

“Whether having regard to the reliefs sought by the Appellant the lower court was right to have held that the trial Federal High Court lacks the necessary jurisdictional competence to entertain the Appellant’s case.”

In arguing the appeal, learned counsel for the Appellant, by way of summary, submitted that the trial court has jurisdiction to try the case as presented before it particularly as the case was simply a claim for the enforcement of fundamental rights, that the doctrine of 'covering the field' was properly invoked in the case by the trial court and that the Court of Appeal had no justifiable reason to disagree with the trial court, having regard to the way the Military Government operated and the state of law, that the 1st and 2nd Respondents were agents of the Federal Military Government and that the States and their Military Administrators could not perform any of their constitutional duties without reference to the Federal Military Government unlike in civilian dispensation. Learned senior counsel then urged the court to allow the appeal.

It is settled law that courts are creatures of statute based on the Constitution with their jurisdiction stated or prescribed therein. That being the case, it is obvious that no court assumes jurisdiction except it is statutorily prescribed as jurisdiction cannot be implied nor can it be conferred by agreement of parties, see *Ariyo v. Ogele* (1968) 1 All NLR 1; *Timitimi v. Amabebe* (1953) 14 WACA 374; *Osadebay v. Attorney-General, Bendel State* (1991) 22 NSCC (Pt. 1) 137 at 160, (1991) 1 NWLR (Pt. 169) 525 at 572.

It follows that jurisdiction is a radical or crucial question of competence since if a court has no jurisdiction to entertain a matter, the proceedings is a nullity however well conducted and brilliantly decided as the defect in competence is not intrinsic but extrinsic to the adjudication. It is for this reason that jurisdiction is described variously as the livewire, blood, bedrock and/or foundation of adjudication and that once it is challenged, the issue must be settled first before taking any further step in the matter.

It is however, the case or claim of the plaintiff that determines the jurisdiction of the court, see *Adeyemi v. Opeyori* (1976) 9 - 10 SC 31, *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517, *Magaji v. Matari* (2000) FWLR (Pt. 18) 237, (2000) 5 SC 57, (2000) 8 NWLR (Pt. 670) 722 at 735. In the instant case, the claim of the Appellant before the trial court had earlier been reproduced in this judgment. There is no doubt that the trial court has jurisdiction to try matters relating to or grounded on fundamental human rights as constitutionally provided, under section 42 of the 1979 Constitution as applicable to the facts of this case. It is not disputed that the Commission of Inquiry whose recommendations are subject of the challenge at the trial court is a creation of State Law, particularly Cap. 25 Laws of Northern Nigeria, 1963 as applicable to Kwara State and as amended by Edict No. 4 of 1994.

It is however the contention of the Appellant that by virtue of the provisions of section 230(1)(q), (r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993, the trial court has the jurisdiction to entertain and determine the matter as filed. The section provides as follows:-

230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from -

(q) The administration or the management and control of the Federal Government or any of its agencies;

(r) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.

(s) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

As found earlier in this judgment, the case of the Appellant is grounded on the recommendations of the Commission of Inquiry set up by the 1st Respondent, government of Kwara State and under a State Law and the reliefs claimed in the action arose from the actions of the said Commission of Inquiry. It follows therefore that the enforcement of the Appellant's fundamental human rights is interwoven with the proceeding and recommendations of the Commission of Inquiry as there is no way by which the alleged rights can be enforced without a determination of how the rights were allegedly infringed by the Commission of Inquiry. That will surely call for a complete examination of overhaul of the

proceedings and or activities of the said Commission of Inquiry and it will be impossible to do that without stepping outside the limits of the jurisdiction statutorily conferred on the trial court by Decree No. 107 of 1993, *supra*.

The issue of the doctrine of covering the field does not really arise in this case, neither can it, by any stretch of imagination be seriously contested that the Respondents are agents of the Federal Government within the contemplation of the provisions of Decree No. 107 of 1993 *supra*.

In conclusion, I agree with the conclusion of my learned brother, Mohammed JSC that the appeal has no merit and should be dismissed. I order accordingly and abide by the consequential orders contained in the said lead judgment including the order as to costs.

Ogbuagu, JSC: The Appellant was the plaintiff/Applicant at the Federal High Court, Ilorin wherein he sought for a declaration for the enforcement of his fundamental right in respect of the Commission of Inquiry set up by the 1st Respondent. The Respondents filed a notice of preliminary objection challenging the court's jurisdiction to entertain and determine the suit. In a considered judgment, the objection was overruled by Jega J. (as he then was). Dissatisfied, the Respondents appealed to the Court of Appeal, Kaduna Division (hereinafter called 'the court below'), which allowed the appeal. It is against the decision of the court below, that the Appellant has brought the instant appeal.

Seven (7) grounds of appeal were filed from which the Appellant formulated a lone issue for determination, namely:

- "1. Whether the court below was right having regard to the claims of the Appellant, the state of the law and in all the circumstances of the case to have held that the trial court had no jurisdiction to entertain the case of the Appellant which was principally concerned with the complaint of lack of fair hearing and the observance of the rules of natural justice.
 - (a) Whether the doctrine of covering the field was unavailing in the circumstances of the case.
 - (b) Whether from the totality of the facts it could be said that the 2nd and 3rd Respondents were not agents of the 1st Respondent, in other words whether there was true federalism in Nigeria at all times material."

The Respondents have formulated also one (1) issue for determination, namely:

“Whether having regard to the reliefs sought by the Appellant the lower court was right to have held that the trial Federal High Court lacks the necessary jurisdictional competence to entertain the Appellant’s case.”

In my humble and respectful view, this appeal rests squarely and entirely, on the interpretation of Decree No. 107 of 1993 having regard to the reliefs sought by the Appellant. The questions that I or one may ask are:-

- (i) Was Kwara State Government *an agent* of the then Federal Military Government?
- (ii) Does section 42 of the Constitution of the Federal Republic of Nigeria, 1979 permit the Federal High Court to adjudicate on the subject matter of the suit or is the matter giving rise to the said suit, a State matter i.e. that concerns the State?

It need be stressed by me that the case is centred on the recommendation of the Commission of Inquiry set up by the Kwara State Government under the Law of the State. The court below held that all the reliefs sought before the trial court, *arose* from the action of the Commission of Inquiry. That there is no way the Appellant’s fundamental rights, could be enforced without a determination as to how the rights were infringed. That to be able to do this, the trial court, must examine the whole spectrum of the activities of the Commission. That where and when it started doing this, it would certainly be going beyond the limited jurisdiction of the Federal High Court as conferred by section 230(1) of Decree No. 107 of 1993.

These findings and conclusions, can hardly be faulted by me. However, the court below examined and dealt with section 230(1) (q), (r) and (s) of Decree 107, 1993 which it reproduced and held that they did not expand the jurisdiction of the Federal High Court to confer jurisdiction on it. For completeness and for the avoidance of any doubt, I will reproduce the said section and the relevant subsections. They read as follows:-

230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the

exclusion of any other court in civil causes and matters arising from -

(q) the administration or the management and control of the Federal Government or any of its agencies;

(r) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.

(s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

“Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.”

It is now settled that the duty of the courts, is to interpret the words contained in a statute or Constitution in their ordinary and literal meaning. Certainly, it is not the duty of the court, to go outside the words used and import an interpretation which may be or is convenient to it or to the parties or one of the parties. There are too many authorities as regards the interpretation of either a statute or Constitution. See *Curtis v. Stovin* (1869) 22 QBD 513, 519; *Alhaji Tukur v. Government of Gongola State*(1989) 9 SCNJ 1, (1989) 4 NWLR (Pt. 117) 517 at 547, 549; *Anasaldo Nig. Ltd. v. National Provident Fund Management Board* (1991) 2 NWLR (Pt. 174) 392, (1991) 3 SCNJ 22, *Kotoye v. Mrs. Saraki & Anor.* (1994) 7 - 8 SCNJ (Pt. III) 524 at 545 and recently, *Chief Okotie-Eboh v. Chief Manager & 2 Ors.* (2004) 12 SCNJ 139 at 165, (2004) 11 - 12 SC 174, (2004) 20 NSCQR 214, (2005) All FWLR (Pt. 241) 277, just to mention but a few.

So, as rightly stated by the court below, courts are creatures of statute and it is the statute that created a particular court that will also confer on it, its jurisdiction. The legislature, and not the courts, may extend the jurisdiction of any court and

it is the function of the court in its duty of interpretation, to *expound* the jurisdiction of the court and certainly, not to *expand* it.

I note that the reasoning of the learned trial Judge are:-

- (a) that by “the nature of the existing governmental structures” which according to him, did not make for the operation of an ideal operation of Federation, had ceased.
- (b) that the defendants/Respondents’ stand on agency relationship with the Federal Government is covered by section 230(1)(q), (r) and (s).”

However, the court below, rightly in my respectful view, held that the above reasoning was/is completely misconceived. That this reasoning, is clearly a glaring situation where the learned trial Judge, both expounded and expanded, the jurisdiction of his court and that he could not do that and in fact, was wrong to do that. At page 165 of the records, the court below, reproduced the pronouncement of Obaseki JSC, in *Tukur’s case (supra)*. It finally concluded again rightly and justifiably in my humble but firm view, that the reliefs sought by the Appellant, arose from the activities of the Commission of Inquiry. That it could not find any statutory provisions, conferring on the Federal High Court, jurisdiction to entertain the reliefs or the suit.

The learned counsel for the Appellant, in their brief, contends that the court below, took a narrow view of the claims which determine the jurisdiction of the court. In other words, he concedes that it is the claim of a/the plaintiff, that determines the jurisdiction of a trial court. It is his view (erroneously thought), that *Tukur’s case (supra)*, is inapplicable in their or this case leading to this instant appeal.

Learned counsel’s further submission is that the operational set up of a Military Government, is an issue that can be *judiciously noticed* and that the *mode* of operation of the Military Government, was unitary. My reaction, is that with respect, the submission, is totally irrelevant to the crucial issue in this appeal and what is more, it is completely misconceived. It does not arise.

It is the further submission in the Appellant’s brief that all superior courts of record guard their jurisdiction *jealously*. I agree as this is firmly settled. But it is further submitted that the trial court did not expand or expound it’s jurisdiction, but rather acted strictly within it under Decree No. 107 of 1993. I respectfully do not agree or subscribe to this submission as has been demonstrated by me in this judgment. I agree however, with the further submission of learned counsel that it

is only the clear words in a statute that can take away the ordinary jurisdiction of the court. I have said so earlier in this judgment.

It is his further submission that there is nothing in our statutes that preclude the Federal High Court from adjudicating on matters/matter concerning a State Government and that the Decree permit this. Let me say with respect, that this cannot be true because the Federal High Court has limited jurisdiction while by section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria, a State High Court, has 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.

It is further submitted that the Kwara State Government, was an agent of the Federal Military Government. In dealing with this submission, let me refer to and reproduce the provisions of section 2(2) of the said 1979 Constitution for a proper appreciation and holistic understanding of the said provisions. It reads thus:

“Nigeria shall be a Federation consisting of States and a
Federal Capital Territory.”

So, if I or one may ask, can the 1st and 2nd defendants/Respondents, strictly speaking, be agents? I think not. They are certainly not, at least, in the circumstances of this case where the State Government set up the Commission of Inquiry and later issued a white paper in respect of its report and recommendations.

The next question is, does the fact that the money allegedly misappropriated by the Appellant, was a special grant from the Federal Government; qualify the 1st and 2nd Respondents, to be its agent? I again, think not. Indeed, since it was a grant (did not say refundable grant), then in my humble and respectful view, the money was owned by the State Government for its use in the State. Afterall, a State Government has been bestowed with executive powers even by the 1979 Constitution. It is further submitted that section 42 of the 1979 Constitution allows the Federal High Court to adjudicate on the matter. That the 3rd Respondent is/was *an appointee* of the 2nd Respondent and is therefore, its agent and that the 2nd Respondent, was also *an appointee* of the Federal Military Government. Finally, that in a Military Government,

Federation gives way to a military system of government. I note that Decree No. 107 of 1993, did not mention any words therein of a unitary system of government. I therefore, agree with the submissions of the learned counsel for the Respondents in paragraphs 4 - 12 of their brief. They are sound.

In respect of the doctrine of “covering the field”, it is noted by me, that it is inappropriate. 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 or Commission of Inquiry. See section 7 of the Commission of Inquiry Laws of Northern Nigeria, 1963, applicable to 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 and as amended by Edict No. 4 of 1984, the Commission of Inquiry so set up, was, so to speak, a creation of the State Law. So, the reliance by the trial court on Cap. 389 of the Laws of the Federation, 1990, with respect, was erroneous and was a complete misconception.

Before concluding this judgment, I wish to stress by way of emphasis that jurisdiction implies the powers or authority of a court to adjudicate over a particular subject matter. As I already stated in this judgment, the nature of the claim, determines the jurisdiction of the court. Also to be always borne in mind is that in this country, all the courts without exception, have no power to prescribe jurisdiction to themselves. Neither do they have the power to expound or reduce their area of jurisdiction. See also *Tukur's case (supra)* at page 238 and 241 of the NWLR.

Comment: This is another case where if the Appellant had gone straight to the High Court after the decision of the court below, his case may have been concluded before now. I do not see anything special about the Federal High Court hearing and determining the case.

In conclusion, since the reliefs sought in the suit are anchored squarely on the said recommendations of the Commission of Inquiry, the inevitable conclusion, is that there is no how the alleged breach of the fundamental human rights of the Appellant, can be determined by the trial court, without the production of and examination of the said report or recommendation of the Commission of Inquiry. It is my respectful view and I so hold that the order of transfer of the suit to the High Court by the court below is right and correct. I too, affirm the said order or decision. This appeal has woefully failed and I too, dismiss it having had the advantage of reading before now the lead judgment of my learned brother, Mohammed JSC to which I subscribe. I abide by the consequential order in respect of costs.