

# **The Jurisprudential Justification of The Supreme Courts**

## **Decision In The Case Of: Olutola Vs. Unilorin:**

*Yusuf O. Ali Esq; SAN MCI Arb<sup>xxx</sup> xxx*

### **INTRODUCTION**

The Supreme Court of Nigeria on 17th December, 2004 delivered its judgement in the case of *Prof Aderemi Dada Olutola vs University of Ilorin*.<sup>1</sup> That decision is what this paper is meant to dissect because of its importance in the perennial dispute as to the amplitude and extent of the jurisdiction of the Federal High Court vis-à-vis the State High Court. The importance of the decision is also underscored by the fact that an important area of our jurisprudence, to wit the principle of Law which states that in the consideration of a case, the court will look at the same of the law when the cause of action arose and not the law as at when action is filed in court.

In order to appreciate the decision of the Supreme Court on this matter, we shall dwell on the facts leading to the case in some detail.

### ***FACTS OF THE CASE***

Prof. Olutola, the appellant was a Professor of Education Management and Planning at the University of Ilorin. He was a former Head of Department, Dean, Chairman Committee of Deans and Director of the Institute of Education at different times. An allegation of plagiarism was made against him and two others by Prof; then (Doctor) *Segun Ogunsaju* of the same Faculty of Education.

The authorities of the University set up a panel to look into the allegations against the appellant and a verdict of guilt was passed on him on the allegations. In October, 1989, the University authorities wrote a letter to the appellant removing him forthwith as the dean of the Faculty of Education and also barred him from holding any other elective post or head of department in the University throughout the remaining part of his tenure in the University.

The appellant was naturally dissatisfied with the action of the University authorities, he proceeded to file an action challenging the decision to remove him

as dean and barring him from holding other offices before the High Court of Justice in Kwara State presided over by *Ibiwoye J.*

After a full trial, the trial High Court Judge in a judgement delivered on 8<sup>th</sup> of May, 1996 found in favour of the appellant and granted the reliefs he claimed. The University was dissatisfied with the decision of the High Court and it proceeded to file an appeal against same before the Court of Appeal, Kaduna division. At the hearing of the appeal before the Court of Appeal, the court *suo motu* drew the attention of the counsel to the parties to a jurisdictional point and accordingly ordered the counsel to address it. on the point which was as follows:-

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“There is an issue that need to be considered. it is an issue of jurisdiction, which need to be addressed by both counsel. The parties should go and consider the provisions of Decree No. 107 of 1993 as well as the provisions of the Federal High Court Act, will need to be addressed on this important issue.”

Learned counsel to the parties addressed the court on this jurisdictional point and in a judgment delivered by the Court of Appeal on 22<sup>nd</sup> September, 1998, that court allowed the appeal of the University, holding that by virtue of the provisions of the amendment to section 230 of the 1979 Constitution introduced by Decree 107 of 1993, the High Court of a State had no jurisdiction to entertain the respondent's case since the appellant, the University of Ilorin is an agent of the Federal Government. Against the decision of the Court of Appeal, the present appellant who was the respondent at the Court of Appeal filed an appeal to the Supreme Court. It is instructive to note at this juncture that the appellant filed his case at the High Court in 1989 long before Decree 107 of 1993 came into operation.

However, the trial proper at the High Court commenced on 31<sup>st</sup> **March, 1994** after the Decree had become operational and the trial judge eventually delivered his judgment in **May, 1996.**

The issue of jurisdiction as it is apparent from the narrative above was never raised at the trial court but was raised even *suo motu* at the Court of Appeal. The above are the salient facts that formed the fulcrum of the decision of the Supreme Court in the matter.

### **DECISION OF THE SUPREME COURT**

The appellant at the Supreme Court submitted the following three issues for the determination of the court to with:-

“1. Whether the lower courts lacked jurisdiction as a result of the promulgation of Decree No. 107 of 1993 on 17th November, 1993 when the cause of action had arisen in 1989 and action on it filed before the trial court on 13th January, 1993.

2. Whether under the doctrine of judicial precedent or *stare decisis*, the Court of Appeal can refuse to follow its earlier decision, as done in this case, without setting it aside, when the issue for consideration and *rationes decedendi* are *in pari materia*.

3. Whether or not the appropriate remedy by the lower court should be setting aside the judgment of the lower trial court and, striking out the appeal.

The Supreme Court in a unanimous decision answered all the three questions above against the appellant and in favour of the respondent. The argument of counsel to the parties on the first issue as captured by *Ejiwunmi JSC* who read the leading judgment was as follow<sup>2</sup>:-

“From a very careful perusal of the argument in respect of the first issue in the appellant’s brief, it became manifest that the thrust of the complaint of the appellant appears to be that a person’s vested right falls to be determined by the law applicable when the cause of action arose. It is therefore submitted for the appellant that in the instant appeal the vested rights of the appellant that in the instant appeal the vested rights of the appellant took effect when the action was commenced at the Ilorin High Court, by virtue of the provisions of section 230 of the 1979 Constitution. It is therefore the submission of learned counsel for the appellant that the jurisdiction vested in the High Court of Ilorin to try and determine the action

before it cannot be taken away by any of the provisions of Decree No. 107 of 1993. In support of this submission, he referred to decisions of this court namely:

***Amavo Ltd. v Bendel Textiles Mills (1991) 8 NWLR (Pt 207) 37 at 51; Osadebay v A. G, Bendel State (1991) 1 NWLR (Pt. 169) 525 at 574; A.G, Federation vs Sode (1990) 1 NWLR (Pt. 128) 500 at pages 526 and 534; Turkur v Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 581; Mustapha v Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539; Garba v Federal Civil Service Commission (1988) 1 NWLR (Pt 71) 449.***

After the submission so made by learned counsel for the appellant that the court below erred in holding that the provisions of Decree No. 107 of 1993 had the effect of abrogating the jurisdiction of the Ilorin High Court to continue with the hearing of the action, also submitted that the court below did not advert nor did it consider what is meant by "action" before it arrived at its decision. In respect of this aspect of his submission, learned counsel made reference to cases wherein decisions of this court, the meanings of "action" and proceedings were stated. See ***Udoh v Orthopaedic Hospital Management Board (1993) 7 NWLR (Pt 304) 139 at 148.*** And he went on to refer to the different kinds of proceedings recognized within the jurisdiction of the Ilorin High Court. Also reference was made to the High Court (Civil Procedure) Rules of Kwara State. After this reference, it is the contention of learned counsel for the appellant that the court below did not seek to distinguish between "action" and proceedings before striking out the action before it.

The respondent in the brief filed on its behalf by its learned counsel commenced his arguments against that of the appellant by submitting that the court below was right to have raised ***suo motu*** the issue of jurisdiction when the appeal came before it. And in support of that contention, he referred to ***Oloba v Akereja (1988) 3 NWLR (Pt 84) 508 and western Steel Works Ltd v Iron and Steel Workers Union (1986) 3NWLR (Pt. 30) 617.*** With regards to whether the trial court had jurisdiction or not in view of the provisions of Decree No. 107 of 1993, particularly section 230 (1) (q) (r) & (s) thereof, the thrust of the submission of learned counsel for the respondent is that, the lower court was right to have held that the trial court no longer had jurisdiction to continue with the hearing of the matter upon the promulgation of Decree No. 107 of 1993. On this point, which he concedes that there is a general presumption against retrospectivity, yet he submits that such presumption must

be applied in the light of the language of the statute and the subject matter with which the statute is dealing or the circumstances of the case. In support of this proposition, reference was made to ***Ojokolobo v Alamu (1987) 3 NWLR Vol. 18 (1987) (PCII) (Pt. 61)377; Utih v Onoyivwe (1991) 11 NWLR (Pt. 166) 166; Egolum v Obasanjo (1999) 7 NWLR (Pt. 611) 423, (1997) 5SCNJ92***”

After setting out the argument as above, his Lordship considered the totality of the arguments and went into a thorough appreciation of the cases cited by the parties. His Lordship also considered the provisions of Decree No. 16 of 1992 which was a Decree that amended the Federal High Court Act, after which his Lordship at pages 45 1-452 of the report sets out **in extenso** the provisions of section 230(1) of the 1979 Constitution as amended by Decree 107 of 1993.

Therefore, his Lordship found as follows<sup>3</sup>:-

“It is manifest from the provision of section 230 (1) of Decree No. 107 of 1993 and which I have already set out in this judgment that the Federal High Court became vested with jurisdiction to have and determine causes and matters including actions for declaratory reliefs against the Federal Government and its agencies, thereby removing the trial of such actions by State High Courts, which, of course, included the High Court of Kwara State from the 17<sup>th</sup> of November, 1993.”

Further down in the judgment, his Lordship concluded thus<sup>4</sup>:-

“It is therefore not arguable that the court below seised of an appeal of this with those features and viewed from the background of the law cannot help but hold that the trial court was not vested with the jurisdiction to try and determine the cause presented to it by the appellant.”

His Lordship also considered the contention of the appellant counsel that the Court of Appeal failed to follow its earlier decision in the case of ***Tup Bottling Co. Ltd & Ors vs Abiola & Sons***<sup>5</sup>.

Ejiwunmi JSC came to the following conclusion on the point<sup>6</sup>:-

“This case was duly considered by the lower court and the court having decided that it was wrongly decided, felt that it does not have to follow it. It is therefore not right for learned counsel to the appellant to contend as if the court below deliberately failed to follow that decision. And in any event, courts that are of similar or concurrent jurisdiction are not bound to follow the decision of each other. Where courts of similar jurisdiction fail to follow previous

decision of the court the remedy for that situation is for the party aggrieved by it to appeal to a superior court. This appeal is not in any event aimed against the decision of the Court of Appeal in **7up Bottling Co. Ltd & Ors vs Abiola & Ors (supra)**. And I need say no more.”

Further in the judgment, his Lordship adverted to the contention of the appellant counsel on the applicability of the decision of the Supreme Court in the case of **Mustapha vs Gov of Lagos State**<sup>7</sup> his Lordship recorded his views of the matter in the following words<sup>8</sup>:-

“I have deliberately set out in so much detail the facts and the decision reached by this court to show that the learned counsel was obviously in error to have argued that the decision in **Mustapha ‘s case (supra)** is applicable to the instant appeal. A close reading of the facts and the decision thereon should have revealed to learned counsel that the issues canvassed in that case simply bear no correlation to the appeal in hand. The fulcrum of the case for the appellant in the **Mustapha case (supra)** is that his claim against the 3<sup>rd</sup> respondent can be heard by the High Court of Lagos State, whereas the 3<sup>rd</sup> respondent whose rights had become vested before the coming into force of 1979 Constitution, and that the right so vested cannot be challenged in any court of law by virtue of section 6 (6)(d) of the said Constitution. But in the case in hand, there was nothing that can be described as vested in the appellant in terms of what the court accepted as the vested rights of the 3<sup>rd</sup> respondent to remain as the Oloja of Igbogbo.

The question under consideration in the **Mustapha ‘s case (supra)** is, whether there is jurisdiction in the High Court of Lagos State to try causes or matters including declaratory actions against the Federal Government and or its agencies. I do not think it needs any authority to state that upon the coming into force of Decree No. 107 of 1993 whose long title “Constitution (Suspension and Modification) Decree. 1993”, that Decree which came into operation was endowed with the force of law was the only Constitution of the Federal Republic of Nigeria. In that Decree No. 107 of 1993, S. 230(I) of the 1979 Constitution was duly modified as stated above earlier in this judgment. What this means is that provisions of the 1979 Constitution, which gave unlimited jurisdiction to State High Courts to hear and determine both civil and criminal causes automatically lapsed or ceased to have effect or are impliedly repealed and abrogated by Decree No. 107 of 1993. See *Onyerna & Ors v Oputa & Ors. (1987) 3NWLR (1987) Shaw (1929) 3 K.B. 96 at 105* where Scrutton L.J. stated the principle of implied repeal by plain repugnancy. The provisions of Decree No. 107 of 1993 and those of the 1979 Constitution cannot stand together. I therefore must told that the **Mustapha’s case** is not of any assistance to the appellant.”

Lastly, the appellant's contention that the Court of Appeal ought not to have struck out the appellant's case was answered as follows by his Lordship<sup>9</sup>:-

"Having regard to the principles lucidly elucidated above, there can be no doubt that the trial of the action must be commenced de novo before the appropriate court of the Federal High Court. Since the trial court lacked the competence to adjudicate upon the latter, the court below was right to have struck out the case. As the appeal against that judgment is devoid of any merit, this appeal must be dismissed and the judgment of the court below striking out the case is hereby affirmed"

As alluded to earlier, the other four justices<sup>10</sup> who sat on the appeal concurred in the leading judgement delivered by **Ejiwunmi JSC**.

Tobi JSC also considered in great details the applicability or otherwise of the decision of the Supreme Court in the case of **Mustapha vs Gov. of Lagos State (supra)**. He also examined and applied the decision of the Supreme Court in the case of **Adah vs National Youth Service Corps**<sup>11</sup>, where the Supreme Court per Uwaifo JSC held that the law which support a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which is called upon to try the suit founded on the cause of action. He further held to use the words of Tobi JSC.<sup>12</sup>

"The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time that action was instituted and heard".

His Lordship, also expressed his views on the decision of the Court of Appeal in the case of **7Up Bottling Company Ltd & Ors vs Abiola & Sons (supra)** in the following elucidating words<sup>13</sup>: -

"What is the legal position in the light of the decisions of this court vis-à-vis the decision of the Court of Appeal in **7Up Bottling Co. Ltd. V Abiola and Sons Co. Ltd. (supra)**? Was that court wrong for taking the position it took, a position which is consistent with decisions of this court? In my humble view, the Court of Appeal was not in a position to follow the decision of **7Up Bottling Co.** This is because the decision is, with the greatest respect, not correct, vide the decision of this court considered above. The most current one of **Adah vs National Youth Service Corps (supra)** dealt with pending matter as was in **7Up Bottling Co.**, but this court did not see its way clear in saving the action in the High Court".

Finally, his Lordship at page 468 of the report stated:-

“And in the determination of that controversy, I come to the conclusion that the decision of ***Tup Bottling Co.*** is bad law as it conflicts with all known decisions of this court.”

Having considered in some details, the decision of the court on this case, the question that follows is whether there is any legal or jurisprudentially basis to support the judgement of the court.

### ***THE JURISPRUDENTIAL BASIS OF THE DECISION***

The reasons for the conclusion of the Supreme Court to the effect that the Kwara State High Court lacked jurisdiction to entertain the cases of the appellant were well articulated in the leading judgement of *Ejiwumi JSC*.

Firstly, his Lordship articulated his position on the issue of lack of jurisdiction of the trial High Court in the following words<sup>14</sup>:-

“The trial, after pleadings have been ordered, then proceeded before the trial judges sitting at Ilorin in the High Court of Kwara State until it was concluded with the judgment of the learned trial judge, which was delivered on the **18<sup>th</sup> of May, 1996**. Meanwhile, the Federal Military Government promulgated on the 17th of November, 1993 Decree No. 107 of 1993. By this enactment, the unlimited jurisdiction vested in State High Court to hear and determine both civil and criminal causes had by virtue of the new section 230(1) of Decree No. 107 of 1993 been modified by removing the State High Court and vesting in the Federal High Court the jurisdiction to hear and determine causes and matters including declaratory action against the Federal Government or its agencies. And the respondent undoubtedly, is one of such agencies. I also need to refer to Decree No. 16 of 1992 which was enacted by the Federal and which has the title “The Federal High Court (Amendment) Decree, 1992”. The provisions of this Decree, which were brought to the attention of the court below, also led to the decision of that court that the trial court had no jurisdiction to try the case”.

Further down in the judgement, his Lordship also held<sup>15</sup>:-

“It must be borne in mind as I have stated above that the trial court commended on the 31st of March, 1994 long after Decree No. 107 of 1993 was promulgated. What therefore fell squarely for the

determination of the court below was whether the trial court having regard to the provisions of Decree No. 107 of 1993 had the competence to try the case. It is manifest from the provision of section 230 (1) of Decree No. 107 of 1993 and which I have already set out in this judgment that the Federal High Court became vested with jurisdiction to hear and determine causes and matters including actions for declaratory reliefs against the Federal Government and its agencies, thereby removing the trial of such sections by State High Court, which, of course, included the High Court of Kwara State from the 17<sup>th</sup> of November, 1993.

To put the point aside, his Lordship tied up the issue as follows:-<sup>16</sup>

“It is also common ground that the respondent in the appeal, defendant in the trial court, is an agent of the Federal Government. It is therefore not arguable that the court below seised of an appeal of this with those features and viewed from the background of the law cannot help but hold that the trial court was not vested with the jurisdiction to try and determine the cause presented to it by the appellant”.

Honourable **Justice Tobi JSC** also provided the jurisprudential basis for his concurring judgment. His Lordship adverted to the case of **Adah vs National Youth Service Corps (Supra)** and adopted the conclusion of Uwaifo JSC in that case by stating as follows:-<sup>19</sup>

“On appeal to this court it was held (per Uwaifo JSC), that the law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard”.

His Lordship further at page 465 of the report also adopted the view of **Bello CJN**(as he then was) in the case of **Chief Utih vs Onoyivwe**<sup>18</sup> where the learned jurist held that:-

“... the relevant law applicable in respect of a cause or matter is the law in force at the time the cause of action arose and in the case of the law relating to jurisdiction when the action was instituted”.

To underscore the above point, his Lordship further made the point by holding

“Learned counsel for the appellant would appear to have used cause of act and jurisdiction as interchangeable terms in this appeal. That explains why he took the definition of an action in great details in issue No. 1 at page 6 to 10 of his brief the principle of law that the relevant law applicable in respect of a cause or matter is the law in force at the time the cause of action arose can only be extended to the of jurisdiction if at the same time the court had jurisdiction in the matter. In other words, the principle can only apply if the jurisdiction of the court coincides with the law in force at the time the cause of action arose which vested the court with jurisdiction”.

Finally on the point of lack of jurisdiction of the trial High Court to entertain the action of the appellant *ab-initio* Tobi JSC *ex cathedra* declared as follows:-<sup>21</sup>

“Let me apply the above principle to the raw figures in this matter by way of dates as done by Bello, CJN. It is common ground that the cause of action arose in October, 1989 and the appellant filed that action on 13<sup>th</sup> January, 1993. The Decree which vested in the Federal High Court the jurisdiction to entertain the matter as from 17<sup>th</sup> November, 1993 when Decree No. 107 was promulgated. Accordingly the Kwara State High Court had no jurisdiction to deliver judgment. The judgment which that court delivered on 18<sup>th</sup> May, 1996 some thirty months after the ceaser of its jurisdiction is a nullity ab initio”

*Edozie JSC* added his voice to the reasons for the decision of the Supreme Court in this matter by coming to the following conclusion:-<sup>21</sup>

“But it is a misconception I think, as the learned appellant’s counsel in the present appeal has erroneously thought that it is the same existing law at the time a cause of action accrued that determines the jurisdiction of the court at the time that jurisdiction of the court at the time that jurisdiction in invoked. The correct position of the law is that while the existing substantive law at the time a cause of action arose governs the determination of the action, it is the law in force at the time of the trail of the action base on the course of action that determines the court that is vested with the jurisdiction to try the case”.

His Lordship explained the rationale behind the above holding when he further espoused the position of the law on the point in the following illuminating words:-<sup>22</sup>  
“Thus, a State High Court may have the jurisdiction to entertain a

suit at the time the cause of action founded on that suit arose but at the time of the actual trial it is divested of the jurisdiction. That was exactly what happened in the present appeal. The appellant's cause of action arose in 1989 when the respondents by its council's letter Ref: VI/RO/5032 remove the appellant from, inter alia the office of the Dean of the Faculty. As at the point in time and even as at the time he commenced action in January 1993 before the High Court of Justice Kwara State, the existing substantive law then was the 1979 constitution which by section 235 thereof conferred unlimited jurisdiction on State High Courts. By virtue of that, the Kwara State High Court rightly assumed the jurisdiction to entertain the appellant's claims. But the trial continued till 8<sup>th</sup> May, 1996 when judgement was delivered. Before then, unlimited jurisdiction conferred on the State High Court had been curtailed by the Constitution (suspension and modification Decree) No. 107 of 1993 which amended section 230(1) of the 1979 constitution. The Decree, which has as its effective date, 17<sup>th</sup> November, 1993 divested from the State High Court and vested on the Federal High Court exclusive jurisdiction over the subject matter in dispute between the parties. Although a statute is prospective, and not retrospective since Decree No. 107 of 1993 made no special provision for cases already pending in court on its effective date of 17<sup>th</sup> November, 1993, those cases such as the one that gave rise to the instant appeal were caught by the decree thereby rendering the decision of the trial court on 8<sup>th</sup> May, 1993 in the instant case a complete Nullity. The court below was right in declaring the proceedings in the trial court a nullity as it had lost the jurisdiction to entertain the matter..

## **CONCLUSION**

In this paper, we have tried to review the decision of the Supreme Court in the case of ***Olutola vs University of Ilorin (supra)***. From the fact of the case and its antecedent as narrated in the paper, it is clear that the Supreme Court has now formally established that the law in operation when a cause of action accrue if it conflicts with the law that gives jurisdiction to the trial court at the time of the trial, the former will give way to the latter.

It is significant to note that a careful reading of the various ***dicta*** set out ***in extenso*** in this paper, provide the jurisdictional basis for the conclusion of the Supreme Court that the trial High Court had no jurisdiction to entertain the appellant's case having regard to the amendment effected to section 230 of the 1979 Constitution by Decree 107 of 1993. Therefore, there are grounds on which this judgment could be defended from the prism of jurisprudence.

## End Note

\* \* \* Senior Advocate of Nigeria, Member Institute of Chartered Arbitrators London and Senior Partner Yusuf O. Ali & Co; Ghalib Chambers, Ilorin.

1. (2004) 18 NWLR (Pt. 905) 416..
2. Pages 444-445 of the report
3. Page 453 O. Cit.
4. Page 454 Op. Cit.
5. (1996) 7 NWLR (Pt. 463) 714.
6. Page 454 Op. Cit.
7. (1987) 2 NWLE (Pt. 58) 539
8. Pages 457-458 Op. Cit.
9. Page 454 Op. Cit.
10. Onu, Katisna-Alu, Tobi and Edozie JJSC
11. (2002) 13 NWLR (Pt. 891) 639
12. Page 464 Op. Cit.
13. Page 467 Op. Cit.
14. Page 448 Op. Cit.
15. Page 453 Op. Cit.
16. Page 454 Op. Cit.
19. (1991) 1 NWLR (Pt. 166) 166
19. Page 465-466 Op. Cit.
21. Page 465-466 Op. Cit.
22. Page 470-47 1 op. Cit.

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It is significant to note that a careful reading of the various ***dicta*** set out ***in***

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14. Page 448 Op. Cit.
15. Page 453 Op. Cit.
16. Page 454 Op. Cit.
19. (1991) 1 NWLR (Pt. 166) 166
19. Page 465-466 Op. Cit.
21. Page 465-466 Op. Cit.
22. Page 470-471 op. Cit.