1. **PROFESSOR SHUAIB OBA ABDULRAHEEM (VICE-CHANCELLOR, UNILORIN)**
2. **COUNCIL OF UNIVERSITY OF ILORIN**
3. **UNIVERSITY OF ILORIN**
4. **B. S. BABA (ESTATE MANAGER, UNILORIN)**

V.

1. **PROFESSOR S.O. ODULEYE**
2. **PROFESSOR. A.S. ANJORIN**
3. **PROFESSOR A.E. ANNOR**
4. **DR. BODE OMOJOLA**
5. **DR. ROY NDOM**
6. **DR.O.O OBIELODAN**

COURT OF APPEAL
(ILORIN DIVISION)
CA/IL/50/2003
MUHAMMAD SAIFULLAHI NUMTAK-COOMASSIE, J.C.A. (Presided and Read the Leading Judgment)
ABOYI JOHN IKONGBEH, J.C.A. (Dissented)
TIJJANI ABDULAHI, J.C.A.
MONDAY, 17TH JANUARY, 2005

*ACTION - Parties to an action - Joinder of party as plaintiff to an action - Whether permissible - Requirements of - Order 12; rule 1, Federal High Court (Civil Procedure) Rules, 2000 and Order 8 rule 1, High Court of Oyo State (Civil Procedure) Rules considered.*

*ADMINISTRATIVE LAW – Government acts – Classification of.*

AGENCY- *Government agencies - University established by Federal Government- Vice Chancellor and University Council created by the University Act - Whether agencies of Federal Government within the meaning of section 251(1 )(p)(q)(r)(s), 1999 Constitution - Action against - Which court has jurisdiction to entertain.*

*CONSTITUTIONAL LAW - Government agencies - University established by Federal Government — Vice Chancellor and University Council created by the University Act — Whether agencies of Federal Government within the meaning of section 251(1 )(p)(q)(r)(s), 1999 Constitution -Action against - Which court has jurisdiction to entertain.*

*COURT - Federal High Court - Jurisdiction of under section 251(1)(p)(q)(r)(s), 1999 Constitution - Whether court must look at subject matter of claim to determine same.*

*COURT — Federal High Court - Jurisdiction of under section 251(1 )(p)(q)(r)(s), 1999 Constitution - Whether covers matters of declaration as to trespass and damages for trespass.*

*COURT-Jurisdiction of court- What determines.*

*EDUCATION — Government agencies - University established by Federal Government- Vice Chancellor and University Council created by the University Act - Whether agencies of Federal Government within the meaning of section 251(1 )(p)(a)(r)(s), 1999 Constitution - Action against - Which court has jurisdiction to entertain.*

*GOVERNMENT- Government acts - Classification of.*

*JUDGMENT AND ORDER - Proper order - Where court lacks jurisdiction to entertain suit - Proper order to make.*

*JURISDICTION - Federal High Court - Jurisdiction of over matters involving the Federal*

*Government or its agencies— Condition precedent to acquisition of jurisdiction - Section 251(1), 199 Constitution.*
*JURISDICTION - Federal High Court - Jurisdiction of section 251(1)(p)(q)(r)(s),1999 Constitution - Whether court must look at subject matter of claim to determine same.*
*JURISDICTION - Federal High Court - Jurisdiction of under section 251(1 )(p)(q)(r)(s), 1999 Constitution - Whether covers matters of declaration as to trespass and damages for trespass.*
*JURISDICTION - Jurisdiction of court - What determines.*
*PRACTICE AND PROCEDURE-Parties to an action-joinder of party as plaintiff to an action - Whether permissible -Requirements of - Order 12 rule 1 of the Federal High Court (Civil Procedure) Rules, 2000 and Order 8 rule 1, High Court of Oyo State (Civil Procedure) Rules considered.*
*PRACTICE AND PROCEDURE - Proper order- Where court lacks jurisdiction to entertain suit - Proper order to make.*
*STATUTE - "Any of its agencies" in Decree No. 107 of 1993 -Meaning of.*
*UNIVERSITY - University established by Federal Government -Vice Chancellor and University Council created by the University Act — Whether agencies of Federal Government within the meaning of section 251(1 )(p)(q)(r)(s), 1999 Constitution - Action against - Which court has jurisdiction to entertain.*
*WORDS AND PHRASES - "Administration and management" -What constitutes.*
*WORDS AND PHRASES - "Any of its agencies" in Decree No. 107 of 1993 - Meaning of.*
*SAND PHRASES - "Executive act" - What constitute.*
*WORDS AND PHRASES- "Executive and administrative function " — Meaning of.*

**Issues:**

1. Whether the trial court was right in holding that the alleged act of ejection/eviction of the respondents by the appellants is an administrative action and in holding that it has jurisdiction to entertain the case.
2. Whether the trial court was right in concluding that the respondents' action was properly constituted.

**Facts:**

The respondents were lecturers with the 3rd appellant, that is, the University of Ilorin. At some point in time the governing authorities of the University took a decision dispensing with the services of the respondents. The respondents challenged that decision in the Federal High Court in a suit. While that court action was pending, the 4th appellant, who was the 3rd appellant's Estate Manager, on the instruction of the other appellants forcibly evicted the respondents and their families from the quarters that they had occupied as staff of the University, throwing their belongings into the streets.

Aggrieved by this treatment, the respondents commenced an action at the Federal High Court, claiming:

a) A declaration that the ejection/eviction of the plaintiffs from their official quarters in the staff quarters of University of llorin on 15/1/2002 by the defendants and/or at their instance/instruction is wrongful, unconstitutional and amounts to trespass,
b) N10 million (ten million Naira) as general damages for trespass and or for the forceful and unlawful eviction/ ejection of the plaintiffs from their respective official quarters at University of

Ilorin Staff Quarters on 15/1/2002 by the defendants and/or at their instance/ instruction."

After pleadings had been filed and exchanged, the appellants raised a preliminary objection urging the court to strike out the respondents' action on the grounds, *inter alia,* that:

(1) the Federal High Court had no jurisdiction to entertain the subject-matter of the respondents' action; and

(2) the action was improperly constituted, the respondent, having improperly joined together as plaintiffs to bring it,

The Federal High Court heard the appellants' notice preliminary objection and dismissed same. The appellants were dissatisfied with the decision and appealed to the Court of Appeal which, in determining the appeal, considered the provisions of section 251(l)(p)(q)(r)(s) of the Constitution of the Federal Republic of Nigeria, 1999 which provide thus:

"251(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, the Federal High Court shall have and exercise jurisdiction to the exclusion if of any other court in civil causes and matters:-

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

q) 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;

r) 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; and

such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly."

**Held** *(Dismissing the appeal by majority of 2 to 1, Ikongbeli, J. C.A. dissenting):*

1. *On Jurisdiction of Federal High Court over matters involving the Federal Government or its agencies* -By virtue of section 251(l)(p)(q)(r)(s), 1999 Constitution, where the Federal Government or any of its agencies is a party to an action, a State High Court would no longer have jurisdiction in such matter notwithstanding the nature of the claim. In the instant case, the appellants are agents of the Federal Government and considering the claims before the trial court which is for a declaration and damages, the Federal High Court had jurisdiction to entertain the action. *[NEPA v. Edegbero* (2002) 18 NWLR (Pt. 798) 79 referred to and applied.] *(Pp. ]65-166, paras. H-G)*

2. *On Whether the University of llorin, its Vice Chancellor and Council are agents of the Federal Government* -Per MUNTAKA-COOMASSIE, J.C.A. at page 165, paras. A-E:

"From my findings earlier stated, it is clear that the appellants are agents of the Federal Government. The 3rd appellant was established by the Unilorin Act, while the 1st and 2nd were created by the said Act, in order to carry out the functions of managing and controlling the activities of the 3rd appellant. The position seems to have been settled in the case of *University of Abuja v. Ologe* (1996) 4 NWLR (Pt. 445) 706 at 709 when this court held as follows:

"By the provisions of Decree No. 106 of 1992 which established the

University of Abuja, the combined effect of section 230(l)(q), (r) and (s) and section 277(e) and (f) as amended by Decree 107 of 1993, the University of Abuja is an agency of the Federal Government."

The Court of Appeal went further, as to the meaning of agency, to hold as follows:

'It seems to me that the use of the expression any of its agencies in Decree No. 107 of 1993 is meant to cover all the organs established by law through which the Federal Government carries out its duties.'

I must say with tremendous respect that I bound by these pronouncements as same have not been overturned by the Supreme Court hence I have no hesitation in holding that appellants are agents of the Federal Government."

3. *On Joinder of parties –*

By virtue of Order 12 role 1 of the Federal High Court (Civil Procedure) Roles, 2000, all persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist whether jointly, severally or in the alternative, where, if such persons brought separate actions any common question off law or facts would arise and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to reliefs as he or they may be entitled to, without any amendment. *(P.*767, *paras. A-C)*

4. *On Requirements for joinder of parties –*

Under the provision of Order 8 role 1 of the Oyo State High Court (Civil Procedure) Rules, joinder of persons or parties in one action as plaintiffs as well as the joinder of causes of actions are clearly permissible. However, there are limiting factors or conditions which must be established by such plaintiffs to qualify for this joinder. These are:

i. that right to relief is in respect of or arises out of the same transaction, and
ii. that if separate actions were brought by such persons, a common question of law or facts would arise.

In the instant case, the respondents established the limiting factors stated above. Firstly, the right to relief of the respondents was their ejection/eviction from their quarters by the appellants, and secondly, if the respondents have filed separate actions the same or common question of law would arise for determination, i.e. whether the ejection/eviction of the respondents are valid in the circumstances of this case. *[Cross River State of Nigeria Newspaper Corp.* v. *Oni* (1995) 1 NWLR (Pt. 371) 270 referred to and applied, *Amachree v. Newington* (1952/1955) 14 WACA 97 referred to and distinguished.] *(P. 167, paras. C-H)*

5. *On Meaning of the expression "any of its agencies" in Decree No. 107 of 1993 -*

The use of the expression any of its agencies in Decree No. 107 of 1993 is meant to cover all the organs established by law through which the Federal Government carries out its duties. *[University of Abuja v. Ologe* (1996) 4 NWLR (Pt. 445) 706 referred to.] *(P. 165, paras. B-D)*

6. *On What constitute administration and management* - Administration is a large term in business and commerce. So too management. Etymologically, the words are synonymous in our context. Administration is the direction of the affairs of a business. Management is the art of practice of managing, especially a business. Both words have business as a common denominator. *(P. 181, paras. A-B)*

7. *On Classification of governmental acts* -
Governmental acts are classified into three, namely, legislative, executive or administrative, and judicial. Legislation and adjudication are not in the normal field of the executive arm of government or its agencies. It would make no sense to classify its acts according as they are legislative, executive or judicial. The term should be interpreted as referring to something more specific within the normal field of operation of the executive arm. *(P. 181, paras. F-G)*

8. *On Connotation of the term 'administrative' or 'executive' —*
The term administrative or executive is capable of bearing a wide range of meanings, some of which are remote from the problems raised by the classification of statutory functions. In such phrases as "administrative law', 'administrative tribunal' and judicial review of 'administrative action' it refers to broad areas of governmental activity in which the repositories of power may exercise every class of j statutory function. *(P. 182, paras. A-B)*

9. *On Meaning of executive and administrative function –*

*Executive and administrative function is the general and* detailed carrying on of government according to law, including the framing of policy and the choice of manner in which the law may be made to render \ that policy possible. *(P. 182, paras. C-D)*

DISSENTING OPINIONS OF IKONGBEH, J.C.A.:

1. *On What determines jurisdiction of a court* -
It is the plaintiff's writ of summons and the averments in his statement of claim that determines whether or not a given case comes within the jurisdiction conferred on a court of limited jurisdiction, like the Federal High Court. In the instant case, the plaintiffs' action was not aimed at challenging the validity of any act by the defendants in the administration of the 3rd defendant institution. Their action was aimed at declaring the forcible eviction of them in disregard of the due process by the defendants unlawful act and therefore, a trespass, and at claiming damages for; the hardship suffered as a result of the alleged trespass. Their action therefore does not fall within the ambit of section 251(1) to give the Federal High. Court jurisdiction. *[Adeyemi v. Opeyori* (1976) 9-10, SC 31 referred to.] *(Pp. 179-180, paras. G-A; C-E)* , Per IKONGBEH, J.C.A. at pages 172-174, paras. G-F:

> "The gist of learned counsel's argument is that, in the circumstances, the trial court, being a court of limited jurisdiction, lacked the competence to entertain the plaintiffs' action. This, according to counsel, is because the subject matter of the action, namely, "declaration as to trespass and damages for trespass", is not one of the matters specified in section 251(1) and

in respect of which exclusive jurisdiction is conferred on the Federal High Court. Counsel, relying on A.-G., *Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. Ill) 55, opined that where the claim of a party as endorsed on the statement of claim is not within the jurisdiction as conferred by the Constitution, a court would lack the competence to entertain the claim. Relying on *Minister for Works and Housing v. Tomas (Nig.) Ltd.* (2002) 2 NWLR (Pt. 752) 740, (2001) 48 WRN 119, 147, learned counsel submitted that the mere fact that the defendants were agencies of the Federal Government did not automatically confer jurisdiction on the Federal High Court. The learned trial Judge was, therefore, in counsel's view, wrong in assuming jurisdiction, having regard to the subject matter of the plaintiffs' action.

For the respondents, Mr. J. O. Baiyeshea submitted that the plaintiffs' action came squarely within the exclusive jurisdiction conferred on the Federal High Court by section 251(1) of the Constitution. Learned counsel supported the learned trial Judge's view that the act of the defendants complained of, i.e. the act of forcibly evicting the plaintiffs in the circumstances described in the statement of claim, was the type of executive or administrative act envisaged in subsection. It was counsel's contention that none of the cases cited on behalf of the appellants, which, he pointed out, are all Court of Appeal decisions, is relevant, because they no longer represent the correct position of the law, having regard to the Supreme Court decision in *N.E.P.A.* v. *Edegbero* (2002) 18 NWLR (Pt.798) 79, (2002) 12 SCNJ 173, which interpreted a section of the 1979 Constitution, *in pan materia* with 251(1) of the 1999 Constitution. Relying heavily on this decision counsel expressed the view that -

> '... whatever may be the nature of any* matter, once the Federal Government or any of its agencies are parties, the case must be handled by the Federal High Court.'

Learned counsel's trump card in support of his contention here appears to be in two passages from the lead judgment by Ogundare, J.S.C., at pages 183 and 185-186. He also referred to the contributing opinion of Niki Tobi, J.S.C., at page 188. In counsel's view, to take this case before the Kwara State High Court, as requested by the appellants would amount to taking the matter to the wrong forum.

I must first dispose of Mr. Baiyeshea's contention that whatever the nature of the subject matter of a case, once the Federal Government or any of its agencies is a party to that case, the case can only be handled by the Federal High Court. With all due respect to learned counsel, I think he has stated the matter too widely. *N.E.P.A. v. Edegbem* does not, in my view, support him in his contention here. That case did not decide that all that is required to confer exclusive jurisdiction on the Federal High Court is the mere fact that the Federal Government or any of its agencies is a party to the proceedings and that the subject matter of the proceedings is irrelevant. Indeed the opposite view was expressly held in that case. In this regard, see page 188 of the report, where Niki Tobi, J.S.C., held that -

'As I indicated above, another important area is the subject matter of the litigation. In my view, for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control

> of the Federal Government or any of its agencies. The matter must arise from the operation and interpretation of the Constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of executive or administrative action or decisions by the Federal Government or any of its agencies ... I agree entirely with the submissions of learned counsel for the respondent, Mr. R. A. Lawal-Rabana, that the plaintiff's claim should be looked at alongside with the provisions of section 230(1) of the 1979 Constitution.'

It is clear from these passages that it is a condition precedent to the acquisition of jurisdiction by the Federal High Court that the subject matter of the proceedings in question is one of the matters specified in the subsection. That, in His Lordship's judgment, is the determinant factor, not the fact that the Federal Government or any of its agencies is a party to the proceedings."

2. *On Condition precedent to acquisition of jurisdiction by the Federal High Court -*
A condition precedent to the acquisition of jurisdiction by the Federal High Court is the subject-matter of the proceedings in question and not the fact that the Federal Government or any of its agencies is a party to the proceedings if such subject matter is not one of those specified in section 251(1) of the 1999 Constitution, then it is not a matter over which jurisdiction exclusive or otherwise has been conferred on the Federal High Court. *[NEPA* v. *Edegbero* (2002) 18 NWLR (Pt.798) 79 referred to.]

3. *On What constitutes an executive act –*
An executive act or decision is one done or taken in lawful performance of a statutory function. In other words, the act or decision done or taken must one that is sanctioned by law and it must be related to the performance of statutory function for the; carrying on of government. The corrollary from all this is that any act or decision that is not for the purpose of carrying on government or performing] the specific function assigned to an agency of the executive arm, or is forbidden by law, cannot be' classified as an executive or administrative act or*'*, decision for the purposes of section 251(1) of 1999 Constitution. Where a person initiates court proceedings to challenging the action of another on the ground that it is forbidden by law and not necessary for the performance of that other person's statutory functions, such proceedings cannot be described as affecting the validity of any executive or administrative action or decision of that person. In the instant case, what the respondents were challenging before the trial court was not the validity of any act done or decision taken in furtherance of their statutory functions but the employment by the defendants of self-help in disregard of the due process of law, which is an act forbidden by our law. *[Ojukwu v. Gov., Lagos State*, (1985) 2 NWLR (Pt.10) 806; *Obeya v. Memorial Hospital v. A.-G., Fed.* (1987) 3 NWLR (Pt. 60) 325 referred to.} *(Pp. 182-183, paras. D-B)*

4. *On Proper order where Federal High Court lacks jurisdiction to entertain a case –*
By virtue of section 22(1) of the Federal High Court Act no cause or matter shall be struck out by the court merely on the ground that such cause or matter was taken in the court instead of the High Court of a State or of the Federal Capital Territory, Abuja in which it ought to have been brought, and the Judge of the court before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate High Court of a State or of the Federal Capital Territory, Abuja in accordance with rules of court to

be made under section 44 of the Act. *(P. 184, paras. D-F)*

**Nigerian Cases Referred to in the Judgment:**

*A.-G., Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. I11) 55 -
*Adeyemi v. Opeyori (*1976) 9-10 SC 31
*Amachree v. Newington (1952-1955) 14 WACA 97*
*Ayankoya v. Olukoya (1996) 4 NWLR (Pi. 440) 1*
*Ayeni v. University of Harm (2000) 2 NWLR (Pt. 644) 290*
*Cross River State Newspaper Corp. v. Oni (1995) 1 NWLR (Pt. 371)270*
*Dangida v. Mobil Producing Nigeria Unltd. (2002) 7 NWLR (Pt. 766) 482*
*NEPA v. Edcgbero* (2002) 18 NWLR (Pt. 798) 79
*Mil. Gov., Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621*
*Minister for Works and Housing v. Tomas (Nig.) Ltd. (2002) 2 NWLR (Pt.752) 740*
*National University Commission v. Oluwo (2001) 3 NWLR (Pt. 699)90*
*Obeya Memorial Hospital v. A.-G., Fed. (1987) 3 NWLR (Pt. 60)325*
*Ojukwu v. Gov., Lagos State (1985) 2 NWLR (Pt. 10) 806*
*University of Abuja v. Ologe 41996) 4 NWLR (Pt. 445) 706*

**Nigerian Statutes Referred to in the Judgment:**

Constitution of the Federal Republic of Nigeria, 1979. S. 230(1 )(q)-(s)
Constitution of the Federal Republic of Nigeria, 1999, S. 251(l)(p), (r)and(s)
Federal High Court Act, Cap. 134. Laws of the Federation of Nigeria, 1990, S. 22(2)

**Nigerian Rules of Court Referred to in the Judgment:**

Federal High Court (Civil Procedure) Rules, 2000, O. 12 IT. 1 and 2, 5 r. 3(1)
High Court of Oyo State (Civil Procedure) Rules, 1978, O. 8r.

**Books Referred to in the Judgment:**

De Smith's Judicial Review of Administrative Actions, 4th Edn P. 71
0. Hood Phillip's Constitutional and Administrative Law, 5th Edn.. p. 13

**Appeal:**

This was an appeal against the ruling of the High Court which! dismissed the appellant's preliminary objection. The Court of Appeal, in a majority decision of 2 to 1, Ikongbeh, JCA dissenting, 3 dismissed the appeal.

**History of the Case:**

*Court of Appeal:*

*Division of the Court of Appeal to which the appeal was brought:* Court of Appeal, Ilorin
*Names of Justices that sat on the appeal:* Muhammad Saifullahi Muntaka-Coomassie, J.C.A. *(Presided and Read the Leading Judgment)',* Aboyi John Ikongbeh, J.C.A. *(Dissented);* Tijjani Abdullahi, J.C.A.
*Appeal No.:* CA/IL/50/2003
*Date of Judgment:* Monday, 17th January, 2005
*Names of Counsel:* Yusuf AH, SAN *(with him,* R. O. Balogun, Esq. and A. A. Amoloye, Esq.) *-for the Appellants* J. O. Baiyeshea, Esq. *(with hint,* W. Ismail, Esq.) - *for the Respondents*

*High Court:*
*Name of the High Court:* Federal High Court, Ilorin *Name of the Judge:* Olayiwola, J.
*Suit No.:* FHC/1L/CS/29/2001
*Dale of Judgment:* Friday, 29th November, 2002

**Counsel:**

Yusuf Ali, SAN *(with him,* R. O. Balogun, Esq. and A. A. Amoloye, Esq.) *-for the Appellants*

J. O. Baiyeshea, Esq. *(with him.* W. Ismail. Esq.) *- for the Respondents*

JUNTA**KA-COOMASSIE, J.C.A. (Delivering the Leading judgment):** The respondents who were the plaintiffs before the Federal High Court Ilorin. claimed in their statement of claim dated 7/2/2002 as follows:

(a) A declaration that the ejection/eviction of the plaintiffs from their official quarters in the staff quarters of University of Ilorin on 15/1/2002 by the defendants and/ or at their instance/instruction is wrongful, unconstitutional and amounts lo trespass.

(b) N10 million (Ten million naira) as general damages for trespass and/or for the forceful and unlawful eviction/ejection of the plaintiffs from their respective official quarters at University of Ilorin staff quarters on 15/1/2002 by the defendants and/or at their instance/
instruction.

The defendants now appellants entered a conditional memorandum of appearances and then filed a statement of defence where issue of jurisdiction was raised. Thereafter, appellants by a notice of preliminary objection dated 14/3/02, prayed the lower court to dismiss and/or strike out the action on the following grounds:

"1. The court lacks the *vires* and/or jurisdiction to try this matter.
2. The suit is badly constituted.
3. The court cannot take cognizance nor adjudicate on the subject-matter of the suit.
4. The suit discloses no reasonable cause of action against the defendants."

The notice of preliminary objection was heard by the learned trial Judge, and in a well considered ruling dismissed same. The learned trial Judge held as follows:

"I agree with the respondents' counsel that the act of ejection is an administrative action by the respondents. The plaintiffs have claimed that the 4th defendant and others were acting al the behalf of the 1st, 2nd and 3rd defendants and a1! are agencies of the Federal Government. There is no denying that 1st to 4tli defendants are agencies of the Federal Government as I can only take judicial notice of this. Section 251(1) paragraphs p, q, r and s confer jurisdiction on the Federal High Court in respect of administrative actions by the Federal Government or any of its agencies..."

See pages 31 -32 or the record of proceedings. On the second leg of the objection, the learned trial Judge held, on page 34, that the plaintiffs suit was properly constituted. He held as follows:

"Furthermore, from the statement of claim it could be unified that the right to relief arises out of the same transaction - as plaintiffs complain of forcible ejection ' from their quarters and the same question of law ^-o be considered whether the defendants are justifiable *(sic)* falling the action complained of. I therefore reject the , contention that there was a misjoinder of parties ... I held that the preliminary objection is misconceived as is dismissed..."

See page 34 of the record of proceedings. It is against the above ruling that the defendants appealed to
this court. Henceforth the defendants are referred to as appellants. They filed a notice of appeal on 11/12/2002, which contains three grounds of appeal. Shorn of their particulars they are reproduced as
follows:

"1. The learned trial Judge erred in law when he ruled that he has jurisdiction to entertain the claim of the plaintiffs respondents which border on trespass.

2. The learned trial Judge erred in law in holding that the case of the plaintiffs borders on administration and control of a Federal agency and thereby came to a wrong conclusion.

3. The learned trial Judge erred in law in holding that the plaintiffs case was properly constituted thereby over ruling the defendants' objection."

In compliance with the rules of this court both parties filed and exchanged their respective briefs of argument. The appellants in their brief distilled two issues for our consideration of the appeal as

"1. Whether the court below was right in holding that the alleged act of ejection/eviction of the respondents by the appellants is an administrative action and in holding that it has jurisdiction to entertain the case.

2. Whether the court below was right in concluding that the plaintiffs' action was properly constituted." The respondents in turn formulated two issues for the [determination of this appeal thus:

"1. Whether the Federal High Court has jurisdiction to entertain the plaintiffs' case.

2. Whether the plaintiffs' case is properly constituted." My Lords before 1 embark on the consideration of this appeal it is pertinent at this juncture to state briefly the case as disclosed in the statement of claim. The plaintiffs are employees in the employment of the defendants whose employment was terminated as a result of which an action was instituted at the Federal High Court, Ilorin in suit No. FHC/IL/CS/29/2001 challenging the termination. While the action was pending the defendants proceeded to forcefully eject the plaintiffs from their respective quarters on 15/ 1/2002. In some of the paragraphs of the statement of claim it was averred thus:

"(a)l. The plaintiffs are all staffers of University of Ilorin when the 1st to 3rd defendants purported to have been sacked from service.

2. The plaintiffs herein are also plaintiffs with others in a pending suit No. FHC/IL/CS/29/2001 in this court challenging the said purported termination of their appointments.

3. The plaintiffs state that they have been in the service of the University for many years and have also lived in the official quarters for the several years. The plaintiffs shall give evidence in the trial to establish their long years of service in the University and residence for many years in the official quarters until 15/1/02 when they were forcefully ejected/evicted from the quarters by the defendants and/or at their instance or instruction.

25. Plaintiffs say that they were occupying the official quarters in the staff quarters of the University as part of their conditions of service with the 1st defendant which
make them to be so entitled. And the plaintiffs sha1j| contend that even if defendants had properly terminated the plaintiffs' appointment (which is not conceded) i defendants still had no right to forcefully eject the plaintiffs from the said quarters without following the due process of law.

27. The plaintiffs shall rely at the trial on all relevant State any Federal statutes and laws regarding their relation *(sic)* with the defendants and the flagrant violation off their rights by the defendants. The plaintiffs shall addition rely on the statute creating the University of Ilorin, that is, Unilorin Act and the revised regulations governing conditions of service for senior staff March, 1994 of the University."

The relevant paragraphs in the statement of defence are here with reproduced as follows:

"2. The defendants stale that the plaintiffs used to be employees of the 3rd defendant until their appointments were lawfully and legally brought to an end in May, 2001. Letters of cessation of employment written to the plaintiffs dated 22nd May, 2001 are pleaded.

3. The defendants aver that each of the plaintiffs was allocated official quarters in virtue *(sic)* of their employment with the understanding of parties that once the employment comes to an end they were to give up possession of the quarters not later than *90 days* after the contract of employment is at an end. The tenancy agreements executed by the plaintiffs are pleaded.

4. The defendants aver that after the determination of the employment of the plaintiffs, the defendants still issued them with notice to quit even though Clause 4.10.1 of the *University of Ilorin Senior Staff Regulation* makes it clear that the plaintiffs must give up possession of the quarters not later than *90 days* after their employment had come to an end. Notice to quit dated 24th May, 2001, are pleaded."

From the above expositions/averments as pleaded by the parties, the following facts are not in dispute:

(a) That the plaintiffs are employees of the 3rd defendant, namely. University of Ilorin, which was established by the University Act.

(b) The plaintiffs' right to stay in the official quarters is guided by the University of Ilorin Senior Staff Regulation, University of Ilorin conditions of service as provided by the Unilorin Act; which is a Federal legislation; and

(c) The 1st, 2nd and 4th defendants are agents/officers of the 3rd defendants, who carry out the functions whether administrative or otherwise.

Now coining to the arguments/submissions of the parties, 1 dare
say with respect, that the issues formulated by the parties, are with all intents and purposes the same. On issue No. 1, the learned counsel to the appellants K. K. Eleja, Esq., submitted that the lower court t?as wrong to have held that it has jurisdiction to hear this matter, as Kt was a pure case of trespass. He submitted that the issue of administration and control of a Federal agency are not in issue in this case. The learned counsel referred to section 251 (1) of the 1999 Constitution which set out the jurisdiction of the lower court and submitted that the lower court can only expound its jurisdiction and Knot to expand it. The provisions of this section are clear and unambiguous and the lower court ought to have given ordinary meanings to it. He cited the cases of *Dangida* v. *Mobil Producing Nigeria Unltd.* (2002) 7 NWLR (Pt.766) 482/502; *National & University Commission* r. *Oluwo* (2001) 3 NWLR (Pt. 699) 90 at

**111.**

On the 2nd issue for determination the learned counsel
submitted that this case was wrongly constituted. It is wrong for the plaintiffs to jointly institute this action as the dates and circumstances of the alleged ejection/eviction were quite different from one respondent to the other. The provisions of Order 12 rule (1) of the Federal High Court (Civil Procedure) Rules. 2000 do not apply to the case; and under the provisions of rule (2) of the said order, the trial court ought to have ordered a separate trial. He further submitted that there are three conditions that must be met before two or more plaintiffs could jointly file an action. These are:

1. That the right to relief claimed in the suit must be vested in the plaintiffs whether jointly, several!} or in the alternative.
2. The right to relief must be in respect of' arise out of the same transaction or series of transaction, and

3. If all the plaintiffs have brought separate actions a common question of law or facts would arise in all such actions.

He submitted that the above three co-terminus elements must exist before there could be a joint action by the plaintiffs. He fortified himself with the cases of: *Crass River Slate Newspapers Corporation v. Oni* (1995) 1 NWLR (Pt.371) 270, (1995) 1 SCNJ 218 at 233; The learned counsel cited the old case of *Amachree* v. *Newington* (1952-1955) 14 WACA Vol. XIV p. 97. In spite of the fact that he conceded that the rules of court considered in that case was different from the provisions of Order 12 of the Federal High Court (Civil Procedure) Rules, 2000. which is the rule applicable to this court, Finally, the learned counsel submitted that the respondents having failed to meet the three conditions stated above, the trial court ought; to have dismissed or struck out the action.

The learned counsel to the respondents Baiyeshea, Esq. submitted that the trial court was right in holding that it has jurisdiction to hear this case. He referred to the provisions of section 251 of the 1999 Constitution of the Federal Republic of Nigeria and submitted that the respondents particularly the 3rd respondent are agents of the Federal Government as such the proper court to institute this action is the Federal High Court. He referred to the case of I *NEPA* v. *Edegbero* (2002) IS^NWLR (Pt.798) 79, (2002) 12 SCNJ '" 173 and submitted that whatever be the nature of the claim, once the Federal Government or any of its agencies are parties the case must be handled by the Federal High Court; he also cited this courts decision in *Ayeni v. University of Ilorin* (2000) 2 NWLR (Pt. 644) 290.

On the 2nd issue for determination the learned counsel submitted that the action was properly constituted. He referred to the provisions of Order 12 rule 1 and Order 5 rule 3(1) of the Federal High Court (Civil Procedure) Rules, 2000 and submitted that the trial court properly applied same. He cited the case of *Cross River Suite Newspaper 'Corp. v. L. Om* (1995) 1 NWLR (Pt.371) 270,
(1995) 1 SCNJ 218 at 220 where a similar provision to Order 12 rule 1 was interpreted. Also he cited the case of: *Ayankoya v. Olukoya* 4 NWLR (Pt.440) 1, (1996) 2 SCNJ 292/302; and he then submitted finally that the ruling of the lower court is unassailable and should be affirmed.

I have closely set out the facts and the submissions of both Parties in order to clearly appreciate the issues involved in the appeal, in my findings earlier stated, it is clear that the appellants are agents of the Federal Government. The 3rd appellant was established the Unilorin Act, while the 1st and 2nd were created by the said _ in order to carry out the functions of managing and controlling Activities of the 3rd appellant. The position seems to have been (Jed in the case of *University of Abuja* v. *Ologe* (1996) 4 NWLR ,445) 706 at 709 when this court held as follows:

"By the provisions of Decree No. 106 of 1992 which established the University of Abuja; the combined effect of section 230(1) (q) (r) and (s) and section 277(e) and (f) as amended by Decree 107 of 1993, the University of Abuja is an agency of the Federal Government." The Court of Appeal went further, as to the meaning of agency, to hold as follows:

"It seems to me that the use of the expression 'any of its agencies' in Decree No. 107 of 1993 is meant to cover all the organs established by law through which the Federal Government carries out its duties." I must say with tremendous respect that I am bound by these pronouncements as some have not been overturned by the Supreme nit, hence I have no hesitation in holding that the appellants are agents of the Federal Government.

«„ Section 251(l) paragraphs p, q, r and s of the 1999 Constitution (of the Federal Republic of Nigeria provides thus:

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

(q) 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;

(r) 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; and

(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly."

The Supreme Court in the case *of Edegbero v. N.E.P.A. (supra)* 183 per Ogundare, JSC (as he then was of blessed memory) had considered these provisions of section 251 (1) paragraphs p, q, r and s and held as follows:

> "The action on hand came squarely within the provision of section 230(l)(s) of the 1997 Constitution. It would appear on the surface, therefore, that the action would be one within the exclusive jurisdiction of the Federal High Court. I have myself read the *proviso to* paragraphs (q), (r) and (s) of subsection (1) of section 230 all over again; I can find no such exception in it that would lead me to find to the contrary. A careful reading of paragraphs (q), (r) and (s) reveals that intention of the law makers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions in which the Federal Government or any of its agencies is a party While paragraphs (s) talked of actions for declaration or injunction, the *proviso* extended this to actions for damages, injunction or specific performance. It did not say, as the learned trial Judge with profound respect, appear to read into it that action for damages, injunction' or specific performance against the Federal Government or any of its agencies could still come before a State 1 High Court."

At page 185, the learned Justice of the Supreme Court continues and held as follows:

"... From what I have said earlier in this judgment, the aim of paragraphs (q),(r) and (s) of subsection (1) of] section 230 was to vest exclusive jurisdiction in the Federal High Court in matters which the Federal Government or any of its agents was a party.. A State High Court would no longer have jurisdiction in such matters not withstanding the nature of the claim." Applying this decision to the case at hand, it is clear that in view my earlier holding that the appellants are agents of the Federal Government, and considering the claims before the trial court which' is for a declaration and damages, the trial court was right in holding, as it did, that it has jurisdiction to entertain this case and I so hold. On the second issue for determination, I also entirely agree with the stance taken by the lower court that in view of the provisions of Order 12 rule I of the Federal High Court (Civil Procedure) Rules,

2000, this action was properly constituted. Order 12 rule 1 of the rules of the lower court provides thus:

> "(1) All persons may be joined in one action as plaintiffs in whom any right to relief (in respect of or arising out of the same transaction or in a series of transaction) is alleged to exist whether jointly, severally or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment."

In the consideration of a similar provisions as contained in Order 8 rule 1 of the Oyo State High Court (Civil Procedure) Rules, the Supreme Court in the case of *Cross State Newspaper Corp. v. J.L. Oni (supra)* at 220 held as follows:

> "The joinder of persons or parties in one action as plaintiffs as well as the joinder of causes of action are clearly permissible under the provisions of Order 8 rule 1 of the High Court (Civil Procedure) Rules, 1978 of Oyo State. The limiting factors or conditions must however be established by such plaintiffs to qualify for this joinder. These are:
>
> (1) That right to relief is in respect of or arises out of the same transaction; and
>
> (2) That if separate actions were brought by such persons, a common question of law or fact would arise."

With due respect, it is my respectful view that the respondents have established the limiting

factors as laid down in the above quoted decision of the Supreme Court. Firstly, the right to relief of the respondents is their ejection/eviction from their quarters by the appellants, and secondly, if the respondents have filed separate action the same or common question of law would arise for determination, i.e. whether the ejection/eviction of the respondents are valid in the circumstances of this case.

Honestly my Lords. I cannot see how the decision in the case of *Amachree* v. *Newington (supra)* cited by the appellants would be of any assistance to the appellants in this case. The said decision was arrived at based on the provisions of the rules of court that was quite different and distinct from the ones applicable to the lower court.

Finally and with all sense of responsibility, I hold that the particular appeal is lacking in merit and same is accordingly dismissed. For the avoidance of any possible doubt, the ruling of Olayiwola. J, dated 29/1 1/2002 is unassailable same is affirmed. the overall interest of justice 1 make an order for accelerated hearing of this mailer before the lower court.

Ten thousand naira (N10.000.00) costs is awarded in favour of the respondents.

ABDULLAH!, J.C.A.: I have had the advantage of a preview of the judgment of my learned brother. Muntaka-Coornassie, JCA just delivered, 1 am in entire agreement with him that the appeal lack merit and ought to be dismissed.

I am unable to agree with the learned counsel for the appellant that the issue of administration and control of a Federal agency are not in issue in this case. It is in deed very clear from the facts of the-case ably stated in the lead judgment that the said issue is a live! issue in this appeal.

The decision of the lower court that the appellants are agents of the Federal Government hence his jurisdiction to try the case at hand cannot be faulted. For this reason and the fuller reasons in the lead judgment of my learned brother. I too dismiss the appeal for lacking in merit. I endorse the consequential orders made in the lead judgment including the order of costs.

IKONGBEH, J.C.A.: The appellants, who were the defendants before the Federal High Court, sitting at Ilonn. Submitted two issues for consideration and determination by us. The issues are, as set out in the appellants' brief of argument,

" 1. Whether the court below was right in holding that the alleged act of ejection/eviction of the respondents by the appellants is an administrative action and in holding that it has jurisdiction to entertain the case.

2 . Whether the court below was right in concluding that, the plaintiffs' action was properly constituted." 1 had the privilege of reading in draft from the judgment just delivered by my learned brother. Muntaka-Coomassie. JCA. in resolution of those issues. While I agree with him that the second sue ought to be resolved against the appellants, I cannot say the ne of his treatment of the first one. I regret to say that I do no! with his conclusion that the plaintiffs'/respondents' action against the defendants/appellants arose from any of the matters specified in section 251(1 )(p) - (s) of our 1999 Constitution and could, therefore, be entertained by the Federal High Court, It cannot disputed that the Federal High Court, being a court of limited jurisdiction, which can entertain only cases relating to mailers specified in section 251, some of them repealed in the Federal High court Act, Cap. 134, Laws of the Federation, 1990, cannot entertain actions relating to matters outside that list. I shall endeavour to show that the plaintiffs' action in the present ease cannot be said to have arisen in relation to any of the mailers specified in the relevant section. This being the determinant issue in this appeal and since ii is my view that it ought to be determined in favour of the appellants. I their appeal, in my view, must succeed. That is why 1 find myself liable to subscribe to my learned brother's decision dismissing it. I propose to explain myself in detail in my judgment

appearing hereunder.

The facts that gave rise to the controversy in this appeal arc not disputed and can be found summarised by the learned trial Judge {P.P. Olayiwola, J.) at page 31 of the record. The plaintiffs were lecturers with the 3rd defendant, i.e., the University of Ilorin. At some point in time the governing authorities of the University look a decision dispensing with the services of the plaintiffs. The plaintiffs challenged that decision in the Federal Court in a suit with which we are not here concerned. While that court action was pending, the 4th defendant, who is the 3rd defendant's estate manager, on the instruction of the other defendants, went with what the trial Judge described as a horde of University security officials and forcibly evicted the plaintiffs and their families from the quarters that they had occupied as staff of the University, throwing their belongings into the streets. Aggrieved by this treatment, the plaintiffs commenced another action, which has led lo this appeal, again, in the Federal High Court, claiming -

"(a) A declaration that the ejection/eviction of the plaintiffs from their official quarters in the Staff Quarters of University of Ilorin on 15/1/2002 by the defendants and/or at their instance/instruction is wrongful, unconstitutional and amounts to trespass,

(b) N10 million (Ten million naira) as general damages for trespass and/or for the forceful and unlawful eviction/ejection of the plaintiffs from their respective of. quarters at University of Ilorin Staff Quarters on 15/1/2002 by the defendants and/or at their instance instruction."

After pleadings had been filed and exchanged the defendants raised a preliminary objection, urging the court to strike out plaintiffs' action on the grounds, inter alia, that (1) the Federal High Court had no jurisdiction to entertain the subject matter of the plaintiffs' action, and (2) the action was improperly constituted, the plaintiffs having improperly joined together as plaintiffs to bring it The learned trial Judge resolved both points against the defendants thus overruling their objection. On the first point he said at pages 31 - 33 of the record:

"I agree with the respondents' counsel that the act of ejection is an administrative action by the respondents" The plaintiffs have claimed that the 4th defendant and, others were acting at the behest of the 1st, 2nd and 3rd defendants and all are agencies of the Federal Government. There is no denying that 1st to 4th defendants are agencies of the Federal Government as I can only take judicial notice of this. Section 251(1) paragraphs p, q, r and s confer jurisdiction on the Federal High Court in respect of administrative actions by the Federal Government or any of its agencies.

I disagree with the application (sic) that this suit could not be instituted in the Federal High Court. That leg of the objection is therefore overruled." On the second point he said at pages 33 - 34:

"Order 12, r. 1 of the Federal High Court (Civil;
Procedure) Rules provides as follows:
'1(1) All persons shall be joined in one action as plaintiffs in whom any right to relief (in respect of or arising out of the same transaction or in a series of transactions) is alleged to exist whether; jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.' It is therefore apparent from the above that more than one plaintiff could sue in a suit before the court.

Furthermore, from the statement of claim it could be unified (sic) that the right to relief arises out of the same transaction - as plaintiffs complain of forcible ejection from their quarters and the same question of law would be considered whether the defendants are justifiable (sic) taking the action complained of. I therefore reject the contention that there was a misjoinder of parties."

It is against that ruling that the defendants have appealed to his court and raised the two issues highlighted at the beginning of his judgment. I shall take the second issue first. Mr. K. K. Eleja, who had prepared the appellants' brief of argument, submitted that fee learned trial Judge was wrong in holding that the plaintiffs' action was properly constituted. Learned counsel drew attention to the fact that, although the plaintiffs were all staff of the 3rd defendant and suffered the same treatment, the injury suffered by each was peculiar to him. Counsel submitted that therefore "there is no reason for the respondents to institute the same action." This, according to him, is because "the provisions of Order 12, r. 1(1) of the Federal High Court Rules, 2000, have no application ... because the reliefs do not arise out of the same transaction or in a series of transactions." The Judge should, therefore, in counsel's view, have ordered separate trials.

For the respondents Mr. Baiyeshea, in answer, submitted that it would be unreasonable and inexpedient in the circumstances of this case to insist that the plaintiffs institute separate actions. Learned counsel pointed out that the pleadings show that the plaintiffs had the same cause of action. Counsel drew attention to the fact that, to use his own words,

> "The unlawful and illegal ejection of the plaintiffs from their official quarters at the same time and in the same manner by the same persons (defendants) is the cause of action and this is well expressed in the plaintiff statement of claim and reply to the statements defence."

In the circumstances, acceding to the appellants' request for separate trials, counsel warned, would encourage rather than avoid a multiplicity of actions, which Order 12, rule 1 of the Rules of the court seeks to discourage.

I have no hesitation whatsoever in agreeing with Mr. Baiyeshea for the respondents, that this issue ought to be resolved against the appellants. I cannot support the appellants in their contention that the respondents' action should be struck out on grounds of misjoinder In the first place, striking out a suit, as requested by them is not the inevitable answer to misjoinder of parties. The worst that could happen is the ordering by the court of separate trials. Even that not, in my view, an appropriate order in this case. This is because do not think there has been a mis-joinder of plaintiffs. I agree with learned Mr. Baiyeshea that the learned trial Judge was right when he held that there was nothing wrong in the way in which the plaintiffs had teamed together to sue the defendants for what the former regarded as trespass. As the learned Judge rightly pointed out, the acts of the defendants complained of were done in one transaction or, at the most, a series of transactions. As Mr. Baiyeshea has pointed out, the complaints of each plaintiff were similar in nature to those of the others and were against the same set of defendants. Moreover it is clear from the plaintiffs' pleadings that the same issues of law and facts were likely to arise in respect of the case of each plaintiff, The learned trial Judge, in my view, correctly interpreted and applied the provisions of Order 12, rule 1 of the Rules of the Federal High Court when he refused to order separate trials.

Accordingly, I, like my learned brother, resolve this issue against the appellants.

I now come to the first issue. The gist of learned counsel's argument is that, in the circumstances, the trial court, being a court of limited jurisdiction, lacked the competence to entertain the plaintiffs' action. This, according to counsel, is because the subject matter of the action, namely, "declaration as to trespass and damages for trespass", is not one of the matters specified in section 251(1) and in respect of which exclusive jurisdiction is conferred on the Federal High Court. Counsel, relying on A.-G., Lagos State v. Dosunmu (1989) 3 NWLR (Pt. Ill) 552, opined that where the claim of a party as endorsed on the statement of claim is not within the jurisdiction as conferred by the Constitution, a court would lack the competence to entertain the claim. Relying on Minister of Works and Housing v. Tomas (Nig.) Lid. (2002) 10 NWLR (Pt.752) 740, (2OOl) 48 WRN 119, 147, learned counsel submitted that the mere Bract that the defendants were agencies of the Federal Government Kid not automatically confer jurisdiction on the Federal High Court, the learned trial Judge was, therefore, in counsel's view, wrong in assuming jurisdiction, having regard to the

subject matter of the plaintiffs' action.

For the respondents, Mr. J.O. Baiyeshea submitted that the plaintiffs' action came squarely within the exclusive jurisdiction conferred on the Federal High Court by section 251(1) of the Constitution. Learned counsel supported the learned trial Judge's view that the act of the defendants complained of, i.e.. the act of forcibly evicting the plaintiffs in the circumstances described in the statement of claim, was the type of executive or administrative act envisaged in subsection. It was counsel's contention that none of the cases cited on behalf of the appellants, which, he pointed out are all Court of Appeal decisions, is relevant, because they no longer represent the correct position of the law, having regard to the Supreme Court decision in N.E.P.A. v. Edegbero (2002) 18 NWLR (Pi.798) 79, (2002) 12 SCNJ 173, which interpreted a section of the 1979 Constitution, in pari material with 251(1) of the 1999 Constitution.
Relying heavily on this decision counsel expressed the view that -
"... whatever may be the nature of any matter, once the Federal Government or any of its agencies are parties, the case must be handled by the Federal High Court."
Learned counsel's trump card in support of his contention here appears to be in two passages from the lead judgment by Ogundare, JSC, at pages 183 and 185-186. He also referred to the contributing opinion of Niki Tobi, JSC, at page 188. In counsel's view, to take this case before the Kwara State High Court, as requested by the appellants would amount to taking the matter to the wrong forum. I must first dispose of Mr. Baiyeshea's contention that whatever the nature of the subject-matter of a case, once the Federal
Government or any of its agencies is a party to that case, the case can only be handled by the Federal High Court. With all due respect to learned counsel, 1 think he has stated the matter too widely. N.E.P.A. v. Edegbero does not, in my view, support him in his contention here. That case did not decide that all that is required to-confer exclusive jurisdiction on the Federal High Court is the mere fact that the Federal Government or any of its agencies is a party to-the proceedings and that the subject matter of the proceedings is irrelevant. Indeed the opposite view was expressly held in that case., In this regard, see page 188 of the report, where Niki Tobi, JS held that -

> "As I indicated above, another important area is the subject matter of the litigation. In my view, for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its agencies. The matter must' arise from the operation and interpretation of the Constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of executive or administrative" action or decisions by the Federal Government or any of its agencies...
>
> I agree entirely with the submissions of learned I counsel for the respondent, Mr. R. A. Lawal-Rabana, that the plaintiffs claim should be looked at alongside will] the provisions of section 230(1) of the 1979 Constitution." (Italics mine).

It is clear from these passages that it is a condition precedent to the acquisition of jurisdiction by the Federal High Court that the subject matter of the proceedings in question is one of the matters specified in the subsection. That, in His Lordship's judgment, is the determinant factor, not the fact that the Federal Government or any of its agencies is a party to the proceedings.

Mr. Baiyeshea, before us, relied for his contention in this regard on the passage from the judgment of Ogundare, JSC, where the learned Justice of the Supreme Court said at page 185-156,

> "... the aim of paragraphs (q), (r) and (s) of subsection (1) of section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agencies was a party. A State High Court would no longer have jurisdiction in such. matters notwithstanding the nature of the claim in this action." (Italics mine).

With respect to counsel, this passage, especially the italicised portion, must be read within the context of the entire judgment of Ogundare, JSC, and the entire decision of the court in that case. If go read, it will be seen that the learned Justice of the Supreme Court lid not decide that all that is required to confer exclusive jurisdiction on the Federal High Court is the mere fact that the Federal government or any of its agencies is a party to the proceedings and that the subject matter of the proceedings is irrelevant. In addition to the Federal Government or any of its agencies being a party, the court must consider the subject-matter of the plaintiff's claim as endorsed on the writ of summons and pleaded in the statement of claim. If such subject matters is not one of those specified in section 251(1) of the 1999 Constitution, which is in pari materiel with section 231(1) of the 1979, then it is not a matter over which jurisdiction, exclusive or otherwise, has been conferred on the Federal High Court, the fact that the Federal Government or any of its agencies is a party to the action notwithstanding. I just highlighted the view of Niki Tobi, JSC, which expressly decided that the plaintiffs claim must be taken into consideration in determining whether or not the provisions of section 230(l)(q) - (s) of the 1979 Constitution applied. There are passages, even in the judgment of Ogundare, JSC. which support this view. At page 183 the learned Justice of the Supreme Court observed that -

> "It is also not disputed that the cause of action in this matter arose out of the administrative action or decision of the defendant. The action is for a declaration and injunction and the purpose of it is to nullify the decision of the defendant terminating the appointments of the plaintiffs and others. " (Italics mine).

It is clear from this that the learned Justice of the Supreme Court was well aware that he had to gauge the plaintiffs' claim against the relevant constitutional provisions before he could determine whether or not the matter was within the jurisdiction of the Federal High Court. He did take note of the subject matter of the plaintiffs' action, as the italicised words show. He would not have adopted this course of action if he had thought that the only relevant factor was the fact that the Federal Government or any of its agencies is a party to the case. The same impression can be gathered from the judgment of Uwais, C.J.N., at page 186, where he said that the clear intendment of the modification of section 230 of the 1979 Constitution ... was to confer on the Federal High Court exclusive! jurisdiction /» respect of matters specified under subsection (l)(a) to (s) thereof." It was clearly the view of the learned Chief Justice of Nigeria, as the italicised words show, that the crucial factor was the fact that the subject matter of the action was the matters specified' in the subsection.

Since the matters specified in this subsection all relate to subject matters with respect to which exclusive jurisdiction is conferred ort the Federal High Court and since the Justices of the Supreme Court unanimously agreed that those specified matters must be considered, it is, in my view, highly improbable that any one of them could have intended to say that the subject matter of the affected litigation with not be relevant to the question whether or not the litigation comes within the subsection. In my respectful view, the observation by this court, per Bulkachuwa, JCA, in Minister of Works and Housing v. Tomas at page 147. that -

"It is however a misconception to say that whenever the Federal Government or any of its agencies is involved in a case the only court for the determination of the case is the Federal High Court", still represents the correct position of the law on the point.

I come now to the crucial question, which is whether or not the subject matter of the plaintiffs' action in the present case is am of the matters specified in section 251(1) of the Constitution. As we have seen, while the appellants" counsel contends that it is not, the respondents' counsel insists that it is. The submissions of the respondents' counsel imply that it comes within section 25.1(1 )(p) or (r).

To be able properly to appreciate the contentions of counsel for the parties, it is, I think, necessary to read the relevant provisions of the 1999 Constitution. Since the respondents' counsel has limited himself to section 251(l)(p) and (r), I will reproduce only those two paragraphs:

> "25 J(J) Not withstanding 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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from –

(p) the administration or the management and control of the Federal Government or any of its agencies.

(r) 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."

I think it is also necessary to look at some of the averments in the statement of claim to sec whether they raise any issues relating Ito the matters specified in the two paragraphs. The relevant ;Averments are:

"5. The plaintiffs state further that 2nd and 3rd defendants connived and conspired with the 1st defendant to carry out the inhuman and highly dehumanizing act of forcefully evicting/ejecting the plaintiffs from their official quarters.

*6.* The plaintiffs aver that the 4lh defendant who is known to be the Estate Manager of the University personally supervised the forceful eviction/ejection of the plaintiffs from their quarters on 15/1/2002 and giving each of the plaintiffs only 30 minutes to pack their personal
properties from the quarters they have lived in for several years.

*7.* The plaintiffs slate that Professor Anjorin. Professor Annor, Dr. Obielodan, and their families were all ejected on 15th January, 2002 while the house of Dr. Bode Omojola, Professor Oduleye were sealed/barricaded by the defendants as they and their families had gone out.
The 4th defendant and workmen he led pulled down the mam door of Professor Armor's house. The plaintiffs will at the trial give detail evidence of the manner in which each of the plaintiffs and their families were forcefully evicted/ejected from their official quarters by the defendants on 15/1/2002 and 16/1/2002 respectively.

14. The plaintiffs state that they and their families (wives, children and other dependants) have been humiliated by the defendants, rendered homeless suddenly and made to suffer agony, emotional stress and disgrace The 4th defendant and the workmen/security personnel he led to park their properties out of the houses they have lived in for many years gave them only 30 minutes And even before the time expired, the said workmen and security personnel of the defendants forcefully parked/threw out the plaintiffs' properties and in the process damaged many of them.

15 The plaintiffs state that they and their families we thrown in to the streets by the defendants with no roof over their heads and had to be scattered and reduced refugee status as they had to take refuge by squatting) the houses of good Samaritans. It was a naked display of barbarism and crudity by the defendants.

16. The plaintiffs state that so much incalculable and u; unquantifiable damage has been done to their image status and standing in the society and their families made! to suffer such untold hardship. Some of their children! who had even dressed up to go to school on 15/1/2002 had that aborted.

19. The plaintiffs slate that even though the staff quarters, of the University falls under the management and-control of the defendants, defendants have no right to eject/evict the plaintiffs from the said quarters vi et armis.

20. The plaintiffs state that to the best of their knowledge the defendants had no Court Order to eject or evict them from their quarters.

23. The plaintiffs shall contend at the trial of this action that their ejection/eviction was unlawful, mischievous and done without the least deference to the due process of law. There was no notice of whatever nature given to any of the plaintiffs by the defendants.

24. The plaintiffs will also contend at the trial of this case that the defendants act of forcefully ejecting/evicting the plaintiffs from their respective official quarters in the staff quarters of the University is a gross violation of their fundamental rights as enshrined in the Constitution of the Federal Republic of Nigeria. 1999. 25.

25. Plaintiffs say that they were occupying the official quarters in the staff quarters of the University as part of their conditions of service with the 3rd defendant, which made them to be so entitled. And the plaintiffs shall contend that even if the defendants had properly terminated the plaintiffs' appointment (which is not conceded), the defendants still had no right to forcefully eject the plaintiffs from the said quarters without following the due process of law.

29. The plaintiffs shall contend at the trial of this case that the defendants are also liable in damages to the plaintiffs for trespass. And the plaintiffs state also that the defendants acted maliciously and wickedly in electing/ evicting them on 15/1/2002 from the official quarters. in that the defendants had no immediate need of the said quarters, as all the quarters remained unoccupied as at the time of filing this suit."

As we have seen, the learned Judge held that the defendants' , act complained of by the plaintiffs was the executive or administrative act envisaged by section 251(1) (p) or (r). I observe that he based his conclusion in this regard on Mr. Baiyeshea's submission on page 19 of the record that -

"Staff quarters (sic) is under the management of defendant. Decision to eject them is administrative decision of defendant..."

With all due respect to learned counsel and the learned Judge, I see a flaw or two in their stand. Counsel's insinuation, implicit in the first sentence of his statement, that the plaintiffs were, by their action, challenging the defendants in the exercise by them of their power of managing the affairs of the institution cannot be supported, having regard to case disclosed on the writ of summons and the statement of claim. It is trite that it is the plaintiffs writ of summons and the averments in his statement of claim that determine whether or not a given case comes within the jurisdiction conferred on a court of limited jurisdiction, like the Federal High Court. See Adeyemi v. Opeyori (1976) 9-10 SC 31 at 49, per Idigbe, JSC. As the plaintiffs' claim in the writ of summons and the averments in their statement of claim set out by me show, the plaintiffs were not complaining that the 3rd defendant had no right or power to refuse to allocate quarters to them or to evict them after allocation. They were not challenging the defendants' statutory power to manage affairs of the University, including, of course, the allocation ; withdrawal of staff quarters. No issue arose as to whether or allocation of staff quarters is a management matter. Indeed the plaintiffs acknowledged in paragraph 19 of their statement of claim as has been seen, that "the staff quarters of the University falls under the management and control of the defendants. Their action was ns aimed at challenging the validity of any act or decision by the defendants in the administration or management of the 3rd defendant institution. Their action was aimed at declaring the forcible eviction of them in disregard of due process by the defendants unlawful and therefore, a trespass, and at claiming damages for the hardship suffered as a result of the alleged trespass. Their grievance was what their own counsel referred to in paragraph 3.01 of there brief of argument as "The unlawful and illegal ejection of the plaintiffs from their official quarters." The reference by counsel to "the

management' of the defendant" is, therefore, in my view, a futile attempt by him to shoehorn, the plaintiffs' case into section 251(1) (p), where it' does not fit, just to give the Federal High Court jurisdiction. Their case cannot, as far as I can see, come within that paragraph. Can it be placed under paragraph (r)? The learned Judge's conclusion that the defendants' act complained of here, namely the act of forcibly evicting the plaintiffs • in disregard of due process of law is an administrative act and, therefore, comes within it, has no basis that I can discern, other than the bland say-so of Mr. Baiyeshea. That conclusion cannot, with respect, flow from counsel's reminder that allocation of staff quarters is a matter relating to the administration and management of defendant institution. With respect, I think the learned Judge should have looked into the matter more deeply than he did before coming to his conclusion. He should have done some analysis, as the Supreme Court did in N.E.P.A. v. Edegbero, where Niki Tobi, JSC, demonstrated by analytical reasoning that an action challenging the decision of the Federal Government or any of its agencies is one that comes within the matters specified in section 230(1), (q) - (s) of the 1979 Constitution (section 25 l(l),(p)(r) of the 1999 Constitution) and can, therefore, be entertained only by the Federal High Court. In this regard, see page 189. where the learned Justice of the Supreme Court explain that -

> "Administration is a large term in business and commerce. So too management. Etymologically, the words are synonymous in our context. Administration is the direction of the affairs of abusiness. Management is the art or practice of managing, especially a business. Both words have business as a common denominator. Entering into a contract of employment with an employee is a business relationship which clearly comes within section 230(J)(cj) of the 7979 Constitution..." (Italics mine).

He should not have just accepted the mere say-so of Mr. Baiyeshea, which, with respect, cannot be supported if one carefully ascertained the true import of section of section 251(l)(r) of the Burrent Constitution.

Broadly speaking, governmental acts are classified into three, namely, legislative, executive or administrative, and judicial. The question that has to be answered now is whether the Constitution lifers have used the term "any executive or administrative action decision" in section 251(l)(r) as referring to any and every act of the Federal Government or any of its agencies that is the residue after legislative and judicial acts have been discounted. In other words, has the expression been used in the broad sense that I noted at the beginning of this paragraph?

After giving the provision an anxious consideration the answer pal suggests itself to me is in the negative. In my respectful view. Be term could not have been used in that broad sense. Legislation find adjudication are not in the normal field of the executive arm of government or its agencies. It would, therefore, make no sense to classify its acts according as they are legislative, executive or judicial. To make sense and achieve the purpose of the provision the term should, in my view, be interpreted as referring to something more Specific within the normal field of operation of the executive arm. The relevant question should be, what acts within the normal field of activities of the executive arm, would qualify as executive or Administrative acts as against others within the same field within fie contemplation of paragraph (r)?

The following statement, found in de Smith's Judicial Review of Administrative Actions, 4th ed., at page 71, I think, will offer Some guide on the interpretation of the expression "executive or administrative action or decision" used in section 251(l)(r):

> "The term 'administrative' or 'executive' is capable bearing a wide range of meanings, some of which are remote from the problems raised by the classification of statutory functions. In such phrases as 'administrative law', 'administrative tribunal' and judicial review of 'administrative action' it refers to broad area of governmental activity in which the repositories of pawer may exercise every class of statutory function. " (Italics mine).

O. Hood Philip's Constitutional and Administrative Law, 5th ed. At page 13 may also be helpful:

> "The executive and administrative function is the general and detailed carrying

on of government, according to law, including the framing of policy; the choice of manner in which the law may be made to render that policy possible."

In my view, the executive or administrative act envisaged by section 251(l)(r) must, in line with the definitions just seen, be one done for the purpose of carrying on government according to law I think the emphasis must be on the words "according to law", in short, an executive act or decision is one done or taken in lawful performance of a statutory function. In other words, the act or decision done or taken must be one that is sanctioned by law and it must be related to the performance of statutory function for the carrying on of government. The corollary from all this is that; any act or decision that is not for the purpose of carrying on government or performing the specific function assigned to an agency of the executive arm, or is forbidden by law, cannot be classified as an executive or administrative act or decision for the purposes of the provision under discussion. In my, respectful view, where a person initiates court proceedings to challenge the action of another on the ground that it is forbidden by law and is not necessary for the performance of that other person's statutory function, such proceedings cannot be described as "affecting the validity of any executive or administrative action or decision" of that other person. Now, as we have seen, what the respondents were challenging by their action before the trial court was not the validity of any act done or decision taken in furtherance of their statutory functional What they were challenging was the employment by the defendants

of self-help in disregard of due process of law, which is an act forbidden by our law. The decision of this court in Ojukwu v. Governor of Lagos State (1985) 2 NWLR (Pt. 10) 806, at 830, per Kutigi, JCA, as he then was, shows that the statement that "the common law gives now of right to the police of the executive to evict anyone..." is part for our law. And the decision of the Supreme Court in Military Governor, Lagos State & Ors. v. Ojukwu & Anor. (1986) 1 NWLR (Pt.18) 621, (2001) 39 WRN 155 and Obeya Memorial Hospital & Anor. v. A.-G., eratton & Anor. (1987) 3 NWLR (Pt. 60) 325, (2000) 24 WRN 1 35, shows that self-help by government and its agencies is executive? 3essness, which is a deliberate violation of the Constitution. It shows that in an area where the rule of law operates, as it does in Nigeria, of self-help is abandoned. The plaintiffs' counsel himself, as been described what his clients were challenging as "the unlawful 1 illegal ejection of the plaintiffs from their official quarters." How can we, in the circumstances, hold that his clients were challenging the validity of an executive or administrative action of the defendants? speaking for myself, I cannot say that the plaintiffs' action leading up to this appeal involved any of the matters specified in section 25 1(1 ) of 5 Constitution.

Let me hasten to make it clear that I have not decided that the defendants did any acts that were not sanctioned by law. That is not for me but the appropriate trial court to decide. All I have said is that the plaintiffs by their action were proceeding against the defendants for allegedly going outside their statutory limits and doing acts forbidden by law. I am saying that the inquiry called for here, which is as to whether or not the defendant employed self-help, is not one that can be undertaken by the Federal High Court because such inquiry is not one of the matters specified as being within the jurisdiction of that court.

The Federal High Court, being a court of limited jurisdiction, ; jurisdiction only in respect of the matters specified in section 251(1) of the Constitution. Since it is my finding that the plaintiffs'/ respondents' action is not one of the matters specified in the Subsection, it follows that the trial court lacks the jurisdiction to entertain it. The learned trial Judge should have declined jurisdiction. I must, therefore, resolve this issue in favour of the appellants.

This being the main and crucial issue, and it having been resolved in favour of the appellants, their appeal must succeed. I accordingly fallow it. The ruling of Olayiwola, J., in which he held that his court

had jurisdiction in this matter is hereby set aside. Now. what consequentially order do I make? In paragraph 4 of their notice of appeal the appellants soy an order striking out the case, but Mr. Eleja, on their behalf, 1 us in their brief of argument, in the alternative, to order the trans of the suit to the Kwara State High Court for hearing. I think| alternative request is the proper order in the

circumstances, jurisdiction of the Federal High Court has been a thorny issue ,-although quite a lot has been said on it. the grey area is overwhelming. Litigants have been plagued by uncertainty as to which forum to take their complaints involving the Federal Government or any of its agencies. One can hardly blame them they wind up in the wrong forum. Justice and fair play demand that they be not deprived completely of their right to have their heard or be put to unnecessary expenditure in time and resources being made to go back and start all over in the correct filing a fresh action. Happily, section 22(2) of the Federal High Court Act has come to the rescue. It provides: "22(1) ...

(2) No cause or matter shall be struck out by the court merely on the ground that such cause or matter was taken in the court instead of the High Court of a State or of the Federal Capital Territory. Abuja in which i ought to have been brought, and the Judge of the cowl before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate High Court of a State or of the Federal Capital Territory, Abuja in accordance with Rules of Court to be made/f under section 44 of this Act." The attention of the learned trial Judge is drawn to the provisions* of this section for compliance.

The respondents are to pay to the appellants costs of this appeal.; assessed at N10,000.00.

Appeal dismissed.