

DR. OLUBUKOLA ABUBAKAR SARA

V.

FEDERAL REPUBLIC OF NIGERIA

SUPREME COURT OF NIGERIA

SC.852/2015

MAHMUD MOHAMMED. C.J.N. (*Presided*)

WALTER SAMUEL NKAKU ONNOGHEN. J.S.C. (*Read the Leading Judgment*)

IBRAHIM TANKO MUHAMMAD, J.S.C.

NWALI SYLVESTER NGWUTA. J.S.C.

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN. J.S.C.

CHIMA CENTUS NWEZE, J.S.C. AMIRU SANUSI, J.S.C.

FRIDAY. 5TH FEBRUARY 2016

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Issues:

1. Whether the Code of Conduct Tribunal was properly constituted when it sat with its chairman and one other member to conduct its proceedings that culminated in its ruling of 18th September 2015
2. Whether the Court of Appeal was right when it held that the Code of Conduct Tribunal, though a court of limited jurisdiction, was competent to issue a bench warrant against appellant in the event of his failure to appear before it.
3. Whether the Court of Appeal was right when it held that the charge preferred against the appellant before the Code of Conduct and signed by Mr. M.S. Hassan, a Deputy Director and a law officer in the Federal Ministry of Justice was competent notwithstanding that there was no Attorney-General of the Federation in office at the time the charge was filed.
4. Whether the Court of Appeal was right when it held that the issue of the irregularity in the service of Tribunal's summons on the appellant was not fatal to the proceedings before Tribunal.
5. Whether the Court of Appeal was right when it held that since the Federal High Court did not make any order restraining the Tribunal from sitting, the issue of the Tribunal's disobedience of such order or of the superiority of the Federal High Court over the Tribunal did not arise in the case

Facts:

The appellant, the President of the Senate of the Federal Republic of Nigeria, was a two-term Governor of Kwara State, Nigeria, between May 2003 and May 2011. While in the office as Governor, the appellant completed and filed four assets declaration forms covering his tenure as Governor and submitted same to the Code of Conduct Bureau as required by law.

The Bureau and other government agencies investigated the appellant's statements in the assets declaration forms, and alleged he made false declaration of assets in the forms. They also alleged the appellant maintained a bank account outside Nigeria during his tenure as Governor.

Consequently, one Mr. M.S Hassan, a Deputy Director in the Federal Ministry of Justice and a law officer in the department of the Attorney-General of the Federation, applied to the Code of Conduct Tribunal, Abuja for the commencement of trial of various charges against the appellant.

At the time Mr. Hassan filed the charges against the appellant, there was no Attorney-General of the Federation in office but there was a Solicitor General of the Federation in office. Mr. Hassan told the Tribunal that in the absence of the Attorney General of the Federation, the Solicitor-General of the Federation could perform the former's duty. He also told the Tribunal that the Solicitor-General was in office and he was authorised to file the charges against the appellant. However, the record of the Tribunal did not disclose that the Solicitor-General of the Federation authorised Mr.Hassan to file the charges against the appellant or did not authorise him to do so

After the summons of the Tribunal was served on the appellant, he filed preliminary objection to the competence of the charge against him, and refused to appear before the Tribunal. He also filed two suits before the Federal High Court at Abuja and Lagos by which he challenged the validity of the proceedings before the Tribunal.

On 18th September 2015, the Tribunal heard the appellant's objection and dismissed it. The Tribunal also issued a bench warrant for the appellant to be arrested and brought before it. Eventually, the appellant appeared before the Tribunal on his own volition and the Tribunal revoked its bench warrant. The appellant then took his plea and was admitted to bail. Subsequently, the case was adjourned for hearing. The appellant was dissatisfied with the dismissal of his objection on 18th September 2015. So he appealed to the Court of Appeal. He challenged the proceedings and the decision of the tribunal on five main grounds as follows:

- (a) that the summons of the Tribunal was not served on him personally;
- (b) that the Tribunal was not properly constituted because only two members of the Tribunal sat during its proceedings and ruling instead of three members as stipulated by the Constitution of the Federal Republic of Nigeria, 1999 (as amended);
- (c) that the Tribunal was not a court of criminal jurisdiction and could not issue a bench warrant against him;
- (d) that only the Attorney-General of the Federation could commence proceedings against him at the Tribunal and that when the proceedings were commenced, the office of the Attorney-General was vacant; and
- (e) that the Tribunal erred when it ignored an order of the Federal High Court directing it to appear before that court to show cause why orders staying its proceedings should not be made against it.

The Court of Appeal heard and dismissed the appellant's appeal by a majority decision of two to one (Ekanem, J.C.A (dissenting). The judgment of the Court of Appeal is reported as: *Saraki v. Federal Republic of Nigeria*

(2016) 2 NWLR (Pt. 1495) 25. Still dissatisfied, the appellant appealed to the Supreme Court.

In determining the appeal, the Supreme Court considered some constitutional and statutory provisions. They include:

Sections 174(1), (2) and 318(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and paragraph 15(1) of the Fifth Schedule to the Constitution, which respectively read:

"174(1) The Attorney-General of the Federation shall have powers:-

- (a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a Court Martial, in respect of any offence created by or under any Act of the National Assembly;
- (b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or persons; and

To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person

2. The powers conferred upon the Attorney-General of the Federation under sub-section (1) of this section may be exercised by him in person or through officers of his Department.

31 8(4) "The Interpretation Act shall apply for the purposes of

interpreting the provisions of this Constitution." Para. 15(1)

"There shall be established a tribunal to be known as the Code of Conduct Tribunal which shall consist of a Chairman and two other Persons." Section 28 of the Interpretation Act which reads:

"Notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal, commission of inquiry (including any appeal tribunal established for the purpose of hearing any appeal arising therefrom) shall not be less than two (including the Chairman):

Provided that the Chairman and the member shall be present at every sitting of the tribunal, commission of inquiry throughout the duration of the trial or hearing." Section 20(1) and (2) of the Code of Conduct Bureau and Tribunal Act which reads:

"20(1) There is hereby established a tribunal to be known as the Code of Conduct Tribunal (in this Act referred to as "the Tribunal") (2) The Tribunal shall consist of a Chairman and two other members."

Held {*Unanimously dismissing the appeal*):

1. On Purpose of Code of Conduct for public officers –

The Code of Conduct for public officers enshrined in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is primarily made to enthrone probity in the public lives of public officers, that is, officers listed in Part II of the Fifth Schedule to the Constitution and, *a fortiori*, to promote transparency and accountability in governance. (P. 630, paras. D-E)

2. On Meaning of "consist" –

The word "consist" means make up something, constitute, or be comprised of. The definition of the word all mean to be formed from the things or people mentioned, or to be the parts that form something. An application of the definition in this case means the chairman and two other members of the Code of Conduct Tribunal are the persons who make up the Tribunal. In other words, the Tribunal must be composed of the chairman and two other members. (Pp. 620-621, paras. H-D)

3. On Meaning of "consist" –

The word "consist" means to be made up of, or composed of, to reside or lie essentially, or to stand together. Tn this case,

"consists of" were the relevant words used in the provisions in paragraph 15(1) of the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 20(1) and (2) of the Code of Conduct Bureau and Tribunal Act. In the circumstance, they provide for the establishment and composition of the Code of Conduct Tribunal as consisting of a chairman and two other members. This construction is clearly the literal meaning of the words used by the draftsman in the section. (P. 573. paras. D-G)

4. *On Meaning of "quorum" –*

The word "quorum" means the smallest number of people who must be at a meeting before it can begin or decisions can be taken. (P. 622. paras. A-B)

5. *On Meaning of "quorum" –*

The word "quorum" means a majority of the entire body, the number of members who must be present in a deliberative body before business may be transacted, or such a number of the members of a body as is competent to transact business in the absence of the other members. (Pp. 573-574, paras. H-A)

6. *On Whether quorum of Code of Conduct Tribunal provided in 1999 Constitution and Code of Conduct Bureau and Tribunal Act - Paragraph 15(1) of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 20(1) and (2) of the Code of Conduct Bureau and Tribunal Act, do not contain any expression relating to the composition of the Tribunal in the exercise of its jurisdiction. (Pp. 574. paras. E-F: 589-590. paras. F-A; 642-643, paras. F-A)*

7. *On Whether quorum of (aide of Conduct Tribunal provided in 1999 Constitution –*

Paragraph 15 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) omitted to make a categorical provision on what forms the quorum of the Tribunal. In the circumstance, the provision of section 31 S(4) of the Constitution permits recourse to section 28 of the Interpretation Act for guidance on the interpretation of the paragraph. Thus, in determining the issue of quorum of the Tribunal, resort can conveniently be made to section 28 of the Interpretation Act. [A.-G Federation v. A.-G. Abia State (No. 2) (2002) 6 NWLR (Pt.764) 542 referred to.] (Pp. 574-575, paras. G-A; 590. paras. Gil: 6]3, paras. B-G: 614. paras. C-D: 623. paras, F-H 642-643. paras. H-B: 630-631. paras. G-D)

8. On Quorum of Tribunals and Commissions of Inquiry -

By virtue of section 28 of the Interpretation Act, notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal or commission of inquiry (including any Appeal Tribunal established for the purpose of hearing any appeal arising therefrom) shall not be less than two (including the chairman). Provided that the chairman and member shall be present at every sitting of the tribunal, commission of inquiry throughout the duration of the trial or hearing. The effect of the provision is that the quorum of a tribunal is the chairman and one other member, and its sitting shall be valid once the chairman of the tribunal sits with one other member of the tribunal. In this case, the chairman of the tribunal sat with one other member of the tribunal on 18th September 2015. In the circumstance, it was properly constituted on that date and its proceedings were validly conducted. (Pp. 575, paras. A-C; 590-591, H-C-591, paras. D-F; 594. paras. E: G-H: 631, .paras. A-B; D)

9. On Status of Code of Conduct Bureau and Tribunal Act -

The Code of Conduct Bureau and Tribunal Act which created the offences peculiar to the jurisdiction of the Code of Conduct Tribunal is an Act of the National Assembly in fact and by operation of law. (P. 582. paras. B-C)

10. *On Source of Code of Conduct Tribunal -*

The Code of Conduct Tribunal is a creation of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in Paragraph 15(1) of the Fifth Schedule to the Constitution. (P. 590. para. A)

11. *On Nature of jurisdiction of Code of Conduct Tribunal-*

By virtue of the provisions of the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and of the Code of Conduct Bureau and Tribunal Act, the Tribunal has a quasi jurisdiction contrary to the decision of the Court of Appeal that the Tribunal has limited criminal jurisdiction. (Pp. 579; paras. E-H; 581, paras. F-G)

12. *On Rules of procedure applicable in proceedings of Code of Conduct Tribunal-*

By the operation of section 4(2)(b) of the Interpretation Act, references to the Criminal Procedure Act and or Criminal Procedure Code in the 3rd Schedule to the Code of Conduct and Bureau Tribunal Act, are to be construed to mean references to the Administration of Criminal Justice Act, 2015, and particularly, rule 17 of the 3rd Schedule to the Code of Conduct Bureau and Tribunal Act shall be construed as referring to section 136(a) of the Administration of Criminal Justice Act, 2015. (Pp. 583-584, paras, H-A)

13. *On Whether sanctions Code of Conduct can impose are purely administrative –*

The sanctions the Code of Conduct Tribunal can impose are not purely administrative. (Pp. 578-579, paras. D - B)

Per ONNOGHEN, J.S.C. at pages 578-579, paras. D-B:

"Is it correct to say that the sanctions the Code of Conduct Tribunal can impose are purely administrative, if so why are the provisions of the Code of Conduct Bureau and Tribunal Act and paragraph 18 of the 5th Schedule to the 1999 Constitution, (as amended) replete with unambiguous terms and expressions indicating that the proceeding before the said Code of Conduct Tribunal are criminal in nature? The terms and expressions used in the above legislations include arrest, arraignment, the charge, plea, prosecution, conviction, guilty, sentence, prerogative of mercy, etc. See sections 23, 24 of the Code of Conduct Bureau and Tribunal Act; paragraph 18 of the 5th Schedule in the 1999 Constitution, (as amended): paragraphs 3, 4 and Forms 3,4,6,7, 8 and 9 of the Third (3rd) Schedule to the Code of Conduct Bureau and Tribunal Act. Finally, paragraph 17 of the 3rd Schedule to the Code of Conduct Bureau and Tribunal Act empowers the tribunal to apply the provisions of the Criminal Procedure Act or Code in the conduct of its proceedings in the "trial of offences generally." With the repeal of the Criminal Procedure Act and Criminal Procedure Code, section 493 of the Administration of Criminal Justice Act, 2015, has taken their place. The 3rd Schedule to the Code of Conduct Bureau and Tribunal

Act is actually headed "Code of Conduct Tribunal Rules of Procedure" and is sub-divided as follows:

- (1) Institution of proceedings.**
- (2) Order on an accused to appear.**
- (3) Commencement of trial.**
- (4) Plea of not guilty or no plea;**
- (5) Presentation of case for prosecution.**
- (6) Procedure after presentation of evidence by the prosecutor;**
- (7) Defence, etc, etc.**

From the totality of the provisions it is my view that it is clear that the intention of the legislature is to make the proceedings of the tribunal criminal proceedings to be regulated by criminal procedure.

14. *On Whether Code of Conduct Tribunal can compel appearance before it by bench warrant-*

The Code of Conduct Tribunal is not a court of superior record or jurisdiction with relevant inherent powers and sanctions but as a court of quasi-criminal jurisdiction with authority guided by the Criminal Procedure Act or Criminal Procedure Code in the conduct of its proceedings, it can issue a bench warrant in exercise of its jurisdiction. In the circumstance, the appellant's argument that the Tribunal cannot issue a bench warrant is untenable. (Pp. 579. paras. G-H; 644, paras. B-G)

15. *On How Attorney General of the Federation exercises power to prosecute criminal cases –*

By virtue of section 174(1)(a) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Attorney-General of the Federation has power to institute and undertake criminal proceedings against any person before any court in Nigeria, other than a court martial, in respect of any offence

created by or under any Act of the National Assembly and the power of the Attorney -General may be exercised by him in person or through officers of his department. In effect, the Attorney-General acts in person or through officers in his department and when a prosecution is initiated by any law officer in the Ministry of Justice, it is immaterial that there is no Attorney-General in office. In this ease, any officer in the department of the Attorney-General, such as Mr. Hassan who signed and filed the charge, could initiate the proceedings against the appellant. [*State v. Obasi* (1998) 9 NWLR (Pt. 567) 686; *F.R.N. v. Adewummi* (2007) 10 NWLR (Pt. 1042) 399 referred to.] (Pp. 581-582, paras. G-B; 593, paras. E-G; 594. para. A, F-G; 601, paras. A-B; 615, paras. B-G; 647. paras. B-D)

16. *On How Attorney-General of the Federation exercises power to prosecute criminal cases –*

Section 174 (1)(b) & (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which refers to proceedings initiated by "any other authority or persons", is clear indication that the power of the Attorney-General to institute criminal proceedings is not exclusive to his office. Secondly, by section 174(2) of the Constitution, the powers conferred on the Attorney-General may be exercised by him in person or through officers of his department. There is no provision in section 174 of the Constitution that the Attorney-General must expressly delegate his powers to a law officer in his department. By the provisions of section 174(2) of the Constitution, it is clear that the lawmakers appreciated that there may be occasions when there is no incumbent occupant in the office of Attorney-General, and necessary provisions must be in place to ensure that the business of the Ministry of Justice

does not stop. [*F.R.N. v. Adewummi* (2007) 10 NWLR (Pt. 1042) 399 referred to.] (*P. 627. paras. A-D*)

Per SANUSI, J.S.C. at pages 647-648, paras. G-A: "The learned senior counsel for the appellant in my view wrongly laid his emphasis on the person of the Attorney General rather than the office of the Attorney General. That is wrong, in my view. To say that without a sitting Attorney General in place, no criminal proceedings can be initiated, then the administration of justice will ground to a halt which will obviously be injurious and dangerous to the system of governance, especially if one considers the fact that an Attorney General of the Federation or State is the Chief Taw officer of the Federation or of a State. That contention of the learned silk for appellant, if accepted, could lead to chaos."

- 17. *On Whether power to prosecute criminal cases is exclusive to Attorney General of the Federation –***

The Attorney-General's power of public prosecution under section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is not exclusive because any other authority or an officer in any department of the Attorney-General's office can initiate and undertake criminal prosecution. Accordingly, an officer in the department of the Attorney-General of the Federation can initiate criminal proceedings when (here is no Attorney-Genera! of the Federation in office. So once proceedings are commenced against any person by a member of the department, it is assumed the person did so in accordance with the instruction of the Attorney-General. [*F.R.N, v Adewunmi* (2007) 10 NWLR (Pt. 1042) 399; *Awobotu v. State* (1976) 5 SC 49; *A.-G., Western Nigeria v.*

African Press Ltd. (1965) 1 All NCR 9 referred to.] (Pp. 582. paras. D-G; 615. paras. G-H)

18. *On When Solicitor-General of the Federation may perform duties of Attorney General of the Federation –*

Under section 4 of the Law Officers Act, the Solicitor-General of the Federation, in the absence of the Attorney-General of the Federation, may perform any of the duties and shall have the same powers as are imposed by law on the Attorney-General of the Federation. In this case, at the time Mr. Hassan initiated the proceedings against the appellant, there was a Solicitor-General of the Federation in office. Further, there was no issue before the Tribunal whether the Solicitor-General authorized Mr. Hassan to initiate the proceedings. In the circumstance, the appellant's complaint about the competence of the charge filed against him lacked merit. (Pp. 582-583, paras. H-F; 016. para. D; 627, paras. D-F; 647. paras. D-G

19. *On Who can institute prosecution for offences under Code of Conduct Bureau and Tribunal Act –*

Section 24(2) of the Code of Conduct Bureau and Tribunal Act states that prosecutions for all offences referred to in the Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such other officer in the Federal Ministry of Justice as the Attorney-General of the Federation may authorize so to do. (Pp. 593. paras. B-C; 615. paras. A-B; 646. para. H)

20. *On When Solicitor-General can institute prosecution for offences under Code of Conduct Bureau and tribunal Act -*

By necessary intendments, both section 4 of the Law Officers Act and section 24(2) of the Code of Conduct

Bureau and Tribunal Act are not opposed to each other but are complementary in that whenever there is no Attorney General in office, the Solicitor-General is empowered to exercise the functions or powers conferred by section 24(2) of the Code of Conduct Bureau and Tribunal Act on the Attorney-General. (P. 607, paras. C-H)

21. *On Supremacy of the Nigerian Constitution –*

By virtue of section 1 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Constitution is the supreme law and the fountain of all laws in Nigeria. Accordingly, provisions in the Constitution override provisions in any other Act of the National Assembly. In this case, by virtue of section 174(2) of the Constitution, Mr. Hassan could initiate proceedings at the Tribunal though there was no Attorney-General in office, notwithstanding the provision of section 24(2) of the Code of Conduct Act. [Abacha v. Fawehinmi (2000) 6 NWLR (Pt. 660) 228; P.D.P. v. C.P.C. (2011) 17 NWLR (Pt. 1277) 485; F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361; F.R.N. v. Adewunmi (2007) 10 NWLR (Pt. 1042) 399 referred to.] (Pp. 594, paras. A-D; F-G; 616, paras. A-B; 620. paras. F-G; 626. paras. B-C; 647. paras. B-D)

22. *On Application of doctrine of covering the field –*

Where the doctrine of covering the field applies under the Nigerian Constitution, any other Federal or State legislation on the same subject must bow to the dictate of the Constitution. Such legislation, if not repugnant, must be supplemental or subsidiary to the constitutional provision. In this case, from the tenor of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 1999 as (amended), initiating criminal proceedings by the

State (whether the Federal or a State Government), has been adequately covered by the Constitution. Further, the provision of paragraph 12 of the 3rd Schedule to the Code of Conduct Bureau and Tribunal Act, which is a procedural rule, cannot override the provisions of the 5th Schedule of the Constitution on the Tribunal's composition. [*INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72; *A.-G.. Ogun State v. A.-G.. Fed.* (1982) 3 NCLR 166; *A. - G.. Abia State v. A.-G.. Fed.* (2002) 6 NWLR (Pt. 763) 264 referred to.] (Pp. 604, paras. B-D; 612. paras. E-H)

23. *On Whether irregularity in court processes can vitiate trial of defendant present before court –*

By virtue of section 136(a) of the Administration of Criminal Justice Act, 2015, where a defendant is before a court, whether voluntarily or on summons or after being arrested with or without warrant, or while in custody for the same or any other offence, the trial may be held notwithstanding any irregularity, defect or error in the summons or warrant or in the issuing, .service or execution of the summons or warrant, in this case, lack of proper service of the summons on the appellant did not vitiate the Tribunal's proceedings. (Pp. 583, paras. F-G: 5S4. paras. A-C)

24. *On Whether person filing a charge must present evidence of authority to do so -*

There is no statutory duty imposed on the person tiling a charge to produce any evidence of his authority at the time of filing the charge or at arraignment. And it is not the usual practice of the courts to demand the letter authorizing a counsel, such as Mr. Hassan in this case, to sign a charge before the court. [*Comptroller, N.P.S. v. Adekanye (No. 1)* (2002) 15 NWLR (Pt. 790) 318; *George v.*

F.R.N. (2011) 10 NWLR (Pt. 1254) 1; Nnakwe v. State (2013) 18 NWLR (Pt. 1385) 1 referred to.] (P. 608. paras. B-H)

25. On Presumption of authority of counsel –

The presumption of regularity under section 168 of the Evidence Act is applicable where a legal practitioner informs the court that he was authorised to act as counsel. In such case, the court or tribunal must believe the legal practitioner. The duty to prove otherwise then shifts on the adverse party. In this case, Mr. Hassan told the Tribunal that he was authorised to file the charges against the appellant. The appellant therefore had the duty to rebut the presumption in Mr. Hassan's favour but he failed to do so. In the circumstance, Mr. Hassan had the competence and power to initiate the proceedings against the appellant at the Tribunal. [*Comptroller. N.P.S. v. Adekanye (No. 1) (2002) 15 NWLR (Pt. 790) 318 referred to*]"(Pp. 608-609: paras. H-A;627-628 paras. F-F)

26. On Presumption raised by statement from bar fry counsel -

Per I. T. MUHAMMAD. J.S.C., at pages 603.604, paras. G-B:

"My lords.it is clear from the records of appeal that at the time proceedings were initiated to prosecute the appellant at the tribunal there was no person occupying the office of the Attorney-General of the Federation. Mr. Hassan who appeared before the tribunal to prosecute the appellant told the tribunal, in his words:

"In the absence of the Attorney-General of the Federation, the Solicitor-General can perform such powers as the Attorney-General. The Solicitor-General is in office and I am authorised to file this action." This was an information coming from a learned counsel who was speaking from the Bar, and, who, as a Minister in the temple of justice, would always be expected to say nothing but the truth. Was he disproved? There is no finding to that effect.

Thus, the presumption of regularity must work in favour of the learned counsel, Mr. Hassan and there was no basis for the tribunal to disbelieve or ignore such information from a gentleman of the Bar."

27. *On Status of the Interpretation Act –*

The Interpretation Act is an Act of the National Assembly, which has been incorporated by reference into the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and it is applicable to the Fifth Schedule of the Constitution. (*P.623, para. H*)

28. *On Whether Interpretation Act applicable to interpretation of 1999 Constitution -*

By virtue of section 318(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Interpretation Act applies for the purpose of interpreting the provisions of (he Constitution. (*P. 591, para. C*)

29. *On Import of "notwithstanding " alien used in a statute –*

When the term "notwithstanding" is used in the section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the section may fulfill itself. In this case, the use of "notwithstanding" in section 28 of the Interpretation Act, makes the section encompassing and applicable irrespective of any provision in any other statute. It also means that the provision of the section cannot be undermined by any provision in any other Act or enactment. Thus, paragraph 12 of the Third Schedule to the Code of Conduct Bureau and Tribunal Act, which contains the Tribunal's procedural rules, cannot override the provisions of section 28 of the Interpretation Act. [*N.D.I.C. v. Okem Int. Ltd. (2004) 10 NWLR (Pt. 880) 107; Olatunbosun v. NISER Council (1988) 3 NWLR (Pt. 80) 25; Ndaba (Nig.) Ltd. v.*

UBN Plc (2009) 13 NWLR (Pt. 1158) 256 referred to.) (Pp. 613-614. paras. H-C; 624, paras. C-D)

30. *On Burden of proof of assertion –*

Under sections 131 and 132 of the Evidence Act, the person who asserts a fact must prove it. In this case, the issue of Mr. Hassan's authority to sign the charge before the Tribunal is dependent on the evidential proof demanded by the Evidence Act. (Pp. 607-608, paras. H-A)

31. *On Principles guiding interpretation of the Constitution -*

Because of the importance of the Constitution, any of its provisions must be interpreted in such a manner to enhance its purpose, in cases of real or perceived ambiguity, the provision in question must be construed in such a way as to avoid what is inconvenient or absurd. In this case, it was absurd for the appellant to argue that a criminal charge could not be filed in the country because there was no Attorney-General in office. (Pp. 602. para. G; 676, paras. B-C)

32. *On Principles guiding interpretation of the Constitution –*

The principles guiding the interpretation of the Constitution of the Federal Republic of Nigeria include the following:

(a) The principles on which the Constitution was established, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.

(b) A narrow interpretation that would do violence to the provisions of the constitution and fail to achieve its goal must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution read as a whole, has set out to regulate, is to be preferred.

(c) The construction of the Constitution should be undertaken as an holistic endeavour.

[Global Excellence Comm. Ltd. v. Duke (2007) 16 NWLR (Pt. 1059) 22; A.G.. Bendel v. A.-G., Federation (1982) 3 NCLR 1; Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 332; Tinubu v. IM.B. Securities (2001) 16 NWLR (Pt. 740) 670; Tukur v. Govt.. Gongola State (No. 2) (1989) 4 NWLR (PL 117) 517; Aqua Ltd. v. O.S.S.C. (1988) 4 NWLR (Pt. 91) 622; Ifezue v. Mbadugha (1984) 1 SL'NLR 427; Rabi'u v. State (1981) 2 NCLR 293; Abegunde v. O.H.A (2015) 244 LRCN 1 referred to.] (Pp. 631 - 632. paras. G-C; 632. paras. E-F)

33. *On Interpretation of clear words in constitutional and statutory provisions -*

When interpreting constitutional and statutory provisions, clear and unambiguous words used must be given their plain and ordinary meaning except where such interpretation would lead to manifest absurdity or inconsistency with the rest of the statute, or where the context requires some special or particular meaning should be given to the words. In this case, the words used in paragraph 15(1.) of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) are clear and unambiguous. The plain and ordinary meaning of the words is that the composition of the Tribunal in its highest or full capacity consists of a Chairman and two other persons. So the composition of the Tribunal may even be less than three persons but it cannot be more than three persons. And since there is no provision for quorum in the paragraph, any interpretation that it so provides would amount to reading words which are clearly not in it. *[Dangana v. Usman (2013) 6 NWLR (Pt. 1349) 50; Amadi v. I NEC (2013) 4 NWLR (Pt. 1345) 595; Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296; Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513; Ojokoloso v. Alamu (1987) 3 NWLR (Pt. 61) 377; Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116; Uwazurike v. A.-G., Fed. (2007) 8 NWLR*

(Pt. 1035) 1; *Nigerian Army v. Aminu-Kano* (2010) 5 NWLR (Pt.1188) 429; *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1 referred to.] (Pp. 589-590, paras. F-A; B-C; 611. paras. C-G: 620. paras. B-D; H: 641. para. C; 642. paras. F-G)

34. On Interpretation of clear words in statutory provisions –

When interpreting the provisions of a statute, the court must not ascribe meanings to clear, plain and unambiguous provisions in order to make such provisions conform to the court's view of their meaning or what they ought to be. [A.-G, *Fed v Guardian Newspapers Ltd.* (1999) 9 NWLR Cpt.618) 187 referred to.] (P. 620. paras. D-E)

35. On Status of schedule to an enactment –

A schedule to an enactment forms part of the enactment. Thus, paragraph 15(1) of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) forms part of the Constitution. [*NNPC v. Famfa Oil Ltd.* (2012) 17 NWLR (Pt. 1328) 148 referred to.] (P.61], paras. B-C)

36. On Duty on court to construe provisions of a statute as a whole -

The meaning of a statute should be looked for, not in any single section, but in all the parts together and in their relation to the end in view. In other words, the provisions of a statute should be construed harmoniously. In the context of the Code of Conduct Tribunal, the objective of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is to have a functional tribunal which would achieve the purpose of the Fifth Schedule of the Constitution, that is, to meet the exigencies of accountability, probity, transparency by public officers. [*Rabiu v. State* (1981) 2 NCLR 293; *Adesanya v. President, F.R.N.* (1981) 1 NCLR 236; *Abegunde v. O.H.A.* (2015) 244 LRCN 1; *Marwa v. Nyako* (2012) 6 NVVLR (Pt. 1296) 199 referred to.] (P. 631. paras. C-F)

37. *On Attitude of Supreme Court to concurrent findings of fact –*

The Supreme Court will not interfere with concurrent findings of facts unless there are special circumstances to warrant such interference. In this case, the appellant failed to show any special circumstance to warrant an interference with the concurrent findings of the Tribunal and the Court of Appeal that an officer in the department of (he Attorney General could initiate proceedings against the appellant at the Tribunal. [Onwugbufor v. Okoye (1996) 1 NVVLR (Pt. 424) 252; Olatunde v. Abilogun (2001) 18 NWLR (Pt. 746) 712; Amayo v. State (2001) 18 NVVLR (Pt. 745) 251; Obasohan v. Omorodwn (2001) 13 NWLR (Pt. 729) 206 referred to.] (Pp. 601-602. paras. B-F)

38. *On Meaning of jurisdiction of court –*

Jurisdiction is the authority a court or tribunal has to decide matters presented in a formal way for its decision. It also means the authority which a court or tribunal has to decide matters contested before it or the authority to take cognizance of matters presented in a formal way for its decision. And the limits of the authority may be prescribed in a statute under which the court or tribunal was created. Where a court or tribunal does not have jurisdiction, it cannot adjudicate on a controversy between litigants before it. [National Bank (Nig.) Ltd. v. Shoyeyc (1977) 5 SC 181; Kalio v. Daniei-Kaho (1975) 2 SC 15 referred to.] (Pp. 588-589, paras. F-A)

39. *On How jurisdiction is conferred on court -*

The jurisdiction is conferred on a court by clear and express language. [Akinpelu v. Adegboro (2008) L) NWLR (Pt. 1096) 531 referred to.] (P. 630, para. C)

40. *On Effect of lack of jurisdiction of court -*

Where a court lacks jurisdiction to adjudicate on a cause or matter, its proceedings is an exercise in futility however well

conducted. In other words, its proceedings would amount to a nullity *ab initio* and liable to be set aside. (P. 617, para. G)

41. On When court or tribunal is competent –

A court or tribunal is competent only when:

- (a) it is properly constituted with respect to the number and qualification of its members;**
- (b) the subject matter of the action is within its jurisdiction;**
- (c) the action is initiated by the due process of law; and**
- (d) any condition precedent to the exercise of its jurisdiction has been satisfied.**

And the non-existence of any of the conditions is fatal to the exercise of jurisdiction and adjudication because a defect in competence of a court or tribunal is not intrinsic but extrinsic to the process of adjudication. In this case, the Tribunal was properly constituted as regard its quorum when it sat with its chairman and one other member on 18th September 2015. [Madukola v. Nkemdilim (1962) 2 SCNLR 341; Skenconsult (Nig.) Ltd. v. Ukey (1981) 1 SC 6; Inakoju v. Adeleke (2007) 4 NWLR (Pt.1025) 423; N.U.R.T.W. v. P.P. L.A.N. (2012) 10 NWLR (Pt. 1307) 170; Dangana v. Usman (2013) 6 NWLR (Pt.1349) 50; Goldmark (Nig.) Ltd. v. Ibafon Co. Ltd. (2012) 10 NWLR (Pt.1308) 291; Egharevba v. Eribo (2010) 9 NWLR (Pt. 1199) 411 referred to.] (Pp. 589, paras. A-C: 617, paras. D-G: 630. paras. A-B; 632. para. G; 641, paras. C-G)

42. On Attitude of Supreme Court to academic issue –

The Supreme Court loathes the pursuit of academic issues, and does not make orders in vain. In this case, the issues of regularity of the service of summons on the appellant and whether the Tribunal has the power to compel his appearance before it by bench warrant became academic when the appellant appeared before the Tribunal and it then discharged

its bench warrant. Further, the issue of the order allegedly made by the Federal High Court is spent and academic. [SCOA (Nig.) Ltd. v. Iweka (2000) 7 NWLR (Pt. 664) 325; Ukejianya v. Uchendu (1950) 13 WACA 45; Nkwocha v. Govt., Anambra State (1984) 1 SCNLR 634 referred to.] (Pp. 597-598, paras. C-A; 643, paras. G-H; 648, paras. C-F)

43. On Purpose of reply brief –

A reply brief should only address new issues raised in a respondent's brief which were earlier not canvassed or argued, or to clarify grey areas raised in the respondent's brief but certainly not to emphasize, add to, fine-tune, or repeat what had been argued in the appellant's brief. (Pp. 640-641, paras. H-A)

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N.B.N. Bank (Nig.) Ltd. v. Shoyoye (1977) 5 SC 181
N.N.B.C. v. Famfa Oil Ltd. (2012) 17 NWLR (Pt.1328) 148
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 371 (1988)

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Armed Forces Act, S. 133(3) Code of Conduct Bureau and Tribunal Act, Cap. C15, Laws of the Federation of Nigeria. 2004, Ss. 2, 4, 20 (1) &(2); 23(1) & (2) 24 (1) & (2), Third Schedule, Paras. 3. 4, 12, 17 and 18, Forms 3, 4. 6. 7. S, 9

Constitution of the Federal Republic of Nigeria, 1979, S. 160 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ss. 6(1)(2); 36; 174(1)(2)(9)(b); 211; 230(1), (2)(a) (b); 234; 237(1)(2)(a)(b); 247(2); 249(2); 252; 255; 263; 268; 270; 285(1)(2)(3)(4): 318(4), Paras. 1-10, 15(1), 18(1), (2), (4) of the Fifth Schedule; Para. 1(1) of the Sixth Schedule Economic and Financial Crimes Commissions Act, Cap. El, Laws of the Federation of Nigeria, 2004, Ss. 20, 30 Evidence Act, 2011 Ss. 131, 132, 168(2) interpretation Act, Cap. 123, Laws of the Federation of Nigeria. Ss. 4(2)(b); 27. 28

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Appeal:

This was an appeal against the judgment of the Court of Appeal, which dismissed the appellant's appeal against the ruling of the Code of Conduct Tribunal by which the Tribunal refused to strike out or quash charges of breach of the Code of Conduct for public officers preferred against the appellant. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court;

Names of Justices that sat on the appeal: Mahmud Mohammed, C.J.N. (Presided); Walter Samuel Nkanu Onnoghen, J.S.C. (Read the Leading Judgment); Ibrahim Tanko Muhammad, J.S.C; Nwali Sylvester Ngwuta, J.S.C; Kudirat Motonmori Kekere-Ekun. J.S.C; Chima Centus Nweze, J.S.C.; Amiru Sanusi, J.S.C.

Appeal No; SC.852/2015

Date of Judgment: Friday, 5th February 2016

Names of Counsel: J. B. Daclu, SAN (*with him*, are messrs Yusuf O. Ali. SAN; Ahmed Raji. SAN. Adebayo Adelodun. SAN; Saka Issau. SAN. Mahmud A. Magaji. SAN; K. K. Eleja, SAN; A. K. Adeyi. Esq.; Professor Wnhab Egbewole: S.A.Oke. Esq.; Alex Akoja, Esq.; Danjuma G. Aycye. Esq.; Charles Mbalisi, Esq.; H. M. Usman (Mrs.J; Amina Zukogi (Miss); Christian K. Udeoyibo Esq. P. B. Daudu, Esq.; Adedayo Adedeji, Esq.; Odera V. Nwatu, Esq.; Victor Okwudiri. Esq.; M. M. Grema [Mrs.]; K. O. Ltiwal, Esq.; Htuuidu M. Tukur. Esq.; Mu./ammil Yahaya Esq.. Foluso

Adedeji [Mrs.]; Paulinus 1. Nwagu, Esq.; Zekeri Garuba; Olukayode Ariwoola Jnr; Peter Nwatu, Esq.; Esther Ajoge; Olukayode Olojo; Nkem Maha, S. P. Asbiekaa Esq., C E. Ogbozor [Miss]: Nifemi Aje, Esq.; M. H. Yesulu [Miss]. A. O. Usman. Esq.; S. O. Aduagba. Esq.: Yumis O. Murtala, Esq.; M.O. Akinrata [Miss]; Idris Suleimon. Esq.. Sefinat Eamidi [Miss] and P. Monsurat) - *for the Appellant*

Rotimi Jacobs, SAN (*with him*, are messrs Esegine Gabriel, Esq., Adebisi Adeniyi. Esq.; O. A. Atolagbe, Esq.; M. S. Abubakar. Esq.; Pius Akutah. Esq (P.S.C): H.O.P. Ejiga. Esq.; Achana K. Yaro [SSCj: Abdallah Mohammed (S.C) and Esho J. Damilola (S. C) [Mrs.] -*for the Respondent*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Abuja

Names of Justices that sat on the appeal: Moore A. A. Adumein, J.C.A. (*Presided and Read the Leading Judgment*): Joseph E. Ekanem (Dissented); Mohammed Mustapha. J.C.A.

Appeal No: CA/A/551/203 5

Date of Judgment: Friday, 30th October 2015

Names of Counsel: J. B. Daudu (SAN) (*with him*. Madam Yusuf Ali (SAN); Adebayo Adelodun (SAN); Ahmed Raji (SANE Mahmud A. Magaji (SAN); K. K. Eleja (SAN); Prof. Wahab Egbewole; Danjuma Ayeye. Esq. S. A. Oke, Esq.; Charles Mbalisi, Esq.; Kadiza UsnmU IMrs.J; Amina Zukogi [Miss]; Aileola Adedipe, Esq.-Victor Ikwohiri, Esq.; P. B. Datidu. Esq.; A. Adedeji E.sq.; I. C. Okonji, Esq.; Efut Okoi, Esq.; Kencchukwu A/.ie, Esq.; O. N. Nwatu, Esq.; M. M. Grema [Miss]; Hamidu Tukur, Esq.; M. I. Zurumi, Esq.; P. E Ikpegbu, Esq.; Adagha Dzarma [MissJ; S. O. Said [Miss]; B. B. Daudu. Esq.; C. E. Ogbozor [Miss]; H. M. Ibega. Esq.; U. Moses [Miss]; C. C. Oyere [Miss]; M.J. Lidani, Esq.; Esther Ajoge [MissJ; Igwe Paulinus, Esq.; Adekola I. Olawoye, Esq.; R. P. Lata. Esq.; M. B. Mtistapha, Esq.; A. O. Usman, Esq.; Nifemi Aje [Miss]; S. P.

Ashiekaa. Esq. and Kelechi Udeoyibo, Esq. -for the Appellant. Rotimi Jacobs (SAN) (with him, M. S. Hassan, Esq. (Deputy Director, Federal Ministry of Justice); O. A. Atolagbe. Esq.; H. O. P. Ejiga, Esq. and Abdalla Mohammed, Esq. (Senior Counsel, Federal Ministry of Justice) -for the Respondent.

Tribunal:

Name of the Tribunal: Code of Conduct Tribunal, Abuja

Charge No. CCT/ABJ/01/2015

Date of Ruling: Friday, 18th September 2015

Counsel:

J. B. Daudu. SAN (*with him*, are messrs Yusuf O. Ali, SAN; Ahmed Raji, SAN, Adebayo Adelodun, SAN; Saka Issau, SAN, Mahmud A. Magaji, SAN; K. K. Eleja, SAN; A. K. Adeyi, Esq.; Professor Wahab Egbewole; S.A. Oke, Esq.; Alex Akoja, Esq.; Danjuma G. Ayeye, Esq.; Charles Mbalisi, Esq.; H. M. Usman [Mrs.]; Amina Zukogi (Miss); Christian K. Udeoyibo Esq, P. B. Daudu, Esq.; Adedayo Adedeji, Esq.; Odera V. Nwatu, Esq.; Victor Okwudiri, Esq.; M. M. Grema [Mrs.]; K. O. Lawal, Esq.; Hamidu M. Tukur, Esq.; Muzzammii Yahaya Esq., Foluso Adedeji [Mrs.]; Paulinus I. N\vagu, Esq.; Zekeri Garuba; Olukayode Ariwoola Jnr; Peter Nwatu, Esq.; Esther Ajoge; Olukayode Olojo; Nkem Maha, S. P. Ashiekaa Esq., C. E. Ogbozor [Miss]; Nifemi Aje, Esq.; M. [Miss], A. O. Usman, Esq.; S. O. Aduagba, Esq.; Yunus O. Murtala, Esq.; M. O. Akinrata [Miss]; Idris Suieimon, Esq., Sefmat Uamidi [Miss] and P. Monsurat) - *for the Appellant*

Rotimi Jacobs, SAN (*with him*, are messrs Esegine Gabriel, Esq., Adebisi Adeniyi, Esq.; O. A. Atolagbe, Esq.; M. S. Abubakar, Esq.; Pius Akutah,

Esq. (P.S.C.); H.O.P. Ejiga, Esq.; Achana K. Yaro [SSC]: Abdallah Mohammed (S.C.) and Esho J. Damilola (S. C) [Mrs.] - *for the Respondent*

ONNOGHEN, J.S.C. (Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal, holden at Abuja in appeal No. CA/A/551/2015 delivered on the 30th day of October, 2015 in which the court dismissed the appeal of appellant against the ruling of the Code of Conduct Tribunal in charge No. CCT/ABJ/01/2015 delivered on the 18th day of September, 2015 in which the tribunal held that the criminal charge preferred against appellant was competent despite the absence of a sitting Attorney- General of the Federation and issued a bench warrant against appellant for his failure to appear before the tribunal and answer/plead to the charges preferred against him.

The facts of the case, as can be gathered from the record include the following:

Appellant was a two-term Governor of Kwara State, between May, 2003 and May, 2011. While in the said office, appellant filed, as required by law, four asset declaration forms and submitted same to the Code of Conduct Bureau.

These forms were duly investigated by the Bureau and other relevant agencies of government as a result of which it was allegedly found that appellant allegedly corruptly acquired many properties while in office as Governor of Kwara State but failed to declare some of them in the said forms earlier filled and submitted to the relevant authorities. It was also allegedly discovered that appellant made an anticipatory declaration of assets/upon his assumption of office as Governor of Kwara State which he acquired later. It was also alleged that appellant sent money abroad for the purchase of properties in London and that he maintained an account outside Nigeria while serving as the said Kwara State Governor; It was the discovery of these alleged violations of the Code of Conduct for Public

Officers that the Code of Conduct Bureau initiated a criminal proceeding against appellant before the Code of Conduct Tribunal, holdcn at Abuja,

Upon serving of the summons on him, appellant filed a motion dated 17th September, 2015 before the Code of Conduct Tribunal ^B challenging the competence of charge No, CCT/ABJ/01 /2015 and a suit each before the Federal High Court holdcn at Abuja and Lagos in which he also challenged the validity of the criminal proceedings initiated against him at the Code of Conduct Tribunal.

In the course off the proceedings in the tribunal on the 18th ^ day of September, 2015, appellant contended that since there was no sitting Attorney-General of the Federation before or at the time charge No. CCT/ABJ/01/2015 was filed before the tribunal, the said charge was incompetent and that appellant would not appear before the said tribunal etc. D

The tribunal overruled the objections of appellant and issued a bench warrant against appellant and adjourned the case to 19th September, 2015 to enable appellant appear and take his plea but appellant did not so appear, resulting in the tribunal renewing its order or bench warrant and adjourned the matter to 22nd September 2015.

On 22nd September, 2015, appellant appeared before the tribunal *III* person as a result of which the charges preferred against him were read to him and he pleaded not guilty thereto as a result ^ ot which the warrant of arrest/bench warrant issued against him was revoked, and appellant granted bail on self-recognizance and the matter adjourned to the 21st. 22nd and 23rd of October, 2015 for hearing. It is important to note that appellant voluntarily appeared before the tribunal on the 22nd day of September, 2015. His _G appearance was not on the execution of the warrant of arrest issued by the tribunal.

However, on the 2nd day of October, 2015, appellant filed an appeal against the ruling of the tribunal of 18th September, 2015 before the Court of Appeal in which the following issues were raised for the determination of the appeal.

1. Whether the Code of Conduct Tribunal was properly constituted when it sat on 18th September, 2015 with only two members
2. Whether the Code of Conduct Tribunal was competent to issue bench warrant when it was not a court of criminal jurisdiction.
3. Whether the charge preferred against appellant before the Code of Conduct Tribunal when there was no silting Attorney- General of the Federation was competent.
4. Whether the service on appellant of the summons for the proceedings of the 18th of September. 2015 was proper in law, and
5. Whether the Code of Conduct Tribunal has the *vires* to ignore an order of the Federal High Court barring; it from sitting or staying its further proceedings in the matter.

As stated earlier in this judgment, the Court of Appeal dismissed the appeal which resulted in the present further appeal before this court, the issues for the determination of which have been formulated by leading senior counsel for appellant. J.B. DAUDU, SAN in the appellant's brief filed on 11/11/2015 as follows:-

- " 1. Whether the majority decision of the Court of Appeal, Abuja Division was right in the interpretation of the Constitution when it held that the Code of Conduct Tribunal was properly constituted in law when it sat on 18/09/2015 with just the Chairman and one (1) other member in contravention of the provisions of paragraph 15 (1) of the 5th Schedule of the 1st 1999 Constitution as to

exercise the powers and jurisdiction vested by the 1999 Constitution and if the answer is in the negative, whether the charge and the entire proceedings inclusive ? (Issue No. J) (Grounds 1 and 2).

2. Whether the majority decision was right when it held that the Code of Conduct Tribunal is a court of limited criminal jurisdiction competent and empowered to issue a bench warrant against the appellant in the event of his absence from the proceedings of the tribunal? (Issue No. 2) (Ground 3).

3. Having regard to the clear wording of section 24(2) of the Code of Conduct Bureau and Tribunal Act, Cap Attorney-General Federation is competent? of the (Issue No.3) (Ground 4).

4. Whether the majority decision of the Court of Appeal was correct in law when it held that notwithstanding the lack of proper service on the appellant of the criminal summons to appear before the Code of Conduct Tribunal on the 18th of September, 2015 such a vice was a mere irregularity cured by the appearance of the appellant at the proceedings regardless of the existence of appellant's conditional appearance on protest'? (Issue No. 4) (Ground 5)

5. . "Whether the majority decision of the court below was rigid when it justified the refusal of the Code of Conduct Tribunal to obey the Federal High Court to appear before it and show cause why it should not order a stay of further proceedings on the ground that the order in issue was not one specifically asking the lower tribunal to stay its proceedings? (Issue No.5) (Ground 6)

6. Whether the majority decision of the Court of Appeal was correct when it held that the Code of Conduct Tribunal was a criminal court empowered to apply the Administration of Criminal Justice Act? (Issue No. 6) (Ground 7).

On the other hand, learned senior counsel for the respondent, ROTIMI JACOBS, SAN identified the following five issues as relevant for the determination of the appeal in the respondent's brief filed on the 18th day of November, 2015. These are:-

"1. Whether the Court of Appeal was not right in its unanimous decision when it held that the Code of Conduct Tribunal was properly constituted when it heard and determined the issues that culminated in the tribunal ruling of 18th September, 2015 with the Chairman and one member. (See Grounds 1 and 2 of the notice of appeal at pages 1268 - 1278).

2. Whether the Court of Appeal was not right when it held that the Code of Conduct Tribunal, though a court of limited criminal jurisdiction, was competent to issue a bench warrant against the appellant in the event of his failure to appear before it. (See ground 3 of the notice of appeal).

3. Whether the Court of Appeal was not right in its majority decision when it held that the charge preferred against the appellant before the Code of Conduct Tribunal and signed by M.S. Hassan, a Deputy Director in the Federal Ministry of Justice was competent notwithstanding that there was no sitting Attorney-General of the Federation at the time it was initiated (See ground 4 of the notice of appeal).

4. Whether the Court of Appeal was not right when it held that the issue of the alleged irregularity in the service of summons on the appellant to appear before the Code of Conduct Tribunal on 18th September, 2015, was not fatal to the proceedings before the

Code of Conduct Tribunal (See Grounds 5 and 7 of the notice of appeal).

5. Whether the Court of Appeal was not right when it held that since the Federal High Court did not make any order on 17th September, 2015 restraining the Code of Conduct Tribunal from sitting, the issue of disobedience of that order or the superiority of the Federal High Court to the tribunal would not arise (See 1 ground 6 of the notice of appeal)."

In arguing issue 1, learned leading senior counsel for appellant submitted, by way of summary that the decision of the lower court was erroneous in the interpretation of the Constitution by holding that the Code of Conduct Tribunal was properly constituted in • law when it sat, on 18/9/15 with just the Chairman and one other member in contravention of the provisions of paragraph 15(1) of the 5th Schedule of the 1999 Constitution as to exercise of powers and jurisdiction vested by the 1999 Constitution and in consequence of the charge and entire proceedings inclusive of the ruling resulting] in the instant further appeal is null and void and of no consequence. To arrive at the above conclusion, learned senior counsel referred to paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) and stated that the words used therein to the effect that the Code of Conduct Tribunal "shall consist of a Chairman and two other person" are clear and precise and must be given their natural meaning - relying on *Amasike v. Registrar General, Corporate Affairs Commission* (2006) 3 NW1 Al (Pt. 968) 462 and *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1; that the literal and ordinary meaning of the provision in question is that for the Code of Conduct Tribunal to be legally functional, there must "be A at least three persons inclusive of its Chairman; that where, f₀r whatever reason the membership of the tribunal falls below three the deficiency in membership adversely affects the jurisdiction that the above position is supported by section 20(2) of the Code of Conduct Bureau and

Tribunal Act, Cap. C15, LFN, 2004: that the provisions as to the composition of the tribunal in the Constitution and Cap. C15, (supra) admits of no lacuna to be filled by a resort to the provisions of the Interpretation Act, as erroneously held by the Court of Appeal; that paragraph 15(1) of the 5th Schedule is both the composition and quorum of the tribunal and that recourse to the Interpretation Act was therefore unnecessary.

It is the further submission of learned senior counsel that the word "shall", as used in the enactments, connotes command admitting of no discretion or permissiveness while the word "other" has been interpreted in *Omcudiwe v. F.R.N.* (2006) 10 NWLR (Pt. 988) 382 to mean "additional"; that sections 27 and 28 of the Interpretation Act cannot curtail or sideline the constitutional prescription in paragraph 15(1) of the 5th Schedule to the 1999 Constitution neither did the sections downsize the constitutional quorum of the tribunal from 3 to 2; that since the relevant enactments have made exhaustive provisions for the composition and quorum of the tribunal, the provisions of the Interpretation Act become irrelevant and consequently inapplicable.

It is also the further submission of learned senior counsel for the appellant that to hold that a 2-man panel of the tribunal can sit in adjudication contrary to the express provision of the Constitution raises a serious issue of breach of the principles of fair hearing as enshrined in section 36 of the 1999 Constitution, (as amended) and urged the court to resolve the issue in favour of the appellant.

On his part, learned senior counsel for the respondent referred to the relevant provisions of the Constitution and Act and the decision of the lower court on the issue under consideration and submitted that the lower court was right in coming to the conclusion that the tribunal was properly constituted on the 18th day of September, 2015 when it adjudicated on the matter; that it is not the intent of the legislature that the three members who are to make up the tribunal must sit together at all times because paragraph 15(1) of the 5th Schedule is the establishment paragraph of the tribunal because

there is a difference between the expression "consist of" and "quorum of": that the legislature used the expression "consist of not "quorum of.

Learned senior counsel then went on to reproduce various definitions of "consist of and "quorum of to demonstrate their differences; that paragraph 15(1) of the 5th Schedule to the 1999 Constitution is the establishment paragraph of the Code of Conduct Tribunal to be made up of a Chairman and two oilier members as its composition: that the said paragraph makes no provision for the quorum of the tribunal for the purpose of transaction of legally valid business. Learned senior counsel then referred to certain sections of the Constitution establishing the courts of record and tribunals -including election tribunals and submitted that composition of the bodies is different from their quorum; that to determine the quorum of the tribunal resort must be had to the provision of section 28 of the Interpretation Act which provides that the Chairman and a member shall be sufficient to form a quorum of any tribunal including the Code of Conduct Tribunal; that the Interpretation Act is applicable to be the interpretation of the provisions of the Constitution as expressly provided in section 318(4) of the 1999 Constitution and held by this court in *A.-G., Federation v. A.-G., Abut State (No.2)* (2002) 6 NWLR (Pt. 764) 542 at 855: that the decision in *Okoro v. Nigerian Army Council* (2000) 3 NWLR (Ft. 647) 77 and *State v. Olatimji* (2003) 14 NWLR (Pt. 839) 138 are not relevant to the facts of this case and consequently inapplicable as they relate to the non-qualification of the members of the Court Martial and not the quorum of the Court Martial. Finally, learned counsel urged the court to resolve the issue against appellant.

The reply brief of appellant filed on 25/11/15 re-emphasized the points already made in the appellant's brief. I therefore see no need to reproduce them herein as to do so would serve no useful purpose.

It is not disputed that the proceedings of the Code of Conduct Tribunal including the ruling thereof conducted on the IS"¹ day of September. 2015 was conducted by the Chairman and a member thereof; that is two members

of the tribunal including the Chairman conducted the proceedings and delivered the ruling in issue. The issue under consideration is simply whether the said tribunal as constituted was constitutional or had the *vires* or jurisdiction or competence to sit and conduct any proceedings including the A, proceedings in question having regard to the provisions of paragraph 15(1) of the 5th Schedule to the Constitution of the Federal Republic of Nigeria 1999. (as amended) (hereinafter referred to as the 1999 Constitution (as amended)).

The relevant provisions of the 1999 Constitution,(as amended) and Acts of the National Assembly relied upon by counsel for the contending parties are as follows:-

- (1) Paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended):

"There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons." Section 20(1) and (2) of the Code of Conduct Bureau and Tribunal Act: Cap. CI 5 LFN, 2004 provide thus:

- "(1) There is hereby established a tribunal to be known as D the Code of Conduct Tribunal (in this Act referred to as "the Tribunal")
- (2) The Tribunal shall consist of a Chairman and two other members."

Section 3 J 8(4) of the 1999 Constitution (as amended) provides E thus:

"The Interpretation Act shall apply for the purposes of interpreting the provisions of this Constitution."

On the other hand, section 28 of the Interpretation Act, provides as follows:-

"Notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal, commission of inquiry (including any appeal tribunal established for the purpose of hearing

any appeal arising therefrom) shall not be less than two (including the Chairman);

Provided that the Chairman and the member shall be present at every sitting of the tribunal, commission of inquiry throughout the duration of the trial or hearing."

The issue is, whether by the provisions of the 1999 Constitution, (as amended) supra, and the Acts of the National Assembly, also reproduced above, the composition of the Code of Conduct Tribunal on 18th September, 2015 of the Chairman and one member is valid or not? It is the submission of learned senior counsel for appellant that the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution, (as amended) and section 20 of the Code of Conduct Bureau and tribunal Act constitute both de-composition and quorum of the Code of Conduct Tribunal, which is, that at all times the said tribunal must consist of a Chairman and two other members otherwise it is incompetent to sit and transact any business while the respondent contends that the tribunal is properly constituted for the purpose of any proceedings if it consists of a Chairman and member thereof. By submitting that the above relevant provisions of the 1999 Constitution (as amended) and sections of the Acts constitute both the composition and quorum of the Code of Conduct Tribunal, learned senior counsel for appellant admits that there is a difference between composition and quorum but that in the case of the tribunal in question, the terms/words mean the same thing.

To resolve the issue, we shall have to start by understanding some relevant words used in drafting the provisions; these are "consist of. At page 208 of New Webster's Dictionary of English Language, International Edition, the word "consist" is defined *inter alia*, thus:- "To be made up or composed...to reside or lie essentially."

On the other hand, the word is defined in Black's Law Dictionary. 6th Edition at page 308 as follows:-

"To stand together, to be composed of or made up of"

From the above definitions, it is very clear, and I hold the view that paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) and section 20(1) and (2) of Cap. C15. LFN. 2004 provide for the establishment and composition of the Code of Conduct Tribunal as consisting of a Chairman and two other members. This construction is clearly the literal meaning of the words used by the draftsman in the relevant sections concerned.

However, does the composition also mean the quorum needed for the tribunal of a Chairman and two other members to competently conduct any proceedings? This leads to the meaning of "quorum". What does it mean? Blacks Law Dictionary, 6th Ed. page 1255 defines the word thus:

"A majority of the entire body, e.g. a quorum of a State Supreme Court. The number of members who must be present in a deliberative body before business may be transacted. In both houses of congress a quorum consists of a majority of those chosen and sworn. Such a number of the members of a body as is competent to transact business in the absence of the other members "

It should be noted that the words "consist of are used in B the 1999 Constitution (as amended) in the establishment and composition sections of the courts of record such as the Court of Appeal in section 237(2); Federal High Court section 249(2). See also sections 255 and 270 of die said Constitution.

Section 230 of the 1999 Constitution, (as amended) established C the Supreme Court of Nigeria and detailed its composition but section 234 of the said 1999 Constitution provides for the quorum or constitution of the court for the purpose of exercising its jurisdiction, *inter alia*, thus:

"For the purpose of exercising any jurisdiction D conferred upon it by this Constitution or any law, the Supreme Court shall be duly constituted if it consists of not less than live Justices

of the Supreme Court ... See also section 247 (1) in relation to the Court of Appeal.

I agree with the submission of learned senior counsel for the B respondent and the lower court that the above provisions relate to the quorum of the relevant courts for the purpose of exercising the jurisdiction conferred on them by the Constitution or any other law and that such provision is clearly absent in paragraph 15(1) of the 5th Schedule to the 1999 Constitution, (as amended). The F said paragraph and section 20(1) and 2 of Cap. C15 of LFN, 2004 equally did not contain any expression relating to the composition of the tribunal in the exercise of its jurisdiction.

To determine the quorum of the Code of Conduct Tribunal as established, one has to look at section 28 of the Interpretation q Act which, by operation of section 318(4) of the 1999 Constitution (as amended), " shall apply for the purpose of interpreting the provisions of this Constitution"

It is important to note that a resort to the provisions of the Interpretation Act is not for the purpose of filling in a lacuna but g for interpretation of the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution, (supra) and section 20(1) and (2) of Cap. CI 5 of LFN, 2004 which established the Code of Conduct Tribunal as consisting of the Chairman and two other members. In other words, what do these provisions mean for the purpose of lite tribunal exercising its jurisdiction?

The answer is as provided by section 28 of the Interpretation Act thus, *inter alia*:-

"Notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal, commission of inquiry (including any appeal tribunal established for the purpose of hearing any appeal

arising therefrom) shall not be less than two (including the Chairman)....."

From the above provision, it is clear that any sitting of the Code of Conduct Tribunal presided by the Chairman and one member, as was the case herein, is valid.

The above position is very much similar to the provisions of section 285(1) of the 1999 Constitution, (as amended) by section 29 of the First Alteration Act which establishes the National and State Houses of Assembly Election Tribunals. In section 285(3) of the said 1999 Constitution, it is provided thus:-

"The composition of the National and State Houses of Assembly Election Tribunals and the Governorship Election Tribunal respectively shall be as set out in the Six Schedule to this Constitution."

However, paragraph 1(1) of the said Sixth Schedule enacts thus:-

"A National and State Houses of Assembly Election Tribunal shall consist of a Chairman and two other members". - just like the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution, (as amended) in relation to the Code of Conduct Tribunal.

In order to determine the quorum of the said National and State Houses of Assembly Election Tribunal, section 285(4) of the said 1999 Constitution (as amended) by the First Alteration provides that:

"The quorum of an Election Tribunal established under this section shall be the Chairman and one other member."

It is therefore very clear from the above that the interpretation given by learned senior counsel for appellant in respect of the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution, (as amended) as constituting both the composition and quorum of the Code of Conduct Tribunal cannot be correct, because

A regard to the provisions of the Constitution and laws examined supra.

Before leaving this issue, I need to comment on the case of *Okoro v. Nigerian Army Council and State v. Olatumji* (supra) cited and relied upon by learned senior counsel for appellant., I as roe B with learned counsel for respondent that the facts of both cases are totally different from those of the instant case and that those cases relate to the qualification of the members of the Court-Martial which has nothing to do with the quorum of the said Court-Martial. The question was whether a member of the Armed Forces of a lower rank than that required by section 133(3) of the Armed Forces Act is qualified to sit and deliberate on matters in the Court-Martial.

In the circumstance, I resolve issue 1 against appellant.

In respect of issue 2. it is the submission of learned senior counsel for appellant that the lower court was in error when it held D that the Code of Conduct Tribunal is a court of limited criminal jurisdiction competent and empowered to issue a bench warrant against appellant in the event of his absence from the proceedings of (lie Tribunal; that contrary to the holding of the lower court on the issue, paragraph 13(F), (2), (3) and (4) of the 5th Schedule to the 1999 Constitution (as amended), demonstrates that the jurisdiction of Code of Conduct Tribunal is not criminal because the tribunal was not designed to exercise criminal jurisdiction as none of the punishments available under penal legislations is made available to the tribunal as can be seen in paragraph 15(2) of the 5th Schedule F io the 1999 Constitution, (as amended); that the Code of Conduct Tribunal is a disciplinary body for public officers who fall below the acceptable level of probity, ethics etc; that the Code of Conduct Tribunal not being a court with criminal jurisdiction, it cannot take refuge under the Administration of Criminal Justice Act, 2015 or q issue summons, warrants of arrest and other penal processes and that

the physical presence of appellant at the Code of Conduct Tribunal .was consequently not necessary. Learned senior counsel urged the court to resolve the issue in favour of appellant.

On his part, learned senior counsel for the respondent submitted that the contention by appellant that the tribunal has no criminal jurisdiction because it cannot impose any of the punishments in the penal legislation is misconceived as borne out by a careful j consideration of the entire provisions of the 5th Schedule to the 1999 Constitution, (as amended); that by the provisions of paragraphs 1 - 10 of the 5th Schedule, tire tribunal has the power to try certain contraventions that border on corruption by public officers such as bribe, receipt of unauthorized gift and abuse of office; that the tribunal has power to impose punishment after making a finding of guilt - which are part of die exercise of criminal jurisdiction; that the punishment of forfeiture of asset under paragraph 13(2) (c) of the 5th Schedule is also prescribed under section 30 of the Economic and Financial Crimes Commissions (Establishment, etc) Act, Cap. EL. LFN, 2004; section 20 of the said FFCC Act and sections 11 and 17 of the Advance Fee Fraud Act. Cap. A6, LFN. 2004; that the tribunal is not the same as any of the professional disciplinary bodies like the Legal Practitioners' Disciplinary Committee and Medical and Dental Practitioners Disciplinary Committee which are not creatures of the Constitution; that this court should be persuaded by the decision of the lull court of the Court of Appeal in *A.-G., Federation v. Abubakar* (2007) 8 NWLR (Pt. 1035) 117 to the effect that the Code of Conduct Tribunal has criminal jurisdiction and urged the court to resolve the issue against appellant.

In the reply brief, learned senior counsel for appellant submitted that the Code of Conduct does not provide an offence named "corruption" or "abuse" which are expressly offences in the ICPC Act and EFCC Act or other legislations which vests jurisdiction in

the Federal High Court; that there is a difference between a disciplinary penalty and a punishment for an offence, relying on *United States v. Lovett* (1945) 328 US 303 and that the court should not rely on the *A.-G'. Federation v. Abubakar* decision of the Court of Appeal as it cannot import meaning into the 1999 Constitution, (as amended) not intended by the legislature.

The issue, as contended by learned senior counsel for appellant is simply whether the sanctions specified in section 23(2) Code of Conduct Bureau and Tribunal Act and paragraph 18(2) of the 5th Schedule to the 1999 Constitution, (as amended) not being the traditionally recognized criminal law sanctions such as fines or imprisonment, they are not basically more of administrative than criminal sanctions, known to law.

In the case of *United States v. Lovett* (1945) 328 US 303 cited by learned senior counsel for appellant, it was held thus:

"Punishment presupposes an offence, not necessarily, an act previously declared criminal, but an act for which retribution is exacted. The fact that harm is inflicted by governmental authority does not make it punishment. Figuratively speaking all discomfiting action may be deemed punishment because it deprive of what otherwise would be enjoyed. But there may be reasons other than punitive for such deprivation. A man may be forbidden to practice medicine because he has been convicted of a felony ... or because he is no longer qualified ... the deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact."

Clearly therefore, there are administrative and criminal sanctions.

Is it correct to say that the sanctions the Code of Conduct Tribunal can impose are purely administrative, if so why are j the provisions of the Code

of Conduct Bureau and Tribunal Act and paragraph 18 of the 5th Schedule to the 1999 Constitution, (as amended) replete with unambiguous terms and expressions indicating that the proceeding before the said Code of Conduct Tribunal are criminal in nature? The terms and expressions used in the above legislations include arrest, arraignment, the charge, plea, prosecution, conviction, guilty, sentence, prerogative of mercy, etc. See sections 23. 24 of the Code of Conduct Bureau and Tribunal Act; paragraph 18 of the 5th Schedule in the 1999 Constitution, (as amended); paragraphs 3.4 and Forms 3.4.6,7,8 and 9 of the Third (3rd) Schedule to the Code of Conduct Bureau and Tribunal Act. Finally, paragraph 17 of the 3rd Schedule to the Code of Conduct Bureau and Tribunal Act empowers the tribunal to apply the provisions of the Criminal Procedure Act or Code in the conduct of its proceedings in the "trial of offences generally." With the repeal of the Criminal Procedure Act and Criminal Procedure Code, section j 493 of the Administration of Criminal Justice Act, 2015, has taken their place. The 3rd Schedule to the Code of Conduct Bureau and Tribunal Act is actually headed "Code of Conduct Tribunal Rules of Procedure" and is sub-divided as follows:

- (1) Institution of proceedings.
- (2) Order on an accused to appear.
- (3) Commencement of trial.
- (4) Plea of not guilty or no plea;
- (5) Presentation of case for prosecution.
- (6) Procedure after presentation of evidence by the prosecutor;
- (7) Defense, etc. etc.

From the totality of the provisions it is my view that it is clear that the intention of the legislature is to make the proceedings of the tribunal criminal proceeding to be regulated by criminal procedure.

It must be observed that the nature of the punishment to be imposed by the tribunal is not exhaustive at the moment because paragraph 8(1) of the 5th Schedule to the 1999 Constitution, (as amended) and section 23(1) of

the Code of Conduct Bureau and Tribunal Act contain a provision to the effect that the National Assembly may prescribe "such other punishment" other than the current ones to be imposed by the tribunal. This clearly shows a possibility of the National Assembly imposing sanctions of fines and or imprisonment for offences under the Act or paragraph 18 of the 5th Schedule to the said 1999 Constitution, (as amended), if so desired.

The lower court, in considering the issue had come to the conclusion that the Code of Conduct Tribunal is a tribunal with limited criminal jurisdiction. However, looking closely at the provisions of the 5th Schedule to the 1999 Constitution, (as amended) and the Code of Conduct Bureau and Tribunal Act, earlier referred to in this judgment, it is safer to hold that the said tribunal has a quasi-criminal jurisdiction designed by the 1999 Constitution, (as amended). It is a peculiar tribunal crafted by the Constitution. In the circumstance, I hold the strong view that as a tribunal with quasi-criminal jurisdiction with authority to be guided by the Criminal Procedure Act or Code in the conduct of its proceedings, it can legally issue bench warrant for the purpose of carrying out its quasi-criminal jurisdiction. I should not be understood as saying that the Code of Conduct Tribunal is a court of superior record or jurisdiction with relevant inherent powers and sanctions but that as a quasi-criminal tribunal/court, it has the necessary powers to put into effect its mandate of ensuring accountability, probity, transparency etc of public officers in public office.

I therefore resolve issue 2 against appellant

On issue 3, it is the submission of learned senior counsel for appellant that having regard to the clear wording of section 24(2) of the Code of Conduct Bureau and Tribunal Act, the 13 count charge preferred against appellant by someone other than the Attorney-General of the Federation is incompetent and liable to be set aside; that where a person other than the Attorney-General of the Federation files a charge as in the instant case, it was mandatory for the person to prove prior authorization by the Attorney-General or the Solicitor-General of the Federation, which the respondent

failed to do; that the provisions of sections 2 and 4 of the Law Officers Act, Cap. L18, LFN, 2004 which generally authorizes the C Solicitor-General of the Federal Ministry of Justice to authorize law officers to act on behalf of the Ministry in the absence of sitting Attorney-General of the Federation does not apply to the facts of this case which specifically requires the Attorney-General of the Federation to act personally or directly before an act can be valid, D relying on *Matari v. Dangaludima* (1993) 3 NWLR (Pt. 281) 266; that it is not in dispute that at the time of filing the charge, there was no sitting Attorney-General of the Federation; in the alternative that there is, nothing to show that the Solicitor-General either exercised the powers of the Attorney-General under the Code of Conduct E Tribunal Act or authorized any other person to exercise same and urged the court to resolve the issue in favour of appellant.

It is the contention of learned Senior Counsel for respondent that the power to initiate criminal prosecution in Nigeria is conferred on the Attorney-General of the Federation by the provisions of section 174 and 211 of the 1999 Constitution, (as amended) and overrides every other law including section 24(2) of the Code of ! Conduct Bureau and Tribunal Act; that section 174(F) and (2) of the 1999 Constitution, (as amended) also recognizes the fact that other authorities or persons, apart from the Attorney-General may initiate and undertake criminal proceedings against any person, relying on *Comptroller of Prisons v. Adekanye (No. 1)* (2002) 15 NWLR (Pt. i 790) 318 at 329; *F.R.N. v. Osahon* (2006) 5NWLR (Pt. 973) 361 at 406; *F.R.N. v. Adewumni* (2007) 10 NWLR (Pt. 1042) 399 at 418 - 419.

In the alternative, learned senior counsel submitted that M.S. Hassan Esq., a Law Officer, can competently initiate a criminal ' proceedings by virtue of sections 2 and 4 of the Law Officers Act; that there was no issue raised either at the tribunal or the lower court on appeal that M.S. Hassan, Esq does not have authority of the Solicitor-General. as such the need for the proof of such authorization did not arise: that in any event, it is only the

Solicitor-General or the Attorney-General of the Federation that can challenge the authority of Mr. Hassan to file the charge in question, not any other person relying on *F.R.N, v. Adewunmi* (supra) at 416 – 417. Finally counsel urged the court to resolve the issue against appellant.

Section 24(2) of the Code of Conduct Bureau and Tribunal Act which forms the basis of the issue under consideration provides as follows:-

"(2) "Prosecutions for all offences referred to in this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officers in the Federal Ministry of Justice as the Attorney-General of the Federation may authorize so to do."

It is not disputed that at the time M.S. Hassan Esq., a Law Officer in the Federal Ministry of Justice filed the charge against appellant, there was no sitting *Attorney-General*, of the Federation. It is the contention of learned senior counsel for appellant that with the absence of a sitting Attorney-General of the Federation. M.S. Hassan Esq., could not have been so authorized by an absent Attorney-General of the Federation to initiate the criminal proceedings against appellant as required by the said section 24(2) supra. The contention of learned senior counsel for appellant is also that the provision of section 24(2) supra is mandatory and that noncompliance vitiates the charge and proceedings arising therefrom. The question is whether learned senior counsel is right.

I had earlier, in the consideration of issue 2 supra, come to the conclusion that the Code of Conduct Tribunal has quasi-criminal jurisdiction over matters before it. The above being the case, it is necessary to look at the constitutional powers of the Attorney-General of the Federation in initiating criminal prosecutions as enshrined in section 174 (1) and (2) of the 1999 Constitution, (as amended) which provides thus:

"(1) The Attorney-General of the Federation shall have power -
(a) to institute and undertake criminal proceedings (sic) (prosecution) against any person before any court of law in Nigeria, other than a Court - Martial, in respect of

any offence committed by" under any Act of the National Assembly;(b)

(b)

(c)

- (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department."

It is not in doubt that the Code of Conduct Bureau and Tribunal Act which created the offences peculiar to the jurisdiction of the tribunal is an Act of the National Assembly in fact and by operation of law.

Also not in dispute is the fact that M.S. Hassan Esq., a Deputy Director in the Federal Ministry of Justice is a Law Officer in the department/chambers of the Attorney-General of the Federation.

In interpreting the provisions of section 174 of the 1999 Constitution, (as amended) or similar provision under the 1979 Constitution - section 160 thereof, this court has held in a number of cases that the Attorney-General's power of public prosecution is not exclusive as any other authority or person can institute and undertake criminal prosecution - see *F.R.N. v. Adewunmi* supra, at E⁴ 418-419 paras. F-G, where this court stated, *inter alia* thus:-

"These sections though very similar in content do not require that the officers can only exercise the power to initiate criminal proceedings if the Attorney-General expressly donated his power to them. The provisions of this section presumed that any officer in any department of the Attorney-General's office is empowered to initiate criminal proceeding unless it is proved otherwise. See also *F.R.N. v. Osahon* (2006) 5 NWLR (Pt.973) 361. It is very clear that the power of initiating criminal proceedings by any officer of the department of the Attorney-General of the Federation is not

dependent on the office of the said Attorney-General of the Federation having an incumbent.

Another provision that needs looking into in trying to resolve the issue under consideration is sections 2 and 4 of the Law Officers Act, Cap. L8, LFN, 2004 which enact as follows:-

"2. The offices of the Attorney-General, Solicitor-General and. The Solicitor General of the Federation in the absence of the Attorney-General of the Federation may perform any of the duties and shall have the same powers as are imposed by law on the Attorney-General of the Federation."

It is not in dispute that at the time the Law Officer. M.S. Hassan Esq. initiated the proceedings by filing the charge against appellant, there was and still is. a sitting Solicitor General in the Federal Ministry of Justice. I had earlier also found that M.S. Hassan Esq. is a Law Officer in the department of the Attorney-General of the Federation.

Thirdly, there is no issue before the tribunal and the lower court concerning the authority of the Solicitor General authorizing Mr. Hassan to file the charge since by the provisions of section 4 of the Law Officers Act (supra), the Solicitor General, in the absence of a sitting Attorney-General, as in the instant case, "may perform any of the duties and shall have the same powers as are imposed by law on the Attorney-General of the Federation" such as that imposed by section 24(2) of the Code of Conduct Bureau and Tribunal Act.

In the circumstance and having regard to the state of the law, applicable to the facts relevant to the issue considered supra, I find no merit in issue 3 which is hereby resolved against appellant.

On issue 4, it is the submission of learned senior counsel for appellant that the lower court was in error when it held that notwithstanding the lack of proper service on the appellant of the

criminal summons to appear before the tribunal on 18th September. 2015, such a vice was a mere irregularity which was cured by the appearance of appellant at the proceedings despite the conditional appearance of appellant on protest.

The complete answer to the above issue as argued lies in the provision of section 136(a) of the Administration of Criminal Justice Act, 2015 to the effect that trials may be held notwithstanding –

- (a) any irregularity, defect or error in the summons, or warrant or in the issuing, service or execution of the summons or warrant.

By operation of section 4(2) of the Interpretation Act, references to the Criminal Procedure Act and/or Criminal Procedure Code in the Third (3rd) Schedule to the Code of Conduct and Bureau Tribunal Act, particularly rule 17 thereof are understood or construed to mean references to section 136 of the said Administration of Criminal Justice Act, 2015. The said section A 136(a) of the Act provides as follows:-

"Where a defendant is before a court, whether voluntarily or on summons, or after being arrested with or without warrant, or while in custody for the same or any other offence, the trial may be held notwithstanding –

- (a) any irregularity, defect or error in the summons or warrant, or in the issuing, service, or execution of the summons or warrant."

In the circumstance issue 4 is also resolved against appellant C-It is the submission of learned senior counsel for appellant on issue 5 that the decision of the lower court was wrong when it justified the refusal of the Code of Conduct Tribunal to obey the order of the Federal High Court to appear before it and show cause why it should not order a stay of further proceedings on the ground D that the order in issue was not one specifically asking the tribunal to stay its proceedings.

I have carefully gone through the record particularly the order of the Federal High Court in suit No. FHC/ABJ/CS/7 75/2015 issued on the 17th day of September, 2015 and reproduced at pages 946 - E 949 of Vol. 2 of the record and the judgment of the lower court on the issue particularly at pages 1243 - 1244 of the record and I have no hesitation in agreeing with the decision of the lower court on the matter. The lower court found/held as follows, *inter alia*:-

"It is apparent on the face of the record of appeal that the tribunal was misled into believing or thinking that the Federal High Court made an order "barring" it from sitting. There was no such order. The order of the Federal High Court reproduced above, merely directed the main respondents "to appear before this court ... And show cause why the interim orders of injunction being sought by the plaintiff/appellant should not be made ...". The respondent to the appellant *ex-parte* application could "appear" before the Federal High Court either by themselves or by their legal practitioners to react to the appellant's motion on notice for interim injunction. The order of the Federal High Court did not ask the tribunal to stay proceedings or further proceedings in the case, the subject matter of this appeal. Since there was no order by the Federal High Court directing the tribunal to stay proceedings, the argument of the contending parties on whether or not the tribunal is a superior court having coordinate jurisdiction with the Federal High Court are merely of academic relevance."

As stated earlier, the above decision cannot be faulted having regard to the facts of the case and arguments of counsel on the issue concerned. The only positive order made by that court was for the respondents to appear before the Federal High Court and show cause why the interim orders of injunction being sought by the appellant should not be made. The respondents to the application in which the order was made could appear either personally or by legal practitioners. They were not ordered to appear in person. In any event, the suit in which the order was made is not the matter giving rise to this appeal.

I hold the view that if appellant felt aggrieved with the conduct of the respondents in respect of the order in issue, appropriate processes could be initiated in the suit in which the order was made to seek appropriate redress. In any event, there was no order of the Federal High Court staying the proceedings of the tribunal which was disobeyed by the tribunal. I hold the view that the instant issue is an attempt at intimidating the Code of Conduct Tribunal, which is very unfortunate.

In the circumstance I find this issue, like the others already considered, of no merit and is accordingly resolved against appellant.

Having resolved issues 1 - 5 supra against appellant. I see no need to consider issue 6 because such a consideration will serve no useful purpose. In fact issue 6 has already been resolved in substance against appellant during my consideration of issue 2 supra.

In conclusion, I find no merit in the appeal which is accordingly dismissed.

The judgment of the lower court delivered on the 30th day of October, 2015 dismissing the appeal of appellant against the ruling of Code of Conduct Tribunal of 18th September, 2015 is hereby affirmed.

Appeal dismissed.

MOHAMMED, C.J.N.: I have been privileged to have read in advance the judgment of my learned brother. Onnoghen, JSC., dismissing the appellant's appeal. I agree entirely with his reasoning and conclusion. I wish only to comment on the two main issues of competence of the trial Code of Conduct Tribunal to try the appellant for contravention of the provisions of the Code of Conduct for Public Officers of the Federation and whether or not the trial of the appellant was properly initiated by a Deputy Director in the Federal Ministry of Justice on the authorization of the Solicitor-General of the Federation in the absence of a sitting Attorney-General of the Federation. My learned brother. Onnoghen JSC, has stated the facts giving rise to the appeal compendiously and with admirable clarity. I adopt them. I shall confine myself in the determination of this appeal to the two issues I mentioned in my introduction above which were

identified as issues one and three in the appellant's brief of argument as follows:-

1. Whether the majority decision of the Court of Appeal Abuja Division was right in interpretation of the Constitution when it held that the Code of Conduct Tribunal was properly constituted in law when it sat on 18/9/2015 with just the Chairman and one
 - (1) other member in contravention of the provisions of paragraph 15(1) of the 5th Schedule of the 1999 Constitution as to exercise the powers and jurisdiction vested by the 1999 Constitution and if the answer is in the negative, whether the charge and the entire proceedings inclusive of the ruling in issues is not null and void and of no consequence?"
 - (2) xxx
 - (3) Having regard to the wording of the section 24(2) of the Code of Conduct Bureau and Tribunal Act. Cap. C.15, 2004, whether the 13 count-charge preferred against the appellant by someone other than the Attorney-General of the Federation is competent?" p Starting with issue number one quoted above, it was argued for the appellant by his learned senior counsel who after quoting the provision of paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) which states "15(1) There shall be established a Tribunal to be known as the Code of Conduct Tribunal which shall consist of a Chairman and two other Persons." stressed that the provisions are quite plain and unambiguous thereby requiring no further interpretation. According to him, where the words of the Constitution or any statute are clear, precise and unambiguous, they must be given their natural and indeed literal meaning, relying on the cases of *Amasike v. Registrar General*, CAC (2006) 3 NWLR (Pt.968) 462 and *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1 in support of the argument. In the understanding of the learned senior counsel, the literal and ordinary interpretation of the provisions of

paragraph 15(1) of the 5th Schedule to the 1999 Constitution, not only the establishment, and composition of the Code of Conduct Tribunal were made therein but that the quorum of the tribunal as well. That is to say for the Code of Conduct Tribunal to be legally functional, there must be at least three persons inclusive of its Chairman. Learned senior counsel therefore concluded that since the Code of Conduct Tribunal sat with only the Chairman and one member on 18/9/2015 in exercise of its jurisdiction and j powers in contravention of paragraph 15(1) of the 5th Schedule to the 1999 Constitution in the proceedings and delivery of the ruling of the tribunal now on appeal, the ruling of 18/9/2015 and the entire proceedings are null and void and of no consequence whatsoever, and therefore urged this court to allow the appeal on this issue and reject the call by the respondent's senior counsel for the application T of section 318(4) of the 1999 Constitution (as amended) and section 28 of the Interpretation Act to the interpretation of the clear provisions of paragraph 15(1) of the 5th Schedule to the same 1999 Constitution (as amended)

However, the learned senior counsel to the respondent is of the view that the interpretation placed on the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) by the learned senior counsel for the appellant, was misconceived although agreeing with him that the provisions are very clear and unambiguous. Relying on a number of cases including *Obioha v. Dafe* (1994) 2 NWLR (Pt.325) 157 at 180 - 181 and *Odu'a Investment Co. Ltd v. Talabi* (1997) 10 NWLR (Pt.523) 1 at 58 learned senior counsel pointed out that since the construction of the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) does not lead to any manifest absurdity the words should be given their natural and ordinary meaning of merely providing for the establishment and composition of the tribunal only, leaving the question of quorum for the sitting of the tribunal to the provisions of

section 318(4) of the 1999 Constitution (as amended) and section 28 of the Interpretation Act, Cap. 123, Laws of the Federation. Learned senior counsel drew clear distinction between the words "consist of" used in the provision of the 1999 Constitution (as amended) establishing the Code of Conduct Tribunal and the words "quorum" of providing for quorum of the courts established under the same Constitution in section 234 for the Supreme Court and section 237 for the Court of Appeal and came to the conclusion that no provision for quorum was made in paragraph 15(1) of the 5th Schedule to the 1999 Constitution (as amended) establishing the Code of Conduct Tribunal.

That having regard to the absence of the provision for quorum in the constitutional provision establishing the Code of Conduct Tribunal, the trial Tribunal and the court below were right in resorting to the provisions of section 318(4) of the 1999 Constitution and section 28 of the Interpretation Act to resolve the question in sustaining the validity of the proceedings of the tribunal of 18/9/2015 and subsequently its ruling now on appeal.

The appellant's issue number one now under consideration is challenging the unanimous decision of the Court of Appeal that the court was right in its decision that the Code of Conduct Tribunal was right in holding that it was properly constituted on 18/9/2015 when it sat and conducted its proceedings and ultimate ruling with only F the Chairman and one other member. This in effect is a challenge to the jurisdiction of the tribunal as vested under the Constitution. The meaning of the word jurisdiction has been accepted - as the authority which a court or tribunal has to decide matters presented in a formal way for its decision. Where a court does not have *q* jurisdiction, there is nothing before it to adjudicate. The limits of its authority as in the present case may be prescribed, as it has been prescribed by statute under which the court or tribunal was created. Concisely stated, jurisdiction means the authority

which a court or tribunal has to decide matters contested before it or to take cognizance of matters presented in a formal way for its decision as stated by this court in *National Bank (Nig.) Ltd. v. Shoyoye* (1977) 5 SC 181. To put it in another way, a court or tribunal can only adjudicate on a controversy between litigants before it when it has jurisdiction to do so. See *Kalio v. Daniel Kalio* (1975) 2 SC 15. Since it is the competence of the tribunal that is being challenged in this appeal, the law is that a court or tribunal is only competent when:-

1. It is properly constituted with respect to the number and qualification of its members;
2. The subject matter is within its jurisdiction;
3. The action is initiated by the due process of law; and
4. The condition precedent to the exercise of jurisdiction has been satisfied."

as laid down by this court in its leading decision on this subject in the case of *Madakolu & Ors v. Nkemadilim & Ors* (1962) 1 All NLR 587, (1962) 2 SCNLR 341 per Bairamain, JSC. The failure to satisfy anyone of these conditions is fatal to the exercise of jurisdiction and adjudication.

In this appeal, the chairman of the tribunal whose jurisdiction was challenged by the appellant was of the view that the tribunal was properly constituted and therefore competent to assume jurisdiction, sitting with the Chairman and only one of its two other members. On appeal against this stand taken by the chairman of the tribunal to the Court of Appeal, that court in its split decision of two to one given on 30/10/2015, agreed with the Chairman of the tribunal to give rise to the present appeal.

The simple question for determination in this issue is whether the Code of Conduct Tribunal was properly constituted with its Chairman and only one of its two members for the determination of its powers and jurisdiction in the proceedings against the appellant

on 18/9/2015/The provisions of the 1999 Constitution (as amended) calling for interpretation are in paragraph 15(1) of the 5th Schedule to the 1999 Constitution which provides:-

"15. Code of Conduct Tribunal

- (1) There shall be established a Tribunal to be known as the Code of Conduct Tribunal which shall consist of a Chairman and two other persons."

The above provisions as agreed by the learned senior counsel to the parties in this appeal, are quite clear, plain and unambiguous. The words therefore must be given their ordinary meaning unless such interpretation would lead to manifest absurdity or unless the context requires some special or particular meaning to be given to the words. See *Bronik Ltd. v. Wema Bank Ltd.* (1983) 1 SCNLR 296. It is not in doubt at all that the Code of Conduct Tribunal is a creation of the Constitution in Paragraph 15(1) of the 5th Schedule to the Constitution quoted above, which only provided for its establishment and composition with a Chairman and two other persons. No provision was made in that paragraph for quorum of the B tribunal which is very vital for its smooth operation in the discharge of its powers and jurisdiction. The construction being placed on the provisions of the paragraph as having also made provision for mandatory quorum of three with the Chairman of the tribunal, will do violence to the provision of that paragraph by reading in the paragraph words which are clearly not there at all.

Looking into the provision of section 285(1) of the 1999 Constitution (as amended), the establishment of the National and State Assembly Election Tribunal was provided therein while sub-section (3) of that section provides for the composition of the Election Tribunals as follows:-

- “(3) The composition of the National and State Houses of Assembly Election Tribunal and the Governorship Election Tribunal respectively shall be as set out in the Sixth Schedule

to this Constitution.”

Paragraph 1 (1) of the Sixth Schedule proceeded to provide the composition of the tribunal to consist of a Chairman and two other members as was provided for the Code of Conduct Tribunal in paragraph 15(1) of the 5th Schedule to the same 1999 Constitution (as amended). While the same Constitution failed to make provision for quorum for the Code of Conduct Tribunal, the same Constitution proceeded in sub-section 4 of section 285 of the 1999 Constitution (as amended) to provide quorum for Election Tribunal as follows:-

“(4) The quorum of an Election Tribunal established under this section shall be the Chairman and one other member.”

It is for this reason that resort has to be made to the provisions of section 318(4) of the 1999 Constitution (as amended) and section 28 of the Interpretation Act, Cap. 123, Laws of the Federation to provide for quorum to ensure the smooth exercise of the functions of the Code of Conduct Tribunal in the discharge of its powers and jurisdiction for which it was created under the Constitution. Section 28 of the Interpretation Act provides:-

“(28) Quorum Notwithstanding anything contained in any Act or any other enactment, the quorum of any Tribunal, Commission of Inquiry (including any appeal Tribunal established for the purpose of hearing any appeal arising there from) shall not be less than two (including the Chairman):

Provided that the Chairman and the member shall be present at every sitting of the Tribunal, Commission of Inquiry throughout the duration of the trial or hearing.”

There is no doubt whatsoever that on the face of the provision of section 318(4) of the 1999 Constitution (as amended) stating:-

“(4) The Interpretation Act shall apply for the purpose of interpreting the provisions of this Constitution.”

the window for quorum for the sitting of the Code of Conduct Tribunal in proceedings in exercise of its jurisdiction opened under section 28 of the Interpretation Act, is solidly on the ground for the effective functioning of the Tribunal as rightly found by the tribunal and affirmed on appeal by the court below. In other words, the Code of Conduct Tribunal was properly constituted with the Chairman and one member only when it exercised its jurisdiction in proceedings for the hearing and determination of the appellant's objection to the competence of the Code of Conduct Tribunal to try him for his conduct in contravention of the stated provisions of the Code of Conduct for Public Officers on 18/9/2015. I therefore resolve this issue against the appellant.

With regard to issue number three in the appellant's brief of argument, learned senior counsel to the appellant decided to put the question thus:-

“(3) Having regard to the wording of section 24(2) of the Code of Conduct Bureau and Tribunal Act, Cap. C.15, 2004, whether the 13 count-charge preferred against the appellant by someone other than the Attorney-General of the Federation is competent.”

The stand of the appellant on this issue is that it is incontestable that section 24(2) of the Code of Conduct Bureau and Tribunal Act, 2004, which requires prior authorization of the Attorney-General of the Federation before breaches of the Code of Conduct for Public Officers can be charged to court has rebutted the presumption of authorization by a Law Officer to file the charges. Learned senior counsel emphasized that section 24(2) of the Code of Conduct Bureau and Tribunal Act, Cap. C.15 and paragraph 18 of the 3rd Schedule to the said Act, are specific provisions on the requirements on how a charge can or should be initiated at the Code of Conduct Tribunal and that these specific provisions take precedence in Law over the general stipulations provided in sections 2 and 4 of the Law Officers Act, Cap. L8, Laws of the Federation which merely authorized Law Officers to act on the instruction of the Solicitor-General in the absence of

a sitting Attorney-General so that the activities of the Ministry does not grind to a halt. The case of *Jack v. UN AM* (2004) 5 NWLR (Pt.865) 208 at 229, was relied upon in support of this argument of learned senior counsel who concluded that the 13 count charge filed in the absence of a sitting Attorney-General of the Federation against the appellant before the Code of Conduct Tribunal without specific authorization of the Attorney-General of the Federation, is null and void.

For the respondent, its learned senior counsel heavily supported the findings of the majority decision of the court below that the office of the Attorney-General of the Federation is an existing office under the Constitution; that the Solicitor-General of the Federation is by virtue of section 4 of the Law Officers Act, 2004, empowered to exercise the function of the Attorney-General prescribed in section 24(2) of the Code of Conduct Bureau and Tribunal Act whenever there is no sitting Attorney-General; that M.S. Hassan was authorized by the Solicitor-General of the Federation to file the charge against the appellant; that by section 174(1) and (2) of the 1999 Constitution (as amended), M.S. Hassan or any Officer in the Department of Attorney-General's office is empowered to initiate criminal proceedings unless it is proved otherwise. It was the argument of the learned senior counsel for the respondent that these findings by the Court of Appeal now on appeal, cannot be faulted as they are supported by the Constitution, the Acts of the National Assembly and many judicial pronouncements and therefore urged the court to find against the appellant on this issue.

The resolution of this issue lies squarely in the provision of section 24(1) and (2) of the Code of Conduct Bureau and Tribunal Act 2004, and its Third Schedule thereto, the Law Officers Act, Cap. L.8, Laws of the Federation of Nigeria 2004, sections 2 and 4 thereof and section 174(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Section 24(1) and (2) of the Code of Conduct Bureau and Tribunal

Act states:-

- “24(1) The rules of procedure to be adopted in any prosecution for the offences under this Act, before the tribunal, and the forms to be used in such prosecutions shall be as set out in the Third Schedule to this Act.
- (2) Prosecution for all offences referred to in this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such Officers in the Federal Ministry of Justice as the Attorney-General of the Federation may authorize so to do.”

From the above sub-section (2) of the section, it is quite plain that prosecution for the offences under the Act shall be instituted by the Attorney-General of the Federation or such Officers of his Ministry as the Attorney-General, may authorize to prosecute. Although it is not in dispute between the parties that there was no sitting Attorney-General of the Federation at the time and date when a Deputy Director from the Federal Ministry of Justice was authorized by the Solicitor-General of the Federation to initiate the prosecution against the appellant now being challenged in this appeal, the fact that the provisions of sections 2 and 4 of the Law Officers Act, 2004 and section 174(1) and (2) of the 1999 Constitution (as amended), have clearly sanctioned what took place before the Code of Conduct Tribunal is not at all in doubt. In particular section 174(1) and (2) of the Constitution (as amended) reads:-

“174(1) The Attorney-General of the Federation shall have power:

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- (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a Court Martial, in respect of any offence created by or under any Act of the National Assembly.
- (b) to take over and continue any such criminal

- proceedings that may have been instituted by any other authority or person; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
2. The powers conferred upon the Attorney-General of the federation under sub-section (1) of this section may be exercised by him in person or through officers of his department.”

Sub-section (2) of section 174 of the 1999 Constitution quoted above is quite clear and unambiguous. It has provided that even in the absence of a sitting Attorney-General of the Federation. Officers of his Department such as the Deputy Director from the Federal Ministry of Justice who signed and filed the 13 counts charge against the appellant, can initiate the proceedings of prosecution before the Code of Conduct Tribunal against the appellant, notwithstanding the specific provisions of section 24(2) of the Code of Conduct Act, 2004, relied upon by the appellant. This is because the law is trite that the provisions of the Constitution override any other provisions in any Act of the National Assembly. See *Federal Republic of Nigeria v. Adewunmi* (2007) 10 NWLR (Pt. 1042) 399 at 418-419. On the whole therefore, it would appear that the complaint of the appellant in this issue against the majority decision of the court below is rather misconceived resulting in this issue being resolved against the appellant.

In the result, having resolved the two main issues in this appeal against the appellant, I am of the strong view that the court below was right in its unanimous decision that the Code of Conduct Tribunal was properly constituted when it heard and determined the issues that culminated in the tribunal's ruling of 18/9/2015, with the Chairman and one other member or person of the tribunal. I am equally of the strong view that the court below was on firm ground in its majority decision that the 13 count charge preferred against the appellant before the Code of Conduct Tribunal and

signed by M.S. Hassan, a Deputy Director in the Federal Ministry of Justice, was competent notwithstanding that there was no sitting Attorney-General of the Federation at the date and time it was initiated.

It is for the above reasons and more comprehensive reasons on the main and other issues resolved contained in the lead judgment of my learned brother, Onnoghen JSC., which I have had the opportunity of reading before today and with which I entirely agree that this appeal must be dismissed. Accordingly, I also hereby dismiss the appeal

I.T.MUHAMMAD, J.S.C.: The issues formulated by the appellant in this appeal are as set out below:

“Issues for Determination

13. Whether the majority decision of Court of Appeal Abuja Division was right in the interpretation of the Constitution when it held that the Code of Conduct Tribunal was properly constituted in law when it sat on 18/9/2015 with just the Chairman and one (1) other member in contravention of the provisions of paragraph 15(1) of the 5th Schedule of the 1999 Constitution as to exercise the powers and jurisdiction rested by the 1999 Constitution and if the answer is in the negative, whether the charge and the entire proceedings inclusive of the ruling in issue is not null and void and of no consequence? (Issue No. 1) (Ground 2).
14. Whether the majority decision was right when it held that Code of Conduct Tribunal is a court of limited criminal jurisdiction competent and empowered to issue a bench warrant against the appellant in the event of his absence from the proceedings of the

Tribunal? (Issue No. 2) (Ground 3)

15. Having regard to the clear wording of section 24(2) the Code of Conduct Bureau and Tribunal Act, Cap. C15, 2004 whether the 13 count charge preferred against the appellant by someone other than the Attorney-General of the Federation is competent? (Issue No. 3) (Ground 4)
16. Whether the majority decision of the Court of Appeal was correct in law when it held that notwithstanding the lack of proper service on the appellant of the criminal summons to appear before the Code of Conduct Tribunal on the 18th of September, 2015, such a vice was a mere irregularity cured by the appearance of the appellant at the proceedings regardless of the existence of appellant's conditional appearance on protest? (Issue No. 4) (Ground 5)
17. Whether the majority decision of the court below A was right when it justified the refusal of the Code of Conduct Tribunal to obey the Federal High Court to appear before it and show cause why it should not order a stay of further proceedings on the ground that the order in issue was not one specifically asking the lower Tribunal to stay its proceedings? (Issue No. 5) (Ground 6)
18. Whether the majority decision of the Court of Appeal was correct when it held that the Code of Conduct Tribunal was a criminal court empowered C to apply the Administration of Criminal Justice Act? (Issue No. 6) (Ground 7).”

The respondent couched issues it considered more relevant to the appeal as follows:

- 1) “Whether the Court of Appeal was not right in its unanimous decision when it held that the Code of Conduct Tribunal was properly constituted when it heard and determined the issues that culminated in the tribunal's ruling of 18th September, 2015 with the Chairman and one other member, (see Grounds 1 and 2 of the notice of appeal at pages 1268 - 1278 of the record).
- 2) Whether the Court of Appeal was not right when it held that the Code of Conduct Tribunal, though a Court of limited criminal jurisdiction, was competent to issue a bench warrant against the appellant in the event of his failure to appear before it (see ground 3 of the notice of appeal).
- 3) Whether the Court of Appeal was not right in its majority decision when it held that the charge preferred against the appellant before the Code of Conduct Tribunal and signed by M. S. Hassan, A Deputy Director in the Federal Ministry of Justice was competent notwithstanding that there was no sitting Attorney General of the Federation at the time it was initiated (see ground 4 of the notice of appeal).
- 4) Whether the Court of Appeal was not right when it held that the issue of the alleged irregularity in the service of summons on the appellant to appear before the Code of Conduct Tribunal on 18th September, 2015, was not fatal to the proceedings before the Code of Conduct Tribunal (see grounds 5 and 7 of the notice of appeal).
- 5) Whether the Court of Appeal was not right when it held that since the Federal High Court did not make any order on 17th September, 2015 restraining the Code of Conduct Tribunal from sitting, the issue of disobedience of that order or the superiority of the Federal High Court to the Tribunal would not arise (see ground 6 of the notice of appeal).”

My Lords, by taking a careful perusal at the issues, it is my observation that the issues formulated by the respondent can conveniently fuse into appellant's issues. I think I should start with issue No. 2(14) on the competence of the tribunal to issue a bench warrant against the appellant. This issue, to my mind, is no more a live issue. It is far spent since the time the tribunal discharged that order. On the 22nd of September, 2015, when the appellant was physically present in the Tribunal and his plea taken on all the 13 counts, the defence applied that the bench warrant issued against the appellant be discharged. The tribunal, there and then, stated:

“Bench warrant discharged”

Although no elaborate reason was stated by the tribunal for discharging its order for issuance and execution of the bench warrant against the appellant, it is not unconnected, I believe, with the fact that the appellant put up physical appearance before the tribunal on that day of 22nd September, 2015. Thus, the physical appearance of the appellant before the tribunal, through whatever means, now settles the issue of the execution of the bench warrant. The bench warrant order, therefore, became spent and it was no more a live issue.

Although the court below supported the view that the tribunal has criminal jurisdiction (limited), this connotes, by drawing necessary inference, that the tribunal was competent to issue the bench warrant as it did. All I am trying to convey is that the issues of bench warrant against the appellant is no more pursuable as if same has been discharged by the tribunal itself. The court below, in my humble view, was over generous in entertaining that issue as it assumed the status of an academic rigmarole. I do not consider it worth spending another second on that issue, talkless of giving it any elaborate consideration. I am hereby, competently, striking out that issue as purely academic. This court is always loathe in pursuing academic issues and as a court does not make orders in vein. See: *Iweka v. SCOA (Nig.) Ltd.* (2000) 3 SC 21 at 29, (2000) 7 NWLR (Pt. 664) 325; *Ukejianya v. Uchendu* (1950) 13 WACA 45; *Nkwocha v. Govt. of Anambra*

State (19S4) 1 SCNLR 634.

The next issue in my consideration is issue No. 3 formulated by B the appellant in paragraph 15 of the appellant's brief of argument. This issue challenges the competence of any other person (someone other) than the Attorney-General of the Federation to initiate a complaint or proceeding against the appellant. Learned senior counsel for the appellant, Mr. Daudu, submitted that the correct position of the law is that the extant statutory requirement for the initiation of complaint against a person alleged to have breached the Code of Conduct for public officers expressly requires the authorization of a sitting Attorney-General of the Federation (AGF). He cited and relied on the provision of section 24(2) of the Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004. He contends further that this legislation required specifically the Attorney-General of the Federation to act personally or directly before an act can be valid. He cited the case of *Matari v. Dangaladima* (1993) 2 NWLR (Pt.281) 266. The learned SAN contended further that notwithstanding the provisions of the Law Officers Act which empowers the Solicitor-General of the Federation to perform the general functions of the Attorney-General in the absence of the latter, the general provisions of the Law Officers Act cannot override the specific provisions of section 24 of the Code of Conduct Tribunal Act which specifically requires that only the Attorney-General of the Federation or his direct appointee can commence proceedings before that tribunal. The proceedings of the tribunal did not disclose that the Solicitor-General of the Federation exercised the powers of the Attorney-General of the Federation under the Code of Conduct Tribunal Act nor authorised any other person to exercise same. The majority decision of the court below was in error when it held that the assertion of Mr. Hassan of counsel from the Bar was sufficient proof of the Solicitor-General's authority to prosecute. He cited the case of *Jack v. Uwam* (2004) 5 NWLR (Pt.865) 208 at 229.

The learned SAN for the respondent Mr. Jacobs, made copious submissions on this issue. Some of the cardinal submissions are that the

power to initiate criminal proceedings is conferred by the provisions of sections 174 and 211 of the Constitution and that any other law purporting to confer such power must bow to the Constitution including section 24(2) of the Code of Conduct Tribunal Act. The Constitution, he said, has already covered the field as to the law governing prosecution. He cited among others: *INEC v. Musa* (2003) 3 NWLR (Pt.806) 72 at 158; *A.-G., Ogun State v. A.-G., federation* (1982) 3 NCLR 166 at 176; that the Attorney General of any State or Federation does not have monopoly of criminal prosecution, officers in his department are empowered to initiate and prosecute criminal cases; likewise, other Agencies of Government. Thus, Mr. M. S. Hassan can competently sign a charge as an officer in the office of the Attorney-General of the Federation. The charge before the tribunal signed by M.S. Hassan is competent in law. In similar vein, Mr. Hassan, by virtue of sections 2 and 4 of the Law Officers' Act, Cap. LS, LFN, 2004, can still be competent to initiate the charge against the appellant; Mr. Hassan, as Solicitor-General of the Federation stepped into the shoes of the Attorney-General of the Federation to exercise the power to initiate criminal proceedings before the Code of Conduct Tribunal since there was no sitting Attorney-General. The learned SAN urged this court to resolve this issue in favour of the respondent.

My Lords, it is worth clarifying from the outset to state that the legal profession in this country by orientation owes its allegiance to the English legal system. But the current political dispensation via the Constitution, largely aligns more with the United States practice. An Attorney General in England is the principal law officer of the Crown, and head of the Bar in England. The Federal Attorney-General in the United States of America is the Head of the Department of Justice and Chief Law Officer of the Federal Government who represents the United States in legal matters generally and gives advice and opinions to the President and to the head of the executive departments of the Government when so requested. The Attorney-General appears in person to represent the Government in the United States Supreme

Court in cases of exceptional gravity or importance. (See: Black's law, Dictionary, Fifth Ed. p. 118). In the United States' dispensation, the Solicitor-General of the United States is in-charge of representing the Government in the Supreme Court. He decides what cases the Government should ask the Supreme Court to review and what position the Government should take in cases before the court. He supervises the preparation of Government's Supreme Court briefs and other legal documents and the conduct of the oral arguments in the court and argues most of the important cases himself. The Solicitor-General's duties also include deciding whether the United States should appeal in all cases it losses before the lower courts.

In our Federal Constitution, 1999 (as amended), it is provided as follows:

“The Attorney-General of the Federation shall have power:

- (a) to institute and undertake *criminal proceedings against any person before any court of law in Nigeria other than Court Martial in respect of any offence created by or under any Act of the National Assembly;*
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
- (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this Section may be exercised by him in person or through officers of his department

(Italics supplied. Section 174 of the Constitution)

The bone of contention between the appellant and the respondent on this

issue is, primarily, on whether the tribunal has any criminal jurisdiction and whether the allegations made against the appellant were criminal in nature. There is a finding by the court below as follows:

“The tribunal is a court with specific criminal jurisdiction. In a sense, because of the provisions of paragraph 18(3) of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the criminal jurisdiction of the tribunal has the inherent powers of a court of criminal jurisdiction. ...”

As of now, the above finding of the court below has not been set aside. It is a binding statement of the law. Therefore, the provisions of section 174 of the Constitution applies forcefully to the proceedings of the tribunal. The Attorney-General of the Federation is competent to initiate any criminal proceeding before the tribunal in respect of the allegations made against the appellant. He can equally exercise such power by himself in person or through any officer of his department.

The issue of whether any other person, apart from the Attorney-General of the Federation is empowered to initiate a criminal C proceeding has been commented upon by both the trial tribunal and the court below. The trial tribunal made the following finding:

“It is the believe (sic: ‘belief’) of this tribunal that the powers to initiate proceedings are further enhanced by the provisions of section 2 and section 4 of the Law Officers' Act, Cap, L8, Laws of the Federation of Nigeria. In the absence of Attorney-General, the Solicitor-General of (sic: ‘or’) any other officer in the chambers of the Attorney-General can exercise such powers or duties of the Attorney-General relating to institution of criminal proceedings. See also section 24(3) of the Code of Conduct Bureau and Tribunal Act, Cap. C15, 2004 which said prosecutions for all offences referred to in this Act shall be instituted in the name of the

Federal Republic of Nigeria by the Attorney-General or such officers in the Federal Ministry of Justice as the Attorney-General may authorise.”

In agreeing with the above finding, the court below, remarked, *inter alia*:

“The office of the Attorney-General of the Federation is a constitutional or Statutory office created by section 150 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Unless this office is abolished through the instrumentality of amendment of the relevant provisions of the Constitution, the office like a continuum, remains in existence as an artificial or juristic person. Although the office of the Attorney-General of the Federation does not die, and indeed has not died, the duties and functions of the Attorney-General of the Federation must be carried out or performed by a biological person or natural person, as only a human being can legally and logically occupy the said exalted office. That the office of the Attorney-General does not die, unless abrogated by a constitutional amendment, see: *Attorney-General of the Federation v. All Nigeria Peoples Party & 2 Ors* (2003) 18 NWLR (Pt. 851) 182 at 209, per Tobi, JSC

I agree that in the absence of the Attorney-General of the Federation, the Solicitor-General of the Federation may perform his duties and shall have the same powers as are ‘imposed by the law on the Attorney-General of the Federation.’ See: Section 4 of the Law Officers' Act, 2004.... The provisions of section 174(1)(a) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) are broad enough to justify Mr. M.S. Hassan, a

Deputy Director in the office of the Attorney-General of the Federation to institute the proceedings against the appellant in the Tribunal.”

By court below's affirmation as above of the findings by E the tribunal, the issue of subrogating the Attorney-General of the Federation by an officer in his office has now become a concurrent finding of fact which requires special circumstances to warrant this court to tamper with such a finding. No such special circumstances have been placed before me to make me interfere. I am therefore, loathe to interfere. See: *Onwugbufor v. Okoye* (1996) 1 NWLR (Pt.424) 252; *Oleinmde v. Abidogun* (2001) 18 NWLR (Pt.746) 712; *Amayo v. State* (2001) 18 NWLR (Pt.745) 251; *Obasohan v. Omorodion* (2001) 13 NWLR (Pt.729) 206.

In any event, my noble lords, it appears ridiculous to pursue q the argument that where there is no person occupying the office of the Attorney-General of the Federation, activities in the office, such as prosecution of offences in the law courts would grind to a halt. That office, as rightly stated by the court below, is a creature of the Constitution or a statute. It is the same Constitution/Statute that delegated the functions or activities of the office of the Attorney-General of the Federation to some other persons such as the Solicitor-General or other officers in the Ministry. The point raised by the learned SAN for the appellant that in order to comply with section 24(2) of the Code of Conduct Bureau and Tribunal Act, 2004, the Attorney-General of the Federation is the one required to specifically sign the charge or be available to give consent to the law officer that will sign the charge even if that law officer is tire Solicitor-General. The court below adequately and frontally answered this poser in the following words:

“I do not agree with the contention of the learned senior counsel for the appellant that consent to sign or institute prosecution must be physically delegated to the Solicitor-General of the Federation or any other law officer of the Federation. This is because section 24(2) of the Code of

Conduct Bureau and Tribunal Act cannot be read in isolation of the clear provisions of section 4 of the Law Officers' Act. The right to perform the duties and exercise the powers of the Attorney-General of the Federation by the Solicitor-General, in the absence of the former, has statutory backing and to require physical consent is a requirement that is merely a surplussage.

The Solicitor-General of the Federation while performing the duties and exercising the powers of the Attorney-General of the Federation, in the absence of the latter, can also do so through any law officer in the Federal Ministry of Justice. The law is that there is a presumption that 'any officer in any department of the Attorney-General's office is empowered to initiate criminal proceeding unless it is proved otherwise.' See: *Federal Republic of Nigeria v. Senator Olawole Julius Adewunmi* (2007) 10 NWLR (Pt. 1042) 399 at 418 per Kalgo, JSC.

The presumption to initiate the prosecution in the tribunal in favour of Mr. M. S. Hassan has not been rebutted by the appellant in this case.”

My lords, it is clear from the records of appeal that at the time, proceedings were initiated to prosecute the appellant at the tribunal, there was no person occupying the office of the Attorney-General of the Federation. Mr. Hassan who appeared before the tribunal to prosecute the appellant told the tribunal, in his words:

“In the absence of the Attorney-General of the Federation, the Solicitor-General can perform such powers as the Attorney-General. The Solicitor-General is in office and I am authorised to file this action.”

This was an information coming from a learned counsel who was speaking from the Bar, and, who, as a Minister in the temple of justice, would always

be expected to say nothing but the truth. Was he disproved? There is no finding to that effect. Thus, the presumption of regularity must work in favour of the learned counsel, Mr. Hassan and there was no basis for the tribunal to disbelieve or ignore such information from a gentleman of the Bar.

From the tenor of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), initiating criminal C proceedings by the State (whether federal or a state government), has been adequately covered by the Constitution. Where the doctrine of covering the field is in vogue in the Constitution, any other legislation on the same field whether by the Federal/State government must bow to the dictate of the Constitution. That other law/legislation, if not repugnant, must be supplemental or subsidiary to the constitutional provision. See: *INEC v. Musa* (2003) 3 NWLR (Pt.806) 72 at pp. 15S; 203 - 205; A.-G., *Ogun State v. A.-G., Federation* (1982) 3 NCLR 166 at p.176; A.-G., *Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt.763) 264 at pp. 391 - 392.

My lords, delegation of the powers of the Attorney-General whether of the Federation or State as donated to him by the Constitution, to officers of his Ministry or to Agencies such as the Police, the Code of Conduct Bureau, Economic and Financial Crimes Commission, the Customs, the Nigerian Deposit Insurance Corporation (NDIC), the National Drug Law Enforcement Agency (NDLEA) and even to private legal practitioners, to initiate criminal proceedings against any person alleged to have committed an offence, is not strange or a novelty. This court, per Belgore, JSC (as he then was, later, CJN) (retired), did observe as follows:

“It is clear from the provision of section 160 of the 1979 Constitution that the Attorney-General's powers of public prosecution is not exclusive, the 'any other authority or person' in subsection (1) can institute and undertake criminal proceedings. The Central Bank of Nigeria and the Nigerian Deposit Insurance Corporation are also authorities that can

institute criminal proceedings under Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994.”

See the case of Comptroller, Nigeria Prison Services, *Ikoyi v. Adekanye* (No. 1) (2002) 15 NWLR (Pt.790) 318 at p.329 paras. C-D. Again, in the year 2006, the same Belgore. in the case of *F.R.N. v. Osahon* (2006) 5 NWLR (Pt.973) 361 at p. 105 paras. D-F, held:

“Police authority can, by virtue of the aforementioned provisions of section 174(1) of the Constitution prosecute any criminal suit either through his legally qualified officers or through any counsel they may engage for the purpose (*see Comptroller General, Prisons Service, Lagos v. Adekanye*, (No. 1)(2002) 15 NWLR (Pt. 790) 318. 329). 'Any other authority or persons can definitely institute criminal prosecution. The power of the Attorney-General of the Federation or of the State are not exclusive, any other person or authority can prosecute. However, the Attorney-General can take over or continue the prosecution from any such authority or persons. He can also discontinue by way of *nolle prosequi*.”

One year later, i.e. in 2007, in *F.R.N. v. Adewunmi* (2007) 10 NWLR (Pt. 1042) 399 at pp 418 - 419 paras. E-A. this court dealt specifically with the constitutional provisions, i.e. sections 174 and 211 of the current Constitution:

“There is no doubt at all that the power to institute criminal proceedings against any person in the 1999 Constitution lies on the Attorney-General of the State or the Federation as the case may be, but such power may be exercised by the Attorney-General himself or through any officers in his department. See sections 174 and 211 of the 1999, Constitution. These sections though very familiar in content

do not require that the officer can only exercise the power to initiate criminal proceedings if the Attorney-General expressly donated his power to them. The provisions of this section presumed that any officer in any department of the Attorney-General's office is empowered to initiate criminal proceeding unless it is proved otherwise. This will not be in conflict with our decision in A –G., *Kaduna State v. Hassan* (1985) 2 NWLR (Pt.8) 483 where the main controversy was that there was no incumbent Attorney-General who could have donated the power to discontinue criminal prosecution in the case concerned. There is also no doubt in my mind that Mrs. Fatunde, an Assistant Chief Legal Officer in the Federal Ministry of Justice, D.P.P office, is an officer in one of the department of the/Attorney-General of the Federation and is highly qualified to initiate criminal proceedings against the respondent. She has therefore validly and properly, in my view signed the amended charge filed on 27th October. 1999.”

(Italics for emphasis)

The effect of the absence of an Attorney-General from office (i.e. where his office is vacant), this court clarified the issue in no uncertain terms. It was held, *inter alia*:

“Chief Olanipekun, SAN seriously attacked the appellant on the ground that at the time he appealed, the office of the Attorney-General was vacant and that meant that the Attorney-General was “dead” legally. He took so much time to cite authorities particularly on the expression dead to buttress the point that it does not mean in the context physical cessation of breath in medical parlance. Section 150(1) of the Constitution of the Federal Republic of Nigeria, 1999 creates the office of Attorney-General of the

Federation, Let me read it quickly ... It would appear that the Attorney-General is the only minister specifically created in the Constitution. Section 147(1) of the Constitution ominously create the office of Minister of the Government of the Federation. In view of the fact that the office is created in the Constitution, and unless or until the office is abrogated, it will continue in perpetuity. And any suit by or against the Attorney-General will in law be absorbed by the office, which never dies unless the Constitution abrogates it. At the time the appellant, the Attorney-General, filed the appeal, the office was and is in existence. It is very much alive and not dead as contended by Chief Olanipekun.”

See: A-G., *Federation v. ANPP* (2003) 18 NWLR (Pt.851) 182 at pp. 207-208, paras. D-A. Thus, the absence of an Attorney -General from office either on the basis of non-appointment of one or on the basis of infirmity of body or mind of the occupant of that office, that office must remain alive and active. Assignments placed on the office by the Constitution or other statutes must not stagnate but must be carried out by other competent officers of the office. Mr. Hassan is one of such competent officers of the office of the Attorney-General of the Federation. He can competently sign a charge as he actually did. The charge before the tribunal signed by Mr. Hassan, in my humble view, is valid and competent in law.

As a complimentary law to the provisions of the Constitution in relation to initiation of proceedings by the Attorney-General, (Section 174 of the Constitution) Sections 2 and 4 of the Law Officers' Act, the Solicitor-General of the Federation can competently step into the shoes of the Attorney-General of the Federation to exercise the power to initiate criminal proceedings before the Code of Conduct Tribunal since there was no sitting Attorney-General. The Sections provide as follows:

- “2. The offices of the Attorney-General, Solicitor-General and State Counsel are hereby created.

4. The Solicitor-General of the Federation in the absence of the Attorney-General of the Federation may perform any of the duties and shall have the same powers as are imposed by law on the Attorney-General of the F Federation.”

The Law Officers' Act details the matter of delegation of powers conferred on the Attorney-General of the Federation by statute, on the Solicitor-General of the Federation whenever there is no incumbent Attorney-General in office as in the present case. By necessary intendments, both section 4 of the Law Officers' Act and section 24(2) of the Code of Conduct Bureau and Tribunal Act are not opposed to each other but complementary in that whenever there is no Attorney-General in office, the Solicitor-General is empowered to exercise the functions or powers conferred by section 24(2) of the Code of Conduct Bureau and Tribunal Act on the Attorney-General of the Federation.

The issue of proof whether Mr. Hassan was authorised by the Solicitor-General of the Federation to sign the charge before the tribunal, is largely dependent on the evidential proof demanded by the evidence Act (Sections 131 and 132), as he who asserts must prove. It is to be noted from the records, that neither the appellant nor the tribunal demanded for any letter of authority from Mr. Hassan authorising him to sign the charge from the Solicitor-General. In any event, it is not the usual practice of the courts to demand letter of authority authorising a counsel such as Mr. Hassan to sign the charge before the tribunal. In fact, there is no statutory duty imposed on the person filing a charge to produce any evidence of his authority at the time of filing the charge or at arraignment. Comptroller, *NFS v. Adekanye* (No.1)(2002) 15 NWLR (Pt.790) 318 at 32S; *Bode George v. F.R.N.* (201.1) 10 NWLR (Pt. 1254) 1 at (p.66; In *Nmikwe v. State* (2013) 18 NWLR (Pt.1385) 1 at p.27, this court observed:

“The same principle was earlier applied by this coma in the case of Compt. *NFS v. Adekanye* (No.1)(2002) 15 NWLR (Pt.790) 318. This was a case where the respondents were

prosecuted by a private legal practitioner on behalf of the Federal Government. Upon objection raised by the respondents' counsel, the Court of Appeal sought for the production of the fiat by counsel to the Federal Government. On further appeal to this court, a presumption of authority was held in favour of a counsel who announces appearance for a party, notwithstanding that he possesses a fiat or a letter of instruction. It was further held that the p presumption of authority can only be rebutted by-hard evidence adduced by the other party; this from all indications has not been shown to be the case in the present appeal. Rather, and from the available evidence, it is on record that the Attorney-General of q the Federation did authorise and ratify the preferment of the said count 4. There is no contrary evidence to this fact which can only be debunked by producing such as clearly restated in Adekanye's case (supra).”

My lords, the presumption of regularity is sacrosanct. Where a legal practitioner informs the court that he was authorised (as did Mr. Hassan), the court/tribunal must believe the counsel. It is left for the party challenging him to prove otherwise. See: Comptroller of Prisons v. Adekanye (supra), page 330 B – D.

I am still of the firm view that both Mr. Hassan and the Tribunal, did the right thing.

I now turn to the thorny issue of whether the tribunal was properly constituted when it sat on 18/9/15 with the chairman and one other member to exercise powers and jurisdiction vested on it by the Constitution.

Your lordships, it is not in dispute that when the tribunal sat on the 18th day of September, 2015 to take the plea of the appellant, the tribunal was constituted by the Chairman and one other member of the tribunal. Paragraph 15 of Fifth Schedule of the Constitution, establishes the code of Conduct Tribunal. It provides:

“15(1) There shall be established a tribunal to be known as code of Conduct Tribunal which shall consist of a Chairman and two other persons.”

(Italics for emphasis)

It is the submission of Mr. Daudu, learned SAN, for the appellant, that it is the Constitution (grundnorm) that created the Code of conduct Tribunal and specified how its membership is to be constituted for it to assume jurisdiction and exercise its powers. According to the provision of paragraph 15 of the Fifth Schedule of the Constitution, in its literal and ordinary interpretation, it follows that for the Code of Conduct Tribunal to be legally functional, there must be at least three persons inclusive of its chairman. Where for any reason, the tribunal fall short of its member composition, the deficiency in membership goes to its root and renders the tribunal sterile and this impotence can only be remedied by the addition of a new member to bring it in conformity with the constitutional requirement. He submitted further, that paragraph 15(1) referred to above is both the composition and the quorum of tire tribunal. There must be valid composition of the tribunal before the question of quorum can arise. The composition and the quorum in this instance, are the same and the number is three. The learned SAN contended dial the court below was wrong in holding that the Code of Conduct Tribunal was properly constituted when it sat with only its Chairman and one other member in hearing and determining the issues which culminated in its ruling of 18th September, 2015. He urged this court to discountenance all the authorities cited by the respondent and resolve this issue in appellant's favour.

Learned SAN for the respondent, Mr. Jacobs, started his submission by quoting extensively from the decision of the court below on the position of constitution of the Code of Conduct Tribunal when it sat on 18/09/2015. That court held that the Code of Conduct Tribunal was properly constituted. He urged us to uphold the reasoning of that court. He argued further that the provisions of paragraph 15(1) of the Fifth Schedule to the 1999 Constitution is very clear and unambiguous which requires no more than to expand B

those words in their natural and ordinary sense.

The learned SAN submitted that it is not the intendment of the legislature that the three (3) members who are to make up the Code of Conduct Tribunal must sit together at all times and that paragraph 15(1) of the Fifth Schedule is merely the establishment section. He dwelt on the semantics of “Consist of” and “Quorum of”. That the paragraph has not provided what the quorum of that tribunal should be. He drew comparative analysis between that paragraph and some provisions of the Constitution such as sections 237, 249, 255, 270 and 285. He drew this court's attention to section 28 of the Interpretation Act in order to determine the quorum of the tribunal. He submitted that by virtue of the provision of section 28 of the Interpretation Act, the Chairman and one other member shall be sufficient to form a quorum of any tribunal including the Code of Conduct Tribunal. He urged this court to resolve this issue in favour of the respondent.

In his reply brief, the learned SAN for the appellant responded to some points of law/new points raised in the respondent's brief. He replied that the respondent deliberately ignores the provision of paragraph 12 of the 3rd Schedule to the Code of Conduct Bureau and Tribunal Act which requires the signature of the Chairman and not less than two other members of the tribunal including the person who took down the notes, at the conclusion of each days proceedings. That indicates, according to the learned SAN for the appellant, the intention of the legislature to have not less than three members of the tribunal to sit at each day's proceeding. The words of paragraph 15(1) of Fifth Schedule of the Constitution and section 20(1) of the Code of Conduct Bureau and Tribunal Act, 2004, are devoid of any ambiguity as to their purport. Recourse cannot be had to any other piece of legislation to ascertain the true intention of the legislature in that respect. That section 285(3) and (4) of the Constitution are specific to election tribunals. It is only in deserving cases, where any gap, lacuna or mischief, exists that resort may be had to the interpretation Act. Relating his

arguments to the principles of fair hearing, the learned SAN argued that the sitting of the two man panel of the tribunal raises a serious issue of breach of the 1999 Constitution on fair hearing as provided by section 36 thereof. The learned SAN posed this question: “Where there is a tie or disagreement on issues relevant to adjudication between Hon. Chairman Umar and Hon. member Atedze, who breaks the tie or deadlock?” He concluded that the tribunal as composed or constituted cannot secure its independence and impartiality.

My Lords, in the course of considering this issue, I set out earlier the provision of paragraph 15(1) of the Fifth Schedule of the Constitution. It is generally accepted in legal circles that a Schedule to any enactment forms part of that enactment. *NNPC v. Famfa Oil Ltd.* (2012) 17 NWLR (Pt.1328) 148. Thus, paragraph 15(1) of the Fifth Schedule of the 1999 Constitution (as amended) forms part and parcel of that Constitution. In interpreting provisions of the Constitution or indeed any statute the settled principle is that where the words used are devoid of ambiguity, same must be given natural meaning. In other words, where the words used are clear and unambiguous, they must be given their plain and ordinary meaning. See: *Dangana v. Usman* (2013) 6 NWLR (Pt.1349) 50 at page 93 B - D; *Amadi v. INEC* (2013) 4 NWLR (Pt.1345) 595 at pages 633 D - F and 634 - 635 H - C. Thus, the plain and ordinary meaning of the words, used in paragraph 15(1) of the Fifth Schedule of the Constitution, to my humble understanding, is that the composition of the Tribunal in its highest or full capacity is when it consists of a Chairman and two (2) other persons making the composition to be three. That, in my view, relates to composition or Constitution of the Tribunal. That composition may even be less than three but it cannot be more than three. This properly tallies with other provisions of the Constitution such as the composition or constitution sections relating to courts of law as established by the Constitution e.g. Sections: 234, 247, 252, 263 and 268. In all the sections of the Constitution cited above, each section has a correlating section which provides quorum for the particular

court. Even the Election Tribunal, itself, has a composition section as well as quorum section separately established by the Constitution. For instance, section 285(4) of the Constitution provides:

“The quorum of an Election Tribunal established under this section shall be the Chairman and one other members”

(Italics for emphasis)

Paragraph 15(1) of the Fifth Schedule of the Constitution has not, in my view, made any separate provision for the quorum of the Code of Conduct tribunal for the purpose of the tribunal's sitting. In an attempt to justify that quorum for the Code of conduct tribunal must not be anything less than three (3), i.e. Chairman and two (2) other persons (members), the learned SAN for the appellant placed reliance on the provision of paragraph 12 of the Third Schedule to the Code of Conduct Bureau and Tribunal Act which requires the signature of:

“The Chairman and not less than two other members of the Tribunal including the person who took down the notes, at the conclusion of each day’s proceedings.”

Now, the provision of paragraphs 12 of the third Schedule to the Tribunal’s Act, states:

“The Chairman or not less than two other member of the Tribunal authorised by the Chairman in that behalf shall, in every case, takes notes in writing of the oral evidence, or so much thereof as he considers material, in a book to be kept for that purpose and such book shall be signed by the chairman and not less than two other members of the Tribunal including the person who took down the notes, at the conclusion of each days proceedings.”

(Italics for emphasis)

My lords, the title of the Third Schedule of the Code of Conduct Bureau and Tribunal Act, Cap. 56, LRN, 1990 (replicated in Cap. C15, LFN, 2004) states: CODE OF CONDUCT TRIBUNAL RULES OF PROCEDURE

Commencement and Conduct of Trial.

It is thus, clear, that the Third Schedule of the Tribunal's Act is not on establishment or constitution of the tribunal. It is neither on quorum of the tribunal. It provided for what may be regarded as rules of court. The time Honoured principle of law is that wherever and whenever the Constitution speaks, any provision of an Act/Statute, on the same subject matter, must remain silent. See *INEC v. Musa* (2003) 3 NWLR (Pt.806) 72; *A.-G., Ogun State v. A.-G., Federation* (1982) 3 NCLR 166.

It is my belief that paragraph 12 of the said Third Schedule is on Rules of Procedure which cannot override the provisions of section 318(4) and the Fifth Schedule of the 1999 Constitution (as amended), or even override other statutory provisions such as section 28 of the Interpretation Act which specifies the quorum for tribunals such the trial tribunal. Section 318(4) of the Constitution provides:

“The Interpretation Act shall apply for the purpose of interpreting the provisions of this Constitution.”

Thus, as paragraph 15 of the Fifth Schedule of the Constitution omitted to make categoric provision on what shall form the quorum of the tribunal, there is a gap, a *lacunae* which exists. The usual practice of the courts is to fill in the gap/lacunae as may appear appropriate to the court by the importation of any relevant legislation/law to blow life or resuscitate the otherwise dead/ dormant piece of legislation. That is what necessitated resort to the provision of section 28 of the Interpretation Act. This harmless section provides that:

“Notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal. Commission of inquire (including any appeal tribunal established for the purpose of hearing any appeal arising therefrom) *shall not be less than two* (including the chairman):

Provided that the chairman and the member shall be present at every sitting of the Tribunal, Commission of

Inquiry throughout the duration of the trial or hearing.”

(Italics for emphasis)

I am of the firm view, that by virtue of the provision M section 28 of the interpretation Act as set out above, the chairman and one other member shall be sufficient to form a quorum of any tribunal including the Code of Conduct Tribunal. So, in determining the issue of quorum of the Code of Conduct Tribunal, resort can conveniently be made to the provisions of the Interpretation Act. See: *A.-G., Federation v. A.-G., Abia State* (No.2)(2002) 6 NWLR (Pt. 764) 542. Thus, the effect of the provisions of section 28 of the Interpretation Act is that the sitting of a tribunal shall be valid once the chairman of the tribunal sits with one other member of the tribunal. In the case on hand, the proceedings of the tribunal by the Chairman, Mr. Umar, who sat with one other member, Mr. Atedze, was validly conducted. Further, section 28 of the Interpretation Act is made in such encompassing nature that it is applicable “notwithstanding” anything contained in an Act/Legislation. It implies among others “irrespective of any other provision”, the section must be enforced. It also means that the provision of the section cannot be undermined by any other provision in any other Act or enactment. In *NDIC v. Okem Ent.* (2004) 10 NWLR (Pt.880) 107 at 182 para. 4, this court, per Uwaifo, JSC (Rtd.) stated as follows:

“When the term “notwithstanding” is used in the section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself”

See further: *Olatunbosun v. NISER Council* (1988) 3 NWLR (Pt.80) 25; *Ndaba (Nig.) Ltd. v. UBN Plc* (2009) 18 NWLR (Pt.1158) 256 at 304.

I am in total agreement with the court below in its conclusion that since there is a gap in the provisions of paragraph 15 of the Fifth Schedule to the Constitution, the Interpretation Act is the available legislative tool to fill this lacunae.

I have not been convinced that the principles of fair hearing encapsulated in section 36 of the Constitution have been violated by the tribunal by its sitting with the chairman and one other member.

My learned brother, Onnoghen, JSC, has done full justice in treating all the issues raised in this appeal. It is in agreement with him that I made the above observations. The appeal certainly lacks merit. I too, dismiss it. I affirm the decision of the court below.

NGWUTA, J.S.C.: I had a preview of the lead judgment just delivered by my learned brother, Onnoghen, JSC. I agree entirely with the reasons leading to the conclusion that the appeal is bereft of merit and ought to be dismissed.

I will however make a few comments in support of the judgment.

It was strenuously argued on behalf of the appellant that in view of the wording of section 24 (2) of the Code of Conduct Act the charge preferred against the appellant by someone other than the Attorney-General of the Federation is incompetent and ought to have been struck out.

Section 24 (2) of the Act relied on provides:

“S.24(2): Prosecutions for all offences referred to in this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officers in the Federal Ministry of Justice as the Attorney-General of the Federation may authorize so to do.”

Also section 174 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

“(1) The Attorney-General of the Federation shall have power:
(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a Court Martial, in respect of any offence created by or under any Act of the National

Assembly.

(b)

(c)

- (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.”

Appellant does not dispute that M.S. Hassan who initiated the charge is a law officer in the Federal Ministry of Justice which is a department of the Attorney-General of the Federation in terms of section 174 (2) of the Constitution (supra).

However, the appellant contended that in the absence of a sitting Attorney-General of the Federation no one could have been authorized to initiate the charge. Attractive and logical as this argument may seem on the surface, it does not represent the law as it is. The Attorney-General acts in person or through officers in his department and when a prosecution is initiated by any law officer in the Ministry of Justice it is immaterial that there is no sitting Attorney-General. See *The State v. Obasi* (1998) 9 NWLR (Pt. 567) 686.

Once an information is filed against any person by a member of the department of the Attorney-General it is taken for granted that he did so in accordance with the instruction of the Attorney-General. See *Christopher Awobom v. The State* (1976) All NLR (Pt.1) 5 at 18-20, (1976) 5 SC 49; *Onwuka v. The State* (1970) 1 All NLR 159; A.-G., *Western Nigeria v. The African Press Ltd. & Anor* (1965) 1 All NLR 9.

It may seem fictitious that any act of a Law Officer in the Federal Ministry of justice can be said to have been authorized by a non-sitting Attorney-General or when an Attorney-General has not been appointed. Be that as it may, the Constitution is the embodiment of what the people desire to be their guiding light in governance. It is the supreme law the fountain of

all laws. See: *Federal Republic of Nigeria v. George Osahon & Ors.* (2006) 28 SCRJ 348, (2006) 5 NWLR (Pt. 973) 361.

In view of the importance of the Constitution any of its provisions must be interpreted in such a manner to enhance its purpose. In cases of ambiguity, real or perceived the provision in question must be construed in such a way as to avoid what is inconvenient or absurd. See Black's Law Dictionary (Special Deluxe) 5th Edn p.234 and nothing can be more inconvenient and absurd than to say that a criminal case cannot be filed against any person in the country unless there is a sitting Attorney-General.

Moreover, the Solicitor-General can take over the duties of the Attorney-General if the office of the Attorney-General is vacant. See section 4 of the Law Officers Act.

For the above and the fuller reasons in the lead judgment I also dismiss this appeal for want of merit.

KEKERE-EKUN. J.S.C.: I have had the privilege of reading in draft the judgment of my learned brother, Onnoghen, JSC, just delivered. I agree with the reasoning and conclusion that the appeal is devoid of merit and should be dismissed. His Lordship has meticulously considered and painstakingly resolved all the issues in contention in this appeal. However, having regard to the constitutional importance of some of the issues raised. I shall make some comments by way of emphasis and in support of the lead judgment.

The facts and circumstances giving rise to this appeal have been fully set out in the lead judgment. I need not repeat them here. My comments are in respect of issues 1 and 3 formulated by both parties, which are in *pari materia* and relate to the jurisdiction of the trial tribunal to hear and determine the matter before it. The said issues, as formulated by the appellant, read thus:

1. Whether the majority decision of the Court of Appeal, Abuja Division was right in the interpretation of the Constitution

when it held that the Code of Conduct Tribunal was properly constituted in law when it sat on 18/09/2015 with just the Chairman and one (1) other member in contravention of the provisions of paragraph 15 (1) of the 5th Schedule of the 1999 Constitution as to exercise the powers and jurisdiction vested by the 1999 Constitution and if the answer is in the negative, whether the charge and the entire proceedings inclusive of the ruling in issue is not null and void and of no consequence?

3. Having regard to the clear wording of section 24(2) Code of Conduct Bureau and Tribunal Act, Cap. C15, 2004 whether the 13 count charge preferred against the appellant by someone other than the Attorney-General of the Federation is competent?

It is well settled, almost beyond the need to cite authorities, that the competence of a court to adjudicate in a cause or manner before it depends on the following conditions:

- a. It must be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other.
- b. the subject matter of the case must be within its jurisdiction, and there must be no feature in the case which prevents the court from exercising its jurisdiction; and
- c. The case must come before the court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, (1962) 1 All NLR 587 at 594; *Skenconsult (Nig.) Ltd. V. Ukey* (1981) 1 SC 6 at 62; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt.1025) 423 at 588 F.

The importance of issues 1 and 3 is further buttressed by the fact that it is equally trite that where the court lacks jurisdiction to entertain a

cause or matter the entire process, no matter how well conducted, is an exercise in futility. The proceedings would amount to a nullity *ab initio* and liable to be set aside.

With regard to the first issue, J.B. Daudu, SAN, learned senior counsel for the appellant submitted, relying on paragraph 15 (1) and (3) of the 5th Schedule to the 1999 Constitution (as amended), that the Code of Conduct Tribunal (hereinafter referred to as the tribunal) in the exercise of its adjudicatory functions, is only properly constituted when it consists of the Chairman and two other persons. He submitted that where, for any reason, the tribunal falls short of its three-member composition, the deficiency in membership goes to its roots and renders it sterile. To fortify this argument, learned senior counsel relied on section 20 (2) of the Code of Conduct Bureau and Tribunal Act, Cap. C15, EFN, 2004 (hereinafter referred to as the CCBT Act), which he argued is in tandem with the constitutional provision. He submitted that contrary to the position taken by the lower court, there is no lacuna in the provisions of paragraph 15 (1) of the 5th Schedule to the C Constitution to warrant the application of the Interpretation Act. He submitted that the constitutional prescription of the composition of the tribunal is inviolate and cannot be circumscribed by a lesser statute such as the Interpretation Act. He referred to the case of: *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 @ 157 - 158.

He argued that paragraph 15 (1) of the 5th Schedule provides for both the quorum and the constitution of the tribunal and that it puts the quorum at three. He posited that the use of the word “other” in the said provision envisages that the tribunal can have other members in excess of three but for it to be properly constituted the Chairman must sit with two other members.

He referred to comparable provisions of the Constitution, such as sections 234, 247, 252, 263 and 268 and contended that the word “consist” used in paragraph 15(1) of the 5th Schedule to the Constitution refers to the composition of the tribunal and not its establishment. He contended that

where the framers of the Constitution seek to define the numerical strength of Justices or Judges to exercise the powers and jurisdiction of a court, they used the word “consist”. He submitted further that the distinction between the word "consist" and "quorum" made by learned senior counsel for the respondent at the court below is an unlawful importation into the provision. He also relied on Paragraph 12 of the 3rd Schedule to the CCBT Act, which provides that the record of proceedings must be signed at the end of each day by the Chairman and not less than two other members of the tribunal, including the person who took down the notes. He argued that if it is determined that a two-man panel is competent, in the event of failure to reach a consensus on an issue, it would raise a serious issue of breach of the parties' fundamental rights to fair hearing guaranteed by section 36 of the 1999 Constitution, as such a composition would not secure the tribunal's independence and impartiality.

In response, Rotimi Jacobs, SAN, learned senior counsel for the respondent, contended that paragraph 15(1) of the 5th Schedule is an establishment section, which provides for the creation of the Code of Conduct Tribunal to be made up of three members. He submitted that the composition of the tribunal as a body is different from its quorum and that the quorum relates to the number of members that must be present before valid proceedings can take place. He maintained that paragraph 15 (1) of the 5th Schedule to the Constitution and section 20 (1) and (2) of the CCBT Act have nothing to do with the quorum of the tribunal to entertain cases. He referred to the sections of the Constitution establishing the various superior courts of record e.g. Sections 249 and 237, which establish the Federal High Court and the Court of Appeal respectively, and submitted that it would be absurd to interpret the sections and others as requiring the full complement of the Judges or Justices before such courts could carry out their legal duties.

On the distinction between composition and quorum, he referred to section 285 (1) of the Constitution (as amended) and paragraph 1 (1) of the

6th Schedule thereto to, which provides that the composition of the National and State Houses of Assembly-Election Tribunal and Governorship Election Tribunal shall consist of a Chairman and two other members and Section 285 (4) of the 1999 Constitution (First Alteration), which specifically provides for the quorum of the said Election Tribunals, which shall be the Chairman and one other member. He maintained that while sections 234, 247, 252, 263 and 268 of the Constitution make specific provisions for the quorum of the respective courts, paragraph 15 (1) of the 5th Schedule contains no such provision. It is for this reason that he contends that recourse must be had to section 28 of the Interpretation Act, which is authorised by section 318 (4) of the Constitution. He submitted that by virtue of the said section 28, the sitting of the tribunal is valid if the Chairman sits with one other member. He submitted that the record shows that on 18/9/2015, the Chairman, Hon. Danladi Yakubu Umar sat with one other member, Hon. Agwadza W. Atedze and asserted that the said sitting was valid. He submitted that paragraph 12 of the 3rd Schedule to the CCBT Act, which relates to the procedure for taking evidence at the trial, does not and cannot provide for the quorum of the Tribunal. He submitted further that paragraph 12 of the 3rd Schedule to the CCTB Act, which provides rules of procedure for the Tribunal, cannot override the provisions of section 318 (4) and the 5th Schedule to the Constitution nor section 28 of the Interpretation Act.

The main object of statutory interpretation is to discover the intention of the lawmaker, which is to be deduced from the language used. See *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841) 446 @ 535. The golden rule of interpretation is that where the words used in the Constitution or in a statute are clear and unambiguous they must be given their natural and ordinary meaning unless to do so would lead to absurdity, or inconsistency with the rest of the statute. *Ibrahim v. Barde* (1996) 9 NWLR (Pt.474) 513; *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377 @ 402 F - H; *Adisa v. Oyinwola & Ors* (2000) 6 SC (Pt.II) 47, (2000) 10 NWLR (Pt. 674) 116;

Uwazurike & Ors v. A.-G., Federation (2007) 2 SC 169, (2007) 8 NWLR (Pt. 1035) 1; *Nigerian Army v. Aminu-Kano* (2010) 5 NWLR (Pt.1188) 429. It is also trite that when interpreting the provisions of a statute the court must not ascribe meanings to clean plain and unambiguous provisions in order to make such provision conform to the court's view of their meaning or what they ought to be. See: *A.-G., Federation v. Guardian Newspapers Ltd.* (1999) 9 NWLR (Pt.618) 187 @ 264 G - H.

The Constitution is the supreme law of the land. It is the grundnorm i.e. it is the basic law from which all other laws of the society derive their validity. Section 1 (1) of the 1999 Constitution (as amended) provides:

1.(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

(3) If any other law is inconsistent with the provisions of this Constitution/ this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

See: *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt.660) 228; *P.D.P. v. C.P.C.* (2011) 17 NWLR (Pt.1277) 485.

Paragraph 15(1) of the 5th Schedule to the 1999 Constitution is clear and unambiguous. It provides:

“15.(1) There shall be established a tribunal to be known as Code of Conduct Tribunal, which shall consist of a Chairman and two other persons.”

The phrase “consist of” is defined in the Oxford Advanced Learner's Dictionary of Current English, 8th Edition (International student's Edition) page 310 as follows:

“Consist of: make up something; constitute; be comprised of;

These words all mean to be formed from the things or people mentioned, or to be parts that form something.”

If this definition is applied to paragraph 15(1) of the 5th Schedule it

means the Chairman and two other members are the persons who make up tribunal. In other words, the Code of Conduct established by the Constitution must be composed of the Chairman and two other members. This is the natural and ordinary meaning of the words “consist of”. The question is whether, as postulated by learned senior counsel for the appellant, the composition of the tribunal is the same as the quorum of members required to legally exercise its adjudicatory powers.

One of the ways of revolving this conundrum and ascertaining the intention of the lawmakers is to have a look at similar provisions in the Constitution, which provide for the establishment of superior courts of record and election tribunals.

Sections 230 and 237 of the 1999 Constitution provide as follows:

“Section 230. (1) There shall be a Supreme Court of Nigeria.

- (2) The Supreme Court of Nigeria shall consist of –
 - (a) the Chief Justice of Nigeria; and
 - (b) such number of justices of the Supreme Court, not exceeding twenty-one, as may be prescribed by an Act of the National Assembly.

Section 237. (1) There shall be a Court of Appeal.

- (2) The Court of Appeal shall consist of-
 - (a) a President of the Court of Appeal; and
 - (b) such number of Justices of the Court of Appeal, not less than forty-nine, of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary Laws as may be prescribed by an Act of the National Assembly.”

It is apposite at this point to refer to the definition of “quorum” as

contained in Oxford Advanced Learner's Dictionary (*infra*) at page 1203. It is as follows:

“Quorum: the smallest number of people who must be at a meeting before it can begin or decisions can be made.”

Now, if we were to apply the argument of learned senior counsel for the appellants to sections 230 & 237 of the Constitution, there would be no need for any other provision specifying the quorum necessary for each court to carry out its judicial functions. That this is not the intention of the lawmakers as borne out by sections 234 and 247 of the Constitution, which provide as follows:

“Section 234.

For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law, the Supreme Court shall be duly constituted if it consists of not less than five Justices of the Supreme Court;

Provided that where the Supreme Court is sitting to consider an appeal brought under section 232 (2) (b) or (c) of the Constitution, or to exercise its original jurisdiction in accordance with section 232 of this Constitution, *the court shall be constituted by seven justices.*

Section 247.

For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law, the Court of Appeal shall be duly constituted if it consists of not less than three Justices of the Court of Appeal and in the case of appeals from -

- (a) a Sharia Court of Appeal, if it consists of not less than three Justices of the Court of Appeal learned in Islamic personal law; and
- (b) a Customary Court of Appeal, if it consists of not less than three Justices of the Court of Appeal learned in

Customary law.” (Italics mine)

See also sections 252, 254E, 263 and 268 in respect of the Federal High Court, the National Industrial Court, the Sharia Court of Appeal of the Federal Capital Territory (FCT) and the Customary Court of Appeal of the FCT. It is quite clear from the constitutional provisions set out and referred to above that the contention of learned senior counsel for the appellants that the Earners of the Constitution use the word "consist" when they seek to determine the numerical strength of Judges or Justices necessary to exercise the jurisdiction conferred on the respective courts, is with respect, misconceived. What is consistent throughout the Constitution is that after providing for the composition of a court or tribunal, the lawmakers made separate provision for the quorum of those courts or tribunals. There is nowhere in the Constitution that quorum and composition are combined in one provision.

Section 285 (1) & (2) of the Constitution provides for the establishment of the National and State Houses of Assembly Election Tribunals and the Governorship Election Tribunals. Subsection (3) provides that the composition of the said Tribunals shall be as set out in the 6th Schedule to the Constitution. Paragraph A 1(1) of the 6th Schedule provides that a National and State Houses of Assembly Election Tribunal shall consist of a Chairman and two other members, while Paragraph B 2(2) provides that a Governorship Election Tribunal shall consist of a Chairman and two other members.

Subsection (4) of section 285 goes on to provide that the quorum of tin election Tribunal established under the section shall be the Chairman and one other member. This provision buttresses the fact that even with respect to a tribunal established under the Constitution, separate provisions were made for its composition and quorum and that a quorum of two is not alien to the Constitution,

From all that has been said above, it is evident that there is no express provision in paragraph 15 of the 5th Schedule to the Constitution

for the quorum of the Code of Conduct Tribunal. In a situation such as this, section 318 (4) of the Constitution permits recourse to the Interpretation Act for guidance. Learned senior counsel for the appellant has placed an interpretation on paragraph 15 (1) of the 5th Schedule, to wit: that it provides for both the composition and the quorum of the tribunal.

The Interpretation Act may be called in aid to determine whether the interpretation given accords with the intention of the lawmakers. The Interpretation Act is an Act of the National Assembly, which has been incorporated by reference, into the Constitution and is applicable to the 5th Schedule. Section 28 of the Interpretation Act provides:

“28 Quorum

Notwithstanding anything contained in any Act or other enactment; the quorum of any tribunal, Commission of inquiry (including an appeal tribunal established for the purpose of hearing any appeal arising therefrom) shall not be less than two (including the Chairman): Provided that the chairman and the member shall be present at every sitting of the tribunal. Commission of Enquiry throughout the duration of the trial or hearing.”

As rightly submitted by learned senior counsel for the respondent, relying on the case of: *NDIC v. Okem Ent.* (2004) 10 c NWLR (Pt.SSO) 107 @ 182 para. H,

“When the term "notwithstanding" is used in a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself.”

I therefore agree with him that paragraph 12 of the 3,d Schedule to the CCBT Act, which provides for rules of procedure for the tribunal, cannot override the provisions of section 318 (4) of the Constitution, which, by reference, incorporated the provisions of section 28 of the Interpretation Act.

I am therefore in complete agreement with my learned brother in the lead judgment that the tribunal was properly constituted on 18th September 2015 when it sat with the Chairman and one other member. I resolve this issue against the appellant.

The second issue I wish to comment upon is issue 3: whether having regard to the clear wording of section 24 (2) of the CCBT Act, the 13-count charge preferred against the appellant by someone other than the Attorney-General of the Federation is competent.

Section 24 (2) of the CCBT Act provides:

“24.(2) Prosecutions for all offences under this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such Officers in the Federal Ministry of Justice as the Attorney-General of the Federation may authorise so to do.”

It is the contention of learned senior counsel for the appellant that under section 24 (2) of the CCBT Act, for a charge to be validly instituted before the tribunal, it must be filed in the name of the Federal Republic of Nigeria by the Attorney-General himself or, if filed by any officer in the Federal Ministry of Justice, such officer must have been specifically authorised by the Attorney-General of the Federation. He submitted that the specific provisions in section 24 (2) of the CCBT Act and paragraph 18 of the 3rd schedule to the Act take precedence over the general provisions of sections 2 and 4 of the Law Officers Act, Cap. L8, LFN, 2004, relied upon by the two lower courts, which empowers the Solicitor-General of the Federation to perform the duties of the Attorney-General in his absence and confers on him the same powers as are imposed by law on the Attorney-General of the Federation. He relied on the maxim '*generalia specialibus non derogant*', which was espoused by Karibi-Whyte, JSC in the case of: *Matari v. Dangaladima* (1993) 3 NWLR (Pt.281) 266. He also argued that the presumption of regularity of official acts is rebutted in the instant case,

as there is no evidence that the Solicitor-General personally exercised the powers of the Attorney-General or authorised any law officer in the Federal Ministry of Justice to so act. He cited the case of: *Abubakar v. Yar'Adua* (2008) 18 NWLR (Pt.1120) 1 @ 155.

On the other hand, learned senior counsel for the respondent argued that the Constitution is supreme and that any other law purporting to confer power to initiate criminal proceedings must bow to the Constitution. He referred to sections 174 and 211 of the Constitution and contended that the Constitution has covered the field in respect of the power to initiate criminal proceedings and is the authoritative law on the subject. He submitted that by the-provisions of sections 174 and 211 of the Constitution the Attorney-General of the Federation does not have exclusive power to initiate criminal proceedings, as law officers in the Ministry of Justice, lawyers in the employment of prosecuting agencies, policemen in the service of the Nigerian Police Force, among others also have the power to institute criminal proceedings. He referred to: *Comptroller of Prisons v. Adekanye* (2002) 15 NWLR (Pt .790) 3 18 @ 329 per Belgore, JSC (as he then was); *E.R.N, v. Osalion* (2006) 5 NWLR (Pt.973) 361 @ 406 and *E.R.N, v. Adewunmi* (2007) 10 NWLR (Pt.1042) 399 @ 418 - 419. On the distinction between the office of the Attorney-General and the person occupying the office, he cited the case of: *A.-G., Federation v. ANPP* (2003) 18 NWLR (Pt. 851) 182.

Alternatively, he submitted, relying on sections 2 and 4 of the Law Officers Act, 2004 and section 168 (2) of the Evidence that there is a presumption of regularity in favour of the competence of M.S. Hassan, Deputy Director in the Federal Ministry of Justice to initiate the charge against the appellant. He submitted that the maxim “*generalia specialibus non derogant*” is inapplicable to the circumstances of this case, as the maxim only applies where the general and specific provisions are contained in the same statute and on the same subject matter. See: *Jack v. U.N.A.M.* (2004) 5 NWLR (Pt.865) 208 @ 229.

In considering this issue, I refer once more to section 1 (1) of the 1999 Constitution, which provides that the Constitution is supreme and that its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It is also worthy of note that the Attorney-General of the Federation is the only Minister of the Federal Republic whose powers are specifically provided for in the Constitution. Section 174 of the 1999 Constitution provides:

“174.(1)The Attorney-General of the Federation shall have power -

- (1) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a Court-Martial, in respect of any offence created by or under any Act of the National Assembly;
- (2) *to take over and continue any such criminal proceedings that may have been instituted by p any other authority or person; and*
- (3) *to discontinue at any stage before judgment is delivered any such criminal proceeding instituted or undertaken by him or any other authority or person.*

- (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.
- (3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent the abuse of legal process.”

(Italics mine)

Section 211 of the Constitution makes identical provisions for the office of the Attorney-General of a State in relation to offences created by

or under any law of the House of Assembly. Section 174 (1) (b) & (c), which refers to proceedings initiated by “any other authority or persons”, is a clear indication that the power of the Attorney-General to institute criminal proceedings is not exclusive to his office. Secondly, by subsection (2) of Section 174 the powers conferred on the Attorney-General may be exercised by him in person or through officers of his department. See: *F.R.N, v. Adewunmi* (2007) 10 NWLR (Pt.1042) 399 @ 418 - 419. There is nothing in section 174 that states that the Attorney-General must expressly delegate his powers to a law officer in his department.

By the provisions of section 174 (2) of the Constitution it is clear that the lawmakers appreciated the fact that there may be occasions when there is no incumbent occupant of the office of Attorney-General and necessary provisions must be in place to ensure that the business of the Ministry of Justice does not grind to a halt. Sections 2 and 4 of the Law Officers Act, 2004 also provide as follows:

- “2. Creation of the offices of the law officers.
The offices of Attorney-General, Solicitor-General and State Counsel are hereby created.
4. The Solicitor-General of the Federation in the absence of the Attorney-General of the Federation may perform any of the duties and shall have the same powers as are imposed by law on the Attorney-General of the Federation.”

It is not in dispute that M.S. Hassan is a Deputy Director in the office of the Attorney-General. He informed the tribunal that even though there was no sitting Attorney-General, the Solicitor-General was in office and he was authorised to institute the proceedings. There is a presumption of regularity in his favour by virtue of section 168 of the Evidence Act. I fully agree with the majority decision of the court below to the effect that the appellant failed to rebut the presumption of regularity in favour of the initiation of the proceedings before the tribunal by Mr. Hassan. It cannot be right, as asserted by learned senior counsel for the appellant that the burden

of proving that he had the requisite authority was on Mr. Hassan. Indeed, as rightly observed by learned senior counsel for the respondent, the only person who could challenge the authority of Mr. Hassan is the Solicitor-General of the Federation.

In its majority decision on this issue, the court below per Adumein, JCA, held at pages 1252 - 1253 of the record:

“I do not agree with the contention of learned senior counsel for the appellant that consent to sign or institute prosecution must be physically delegated to the Solicitor-General of the Federation or any other law officer of the Federation. This is so because section 24 (2) of the Code of Conduct Bureau and Tribunal Act cannot be read in isolation of the clear provisions of section 4 of the Law Officers Act. The right to perform the duties and exercise the powers of the Attorney-General of the Federation by the Solicitor-General in the absence of the former has statutory backing and to require physical consent is a requirement that is merely a surplussage.

The Solicitor-General of the Federation, while performing the duties and exercising the powers of the Attorney-General of the Federation, in the absence of the latter, can do so through any law officer in the Federal Ministry of Justice. The law is that there is a presumption that 'any officer in any department of the Attorney-Generals office is empowered to initiate criminal proceedings unless it is proved otherwise.' ... The presumption to initiate the prosecution in the tribunal in favour of Mr. M.S. Hassan has not been rebutted by the appellant in this case.”

I find no reason to interfere with the sound reasoning above and fully endorse it. I therefore also resolve issue 3 against the appellant.

For the reasons stated herein and for the more comprehensive

reasons lucidly adumbrated in the lead judgment, I also find this appeal to be devoid of merit. I hereby dismiss it.

NWEZE, J.S.C.: My Lord, Onnoghen, JSC, obliged me with the draft of the leading judgment just delivered now. I am persuaded by the ultimate conclusion in the said leading judgment.

As, demonstrably, shown in my Lord's leading judgment, the agitations of the parties on the first issue have a far-reaching implication in our adversarial jurisprudence. Unarguably, this first issue in the appellant's brief is framed in a rather woolly or imprecise manner.

Be that as it may, his complaint here is, actually, woven around the question whether the majority decision of the Court of Appeal (lower court, for short), rightly, construed the constitutional provisions apropos the proper constitution of the Code of Conduct Tribunal (hereinafter, simply, referred to as “the CCT”).

Arguments of counsel, having been, admirably, summed up in the leading judgment, this brief contribution shall resist the temptation of boring my Lords with their wearisome iteration.

It is not in doubt that the CCT sat with only the Chairman and one member. The question here is whether, in so doing, it (the CCT) was, properly, constituted.

Now, the drafts person of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution, for short), deliberately, distinguishes between superior courts of record and other courts. The courts under the former category (superior courts) are, specifically, vested with the judicial powers of the Federation and of the States, section 6 (1) and (2) of the Constitution.

In addition, the Constitution, methodically, provides for the establishment of these courts (see, for example, section 230 (1) which establishes this court and the quorum for their exercise of jurisdiction. In the case of this court, for the exercise of any jurisdiction conferred on it, it

shall be, duly, constituted if it consists of not less than five Justices in what may, loosely, be termed "ordinary appeals," section 234 of the Constitution.

The drafts person, specifically, resorted to this distinction in relation to, at least, one tribunal, namely, the Election Tribunal. Thus, while paragraph 1 (1) of the Sixth Schedule provides for the composition of the National and State Houses of Assembly Election Tribunals, the First Alteration to the Constitution, (section 285 (4)), expressly, provides for the quorum of the said Election Tribunal to be "the Chairman and one other member," *ANPP v. INEC* (2015) LPELR - 25706 (SC), (2010) 13 NWLR (Pt. 1212) 549.

The implication of this drafting technique is that where there is any defect as to the quorum of this court, for example, or the said Election Tribunal, in the exercise of any jurisdiction so conferred, it cannot exercise it (that jurisdiction) for the simple reason that a defect in competence is not intrinsic but extrinsic to the process of adjudication, *Goldmark Nigeria Ltd. and Ors v. Ibafon Company Ltd.* (2012) 3 SC (Pt. III) 72, (2012) 10 NWLR (Pt. 1308) 291.

It cannot be otherwise for jurisdiction is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court (as regards its quorum), with control over the subject matter and the parties, *Egharevba v. Osadolar Eribo and 4 Ors* (2010) 3-5 SC (Pt. III) 93, (2010) 9 NWLR (Pt. 1199) 411. Above all, the jurisdiction of a court is given in a clear and express language and never to be looked for with a search light, *Akinpelu v. Adegboro and Ors* (2008) 4 -5 SC (Pt. II) 75, (2008)10 NWLR (Pt. 1096) 531.

However, quite apart from the above categories of courts and other courts which the States are empowered to establish pursuant to section 6 (2) of the Constitution, certain categories of adjudicatory bodies were set up by the Constitution to tackle certain exigencies in our national life.

Paragraph 15 (1) of the Fifth Schedule of the Constitution provides for the establishment of one of such adjudicatory bodies. Undoubtedly, the

constitutional provisions (enshrined in the Fifth Schedule), dealing with the Code of Conduct for Public Officers, were primarily designed to enthrone probity in the public lives of public officers (that is, officers listed in Part 11 of the Fifth Schedule) and, a fortiori, to promote transparency and accountability in governance.

The Code of Conduct Bureau (CCB, for short) and the CCT are the bodies responsible for effectuating the said code of conduct provisions. In particular, the latter (CCT) is the adjudicative arm in the entire architecture of the accountability provisions of the Third and Fifth Schedules of the Constitution. Its powers are outlined in q paragraph 18 of the Fifth Schedule.

As, already, shown above, there are express provisions with regard to the quorum of the conventional courts (and, as shown above, the Election Tribunal) for the exercise of jurisdiction. This was not done with regard to the CCT, the Tribunal, specially, incorporated into the Constitution to deal with breaches of the Code of Conduct provisions, that is, the provisions aimed at promoting accountability, probity, transparency in the lives of the public officers above.

That notwithstanding, the quorum of all categories of tribunals (except, of course, the tribunal contemplated in the First Alteration above, section 285 (4) supra) is set out in an extant enactment which, by section 318 (4) of the Constitution, “shall apply for the purposes of interpreting (its) provisions.” That enactment is the Interpretation Act which, in section 28, provides inter alia that “... the quorum of any tribunal ... shall not be less than two (including the Chairman).”

In effect, section 28 of the Interpretation Act can, always, be prayed in aid for the purpose of interpreting the constitutional provisions on the CCT apropos its quorum which is not, expressly, provided for in the organic law, the Constitution. In other words, the provisions should be construed harmoniously, *Rabin v. The State* (1980) 8 -11 SC 130, 151, 195, (1981) 2

NCLR 293; *Adesanya v. President of the Federal Republic of Nigeria and Anor.* (1981) 5 SC 112, 134, 321, (1981) 1 NCLR 236; *Abegunde v. The Ondo House of Assembly and Ors* (2015) 244 LRCN 1, 374.

That done, it becomes evident that the quorum of the CCT “shall not be less than two (members) (including the Chairman).” As was held in *Panama Refining Co. v. Ryan* 293 US 388, 493 (1935), the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view.

In the context of the CCT, the end in view (that is, the objective of the Constitution) is to have a functional tribunal which would achieve the purposes of the Fifth Schedule, that is, to meet the exigencies of accountability, probity, transparency in the lives of the said public officers. In my view, this is the only interpretation which would guide this court in discovering the intention of the Legislature on this point, *Marwa and Anor v. Nyako and Ors* (2012) 1 SCNJ 378, (2012) 6 NWLR (Pt. 1296) 199.

Here, I take the liberty to remind my Lords that one of the guiding posts in the interpretation of the provisions of the Nigerian Constitution is that the principles, upon which it (the Constitution) was established, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions. *Global Excellence Communication Ltd. v. Duke* (2007) 16 NWLR (Pt. 1059) 22; *A.-G., Bendel v. A.G., Federation* (1982) 3 NCLR 1.

Above all, the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution read as a whole has set out to regulate, is to be preferred, *Dapianlong v. Dariye* (2007) 8 NWLR (Pt. 1036) 332.

The principle that underlies this construction technique is that B the Legislature would legislate only for the purpose of bringing about an

effective result, *Tinubu v. IMB Securities* (2001) 16 NWLR (Pt.740) 670; *Tukur v. Government of Gongola State* (No. 2) (1989) 4 NWLR (Pt. 117) 517, 579; *Aqua Ltd. v. O.S.S.C.* (1988) 4 NWLR (Pt. 91) 622; *Ifezue v. Mbadugha and Anor* (1984) 15 NSCC 314, C (1984) 1 SCNLR 427; *Nafiu Rabi v. The State* (1980) 8 -9 SC 130, (1981) 2 NCLR 293.

This approach is consistent with the “living tree” doctrine of constitutional interpretation enunciated in *Edward v. Canada* (1932) AC 124 which postulates that the Constitution "must be capable of growth to meet the future,” N. K. Chakrabarti, *Principles of Legislation and Legislative Drafting*, (Third Edition) (Kolkata: R. Cambray and Co. Private Ltd., 2011) 560, citing Graham, “Unified Theory of Statutory Interpretation,” in *Statute Law Review* Vol. 23, No. 2, July, 2002 at 91 -134.

I, therefore, endorse the position that the construction of any document (and this includes the construction of the precious and organic document known as the 1999 Constitution) is a holistic endeavour, *United Sav. Ass'n of Tex v. Timbers of Inwood Forest Assocs Ltd.* 484 U.S. 365, 371 (1988) (per Scalia, J), see, generally, F A. Scalia and G. Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul, MN: Thomson/West, 2012) 167 - 168; also, *Abegunde v. The Ondo State House of Assembly* (2015) Vol. 244 LRCN 1, 374.

In my humble view, therefore, the plurality decision of the lower court was right in its conclusion that the said CCT was, properly, constituted (as regards its quorum) when it sat with the Chairman and one other member. I find no merit in the appellant's complaint here.

It is for these, and the more detailed reasons in the leading judgment that I, too, hold the view that this appeal is unmeritorious. I abide by all the consequential orders in the leading judgment.

SANUSI, J.S.C.: This appeal is against the judgment of the Court of Appeal, Abuja Division, (hereinafter referred to as “the court below/lower court”) delivered on 30th October 2015. The said judgment was delivered by the court below affirmed the decision of the Code of Conduct Tribunal (“the trial court or tribunal”) delivered on 18th of September 2015. The facts which gave rise to this appeal are briefly put as below.

The appellant herein served for two terms as executive governor of Kwara State between May 2003 and May 2011. As a public servant, he filled four asset declaration forms covering the two periods he served as governor and submitted them to the Code of Conduct Bureau. Investigations were later made to verify the information about the assets he declared by the Code of Conduct Bureau and other agencies of the Federal Government and also as to how he acquired the assets declared by him. Upon conducting the investigation by the relevant authorities on the information given by the appellant in the four asset declaration forms he filled, it was allegedly discovered that the appellant corruptly acquired some of the properties while he was serving as governor of Kwara State which he did not declare in the asset declaration forms. It was also allegedly discovered that the appellant made anticipatory declaration of assets on assumption of office of governor which assets he later acquired. Another discovery made, was that the appellant sent some money outside Nigeria to purchase properties in London and also that he maintained foreign bank account while serving as governor. All these allegations were regarded as infringement of Code of Conduct Act by the appellant who is a public servant. Sequel to that, the Code of Conduct Bureau initiated criminal proceedings against the appellant before the Code of Conduct Tribunal sitting in Abuja, by filing criminal charges against him through the Federal Ministry of Justice. To that effect, a criminal summons was served on the appellant. As at the time the charges were framed against the appellant, there was no sitting Attorney General of the Federation, hence the charges framed against the appellant, were initiated or signed by one M.S. Hassan Esq. a Deputy Director in the

Federal Ministry of Justice with the consent of the Solicitor General of the said ministry.

Upon being served with criminal summons, the appellant herein, filed a motion on notice dated 17/9/2015 before the Code of Conduct Tribunal challenging the competence of the charge No. CCT/ABJ/01/2015 framed against him and he at the same time, filed two suits before the Federal High Court. Abuja and Lagos challenging the validity of the proceedings initiated at the tribunal and he refused to appear before the Tribunal. He also filed a notice of preliminary objection earlier i.e. on 17/9/2015. When the matter came up before the tribunal for hearing on 18/9/2015, Chief J.B. Daudu, SAN of learned senior counsel for the appellant drew the tribunal's attention to the preliminary objection he filed on 17/9/2015 and argued the objection. The preliminary objection raised on behalf of the appellant was, inter alia, premised on the following grounds:-

- (a) That the charge(s) framed against the appellant was/ were incompetent in view of the absence of silting Attorney General of the Federation and for that reason, the appellant would not appear before the tribunal.
- (b) That the non-appearance of the appellant before the tribunal was because there was an existing order of the Federal High Court on the tribunal to stop the proceedings.

After taking argument on the preliminary objection, and upon considering the grounds of the preliminary objection the tribunal delivered its considered ruling overruling the preliminary objection and dismissing same in that, it held that the charge(s) was/were properly instituted against the appellant. It also held that the proceedings was properly and competently instituted against the appellant. In the light of this stance, the tribunal held, it subsequently issued a bench warrant for the arrest of the appellant and adjourned the matter to 19/9/2015 for the appellant to be arrested and brought before it to face the trial. The appellant did not appear on 19/9/2015, hence the tribunal renewed or updated the bench warrant and

further adjourned the case to 22/9/2015.

When the case came up on 22/9/2015, the appellant appeared in court even though there is no indication that the bench warrant was personally executed on him. On seeing that the appellant had appeared before it on 22/9/2015, the tribunal decided to revoke the bench warrant it had issued earlier, hence the charge(s) was/ were on that day read to the appellant and his plea was taken. He was subsequently admitted to bail on his self cognizance and the trial/proceedings was adjourned till 22nd and 23rd October, 2015 for commencement of hearing in the case. Before the tribunal reconvened for the heaving of the case, the appellant appealed to the Court of Appeal (court below) against the ruling of the tribunal dated 18/9/2015.

At the Court of Appeal, the appellant raised the following five issues for determination of his appeal, as listed below:-

- (1) Whether the Code of Conduct Tribunal was properly constituted when it sat with two members on 18/9/2015.
- (2) Whether the tribunal was competent to issue bench warrant when it is not a court of criminal jurisdiction.
- (3) Whether the charge framed against the appellant was properly initiated when as at the time it was so framed or initiated, there was no sitting Attorney General of the Federation (AGF) to do so.
- (4) That the issuance of criminal summons on the appellant for him to appear before the tribunal on 18/9/2015 was improper, and
- (5) That the Code of Conduct Tribunal wrongfully ignored the order of the Federal High Court barring it from sitting.

On 16th October, 2015, the court below heard the appeal of the appellant and adjourned same for judgment. Then on 30th October, 2015, it delivered its considered judgment by a simple majority of two to one dismissing the appellant's appeal when it resolved four out of the five issues

raised by the appellant as reproduced supra. It is pertinent to say, that even the purported minority or dissenting judgment was only on issue No.3 above i.e. the competence of Mr. M.S. Hassan Deputy Director, Federal Ministry of Justice to initiate the charge. It should also be noted that the court below resolved issue No.4 supra, in favour of the appellant when it reasoned that the service of criminal summons on the appellant was defective because it was not really personally served on the appellant, but even then, it held that, that anomaly could not vitiate the charge and the plea taken from the appellant in view of the provisions of section 136(a) of Administration of Criminal Justice Act of 2015.

The appellant herein, became piqued by the judgment of the court below delivered on 18th September, 2015, hence he further appealed to this court vide a notice of appeal which he filed on 2nd November 2015, containing seven grounds of appeal. In keeping with the rules and practice applicable in this court, learned senior counsel to the parties filed and exchanged briefs of argument on behalf of their respective clients/parties. The appellant's brief of A argument, settled by his learned senior counsel Mr. J.B. Daudu SAN, was filed on 11th November 2015. Upon being served with the respondent's brief of argument, Mr. J.B. Daudu SAN, also filed appellant's reply brief (settled by him) on the 25th November 2015. On the part of the respondent, its learned senior counsel Mr. Rotimi Jacobs, SAN, filed the respondent's brief of argument on 18th November 2015.

Both learned senior counsel adopted the briefs of argument they settled and filed on behalf of their respective parties.

In the appellant's brief of argument, six issue for determination were decoded from the seven grounds of appeal contained in the notice of appeal which said issues are set out below:-

- (1) Whether the majority decision Court of Appeal, Abuja Division was right in the interpretation of the Constitution when it held that the Code of Conduct tribunal was properly constituted in law when it sat on 18/10/2015 with just the

Chairman and one (1) other member in contravention of the provisions of paragraph 15(1) of the 5th Schedule of the 1999 Constitution as to exercise the powers and jurisdiction E vested by the 1999 Constitution and if the answer is in the negative, whether the charge and the entire proceedings inclusive of the ruling in issue is not null and void and of no consequence? (Grounds 1 and 2).

- (2) Whether the majority decision was right when it held that Code of Conduct Tribunal is a court of limited criminal jurisdiction competent and empowered to issue a bench warrant against the appellant in the event of his absence from the proceedings of the Tribunal? (from Ground 3).
- (3) Having regard to the clear wording of section 24(2) the Code of Conduct Bureau and Tribunal Act, Cap. C15, 2004 whether the 13 count charge preferred against the appellant by someone other than the Attorney General of the Federation is competent? (Ground 4).
- (4) Whether the majority decision of the Court of Appeal was correct in law, when it held that notwithstanding the lack of proper service on the appellant of the criminal summons to appear before the Code of Conduct Tribunal on the 18th of September, 2015, such a vice was a mere irregularity cured by the appearance of the appellant at the proceedings regardless of the existence of appellants' conditional appearance on protest. (Ground 5)
- (5) Whether the majority decision of the court below was right when it justified the refusal of the Code of Conduct Tribunal to obey the Federal High Court to appear before it and show cause why it should not order a stay of further proceedings on the ground that the order in issue was not specifically asking the lower tribunal to stay its proceedings? (Ground

6).

- (6) Whether the majority decision of the Court of Appeal was correct when it held that the Code of Conduct Tribunal was a criminal court empowered to apply the Administration of Criminal Justice Act? (Ground 7).

On the other part, the learned senior counsel for the respondent raised five issues for the determination of this appeal, which are reproduced hereunder:-

- (A) Whether the Court of Appeal was not right in its unanimous decision which held that the Code of Conduct Tribunal was properly constituted when it heard and determined the issues that culminated in the tribunals ruling of 18th September 2015 with the Chairman and one other member (Grounds 1 and 2).
- (B) Whether the Court of Appeal was not right when it held that the Code of Conduct Tribunal though a court of limited criminal jurisdiction, was competent to issue a bench warrant against the appellant in the event of his failure to appear before it. (Ground 3)
- (C) Whether the Court of Appeal was not right in its majority decision when it held that the charge preferred against the Appellant before the Code of Conduct Tribunal and signed by M.S. Hassan, a Deputy Director in the Federal Ministry of Justice was competent notwithstanding that there was no sitting Attorney General of the Federation at the time it was initiated (Ground 4).
- (D) Whether the Court of Appeal was not right when it held that the issue of the alleged service of summons on the appellant to appear before the Code of Conduct Tribunal on 18th September 2015 was not fatal to the proceedings before the Code of Conduct Tribunal (Grounds 5 and 7); and

- (E) Whether the Court of Appeal was not right when it held that since the Federal High Court did not make B any order on 17th September 2015 restraining the Code of Conduct Tribunal from sitting, the issue of disobedience of that order or the superiority of the Federal High Court to the tribunal would not arise (Ground 6). 3

The issues formulated by the learned senior counsel for the respondent appear to me to be till encompassing as they captured all the six issues raised in the appellant's brief of argument. They are also less verbose and are more elegantly framed. I therefore choose to be guided by them in approaching this appeal and I shall only consider those that are live issues and not sheer academic in nature.

The first issue for determination raised by the respondent corresponds with the first issue raised in the appellant's brief of argument and it has to do with the constitutionality or otherwise of the sitting of the Code of Conduct Tribunal by sitting with Chairman and one member only. The learned senior counsel for the appellant in his submission faulted the lower court's interpretation of paragraph 15 (1) of the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (later to be simply referred to as "the Constitution") and its finding that Tribunal was properly constituted when it sat on 18/9/2015 with the Chairman and one member alone instead of two according to him. He argued that the constitutional provision is clear, plain, unambiguous and does not accommodate any doubt or ambiguity at all and therefore should have been given its natural and literal interpretation by the court below which however failed to do so. See *Amasike v. Registrar General, C.A.C.* (2006) 3 NWLR (Pt. 968) 462; *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1. The learned senior counsel submitted that the provisions of Paragraph 15(1) of 5th Schedule to the Constitution is similar to the provisions of section 20 (2) of Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004, a domestic statute of the tribunal which provides thus:-

“The tribunal shall consist of a chairman and two other members”.

He argued that any composition less than that is fatal to the proper composition of the tribunal.

In further submission, the learned silk for the appellant argued that there was no any gap or lacuna created, to warrant resort to the Interpretation Act to find the quorum of the tribunal. Learned silk for the appellant further submitted on this issue, that paragraph 15 (1) of the 5th Schedule to the Constitution provides for both the “composition” and the “quorum” of the Tribunal since there must always be valid composition of the tribunal before the question of quorum can arise. He said in this situation both “composition” and “quorum” are the same and the number is supposed to be three and not two. He argued that if the members sitting at the tribunal are below three, then it is not properly constituted and whatever decision it took or passed is unconstitutional, null and void. He argued that the provisions of paragraph 15 (1) of the 5th Schedule to the Constitution are plain, clear and unambiguous and must be given their “lateral, ordinary and natural meaning”. He cited and relied on the cases of *Amasike v. Registrar General Corporate Affairs Commission* (2006) 3 NWLR (Pt. 968) 462 and *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) 1. He again submitted that any short in the composition of the tribunal i.e. below three, the (chairman inclusive) for any reason, affects the jurisdiction of the tribunal and violates the provisions of section 20(2) of Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004, adding that there was not any lacunae left that requires to be filled, as wrongly held by the court below as would require any recourse to the Interpretation Act as done by the court below. He contended that Paragraph 15(1) of the 5th Schedule to the Constitution serves as the purpose of both the composition and quorum of the tribunal hence resort to the Interpretation Act is uncalled for and unnecessary as the provisions of sections 27 and 28 of the Interpretation Act can not sideline or curtail the constitutional provisions of paragraph 15(1) of 5th Schedule to

the Constitution. Learned silk for the appellant, finally argued that to hold that two-man panel could form a quorum of the Code of Conduct Tribunal in adjudication, tantamount to a breach of the principles of fair hearing as enshrined in section 36 of the 1999 Constitution (as amended).

In his response to the appellant's senior counsel's submission supra, the learned senior counsel for the respondent submitted that the court below was correct in its interpretation and finding that the chairman and one member properly constitute or form the quorum of the tribunal. He argued that the provisions of paragraph 15(1) of the 5th Schedule merely deals with establishment of the Code of Conduct Tribunal because there is difference between “consist of” and “quorum of” as used by the legislature in that the provisions used the phrase “consist of and NOT “quorum of”. Learned counsel proceeded to cite in his brief of argument, several provisions in 1999 Constitution which used the phrase “consist of. Notable among them are:- Section 249(2) of the 1999 Constitution dealing with establishment of Federal High Court, section 237(2) of 1999 Constitution dealing with establishment C of Court of Appeal; section 285(1) all of the 1999 Constitution (as amended) by section 29 of the First Alteration dealing with establishment of National and State Houses of Assembly Election Tribunal section 285(3) of the same Constitution dealing with composition of Governorship Election Tribunal, and he further referred to or compared them with section 285(4) of the same Constitution (as amended) which specifically made provisions for the quorum of the Election Tribunal very much unlike Paragraph 15(1) of the 5th Schedule to the Constitution. Learned counsel then argued that since no mention of “quorum” was made in paragraph 15(1) it means the Constitution failed to provide Quorum” of Code of Conduct Tribunal in order to adjudicate. It therefore had left a lacunae. Therefore argued the respondent's senior counsel, the court below had rightly resorted to the provisions of section 28 of the Interpretation Act which provided that the quorum of a tribunal shall be chairman and a member which also includes the Code of Conduct Tribunal. He again stated

that by the provision of Section 318(4) of the 1999 Constitution, the Interpretation Act could be used in interpreting the provisions of the constitution. He cited the case of *Okoro v. Nigeria Army Council* (2000) 3 NWLR (Pt. G 647) 77; *State v. Olatunji* (2003) 14 NWLR (Pt. 839) 138; *A.-G. of Federation v. A.-G. of Abia State* (No. 2)(2002) 6 NWLR (Pt. 764) 542 at 855.

It is noted by me, that the appellant's senior counsel filed an appellant reply brief on 25/11/2015. To me, that process is far from being or cannot in the true sense be regarded as or called a "Reply brief" because going through its contents, he only succeeded in amplifying, fine tuning or repeating the arguments he proffered in his main brief. A reply brief should only address new issues raised in a respondent's brief which were earlier not canvassed or argued or to clarifying some grey areas raised in the respondent's brief but certainly NOT to emphasise, add, fine-tune or repeat what had earlier been argued in the appellant's brief. I shall therefore not bother to consider it here at all.

Paragraph 15 (1) of the 5th Schedule reads thus:-

"There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons".

I have set out the provisions of paragraph 15(1) of the 5th Schedule to the 1999 Constitution which is focal point or core point on which this issue revolves. It is a cardinal principle of interpretation that words should be given their literal, ordinary, natural meaning. *Ngige v. Obi* (supra). The grouse of the appellant's senior counsel is that the Code of Conduct Tribunal was not properly constituted when it sat on the case of his client, the appellant, since it sat with the chairman and one other member only, instead of two other members. Obviously this complaint touches on issue of jurisdiction. It is trite law that before a court can be said to be competent to adjudicate in a matter, it must satisfy the following features or conditions:

(a) It must be properly constituted with respect to the member

and qualification of its members;

- (b) The subject matter of the action must be within its jurisdiction;
- (c) The action is initiated by due process of law, and
- (d) Any condition precedent to the exercise of its jurisdiction must have been fulfilled. See *Madukolu v. Nkemdilim* (1962) 1 All NLR 587, (1962) 2 SCNLR 341; *Dangana and Anor v. Usman & 4 Ors* (2012) 2 SC (Pt 111) 103, (2013) 6 NWLR (Pt. 1349) 50; *N.U.R.T.W. & Anor v. R.T.E.A.N. & 5 Ors* (2012) 1 SC (Pt. II) 119, (2012) 10 NWLR (Pt. 1307) 170.

From the wordings of paragraph 15(1) of 5th Schedule to the Constitution it is clearly stated thus:-

“There shall be established, a Tribunal to be known as the Code of Conduct Tribunal which shall consist of a chairman and two other “persons”.

It is discernable from the above, that the paragraph quoted supra simply made provisions for the establishment of the tribunal by the appointing authority and it also when doing so, stated the member it will compose i.e. its composition “which should be chairman and two other persons. Anything short or more than such member cannot be said to be constitutional. The said provision in my view, is silent on how a quorum is formed when the tribunal is to adjudicate. The provision in my view, had left a lacunae or gap with regard to the number of members that could form a quorum for purpose of adjudication. This is very much unlike some provisions of the Constitution dealing with some courts or tribunals, notable among them, for instance, is section 285 of the Constitution (as amended) which by subsection (3) the composition of National and State Houses of Assembly and Governorship election Tribunal were set out in 6th Schedule to the constitution. But the said provisions went further to specifically provide the quorum of the Election tribunal vide its subsection (4) when it stated thus:-

“The quorum of an election Tribunal established under this section shall be Chairman and one other member”.

From this subsection, the legislators clearly meant that the section would provide the establishment and composition of the said Election tribunal and importantly, the number of members that could form a quorum. There are other provisions which provide for both the *composition* and the *quorum* specifically in the Constitution such as section 234, 247, 212, 263 and 268 of the Constitution (as amended) which deal with composition of some superior courts of record established by the same constitution. These two features are completely absent in the provision of paragraph 15(1) of the 5th Schedule to the Constitution. I therefore do not share the view or sentiment of Mr. J.B. Daudu SAN, for the appellant, when he argued that the paragraph in question served dual purposes of providing for both the "composition" and "quorum" at the same time. For to accept that view, would, in my view, lead to over-stretching the intention of the legislature, or to insert extraneous meaning or to import new addition over and above what the legislature had actually meant or had provided. If the legislature had wanted the said paragraph to include the two, it would have said so clearly as it did in some sections of the Constitution mentioned above.

Now coming to the issue of "quorum" of the Code of Conduct Tribunal, as I said earlier, paragraph 15 (1) did not make any provision on quorum. It merely provided for the “establishment” and "composition" of the tribunal. Similarly, the Code of Conduct Bureau and Tribunal Act did not specifically make provision on quorum either. In this situation, it is my view, that the lower court in this situation had no option but to seek resort to the provisions of Interpretation Act as it had rightly done by invoking the provisions of section 28 of Interpretation Act to determine the quorum of the tribunal which provides thus:-

“Notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal, commission of enquiry (including any appeal tribunal established for the

purpose of hearing any appeal arising therefrom) shall not be less than two (including the chairman);

Provided that the Chairman and the member shall be present at every sitting of the tribunal, commission of inquiry throughout the duration of the trial or hearing.”

Thus, from the wordings of the above provisions, which is also applicable to the Code of Conduct Tribunal, the quorum of the tribunal is chairman and one other member. The court below is therefore correct in invoking the above provisions to determine the quorum of the tribunal since the Interpretation Act is always the law to resort to, in order to interpret the provisions of the constitution or any other statute creating a statutory body. The provisions of section 28 of the Interpretation Act has clearly and unequivocally provided the answer as regards the quorum of the tribunal which is simply the Chairman and one member. Therefore, it is my view, that the tribunal was properly constituted when the chairman and one member sat on the appellant's case on 18/9/2015. I do not therefore see any reason to agree with the appellant's learned senior counsel's view, that the right to fair hearing of the appellant was in anyway infringed. By section 318 of the Constitution (as amended), Interpretation Act can be invoked. This first issue is therefore resolved against the appellant.

The second issue in the respondent's brief has to do with the competence of the tribunal to issue bench warrant against the appellant even though it has limited criminal jurisdiction. To my mind, there is no need to dissipate energy in dealing with this issue, as I do not regard it as a live issue at all. To me it is merely an academic issue which this court lacks luxury of time to make any pronouncement on because whichever pronouncement is made on it, will serve little or no useful purpose to either of the two parties.

The learned appellant's senior counsel's stance is that tribunal has no power to issue bench warrant because it has no criminal jurisdiction since it cannot impose any punishment. I do not agree with the learned appellant's senior counsel on that submission, because paragraphs 1 to 11 of the 5th

Schedule to the 1999 Constitution, (as amended), gave the tribunal powers to try persons who contravene the offences listed therein, especially offences bordering on bribery and corruption by public officers. This court in the case of *Ahmed v. Ahmed* (2013) 15 NWLR (Pt. 1377) 274 @ page 329 paras. E-F stated as below:-

“If I may repeat, the Code of Conduct Tribunal has been established with exclusive jurisdiction to deal with all violations contravening any of the provisions of the Code as per paragraph 15(1). This provision has expressly ousted the power of ordinary regular courts in respect of such violations. The tribunal to the exclusion of other courts is also empowered to impose any punishment as specified in subsection (2) (a) (b) of paragraph 18 ...”

From the above pronouncement by this court, it clearly shows that the tribunal, at least, has quasi-criminal jurisdiction or limited jurisdiction as rightly held by the lower court. Having said so, I have no hesitation in holding that since it has criminal jurisdiction, it goes without saying, that it can as well competently issue bench warrant to arrest any person or accused person charged before it, if such person/accused fails to appear before it as is the case of the present appellant in this instant case. To accept the submission of the learned appellant's counsel that it has no power to issue such bench warrant, could mean opening flood gate for such suspects to refuse to appeal” before the tribunal and such situation will render the powers of court or tribunal ineffective and it will ultimately stultify the administration of criminal justice. It needs to also be stressed here, that the provisions of paragraph 18(1) empowers the tribunal to make finding of guilt and to also impose punishment which to me, buttresses the point, that the tribunal has criminal jurisdiction. I therefore also resolve this second issue against the appellant.

The third issue for determination queries whether the court below was correct when it held that the charge framed or preferred against the

appellant by Mr. M.S. Hassan, Deputy Director Federal Ministry of Justice was competently preferred in the absence of a sitting Attorney General of the Federation. The contention of Mr. J.B. Daudu for the appellant, is of the view that since there was no sitting Attorney General of the Federation as at the time Mr. M.S. Hassan, Deputy Director FMOJ preferred the charges, the said charges were not competent. He hinged his contention on the provisions of Section 24(2) of the Code of Conduct Bureau and Tribunal Act which provides thus:-

“Section 24(2) of CCBT Act provides as below:-

“Prosecution for all offences under this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney General of Federation, or such Officers in the Federal Ministry of Justice as the Attorney General of the Federation may authorize so to do”.

To the learned appellant's senior counsel, for a charge to be competently preferred by any officer of the ministry, such officer must be specifically authorised by the Attorney General of the Federation. He argued also, that the provision of section 24(2) of CCBT Act and paragraph F8 of 3rd Schedule to the Act take precedent over the general provisions of sections 3 and 4 of the Law Officers Act, Cap. 28, LFN, 2004. He also cited *Matari v. Dangaladima* (1993) 3 NWLR (Pt. 281) 266. The learned senior counsel submitted that the presumption of regularity of official act does not apply here, or is rebutted, since there is no evidence that the Solicitor-General had personally authorised any Law Officer to exercise such powers and he did not exercise it either or authorize M.S. Hassan to prefer the charges against the appellant. See *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt. 1120) 1 at 55.

In his response Mr. Rotimi Jacobs SAN for the respondent contended that the constitution has covered the field with regard to initiation of criminal proceedings, in view of its sections 174 and 211, which state that the power of the Attorney General to initiate proceedings is not

exclusive because law officers in the Ministry of Justice, lawyers of some of Federal parastatals or agencies like Customs and Excise, Nigeria Police Force, can now initiate criminal proceedings. See *Compt, N.P.S. v. Adekanye* (No. 1)(2002) 15 NWLR (Pt. 790) 318 (a) 329; *F.R.N. v. Osahon* (2006) 5 NWLR (Pt. 973) 361 (a) 406; *F.R.N. v. Adewunmi* (2007) 10 NWLR (Pt. 1042) 399 at 418/419. He also submit that the presumption of regularity still applies to this instant case.

I think in order to resolve this issue, it is apt to say that the provisions of section 24(1) and (2) of the Code of Conduct Bureau and Tribunal Act, 2004, sections 2 and 4 of that Act and section 174 (1) and (2) of the Constitution of the Federal Republic of Nigeria of 1999 (as amended), will have to come into play. I shall therefore reproduce them below:-

Section 24 (1) and (2) of the Code of Conduct Bureau and Tribunal Act reads as below:-

- “24(1) - The rules of procedure to be adopted in any prosecution for the offences under this Act, before the Tribunal and the forms to be used in such prosecutions shall be as set out in the Third Schedule to this Act.
- (2) Prosecution for all offences referred to in this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney General of the Federation or such officers in the Federal Ministry of Justice as the Attorney General of the Federation may authorise so to do”.

Section 174 (1) and (2) of the 1999 Constitution (as amended) provides as below:-

- “174(1) The Attorney General of the Federation shall have power: -
- (a) to institute and undertake criminal proceedings against any person before any court of law in E Nigeria other than a Court Martial, in respect of any offence directly or under any Act of the National Assembly.

- (b) to take over and continue any such criminal proceedings that may have been instituted by F any other authority or person, and
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
- (2) The powers conferred upon the Attorney General of the Federation under sub-section (1) of this section may be exercised by him in person or through officers of his department”.

Now first of all, from the wordings of subsection 2 of section 24 of the CCBT Act, it is clear and unambiguous that the Attorney General of the Federation is the person authorised to initiate proceedings before the Tribunal in person or by any of the officers in his ministry authorized by him to do so. Both parties are, *ad idem*, that as at the time Mr. Federation. The question is, Can Mr. M.S. Hassan competently prefer or initiate proceedings as he did against the appellant, when as at that time, there was no sitting Attorney General? I think an answer to this question can be said to have been provided in the provisions of sections 2 and 4 of Law Officers Act 2004 and section 174 of the Constitution, (as amended) which I have copiously reproduced above. Section 174 subsection (2) of the Constitution (as amended) is clear and unequivocal, in that it provides that even without a sitting Attorney General of the Federation, an officer of his Department such as the Solicitor General can step into the shoes of the Attorney General to initiate or halt any proceeding in any court trying an offence against any Act of the National Assembly. This section, to my mind, overrides section 24(2) of CCBT Act since, being a constitutional provision, it certainly supersedes or over-rides any other provisions of any Act or Statute. See *F.R.N, v. Adewunmi* (Supra). Again it will be pertinent also to consider the provision of sections 2 and 4

of Law Officers Act, Cap. L8, LFR which said provisions provide as follows:-

- “2 - The offices of the Attorney General, Solicitor General and State Counsel are hereby created.
- 4 - The Solicitor General of the Federation in the absence of the Attorney General of the Federation may perform any of the duties and shall have the same powers as are imposed by law on the Attorney General of the Federation.”

The clear and plain meaning of the above provisions is to the effect that even without a sitting Attorney General of the Federation, the Solicitor General steps into his shoes and could perform all the G statutory functions of the Attorney General. The learned senior counsel for the appellant in my view wrongly laid emphasis on the person of the Attorney General rather than the office of the Attorney General. That is wrong, in my view. To say that without a sitting Attorney General in place, no criminal proceedings can be initiated, then the administration of justice will ground to a halt which will obviously be injurious and dangerous to the system of governance, especially if one considers the fact that an Attorney General of the Federation or State is the Chief Law officer of the Federation or of the State. That contention of the learned silk for appellant, if accepted, could lead to chaos. In any case, regarding authorization, Mr. M.S. Hassan had even disabused the mind of all stakeholders at the tribunal, when he announced that he even had the mandate of his Solicitor General to initiate the said proceedings and the appellant did not dispute that or challenge him to produce such mandate, if he felt it was necessary so to do. This clearly further buttressed the issue of presumption of regularity. My stance on this third issue therefore is that Mr. M.S. Hassan has the competence and power to initiate the proceedings against the appellant at the tribunal. I therefore resolve this third issue against the appellant.

Finally, I do not want to delve much on the fourth and fifth issues for determination which relate to the regularity or otherwise of court

summons issued on the appellant by the tribunal and the alleged order of Federal High Court on the Code of Conduct Tribunal to stop proceedings respectively. With regard to the issuance or service of civil summons served on the appellant, I regard that as a spent issue, since the majority decision of the court below was that the summons was not personally served on the appellant and in fact, the tribunal having secured the attendance or appearance of the appellant, it decided to cancel that process. Also the court below even regarded the civil summons as defective. As I regards the order of the Federal High Court allegedly disobeyed by the tribunal, it is my view that, that issue is spent and my stance on the last two issues supra renders it academic. There is therefore no need to expend energy in making any pronouncement here on those issues for determination as they will be of little or no benefit to any of the parties to this appeal since they are no longer live issues. In addition, even if it is considered here, it will as I said above, only serve academic purpose and courts should always avoid embarking on, since the court has no luxury of time to do so.

On the whole, in the light of these few comments of mine and the more detailed reasons ably and painstakingly advanced in the lead judgment of my learned brother, Onnoghen JSC, which I entirely agree with, I also do not see any merit in this appeal. I dismiss it and affirm the judgment of the court below delivered on 30/10/2015 which had also dismissed the appellant's appeal against the ruling of the Code of Conduct Tribunal. Appeal is hereby dismissed for want of merit.

Appeal dismissed