

NIGERIAN COURTS AND THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

**THE 11TH HON. JUSTICE IDIGBE MEMORIAL LECTURE DELIVERED
BY THE HON. JUSTICE P.O. ADEREMI, JSC (RTD) CON AT THE
FACULTY OF LAW AUDITORIUM, UNIVERSITY OF BENIN, BENIN CITY,
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I hereby formally thank the Dean of Faculty of Law of this great university (University of Benin, Benin City, Nigeria), Prof. P. Ehi Oshio for inviting me per his letter dated 20th July, 2009, to deliver the 11th Justice Idigbe Memorial Lecture 2010. In his said letter, he gave me a free hand to choose a topic that appeals to me but I must be ready to deliver the lecture between April and June 2010. Contained in the letter is also a list of eminent personalities in the legal profession who had honoured the invitations by this faculty to deliver The Hon. Justice Idigbe Memorial Lecture Series instituted by the legendary Chief Gani Fawehinmi SAN in 1984 to immortalise the name of the great jurist (Justice Idigbe). The names of those lecturers include Hon. Justice Kayode Eso CON who delivered the first lecture on 31st January, 1985, Hon. Justice A.G. Karibi-White, CON, Hon. Justice Chukwundiju Oputa, CON, Prof. B.O. Nwabuize, SAN, Prof. D. Ijalaiye SAN, Prof. Itse Sagay SAN and Prof. C.J. Azinge SAN etc. Undoubtedly, these people are giants who have and are still adorning the legal profession. To be able to make an impact, I must struggle hard to stand on their shoulders and open my eyes wide to see far. This is why I feel

highly humbled and very grateful to the entire Faculty of Law for the invitation extended to me.

I had a lot of difficulty in making a choice of my topic for this lecture, but after reflecting on the problems besetting our great country over a long period of time, I reached a conclusion with divine intervention, that the issue of fundamental human rights is one that has been trampled upon by various powers that be in this country. This has not abated, I shall start this lecture with what is the concept of fundamental rights.

CONCEPT OF FUNDAMENTAL RIGHT

When God created man, certain divine rights were conferred on him by the ALMIGHTY, they are among others, rights to life, right to fair hearing, right to peaceful assembly and association, right to dignity of human person, right to personal liberty, right to freedom of movements etc. With advancement in human civilization, most of these rights have now been entrenched in the grundnum of countries that have written Constitution and those countries that do not have written Constitution, these rights have become part of their life. In Nigeria, Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 clearly spells out, in details, these fundamental rights - they are subsumed in the said 1999 Constitution. But I beg to submit that by their nature, they are not a creation of the Constitution. It therefore seems to me that they are entrenched in the constitution because they are fundamental and they can never be said to be fundamental because

of the reason of their being entrenched in the Constitution. They are the basic natural rights of all mankind - they may even be described as the fundamental divine rights, given to mankind from time immemorial. It again follows that the enforcement and the enjoyment of these natural fundamental freedom guaranteed under the Constitution must not be circumscribed by limitation prescribed by any special procedure notwithstanding that it was the intention of the makers of the Constitution that it (the special procedure) was designed to enhance speedy enjoyment. The above is a general statement of mine alone. There are necessary exceptions to this proposition which I shall soon come to later in this paper.

Suffice it to say that this general statement of mine finds support in the dictum of Hon. Justice Fatayi-Williams, a former Chief Justice of Nigeria in the decision of the Supreme Court in SOFEKUN Vs. AKINYEMI & ORS (1980) 5-7 SC 1 at pages 20-21 where he reasoned thus;

“..... I take the view that because it is so fundamental to the life, liberty and well being of the individual, any person who complains about an alleged infringement of any of his Fundamental Rights as entrenched in our constitution, to convey the issue of such infringement at any stage of any court proceedings whether in the trial court or Court of Appeal,¹ to say that the procedure specified in section 42 (the 1979 Constitution) is an exclusive procedure may indeed lead to strange and undesirable consequence in certain circumstance. If, for instance, a person engaged say in a statutory corporation or the Civil Service, alleges as basis of his employment that the

termination was wrongful because it was based on the result of an enquiry which was (1) conducted unfairly in breach of the provision of section 36 of the Constitution and/or (2) in the alternative, in breach of the statutory procedure for conducting such enquiry as laid down by the particular statute relating to his employment, it will be preposterous to suggest that by the mere fact that he alleges a contravention as one of his grounds for redress, he would have to proceed under the Fundamental Rights (Enforcement Procedure) Rules 1979 even though the said Rules do not cover his 2nd ground or, that he should pursue his two grounds by means of separate proceeding, one in the normal way and one other by special procedure. It does appear to me that for recourse to the procedure laid down in the Rule to be appropriate, the question of contravention of the provisions of Chapter IV must not be a mere preliminary or incidental question in the case. It must be the sole issue in the case and the whole purpose of the proceedings must be to free the application from the burdens of the contravention.

While I am not advocating disobedience to rules of court or procedural rules by which an action such as the one relative to fundamental rights is to be begun one indeed, a judge must not, in the interest of dispensation of true and unalloyed justice, act slavishly to the application of procedural rules, what the former Chief Justice of Nigeria was saying in the above case is that the procedure laid down in the Fundamental Rights (Enforcement Procedure) Rules, 1979 (applicable then) cannot be said to be intended to be

exclusive as to oust recourse to the normal procedure for seeking redress, indeed, declaratory orders.

NATURE OF FUNDAMENTAL RIGHT

The very idea of “justice” and of “equality” necessarily presupposes the thesis that independent of any positive law, there exists certain natural rights which are direct gift to man by God our Creator. They have being there from the existence of mankind. These rights are not to be taken away from man whimsically. A peep into the origin of the American Constitution shows that the founding fathers of that Constitution fighting to free or liberate themselves from the harsh legalism of George III of England to enthrone justice and dethrone the King’s positive legalism conceived the idea of the inalienable rights of man. They sought for the basis of these rights, found it and set it down in the Second Paragraph of the Declaration of independence in the following terms:

“It is a self-evident principle that the Creator has endowed man with certain inalienable rights - life, liberty and the pursuit of happiness.

All countries in the world that adopt Federal System of governance have these rights well and clearly entrenched in their constitution. Nigeria is not an exception. The importance of the nature of a fundamental right was couched in a very illuminating language by Hon. Justice Kayode Oso CON in the famous case of Chief (Dr.) (Mrs.) Olufunmilayo Ransome-Kuti & ORS Vs Attorney-General of the Federation & ORS where he opined thus:

“But what is the nature of a fundamental right? It is a right which stands above the ordinary law of land of the level and which in fact is antecedent to the political society itself. It is a primary condition to a civilised existence and what has been done by our Constitution, since independence, starting with the independence Constitution, that is the Nigeria (Constitution) Order in Council 1960, up to the present Constitution that is, the Constitution of the Federal Republic of Nigeria 1979 (the latter does not in fact apply to this case. (It is the 1963 Constitution that applies) to have these rights enshrined in the constitution so that the rights could be immutable” to the extent of the “non-immutability,” of the Constitution itself.”

I have quoted, in extense what the distinguished jurist said on this aspect of the case i.e. the nature of fundamental rights, because I shall later in this paper refer to this man land-mark judgement given by the Supreme Court in order to have a full understanding of the reasoning of the apex ... as given by the Hon Justice Osio. For who, what I want to bring out from the dictum of the learned retired Justice of the Supreme court is that fundamental right is a right which stands above the ordinary laws of the land and which as a matter of fact is antecedent to the political society itself.

HOW HAS THE COURT FARED IN THE TREATMENT OF CASES RELATING TO BREACH OF FUNDAMENTAL HUMAN RIGHTS

I have had a careful study of our Constitution, indeed, all the constitutions promulgated in this country, I did not see where the word “Court” was defined in any of them. The definition section of the various High Court Laws and Magistrates Court Laws have not helped in providin a clear-cut

definition of the word. The Pocket Oxford Dictionary, 6th Edition attempts the definition of the word “Court” at page 187 as follows:

“it is a body with judicial powers.” Again, the Law Dictionary by Steren H. Gifis an Associate professor of Law, The State University of New Jersey tries a definition in the following terms:

“the branch of government which is responsible for the resolution of disputes arising under the laws of the government.”

The often-quoted definition is that of Coke on Littleton (58a) repeated by Blackstone in his Commentaries on the Laws of England Volume 3 page 23 thus:

“Curia, court is a place where justice is judicially administered,” I will not want to set out on my own to define the word “court” because I doubt if I can improve on the above . I therefore wish to say, in all modesty that it connotes a statutory body which has powers to decide controversies and give binding decision. And the test necessarily for the determination whether a statutory body has judicial powers are:

1. whether it has before it a *lis* inter parties or justiciable issue. It is of importance for the exercise of judicial power that there must be a dispute requiring determination.

2. Whether the decision of the statutory body is binding: Let me say that the bindingness of the determination of the statutory body without the need for confirmation or adoption by any other authority is one of the essential characteristics of the exercise of judicial power.

3. Whether the decision is conclusive and final. Conclusiveness of the determination is another characteristic of the exercise of judicial power. I hasten to say that the provision of channels of appeal to another body from its determination does not divest the determination of its conclusive nature and the statutory body of its judicial character.

Having digressed on the connotation of the word “Court,” I shall now start the discussion of the courts’ performance in this area. I must hasten to say that all our courts have the characteristics that I have enumerated above. The first celebrated case I shall discuss is Chief Mrs. (Dr.) Olufunmilayo Ransome-Kuti & ORS Versus Attorney General of the Federation² and ORS.

3. which traveled through the High Court in Lagos State, to the Court of appeal (Lagos Division) and finally ended at the Supreme Court - the last two counts by way of appeal. The facts as follows to this case are as follows: Sometimes in February 1977 one employee of the late Fela Anikulapo-Kuti was riding in his master’s vehicle driven by his other employee along Agege Motor road, Lagos. At a point on the said road precisely at Ojuelegba, a military traffic policeman stopped them and questioned them as to why their vehicle failed to carry a plate number in the front. The two men replied that the vehicle had a plate number at the back, but the one which should have been in the front was inside the vehicle. The soldier demanded for the surrender of the vehicle to him. They refused this military directive. And the employee instructed the driver of the vehicle to drive the vehicle in reverse into the property of the plaintiffs (Mrs.

Olufunmilayo Ransome-Kuti, Fela Anikulapo-Kuti and others) styled as 14A Agege Motor Road. Suffice it to say that the soldier whose order was refused had in consequence blown his whistle drawing the attention of other military men around. It should also be known that the soldier had sat on the bonnet of the plaintiff's vehicle to prevent it from moving. A traffic hold-up built around the said vehicle and it (the vehicle) was besieged by soldiers. An attempt by the employee to get down and lodge on report to his boss (was frustrated by the soldiers who beat him to pulp). The employee was eventually taken to the hospital. The soldiers had massed outside the gate of 14A Agege Motor road, wanting to enter the building to arrest the employee but the 2nd Plaintiff (Fela Anikulapo-Kuti) would not yield. He demanded for the warrant of the soldiers. More soldiers came carrying guns. The 2nd Plaintiff ascended to the balcony of the house. A Major in the Army thereafter came and spoke. As soon as he left the soldiers rained stones, bottles and other missiles towards the house. At this stage, the 3rd Plaintiff (Dr. Beko Ransome-Kuti) came in and joined the brother, the 2nd plaintiff at the balcony. More soldiers came in carrying guns. The generator in the house was set ablaze by the soldiers after they had moved into the compound. The (soldiers) assaulted everybody in the house, threw them out (except the 1st and 3rd plaintiffs - Chief (Mrs.) Olufunmilayo Ransome-Kuti and Dr. Beko Ransome Kuti respectively. Later they marched all of them including the two brothers (Fela and Beko) to the barracks. They all sustained serious injuries from the brutalization by the soldiers. Chief (Mrs.)

Ransome-Kuti and Fela Anikulapo-Kuti were not exempted. The Plaintiffs, in their writ of summons claimed twenty-five million Naira against the defendants jointly and severally being damaged, suffered by the plaintiffs for maliciously and wilfully setting the building in the compound on fire, including motor vehicles and equipments in the house, all of which were totally destroyed. The case proceeded before the High Court of Lagos State. After listening to the submissions of the counsel on both sides, the trial judge held that it could not be doubted that the action was in tort against the Government and its servants. The learned trial judge then examined the entire case as it involves “crown proceedings” and held that unlike in England where the position had been altered by the Crown Proceedings Act, 1947, the Federal Government of Nigeria had an immunity against an action in that based on the old Common Law Doctrine - “The King can do no wrong - and no action would be against the Attorney General as representative of the Government for a wrong committed by its servants. But after scrutinising the evidence led as it affected the servants personally and individually, he was of the view that each servant was liable for the wrong committed, individually. Although in paragraph 14 of the statement of claim, the plaintiffs averred:

“The plaintiffs will at the trial invoke all statutory and common law provisions and provisions of the Constitution of the Federation of Nigeria with particular reference to Chapter III and Section 19 of the said Constitution.”

The trial judge in his judgement held that the plaintiffs did not bring their action under the constitution of 1963 and that the Constitution did not provides for the award of damages for the infringement of the provisions in relation to fundamental rights. Concluding, the trial judge said it was the common law that provided for the award of damages to the plaintiffs when assaulted or battered and it was the same common law that immunised the State or its servants from liability. The suit was consequently dismissed. On appeal to the Court of Appeal, after taking arguments of counsel on both sides, the court unanimously held that because the appellants did not allege in their write that any of their fundamental rights having been violated, their claim, as set out, was for willful and malicious damage to their properties, the claim was therefore one rooted in tort. The appellate court went further in its judgement by saying that the plaintiffs averred in paragraph 14 of their pleadings that they would rely on the provisions of Chapter 3 of the 1963 Constitution, that according to it, was not the same thing as basing an action on the violation of the fundamental right of the constitution and seeking redress under Section 32 of it. The appeal was thus dismissed.

On a further appeal to the Supreme Court, which was purely on points of law, as there was no appeal on the facts as found by the trial judge. In fact, the judgement of one apex court, per the judgement of Kayode Eso JSC was emphatic in saying that the decision of the High Court in regard to non-identification of the perpetrators of the atrocities at 14a Agege Motor road,.Yaba, Lagos remained unchallenged at the appellate level. The cause

of action of the appellants, according to the apex court, was in fort simpliciter. But in his characteristic manner of wanting to reach out to justice in any case before him Eso JSC who wrote the lead judgement of the court, exhaustively discussed the case of the appellants as was laid before them. For as he said, if the appeal succeeded thereupon, it would not be necessary to discuss the issue of liability by the state in tort. He set out by referring to Section 19 of the 1963 Constitution which provides:

“No person shall be subjected to torture or to INHUMAN or degrading punishment or other treatment.”

This is a right guaranteed under the 1963 Constitution. What then happens if there is a breach of a fundamental rights, under the 1963 Constitution. The learned jurist provided an answer to that question by referring to Section 32 thereof which provides:

Any person who alleges that any of the provisions of this Chapter has been contravened in any territory to him may apply to the High Court of that territory for redressed.”

Assuming that the case of the plaintiff appellants was an inhuman treatment, the learned jurist was of the opinion, as stated in his judgement that they should have apply for redress just as any citizen would have applied for redress in England under the Magna Carta or redress under the Eight Amendment in the United States, not under the cloak of a tortious action Articles 39 - 40 of Magna Carta 1215 relevant to this type of action, provides:

“No freeman be taken or imprisoned or disused by his freehold or liabilities in free customs or be outlawed or exiled or in any way molested nor judged or condemned except by lawful judgement or in

accordance with the law of the land ... And the crown or its ministers may not imprison or coerce the subject in an arbitrary manner.”

In the United States, the Eight Amendment to the United States Constitution provides:

“Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted.”

What was the manner of seeking a redress under the 1963 Constitution? To the learned Jurist, Section 32(2) and (3) of the 1963 Constitution provides an answer. It provides:

“Sec 32 (2)

“Subjection to the provisions of Section 115 of this Constitution the High Court of a territory shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issues such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that territory of any rights to which the person who makes the application may be with held under this chapter.”

This is a jurisdiction bestowed on the High Court. The question then is by what process? Sub-section two of the section provides the answer.

Section 32 (3)

“The Chief Justice of Nigeria working with the consent of the Federal Executive, by order, make provision with respect to the practice and procedure of the High Courts of the territories in the purpose of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling hose courts more effectively to exercise the jurisdiction conferred upon them by this section.”

The truth of the matter is that the then Chief Justice of Nigeria during the operational period of the 1963 Constitution never made any provision under this section. The only resort open to the apex court at that moment was paragraph 14 of the statement of claim which I have reproduced supra. After a careful examination of the said paragraph 14 the learned jurist could not but agree with the dictum of Ademola JCA (who read the lead judgement and Nanemeka-Agu JCA (as he then was) who wrote a concurring opinion at the Court of Appeal. Ademola JCA (of blessed memory) had said that the claim of the plaintiff/appellants was in tort simpliciter. Could the claim in tort and the reference to fundamental right averred in the said paragraph 14 of the statement of claim be sufficient for the court to enquire as to the violation of that right? Nnameka-Agu JCA (as he then was) who was on that panel, in answering that question reasoned thus:

“For a plaintiff who comes to court in reliance upon chapter III of the 1963 Constitution to succeed he must show that one or more of the rights guaranteed by that Constitution had been infringed.

As I have said, Justice Eso agreed with the two learned justices of the Court of Appeal. Suffice it to say that the counsel for the plaintiffs/appellants consistently maintained that the action he brought was in tort and no more. A careful reading of the lead judgement of the apex court readily reveals the lengthy but tortuous path, Justice Kayode Eso travelled to see whether there was anything in any of our laws that would empower him to circumvent, rightly, that seemingly anachronistic legal phraseology that “the KING CAN DO NO WRONG, a common law

doctrine handed over to us by the colonial masters and which became entrenched as part of our laws by virtue of the Interpretation Act (I Cap 89) Laws of the Federation of Nigeria and Lagos 1958 - Section 45 (1) thereof. Alas, he found nothing despite exhaustive research. As a jurist who always defers to the supremacy of the law no matter his personal feelings and driving passion for justice, he firmly held, that the case at hand was governed by the 1963 Constitution which did not obliterate the anachronistic doctrine. Although this judgement of the apex court was handed down in 1985, the law remains immutable that regardless of the time, the case proceeds to trial it is the law applicable at the time of the cause of action that would apply. His quest for justice and respect of rule of law made Justice Eso to allude at the tail end of his judgement to section 6 of the 1979 Constitution of the Federal Republic of Nigeria which was then in vogue and which, were it to be applicable to this case, the plaintiffs/appellants would have succeeded. Section 6(6) of the 1979 Constitution provides:

Section 6 (6)

“The judicial powers vested in accordance with the provision of this section - (b) shall extend to all matters between persons, or between government or authority and any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question as to the civil right and obligations of that person. (underlining supplied).

And so in a painful manner the Ransome-Kuti case eventually got dismissed for want of law to support it.

I shall now go on to consider some other human right cases at the end of which I shall endeavour to comment on the attitudinal approach of Nigerian judges to cases on this topic.

RIGHT TO FREEDOM OF MOVEMENT

I had listed above right to freedom of movement as one of the fundamental rights of man. It is a right which is constitutionally guaranteed. And in the case I am about to treat, by Section 38 (1) of the Constitution of the Federal Republic of Nigeria 1979 which is the Constitution applicable to the case now at hand. The equivalent provision in the 1999 Constitution of the Federal Republic of Nigeria which is what is now in force in Nigeria is Section 41. Back to the 1979 Constitution which is here applicable, section 38 (1) provides:

“Every citizen of Nigeria is entitled to move freely throughout Nigeria and reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.”

I hasten to say that no right is absolute. It is true we are in a democratic society and even during the military regime, the Juntas always professed that they were ruling in accordance with the dictates of the laws of the land, the truth of the matter is that where the interest of the society will be better served, any law promulgated which imposes restrictions on the movement is justifiable. The onus to justify the desirability of such restrictional law is on the state, Let it be said that the movement of any citizen cannot be whimsically restricted. It is a right to which every citizen is entitled when he

is not subject to any disability under the law or the Constitution. I go further to say that a necessity for the exercise of natural right of freedom of movement by a person particularly with respect to moving from one country to another is the possession of a passport. The case of ATTORNEY-GENERAL OF THE FEDERATION VS - CHIEF GODWIN OLUSEGUN KOLAWOLE AJAYI⁽⁴⁾ which started from the Federal High Court (4) (2000) 12 NWLR (Pt 682) 509 or (2000) HUMAN RIGHTS LAW REPORTS OF AFRICA (Vol 2) 1,75 sitting in Lagos and ended with an appeal at the Court of Appeal (Lagos Division) - for I conducted a lot of research and I never discovered that a further appeal was lodged at the Supreme Court - is a classical but sorry case of violation of the right to freedom of movement. Briefly, the facts are thus: Chief G.O.K. Ajayi, a reknowned Senior Advocate of Nigeria was billed to attend the 8th Biennial Conference of the International Bar Association scheduled for Edinburgh, Scotland. While he was waiting to board a British Airways flight en route London on the 7th of June, 1995 at the Muritala Mohammed International Airport, Lagos, an officer of the State Security Service walked up to him though uninvited and demanded for his passport. Chief Ajayi did not contend that request, rather he obliged the SSS Officer who immediately seized it, consequently preventing Chief Ajayi from attending the International Bar Conference scheduled to hold between the 10th and 15th of June 1995. Subsequently, Chief Ajayi filed an action under the Fundamental Rights Enforcement Procedure Rules seeking inter alia an order directing the

immediate return to him of the said passport and the payment of the sum of Ten Million Naira being special and exemplary damages occasioned by the wrongful seizure of the passport and of course, an order of injunction restraining the appellant (the Attorney General of the Federation) its servants and/or agents from interfering with the respondent, (Chief Ajayi) right to leave Nigeria and return thereto at all times. Leave of the court for the respondent (Chief Ajayi) to enforce his fundamental right was granted on the 9th of June, 1995 and the motion on notice was filed on the 12th of June 1995 and set down for hearing on the 26th of June, 1995 on which day the trial judge set down the case for hearing on 3rd of July 1995. On the adjourned date for the hearing of the case, neither the appellant (the Attorney General of the Federation) nor his counsel was present in court and no explanation was offered for their absence. Satisfied that hearing notice was served on the appellant, the trial judge, rightly, invited the counsel for the plaintiff/Respondent to make his submission after which he (the judex) adjourned the case for judgement on 27th July 1995. On the day of judgement, the appellant's counsel made his appearance and sought, in vain, the leave of court to enter the appellant's defence. The trial judge there and then proceeded to deliver judgement in favour of the Plaintiff/Respondent awarding him two million Naira as damages, both sides were dissatisfied with the judgement; the appellant appealed to the Court of appeal praying that the entire suit as laid before the Federal High Court be dismissed, while the respondent (Chief Ajayi) cross-appealed, praying for an increase in the

damages awarded by the trial judge. In its judgement delivered on the 20th of May, 2000, the Court of Appeal (Lagos Division) on his status of the SSS operatives and the liability of the Attorney General of the Federation who is commonly regarded as a nominal party to a suit against the government had this to say and I quote:

“In the instant case, the complaint of the respondent is that the State Security Service man unjustifiably and unlawfully seized his passport at the point of boarding the plane to travel abroad. On the face of this complaint, the State Security Service men would be the tort fearsors. But I take judicial notice of the fact that the SSS men are employees of the Government, their act of seizing the passport of the plaintiff /respondent on the 7th of June 1995 is one that was carried within the course of their official duty. This fact has not been denied. It can therefore be safely said that the relationship between the government and the SSS men is that of master/servant.”

As would be expected, this case arose during the military regime (in 1995 arguably, the worst period of any military regime experienced in this country. And the Constitution that was applicable to this case was the 1979 Constitution - Section 6 (6), therefore which was alluded to by Justice Eso in the Ransome Kuti case *supra* and which he rightly said would have conferred jurisdiction on the court at that time but for the reason of its inapplicability as the 1979 Constitution had not come into existence when that case arose and for the purpose of understanding the REASON D’ETRE of this judgement, I shall hereunder, at the risk of repetition, reproduce that provision, it is in the following terms:

Section 6 (6)

“The judicial powers vested in accordance with the provision of this section - (b) shall extend to all matters between persons or between government or authority and any person in Nigeria and to all actions and proceedings relating thereto in the determination of any question as to the civil right and obligations of that person.”

(Underlining mind)

Fortified by the provisions of Section 6 (6) afore-mentioned, the Court of Appeal proceeded to say on the substance of the case thus:

“The Freedom of movement is guaranteed under our constitution and it is a right to which every citizen is entitled when he is not subject to the disabilities enumerated in the constitution. That right inures to the benefit of every humanbeing. It is because it is fundamental that it is entrenched in the constitution. Mere entrenchment in the constitution does not make it fundamental. It is a natural right. A necessity of the exercise of that natural right with respect to moving from one country to another is the possession of a passport. The right to freedom of movement and the right to freedom to travel outside Nigeria are both guaranteed by the constitution to the citizens. See section 38 (3) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended). But the right to hold a passport is subject to the provisions of Passport (Miscellaneous Provision) Act Cap 343 Laws of the Federation of Nigeria 1990.”

“To deny a person of the use of his passport is on the face of it, to deny him the freedom of moving from one country to another. The way and manner the passport was wrestled by the SSS man from the plaintiff/cross appellant, was not controverted. The trial judge in his judgement came to conclusion that the only reason why the passport was seized after the plaintiff had obtained his boarding pass was to expose him to ridicule and contempt. Drawing an inference from the unchallenged evidence, I wish to say that the very act of the seizure of the plaintiff’s passport at that material time and in such circumstances is an oppressive and arbitrary display of naked power and act that is contrary to all constitutional tenets particularly when no reasons for so doing were forthcoming from the government to the plaintiff.

Undoubtedly, that was a clear example of display of executive lawlessness. It is worthy of note that Nigeria was under the military regime at that time. It is equally true that regime professed to the whole world that it was operating under the rule of law. One important way to encourage respect from the rule of law is to show to those whose behaviour it regulates that the law is made by those whom it binds not being a remote group whose attitude and ideals are foreign to those of the ordinary people. Even, in the animal kingdom there is still some decorum, there is still some decency. Strange and wild animals will not pounce on another animal the way the SSS men did to the cross-appellant like an Indian rubber ball will pounce on the floor. Such brazen recklessness that went with the seizure of the plaintiff's passport at the time it happened, I would like to believe would not be displayed in a thick jungle. I only hope that such characters who revel in the brazen display of executive lawlessness will never rear their heads in this country again."

With the above findings, the Court of Appeal (Lagos Division) had no difficulty by unanimous decision, to hold that the defendants/appellants were liable. As said above, the plaintiff cross-appeal on damages. After listening to the arguments of counsel on both sides on this issue, the court reasoned thus:

"In laying down the privileges guiding the award of exemplary damages, the Supreme Court on ODOGU Vs AG or THE FEDERATION & ORS⁽⁵⁾ ... per Onu JSC said - "Besides, where pleaded and proved it ought to be borne in mind that exemplary damages is recoverable if the plaintiff is the one victim of the punishable behaviour of the defendant and should be moderate, the means of the parties must be considered and it being true that while a small exemplary award would go unnoticed by a rich defendant, it is equally true that even a moderate award might cripple a poor defendant."

“From all I have said above and having regard to the situation in life of cross-appellant, the embarrassment and humiliation he was undeservedly

subjected to by the brazen display of executive lawlessness on the part of the appellant, the means of the defendant/appellant to pay and the need for defendant on overzealous officials who may be inclined towards that indecent behaviour, I am of the clear view that the award of N2 million is too low. Accordingly, the proper amount that ought to be awarded the cross-appellant is N5 million. I therefore award N5 million as exemplary damages occasioned by the unlawful seizure of his passport. As I have pointed out earlier, all research conducted by me shows that there was no appeal against this judgement and because I wrote the lead judgement, I shall for reason of being modest, refrain from commenting on it. That is left for the public and posterity.

**VIOLATION OF RIGHT TO PEACEFUL ASSEMBLY AND
ASSOCIATION AND RIGHT TO FREEDOM FROM**

Discrimination

The right of the individual to belong to a peaceful assembly or association and the individual's right to freedom from the discrimination must remain inviolate if an ordinary man is to be properly said to belong to human society. The court as the last/ hope of man, judgement given therefrom must demonstrate a genuine concern to protect the freedom of individual as against a state and bureaucrats The anxiety to protect liberties threatened by public powers was an enormous task confronting the court in the last ten years of the life of this country. They (the Courts were often invited to interpret the provision of the Constitution and some substantial laws as

affected the liberty of the citizens. If society is to maintain a peaceful equilibrium, the Courts of this country have always realised that they have a duty to construe the provisions the laws of the land such that they encroached as little as possible upon the liberties of people) of this country of course without prejudice to keep within the confines of the well known rule of interpretation. The stance of the courts in this respect has always evoked vicious criticisms. I shall discuss two of such cases here. The first one is that between HON. ROTIMI, CHIBUIKE AMAECHI (as Appellant - the present Governor of Rivers State and (i) Independent National Electoral Commission (ii) Celestine Omehia and (iii) Peoples Democratic Party PDP (6) - all as respondents. The case commenced at the Federal High Court, Abuja, then went to the Court of Appeal and ended at the Supreme Court. Amaechi as Plaintiff at the Court of first instance, in his further amended statement of claim, with the leave of courts claimed the following from defendants/respondentss as follows:

(1) a declaration that the option of changing or substituting a candidate whose name is already submitted to INEC by a political party is only available to a political party (INEC) under the Electoral Act 2006, only if the candidate is disqualified by a court order.

(2) a declaration that under section 32 (5) of the Electoral Act, 2006, it is only a court of law, by an order, that can disqualify a duly nominated candidate of a political party whose names and particulars have been published in accordance with section 32 (3) of the Electoral Act 2006.

(3) a declaration that under the Electoral Act 2006, Independent National Electoral Commission (INEC) has no power to screen, verify or disqualify a candidate once the candidate's political party has done its own screening and submitted the name of the plaintiff or any candidate to the Independent National Electoral Commission (INEC)

(4) a declaration that the only way Independent National Electoral Commission (INEC) can disqualify, change or substitute a duly - nominated candidate of a political party is by court order.

(5) a declaration that under Section 32 (5) of the Electoral At, 2006, it is only a court of law, after a law/suit, that a candidate can be disqualified (sic) and it is only after a candidate is disqualified (sic) by a court order, that the Independent National Electoral Commission (INEC) can change or substitute a duly nominated candidate.

(6) a declaration that these are no cogent and verifiable reasons for the defendant to change the name of the plaintiff with that of the 2nd defendant, candidate of the People's Democratic Party PDP) for the April 14th, 2007 Governorship Election in Rivers State.

(7) a declaration that it is unconstitutional, illegal and unlawful for the 1st and 2nd defendants to change the name of the plaintiff with that of the 2nd defendant as the Governorship candidate of People's Democratic Party (PDP) for Rivers State in the forthcoming Governorship Election in Rivers State after the plaintiff has been duly nominated and sponsored by the People's Democratic Party as its candidate and after the 1st defendant has

accepted the nomination and sponsorship of the plaintiff and published, the name and particulars of the plaintiff in accordance with section 32(3) of the Electoral Act, 2006, the 3rd defendant having failed to give any cogent and verifiable reasons and there being no High Court order disqualifying the plaintiff.

(8) an order of perpetual injunctions restraining the defendants jointly and severally by themselves, their agents, parties or assigned from changing or substituting the name of the plaintiff as the Rivers State's People's Democratic Party governorship candidate for the April 2007 Rivers State Governorship Election unless or until a court order is made disqualifying the plaintiff and/or until cogent and verifiable reasons are given as requested under Section 34 (2) of the Electoral Act, 2006.

The above are the reliefs claimed. Briefly, the facts of the case are as follows:

Amaechi, as a member of the People's Democratic Party, in his quest to be the governorship candidate of the party in Rivers State in the April 2007 elections contested the Party Primaries against seven other members of the party. They (candidates) all vied for 6,575 votes and Amaechi had 6,575 to emerge the winner, leaving the rest candidates to share among themselves only 48 votes.

Suffice it to say that one Celestine Omehia (the 2nd respondent) was not one of the candidates at the PDP Primaries. After the results of the Primaries had been released, the PDP rightly submitted Amaechi's name to INEC as

its Governorship candidate. No application was subsequently made to any court to disqualify Amaechi from contesting and indeed no court of law made any order disqualifying Amaechi from contesting the Governorship elections. The defence put up was that the Plaintiff/appellant Amaechi was not a candidate of the People's Democratic Party (PDP) for the Gubernatorial election for Rivers State scheduled to hold in April 2007, that his (plaintiff - Amaechi) name was included in the list of candidates of the 3rd defendant (PDP) for gubernatorial elections in error and submitted to the 1st defendant (INEC). It was thus error that was corrected by the 3rd defendant (P.D.P.) by its letter dated 2nd February, 2007 whereby the name of the plaintiff (Amaechi) was substituted with the name of 2nd defendant (Omehia). For a proper understanding of the facts of this case and the reasoning for the judgement, I hereunder quote the contents of the letter dated February 2, 2007, tendered in evidence as Exhibit D:-

“People's Democratic Party (PDP)

February 2nd 2007

Prof. Maurice Iwu

Chairman

INEC

Abuja

Ref: Forwarding of P.D.P. Governorship Candidate and Deputy - Rivers State.

This is to confirm that Barrister Celestine Ngozichukwu Omehia and Engineer Fele Ikuru are P.D.P. Governorship and Deputy governorship candidates for Rivers State, Barrister Celestine Ngozichukwu Omelua substitutes Hon. Rotimi Amechi (sic) whose name was submitted in error. This is for your necessary action/

Signed Dr. Ahanadu Ali GCON

National Chairman

Signed

Ojo Maduekwe (CFR)

National Secretary

(Italics supplied by me)

At the conclusion of the pleadings it was clear that there was no dispute as the following facts: (1) that Amaechi contested and won the PDP Primaries for the governorship Elections in the Rivers State (2) that Omehia never took part in the said primaries, (3) that Amaechi's name was first forwarded by PDP to the INEC, (4) that Omelua's name was later substituted for amaechi's per a letter forwarded to INEC by PDP on 2nd February 2007 and (5) that the reason given by PDP for the substitution was "ERROR." The 1st respondent (INEC) while justifying the right of PDP to substitute the name of Omehia for that of Amaechi substantially linked the corner stone of its defence on the indictment of the appellant by EFCC (the Economic and Financial Crime Commission). Let me quickly dispose of this issue of the

alleged indictment. The 3rd respondent (PDP) INEC (1st respondent), on paragraph 7 of its statement of defence averred:

“Further to paragraph 18, the 1st defendant states that the indictment of the plaintiff by the EFCC and the acceptance of the Request of the Panel set up by the Federal Government provides cogent and verifiable reasons for the plaintiff’s substitution by his political party.

The appellant had, in his reply to the statement of defence of the 1st defendant denied that he was indicted by EFCC. Going by the pleadings of the 1st respondent and the appellant on this crucial point it seemed that the issues that threw themselves up for resolution at the trial were:

(1) Whether or not, Amaechi was indicted by EFCC and whether the Federal Government set up a panel on such indictment and whether any report of such panel was accepted by the Federal Government of Nigeria.

(2) Whether in any case, the news concerning a report given to the Federal Government on 19/2/2007 on 13/2/2007 could be the basis of Amaechi’s substitution on 2nd February 2007.

But even then the issue of the alleged indictment of Amaechi was raised before the Court of Appeal where leave was sought and obtained to adduce additional evidence bringing in a certified true copy of the ruling of the Federal High Court on this point. As well discussed in the judgement of the Supreme Court, the grant of the application by the Court of Appeal to bring in this piece of additional evidence was against all principles of law relating to conducting further evidence on appeal the cases of (1) **Asaboro Vs Aruwaji & AN (1974): Allinwa (Pt 1) 140**, (2) **Obasi Vs ORS Vs.**

Onwuwa & ORS (1987) ZNSCC (1981) cited in the judgements. What more, the word “INDICTMENT” going by the Dictionary definition means no more than a written accusation against someone who is to be tried. So, the Supreme Court had no hesitation in rejecting the argument of the respondents on the issue of INDICTMENT.

Back to the main issue: Did the 3rd defendant/respondent properly, in law, substitute the name OMEHIA for that of AMAECHI as contestant for that gubernatorial election? On the issue of substitution of the name of one candidate for another in an election, the Supreme Court in a number of its decisions, while interpreting the provisions of Section 34 (2) of the Electoral Act, 2006 laid it down that having submitted the name or names of its candidates to contest an election, a political party still reserves the right to withdraw the name or names of such candidates by applying to the Independent national Electoral Commission, in writing, not later than 60 days to the election stating cogent and verifiable reasons. The relevant section 34 (1) and of the Electoral Act, 2006 provides Section 34 (1) reads:

“A political party intending to change any of its candidates for any election shall inform the Commission of such change, in writing, not later than 60 days to election.

Section 34 (2) reads:

“Any application made to sub-section (1) of this section shall give cogent and verifiable reasons.

Based on the materials distilled from the record before it, the Supreme Court unanimously held that the name of Amaechi was not substituted as

provided by law i.e. Section 34 (2) quoted supra and consequently declared Amaechi as the person entitled to be the Governor of Rivers State as he must be deemed, in the eye of the law, to be the PDP candidate for the April 2007 Election who won. The verdict of the Supreme Court was viciously criticized by many. If the critics had taken some time to read the judgement very carefully along side the facts of the case as contained in the record, I am sure they would not have engaged in that wasteful and unwarranted exercise of criticism. I shall just here dwell on one strong point of law which justifies the judgement delivered. By the combined effect of the provision of section 34 (1) and (2) of the Electoral Act 2006, a political party reserves the right to withdraw the name of a candidate already submitted to contest an election and substitute another provided cogent and verifiable reasons are given, in writing, to the Commission not later than 60 days to the election. Was there a compliance with the aforesaid provisions by the Peoples Democratic Party in the instant case? The catch-words in sub-section (2) are “COGENT” and “VERIFIABLE” reasons. In Burton Legal ... 3rd Edition by William C. Burton, the word “cogent” is defined thus:

“appealing conclusively, appealing forcibly, authoritative, incontestable, unanswerable, undeniable, weighty and well-grounded.

Again in The New Webster’s Dictionary International Edition, the word “COGENT” is given thus definition.

“Compelling Convincing” The word “VERIFY” which is the verb from the adjective ‘Verifiable’ is defined in Blacks Law Dictionary, 6th Edition thus:

“To confirm or substantiate by oath or affidavits, to prove to be true, to confirm or establish the truth or truthfulness of, to check or test the accuracy of exactness of, to confirm or establish the authenticity of, to affirm, to support.”

The word “AND” standing between the two words “Cogent” and “verifiable” in section 34 (2) Supra is conjunctive and its ordinary meaning is “in addition.” It therefore follows that applying simple comas of interpretation of statutes, to legally justify the substitution under sub-section (2) the reasons to be adduced, in writing must be cogent in addition to being verifiable. A quick reading of the said letter dated 2nd February 2007 tendered as Exhibit D addressed to INEC (the 1st respondent) gave the reason for the submission. Rotimi Amaechi’s name earlier to INEC as one IN ERROR: That letter, I submit, with the greatest respect, if accorded any strained interpretation cannot meet the requirement of the law, given that the fundamental duty of ‘a judge is to expound the law and not to expand it, a judex faced with the facts set out above can reach no other conclusion than that there was no compliance with that crucial provision of sub-section (2) of Section 34, supra. The words used in that sub-section are very clear and unambiguous.

Again, because I was on the panel that heard this appeal I would not want to comment more on it. Suffice it to say that a very careful reading of the judgement, particularly the leading judgement by Oguntade JSC and the contributions of the other justices that heard the appeal will expose the futility of the efforts of the critics at rubbishing the judgements. At the risk of sounding to be immodest, I wish to beg to say that this judgement accords with all that is desired in dispensing true justice.

The last of the cases I wish now to treat is that of PETER OBI Versus(1) INEC, (2) All Nigeria Peoples Party, (3) Ukachukwu (4) PEOPLES DEMOCRATIC PARTY (5) ANDY UBA, (6) PEOPLES MANDATE PARTY AND (7) NWANDU. This also relates to right of mankind to peaceful assembly and association. The central issue before the apex court was an invitation to interpret the provisions of Section 180 of the Constitution of the Federal Republic of Nigeria, 1999 as it affects the tenure of the office of the governor. Briefly, the facts of the case are as follows: The appellant (Dr. Peter Obi) had contested the Governorship seat to Anambra State in the April 2003 general election and lost to Dr. Ngige who was declared by INEC the respondent) as duly elected and sworn-in as Governor of Anambra State. The appellant contested the declaration of Ngige as the winner of the said election before the Election Tribunal. The verdict of the Tribunal favoured the appellant and he subsequently took the oath of office on 17th March 2006 as the Governor of Anambra State. The 1st respondent, as the agency statutorily charged with the conduct of

elections in this country set into motion machinery for elections for elective offices in the April 2007 general elections including the Anambra State Governorship. The appellant, who rightly felt that his tenure had not run out and that his term of office as the Governor of that state was threatened sought, from the federal High Court, Enugu by way of originating summons, the following reliefs:

(1) Whether having regard to Section 180 (2) (a) of the 1999 Constitution, the tenure of office of a Governor first elected as governor begins to run when he took the oath of allegiance and oath of office.

(2) Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship Election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath of office on 17th March, 2006 and has not served his four-year tenure as provided under Section 180 (2) (a) of the 1999 Constitution.

Simultaneously, the appellant prayed for the following reliefs:

(1) a declaration that the four-year tenure of office of the plaintiff as Governor of Anambra State began to run from the date he took the oath of allegiance and oath of office being the 17th of March, 2006.

(2) a declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in as far as the plaintiff as the incumbent Governor has not served his four-year term of office commencing from when he took the oath of allegiance and oath of office on 17th March, 2006.

(3) Injunction restraining the defendant by themselves, heir agents, servants, assigns and privies or whosoever from in any way conducting any regular election for the Governorships of Anambra State until the expiration of a period of 4 (four) years from 17th day of March, 2006 when the plaintiff's tenure of office will expire.

A number of processes were laid by all the parties before the trial court which processes included one of reference to the Court of appeal - question of law and one by the defendants. After taking arguments of counsel on the motions and preliminary objection as to jurisdiction, the trial court in a reserved ruling on 30th March 2007 refused the application for reference to the Court of Appeal and upheld the preliminary objection as to jurisdiction and consequently struck out the summons. An appeal lodged by the appellant to the Court of Appeal against the ruling was dismissed by that appellate court on 22nd May 2007 on the ground, according to it, that the reliefs sought at the trial court were election matters which it said, were within the exclusive jurisdiction of the Election tribunal.

Being dissatisfied with the decision of the Court of Appeal, the appellant lodged an appeal to the Supreme Court. As I have said, the court was called upon to interpret the provisions of sections of the constitution and some statutes. Perhaps it is also essential that I here say that the action of the appellant pre-dates the general election held on 14th April, 2007. In fact, the originating summons was filed at the Federal High Court on the 12th of February, 2007. And the essential provisions that called for interpretation

before me for the resolution of the appeal are (1) Section 251 (1) (P) and (r) of the 1999 Constitution which define the jurisdiction of the Federal High Court and Section 18 (c) (s) and (2) of the Constitution which relates to the tenure of the Governor while in office.

Section 251 (r), (p), (q) and (r) reads

“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise to the exclusion of any other court, in civil/causes and matters:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

(o)

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

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

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.” (underlining mine for emphasis)

It is clear beyond any doubt, that by the above provisions, the interpretation of the provisions of any section of the 1999 Constitution is vested in the Federal High Court, in so far as it affects the Federal Government on any of its agencies. These above provisions indeed define the jurisdiction of the Federal High Court. I go further by saying that it is not by accident that Section 251 of the Constitution starts with the words: “Notwithstanding anything to the contrary contained in this constitution”. The word **“Notwithstanding”** was judicially considered by the Supreme Court MDIC, Vs OKEM LTD and AN (2004) 10 NWLR (Pt 880) 107 at pages 182/183 thus:

As has been observed, Section 251 (1) of the 1999 Constitution begins with Notwithstanding anything to the contrary contained in this Constitution” ...

When the term “notwithstanding is used in a section of a statute, it is meant to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself. It follows that as used in Section 251 (s) of the

1999 Constitution no provision of the Constitution shall be capable of undermining the said section.”

On the principle of stare decisis, the Supreme Court must follow its dictum or dicta in previous judgement unless same had been overtuned or manifest a clear to be unjust of the face of them. And so, we followed the above dictum as it relates to the decision we came to the conclusion that the Federal High Court has jurisdiction to entertain the originating summons. God forbid the day when any other court of record, the category of which includes the High Court, Court of Appeal and Supreme Court, will decline jurisdiction to entertain a declaratory action. As I have said above, the originating summons pre-dates the general elections held on the 14th of April, 2007. And all the appellant was asking for was the determination of his tenure by constraining the provisions of section 180 of the Constitution, 1999 which reads:

Section 180 (1)

Subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until:

- (a) when his successor in office takes the oath of that office, or
- (b) he dies whilst holding such office, or
- (c) the date when his resignation from office takes effect; or
- (d) he otherwise ceases to hold office in accordance with the provisions of this Constitution.

Section 180 (2)

Subject to the provisions of sub-section (1) of this section the Governor shall vacate his office at the expiration of a period of four years commencing from the date when:

(a) in the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and Oath of Office and

(b) the person last elected to that office took the Oath of Allegiance and Oath of Office or would, but for his death have taken such oaths.

The above are the provision of the Constitution relating to the tenure of Governor which the court was invited to interpret.

Guided by the above principles, in interpreting the fore-mentioned provisions of Section 180 (5) and (2) of the Constitution of the Federal Republic of Nigeria 1999, we came to the conclusion that the office of Governor of Anambra State was not vacant as at 29th May 2007 when the 1st respondent (Independent National Electoral Commission) swore-in the 5th respondent. (Dr. Andy, Uba) as the Governor of Anambra State and by implication, that the election held in April 2007 in respect of that position was a wasteful exercise and a nullity. In the second ... of the judgement, we held that the tenure of office of the appellant (Dr. Peter Obi) as Governor of Anambra State which by virtue of ... 180 (2) of the Constitution of 1999 was for four years. Certain and would not expire until 17th March 2010 for reason of the fact that Dr. Peter Obi took his Oaths on the 17th of March, 2006.

I wrote the leading judgement and so again for that reason, I shall refrain from making any comments on the said judgement. I leave that to posterity. Needless for me to say that the judgement was unanimous. It was subject to heavy criticism thereafter and even my person was verbally assaulted on the pages of newspapers for a long period until later when well-reasoned articles in favour of the said judgement started to appear on the pages of the dailies.

**PRINCIPLES GUIDING THE JUDEX IN
INTERPRETING PROVISIONS
OF THE CONSTITUTION, STATUTES ETC.**

The power of interpretation must be lodged some where and the custom of the Constitution has lodged it in the judges. If they are to fulfil their functions as judges, that power could hardly be lodged elsewhere. But justice, according to law, which any good judge must ensure he dispenses at all times, demands that even when he (the judge) is said to be free to do anything by the reason of the enormity of the power conferred on him, he is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or goodness or what colouration a piece of law should take. The fundamental duty of a judex is to expound and not to expand the law. He must decide what the law IS and not what it OUGHT TO BE. Where the words used in couching the provisions are clear and unambiguous, as the provisions set out above, they

must be given their ordinary and grammatical meaning by the judex and no more. Yes it is often said that the judex must always have a resort to the intent of the legislators, that intention can only be found in the words used to frame the provision and no where else. If a judge's view as to where the justice or rightness of a case lies is returned after the exercise of any interpretation and that would make the judiciary lose its credibility, authority and its legitimacy. That will not be healthy for the development of the law and the administration of justice. I have always held and will continue to hold the view that "law making in the strict sense of that term, is not the function of the judiciary but that of the legislature. Let there be no incursion by one arm of the government into that of the other. That will be an invidious trespass. Let me further point out that no constitution fashioned by the people, through their elected representatives or any some impostors, is ever perfect in the sense that it provides a clear-cut and for permanent or everlasting solution to all societal problems that may rear their heads from time to time. As the society grows or develops, so also must its Constitution, written or unwritten. Our problems as judges should not and must not be to consider what social or political problems of today require. That is to confuse the task of a judge with that of a legislator. More often than not, the law, as passed by the legislators may have produced results which do not accord with societal wish today. Let that defective law be put right by new legislations but we must not expect the judex in addition to all his other problems, to decide what the law ought to be. In my humble view, a judge is

far better employed if he puts himself to the much simpler task of deciding what the law IS.

I now feel free to comment on the Chief (Mrs.) Olufumilayo Ransome-Kuti which was my starting point and which leading judgement was written by Hon. Justice Kayode Eso CON. That this great jurist, undoubtedly, one of our best in Nigeria, had passion for dispensing justice whilst on the Bench can never be controverted. That he was really learned, reasonably innovative and exhibited great scholarship in all his judgements is common knowledge among members of the legal profession. A reading of his judgements bear eloquent testimony to what I have said. To that extent, he (Justice Eso) is to Nigeria, what the legendary Lord Denning was to England. Indeed, he like Denning also enjoys international reputation. But, unlike Denning, Justice Eso did not believe in getting his judgements reflect what the law ought to be, rather to him judgements must reflect what the law is. He was a stickler to the above principles, hence his judgement in the Ransome Kuti case.

EPILOGUE

THE MAN - OF THE MOMENT -

THE HON. JUSTICE CHIKE CHUKWUWEIKE IDIGBE

What is in a name? I say nothing. To the adherants of the Christian Faith, any reference to our Lord, by name is simply JESUS CHRIST, no prefix by way of title or honour and there is also nothing after HIS name by way of title, degree or honours. Yet those of us who are Christians, we know and

believe HIM to be our LORD CREATOR and INCOMPARABLE TEACHER And to the adherents of Islamic Faith, the founder is referred to simply as MUHAMMED. While I shall never equate the man of the moment (The Hon. Justice Chike Chukwuweike Idigbe either with our Lord, Jesus Christ or Mohammed - that will be heresy - I will say because you were great in your own right, whilst on this side of the divide, I shall now refer to you as Chike Chukwuweike Idigbe.

I had the privilege of being led on two appeals before the Supreme Court on panels of which he was a member. I watched him with admiration, I concentrated on him among the three- member panel on the two occasions My humble impression tallied with the view of these reasonable and well learned members of the legal profession, that in legal circles, he was regarded as sound and a brilliant jurist with passion for justice.

A reading of his judgements conveys to the discerning mind that he was a reputable jurist who not only believed that a judge's social service to the community is the removal of a sense of injustice, indeed he demonstrated it through his judgements.

He was a balanced, patient and courteous stickler to his judicial oaths. He loved the human society so genuinely that God in His infinite mercy blessed him with a son - Chief Anthony Idigbe SAN - whom he has donated to the society to carry on his good words in another branch of the profession. Suffice it to say that whenever he looks back from that peaceful place he is

resting now, he will be happy at that donation and other divine blessing to him by God.

Although you are no longer with us, may the good Lord continue to grant you eternal rest. Let me now recall the saying of WENDELL PHILLIPS which is in the following terms.

Our ingress into this world is but unheralded.

Our path through journey of life is thorny.

The outcome of the exercise will certainly be dictated by our deeds therein.

But if we do well here, we shall certainly do well there.”

By popular acclamation, you have done very well here. The evidence, through your stimulating judgement stares everybody in the face. Continue to rest in the bosom of the Lord.

It is not by accident but by divine intervention that this lecture is being delivered just after the death of Chief Gani fawehinmi, SAN who instituted this lecture in memory of the late Justice Idigbe.

I say this because you will recall that when the Monarch here joined his ancestors, Chief Gani Fawehinmi SAN identified with the great people of this great city by shaving his head clean clear and respectfully mourning the demise of the said Monarch in line with the Bini tradition.

May his soul rest in peace.
I thank you for your patience.