# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC147/1993

**Petitioner:** N.A.B. Kotoye
And
**Respondent:** Mrs F.M. Saraki, Dr. Olusola Saraki.

Date Delivered: 1994-07-27

**Judge(s):** Abubakar Bashir Wali,Idris Legbo Kutigi,Michael Ekundayo Ogundare,Sylvester Umaru Onu, Yekini Olayiwola Adio

## Judgment Delivered

In the consolidated suits Nos. LD/ 845/87 and LD/938/87 the plaintiffs together and the 2nd plaintiff alone respectively claimed against the defendant as follows:-

\"LD845/87

(1) A declaration that the 2,400,000 shares and the Bonus, Scripts and other shares attached thereto standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an Inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

(4) An order for rectification of the Registrar of Shares to give effect to any judgment delivered herein.\"

\"LD/938/87

1. A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

2. An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

3. An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

4. An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

5. An order for the refund of the sum of N70.000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.

The defendant counter-claimed against the plaintiffs in the consolidated suits thus-

\"LD/845/87

(1) Whereupon the defendant by way of Counter-claim claims against the 2nd plaintiff the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

(2) The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

\"LD/938/87

(1) A declaration that of the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(2) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.

The hearing of the consolidated suits was still in progress when the defendant filed a Motion on Notice to strike out the suits on the ground that the court had no jurisdiction to continue to entertain same and or allow the proceedings to be maintained. The motion was supported by a 4-paragraph affidavit sworn to by one Oluwole Koya, a legal practitioner in the Chambers of Ayanlaja, Adesanya & Co. who are counsel with Chief G. O. K. Ajayi, S.A.N. for the defendant/applicant. Paragraphs 2 & 3 of the affidavit merely recited plaintiffs\' claims in suits Nos. LD/ 845/87 and LD/938/87 reproduced above. The remaining para. 4 which I consider vital to the motion reads:

\"4. That it is common ground both in the pleadings filed and the evidence adduced so far before this Honourable court by both parties to the proceedings in the two consolidated cases aforesaid that, the shares in dispute are registered in the name of the defendant in the books of Societe Generale Bank (Nigeria) Limited as holder thereof.\"

The motion was filed pursuant to the promulgation of-Banks and other Financial Institutions Decree No.25 of 1991. The commencement date was 20th June 1991. Section 11 of the said Decree reads:

\"11. Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering/ram any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\" (Italics are mine for emphasis only).

In a considered ruling delivered on the 27th day of November 1992 the F learned trial Judge dismissed the motion or application. On page 54 of the record he said:-

\"It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. I do not find that Section 11 bars this suit or other proceeding based on the claims in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares held in the-name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken. The learned defence counsel had pointed out in his reply that the fifth claim in Suit LD/938/87 is unaffected in any way by this motion. This is a relief for refund of the balance of certain sum allegedly held by the defendant in the plaintiff\'s behalf therein. I agree with him.\"

Dissatisfied with the ruling above, the defendant appealed to the Court of Appeal, Lagos. He formulated eight issues for determination while the plaintiffs formulated only one as follows:

\"Whether the jurisdiction of the court to continue the hearing of this action has been ousted by the provision of section 11 of the banking  A and other Financial Institution Decree 1991 No.25.\"

The Court of Appeal agreed with the plaintiffs when it said in its judgment on page 100 of the record that:-

\"The issue before this court is the correct interpretation of section 11 of the Banking and other Financial institutions Decree No. 25 of 1991 and applying the said interpretation to the claims in this case so as to determine whether the court below has the jurisdiction to continue the case or not.\"

It then considered the issue and arrived at the conclusion that the High Court had jurisdiction to continue the consolidated suits and dismissed defendant\'s appeal with costs.

Aggrieved by the decision of the Court of Appeal the defendant has now appealed to the Supreme Court. Five issues were identified for determination in his brief. The plaintiffs on their part set out only one issue for determination in their brief. It reads:-

Whether the claims contained in the Statement of Claim in this action (or any of them) can strictly regarded, be described or cat'egorised as a claim by the plaintiffs or either of them that the title  D to the shares registered in the name of the defendant vests in them or either of them than in the said defendant.

I agree entirely. The issue above was the same issue before the trial High Court and the Court of Appeal even though worded differently. In fact we are to consider whether the claims of the plaintiffs are caught by the provision of section 11 of Decree 25 of 1991 which is reproduced here again:-

\"11.  Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other F proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\"

The provisions can be conveniently broken down as follows:-

A. No suit or other proceedings shall be maintained against a regis'tered holder of shares in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

B A suit or other proceedings on behalf of a minor or person suffering from any mental illness against a registered holder of shares in bank on the ground that the registered holder holds the share on behalf of the minor or person suffering from mental illness is maintain'able. (See the proviso above).

I must say at once that the opening clause that

\"Notwithstanding anything contained in any law or in any contract or instrument\"

ought to be restricted to a provision in any law or contract or instrument which allows a litigant to maintain the suit against a registered holder on the ground that the title in the shares vests in any other person other than the registered holder. We have not been referred to any law or contract or instrument which provides as such. I venture to say that the clause cannot be read to cover cases of trusts more so as the suit herein is not being maintained because there is a trust, rather it is because of lack of it.

It is a settled cardinal principle of statutory interpretation that where, in their ordinary meaning the provisions are clear and unambiguous effect should be given to them without resorting to external aid. The duty of the court is to interpret the words of the statute as used. Those words may be ambiguous, but even if they are the power and duty of the court to travel outside them on a voyage of discovery are strictly limited (see for example Attorney-General of Bendel State v. Attorney-General of \'the Federation (1981) 10S.C. 1; Abioyev.Yakubu(1991)5 NWLR (Pt.190) 130, Lawal v. G.B. Ollivant (1972) 2 S.C. 124, Aya v. Henshaw (1972) 5 S.C. 87;

There is no doubt at all that the plaintiffs do not come under my classification (B) above. They are neither minors nor persons suffering any mental illness. We are therefore left with classification (A) only. The task now will be to examine the plaintiffs\' claims or reliefs one by one to see whether any of them is covered thereunder. It should be noted at once that the only ground for disqualification provided under (A) above and in fact under section 11 of Decree 25 of 1991 is \"that the title to the said shares vests in any other person than the registered holder\"

So that unless the plaintiffs specifically claim that title in the shares vests in them or in any person other than the defendant registered holder, it would be difficult to bring them under section 11 of the Decree. It is common ground as stated in para.4 of the affidavit in support of the motion above, that the shares in dispute are registered in the name of the defendant in the books of Societe Generale Bank Ltd as holder thereof. The consolidated suits in no way sought to challenge or deny that the defendant is the registered holder of the shares in question or that the shares are vested in him. I think therefore that Chief Williams S.A.N. was right when he said that the plaintiffs are not challenging the fact that the defendant is the registered owner of the shares, but that the defendant is a trustee of those shares for the plaintiff as the beneficial owners. That in my view is the plain and ordinary meaning of the plaintiffs claims in this case.I appreciate

that there might be problems in respect of the claim for rectification depending on what turns out to be rectified after the trial. Definitely it could not be the rectification of the name of the defendant as a registered holder of the shares which section 11 (ibid) forbids, but it could even be the number of shares or any other error as may be revealed during the trial. But once the defendant is declared a trustee of any of the shares for the plaintiffs, the question of rectifying the Register of Shareholders to reflect their names would no more arise because defendant cannot be a trustee unless he holds the shares in his name to enable him exercise control over them.

There is no doubt at all that section 11 (ibid) sought to oust the jurisdiction of the court to entertain matters in respect of registered shareholders in banks. Therefore being an ouster clause, the provision will have to be construed strictly and very strictly too (see Barclays Bank v. C.B.N. (1976) 1 All NLR 409. Ouster clauses must not be construed liberally, or loosely or wantonly. And that is what I have endeavoured to do in this case. We must not forget that a constructive trust, as in this case, is imposed by equity on the ground of conscience and it is not based on the prior or presumed intention of the parties. I would like to believe that the A parties herein are conscionable people. A constructive trust is a trust to be made out of the circumstances. The trial High Court was therefore right when it said:-

The question of whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.

The Court of Appeal was equally right when it held as per Ubaezonu J.C.A., who read the lead judgment, that:-

\"The present suit does not challenge or deny that the appellant is the registered holder of the shares in question or that the shares are vested in him. No. What I understand him to be saying is:-

'I concede that the shares are vested in you but, you hold it in trust for me.\"

I think that if as a result of the plaintiffs\' claims, the defendant is successfully pronounced to be a trustee of any of the shares thereof, he the defendant will still remain the registered legal owner of the shares while the plaintiffs will become the beneficial owners only, a trust relationship being equitable generally. It is of no consequence whatsoever that the defendant though a registered holder is a mere notional or nominal owner of the shares while the plaintiffs are the real beneficial owners. That is exactly what the law of trust is all about. It is not the function of any court to change the law and Decree 25 of 1991 has not changed it. It is none of the business of the court to read into the section 11 other meanings simply because the court does not like the natural and direct result of its application which does not lead to any absurdity.

I must observe that this being an interlocutory application, I must avoid making any observation in the judgment which might appear to prejudge the main issues in the proceedings relative to the interlocutory application (see for example Egbe v. Onogun (1972) 1 All NLR (Pt.I) 95; Ojukwu v. Governor of Lagos State (1986) 3 NWLR (Pt.26) 39. It was therefore necessary for me to have restricted myself to the single issue identified by the plaintiffs and the lower courts for determination as above.

In conclusion this appeal fails and it is hereby dismissed. I hold that the two lower courts, the trial High Court and the Court of Appeal, were right when they respectively came to the conclusion that the High Court has the jurisdiction to continue with the consolidated suits herein. The plaintiffs are awarded costs assessed at one thousand (N1,000) naira against the defendant.

Judgement

Delivered by

Abubakar Bashir Wali J.S.C

I have read in advance the lead judgment of my learned brother, Kutigi, J.S.C., and I agree with the reasoning and conclusion that the appeal be dismissed, I however wish to make the following contributions:-

The plaintiffs:

(1) Mrs. F. M. Saraki; and

(2) Dr. Olusola Saraki

by their amended statement of claim in suit No. LD/845/87 claimed against the defendant, the following reliefs:-

(1) A declaration that the 2,400,000 shares and the Bonus Script and other shares attached thereto standing in the name of the defendant in the Register of Shareholder of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than

as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The defendant, in his amended statement of defence counter-claimed as follows:-

\"46. WHEREUPON the defendant by way of counter-claim claims against the 2nd plaintiff the sum of N730,000 being money advanced to the 2nd plaintiff or to his order at his request

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

Also on the Amended Statement of Claim to Suit No.LD/938/87, Dr. Sola Saraki v. N.A.B. Kotoye, the plaintiff claimed the following reliefs against the defendant:-

\"(1) A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff F or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

(5) An order for refund of the sum of N70,000.00 being balance of the

N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

The defendant on his part and in his Further Amended Statement of Defence claimed against the plaintiff as follows:-

\"(i) A declaration that if the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nig. Limited, 2,783,483 therefore are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

The two suits were consolidated for hearing. While the hearing was in progress, the defendant, by a Motion on Notice dated 16th March 1992 applied to the trial court for an order:

Striking out the consolidated suits herein on the ground that this Honourable court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the defendant/ applicant.\"

The application was opposed. After hearing arguments from both parties. The learned trial Judge, OlusoJa Thomas J, delivered his Ruling on 27th November 1992 in which he opined thus:-

\"Turning again to the provisions of section 11 of Decree 25/1991, one finds that the restriction of suit or other proceeding against a registered holder of a share in the bank as provided in the main part thereof is when one part challenges the registered holder that his \"title to the said shares vests in any person other than himself\". On the other hand, the proviso used different language when exempting the minor or person suffering from mental illness, that is, \'\"on the ground that the registered holder hold the shares on behalf of the minor or person suffering from mental illness'

and then declared-

\"I do not find that Section 11 bars this suit or other proceeding based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.\"

The defendant appealed against this Ruling to the Court of Appeal. And the Court of Appeal also after hearing the appeal opined thus before dismissing the said appeal:-

\"The provision of section 11 of the Decree may be broken up as follows:

No suit or proceedings shall be maintained against

(i) A registered holder of shares in a Bank;

(ii) On the ground that the title of the shares so registered in his name vests in another person other than himself.

Thus, if any person brings an action in any court to say that title of the shares in a Bank registered in A\'s name does not vest in A but in B, the jurisdiction of the court is ousted from entertaining such an action. The registration of the shares of a Bank in the name of a person is absolute as to the person in whom the title to the said shares vests. The Decree is clear on this and gives no room for argument or speculation. The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (B). The Decree is silent on this. In interpreting a statute, a court does not import into it what it does not say. The Decree talks of title or a person registered as holder. It does not talk about beneficial interest in the said shares or whether the person in whom the title vests can or cannot hold the shares in trust for another person.\"

The defendant has now further appealed to this court.

Both parties filed and exchanged briefs of argument as required by the Rules of Court. In the brief filed by the defendant now the appellant, five (5) issues out of the 6 grounds filed by him were identified for determination, while the plaintiffs now the respondents formulated only one issue for determination.

Since the main and determining issue in this appeal is the interpretation of section 11 of Decree No.25 of 1991, in my view the issue formulated by Chief Williams. SAN is the appropriate one for the purpose of determining whether the trial court has jurisdiction to continue with the hearing of the plaintiffs\' case as formulated in the pleadings, and it reads thus:-

Whether the claims contained in the Statement of Claim in this action or (or any of them) can strictly be regarded, be described or categorized as a claim by the plaintiffs or either of them than title to the shares registered in the name of the defendant vests in them or either of them than the defendant.\"

Both learned Senior Advocates agreed that the materials to look, at in deciding this issue of jurisdiction are the Statement of Claim filed, and in the present case, the Amended Statement of Claim in suit LD/845/87, the Second Amended Statement of Claim in suit LD/938/87, and the defendants counter-claim in Amended Statement of Defence in suit LD/845/87 and the counter-claim in Further Amended Statement of Defence in suit LD/938/87. In this regard, both

parties agreed that the shares in dispute are registered in the name of the defendant. But the plaintiff contended that this notwithstanding, section 11 did not bar the plaintiffs claim to the beneficial ownership of these shares.

Undoubtedly, looking at the averments contained in the pleadings of both parties, the issues of trust, trustee and beneficiary are very prominent and therefore in my view, Ubaezonu, J.C.A, was not totally wrong when he summarized the determinant issue in the appeal before them in his lead judgment as follows:-

\"The only issue in this case is whether A in whose name the share are registered can hold the same in trust for B.\"

I do not think, having regard to the pleadings earlier referred to, one should quarrel so much with the way the learned trial Justice recast the germane and determining issue in this appeal.

Now section 11 of Decree No. 25 of 1991 provides thus:

\"11. Notwithstanding anything contained in any law or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on . the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of the minor or person suffering from mental illness.\"

In the course of hearing this appeal, this court suo motu raised the question of retrospectivity of section 11 (supra), and while learned Senior Advocate for the defendant/ appellant submitted that it has retrospective application, learned Senior Advocate for the plaintiffs/respondents, did not make any submission on the issue. It is a well established principle of interpretation of statutes that where the provision of any law ousts the jurisdiction of court on any matter such a provision shall be narrowly and strictly construed, unless it clearly and unambiguously states so. See Dove v.Dove (1963) p.321, (1993) 2 WLR 714. In this case, the Court of Appeal while interpreting section 12(3) of the Matrimonial Causes Act, 1950 A which provided that if the spouse obtaining a decree Nisi of divorce did not make an application for it to be made absolute six months after the trial, then the other spouse could make application within a further period of three months, if the circumstances warranted, obtain a decree absolute, the Court of Appeal held that this did not oust the jurisdiction of the court to substitute a decree of judicial separation for a decree nisi,

'because \"had it been the intention of the legislature to revoke the jurisdiction , it would have been done in a clear way than by inference from the subjection.\" See also Commissioners of Customs & Excise v. Cure &Deeley,Ltd(l962)Q.B.340, Barclays Bank v.C.B.N. (1976)1 All NLR 409 at 421 and A.-G., Bendel State v. A.-G., Federation (1981)10 S.C. 1'

This same principle was emphasised by VISCOUNT Sumands in Smith v. East Elloe RD.C. (1956) A.C. 736 where he said at 750:-

\"It is a principle not by any means to be whittled down that the subject recourse to Her Majesty\'s courts for determination of his rights is not to be excluded except by clear words.\"

It shall also not be made to apply retrospectively to affect the acquired right before it or to affect litigations pending m court, unless such intention is manifestly and unambiguously made clear in it. See Hickson v. Darlow (1883) 23 CH.D. 690 where it was held that the Bills of Sales Act (1878) (Amendment) Act, 1882 which made void bills of sale not registered within seven days of their execution, would not apply to instruments executed more than a week before the commencement of theAct. It was similarly held in RE BRANDON'S PATENT(1884)9 APPCAS 589 that the provisions of the Patents, Designs and Trade Marks Act, 1883, would not affect any patents granted before its commencement.

See also the case of Moon v. Durden 2 Exh. 22 in which the majority judgment of that court (3 to 1) while interpreting 18th Section of Statute 8 and 9 Vie 109 which is worded thus:-

\"And be it enacted that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to -be won upon any wager, or which shall have been deposited in the hands of any person to decide the event on which any wager shall have been made.\"

held that the provision had no retrospective effect to affect suits commenced before its coming into operation.

In Colonial Sugar Refining Co. v. Irving (1905) A.C. 369, the Australian Commonwealth Judiciary Act, 1903 which had abolished a right of appeal by the Privy Council from the Supreme Court of Queensland, it was held not to apply retrospectively to a suit pending when the Act was passed and decided by the Supreme Court after that date.

In Re Athlumney (1898) 2 Q.B. 547, Wright J opined thus:-\"Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as A regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment If the enactment is expressed in a language that is fairly capable of either interpretation, it ought to be construed as prospective only.\"

Looking at the wording of section 11,1 am of the view that it has neither retrospective effect, nor does it affect the issue of relationship of a trustor and a trustee and the beneficial interest accruing to the former from shares in a bank held and

registered in the name of the latter for the benefit of the former. To hold otherwise is to import into the statute something that was not intended or contemplated by the legislature. The Decree only ousts the jurisdiction of the court from determining a dispute challenging the vesting of bank shares in the name of the person in whose name they are registered. The proviso to s.l 1 (supra) only provides exceptions to the main section in cases of persons of unsound mind or minors. The proviso in my view does not affect the question of trust or a claim of beneficial interest from such trust; and the case of Western Derby Union v. Met'ropolitan Life Assurance Society (1897) A.C. 647 cited by learned Senior Counsel for the plaintiffs/respondents is apposite. In that case Lord Herschell while dealing with the effect of proviso to the enactment said:-

\"I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in the proviso. Of course ^proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, which it may reasonably admit of doubt as to its having this scope or that, which the proper view to take, but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous,... and, accordingly, a F proviso is inserted to guard against the particular case of which a particular person was apprehensive, although the enactment was never intended to apply to his case, or to any other similar cases at all.\"

Commenting on the views (supra) Lord Davey opined thus:-

\"My Lords, it seems to me that the whole argument of the appellants really comes to the old and apparently ineradicable fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained in it, by what is called implication from the language of & proviso which may or may not have a meaning of its own. I entirely agree with what has fallen from my noble and learned friend opposite (Lord Herschell) upon this subject.\"

The style of Military Regimes legislations on ouster of courts jurisdiction has always been plainly and clearly drafted such that no iota of doubt is left as regards their intent, purport and scope. See for example, section 5(1) of Decree No.47 of 1979 and section 2(1) of Decree No. 48 of 1977.

I shall briefly touch upon the issue of fair hearing. I have gone through the briefs of argument filed by both parties in the Court of Appeal and I find myself convinced and satisfied that both parties were heard on the germane and determinant question of ouster of the courts jurisdiction by 5.77 of Decree No. 25 1991. The Court of Appeal after considering the written and oral submissions by learned counsel came to the conclusion, as did by the trial court, that S. 11 did not oust the jurisdiction of the court to hear the plaintiffs\' claim. Dealing with issues other than this one, would be academic, as the result derived therefrom, will have no effect on the court\'s power to continue with the hearing of the action. There is no miscarriage of justice. I come to the conclusion that s. 11 has not ousted the trial court\'s jurisdiction to continue with hearing of the cases now pending before it. Both the decisions of the trial court and the Court of Appeal are on firm ground on this issue and I equally affirm them.

It is for these reasons contained in the lead judgment of my learned brother Kutigi, J.S.C. that I also hereby dismiss this appeal and subscribe to the consequential orders contained in it.

Judgement

Delivered by

Sylvester Umaru Onu J.S.C

I had before now the privilege of reading in draft form the judgment of my learned brother Kutigi, J.S.C. just delivered and with it I am in complete agreement. I wish, however, to add some comments of mine in elaboration as follows:-

This appeal arose from the decision of the Court of Appeal, Lagos Division delivered on 30th June, 1993 which dismissed an appeal by defendant, herein appellant, from the Ruling of the Lagos High Court (per Olusola Thomas, J.) wherein that court decided that its jurisdiction to continue the trial of two consolidated actions before it was not ousted by section 11 of the Banks and Other Financial Institutions Decree No. 25 of 1991 (hereinafter in this judgment referred to as Decree No. 25).\' Decree No. 25, Section 11 states:-

\"Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or the person suffering from the mental illness.\"

But first, the genesis and historical background of the case giving rise to this appeal.

It all began from inception in 1987 at the Lagos State High Court wherein the plaintiffs, Mrs. P.M. Saraki and Dr. Olusola Saraki had in suit No LD/845/87 jointly claimed from the defendant, N.A.B. Kotoye, as per their amended statement of claim, as follows:-

\"(1) A declaration that the 2,400,000 shares and the Bonus, script and other shares attached thereto standing in the

name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The defendant in his own amended statement of defence counter-claimed against the plaintiffs vide his paragraphs 46 and 47 thus:-

\"46. Whereupon the defendant by way of counter-claim claims against the 2nd plaintiff in the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

47 The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

In the second suit, Suit No, LD/938/87, the 2nd plaintiff alone claimed against the defendant in his second amended statement of claim as follows:

\"1. A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

2. An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of judgment.

3. An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

4. An order for rectification of the Register of the shares to give effect to any judgment delivered therein.

5. An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

In his further amended Statement of Defence and counterclaim, the defendant pleaded thus:-

\"(i) A declaration that the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner\"

Pleadings having been duly exchanged by the parties the two suits which were consolidated went to trial. Before the conclusion of hearing and following the promulgation of Decree No.25, by the Federal Military Government, the defendant brought an application, on grounds of jurisdiction, in which he prayed

the trial High Court for:-

Striking out the consolidated suits herein on the ground that this honourable court has no jurisdiction to continue to entertain same and/or allow the proceedings to be maintained against the defendant/ applicant.\"

In his considered Ruling, Olusola Thomas, J. held that, in the light of the submissions of learned counsel on both sides, it was his conclusion that there is want of clarity in the drafting of section 11 of Decree No.25 and that therefore there is an ambiguity. He then went on to hold that the interpretative function of the court is called for, adding that the two alternative interpretations of section 11 (ibid) would have the effect of either:

(i) taking away the beneficial interest of a cestui qui trust, or a Bank.

(ii) merely protecting the legal title of a registered holder of shares in a bank

He in addition maintained that-

(a) It is the duty of the court to adopt the more reasonable construction and hold that section 11 is intended to protect the title or the legal title of a registered shareholder.

(b) Section 11 does not bar the claims of the plaintiffs from being maintained against the defendant, and

(c) The question of whether or not there is a trust concerning the shares held in the defendant\'s name is far from being determined and cannot be determined until the whole evidence is taken and

proceeded to dismiss the defendant\'s motion on 27th November, 1992.

The Court of Appeal sitting in Lagos (Per Sulu-Gambari, Ubaezonu and Tobi, JJ.C.A.) before which an appeal was heard on 30th June, 1993, dismissed it and held that the trial High Court had jurisdiction to continue the consolidated suits.

The defendant has further appealed to this court complaining that the decision in the lead judgment of the court below per Ubaezonu, J.C.A., premised on a long issue formulated by him and failure generally on that court\'s part to consider all the eight issues formulated from the eleven grounds of appeal, amounted to a denial of fair hearing contrary to section 33 of the 1979 Constitution.

In his Notice of Appeal dated the 8th of July, 1993, the defendant filed six grounds of appeal and his amended brief of argument formulated five issues distilled there from as follows:-

1. Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

2. Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

3. Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to the fact that plaintiffs who had accepted defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

4. Does the proviso to section 11 create ambiguity or alter or affect the meaning of Section 11 in any way'

5. Did not what the learned trial Judge said amount to accepting the case made by the defendant'

The issue formulated at the plaintiffs\' instance as arising for our determination is:

\"'.... the question for determination in this appeal as in the courts below involves a decision as to whether Decree 25 has effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in a bank.\"

After the exchange of briefs by the parties in accordance with the rules of this court this case came up for hearing on the 7th of June, 1994. Learned Senior Advocates for both sides adopted their briefs of argument. Learned Senior Advocate for the appellant who also filed a Reply brief adopted same before each expatiated on them. 1 shall for the purpose of my consideration of the appeal deal with the five issues submitted at the appellant\'s instance, bearing in mind however that the crux of what are contained in the five issues are, in my opinion, encapsulated in the lone issue proffered on the plaintiffs\' behalf.

ISSUES 1 AND 2:

Issues 1 asks: Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it' Issue 2 on the other hand, poses the question: Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing' The defendant has argued both in his Amended Brief as well as through learned Senior Advocate on his behalf firstly, that the court below was in error when it agreed with the plaintiffs that the only issue for determination in the appeal was that formulated by the plaintiffs and repeated in his Brief. It was contended that the sole issue which was formulated as hereinbefore mentioned did notarise from any of the nine Grounds of Appeal filed by the defendant in his appeal to that court. That being so, it is erroneous for the court below to have raised an issue for determination which does not arise from the grounds of appeal. That issue as formulated in the lead judgment of Ubaezonu, J.C.A., in the court below was

\"The only issue in this case is whether A, in whose name the shares are registered can hold the same in trust for a third party (b)\".

Learned Senior Advocate for the plaintiffs, Chief Williams, has, in his oral submission argued that the issue there put could have been better stated and that even though not strictly enough, was right or not far from being right. Be that as it

may, as it was the jurisdiction of the High Court to entertain the actions now subject of appeal that was involved, the court below even and this court, are bound to look into the matter-jurisdiction being very fundamental.

This is the moreso because, an issue relating to jurisdiction of the court appealed from will always be considered and determined by the court to which an appeal lies. That is to say, a question as to whether or not the court from which an appeal lies has jurisdiction, will be considered by the court to which an appeal lies even where both parties are reluctant to, or agree not to raise it, or even where the point is not raised in the Notice of Appeal, See Asante v. Taawia (1949) 65 TLR 105 (a Privy Council case), Heyting v. Dupont (1961) 1 WLR 1192 and Wong v. Beaumont Property Trust Ltd. (1965) 1 QB173, the latter being a case where the point of jurisdiction involved before the Court of Appeal in England, was not raised in the court below or in the notice of appeal but as it went to jurisdiction, the Court of Appeal (England) considered it. Hence, in the instant case, the fact that the defendant has not included any aspect of the question in his grounds of appeal or A in the questions for determination formulated in his Brief of Argument before the court below, can in no way curtail the jurisdiction of the Court below to decide whether or not the jurisdiction of the trial court has been ousted by Decree No. 25 In other words, the question of whether or not the jurisdiction of the trial High Court in this case has been ousted by Decree No.25, in my view, depends solely on the true meaning and intent of the enactment and not upon what the defendant, or for that matter the plaintiffs, chooses or choose to put in his or their grounds of appeal or cross-appeal or brief or pleading or any document of a similar purport.

Be it noted and as indeed conceded by Learned Senior Counsel on either side, that when determining whether or not a court has jurisdiction, it is the statement of claim alone that must be looked at in a case of this nature. Indeed, if none of the parties chooses to raise the point or were all of them do agree that the trial court has jurisdiction, the court is not bound to refrain from holding a different view should it be convinced that such a view represents the correct decision in law on the question of jurisdiction. See Owoniboys Technical Services Ltd. v. John Holt Ltd. (1991)6 NWLR(Pt.l99)550;Osadebayv.A.-G.,Bendel State(1991) 1 NWLR (Pt. 169) 525; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420 and Tukur v. Governor of Gongola State (1989) 4 NWLR(Pt.l 17) 517. I am therefore not impressed by the argument of learned Senior Advocate for the defendant when he contended that the issue formulated and decided by the court below was not an issue that arose for determination in the appeal and that furthermore that the result was that the defendant was never heard by the court below on the issues properly placed before them when Ubaezonu, J.C.A., reading the lead judgment, of that court held inter alia:-

\"The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (B)\",

the latter which was derived from the oral submission of Mr. Ladi Williams wherein he said:

\"'What we are saying is that this is not to be interpreted to mean where you have a cestui que trust or beneficiary claiming under a trust, such beneficiary cannot direct the person in whom title vests how to deal with the shares and dividends attached thereto\"

I therefore share the learned Senior Advocate, Chief Williams\' view, that this court may raise the point of jurisdiction even if the two courts below did not do so and were overruled. See Vanderyell\' s Trust (No.2) (1974) Ch. 269 (per Lord

Denning). It is my considered view, therefore, that the issue which the court below formulated and decided was not the wrong issue that arose for determination before it. It is accordingly answered in the affirmative. Secondly, the defendant has argued that the court below contravened his right to a fair hearing. After stating how seven other issues apart from the first as formulated by the defendant for determination and distilled from eleven grounds (nine original and two additional) came about, it is learned counsel for the defendant\'s contention that in formulating only one issue out of eight, the court did not only formulate the wrong issue, they so to say, swept aside all other issues formulated by the defendant and which properly arose before them. After relying on several recent decisions of this court such as Alhaji Abu Momodu & Ors v. His Highness Alhaji Momoh & anor. (1991) 1 NWLR (Pt. 169) 608 at 620-621; Aja MaziAja & Anor v. John Okoro & Ors. (1991) 7 NWLR (Pt. 203) 260; Sylvanus Odife & Anor.: Geofrey Aniemeke & Ors. (1992) 7 NWLR (Pt. 251) 25 at 42 and Oshohoja v. Amuda & Ors (1992) 6 NWLR (Pt. 250) 690, it was submitted that it was erroneous on the part of the court below without examining the eight issues within the ambit of the eleven grounds of appeal filed, to conclude as they did, that the eight issues are unnecessary and prolix when in fact each of them arose out of the grounds of appeal filed. The dicta in the case of Ejowhomu v. Edok-Eter Mandilas Ltd (1986) 5 NWLR (Pt.39) 1; (1986) 2 NSCC 1184 at 1193-1197 (per Karibi-Whyte, J.S.C.), 1208 (per Obaseki, J.S.C.) and 1209 (per Aniagolu, J.S.C.) were cited to us in support of the proposition thereof.

It is next argued that the resolution of this issue is closely linked with the first issue considered above in that the question of fair hearing, like that of natural justice, must depend upon the circumstances of the case, the nature of the inquiry, the rules of procedure applicable, the subject-matter that is being dealt with and so forth. The underlying factor however, it is maintained, is that the person concerned should also be heard by the adjudicating panel before a decision is reached one way or the other.

After referring us to several other recent decisions of this court on the duty of the court below to determine all issues placed before it for determination, learned counsel submitted that it is usual in a situation of a proved denial of the right of fair hearing for the appellate court to remit the case to the court below so that all issues raised may be properly considered. The case of Ezeoke & Ors v. Nwagbo & Ors. (1988) 1 NWLR (Pt. 72) 616 at 627 and Obi Awanze Okonji & Ors v. George Njokanma & Ors. (1991) 7 NWLR (Pt. 202) 131 were called in aid. However, in a situation where a court, as herein has failed to consider or pronounce on issues placed before it, and a resolution of other issues by the appellate court, it will be unnecessary to remit the issues not considered to the lower court for consideration and determination vide Chief G. A. Titiloye & Ors v. ChiefJ. Omoniyi Olupo (1991) 7 NWLR (Pt.205) 519 at 539. We were therefore urged not to remit this appeal to the Court below but to determine accordingly in view of other issues raised and considered hereafter.

It is pertinent for me to advert first to the learned Senior Advocate, Chief Williams\' reaction to this question of denial of fair hearing. He submitted that the lone issue relied on by the court below could have been better put but definitely saw nothing wrong with it since it is enough and right. I agree with Chief Williams. With utmost due respect to the learned Senior Counsel for the defendant, the questions which a court or tribunal asks itself before arriving at a decision go to the jurisdiction of that court or tribunal to make the decision. Thus, if it asks itself the wrong question, then it would lack jurisdiction to give the decision it may give. In the case of N.P.A. v. Panapina (1974) 1 NMLR 82 at 15, this court with citing approval the following passage from the judgment of Lord Pearce in theANISMINIC CAS' (1969) 2 A.C. 147 at 195, said:

\"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions prec'edent to the tribunal having any jurisdiction to embark on enquiry. Or the tribunal may at the end make an order which it has no jurisdiction to make.....or it may ask itself the wrong questions .....Any of these

things would cause its purported decisions to be a nullity.\"

1 also agree with Chief Williams that it follows from the foregoing that in deciding whether or not the jurisdiction of the High Court is or is not ousted by Decree 25, it is very important for that court to ask itself the right question. Accordingly I hold that it was competent for the court below to determine what questions the High Court should have asked itself in deciding the aforementioned question. It cannot be right, in my opinion, to suppose that the court below or this court are bound by and cannot step outside the eight questions formulated by the defendant even if it considers, as the court below obviously does, that those are wrong ones. The defendant\'s argument that he was denied a fair hearing in the failure to consider the eight questions formulated by him cannot be sustained. Where a court is clearly convinced that the questions which it ought to ask itself are the wrong questions, then it has no jurisdiction to consider those questions since the answers of them are only of academic interest. In the result, it is my view that it is a misconception to argue that in deciding that questions so formulated are the wrong questions, the court is contravening the right of the party to a fair hearing. For, as clearly pointed out by this court in Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419 at 448 (per Nnaemeka-Agu, J.S.C.):

\"For the rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice has been done because of lack of hearing. It is whether a party entitled to be heard before had infact been given an opportunity of hearing. Once an Appellate Court comes to the conclusion that the party was entitled to be heard before a decision was reached but was not given the opportunity of a hearing the order/judgment thus entered is bound to be set aside.\"

See Section 33(1) of the 1979 Constitution. In Sheldon v. Bromfield Justice (1964) 2 Q.B. 573 at page 578, it was held that the court or tribunal shall give equal treatment, opportunity and consideration to all concerned in a case. And in Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587 at 605, this court held that when a represented party is not heard or given the opportunity of being heard in a case the principles of natural justice are abandoned.

In the instant case, I can see no denial of the defendant\'s constitutional right to fair hearing being perpetuated and so this issue is accordingly answered in the negative.

ISSUES 3 AND 5

In dealing with these issues together which state:

3. Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to the fact that the plaintiffs who accepted the defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they have advanced in response to the defend'ant\'s argument'

4 Did not what the trial Judge said amount to accepting the case made by the defendant'\"

It is clear that these arise from ground 8 of the appeal grounds as well as issues 6 and 7 canvassed in the court below. The defendant\'s grouse in respect of section 11 of Decree 25 is that in so far as the plaintiffs are in this action seeking to enforce a right (according to them) on a secret contract and based on a common law right which exists between a trustor and a trustee, the action cannot be maintained. In other words, that the section prohibits the maintenance of a:

\"Suit or other proceeding.....against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other than the registered holder.\"

The argument of the defendant on the point which, in my view, is not radically different from the submission of the plaintiffs is that the trustee is the legal registered owner, that the trustor is the beneficial owner in equity and that the

beneficial owner or trustor cannot any longer by court action enforce rights which he undoubtedly has against the trustee, on the ground that the trustee is not the true owner, but that the trustor or beneficiary is. Put the other way, the plaintiffs\'

contention is that the Decree only preludes the court from determining a dispute as to whether title to a share vests in A (who is not the registered holder).

I am satisfied that both Chiefs Ajayi and Williams, Senior Advocates, are at one in saying that in such a situation, the Decree treats the fact that B is the registered holder of the shares as conclusive evidence of his title thereto. That is as far as both learned Senior Counsel are ad idem. For, while learned Senior Advocate for the defendant maintains, and this is the point of departure between both learned Senior Advocates, the Decree applies to an action which was filed before the decree came into force, the learned Senior Advocate for the plaintiffs holds a contrary view. In sum, the two learned Senior Advocates are agreed as to the meaning of interpretation to section 11 of Decree No.25 except the rider thereto, which learned Senior Advocate for the defendant submitted, allows a cestui qui trust to be given a direction as to what to do with the shares by the beneficial owner who, although not denied access to the courts, the trustee may obey or refuse to obey him. Learned Senior Advocate for the plaintiffs, for his part after spelling out the dichotomy between a claim against a trustee who acknowledges a trust and is carrying out the directions of the beneficiary, in which case there is nothing to go to court over but that where he says he is the beneficiary\'s trustee by denying the trust placed in him, Section 11 will not bar the beneficiary from suing him since court must view such a situation with seriousness. The case made for the defendant in regard to the meaning of the enactment is summed up as follows:

The situation created by section 11 is almost identical with that created by a statute of Limitation which prevents a debt being recoverable by action after a specified period of time. It does not prevent a creditor demanding payment after the lapse of statutory period; neither does it prevent the debtor from paying the debt in such circumstances. But if the debtor were to refuse to pay, and the creditor commences an action for recovery, he will be successfully met by a plead of the Statute of Limitation in bar. This is because, in spite of the right, the remedy for enforcement is taken away by statute.

With due respect, I do not think that the Decree in any way precludes the court from deciding a claim by A that B holds

the shares registered in his (B\'s) name in trust for A. This is because, on a proper construction, it cannot be said that in such a case A would be questioning the title of B to the shares on the ground that title is vested in someone other than B. For while an honest trustee will allow trust property to be transferred into the assets of a beneficiary, it will be otherwise if the trustee is a dishonest man. In other words, what A would be saying is:

I do not dispute that title to shares are vested in B who is the registered holder thereof. But I ask the court to declare that he holds those shares in trust for me.

I share Chief Williams\' view that the fact that the Decree ought to be given the above meaning is a well established canon of construction that a statute should not be interpreted in a way that will enable it to be used as an instrument of fraud.The meaning urged upon us by the defendant, in my view, would tantamount to saying that where, before the enactment came into force B had agreed to and accepted to hold shares in a bank in trust for A, he is, by the enactment, authorised to treat those shares as his own beneficial property and to keep dividends accruing therefrom for his own use. This, I agree, is patently absurd and that such a construction ought to be rejected. A cursory look at the Amended Statement of Claim in Suit LD/845/87 and the Second Amended Statement of Claim in respect of Suit No. LD/938/87, depict huge sums of money operated in joint accounts, transfers to Societe Generale Bank from other Banks and other manner of heavy monetery transactions between the defendant as trustee and the plaintiffs as beneficiaries and that these took place to give rise to the actions consolidated herein. Similarly, the defendant in his Further Amended Statement of Defence and Counterclaim asked for certain items to be taken account of against the plaintiffs in their mutual transactions. It is pertinent to point out that the plaintiffs joined issues with the defendant by filing a Reply to the Further Amended Statement of Defence and Counterclaim. That being so, it would appear to me scandalous for one to suggest as the defendant has done, and without as much as batting an eye'lid, that if those facts are established, the defendant would be entitled to convert the alleged fabulous millions of Naira in the form of shares and scripts etc. It is well established that in construing or interpreting a statute one must avoid a meaning which results in taking away private rights of property without compensation. It was Francis Bennion in his authoritative book STATUTORY INTERPRETATION, 2nd Edition who in those immortal words at section 164 stated as follows:-

\"Legislative intention is not a myth or fiction, but a reality founded in the very nature of legislature.\"

On the facts of this case, the defendant\'s contention, if I understand him well, is that the enactment would appear to enable him to take beneficial rights of the plaintiffs for his (defendant\'s) benefit without having to pay a kobo for the bonanza. In Maxwell on Interpretation of Statutes 12th Edition 251-252 the learned author writes:-

\"Statutes which encroach on the rights of the subject,whether as regards person or property, are subject to a strict construction in the same way as Penal Acts. It is a recognised rule that they should be, interpreted if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of individual should be adopted.One aspect of this approach to legislation is the presumption that a statute does not retrospectively abrogate vested rights, another is the presumption that proprietary rights are not taken away without provision being made for compensation.\" (Italics is mine for comments)

On the need to discourage a statute that is capable of retrospectively abrogating proprietary rights, I need only refer to

the decision of this court in the case of DIN v. Attorney General of the Federation (1988) 4 NWLR (Pt.87) 147, where it was held inter alia that statutes which encroach on the rights of a subject, be they personal or proprietary rights, attract strict construction by the courts; they are construed fortissime contra preferentes, if possible so as to respect such personal or proprietary rights.

Further, on the need to discourage retrospectively, the word \"shall be maintained\" as used in section 11 of Decree 25 (see for definition of the section at page 1 ante) it is my view that bringing to bear a strict interpretation to those words, they ought to be construed as having retroactive effect. In this wise, I adopt what Stroud\'s Judicial Dictionary relevantly says about the word \"maintain\". It states:

\"To maintain\" an ACTION is to support one which has already been brought (per Platt B. Moon v. Durden; 2 Ex. 22, cited BROUGHT) but the majority of the court in that case held that, though the Gaming Act, 1845 provided that no suit should he \"brought or maintained\" for the recovery of a wager, yet that was not enough to give the Act a RETROSPECTIVE effect so as to prevent a plaintiff, who had begun his action for a wager before the act was passed from going on with it after the passing of the Act. (Italics mine for emphasis)

While the majority decision accord with my view, it is merely persuasive. See also Halsbury\'s Laws of England 4th Edition paragraph 906, page 557 where the learned authors say:

Unless it is clearly and unambiguously intended to do so a statute should not be construed so as to interfere with or prejudice estab'lished private rights under contracts or the title to property or so as to deprive a man of his property without his having an opportunity of being heard; in particular, an intention to take away property without giving a legal right to compensation for the loss of it is not to be imputed to the legislature unless that intention is expressed in unequivocal terms.

See also section 40( 1)(a) and (b) of the 1979 Constitution which provides:

\"40.(1)No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:-

(a) requires the prompt payment of compensation therefor; and

(b) gives to any person claiming such compensation a right of \' access for the determination of his interest in the property ' and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

In a country where for over 24 years, Decrees passed by the Military Administration containing ouster clauses have been the rule rather than exceptions, to import into Decree 25 such a retrospectivity would, in my view, do violence to the legislature\'s intention and constitute a breach of the plaintiffs\' fundamental rights enshrined in the 1979 Constitution. See also:

1. Bello v. Diocesan Synod of Lagos (1973) ECSLR (Pt. 1) 330; (1973) A 3 S.C. 103; (1973) 1 All NLR (Pt.l) 249;

2. P eenok Investment Limited v. Hotel Presidential Ltd (1982) 12 S.C. 1 at 25.

Finally, when it is known that the writs bringing to life the two consolidated actions from which the appeal herein emanated in 1987 and that Decree No. 25 was promulgated in 1991, under no pretext, guise or guile ought section 11 of the Decree to affect rights, equitable or legal that had accrued before the Decree came into force. In other words, retrospectivity ought not to be allowed to fetter such rights unless unequivocally provided for. Fortunately, the Decree makes no such express provision and all I have to do is to give it its ordinary meaning. My answer to both issues 3 and 5 is in the negative

ISSUE 4:

Learned Senior Advocate for the defendant has submitted on this issue which asks;

'Does the proviso to section 11 create any ambiguity or alter or affect the meaning of section 11 in any way'\"

that it is meant to make the meaning of section 11 of Decree 25 clearer. That this must be so, he argues, is because

(i) The proviso is designed to exclude from the operation of the main body of section 11 two specific cases which fall within the class affected by the operation of section 11.

(ii) Both minors and persons suffering from mental illness are persons who lack legal capacity to hold land; but whose properties are held legally on their behalf by Trustees appointed by the courts or under the authority of the laws of the land and who hold legal estates on behalf of the beneficial owners the infants and persons of unsound mind.

(iii) Without the proviso to section 11, children and persons suffering from mental illness whose property are held on their behalf by Trustees who have the legal estate, would be unable to enforce their rights as beneficial owners by court action because of the provisions of the body of section 11 which bars their rights.

(iv) It follows that the main body of section 11 is designed and intended to bar the right of action of beneficiaries in all other cases in which shares in the bank are claimed to be held by one person as Trustee for another.

With utmost due respect to learned counsel for the defendant, this submission on the proviso cannot be absolute, lacking as it does, the unqualified authority attributed to it. The reason is that the court will not modify, enlarge or contract the scope and meaning of any enactment merely because of the proviso to that en'actment. It was Lord Herschell who put it lucidly and unambiguously in the case of Western Derby Union v. Metropolitan Life Assurance Society (1897) A.C 647 H at pages 655 to 656 thus:

\"I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in any proviso. Of course a proviso may be used as a guide in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous, and for this reason; one knows perfectly well that it not unfrequently happens that persons are unreasonably apprehensive as to the effect of an enactment when there is really no question of its application to their case; they nevertheless think that some court may possibly hold that it will apply to their case , and they suggest if it is not intended to be applicable no harm would be done by inserting a proviso to protect them; and, accordingly, a proviso is inserted to guard against the particular case of which a particular person was apprehensive, although the enactment was never intended to apply to his case, or to any other similar cases at all.\"

Commenting on the views expressed by Lord Herschell, Lord Davey declared at page 657 as follows:-

\"My Lords, it seems to me that the whole argument of the appellants really comes to the old and apparently ineradicable fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained E in it, by what is called implication from the language of a proviso which may or may not have a meaning of its own. I entirely agree with what has fallen from my noble and learned friend opposite (Lord Herschell) upon this subject.\"

Since the provisions of section 11 of Decree No.25 are in themselves \"precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case,declare the intention of the law giver..... ..\"See the celebrated Peerage Case (1843-60) All E.R. 54 at 63 (per Tindal, CJ.)- While I am therefore not persuaded to hold, as did the learned trial Judge, that an ambiguity resulted in the interpretation of section 11 of Decree No.25 (ibid), I am nonetheless satisfied that that section does not bar the claims of the plaintiffs from being maintained against the defendant. This is because, inspite of Mr. Ladi Williams\' concession that \"we cannot maintain a suit or proceeding on the ground that the title of the said shares vests in us,\" connoting that:

(i) The defendant is the registered holder of the shares;

(ii) The shares are vested in the defendant:

(iii) The defendant holds the shares in trust for the plaintiffs;

that concession presupposes that the defendant is amenable to the plaintiffs\' direction. Once the defendant denies accountability that the plaintiffs are the beneficial owners or the semblance of such a conduct to wit: that

(a) the ground upon which the plaintiffs inter alia claim Rectification of the Register of Members of the Company that the shares do not truly belong to the defendant (in whose name they are registered) but in the plaintiffs;

(b) the ground upon which the plaintiffs claim a declaration that the defendant holds the shares as Trustee for them and that they and not him are the true owners of the shares

the jurisdiction of the trial court to look into the matter from the date the enactment took effect, which I hold should operate prospectively, ought not, in my respectful view, to be ousted. In the light of this, the conclusion arrived at by the court below to the effect that

\"It is my respectful view that to that extent the jurisdiction of the court is not ousted as the respondents are not seeking to maintain a suit or proceeding against the appellant that the title of the shares are not vested in him\"

cannot, in my opinion, be faulted and should be allowed to stand along with other conclusions arrived at by it.

The result of all I have been saying is that the decisions of the two courts below being clearly concurrent findings which this court by a long line of decided cases has always held it will be loath to interfere with unless the appellant can show special circumstances either that there was a miscarriage of justice or serious violation of some principles of law or procedure or that the findings are erroneous, i.e. error in substantive or procedural law .

1. Lokoyi v. Olojo (1983)8 S.C. at 73; (1983) 2 SCNLR 127;

2. Ezewani v. Onwordi (1986) 4 NWLR (Pt.33) 27;

3. Lamai v. Orbih (1980) 5-7 S.C. 28 and

4. Balogun v. Amubikahun (1989) 3 NWLR (Pt. 107) 18, to mention

but a few, I will decline to disturb the decision in the instant case.

Finally, the case in hand being an interlocutory appeal where care and caution ought to be exercised not to make comments or findings which may have the effect of affecting the merits of the case or remove the substratum thereof, the less said about the claims disclosed in the parties pleadings which ought to be kept more or less sacrosanct before hearing is embarked upon, the better. See Obeya Memorial Hospital v. Attorney-general of the Federation (1987) 3 NWLR (Pt. 60) 325.

For these reasons and those given by my learned brother Kutigi, J.S.C., with which I had signified my concurrence, I will myself dismiss this appeal and affirm the decisions of the two courts below. The case is remitted to the trial court for the parties to continue with the hearing thereof. I award N1000.00 costs to the plaintiffs/respondents.

Judgement

Delivered by

Yekini Olayiwola Adio J.S.C

The respondents, as plaintiffs filed an action, Suit No. LD.845/87 against the appellant in the Lagos High Court. Their claim, as stated in their Amended Statement of Claim, was as follows:

\"(1) A declaration that the 2,400,000 shares and the Bonus Script and other shares attached thereto standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of .the plaintiff or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The appellant filed an Amended Statement of Defence and a counter-claim. For the present purpose, it is sufficient to state that the counter-claim was as follows:-

\"46. Whereupon the defendant by way of counter-claim claims against C the 2nd plaintiff the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

Subsequently, the 2nd respondent alone, Dr. Olusola Saraki, instituted another action, Suit No. LD/938/87, in the same court against the appellant and, according to the Amended Statement of Claim, the claim was as follows:-

\"(1) a declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the E aformentioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as

(4) An order for rectification of the Register of Snares to give effect to F any judgment delivered herein.

(5) An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the

plaintiffs behalf.\"

The Second Amended Statement of Defence filed by the appellant contained a counter-claim as follows:-

(i) A declaration that of the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice,

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

The two suits were consolidated and hearing had commenced and had gone on for some years before the appellant, at a certain stage, filed an application which was based on section 11 of the Banks and Other Financial Institutions Decree 1991 that was promulgated in June 1991, for an order '

'Striking out the consolidated suits herein on the ground that this Honourable Court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the defendant/ applicant.\"

In order to enable one to fully understand the issues involved, it is necessary to set out the provisions of section 11 of the Banks and Other Financial Institutions Decree 1991. The provisions are as follows:

\"11. Notwithstanding anything contained in any law or in any contract or instrument, no such or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from mental illness.\"

The learned trial Judge after consideration of the evidence before him and the submissions of the learned counsel for each party, dismissed the application. He held that the provisions of section 11 of the Decree appeared to be capable of being interpreted in two ways and that the question whether the appellant held the shares in question in trust for both or one of the respondents was yet to be determined. On the whole, he stated, inter alia, as follows:-

If section 11 had been unambiguous, I can only take the intention of the law maker from the words, they have used in the provision. In the face of two possible constructions it is the duty of the court not only to E avoid unreasonable, artificial or anomalous construction but to adopt the more reasonable construction and hold that section 11 is intended to protect the title or the legal title of a registered shareholder in the bank. It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. I do not find that section 11 bars this suit or other proceeding F based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.

Dissatisfied with the ruling of the learned trial Judge, the appellant appealed to the Court of Appeal which dismissed the appeal. The only issue for determi'nation in this case formulated by the learned counsel for the respondents was as follows:

Whether the claims contained in the statement of claim in this action can, strictly be regarded, be (sic) described or categorized as a claim by the plaintiff or either of them that the title to the shares registered in the name of the defendant vests in them or either of them rather than in the said defendant.

The court below pointed out that the issue before it was the correct interpretation of section 11 of the Banks and Other Financial Institutions Decree 1991, No. 25 of 1991, and applying the said interpretation to the claims in this case so as to determine whether the learned trial Judge had jurisdiction to deal with this case or not. It also pointed out that the provision was a provision that ousted the jurisdiction of the court to entertain certain matters in regard to shares in a bank and that, for that reason, the provision should be construed strictly. The court below then went on:

Thus, if any person brings an action in any court to say that title of the shares in a bank registered in A\'s name does not vest in A but in B, the jurisdiction of the court is ousted from entertaining such action. The registration of the shares of a Bank in the name of a person is absolute as to the person in whom the title to the shares vests. The Decree is clear on this and gives no room for argument or speculation. The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (D). The Decree is silent on this. In interpreting a statute, a court does not import into it that it did not say. The Decree talks of title or a person registered as holder. It does not talk about beneficial interest in the said shares or whether the person in whom the title vests can or cannot hold the shares in trust for another person.

The present suit does not challenge or deny that the appellant is the registered holder of the shares in question or that the shares are vested in him. No. What I understand him to be saying is- \'I concede that the shares are vested in you but you hold it (sic) in trust for me. It is my respectful view that to that extent the jurisdiction of the court is not ousted as the respondents are not seeking to maintain a suit or proceeding against the appellant that the title to the shares is not vested in him. I therefore hold that the court below has jurisdiction to continue the consolidated suits which is the subject of this appeal.

Dissatisfied with the judgment of the court below, the appellant has lodged a further appeal to this court. The parties have, in accordance with the rules of this court, duly filed and exchanged briefs. The appellant filed the appellant\'s brief

which was amended with the leave of this court. The respondents filed a respondents\' brief and the appellant filed a reply brief. The five issues for determination formulated in the appellant\'s brief are as follows:

(1) Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

(2) Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

(3) Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to the fact that the plaintiffs who had accepted the defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

(4) Does the Proviso to section 11 create ambiguity or alter or effect the meaning of section 11 in anyway'

(5) Did not what the learned trial Judge said amount to accepting the case made by the defendant'\"

The respondents formulated only one issue for determination in their brief. In their view, the question for determination in this appeal as in the courts below involved a decision as to whether Decree 25 had effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in a bank. Some of the questions raised hi this appeal can be dealt with straightaway B in that they are covered by well-established legal authorities. One is that when an objection is taken that a court has no jurisdiction to hear or to continue the hearing of a suit, only the averments in the Statement of Claim of the plaintiff are relevant for the determination of the question. SeeAdeyemi v. Opeyori, (1976) 9-10 S.C. 31. The other is that an objection that a court has no jurisdiction to entertain a matter or an action is very fundamental. It can be raised at any stage of the proceedings in the High Court, Court of Appeal and in this court by the parties or by the. court. See Oloriodev. Oyebi (1984) 1SCNLR 390; (1984) 5 S.C. 1; and Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508. So, there was nothing wrong with the consideration of it by the court below especially when, in this case, the determination of the question was a main or vital issue.

The learned Senior Counsel for the appellant, in relation to the question raised under the third issue, referred to the statement made by the learned counsel for the respondents, Mr. Ladi Williams, when he was making submissions in the court of trial, and the learned senior counsel for the appellant submitted that the learned trial Judge and the court below should have granted the appellant\' s prayer in his application as the respondents who had accepted the appellant\'s main contention on the effect of section 11 of the Decree were unable to sustain the only proposition which they advanced in response to the appellant\'s argument. The alleged submissions of Mr. Ladi Williams, which were not disputed during the proceedings before us, may be classified into two paragraphs as follows:

the first point I propose to urge on the court is that we are not and do not want to be misunderstood that we are challenging the fact that the defendant is registered as the owner of the shares in F S.G.B.N. We concede the point. We also say that the title to the shares are in the defendant.

A close perusal of section 11 shows that what the section is talking about is maintaining proceedings or suit against the holder of the shares i.e. in whom the shares vest. In other words, we cannot maintain a suit or proceeding on the ground that the title to the said shares vests in us. What we are saying is that, this is not to be interpreted to mean where you have a cestui qui trust or beneficiary claiming under a trust, such beneficiary cannot direct the person in whom title vests how to deal with the shares and dividends attached thereto.

It was further submitted by the learned senior counsel for the appellant that the point on which the parties to this suit disagreed was clearly set out in the last sentence in the submissions of Mr. Ladi Williams in the second paragraph above.

In the case of the respondents, the submissions made for them was that the question for this court to determine was whether the claims contained in the Statement of Claim in this action (or any of them) could strictly be regarded, described or categorized as a claim by the respondents or either of them that the title to the shares registered in the name of the appellant vested in them or either of them rather than in the said appellant. It was argued that the Decree only precluded the court from determining a dispute as to whether title to a share vested in A (who was not the registered holder) or in B (who was the registered holder). It was conceded, on behalf of the appellant, that the Decree treated the fact that B was the registered holder of the shares as conclusive evidence of his title thereto though the Decree in no way precluded the court from deciding a claim by A that B held the shares registered in his (B\'s) name in trust for A. It was also submitted that the meaning of the relevant provisions of the Decree canvassed by the respondents should be adopted because a statute should not be interpreted in a way that would enable it to be used as an instrument of fraud.

In my view, the relevant question, in the present connection, is whether all or any of the reliefs claimed in both consolidated suits could be regarded, described or categorized as a claim by the respondents or either of them that the title to the shares registered in the name of the appellant vested in them or either of them rather than in the said appellant. This is the first aspect of this case which is whether all or any of the reliefs aforesaid came within the category of matters in relation to which an action could not be maintained. The second aspect, which will be dealt with later, is whether the Decree has a retrospective effect. I have already set out above the reliefs claimed in each of the consolidated suits. If the respondents had specifically claimed that they or any of them or any person, other than the appellant, owned the shares in question and, for that reason, they or any of them or that other person should be substituted and registered as the shareholder or shareholders, as the case might be, in place of the appellant, the situation would have been simple and straight forward; the action could not be maintained by virtue of section 11 of the Decree. In order that the provisions of sections 11 of the Decree may apply, there need not really be such a specific claim. It will be enough, whatever way in which the claim, against the registered holder of shares in a bank, is framed or presented, if the basis or the ground upon which the claim is in reality based is that the title to the shares is vested in any person other than the registered holder. Bearing the foregoing principles in mind, I now proceed to examine each of the reliefs claimed by the respondents. In doing so, I take into consideration the averments in the pleadings of the respondents in each of the consolidated suits. Also to be taken into consideration is the fact that by being registered as

a holder of shares in a company the registered holder becomes entitled to certain rights, benefits and privileges. Excepts as otherwise provided by the law and the provisions of the Memorandum and Articles of Association of the company, he has the right to sell, Mortgage or otherwise dispose of the shares. He is entitled to receive dividends on the shares registered in his name and to keep the dividends so received for his own use. Dividend is the payment made out of profits to the shareholders of a company from time to time. In other words, the essence of being registered as owner or a holder of shares in a company is that one is, inter alia entitled to enjoy in one\'s right the foregoing rights, benefits and privileges. Where the situation is that the person who is the registered holder of shares in a company holds the aforesaid shares in trust for another person, all the rights, benefits and privileges can no longer be for his benefit. He may not sell, mortgage or otherwise dispose of the shares without the consent of the beneficiary or keep the money received as dividends for his own personal use. The aforesaid shares are in law and in fact owned not by him personally but by the beneficiary who, in his own right, is entitled to demand payment to him by the trustee of all moneys received as dividends on the shares. The beneficiary may also, in a proper case, demand that the shares be sold and the purchase price be handed over to him(beneficiary). In the circumstance, the relief claimed in item (1) of the respondents\' claim in each of the consolidated suits for a declaration that a certain number of shares, bonus, script and other shares attached thereto standing in the name of the appellant in the register of shareholders of the bank was held by him in trust for the respondents or alternatively for the 2nd respondent is, prima facie, caught by the provision of section 11 of the Banks and other Financial Institutions Decree 1991. The situation is the same in the case of the relief in item (2) of the respondents\' claim in each case of the consolidated suits, for an order directing an inquiry into the amount of any dividend which might have been received by the appellant as holder of the shares in question up to the date of the judgment herein. The situation is also the same in the case of the relief in item (3) of the respondent\'s claim in each of the consolidated suits for an order of injunction restraining the appellant from holding or dealing with the shares in question otherwise than as trustee for the respondents and in accordance with the lawful direction of the respondents or the appropriate authorities. The relief claimed in item (4) of the respondents\' claim in each of the consolidated suits was clearly caught by the provisions of section 11 of the Decree. It was for an order of rectification of the register of shares to give effect to any judgment herein. The said relief clearly showed the real intention of the respondents that what was intended was to deprive the appellant of all the rights, benefits, privileges and other things which his registration as holder of the shares conferred on him. Section 11 of the Decree does not apply to item (5) of the respondent\'s claim in Suit No. LD/938/87 for a refund of the money held by the appellant on the respondent\'s behalf and items (1) and (2) of the counter-claim in Suit No. LD/845/ 87 but the provision of the section applies to item (1) and (2) of the counter-claim in Suit No. LD/938/87. The legal position in the case of the reliefs set out in the items in the claims or counter-claims in the consolidated suits, to which the F provisions of section 11 of the Decree, prima facie, applies, is as if it were in fact that the title to the shares in question, which were registered in the name of the appellant, vested in the respondents or either of them rather than in the appellant. The aforesaid claims and counter-claims in the consolidated suits could, in reality, be regarded or categorized as a claim by the respondents or either of them that the title to the shares, registered in the name of the appellant, vested in them or either of them rather than in the appellant. I have already quoted above the statement or submission credited to the learned counsel to the respondents in the trial court, Mr. Ladi Williams. If, as submitted by him, the respondents should not be misunder'stood that they were challenging the fact that the appellant was registered as the owner of the shares in S.G.B.N. and if the respondents conceded the point and also said that the title to the shares was in the appellant and that they could not maintain a suit or proceeding on the ground that the title to the said shares vested in him, then the aforesaid reliefs in the consolidated suits which, according to me, were, prima facie, affected by section 11 of the Decree were misconceived. The registration of the appellant as a holder of the aforesaid shares was unconditional. He was registered as a holder of the shares in his own right. A suit seeking to convert his registration as a holder of the shares in S.G.B.N. unconditionally as an absolute owner in his own right to a holder of the shares as a trustee for the respondents or either or of them is a suit being maintained against the appellant, a person registered as the holder of the shares in question in S.G.B.N., on the ground that the title to the shares vested in the respondents or either of them. That was, in reality, what the consolidated suits were. The question whether, since the consolidated suits were instituted in 1987, section 11 of the Decree applied to them is another matter which will be dealt with hereunder.

With reference to the contention that the implication of holding that section 11 of the Decree applied to the claims and counter-claimed mentioned above would be that shares of a bank could not be held by a registered holder in trust for a beneficiary, the relevant question is whether the provision of the section is clear on the point and I have no doubt in my mind that it is. If the law-makers, in their wisdom, thought, that that was what they wanted and made specific provisions which were clear on the point it is not the court\'s duty or business to try to avoid the consequences. See Aya v. Henshaw, (1972) 5 S.C. 87 at p. 95. So, what the court should do, in the circumstance, is to limit itself to the interpretation of the law. What the law should or should not be is outside the function of the court. See D Abioye v. Yakubu,(l991)5 NWLR (Pt. 190) 130. Consequently, if the law-makers made it clear in the law made by them that they did not like an arrangement whereby shares of a bank are held, by a registered shareholder of the shares, in trust for another person and, in order to discourage the practice, further provided, in clear-terms, restrictions of legal proceedings in respect of shares purportedly held in trust for another person as had been done in section 11 of the Decree, the court will give effect to the legislation.

The next question for consideration is whether retrospective effect should be given to the provision of section 11 of the Decree. The view of the court below was that the learned trial Judge had jurisdiction to continue proceedings in relation to the consolidated suits which in effect meant that the provision of the section did not have retrospective effect so as to make it affect the consolidated suits instituted in 1987. The submission made for, the appellant was that the effect of the use of the word \"maintained\" in the provision of the section was that its operation was retrospective and it affected the consolidated suits.

The date of commencement of the Decree, as stated in the marginal note in it, was 20th June, 1991. The date of commencement of a statute is the date that it comes into operation. In the circumstance, the date on which the Decree itself, which included section 11 thereof, came into operation was the 20th June, 1991. There was nothing in the Decree to the effect that the Decree or any part or section thereof shall be deemed to have come into operation on a date earlier than the date of commencement stated in the Decree. Also, there was no provision in the Decree that actions or proceedings on matters to which the provision of section 11 of the Decree applied, which were pending in courts on the date of commencement of the decree, should abate or be discontinued. If it is intended by the lawmaker that any part or section of a statute should come into operation on a date earlier than the date of commencement of the statute itself provision to that effect will be made in clear term. Section 331 of the Constitution of the Federal Republic of Nigeria, 1989, provided that the constitution should come into force on the 1st day of October, 1992. It was, however, provided in section 3(2) of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1989, No. 12 of 1989, that notwith- A standing section 331 of the constitution, where circumstances so warrant, the president might, by order, appoint a date earlier than 1st October, 1992 for the coming into force of any of the provisions of the Constitution specified in the order. Where an issue arises upon proceedings before the court, the jurisdiction of the court to dispose of that issue can only be ousted by plain words. See Attorney-General v. Boden, (1912) 1 KB 539. Further, statutory provisions should not be given retrospective effect unless where it is clearly stated that they should have that effect. See Udoh v. Orthopaedic Hospital Management Board, (1993) 7 NWLR (Pt. 304) 139. The question then is whether it was clear from the provisions of the Decree or the provisions of section 11 thereof that the provisions of section 11 were to have retrospective effect. Those who contended that the provisions of section 11 were retrospective based their contention on the use of the word \"maintain\" in the section which, according to the definition in the Black\'s Law Dictionary, 5th edition meant, inter alia, continue, keep in existence or continuance, sustain, keep from collapse a suit already began. It, however, was also stated in the said Dictionary that to maintain an action or suit might mean to commence or institute it. Further, in Moon v. Durden, 2 Ex. 22, the majority decisions was that the use of the words: \"brought or maintained\" was not sufficient to make the Gaming Act, 1845 have a retrospective effect. It could well be that the meaning to be given to the word \"maintained\" depends on the context in which the word is used.

The foregoing is not all. It was the word \"maintained\" that was used in section 11 of the Decree. It cannot reasonably

be said that it meant: \"shall be brought\" and at the same time also meant \"shall be continued\" which are distinct and separate expressions. If it is held that the word \"maintained\" meant \"continued\" then actions commenced before the date of commencement of the Decree (20th June, 1991) will be affected by section 11 of the Decree but those commenced after the date of commencement of the Decree (20th June, 1991) will not be affected. On the other hand, if the word \"maintained\" meant \"shall be brought\" then action instituted on or after the date of commencement of the Decree (20th June, 1991) will be affected by the provisions of section 11 of the Decree but those instituted, like the consolidated suits, before the date of commencement of the Decree will not. The interpretation which may have the effect of making section 11 of the Decree have a retrospective effect will be absurd as it cannot be reasonably inferred that the law makers intended that suits instituted before the date of commencement of the Decree should be affected and those instituted after the date of commencement should not be affected. That sort of situation will be absurd. A statute is not to be construed in such a way that it will manifestly lead to absurdity. See Udoh\'s case, (supra). Further, the right of the subject to have access to the courts may be taken away or restricted by statute, but the language of any such statute will jealously be watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. See Halsbury\'s Laws of England, Vol. 9, p.353,3rd. ed. The conclusion to which I have come is that the provision of section 11 of the Decree applies only to suits or actions brought on or after the 20th June, 1991, which was the date of commencement of the Decree, because it does not have a retrospective effect. It is only on this ground that I hold that section 11 of the Decree did not affect the consolidated suits which has been instituted since 1987 before the Decree came into force. I, therefore, agree, for different reasons which I have just stated above, with the conclusion reached by my learned brother, Kutigi, J.S.C., in the lead judgment which he has just delivered.

Consequently, I too dismiss the appeal and, for different reasons stated in this judgment, affirm the judgment of the court below. Case is remitted to the High Court of Lagos State for the proceedings therein to continue. I abide by the order for costs in the lead judgment.

Judgement(Dissenting)

Delivered by

Michael Ekundayo Ogundare J.S.C

This is a further appeal to this Court against the judgment of the Court of Appeal Lagos Division, Coram; Sulu-Gambari, Tobi and Ubaezonu, JJ.C.A. That Court had dismissed the appeal to it of the defendant, N. A.B. Kotoye against the ruling of the High Court of Lagos State, Thomas J., that his jurisdiction to continue the hearing of the plaintiffs\' suit before him had not been ousted by Section 11 of the banks and other Financial Institutions Decree No. 25 of 1991.

The Plaintiffs, Mrs.F.M. Saraki and Dr. Olusola Saraki had in Suit No. LD/ 845/87 instituted in 1987, claimed from the defendant as per their amended Statement of Claim the following reliefs:

\"(I) A declaration that the 2,400,000 shares and the Bonus, Script and other shares attached thereto standing in the name of the Defendant in the Register of Sharesholders of Societe Generate Bank (Nigeria) Limited is held by him in trust for the Plaintiffs (or alternatively) for the 2nd Plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the Defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the Defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the Plaintiff and in accordance with the lawful direction of the Plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of shares to give effect to any judgment delivered herein.\"

The defendant in a counter-claim in return claims against the 2nd plaintiff as per paragraphs 46 and 47 of his amended Statement of Defence and Counter claim, as hereunder;

\"46. Whereupon the Defendant by way of counter-claim claims against G the 2nd Plaintiff the sunvof N730,000.00 being money advanced to the 2nd Plaintiff or to his order at his request.

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\" In Suit No. LD/938/87 Dr. Olusola Saraki alone claimed against the Defendant N.A.B. Kotoye, as per his 2ndamended Statementof Claim, the following reliefs:

\"(1) A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or A dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

(5) An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

The Defendant for his part counter-claimed against Dr. Saraki as per his 2nd further amended Statement of Defence and counter-claim:

(i) A declaration that of the N6,876,840 shares standing in the name of the Plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the Plaintiff beneficially but upon trust for the Plaintiff and the Defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An Injunction restraining the Plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

At the close of pleadings the two suits were consolidated and proceeded to hearing. In the course of hearing the Banks and Other Financial Institutions Decree was, in June 1991, promulgated. Thereupon in March 1992 the defendant filed an application praying for an order of the trial High Court.

Striking out the consolidated suits herein on the ground that this honourable Court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the Defendant/Applicant.

The application which was supported by an affidavit was contested by the plaintiffs. In a ruling the learned trial Judge found:

In the fact of two possible constructions, it is the duty of the court not only to avoid unreasonable artificial or anomalous construction but to adopt the more reasonable construction and hold that Section 11 is intended to protect the title or the legal title of a registered share holder in the bank. It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. / do not find that section II bars this suit or other proceeding based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The questionof whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken. The learned defence counsel had pointed out in his reply that the claim in Suit No. LD/938/87 is unaffected in any way by this motion. This is a relief for refund of the balance of certain sum allegedly held by the defendant in the plaintiffs behalf therein. I agree with him.\" (Italics mine)

On appeal to the Court of Appeal, that Court after stating, correctly, in my respectful View the issue before it in these words

The issue before the Court is the correct interpretation of Section 11 of the Banking and Other Financial Institutions Decree No. 25 of 1991 and applying the said interpretation to the claims in this case so as to determine whether the court below has the jurisdiction to continue the case or not.

went on later in its lead judgment, per Ubaezonu J.C.A. to say -

\"The only issue in this case is whether A in whose name the shares B are registered can hold the same in trust for a third party (D). (Italics mine)

It then concluded that the trial High Court had jurisdiction to continue the consolidated suits, subject matter of the appeal and dismissed the appeal.

The defendant in his further appeal to this Court filed six grounds of appeal and in his amended brief of argument set out 5 issues that is to say:

(1) Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

(2) Did the refusal by the Court of Appeal to consider the eight issues formulated by the Defendant/Appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

(3) Was not the learned trial Judge obliged to accede to the Defendant\'s prayer on the application having regard to the fact that the plaintiffs who had accepted the defendant\'s main contention on the effect of Section II of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

(4) Does the proviso to section 11 create ambiguity or alter or affect the meaning of Section 11 in anyway'

(5) Did not what the learned trial Judge say amount to accepting the case made by the defendant'\"

The plaintiffs for their part set out in their Brief one question as calling for determination in this appeal and that is:

\"..... the question for determination in this appeal as in the courts below involves a decision as to whether Decree 25 has effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in a bank.\"

In my respectful view having regard to the application brought by the defendant before the trial High Court, the main question for determination in this appeal is as to whether or not the trial court could continue with the hearing of the Plaintiffs\' suits before it having regard to the provisions of Section 11 of Decree No. 25 of 1991.

As rightly pointed out by Chief Williams, S.A.N. in the plaintiffs/respondents\' brief in determining the question posed above by him, it is the Statement of Claim alone that must be looked at. Chief G.O.K. Ajayi S.A.N. conceded at the hearing of this appeal as much. I shall in the course of this judgment have regard to the penultimate paragraphs of the plaintiffs\' pleading in the two suits. Let me begin by setting out Section II of the Decree the correct interpretation of which is the crux of this appeal. Section II provides:

\"Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other A than the registered holder:

Provided that nothing in this section shall bar a suit or other proceeding on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\" (Italics mine)

It is the contention of the defendant, both in his brief and in his counsel\'s submissions, that the section restricts the right of the plaintiffs of access to the court in respect of the reliefs sought in Suit No. LD/845/87 and in the 1st four of the reliefs sought by Dr. Saraki the only plaintiff in Suit No. LD/938/87 and that, therefore, the court\'s jurisdiction to continue with the hearing of the consolidated suit is ousted. For the plaintiffs\' the main submission is that, although the Decree bars access to the court by a person who challenges the registered holder of a share in a bank on the ground that the title to the said share vests in someone else than the registered owner, it does not preclude a beneficiary in a trust where the property subject to the trust are shares in a bank, from suing the trustee.

I have given careful consideration to the submissions made on behalf of the parties by their respective leading counsel. The issue here relates to the correct interpretation of a Statute that restricts the citizen\'s right of access to the courts. At the stage at which the defendant brought his motion the duty before the trial High Court was to determine whether or not its jurisdiction has been ousted by Section 11 of the Decree. The principle that has been settled in a long line of cases in this country and other Common Law jurisdictions is well set out in the words of Nnaemeka-Agu,J.S.C. in Nwosuv.Imo State Environmental Authority and Others (1990) All NLR 379 at page 396; (1990) 2 NWLR (Pt. 135) 688.

\"The court had to be guided by the principle that every superior court of record guards its jurisdiction jealously. So, while

a person\'s access to have his civil right adjudicated upon by a court may be restricted or ousted by statute, the language of such a statute must be construed strictly. But once, with such an approach, it is clear that an ouster or restriction of the jurisdiction was intended and that, from the facts of the particular case, it comes squarely within the four corners of the statute, the court has no alternative but to hold that its jurisdiction has been ousted. For, while a statute may provide that the jurisdiction o f a court has been ousted with respect to a particular cause, the court always has the jurisdiction to inquire whether on the facts and circumstances of the particular cause, its jurisdiction has infact been ousted or restricted: - See on this Wilkinson v. Banking Corporation (1948) 1 K.B.721 atp.725, C.A\"

Bearing this principle in mind, I shall now examine the claims before us to determine whether or not they are caught by the provisions of Section 11.

In Suit LD/845/87 the plaintiffs pleaded, inter alia, thus:

1. At all times material to this action each of the Plaintiffs and the Defendant are persons registered as shareholders in the Societe Generale Bank (Nigeria) Limited (which is hereinafter referred to as \'the Bank\') In addition the Defendant was the Chairman of the Bank.

2. The Defendant was a very close friend of the 2nd Plaintiff and his (2nd Plaintiff\'s) wife, who is the 1st Plaintiff and both Plaintiffs regarded and treated him (Defendant) as a person worthy of their trust and confidence,

3. The first Chairman of the Bank was the 2nd Plaintiff but he vacated that office on his election to the Senate of the National Assembly and nominated the Defendant to succeed him.

4. In or around 1984 the Nigerian Enterprises Promotion Board warned the Bank that unless the Nigerian shareholders, paid up their 60% shares in the Bank\'s Equity, the bank wouldte sealed up. At that time the number of shares alloted but yet unpaid for and held in the name of the defendant was 960,000 whilst that similarly held by the 2nd Plaintiff was 2,240,000. The total sum of money required to pay for the shares was thus N3,200,000 at the rate of N1 per share.

5. The second Plaintiff, although he was detained in prison by the military authorities, managed to arrange for the necessary funds to be made available. The total sum so made available was N4,000,000.00 and out of this sum payment was made for the N960,000 worth of shares in the name of the Defendant and N2,240,000 worth of shares for the 2nd Plaintiff.

6.(1) In view of the fact that the 2nd Plaintiff was in detention at the material time, the defendant advised that the 2,240,000 shares be E registered in the name of the 1st Plaintiff and they were so registered.

(2) Acting on the advice of the Defendant, the 1st Plaintiff executed two deeds of transfer (in duplicate) which were presented to her by the Defendant in 1985 in each of which the following were left blank:

(a) the amount of the price or consideration for the transfer;

(b) the name and address of the Transferee;

(c) the date of execution of the transfer;

(d) the signature of the Transferee; and

(e) the name, signature and address of the witness to the signature of the Transferee.

(3) It was the understanding of both the 1 st Plaintiff and the Defendant that at the appropriate time, the name of the 2nd Plaintiff will be inserted as Transferee.

7. As a result of the use of the money made available to the Defendant by the 2nd Plaintiff the Defendant was able to pay for

(a) 1,164,800 shares of N1 each for which share certificate No. 000025 dated 28.12.84 was issued to her, and

(b)1,075,200 shares of Nl each for which share certificate No. 000027 dated 31.12.84 was issued to her.

8.( 1) After signing the blank transfers relating to the said shares, the said transfers signed by the 1st Plaintiff were handed over to the Defendant for safe custody.

9. Differences have arisen between the Plaintiffs and the Defendant, and these differences eventually resulted in the resignation of the 1st Plaintiff and two other Nigerian directors of the Board of the Bank on 25th September, 1986. 10 At all times material to the aforesaid Board meeting of 25.9.86 and since that date, the Defendant was not on speaking terms with the Plaintiffs.

11. Acting without the authority of the Plaintiffs or either of them and in breach of the confidence reposed in him and also in breach of his fiduciary duties as agent or trustee of the 1 st Plaintiff, the Defendant fraudulently;

(i) and falsely inserted N 1,075,200.00 in words as the C amount of the price or consideration paid to the first plaintiff in two or at least one of the blank transfers kept with him and falsely inserted Nl, 164,000.00 in words as the amount of the price or consideration paid to the first plaintiff in the remaining two or at least one other of the said blank transfers;

(ii) entered his name and address on each of the blank instruments of transfer or on at least two of them as the Transferee;

(iii) and falsely inserted the 25th September 1986 as the date when the instruments of transfer were Signed sealed and delivered;

(iv) inserted his signature where the Transferee should sign; and

(v) inserted the name, signature ad address of one Adebayo Olawoyin as witness to his signature as Transferee.

12A. The price which the defendant inserted in the transfer forms was calculated at or below per value when the said shares were at all material times and to the knowledge of the defendant, worth more than par value and was certainly not worth below par.

12. By reason of the matters hereinbefore pleaded, the Defendant is accountable to the Plaintiffs (or alternatively the 2nd Plaintiff) as a trustee de son tort or as trustee or agent of the said Plaintiff of the aforesaid shares.

What these averments amount to is that the 2,240,000.00 shares in dispute in that suit belonged in fact to the 2nd Plaintiff who provided the money for their purchase but that the defendant fraudulently converted the said shares to himself and got himself registered as the owner of the said shares. This to my mind is a clear challenge to the defendant\'s ownership of the said shares.

I have examined the provisions of Section II very carefully. True enough because it seeks to restrict the citizen\'s right of access to the court, its provisions must be construed narrowly and strictly. But, as Nnaemeka-Agu, J.S.C. explained at pages 405 - 406 of the report in Nwosu\' s case (supra), this does not mean that the Section is to be interpreted capriciously. Nnaemeka-Agu had said, and I agree entirely with him:

I must advise myself that to construe a statute narrowly and strictly does not mean that the court should arbitrarily, in appropriate metaphor, wring a false meaning out of the language of the statute. Rather as applied to statutes generally, it means that the court should give a fair and natural interpretation to the statutory language as applied to the facts of the particular case and, not straining the meaning of the words unnecessarily but guided by certain prin'ciples, arrive at a reasonable construction. See Dyke v. Elliott. The Gauntlet (1872)L.R.4P.C. 184. Certain principles guide the court in such an exercise. If there should be any doubt, gap duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right: See London and Country Commercial Properties Investments Limited v. Attorney-General (1953) 1 All E.R. 436, at p. 441-442. If there is a reasonable Construction which will avoid the penalty in any particular case, the court will adopt that construction. Tuck and Sons v. Priester (1887) 19 Q.B.D. 629 atp. 638. If there is any doubt as to whether the person to be penalised or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt; I.R.C. v. Duke of Westminster (1936) A.C. 1 atp. 19. See on these Moxwe//.- On Interpretation of Statutes (12th Edn.) p.239. If after the above approach and the application of the above principles the person to be affected comes squarely and fairly within and is affected by the words the statute the court has no alternative but to apply it.

It has been argued that the plaintiffs are not challenging the fact that the defendant is the registered owner of the shares; what they say is that he is a trustee in respect of the shares whilst they particularly the 2nd plaintiff, are the beneficial owners of the shares. I see this argument rather ingenious. An examination of the claims and their pleadings will show clearly that what they set out to achieve is exactly what is covered by Section 11. Whether the defendant is a trustee-de-son-tort (or constructive trustee as such a person is usually called), or trustee or agent of the 2nd plaintiff in respect of the shares in dispute, - see paragraph 12 of the amended Statement of Claim, the substance of the plaintiffs\' case is to the effect that the defendant, although a registered holder\'is merely a notional or nominal owner of the shares while the 2nd plaintiff is the true owner. It therefore, cannot be said that the Plaintiffs are not disputing the title of the defendant, the registered holder of the shares in dispute, to the said shares on the ground that the shares truly belong to the 2nd plaintiff. Claim (1) Seeks a declaration which, if granted will hold out the plaintiffs or alternatively the 2nd plaintiff as the true owner of the shares as against the defendant who is a registered holder of the said shares. The view I hold is more reinforced, in my respectful view, by claims 2,3 & 4 which seek to vest the benefits and control of these shares in the Plaintiffs or alternatively the 2nd Plaintiff, thus making the defendant a mere notional owner and the 2nd plaintiff the substantive owner. Section 11, in my respectful view, is aimed against such a suit. In interpreting it, one cannot overlook the opening clause which reads:

\"Notwithstanding anything contained in any law or in any contract  or instrument\"

Indeed, every word of a statute must be considered in order to determine the true purport of the statute. Regrettably in this case it would appear that Chief Williams closed his eyes to the opening clause of section 1 1 in urging on us his interpretation of it. A construction which would leave without effect any part of the language of the statute will normally be rejected.

In Olatunbosun v. NISER Council (1988) 1 NSCC 1025; (1988) 3 NWLR (Pt80) 25, the expression \"notwithstanding\" came up for interpretation and it was there held by this Court that the expression \"notwithstanding\" is a term of exclusion. In interpreting section 4 of Schedule 2 to NISER Act, No. 70 of 1977 which reads:

\"4. Notwithstanding the provisions of the University of Ibadan Act 1962, or of any statutes made thereunder or any provision of this Decree but subject to such directions as may be issued by the Council, any person who immediately before the date of com'mencement of this Decree held office under the Old Institute shall be deemed to have been transfered to the New Institute established under this Decree on terms and conditions not less favourable than . those obtaining immediately before the commencement of this Decree; and service under the Old Institute shall be deemed to be service under the Institute established under Decree for pension purpose.\"

Oputa, J.S.C. delivering the lead judgment Of the Court in the case (with which the other Justices agreed) observed at page 1038 of the Report:

\"The expression \"notwithstanding\" is a term of exclusion. As used in Section 4 of Schedule 2 to Act No. 70 Of 1 977, it means that no provision of the University of Ibadan Act No. 37 of 1962, or any statute made under it, or any provisions of the Decree itself shall be allowed to prevail over the provisions of Section 4 of Schedule 2 above. These other provisions shall be no impediment to the measures outlined in the said Section 4 of Schedule 2. The only thing allowed to interfere with \'deeming service in the Old Institute to have been transferred to the New Institute\' is \'such directions as may be issued to the Council the New N.I.S.E.R./Council.\"

Applying this interpretation to the opening clause of section 1 1 , it is my respectful view, and I so hold, that trusts including the rights of beneficial owners or cestui qui trust are within the exclusion envisaged by that clause. This is made clear by the nature of a mist The learned authors of Snell\'s* Principles of Equity (27

edition) state thus, at pages 87-88:

\"1. Problems of Definition

(a) \'Trust\' No one has yet succeeded in an entirely satisfactory definition of a trust. In Underbill\'s Law of Trusts a trust is defined as \'an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestui qui trust), of whom he may himself be one, and any one of whom may enforce the obligation. But this is not altogether satisfactory, for it is not wide enough to cover trusts for purposes rather than persons. Trusts of chari'table purposes (e.g., for the repairs of a church or the prevention of cruelty to animals) may lack human ben'eficiaries who can enforce them.

Perhaps the most satisfactory definition is Professor B Keeton\'s: \'A trust..... is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui qui trust) or for some \'object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.\'

(b) Nature. Difficult, however, though it may be to give a simple yet satisfactory definition of a trust, it is easy enough to grasp the general idea of it, which is that one person in whom property is vested is compelled in equity to hold the property for the benefit of another person, or for some purposes other than his own. Thus it has been said, some what broadly, that \'all that is necessary to establish the relation of trustee and cestui qui trust is to prove that the legal title was in the plaintiff and the equitable title in the defendant.\' It is not however, always accurate to say that the trustee is the legal owner while the cestui qui trust is the equitable owner, for the interest of the trustee may be (and often is) equitable only, as where a beneficiary under a settlement himself makes a settle'ment of his interest while the legal ownership is still in the hands of the trustees of the former settlement, or for some other reason the legal estate is outstanding. It is therefore better to say that the trustee is the nominal owner of the property, while the cestui qui trust is the beneficial owner.\"

Chief Williams, for the plaintiffs, had argued in his Brief thus:

The case for the plaintiffs: The Decree, in plain terms, prohibits the maintenance of certain suits or other proceedings. The class of suits or proceedings affected are, in the exact words of the enactment -

\'Suit or other proceeding..... against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other JJ than the registered holder.

To put the point very shortly, the Decree only precludes the court from determining a dispute as to whether title to a share vests in A (who is not the registered holder) or in B (who is the registered holder). This is because the Decree, in effect, treats the fact that B is the registered holder of the shares as conclusive evidence of his title thereto. But the Decree in no way precludes the court from deciding a claim by A that B holds the shares registered in his (B \'s) name in trust for A. This is because, on a true analysis, it cannot be said that in such a case A would be questioning the title of B to the Shares on the ground that title is vested in someone other than B. What A would be saying is:

I do not dispute that title to shares are vested in B who is the registered holder thereof. But I ask the court to declare that he holds those shares in trust for me.

The fact that the Decree ought to be given this meaning is reinforced by the fact that it is a well established rule of construction that a statute should not be interpreted in a way that will enable it to be used as instrument of fraud. The meaning urged upon the court by the Appellant would be tantamount to saying that where, before the enactment came into force B has agreed to and accepted to hold shares in a Bank in trust for A, he is, by the enactment, authorised to treat those shares as his own beneficial property and keep dividends accruing therefrom for his own use. This is patently absurd that such a construction ought to be rejected. In this case the facts pleaded in the Statement of Claim are such that it would be highly scandalous to suggest that, if those facts are established, the defendant would be entitled to convert to his own use all shares bought with Plaintiff\'s money which he (defendant) had agreed to hold on trust for the Plaintiff. It is well established that in construing or interpreting a statute one must avoid a meaning which results in taking away private rights of property without compensation. On the facts of this case the Appellant\'s contention is that the enactment enables Kotoye to take the beneficial rights of Saraki for his (Kotoye\'s) benefit without having to pay a kobo for the bonanza.\"

Although this argument seems to find favour with some of my brethren, I must, with profound respect, disagree. I think there should be no room for sentiments in a matter concerning interpretation of statute. What the court should be concerned With is the meaning and intention of the legislation to be gathered from the plain and unambiguous expression used therein rather than from any notions which may be entertained as to what is just or expedient. As Sir Foster Sutton, F.C.A. put it in Ahmed v kassim (1958) SCNLR 28; (1958) NSCC 11, 12.

It seems to me beyond argument that the words: \'nor shall any such order be made, at any time after the expiration of one month from the publication of the result of the election of the member of the House of Assembly to which the petition relates, are clear and unequivocal, capable of only one meaning, that held by the learned trial Judge. In other words, they mean what they say, that no order shall be made after the stipulated period.

The underlying principle is that the meaning and intention of legis'lation must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained as to what is just or expedient.

That the legislative authority intended the result stated seems perfectly clear if regard be had to the fact that regulation 142(2) of the above-mentioned regulations expressly applies the Supreme Court (Election Pe'titions) Rules of Court, 1951, rule 4(1) of which requires an intending petitioner to apply by motion ex pane for an order as to the amount of security to be given by him, before he presents his election petition, and to avoid any delay in the hearing of the motion sub-rule (2) of the same rule provides that any such application shall, \'in respect of the right to priority of hearing by the Court, enjoy (save as prescribed in section 234 of the Customs Ordinance) precedence over all other proceedings, whether civil or criminal, and whether part heard or not.\"

And in OsoAya & anor. v. Emmanuel Daniel Henshaw & Anor. (1972)1 A11NLR C 25, at 30, Lewis J.S.C. delivering the judgment of this court stated:

Moreover when there is statutory provision it should, as we have often said, be given its ordinary natural grammatical meaning and here we do not see on that basis any justification for importing into the words contained in Order 56, rule 16 any limiting words that the Judge on appeal may only exercise his discretion with the fj consent of the parties. Where there is specific statutory provision it is certainly not the duty of any court to try to avoid its consequences and interpret it in such a manner as to fit it into English practice if it is in fact differently and clearly expressed, as to our mind Order 56, rule 16 is.

As argued by Chief Ajayi, learned leading counsel for the defendant, and rightly in my respectful view, section II only takes away a remedy but does not destroy the right. And this is not unusual legislation for that matter. Statutes of Limitations are examples of such legislations. Another example is the Solicitors Act. Construing Section 26 of the Act (6 & 7 Vict. c.73) Lord Romilly, M.R. in In re Jones 9 LR Eq. 63 67 said:

It is to be observed that the clause of the statue, being a penal p enactment, must be construed strictly. It does not apply to conveyancing, or to common law business. The question is, whether the want of the certificate puts an end to the debt, or only takes away the remedy. The distinction between destroying a debt and taking away a remedy is a familiar one, as in the case of the Statute of Limitations, where there is no means of recovering a debt after six years, and yet the debt is not extinguished. I am of opinion that in this case the debt is still subsisting, although the solicitor can take no steps to enforce its payment.

In Re jones, the client had taken out an order for taxation of his solicitor\'s bill of costs, with the usual submission to pay what should be found due, and the Taxing Master had disallowed certain items for business done while the solicitor\'s certificate had not been renewed, it was held that the solicitor was entitled to be allowed the item in question since it was the client that took out the order for taxation and not the solicitor and as the debt for costs in respect of business done while uncertificated, was not extinguished, but only the solicitor\'s remedy, Lord Romilly cited with approval the dicta of Willes, J. in Fullalore v. Parker 31LJ (C.P. 239, 240 thus:

If the attorney is really uncertificated he is not entitled to recover any costs; nor is the Plaintiff entitled to cover such costs from the Defendant, except in this case only - if the Plaintiff has made advances to the attorney, he cannot recover them back upon a condictio indebiti, as for money paid under a mistake; the attorney though uncertificated, is entitled to retain the money so advanced, and the Plaintiff would have a right to recover this amount from the Defendant.

and Byles, J.:

The objection has not been removed that part of this money may have been paid by the Plaintiff to his attorney, in which case it cannot be recovered back, and the Plaintiff would be entitled to have it repaid by the Defendant.

Lord Romilly concluded at page 68 thus:

I am of opinion that the debt was still due, and that the Act does not take away the right of the solicitor either to set off the debt, or to apply to its discharge money which was already in his hands, and the result is, that the bill must go back to the Taxing Master, with a direction that he is to tax the items which he disallowed by reason of the solicitor not being certificated.

In my respectful view, therefore, section II of the Banks and other Financial Institutions Decree is in the same category of such legislations where a person\'s right is not extinguished but only his remedy. Thus, in the case of a trust in respect of shares in a Bank, while a beneficiary\'s rights are preserved, his remedy of access to the court is taken away by the section. From the nature of trusts as discussed above coupled with the exclusion clause in section II, if interpreted as dictated by rules of construction the conclusion is inescapable that the section covers the kind of plaintiff\'s claims (1) - (4) in the consolidated suits.

It must always be borne in mind that the rule of construction is that words, phrases and sentences are to be construed in their ordinary and natural meaning. The duty of the court is to expound the law as it stands, and to \"leave the remedy (if one be resolved upon)\" to others - per Lord Birkenhead L.C. in Sutlers v. Briggs (1922) 1 AC 1,8. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. \"The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision\" - per Lord Morris of Borth-y-Crest in Shop and Store Developments Ltd. v. I.R.C. (1967) 1 AC 472,493. It was held in Cartledge v. E. Jophing & Sons Ltd. (1963) AC 758, and I agree with it, that where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however, harsh or absurd or contrary to common sense the result may be.

Example of literal construction are given in Maxwell on Interpretation of Statutes 12th edition at page 29 et seq. At page 29 the following passage appears:

It was repeatedly decided at law that the statutes of limitation which enacted that actions should not be brought after the lapse of certain periods of time from the accrual of the cause of action barred actions brought after the time so limited, even though the cause of action was not discovered, nor was practicably discover able, by the injured party at the date of accrual, and even though it was fraudulently concealed by the wrongdoer until the expiry of the statutory period. The hardship of such decisions was obvious, but the language was susceptible of no other interpretation.

There are limitations on the competence of a Judge to modify the language of an Act in order to bring it into accordance with his own views as to what is right or reasonable. The maxim is: Bonijudicis est dicere, non jus dare. As Willes J. put it in Abel v. Lee (1871) LR 6 CP 365, 371:

No doubt the general rule is that the language of an Act of Parliament is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy, or injustice. One recognises that rule where the repugnance arises between the words of the section to be construed and those of some other section in the same Act or in some other Act which is in pari materia with it. But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable. No such duty is imposed upon him.

In Young & Co. v. Mayor, etc. of Leamington (1882) 8 QBD 579; (1883) 8 App. Cas. 517, section 174 of the Public Health Act 187 5 required contracts entered into by a sanitary authority for a sum over '50 to be under seal. The plaintiff executed works approved by the defendants under the supervision of their engineer, and under a contract in writing with the engineer which was not sealed by the corporation. The Court of Appeal in England held that the defendants were not bound by the contract, although they had had the benefit of it, on the ground that to hold otherwise would be to repeal the enactment. Lindley LJ observed at page 585 of the first report:

\"The last point argued for the plaintiffs was, that as the contract has been performed and the defendants have the

benefit of the plain'tiffs\' work, labour and materials, the defendants are, at all events, liable to pay for these at a fair price.

In support of this contention, cases were cited to show that corporations are liable at common law, quasi ex contractu, to pay for work ordered by their agents and done under their authority.

The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a Court of Appeal. But in my opinion, the question thus raised does not require decision in the present case. We have here to construe and apply an Act of Parliament. The Act draws a line between contracts for more than 501., and contracts for 501, and under; contracts for not more than 501, need not be sealed and can be enforced whether Executed or not, and without reference to the question whether they could be enforced at common law by reason of their trivial nature. But contracts for more than 501, are positively required to be under seal, and in a case like that before us, if we were to hold the defendants liable to pay for what has been done under the contract, we should in effect be repealing the Act of Parliament and depriving the ratepayers of that protection which Parliament intended to secure for them. Frendv. Bennett is an authority in support of this A view, and was in my opinion rightly decided. The additional works there in question had been executed, and there was the common count for work and labour and materials, as well as a special count on the alleged contract, but the defendant was held not liable either at law or in equity.

It may be said that this is a hard and narrow view of the law: but my answer is that parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute, because it may lead to apparent hardship.

And in Coxhead v. Mullis (1878) 3 CPD 439, the defendant, during his infancy, promised to marry the plaintiff, and after coming of age, recognised without expressly repeating the promise, and eventually broke it. The infants Relief Act, 1874 section 2 came up for consideration. The section read:

\"no action shall be brought whereby to charge any person upon ..... any ratification made after full age of any promise or contract made during infancy .....\"

It was held that the section applied to promise of marriage and the plaintiff was non suited. On appeal, the order of non suit was upheld. Lord Coleridge, C.J. observed at pages 441-443:

\"It is admitted in this case that, if the Act does not apply, there is abundant evidence to fix the defendant, supposing he had been sued under the old law; therefore the question simply arises upon the recent statute. Now, the Act consists of two sections only. The 1st enacts that \'all contracts, whether by specialty or by simple contract, henceforth entered into by infants for the re-payment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. Then the 2nd section enacts that \'no action shall be brought whereby to charge any person upon any p promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there

shall or shall not be any new consideration for such promise or ratification after full age. The question is whether that does or does not apply to a case of breach of promise of marriage. The words of the 2nd section, I think, are quite sufficient to include such a promise. The argument was, that, as regards to 1st section, it is entirely confined to contracts entered into for the re-payment of money and goods supplied or to be supplied; and that the first part of the 2nd section confines itself entirely to promises made after full age to pay a debt contracted during infancy; and it is suggested that we ought to read the second part of the 2nd section as if it ran thus: \'or upon any ratification made after full age of any promise or contract made during infancy.

I believe this is the first time this section has had to be considered with reference to this matte. I should have gladly deferred to any judicial authority which could have been presented as throwing light upon the subject; but, in the absence of such authority, the tendency of my own mind, right or wrong, always is, to suppose that parliament meant what parliament has clearly said, and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ, and as to which decisions may vary. We may thus make that which is plain and simple enactment, -1 will not say inoperative, but - doubtful or obscure, if considerations are to be introduced into the construc'tion of it, when it is entirely uncertain whether they were present to the minds of the legislature when the enactment was made. Looking at this section, I find the words change their form, and I cannot accede to the argument of the plaintiff\'s counsel, without putting a word into the statute, viz, \'such\', which parliament has deliber'ately left out, and which I am not to assume that parliament has carelessly left out, meaning that the Judge should supply it. .Therefore, upon the best consideration I can give to the matter, I think this Act of Parliament does apply to breaches of promise of marriage. It certainly is a matter which in my judgment comes within the fair contemplation of the law with regard to infants. I see nothing to limit the words of the Act, and I hold, therefore, that the defendant is entitled to succeed.\"

I agree entirely with the views expressed by these eminent Judges on the duty of a Judge and the limits placed on him in the exercise of his interpretative jurisdiction of a legislation where the words of the statute are clear and free from ambiguity as in the case with section 11 of the Decree under consideration in this appeal.

It is suggested that a statute is not to be interpreted in a way that will enable it to be used as an instrument of fraud. It is my view that this canon of construction does not apply here where there is no ambiguity in section 11 - and this is generally accepted by both parties.

The conclusion I reach is that section 11 applies to bar plaintiffs from maintaining claims (1) - (4) in each of their suits. I need point out also that the same conclusion is reached in respect of similar claims in the defendant\'s counter'claims.

If there are any lingering doubts as to the extent of the extension clause in Section 11, such doubts, in my view, are cleared by the proviso which exempts p from the prohibition or restriction in the main enactment, trusts where a minor or a person suffering from any mental illness is a beneficiary. That the proviso can be resorted to in aid of interpretation of the main enactment is supported by authorities. In Nabhan v. Nabhan (1967) All NLR 51, 59 (reprint), Brett J.S.C. delivering the judgment of this Court had this to say:

In deciding this question the cardinal rule is to look first at the wording of the statute which is being construed, and if that

is found to be unambiguous it is neither necessary nor permissible to look further. If section 117(2) (a) of the Constitution stood alone the court would have to construe the words \'final decisions\' simply by ascertaining the meaning commonly given to those words in relation to appeals. But the subsection must be read as a whole, and paragraph (iv) of the proviso must be considered '

\'Provided that nothing in paragraph (a) of this sub-section shall confer any right of appeal '

(iv) in the case of a party to proceedings for dissolution or nullity, of marriage who, having had time and opportunity to appeal from any decree nisi in such proceedings, has not so appealed, from any decree absolute founded on such decree nisi.

A proviso admittedly cannot alter the plain meaning of the sub'stantive enactment; Anya and Others v. The State (1965) NMLR 62; but where words are reasonably susceptible of more than one meaning a Proviso may show which meaning they were intended to bear\" (Italics mine)

I need also refer to the speech of Lord Herschell in Western Derby Union v. Metropolitan Life Assurance Society

(1897) A.C. 647, 655-656 - a case cited by Chief Williams in his Brief were the learned and noble Lord said, inter alia:

I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in any proviso. Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because other'wise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous.

In Jennings v. Kelly ( 1 939) 4 All E.R. 464, 470, Viscount Maugham observed as follows:

In coming to his conclusion, Andrews L.C.J., was influenced by his view that the first part of the section was the operative portion of it, and that the proviso could not properly be used to explain the words as to increase of population in the operative part. He therefore relied on the principle of construction to be found in Western Derby Union v. Metropolitan Life Assurance Society. The principle is thus stated by Lord Watson, at p.652:

\"..... I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso.\"

I am sure that none of your Lordships would desire to depart from this principle where it is applicable - namely, where the enacting part of the section is unambiguous and complete and is followed by a true proviso (that is, a qualification or an exception out of it). In my view, that is not the case here, and, as Lord Herschell pointed out in the Western Derby Union case, at p.655: Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it.....\' My Lords, that is precisely the method of construction which, in my view, is applicable in the present case. I will add that the words beginning \"Provided that\" are, in my opinion, additional and explanatory words, necessary for the purpose of giving a more definite meaning to the preceding words - namely, for the purpose of removing doubt as to its scope - and they might easily have been incorporated in the earlier part of the section, at the risk of making it rather more cumbrous than it is, We are not dealing here with a true proviso, or, at any rate, not with such a proviso as this House was considering in the West Derby Union case. It cannot, I think, be disputed that, in construing a section of an Act of Parliament, it is constantly necessary to explain the meaning of the words by an examination of the purport and effect of other sections in the same Act. A number of striking examples will be found in MAXWELL ON THE INTERPRETATION OF STAT'UTES, 8th Edn., pp. 27, 28. This principle is equally applicable in the case of different parts of a single section, and none the less so because the latter part is introduced by the words \"provided that,\" or like words. There can, I think, be no doubt that the view expressed in KENT\'S COMMENTARIES ON AMERICAN LAW, 12th Edn., Vol. 1, p. 463, (cited with approval in MAXWELL ON THE INTERPRETATION OF STATUTES, 8th Edn., p.140 is correct:

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail.

Lord Wright at page 477 of the Report too, observed:

\"It is said that, where there is a proviso, the former part, which is described as the enacting part, must be construed without reference to the proviso. No doubt there may be cases in which the first part is so clear and unambiguous as not to admit in regard to the matters which are there clear any reference to any other part of the section.The proviso may simply be an exception out of what is clearly defined in the first part, or it may be some qualification not inconsistent with what is expressed in the first part. In the present case, however, not only is the first part of the section deficient in express definition, but also the second part is complementary and necessary in order to ascertain the full intention of the legislature.

The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. I do not think that there is any other rule, even in the case of a proviso in the strictest or narrowest sense, and still less where, as here, the introduction of the second part by the word \'provided\' is, in a strict sense, inapt.\" (Italics mine)

Clearly Section II in my view is expressed in clear and unambiguous language and wide enough to cover the case being put forward by the Plaintiffs. The italized portions of the above passages form the speeches of Viscount Maugham and

Lord Wright accord with the decision in Irving v. National Provincial Bank Ltd. ( 1 962) 2 Q.B. 73 at pp. 81, 82 per Wilmer LJ that the main part of a section must not be construed in such a way as to render a proviso to the section redundant. Reading Section II as a whole I have no doubt that it covers the claims of the plaintiffs in the suit No. LD/845/87. While I do not say that the section takes away the rights of beneficiaries under a trust relating to shares in a bank, it certainly bars their right of access to the courts to enforce the type of reliefs being claimed by the Plaintiffs in these proceedings.

I turn to the 2nd suit, that is LD/938/87. The plaintiff in that case pleaded, inter alia, as follows:

\"4. The plaintiff came to know the defendant following his release from detention after military coup of 1966. The defendant was jobless and his legal practice was not yielding sufficient income for his needs and the plaintiff gave him financial and other assistance from time to time up to and including the period when the Bank was established to do banking business in Nigeria in 1976.

5. At all times material to the investment of funds in the Bank, the Defendant had no surplus earnings or loan facilities to enable him make any investment and understanding between the parties was that the plaintiff alone would fund the investment. It was in the contemplation of both parties that the investment would assist the plaintiff in his efforts to continue giving financial assistance to the defendant. The plaintiff also intended that, depending on the level of dividend would donate a reasonable percentage of the shares to his other friends including the defendant and sell the remainder to other Nigerians.

6(1) The defendant who is a lawyer and a former politician in the West advised the plaintiff to go to one of the existing banks to borrow money to Pay for 60% shares so that it would be easy to prove to the authorities in future that he is not being used as a front.

7. All moneys paid into the aforesaid Joint Account in the United bank for Africa Limited as well as other payments made into Societe Generale Bank (Nigeria) Limited share capital account Number 01308986 at Standard Bank of Nigeria Limited (now First bank of Nigeria Limited ) Marina Branch were paid in from moneys which belong exclusively and beneficially to the plaintiff. The plaintiff will rely on all documents relating to the said payments.

8. It was from the said Joint Account and from additional cash made available by the Plaintiff that payment were made tbrthe(N270.000) shares issued by the Bank in the name of the defendant and the (630,000) shares issued in the defendant\'s name.

8A In consequence of the facts pleaded in paragraph 8 hereof the Plaintiff has to the knowledge and with the acquiesence of the defendant exercised rights of ownership in and over the said shares. Plaintiff borrowed a large sum of money for his political party (the defunct National Party of Nigeria) around mid 1979 he called for and obtained from the defendant the Share Certificates relating to 270,000 shares and the 630,000 shares in the defendant\'s name to secure the loan with the lenders.

8B. The plaintiff was originally the only Nigerian shareholder. On the 8th of March, 1977 the plaintiff nominated the defendant as a director and upon the understanding that the defendant will hold shares in trust for him, he directed that 18% of his 60% shares be issued in the name of the defendant as a trustee. This understanding is that the 18% shares were meant for distribution by the plaintiff at the appropriate time among his close friends including the defendant who has assisted him one way or another in the formation of the Bank,

10 The defendant quickly advised the plaintiff (who was then in detention) about the danger facing the Bank and stated that in order to meet the situation he had decided to sell off some of the shares of the plaintiff as well as the shares of the plaintiff held in the name of the defendant and which he well knew were held by him in trust for the plaintiff. The defendant had in fact agreed with intending purchasers to sell the said shares and had (according to him) p collected N3.1 million from such purchasers

12 As a result of the use of the money made available to the defendant by the plaintiff through the business agents of Mr. Klaus Seemuth the defendant was able to pay for (a) the 499,200 shares covered by Certificate No. 000024 in the defendant\'s name (b) the 460,800 shares covered by Certificate No. 000026 in the defendant\'s name (c) 1,164,800 shares covered by Certificate No. 000025 in the name of the plaintiff\'s wife Mrs. P.M. Saraki and (d) 1,075,200 shares covered by Certificate No. 000027 in the name of the plaintiff\'s wife. The balance of N800,000.00 out of the said sum of Four Million Naira (N4m) was disbursed by the defendant according to the orders of the plaintiff leaving a sum of N70,000.00 still with the defendant and the plaintiff hereby claims the said sum of N70,000.00.

14. At all times material to this action the defendant was fully aware that the plaintiff was the beneficial owner of the shares standing in his (defendant\'s) name and that he was obliged to deal with the shares for the benefit and in accordance with the direction of the plaintiff. It was only recently when (for reasons best known to him) the defendant has turned round to deny the trust.

15. By reason of the matters hereinbefore pleaded, the defendant is accountable to the plaintiff as a trustee of all the shares standing in his name in the Bank particulars of which are as follows:-

| | No. of Shares | Share Certificate |
|---|---|---|
| i | 270,000 | 000003 |
| ii | 630,000 | 000006 |
| iii | 85,800 | 000011 |

| | | |
|---|---|---|
| iv | 418,000 | 000018 |
| v | 330,000 | 000022 |
| vi | 499,200 | 000024 |
| vii | 460,000 | 000026 |
| viii | Unknown | Unknown |
| ix | Unknown | Unknown |

(Italics mine)

The sum total of the case being made out by the plaintiff in this suit is that the defendant a registered holder of the shares in dispute in that suit holds those shares as front for him (the plaintiff) and that he the plaintiff, is in truth and in fact the -owner of the shares in dispute and not the defendant. I cannot imagine a stronger case that falls squarely within the provisions of Section 11 than this. The 1st four reliefs sought in this case are identical with those in the 1st Suit LD/845/87 and in my humble view, in so far as those four reliefs are concerned, they are covered by Section 11. Relief 5 however, does not come within the purview of Section 11 and there can be no bar therefore, to the plaintiff pursuing that claim.

In the course of the hearing of this appeal, a member of this Court asked counsel for the parties whether Section 11 applied to bar cases pending at the time the Decree came into force. Chief Ajayi for the defendant submitted that it did and relied on the meaning of the word \"maintain\" used in the Statute. Chief Williams for the plaintiffs was silent on the issue. In view of the fact that this point has been raised, I consider it necessary to say a few words on it. The general rule relating to whether a Statute is to be treated as being prospective or retrospective is well stated in paragraph 922 of Halsbury\'s Laws of England 4th Edition Vol. 44 where the learned author states:

\"922. PRESUMPTION AGAINST RETROSPECTION.

The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. Similarly, the courts will construe a provision as conferring power to act retrospectively only when clear words are used.

By virtue of the presumption, transactions have been held to be neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. On the other hand, they have not been rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear have been held neither to impose flew liabilities in respect of events taking place before their commencement, nor to relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings.

It is also in reliance on the presumption that the courts have frequently held pending proceedings to be unaffected by changes in the law so far as they relate to the determination of substantive rights. In the absence of a clear indication of a contrary intention amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced; and this is so whether the law is changed before the hearing of the case at first instance or while an appeal is pending.\"

See also Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) NSCC1151; (1985) 2 NWLR \"(Pt.9) 734. The law derives its prigin from the legal maxim: Nova Constitutiofuturis torman imponere. debet, non practeritis, that is, a new law ought to be prospective, not retrospective, in its operation. Thus unless there are clear words in Section 11 that will lead to the conclusion that the section is retrospective in the sense that it bars pending proceedings, it has to be held that it does not affect pending proceedings as the suits before us now. One, therefore, has to examine the

section. It reads '

\"..... ..no suit or other proceedings shall be maintained against any person ..... \" (Italics mine)

The question that arises is: what is the meaning of the word \"maintained\"' Does it render the section retrospective' The cardinal rule of construction is that words and sentences are to be constructed in their true and natural meaning anywhere the p words are clear and unambiguous effect ought to be given to them. Words are

primarily to be construed in their ordinary meaning of common and popular sense.

The word \"maintain\" is defined in Black\'s Law Dictionary 5th Edition as follows:

\"MAINTAIN. The term is variously defined as acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition, bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of; hold; or keep in an existing stage or condition; hold or preserve in any particular state or condition; keep from change; keep from falling, declining, or ceasing; keep in existence or continuance; keep in force, keep in good order; keep in proper condition, keep in repair;\' keep up; preserve, preserve from lapse,ecline, failure or cessation, provide for; rebuild; repair, replace; supply with means of support; supply with what is needed; support, sustain, uphold. Negatively stated, it is defined as not to lose or surrender; not to suffer or fail or decline El Paso County Water Imp. Dist. No. 1 v. City of El Paso, D.C.Tex.,234F2d927,931.

To \'maintain\' an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. George Moore Ice Cream Co. v. Co. Rose, Ga., 289 U.S. 373,53 S. Ct 620, 77 L.ED 1265. To maintain an action or suit may mean to commence or institute it; the term imports the existence of .a cause of action. Maintain, however, is applied to actions already brought, but not yet reduced to judgment. Smallwood v. Gallardo, g 275 U.S. 56,48 S.C.I 23.72 L.Ed. 152. In this connection it means to continue or preserve in or with; to carry on.\"

And in the Shorter Oxford English Dictionary \"maintain\" is defined as meaning \"to continue, perservering, to carry on, keep up; to have ground to sustain an action; to continue in, preserve, retain (a condition, position attitude etc.) to keep in being; to preserve unimpaired, a course right, state of things etc.

The verb \"to maintain\" in pleading has a distinct technical signfication. It signifies to support what has already been brought into existence. In my view the word \"maintained\" when used with reference to actions, means \"continued\" after they have been brought. If it is to be prospective only, the word \"brought\" would have been used.

In Smallwood & Anor. v. Gallardo; Ordinez & Ors. V. Gallardo 275 U.S. 56; an Act of March 4,1927 amending a previous Act of March 2,1917 provided in section 48 thereof that no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico \"shall be maintained\" in the District Court of United States for Porto Rico. The U.S. Supreme Court held that the provision applied to previously instituted suits pending before it. Mr. Justice Holmes, delivering the opinion of the Court observed at pages 60-62; 23-24 of the respective Reports thus:

These are suits brought in the District Court of the United States of Port Rico to restrain the collection of taxes imposed by the laws of Porto Rico. On January 7, 1927, the Circuit Court of Appeals affirmed decrees of the District Court dismissing the bills. On March 4,1927, by chapter 503,7 of the Act of that year, Congress p provided that section 48 of the act to provide a civil government for Port Rico should be amended to read as follows:

\'Sec. 48. That the Supreme and District Courts of Porto Rico and the respective Judges thereof may grunt writs of habeas corpus in all cases in which the same are grantable by the Judges of the District Courts of the United States, and the District Courts may grant writs of mandamus in all proper cases.

That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico.

( 44 Starts. 1418, 1421 (48 USCA 872)

Writs of certiorari were granted by this court on May 16, 1927, but argument was ordered on the question whether the cases had not become moot by virtue of that act.

Apart from a natural inclination to read them more narrowly there would seem to be no doubt that the words of the statute covered these cases. To maintain a suit is to uphold, continue on foot and keep from collapse a suit already begun. And although the Circuit Court of Appeals in Gallardo v. Porto Rico Ry Light & Power Co., 18 . (2d) 918,923, with some colour of authority has B held that the act does not apply, we cannot accept that view. To apply the statute to present suits is not to give it retrospective effect but to take it literally and to carry out the policy that it embodies of preventing the Island from having its revenues held up by injunction; a policy no less applicable to these suits than to those begun at a later day, and a general policy of our law. Rev. Stat 3224 C (26 USCA 154) [Comp. St. 5947]). So interpreted the act as little interferes with existing rights of the petitioners as it does with those of future litigants. There is no vested right to an injunction against collecting illegal taxes and bringing these bills did not create one. Hallowell v. Commons, 239 U.S. 506,509,36 S. Ct. 202,60L. Ed. 409 This statute is not like a provision that no action shall be ') brought upon a contract previously valid, which in substance would take away a vested right if held to govern contracts then in force. It does not even attempt to validate previously unlawful taxes. It simply makes it plain that these cases are not excepted from the well known general rule against injunctions. It does not leave the tax'payer without power to resist an unlawful tax, whatever the difficulties in the way of resisting it.

The sequence of the clause in the amendment after others giving authority to grant writs of habeas corpus and mandamus shows that it puts a limit to the power of the court. See Dodge v. Osborn, 240 U.S. 118,119,36 S. Ct. 275,60 L.Ed. 557. That is a question of construction and common sense. Fauntleroy v. Lum, F 210 U.S. 230,235, 28 S.Ct. 641, 52 L.Ed. 1039. Therefore when the District Court required a deposit in the registry of a sum to secure payment of the tax in dispute, the money should be returned as there is no jurisdiction to dispose of it otherwise.

Of course it does not matter that these cases had gone to a higher court. When the root is cut the branches fall. McNulty v. G Batty, 10 How 72,13 L.Ed. 333.\"

In the course of our research my attention was drawn to an English case -Moon v. Durden 1 Ex.22; 154 E.R. 389. In that case, Section 18 of Gaming Act 1845 (8 & 9 Vict. C. 109) which provided that \"all contracts and agreements by way of gaming or wagering shall be null and void; and that no suit shall be. brought or maintained in any court of law or equity for recovering any sum of money or JJ valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event which any wager shall have been made\" was held, per Parke, B, Alderson, B. and Rolfe, B, (Plait, B dissentiente) that the statute had not a retrospective operation, so as to defeat an action for wager, commenced before the statute passed. In his judgment Rolfe, B. observed at page 33 of the Report:

This was an action on a wager. It was commenced on the 12th of June, 1845; and the main question in the case is, whether the effect of the stat. 8 & Vict. c. 109 s. 18, is to disable the plaintiff from maintaining the action. That statute did not receive the royal assent until August, 1845, after this action had been commenced.

After quoting section 18, the learned Baron continued-

\"The effect of this clause is to make void all wagers, and to prevent the bringing or maintaining any action for the recovery of money won on any wager; and the only question is, whether its operation is retrospective, so as to affect past transactions and existing suits.

The general rule on this subject is stated by Lord Coke, in the second Institute, 292, in his Commentary on the Statute of Gloucester, Nava constitutio futuris formam imponere debet non prqeteritis;\" and the principle is one of such obvious convenience and justice, that it must always be adhered to in the construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the legislature meant it to operate retrospectively.

On the part of the defendant it was argued, that in this statute the clause must have been intended to affect past transactions; because it not only enacts that wagers shall be null and void, but further, that no suit shall be brought or maintained for the recovery of money won on a wager. The latter branch of the clause, it was contended would have no operation if the enactment were restricted to future wagers; for it would be useless to enact that no action should be brought, and still more so that no action should be maintained, in respect of a contract already declared to be null and void; and particularly the enactment, that no action should be maintained, must, it was said, apply not only to wagers already won, but even to suits already pending for their recovery.

It must be observed that this latter part of the enactment - that, I mean which prohibits the bringing or maintaining of actions - is in no respect inconsistent with the construction which gives to the enactment an operation merely prospective. The most that can be contended is, that the words in question are unnecessary; and therefore, independent of authority, if the argument rested here, what we should have to decide would be, whether the improbability that the legislature should unnecessarily prohibit the bringing or maintaining an action on a contract already made void in a prior part of the same clause, is so great as to warrant us in saying that it must have been intended retrospectively to affect rights already vested. I think this would be a very unreasonable and strained inference, and which, considering the ordinary frame and language of acts of Parliament, would be by no means fairly deducible from the clause in question.\"

The learned Baron went on to consider cases cited by the defendant in favour of the section being retrospective and concluded that he did not think those cases were rightly decided. The main plank on which he rested his decision seems to be this that the section of the law declaring gaming or wagering contracts null and void could only be in respect of future contracts and, therefore, the section barring actions on such contracts could only be prospective as well. Alderson, B. In his own judgment observed at page 40:

Here, no doubt, the legislature were desirous of putting an end to gaming and wagers; but, unless the words imperatively require it, we ought not to make their prohibition retrospective; for it is contrary to the first principles of justice to punish those who have offended against no law, and surely to take away existing rights without compensation is in the nature of punishment The words of the statute do not, as it seems to me require this construction. The first clause of the section is probably prospective. All contracts by way of gaming or wagering are made void. It seems to me, at present, that this applies to the future; and indeed it was, as I understood, so admitted by Mr. Lush in his argument. But it was said that the next clause was not so; for that it not merely prohibited the future bringing of suits to enforce wagers, but also the future maintenance of such suits when previously brought. But I cannot give such a construction to what appear to me only redundant words in this section. If it had been stated \'that no action shall be brought\' or only\' that no action shall be maintained, it seems to me clear that we should have considered the words \'brought\' and \'maintained\' as synonymous and as prohibiting the success of future suits alone. And although the use of both in one sentence makes this less obvious, yet, when we consider that to give the more strict interpre'tation to the word \'maintained\' will compel us to suppose, without further evidence, that the legislature contemplated so gross an act of injustice as, without compensation, to take away an existing right of action already pending, and that, too, with no provision even for the costs incurred in the enforcing of what was, before the act a legal right, I am not disposed to put such a construction on the word, but to treat it, as I think the legislature intended it, as a redundant expression only. In the 16th section, where they do speak of existing actions of another sort, they do provide for the staying another sort, they do provide for the staying them, by application to the Court and on payment of costs; and I think if they had intended to put an end to pending actions of this description, they would have shown it by introducing a similar provision in the 18th section.

Parke, B. observed at page 43:

\"The only question in this case is, whether the act (8 & 9 Vict. c. 109, s. 18) affects existing suits for the recovery of wagers or not. The clause in question having been read, it is unnecessary for me to repeat it.

I have felt a good deal of difficulty in deciding upon the true construction of this clause; but, after much consideration, I agree in opinion with my Brothers Alderson and Rolfe, that it applies to future actions only.

The language of the clause, if taken in its ordinary sense, as A in the first instance we ought to do, applies to all contracts, both past and future, and to all actions, both present and future, on any wager, whether past or future. But it is, as Lord Coke says, \'a rule and law of Parliament that regularly, nova constitutiofuturisforman imponere debet, non praeteritis\' (2 Inst. 292). This rule, which is in effect, that enactments in a statute are generally to be construed B to be prospective, and intended to \"regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases. For instance, in the construction of the Statute of Frauds, which was held not to apply to promises made before the 24th of June, 1677; Gilmore v. Shuter (T. Jones, 108; 2 show, 16; and also of the stat. 2 & 3 Vict. c. 29 which, it has been decided is not to be construed to defeat a right by relation already vested in an assignee of a bankrupt: Edmonds v. Lawley (6 M. & W. 285); Moore v. Phillips (1 M. & W. 536).

But this rule, which is one of construction only, will certainly yeild to the intention of the legislature; and the question in this and in every other similar case is, whether that intention has been sufficiently expressed. Upon that question it is

that I have felt considerable doubt.

It seems a strong thing to hold, that the legislature could have meant that a party, who, under a contract made prior to the act, had as perfect a title to recover a sum of money, as he had to any of his personal property, should be totally deprived of it without compensation. It is a still stronger thing to hold, that if he has already commenced an action with an undoubted right to recover his debt and costs, he should not only forfeit both, but also be liable, as he would in the ordinary course of a suit, to pay the costs of his adversary, by being obliged to discontinue, or be nonprossed, or have his judgment arrested. These considerations afford a strong reason for limiting the operation of the words of this section, and holding that they apply to future contracts, had actions on such future contracts only - at all events, to future actions only, if any distinction can be made in the degrees of apparent injustice. But, on the other hand, it is to be recollected that the toleration of actions for wagers, on subject in which the parties have no real interest has often been made a subject of reproach to the law of England; and it is not a matter of surprise, that the legislature took an early opportunity of putting a stop to them; and also it is to be borne in mind, that the parties who would suffer by a strict construction of the clause, are often successful gamesters or speculators, not much the objects of favour with the legislature; and one considers the clause, therefore, not quite in the same spirit, as if the enactment related to ordinary contracts.

The enactment, \'that all contracts or agreements, by way of gaming or wagering, shall be null and void,\' if it stood by itself, ought most clearly to be construed as applicable to future contracts and agreements only, by virtue of the rule of construction to which I have adverted, and the apparent injustice of putting an end to a vested right. So, if the next part stood alone, it would, I think, though not so clearly, be construed, for the same reason, to apply to future actions only; and the clause, to avoid the injustice which would otherwise be inflicted on a plaintiff, should be construed to \" mean, not that an action already brought should not be maintained, But that no action should afterwards be brought, or, if brought, maintained; and the absence of any provision that the costs of an existing action should be paid by a defendant, in my mind, strongly favours that construction. The union of the two clauses together does not appear to me to make any difference. The latter clause is surplusage, so far as it relates to bringing actions, whether we construe the former to apply to future or existing contracts; and the only observation that can be made is, that in one mode of construing the enactment the word \'maintained\' is inoperative, in the other it is not. It is redundant, unless it applies to\'the maintenance of an existing action; but this circumstance of mere redundancy does not appear to me to be sufficient to show, that the legislature meant to do so unjust a thing as to prevent the maintenance of an existing well-founded action. 1 think it best to abide by the sound rule of construction above referred to, notwithstanding the conjuctures as to the real intention of the legislature, which the nature of the subject occasions.\" (Italics mine)

In his dissenting judgment Platt, B. reasoned at pages 26-30 thus:

\"The general rule, governing the construction of statutes, is correctly stated in Bac. Abr. 439, \'Statute,\' C. It is there laid down as in general true, \'that no statute is to have a retrospect beyond the time of its commencement; for the rule and law of Parliament is, that nova constitutio futuris formam debet imponere, non praeteritis; and Gillmore v. The Executors of Shooter (2 Mod. 310) is quoted as an example. In that case, a treaty of marriage being on foot between the plaintiff and a person whom he afterwards married and had '2000 with as a portion, Shooter, who was of kin to the plaintiff, promised to give him as much, or to leave him as much by is will. This promise was made before the 24th of June, 1677. Shooter died in September following, without having paid the money, or made provision by his will for the payment thereof. An action was brought against the executors of Shooter, and the question made upon the special verdict was, whether the promise, not being in writing, was within 29 Car. 2, c. 3, whereby it is enacted, \'that, from and after the 24th of June, 1677, no action shall be brought to charge any person upon any agreement made upon consideration of

marriage, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged\' Judgment was given for the plaintiff. And, per Cur., it cannot be presumed that this act was to have a retrospect, so as to take away a right of action which the plaintiff was entitled unto before the time of its commencement. It should, however, be observed, that the form of the condition, on which the right to bring an action was made to depend, imported that future agreements alone were required to be written and signed. The words are, \'unless the agreement shall be in writing, and signed.\' But the general rule is not without exception. A statute may have a retrospect to a time antecedent to that of its commencement. Thus, a statute which compels a convenantor to do an act, which before the passing of the statute he had covenanted not to do, or which forbids his doing an act, which he had before the passing of the statute covenated to do, repeals the covenant: Brewster v. Kitchell (1 Salk. 198.) The 9 Geo. 4 c. 14, S.I, enacts, \'that in actions grounded on any simple contract, no acknowledgment or promise shall be deemed sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of the 21 Jac. 1, c. 16, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable.\' That statute was to take effect on and after the 1st of January. 1829, and has been construed to render insufficient all proof, adduced after the 31st of December, 1828, of an unwritten acknowledgment or promise, although, by such a construction, the statute is made to operate retrospectively, in avoidance of all acknowledgments and promises expressed before the 1 st of January, 1829; Towler v. Chatterton (6 Bing. 258),Ansell v. Ansell (3 C. & P. 563), Gunner v. Cattle (2 M. & P. 367; 9 Bing. 258). By the 3 & 4 Will. 4, c. 42, s. 31, personal representatives failing in their suits are subject to costs. This statute has been held, by the Courts of Queen\'s Bench and Exchequer, to operate retro'spectively, and to render executors and administrators who had brought their actions before it passed, liable Freeman v. Moyes (1 Ad. & Ell. 388), Pickup v. Wharton (2C. & M. 405), Grant v. Kemp (Id. 636). The former of these two statutes intended to abolish an unsatisfactory means of proof; and the latter, the anomaly of allowing a plaintiff, because he sued in a representative character, to escape the just penalty of paying the costs occasioned by his having brought a desperate and ill-founded action.

The 8 & 9 Vict. c. 109, intended to prevent for the future her Majesty\'s courts of justice from being required to execute the unworthy office of deciding a gambling controversy, or of com'pelling, by their process, the payment of a wager.

By adhering to the express provisions of the 9 Geo. 4, c. 14, s. 1, and the 3 & 4 Will. 4, c.42, s. 31, the Courts have applied the remedies intended.

By a like course alone will this Court accomplish the object of the legislature in penning the 18th section of the 8 & 9 Vict. c. 109. In that section the legislature appears to me to have intended to deal with subsisting as well as with future, contracts by way of gaming or wagering. After annulling future contracts of that description, any furtherprovision as to them, or as to any proceedings upon them, was unnecessary. The enacting part of the section might have stopped at the end of the declaration that such contracts should be null and void. The next provision therefore, must be taken to deal with money or other valuable things alleged to be won upon such wagering contracts as subsisted on the 8th of August, 1845; and as to them, to incapacitate the winner from bringing or maintaining in any court of law or equity a suit for their recovery. The words are, \'and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.\' In any way of reading this part of the section, it is impossible to prevent its operating to defeat the rights vested in the winners to recover, if they shall have failed to bring their actions before the 8th of August, 1845. But upon what principle can it be urged, that one of two persons, each having won a bet on the same day, and upon the same event, shall be entitled to recover, because he shall have brought his suit the day next before the act received the royal assent; and the other, who shall have brought his suit two days later, shall be barred altogether' It seems to me that the legislature, contemplating the injustice of allowing such a distinction, has advisedly introduced the words \'or maintained,\' in order to extent equally to both the incapacity to recover. The legislature has used the word\' maintained\' alternatively: are we to say it has no

distinct meaning' Dixit: are we to say non voluit' The verb \'to maintain' in pleading, has adistinct technical signification. It signifies to support what has already been brought into existence. Thus, a defendant, who admits the right of a plaintiff to bring, or to bring and up to the last pleading maintain, his action, but relies on matter disabling him from further proceeding, insists that the plaintiff ought not, by reason of such matter, further to maintain his action. A plea in bar of the further maintenance of the action admits the plaintiff to have properly maintained it up to the time of such plea. In this case, however, the defendant, by his demurrer, objects to the declaration. He says, \'Your action was brought properly; but you have no right to maintain it by your declaration, or, in other words, the law has intervened and deprived you of that right.\' The like intervention deprived the plaintiff in Kirkhaugh v. Herbert, and the Anonymous case also referred to in 6 Bing. 265, of his right of action, and in Grant v. Kamp (2 C. & M. 636) and Freeman v. Moyes (1 Ad. & Ell. 338) of his immunity from the defendant\'s costs.

In confirmation of the view which I have taken of the 18th section, it should be observed, that the expressions\' shall have been deposited\' and \'shall have been made\' appear to have been selected in contradistinction to the words \'shall be\'. If the section was intended to operate prospectively only, the words \'shall be\' would have been appropriate to its object; but if retrospectively, the words \'shall have been\' would be not only appropriate, but necessary.\"

Concluding, he said at page 32:

\"Upon the whole, taking into consideration the general spirit of the act, and the nuisance the legislature sought, by the 18th section, to abate, I think they intended that, from the 8th of August, 1845, when the act received the royal assent, her Majesty\'s courts of law and equity should not be made instrumental in enforcing the payment of a wager; that the supposed vested rights of winners to recover were not contemplated as subjects of legislative projection, but, on the contrary, were absolutely annulled; that, from and after the 8th of August, the winners were barred from bringing, or, if they had been brought them, from maintaining, suits either at law or in equity, to recover the money or valuable thing alleged to be won; and consequently, that the defendant is entitled to judgment.\"

I have carefully considered all the judgments delivered in the case. I found myself unable to agree with the majority decision that the expression \"shall be brought or maintained\" is redundant. This decision ran foul of the rule that a construction which would leave without effect any part of the language of a statute will normally be rejected. I am more impressed with the dissenting judgment of Platt, B. which is in line with the decision of the Supreme Court of the united State of America in Smallwood & Anor. v. Gallardo; Ordinez & Ors. v. Gallardo (supra) with which I am in full agreement. If the legislature intending section 18 of the Gaming Act 1845 to be prospective only it would not have enacted in that section E that no action \"shall be brought or maintained.\" It would have been sufficient to enact that no action \"shall be brought\". There were other indicia in the section to lead to the conclusion that a retrospect was intended. Such expressions as \"shall have been deposited\" and \"shall have been made\" appearing in the section and the effect of which expressions was never considered by the majority in Moon v. Durden, would appear to support the dissenting judgment of Platt, B. See Williams v. Williams F (1971) 2 All ER 764 where the Court relied on a number of small indicia tending to show that Matrimonial Causes Act. 1970 had retrospective effect, even though there was no provision in the Act expressly tending to lead to that conclusion. I am of the view that Moon v. Durden was wrongly decided and I do not intend to follow it in preference to the clear decision in Smallwood v. Gallardo.

The object of section 11, in my respectful view, is to prohibit \"fronts\" being used to hold shares in a bank thus preventing such an important sector of the national economy being controlled by a few individuals. That being so, I

cannot imagine that the legislature would intend that actions to enforce such arrange'ments (under the guise of trusts) made before the Act was promulgated would continue to be maintained. As revealed by cases that have come before this Court, the constant boardroom conflicts in the banking sector before the promulgation of the Banks and other Financial Institutions Decree centred around control of these institutions by powerful individuals through the use of fronts.This, the Decree set out to put an end to by the provision of section 11 in the Decree.

In the case on hand the expression \"shall be maintained\" as used in section 11, construed in its natural sense, contemplates the barring of all actions, whether pending or not, coming within the provisions of section 11.

Bearing the above in mind it is my view, and I so hold, that Section 11 applies not only to future actions but also to actions pending at the time the Decree came into force. The conclusion I arrive at is that not only are the plaintiff\'s claims in the two consolidated suits (except claims 5 of the 2nd suit) with the contemplation of Section 11, the proceedings, although pending at the time the Decree came into force, are affected by it because by the use of the word \"maintain\" in the section it covers pending proceedings as well. I, therefore, hold the courts below are wrong to have held that the courts still had jurisdiction to entertain the Suits. In my respectful view, Section 11 has aborted the suits and as the plaintiffs no longer have any right to maintain them, they are hereby struckout except as to suit No. LD/938/87 where the 5th claim for '

\"an order for refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf still subsists. The 2nd plaintiff is at liberty to pursue this claim.'

I need to observe, although it is not an issue before us, that for the reasons I have stated above, the defendant\'s counter-claim in suit No. LD/938/87 also falls within the ambit of Section 11, but his counter-claim in suit No. LD/845/87 does not.

In view of the conclusion I have just reached above, I do not consider it necessary to deal in detail with the other issues raised by the defendant in his Brief. Suffice to say, however, that I do not see a case of denial of fair hearing made out against the court below. It may be that that court misconceived the defendant\'s case put before it and thereby came to a wrong conclusion. This is not to say that that court had denied the defendant a fair hearing. What it may mean where the court has asked the wrong questions is that it\'s jurisdiction in determining the matter before it might be affected; it is still no case of denial of fair hearing. As stated earlier in this judgment, that court in the lead judgment of Ubaezonu J.C.A. first asked itself the correct question but later proceeded to ask the wrong question and, as shown by my conclusion, thereby came to a wrong decision. This disposes of issues 1 and 2. As there can be no direct appeal from the high Court to this Court, the Issue posed as Issue 3 is, in my respectful view, incompetent. I say no more on it.

Finally if this appeal rests with me, I would allow it and set aside the judgment of the court below affirming that of the trial high Court. The plaintiffs claims in Suit No. LD/845/87 would be struck out, the right of the plaintiffs to continue with that suit having been taken away by section 11 of Decree No. 25 of 1991. The plaintiff\'s claims 1,2,3 & 4 in LD/938/87 would equally be struck out. The plaintiff in that suit is at liberty to proceed with the hearing of the suit in respect of claims 5 thereof. I would award N1,000.00 to the defendant being costs of this appeal.In the consolidated suits Nos. LD/ 845/87 and LD/938/87 the plaintiffs together and the 2nd plaintiff alone respectively claimed against the defendant as follows:-

\"LD845/87

(1) A declaration that the 2,400,000 shares and the Bonus, Scripts and other shares attached thereto standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an Inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

(4) An order for rectification of the Registrar of Shares to give effect to any judgment delivered herein.\"

\"LD/938/87

1. A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

2. An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

3. An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

4. An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

5. An order for the refund of the sum of N70.000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.

The defendant counter-claimed against the plaintiffs in the consolidated suits thus-

\"LD/845/87

(1) Whereupon the defendant by way of Counter-claim claims against the 2nd plaintiff the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

(2) The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

\"LD/938/87

(1) A declaration that of the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(2) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.

The hearing of the consolidated suits was still in progress when the defendant filed a Motion on Notice to strike out the suits on the ground that the court had no jurisdiction to continue to entertain same and or allow the proceedings to be maintained. The motion was supported by a 4-paragraph affidavit sworn to by one Oluwole Koya, a legal practitioner in the Chambers of Ayanlaja, Adesanya & Co. who are counsel with Chief G. O. K. Ajayi, S.A.N. for the defendant/applicant. Paragraphs 2 & 3 of the affidavit merely recited plaintiffs\' claims in suits Nos. LD/ 845/87 and LD/938/87 reproduced above. The remaining para. 4 which I consider vital to the motion reads:

\"4. That it is common ground both in the pleadings filed and the evidence adduced so far before this Honourable court by both parties to the proceedings in the two consolidated cases aforesaid that, the shares in dispute are registered in the name of the defendant in the books of Societe Generale Bank (Nigeria) Limited as holder thereof.\"

The motion was filed pursuant to the promulgation of-Banks and other Financial Institutions Decree No.25 of 1991. The commencement date was 20th June 1991. Section 11 of the said Decree reads:

\"11. Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering/ram any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\" (Italics are mine for emphasis only).

In a considered ruling delivered on the 27th day of November 1992 the F learned trial Judge dismissed the motion or application. On page 54 of the record he said:-

\"It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. I do not find that Section 11 bars this suit or other proceeding based on the claims in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares held in the-name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken. The learned defence counsel had pointed out in his reply that the fifth claim in Suit LD/938/87 is unaffected in any way by this motion. This is a relief for refund of the balance of certain sum allegedly held by the defendant in the plaintiff\'s behalf therein. I agree with him.\"

Dissatisfied with the ruling above, the defendant appealed to the Court of Appeal, Lagos. He formulated eight issues for determination while the plaintiffs formulated only one as follows:

\"Whether the jurisdiction of the court to continue the hearing of this action has been ousted by the provision of section 11 of the banking A and other Financial Institution Decree 1991 No.25.\"

The Court of Appeal agreed with the plaintiffs when it said in its judgment on page 100 of the record that:-

\"The issue before this court is the correct interpretation of section 11 of the Banking and other Financial institutions Decree No. 25 of 1991 and applying the said interpretation to the claims in this case so as to determine whether the court below has the jurisdiction to continue the case or not.\"

It then considered the issue and arrived at the conclusion that the High Court had jurisdiction to continue the

consolidated suits and dismissed defendant\'s appeal with costs.

Aggrieved by the decision of the Court of Appeal the defendant has now appealed to the Supreme Court. Five issues were identified for determination in his brief. The plaintiffs on their part set out only one issue for determination in their brief. It reads:-

Whether the claims contained in the Statement of Claim in this action (or any of them) can strictly regarded, be described or cat'egorised as a claim by the plaintiffs or either of them that the title D to the shares registered in the name of the defendant vests in them or either of them than in the said defendant.

I agree entirely. The issue above was the same issue before the trial High Court and the Court of Appeal even though worded differently. In fact we are to consider whether the claims of the plaintiffs are caught by the provision of section 11 of Decree 25 of 1991 which is reproduced here again:-

\"11. Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other F proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\"

The provisions can be conveniently broken down as follows:-

A. No suit or other proceedings shall be maintained against a regis'tered holder of shares in a bank on the ground that the title to the said shares vests in any person other than the registered holder.

B A suit or other proceedings on behalf of a minor or person suffering from any mental illness against a registered holder of shares in bank on the ground that the registered holder holds the share on behalf of the minor or person suffering from mental illness is maintain'able. (See the proviso above).

I must say at once that the opening clause that

\"Notwithstanding anything contained in any law or in any contract or instrument\"

ought to be restricted to a provision in any law or contract or instrument which allows a litigant to maintain the suit against a registered holder on the ground that the title in the shares vests in any other person other than the registered holder. We have not been referred to any law or contract or instrument which provides as such. I venture to say that the clause cannot be read to cover cases of trusts more so as the suit herein is not being maintained because there is a trust, rather it is because of lack of it.

It is a settled cardinal principle of statutory interpretation that where, in their ordinary meaning the provisions are clear and unambiguous effect should be given to them without resorting to external aid. The duty of the court is to interpret the words of the statute as used. Those words may be ambiguous, but even if they are the power and duty of the court to travel outside them on a voyage of discovery are strictly limited (see for example Attorney-General of Bendel State v. Attorney-General of \'the Federation (1981) 10S.C. 1; Abioyev.Yakubu(1991)5 NWLR (Pt.190) 130, Lawal v. G.B. Ollivant (1972) 2 S.C. 124, Aya v. Henshaw (1972) 5 S.C. 87;

There is no doubt at all that the plaintiffs do not come under my classification (B) above. They are neither minors nor persons suffering any mental illness. We are therefore left with classification (A) only. The task now will be to examine the plaintiffs\' claims or reliefs one by one to see whether any of them is covered thereunder. It should be noted at once that the only ground for disqualification provided under (A) above and in fact under section 11 of Decree 25 of 1991 is \"that the title to the said shares vests in any other person than the registered holder\"

So that unless the plaintiffs specifically claim that title in the shares vests in them or in any person other than the defendant registered holder, it would be difficult to bring them under section 11 of the Decree. It is common ground as stated in para.4 of the affidavit in support of the motion above, that the shares in dispute are registered in the name of the defendant in the books of Societe Generale Bank Ltd as holder thereof. The consolidated suits in no way sought to challenge or deny that the defendant is the registered holder of the shares in question or that the shares are vested in him. I think therefore that Chief Williams S.A.N. was right when he said that the plaintiffs are not challenging the fact that the defendant is the registered owner of the shares, but that the defendant is a trustee of those shares for the plaintiff as the beneficial owners. That in my view is the plain and ordinary meaning of the plaintiffs claims in this case.I appreciate that there might be problems in respect of the claim for rectification depending on what turns out to be rectified after the trial. Definitely it could not be the rectification of the name of the defendant as a registered holder of the shares which section 11 (ibid) forbids, but it could even be the number of shares or any other error as may be revealed during the trial. But once the defendant is declared a trustee of any of the shares for the plaintiffs, the question of rectifying the Register of Shareholders to reflect their names would no more arise because defendant cannot be a trustee unless he holds the shares in his name to enable him exercise control over them.

There is no doubt at all that section 11 (ibid) sought to oust the jurisdiction of the court to entertain matters in respect of registered shareholders in banks. Therefore being an ouster clause, the provision will have to be construed strictly and very strictly too (see Barclays Bank v. C.B.N. (1976) 1 All NLR 409. Ouster clauses must not be construed liberally, or loosely or wantonly. And that is what I have endeavoured to do in this case. We must not forget that a constructive trust, as in this case, is imposed by equity on the ground of conscience and it is not based on the prior or presumed intention of the parties. I would like to believe that the A parties herein are conscionable people. A constructive trust is a trust to be made out of the circumstances. The trial High Court was therefore right when it said:-

The question of whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.

The Court of Appeal was equally right when it held as per Ubaezonu J.C.A., who read the lead judgment, that:-

\"The present suit does not challenge or deny that the appellant is the registered holder of the shares in question or that the shares are vested in him. No. What I understand him to be saying is:-

'I concede that the shares are vested in you but, you hold it in trust for me.\"

I think that if as a result of the plaintiffs\' claims, the defendant is successfully pronounced to be a trustee of any of the shares thereof, he the defendant will still remain the registered legal owner of the shares while the plaintiffs will become the beneficial owners only, a trust relationship being equitable generally. It is of no consequence whatsoever that the defendant though a registered holder is a mere notional or nominal owner of the shares while the plaintiffs are the real beneficial owners. That is exactly what the law of trust is all about. It is not the function of any court to change the law and Decree 25 of 1991 has not changed it. It is none of the business of the court to read into the section 11 other meanings simply because the court does not like the natural and direct result of its application which does not lead to any absurdity.

I must observe that this being an interlocutory application, I must avoid making any observation in the judgment which might appear to prejudge the main issues in the proceedings relative to the interlocutory application (see for example Egbe v. Onogun (1972) 1 All NLR (Pt.l) 95; Ojukwu v. Governor of Lagos State (1986) 3 NWLR (Pt.26) 39. It was therefore necessary for me to have restricted myself to the single issue identified by the plaintiffs and the lower courts for determination as above.

In conclusion this appeal fails and it is hereby dismissed. I hold that the two lower courts, the trial High Court and the Court of Appeal, were right when they respectively came to the conclusion that the High Court has the jurisdiction to continue with the consolidated suits herein. The plaintiffs are awarded costs assessed at one thousand (N1,000) naira against the defendant.

Judgement

Delivered by

Abubakar Bashir Wali J.S.C

I have read in advance the lead judgment of my learned brother, Kutigi, J.S.C., and I agree with the reasoning and conclusion that the appeal be dismissed, I however wish to make the following contributions:-

The plaintiffs:

(1) Mrs. F. M. Saraki; and

(2) Dr. Olusola Saraki

by their amended statement of claim in suit No. LD/845/87 claimed against the defendant, the following reliefs:-

(1) A declaration that the 2,400,000 shares and the Bonus Script and other shares attached thereto standing in the name of the defendant in the Register of Shareholder of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The defendant, in his amended statement of defence counter-claimed as follows:-

\"46. WHEREUPON the defendant by way of counter-claim claims against the 2nd plaintiff the sum of N730,000 being money advanced to the 2nd plaintiff or to his order at his request

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

Also on the Amended Statement of Claim to Suit No.LD/938/87, Dr. Sola Saraki v. N.A.B. Kotoye, the plaintiff claimed the following reliefs against the defendant:-

\"(1) A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff F or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

(5) An order for refund of the sum of N70,000.00 being balance of the

N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

The defendant on his part and in his Further Amended Statement of Defence claimed against the plaintiff as follows:-

\"(i) A declaration that if the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nig. Limited, 2,783,483 therefore are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

The two suits were consolidated for hearing. While the hearing was in progress, the defendant, by a Motion on Notice dated 16th March 1992 applied to the trial court for an order:

Striking out the consolidated suits herein on the ground that this Honourable court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the defendant/ applicant.\"

The application was opposed. After hearing arguments from both parties. The learned trial Judge, OlusoJa Thomas J, delivered his Ruling on 27th November 1992 in which he opined thus:-

\"Turning again to the provisions of section 11 of Decree 25/1991, one finds that the restriction of suit or other proceeding against a registered holder of a share in the bank as provided in the main part thereof is when one part challenges the registered holder that his \"title to the said shares vests in any person other than himself\". On the other hand, the proviso used different language when exempting the minor or person suffering from mental illness, that is, \'\"on the ground that the registered holder hold the shares on behalf of the minor or person suffering from mental illness'

and then declared-

\"I do not find that Section 11 bars this suit or other proceeding based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.\"

The defendant appealed against this Ruling to the Court of Appeal. And the Court of Appeal also after hearing the appeal opined thus before dismissing the said appeal:-

\"The provision of section 11 of the Decree may be broken up as follows:

No suit or proceedings shall be maintained against

(i) A registered holder of shares in a Bank;

(ii) On the ground that the title of the shares so registered in his name vests in another person other than himself.

Thus, if any person brings an action in any court to say that title of the shares in a Bank registered in A\'s name does not

vest in A but in B, the jurisdiction of the court is ousted from entertaining such an action. The registration of the shares of a Bank in the name of a person is absolute as to the person in whom the title to the said shares vests. The Decree is clear on this and gives no room for argument or speculation. The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (B). The Decree is silent on this. In interpreting a statute, a court does not import into it what it does not say. The Decree talks of title or a person registered as holder. It does not talk about beneficial interest in the said shares or whether the person in whom the title vests can or cannot hold the shares in trust for another person.\"

The defendant has now further appealed to this court.

Both parties filed and exchanged briefs of argument as required by the Rules of Court. In the brief filed by the defendant now the appellant, five (5) issues out of the 6 grounds filed by him were identified for determination, while the plaintiffs now the respondents formulated only one issue for determination.

Since the main and determining issue in this appeal is the interpretation of section 11 of Decree No.25 of 1991, in my view the issue formulated by Chief Williams. SAN is the appropriate one for the purpose of determining whether the trial court has jurisdiction to continue with the hearing of the plaintiffs\' case as formulated in the pleadings, and it reads thus:-

Whether the claims contained in the Statement of Claim in this action or (or any of them) can strictly be regarded, be described or categorized as a claim by the plaintiffs or either of them than title to the shares registered in the name of the defendant vests in them  or either of them than the defendant.\"

Both learned Senior Advocates agreed that the materials to look, at in deciding this issue of jurisdiction are the Statement of Claim filed, and in the present case, the Amended Statement of Claim in suit LD/845/87, the Second Amended Statement of Claim in suit LD/938/87, and the defendants counter-claim in Amended Statement of Defence in suit LD/845/87 and the counter-claim in Further Amended Statement of Defence in suit LD/938/87. In this regard, both parties agreed that the shares in dispute are registered in the name of the defendant. But the plaintiff contended that this notwithstanding, section 11 did not bar the plaintiffs claim to the beneficial ownership of these shares.

Undoubtedly, looking at the averments contained in the pleadings of both parties, the issues of trust, trustee and beneficiary are very prominent and therefore in my view, Ubaezonu, J.C.A, was not totally wrong when he summarized the determinant issue in the appeal before them in his lead judgment as follows:-

\"The only issue in this case is whether A in whose name the share are registered can hold the same in trust for B.\"

I do not think, having regard to the pleadings earlier referred to, one should quarrel so much with the way the learned

trial Justice recast the germane and determining issue in this appeal.

Now section 11 of Decree No. 25 of 1991 provides thus:

\"11. Notwithstanding anything contained in any law or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on . the ground that the title to the said shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of the minor or person suffering from mental illness.\"

In the course of hearing this appeal, this court suo motu raised the question of retrospectivity of section 11 (supra), and while learned Senior Advocate for the defendant/ appellant submitted that it has retrospective application, learned Senior Advocate for the plaintiffs/respondents, did not make any submission on the issue. It is a well established principle of interpretation of statutes that where the provision of any law ousts the jurisdiction of court on any matter such a provision shall be narrowly and strictly construed, unless it clearly and unambiguously states so. See Dove v.Dove (1963) p.321, (1993) 2 WLR 714. In this case, the Court of Appeal while interpreting section 12(3) of the Matrimonial Causes Act, 1950 A which provided that if the spouse obtaining a decree Nisi of divorce did not make an application for it to be made absolute six months after the trial, then the other spouse could make application within a further period of three months, if the circumstances warranted, obtain a decree absolute, the Court of Appeal held that this did not oust the jurisdiction of the court to substitute a decree of judicial separation for a decree nisi,

'because \"had it been the intention of the legislature to revoke the jurisdiction , it would have been done in a clear way than by inference from the subjection.\" See also Commissioners of Customs & Excise v. Cure &Deeley,Ltd(l962)Q.B.340, Barclays Bank v.C.B.N. (1976)1 All NLR 409 at 421 and A.-G., Bendel State v. A.-G., Federation (1981)10 S.C. 1'

This same principle was emphasised by VISCOUNT Sumands in Smith v. East Elloe RD.C. (1956) A.C. 736 where he said at 750:-

\"It is a principle not by any means to be whittled down that the subject recourse to Her Majesty\'s courts for determination of his rights is not to be excluded except by clear words.\"

It shall also not be made to apply retrospectively to affect the acquired right before it or to affect litigations pending m court, unless such intention is manifestly and unambiguously made clear in it. See Hickson v. Darlow (1883) 23 CH.D. 690 where it was held that the Bills of Sales Act (1878) (Amendment) Act, 1882 which made void bills of sale not registered within seven days of their execution, would not apply to instruments executed more than a week before the

commencement of theAct. It was similarly held in RE BRANDON'S PATENT(1884)9 APPCAS 589 that the provisions of the Patents, Designs and Trade Marks Act, 1883, would not affect any patents granted before its commencement.

See also the case of Moon v. Durden 2 Exh. 22 in which the majority judgment of that court (3 to 1) while interpreting 18th Section of Statute 8 and 9 Vie 109 which is worded thus:-

\"And be it enacted that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to -be won upon any wager, or which shall have been deposited in the hands of any person to decide the event on which any wager shall have been made.\"

held that the provision had no retrospective effect to affect suits commenced before its coming into operation.

In Colonial Sugar Refining Co. v. Irving (1905) A.C. 369, the Australian Commonwealth Judiciary Act, 1903 which had abolished a right of appeal by the Privy Council from the Supreme Court of Queensland, it was held not to apply retrospectively to a suit pending when the Act was passed and decided by the Supreme Court after that date.

In Re Athlumney (1898) 2 Q.B. 547, Wright J opined thus:-\"Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as A regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment If the enactment is expressed in a language that is fairly capable of either interpretation, it ought to be construed as prospective only.\"

Looking at the wording of section 11,1 am of the view that it has neither retrospective effect, nor does it affect the issue of relationship of a trustor and a trustee and the beneficial interest accruing to the former from shares in a bank held and registered in the name of the latter for the benefit of the former. To hold otherwise is to import into the statute something that was not intended or contemplated by the legislature. The Decree only ousts the jurisdiction of the court from determining a dispute challenging the vesting of bank shares in the name of the person in whose name they are registered. The proviso to s.l 1 (supra) only provides exceptions to the main section in cases of persons of unsound mind or minors. The proviso in my view does not affect the question of trust or a claim of beneficial interest from such trust; and the case of Western Derby Union v. Met'ropolitan Life Assurance Society (1897) A.C. 647 cited by learned Senior Counsel for the plaintiffs/respondents is apposite. In that case Lord Herschell while dealing with the effect of proviso to the enactment said:-

\"I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in the proviso. Of course ^proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, which it may reasonably admit of doubt as to its having this scope or that, which the proper view to take, but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself

on any reasonable construction of it simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous,... and, accordingly, a F proviso is inserted to guard against the particular case of which a particular person was apprehensive, although the enactment was never intended to apply to his case, or to any other similar cases at all.\"

Commenting on the views (supra) Lord Davey opined thus:-

\"My Lords, it seems to me that the whole argument of the appellants really comes to the old and apparently ineradicable fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained in it, by what is called implication from the language of & proviso which may or may not have a meaning of its own. I entirely agree with what has fallen from my noble and learned friend opposite (Lord Herschell) upon this subject.\"

The style of Military Regimes legislations on ouster of courts jurisdiction has always been plainly and clearly drafted such that no iota of doubt is left as regards their intent, purport and scope. See for example, section 5(1) of Decree No.47 of 1979 and section 2(1) of Decree No. 48 of 1977.

I shall briefly touch upon the issue of fair hearing. I have gone through the briefs of argument filed by both parties in the Court of Appeal and I find myself convinced and satisfied that both parties were heard on the germane and determinant question of ouster of the courts jurisdiction by 5.77 of Decree No. 25 1991. The Court of Appeal after considering the written and oral submissions by learned counsel came to the conclusion, as did by the trial court, that S. 11 did not oust the jurisdiction of the court to hear the plaintiffs\' claim. Dealing with issues other than this one, would be academic, as the result derived therefrom, will have no effect on the court\'s power to continue with the hearing of the action. There is no miscarriage of justice. I come to the conclusion that s. 11 has not ousted the trial court\'s jurisdiction to continue with hearing of the cases now pending before it. Both the decisions of the trial court and the Court of Appeal are on firm ground on this issue and I equally affirm them.

It is for these reasons contained in the lead judgment of my learned brother Kutigi, J.S.C. that I also hereby dismiss this appeal and subscribe to the consequential orders contained in it.

Judgement

Delivered by

Sylvester Umaru Onu J.S.C

I had before now the privilege of reading in draft form the judgment of my learned brother Kutigi, J.S.C. just delivered and with it I am in complete agreement. I wish, however, to add some comments of mine in elaboration as follows:-

This appeal arose from the decision of the Court of Appeal, Lagos Division delivered on 30th June, 1993 which dismissed an appeal by defendant, herein appellant, from the Ruling of the Lagos High Court (per Olusola Thomas, J.) wherein that court decided that its jurisdiction to continue the trial of two consolidated actions before it was not ousted by section 11 of the Banks and Other Financial Institutions Decree No. 25 of 1991 (hereinafter in this judgment referred to as Decree No. 25).\' Decree No. 25, Section 11 states:-

\"Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or the person suffering from the mental illness.\"

But first, the genesis and historical background of the case giving rise to this appeal.

It all began from inception in 1987 at the Lagos State High Court wherein the plaintiffs, Mrs. P.M. Saraki and Dr. Olusola Saraki had in suit No LD/845/87 jointly claimed from the defendant, N.A.B. Kotoye, as per their amended statement of claim, as follows:-

\"(1) A declaration that the 2,400,000 shares and the Bonus, script and other shares attached thereto standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the afore-mentioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The defendant in his own amended statement of defence counter-claimed against the plaintiffs vide his paragraphs 46 and 47 thus:-

\"46. Whereupon the defendant by way of counter-claim claims against the 2nd plaintiff in the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

47 The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

In the second suit, Suit No, LD/938/87, the 2nd plaintiff alone claimed against the defendant in his second amended statement of claim as follows:

\"1. A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

2. An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of judgment.

3. An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

4. An order for rectification of the Register of the shares to give effect to any judgment delivered therein.

5. An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

In his further amended Statement of Defence and counterclaim, the defendant pleaded thus:-

\"(i) A declaration that the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the

plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner\"

Pleadings having been duly exchanged by the parties the two suits which were consolidated went to trial. Before the conclusion of hearing and following the promulgation of Decree No.25, by the Federal Military Government, the defendant brought an application, on grounds of jurisdiction, in which he prayed

the trial High Court for:-

Striking out the consolidated suits herein on the ground that this honourable court has no jurisdiction to continue to entertain same and/or allow the proceedings to be maintained against the defendant/ applicant.\"

In his considered Ruling, Olusola Thomas, J. held that, in the light of the submissions of learned counsel on both sides, it was his conclusion that there is want of clarity in the drafting of section 11 of Decree No.25 and that therefore there is an ambiguity. He then went on to hold that the interpretative function of the court is called for, adding that the two alternative interpretations of section 11 (ibid) would have the effect of either:

(i) taking away the beneficial interest of a cestui qui trust, or a Bank.

(ii) merely protecting the legal title of a registered holder of shares in a bank

He in addition maintained that-

(a) It is the duty of the court to adopt the more reasonable construction and hold that section 11 is intended to protect the title or the legal title of a registered shareholder.

(b) Section 11 does not bar the claims of the plaintiffs from being maintained against the defendant, and

(c) The question of whether or not there is a trust concerning the shares held in the defendant\'s name is far from being determined and cannot be determined until the whole evidence is taken and

proceeded to dismiss the defendant\'s motion on 27th November, 1992.

The Court of Appeal sitting in Lagos (Per Sulu-Gambari, Ubaezonu and Tobi, JJ.C.A.) before which an appeal was heard on 30th June, 1993, dismissed it and held that the trial High Court had jurisdiction to continue the consolidated suits.

The defendant has further appealed to this court complaining that the decision in the lead judgment of the court below per Ubaezonu, J.C.A., premised on a long issue formulated by him and failure generally on that court\'s part to consider all the eight issues formulated from the eleven grounds of appeal, amounted to a denial of fair hearing contrary to section 33 of the 1979 Constitution.

In his Notice of Appeal dated the 8th of July, 1993, the defendant filed six grounds of appeal and his amended brief of argument formulated five issues distilled there from as follows:-

1. Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

2. Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

3. Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to the fact that plaintiffs who had accepted defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

4. Does the proviso to section 11 create ambiguity or alter or affect the meaning of Section 11 in any way'

5. Did not what the learned trial Judge said amount to accepting the case made by the defendant'

The issue formulated at the plaintiffs\' instance as arising for our determination is:

\"'.... the question for determination in this appeal as in the courts below involves a decision as to whether Decree 25 has effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in

a bank.\"

After the exchange of briefs by the parties in accordance with the rules of this court this case came up for hearing on the 7th of June, 1994. Learned Senior Advocates for both sides adopted their briefs of argument. Learned Senior Advocate for the appellant who also filed a Reply brief adopted same before each expatiated on them. 1 shall for the purpose of my consideration of the appeal deal with the five issues submitted at the appellant\'s instance, bearing in mind however that the crux of what are contained in the five issues are, in my opinion, encapsulated in the lone issue proffered on the plaintiffs\' behalf.

ISSUES 1 AND 2:

Issues 1 asks: Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it' Issue 2 on the other hand, poses the question: Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing' The defendant has argued both in his Amended Brief as well as through learned Senior Advocate on his behalf firstly, that the court below was in error when it agreed with the plaintiffs that the only issue for determination in the appeal was that formulated by the plaintiffs and repeated in his Brief. It was contended that the sole issue which was formulated as hereinbefore mentioned did notarise from any of the nine Grounds of Appeal filed by the defendant in his appeal to that court. That being so, it is erroneous for the court below to have raised an issue for determination which does not arise from the grounds of appeal. That issue as formulated in the lead judgment of Ubaezonu, J.C.A., in the court below was

\"The only issue in this case is whether A, in whose name the shares are registered can hold the same in trust for a third party (b)\".

Learned Senior Advocate for the plaintiffs, Chief Williams, has, in his oral submission argued that the issue there put could have been better stated and that even though not strictly enough, was right or not far from being right. Be that as it may, as it was the jurisdiction of the High Court to entertain the actions now subject of appeal that was involved, the court below even and this court, are bound to look into the matter-jurisdiction being very fundamental.

This is the moreso because, an issue relating to jurisdiction of the court appealed from will always be considered and determined by the court to which an appeal lies. That is to say, a question as to whether or not the court from which an appeal lies has jurisdiction, will be considered by the court to which an appeal lies even where both parties are reluctant to, or agree not to raise it, or even where the point is not raised in the Notice of Appeal, See Asante v. Taawia (1949) 65 TLR 105 (a Privy Council case), Heyting v. Dupont (1961) 1 WLR 1192 and Wong v. Beaumont Property Trust Ltd. (1965) 1 QB173, the latter being a case where the point of jurisdiction involved before the Court of Appeal in England, was not raised in the court below or in the notice of appeal but as it went to jurisdiction, the Court of Appeal (England) considered it. Hence, in the instant case, the fact that the defendant has not included any aspect of the question in his grounds of appeal or A in the questions for determination formulated in his Brief of Argument before the court below, can in no way curtail the jurisdiction of the Court below to decide whether or not the jurisdiction of the trial court has been ousted by Decree No. 25 In other words, the question of whether or not the jurisdiction of the trial High Court in this

case has been ousted by Decree No.25, in my view, depends solely on the true meaning and intent of the enactment and not upon what the defendant, or for that matter the plaintiffs, chooses or choose to put in his or their grounds of appeal or cross-appeal or brief or pleading or any document of a similar purport.

Be it noted and as indeed conceded by Learned Senior Counsel on either side, that when determining whether or not a court has jurisdiction, it is the statement of claim alone that must be looked at in a case of this nature. Indeed, if none of the parties chooses to raise the point or were all of them do agree that the trial court has jurisdiction, the court is not bound to refrain from holding a different view should it be convinced that such a view represents the correct decision in law on the question of jurisdiction. See Owoniboys Technical Services Ltd. v. John Holt Ltd. (1991)6 NWLR(Pt.l99)550;Osadebayv.A.-G.,Bendel State(1991) 1 NWLR (Pt. 169) 525; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420 and Tukur v. Governor of Gongola State (1989) 4 NWLR(Pt.l 17) 517. I am therefore not impressed by the argument of learned Senior Advocate for the defendant when he contended that the issue formulated and decided by the court below was not an issue that arose for determination in the appeal and that furthermore that the result was that the defendant was never heard by the court below on the issues properly placed before them when Ubaezonu, J.C.A., reading the lead judgment, of that court held inter alia:-

\"The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (B)\",

the latter which was derived from the oral submission of Mr. Ladi Williams wherein he said:

\"'What we are saying is that this is not to be interpreted to mean where you have a cestui que trust or beneficiary claiming under a trust, such beneficiary cannot direct the person in whom title vests how to deal with the shares and dividends attached thereto\"

I therefore share the learned Senior Advocate, Chief Williams\' view, that this court may raise the point of jurisdiction even if the two courts below did not do so and were overruled. See Vanderyell\' s Trust (No.2) (1974) Ch. 269 (per Lord Denning). It is my considered view, therefore, that the issue which the court below formulated and decided was not the wrong issue that arose for determination before it. It is accordingly answered in the affirmative. Secondly, the defendant has argued that the court below contravened his right to a fair hearing. After stating how seven other issues apart from the first as formulated by the defendant for determination and distilled from eleven grounds (nine original and two additional) came about, it is learned counsel for the defendant\'s contention that in formulating only one issue out of eight, the court did not only formulate the wrong issue, they so to say, swept aside all other issues formulated by the defendant and which properly arose before them. After relying on several recent decisions of this court such as Alhaji Abu Momodu & Ors v. His Highness Alhaji Momoh & anor. (1991) 1 NWLR (Pt. 169) 608 at 620-621; Aja MaziAja & Anor v. John Okoro & Ors. (1991) 7 NWLR (Pt. 203) 260; Sylvanus Odife & Anor.: Geofrey Aniemeke & Ors. (1992) 7 NWLR (Pt. 251) 25 at 42 and Oshohoja v. Amuda & Ors (1992) 6 NWLR (Pt. 250) 690, it was submitted that it was erroneous on the part of the court below without examining the eight issues within the ambit of the eleven grounds of appeal filed, to conclude as they did, that the eight issues are unnecessary and prolix when in fact each of them arose out of the grounds of appeal filed. The dicta in the case of Ejowhomu v. Edok-Eter Mandilas Ltd (1986) 5 NWLR (Pt.39) 1; (1986) 2 NSCC 1184 at 1193-1197 (per Karibi-Whyte, J.S.C.), 1208 (per Obaseki, J.S.C.) and 1209 (per Aniagolu, J.S.C.) were cited to us in support of the proposition thereof.

It is next argued that the resolution of this issue is closely linked with the first issue considered above in that the question of fair hearing, like that of natural justice, must depend upon the circumstances of the case, the nature of the inquiry, the rules of procedure applicable, the subject-matter that is being dealt with and so forth. The underlying factor however, it is maintained, is that the person concerned should also be heard by the adjudicating panel before a decision is reached one way or the other.

After referring us to several other recent decisions of this court on the duty of the court below to determine all issues placed before it for determination, learned counsel submitted that it is usual in a situation of a proved denial of the right of fair hearing for the appellate court to remit the case to the court below so that all issues raised may be properly considered. The case of Ezeoke & Ors v. Nwagbo & Ors. (1988) 1 NWLR (Pt. 72) 616 at 627 and Obi Awanze Okonji & Ors v. George Njokanma & Ors. (1991) 7 NWLR (Pt. 202) 131 were called in aid. However, in a situation where a court, as herein has failed to consider or pronounce on issues placed before it, and a resolution of other issues by the appellate court, it will be unnecessary to remit the issues not considered to the lower court for consideration and determination vide Chief G. A. Titiloye & Ors v. ChiefJ. Omoniyi Olupo (1991) 7 NWLR (Pt.205) 519 at 539. We were therefore urged not to remit this appeal to the Court below but to determine accordingly in view of other issues raised and considered hereafter.

It is pertinent for me to advert first to the learned Senior Advocate, Chief Williams\' reaction to this question of denial of fair hearing. He submitted that the lone issue relied on by the court below could have been better put but definitely saw nothing wrong with it since it is enough and right. I agree with Chief Williams. With utmost due respect to the learned Senior Counsel for the defendant, the questions which a court or tribunal asks itself before arriving at a decision go to the jurisdiction of that court or tribunal to make the decision. Thus, if it asks itself the wrong question, then it would lack jurisdiction to give the decision it may give. In the case of N.P.A. v. Panapina (1974) 1 NMLR 82 at 15, this court with citing approval the following passage from the judgment of Lord Pearce in theANISMINIC CAS' (1969) 2 A.C. 147 at 195, said:

\"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions prec'edent to the tribunal having any jurisdiction to embark on enquiry. Or the tribunal may at the end make an order which it has no jurisdiction to make.....or it may ask itself the wrong questions .....Any of these things would cause its purported decisions to be a nullity.\"

1 also agree with Chief Williams that it follows from the foregoing that in deciding whether or not the jurisdiction of the High Court is or is not ousted by Decree 25, it is very important for that court to ask itself the right question. Accordingly I hold that it was competent for the court below to determine what questions the High Court should have asked itself in deciding the aforementioned question. It cannot be right, in my opinion, to suppose that the court below or this court are bound by and cannot step outside the eight questions formulated by the defendant even if it considers, as the court below obviously does, that those are wrong ones. The defendant\'s argument that he was denied a fair hearing in the failure to consider the eight questions formulated by him cannot be sustained. Where a court is clearly convinced that the questions which it ought to ask itself are the wrong questions, then it has no jurisdiction to consider those questions since the answers of them are only of academic interest. In the result, it is my view that it is a misconception to argue that in deciding that questions so formulated are the wrong questions, the court is contravening the right of the party to a fair hearing. For, as clearly pointed out by this court in Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419 at 448 (per Nnaemeka-Agu, J.S.C.):

\"For the rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice has been done because of lack of hearing. It is whether a party entitled to be heard before had infact been given an opportunity of hearing. Once an Appellate Court comes to the conclusion that the party was entitled to be heard before a decision was reached but was not given the opportunity of a hearing the order/judgment thus entered is bound to be set aside.\"

See Section 33(1) of the 1979 Constitution. In Sheldon v. Bromfield Justice (1964) 2 Q.B. 573 at page 578, it was held that the court or tribunal shall give equal treatment, opportunity and consideration to all concerned in a case. And in Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587 at 605, this court held that when a represented party is not heard or given the opportunity of being heard in a case the principles of natural justice are abandoned.

In the instant case, I can see no denial of the defendant\'s constitutional right to fair hearing being perpetuated and so this issue is accordingly answered in the negative.

ISSUES 3 AND 5

In dealing with these issues together which state:

3. Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to the fact that the plaintiffs who accepted the defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they have advanced in response to the defend'ant\'s argument'

4 Did not what the trial Judge said amount to accepting the case made by the defendant'\"

It is clear that these arise from ground 8 of the appeal grounds as well as issues 6 and 7 canvassed in the court below. The defendant\'s grouse in respect of section 11 of Decree 25 is that in so far as the plaintiffs are in this action seeking to enforce a right (according to them) on a secret contract and based on a common law right which exists between a trustor and a trustee, the action cannot be maintained. In other words, that the section prohibits the maintenance of a:

\"Suit or other proceeding.....against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other than the registered holder.\"

The argument of the defendant on the point which, in my view, is not radically different from the submission of the plaintiffs is that the trustee is the legal registered owner, that the trustor is the beneficial owner in equity and that the

beneficial owner or trustor cannot any longer by court action enforce rights which he undoubtedly has against the trustee, on the ground that the trustee is not the true owner, but that the trustor or beneficiary is. Put the other way, the plaintiffs\'

contention is that the Decree only preludes the court from determining a dispute as to whether title to a share vests in A (who is not the registered holder).

I am satisfied that both Chiefs Ajayi and Williams, Senior Advocates, are at one in saying that in such a situation, the Decree treats the fact that B is the registered holder of the shares as conclusive evidence of his title thereto. That is as far as both learned Senior Counsel are ad idem. For, while learned Senior Advocate for the defendant maintains, and this is the point of departure between both learned Senior Advocates, the Decree applies to an action which was filed before the decree came into force, the learned Senior Advocate for the plaintiffs holds a contrary view. In sum, the two learned Senior Advocates are agreed as to the meaning of interpretation to section 11 of Decree No.25 except the rider thereto, which learned Senior Advocate for the defendant submitted, allows a cestui qui trust to be given a direction as to what to do with the shares by the beneficial owner who, although not denied access to the courts, the trustee may obey or refuse to obey him. Learned Senior Advocate for the plaintiffs, for his part after spelling out the dichotomy between a claim against a trustee who acknowledges a trust and is carrying out the directions of the beneficiary, in which case there is nothing to go to court over but that where he says he is the beneficiary\'s trustee by denying the trust placed in him, Section 11 will not bar the beneficiary from suing him since court must view such a situation with seriousness. The case made for the defendant in regard to the meaning of the enactment is summed up as follows:

The situation created by section 11 is almost identical with that created by a statute of Limitation which prevents a debt being recoverable by action after a specified period of time. It does not prevent a creditor demanding payment after the lapse of statutory period; neither does it prevent the debtor from paying the debt in such circumstances. But if the debtor were to refuse to pay, and the creditor commences an action for recovery, he will be successfully met by a plead of the Statute of Limitation in bar. This is because, in spite of the right, the remedy for enforcement is taken away by statute.

With due respect, I do not think that the Decree in any way precludes the court from deciding a claim by A that B holds the shares registered in his (B\'s) name in trust for A. This is because, on a proper construction, it cannot be said that in such a case A would be questioning the title of B to the shares on the ground that title is vested in someone other than B. For while an honest trustee will allow trust property to be transferred into the assets of a beneficiary, it will be otherwise if the trustee is a dishonest man. In other words, what A would be saying is:

I do not dispute that title to shares are vested in B who is the registered holder thereof. But I ask the court to declare that he holds those shares in trust for me.

I share Chief Williams\' view that the fact that the Decree ought to be given the above meaning is a well established canon of construction that a statute should not be interpreted in a way that will enable it to be used as an instrument of fraud.The meaning urged upon us by the defendant, in my view, would tantamount to saying that where, before the enactment came into force B had agreed to and accepted to hold shares in a bank in trust for A, he is, by the enactment,

authorised to treat those shares as his own beneficial property and to keep dividends accruing therefrom for his own use. This, I agree, is patently absurd and that such a construction ought to be rejected. A cursory look at the Amended Statement of Claim in Suit LD/845/87 and the Second Amended Statement of Claim in respect of Suit No. LD/938/87, depict huge sums of money operated in joint accounts, transfers to Societe Generale Bank from other Banks and other manner of heavy monetery transactions between the defendant as trustee and the plaintiffs as beneficiaries and that these took place to give rise to the actions consolidated herein. Similarly, the defendant in his Further Amended Statement of Defence and Counterclaim asked for certain items to be taken account of against the plaintiffs in their mutual transactions. It is pertinent to point out that the plaintiffs joined issues with the defendant by filing a Reply to the Further Amended Statement of Defence and Counterclaim. That being so, it would appear to me scandalous for one to suggest as the defendant has done, and without as much as batting an eye'lid, that if those facts are established, the defendant would be entitled to convert the alleged fabulous millions of Naira in the form of shares and scripts etc. It is well established that in construing or interpreting a statute one must avoid a meaning which results in taking away private rights of property without compensation. It was Francis Bennion in his authoritative book STATUTORY INTERPRETATION, 2nd Edition who in those immortal words at section 164 stated as follows:-

\"Legislative intention is not a myth or fiction, but a reality founded in the very nature of legislature.\"

On the facts of this case, the defendant\'s contention, if I understand him well, is that the enactment would appear to enable him to take beneficial rights of the plaintiffs for his (defendant\'s) benefit without having to pay a kobo for the bonanza. In Maxwell on Interpretation of Statutes 12th Edition 251-252 the learned author writes:-

\"Statutes which encroach on the rights of the subject,whether as regards person or property, are subject to a strict construction in the same way as Penal Acts. It is a recognised rule that they should be, interpreted if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of individual should be adopted.One aspect of this approach to legislation is the presumption that a statute does not retrospectively abrogate vested rights, another is the presumption that proprietary rights are not taken away without provision being made for compensation.\" (Italics is mine for comments)

On the need to discourage a statute that is capable of retrospectively abrogating proprietary rights, I need only refer to the decision of this court in the case of DIN v. Attorney General of the Federation (1988) 4 NWLR (Pt.87) 147, where it was held inter alia that statutes which encroach on the rights of a subject, be they personal or proprietary rights, attract strict construction by the courts; they are construed fortissime contra preferentes, if possible so as to respect such personal or proprietary rights.

Further, on the need to discourage retrospectively, the word \"shall be maintained\" as used in section 11 of Decree 25 (see for definition of the section at page 1 ante) it is my view that bringing to bear a strict interpretation to those words, they ought to be construed as having retroactive effect. In this wise, I adopt what Stroud\'s Judicial Dictionary relevantly says about the word \"maintain\". It states:

\"To maintain\" an ACTION is to support one which has already been brought (per Platt B. Moon v. Durden; 2 Ex. 22, cited BROUGHT) but the majority of the court in that case held that, though the Gaming Act, 1845 provided that no suit

should he \"brought or maintained\" for the recovery of a wager, yet that was not enough to give the Act a RETROSPECTIVE effect so as to prevent a plaintiff, who had begun his action for a wager before the act was passed from going on with it after the passing of the Act. (Italics mine for emphasis)

While the majority decision accord with my view, it is merely persuasive. See also Halsbury\'s Laws of England 4th Edition paragraph 906, page 557 where the learned authors say:

Unless it is clearly and unambiguously intended to do so a statute should not be construed so as to interfere with or prejudice estab'lished private rights under contracts or the title to property or so as to deprive a man of his property without his having an opportunity of being heard; in particular, an intention to take away property without giving a legal right to compensation for the loss of it is not to be imputed to the legislature unless that intention is expressed in unequivocal terms.

See also section 40( 1)(a) and (b) of the 1979 Constitution which provides:

\"40.(1)No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:-

(a) requires the prompt payment of compensation therefor; and

(b) gives to any person claiming such compensation a right of \' access for the determination of his interest in the property ' and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

In a country where for over 24 years, Decrees passed by the Military Administration containing ouster clauses have been the rule rather than exceptions, to import into Decree 25 such a retrospectivity would, in my view, do violence to the legislature\'s intention and constitute a breach of the plaintiffs\' fundamental rights enshrined in the 1979 Constitution. See also:

1. Bello v. Diocesan Synod of Lagos (1973) ECSLR (Pt. 1) 330; (1973) A 3 S.C. 103; (1973) 1 All NLR (Pt.l) 249;

2. P eenok Investment Limited v. Hotel Presidential Ltd (1982) 12 S.C. 1 at 25.

Finally, when it is known that the writs bringing to life the two consolidated actions from which the appeal herein emanated in 1987 and that Decree No. 25 was promulgated in 1991, under no pretext, guise or guile ought section 11 of the Decree to affect rights, equitable or legal that had accrued before the Decree came into force. In other words, retrospectivity ought not to be allowed to fetter such rights unless unequivocally provided for. Fortunately, the Decree makes no such express provision and all I have to do is to give it its ordinary meaning. My answer to both issues 3 and 5 is in the negative

ISSUE 4:

Learned Senior Advocate for the defendant has submitted on this issue which asks;

'Does the proviso to section 11 create any ambiguity or alter or affect the meaning of section 11 in any way'\"

that it is meant to make the meaning of section 11 of Decree 25 clearer. That this must be so, he argues, is because

(i) The proviso is designed to exclude from the operation of the main body of section 11 two specific cases which fall within the class affected by the operation of section 11.

(ii) Both minors and persons suffering from mental illness are persons who lack legal capacity to hold land; but whose properties are held legally on their behalf by Trustees appointed by the courts or under the authority of the laws of the land and who hold legal estates on behalf of the beneficial owners the infants and persons of unsound mind.

(iii) Without the proviso to section 11, children and persons suffering from mental illness whose property are held on their behalf by Trustees who have the legal estate, would be unable to enforce their rights as beneficial owners by court action because of the provisions of the body of section 11 which bars their rights.

(iv) It follows that the main body of section 11 is designed and intended to bar the right of action of beneficiaries in all other cases in which shares in the bank are claimed to be held by one person as Trustee for another.

With utmost due respect to learned counsel for the defendant, this submission on the proviso cannot be absolute, lacking as it does, the unqualified authority attributed to it. The reason is that the court will not modify, enlarge or contract the scope and meaning of any enactment merely because of the proviso to that en'actment. It was Lord Herschell who put it lucidly and unambiguously in the case of Western Derby Union v. Metropolitan Life Assurance Society (1897) A.C 647 H at pages 655 to 656 thus:

\"I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in any proviso. Of course a proviso may be used as a guide in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find in it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because otherwise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous, and for this reason; one knows perfectly well that it not unfrequently happens that persons are unreasonably apprehensive as to the effect of an enactment when there is really no question of its application to their case; they nevertheless think that some court may possibly hold that it will apply to their case , and they suggest if it is not intended to be applicable no harm would be done by inserting a proviso to protect them; and, accordingly, a proviso is inserted to guard against the particular case of which a particular person was apprehensive, although the enactment was never intended to apply to his case, or to any other similar cases at all.\"

Commenting on the views expressed by Lord Herschell, Lord Davey declared at page 657 as follows:-

\"My Lords, it seems to me that the whole argument of the appellants really comes to the old and apparently ineradicable fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained E in it, by what is called implication from the language of a proviso which may or may not have a meaning of its own. I entirely agree with what has fallen from my noble and learned friend opposite (Lord Herschell) upon this subject.\"

Since the provisions of section 11 of Decree No.25 are in themselves \"precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case,declare the intention of the law giver..... ..\"See the celebrated Peerage Case (1843-60) All E.R. 54 at 63 (per Tindal, CJ.)- While I am therefore not persuaded to hold, as did the learned trial Judge, that an ambiguity resulted in the interpretation of section 11 of Decree No.25 (ibid), I am nonetheless satisfied that that section does not bar the claims of the plaintiffs from being maintained against the defendant. This is because, inspite of Mr. Ladi Williams\' concession that \"we cannot maintain a suit or proceeding on the ground that the title of the said shares vests in us,\" connoting that:

(i) The defendant is the registered holder of the shares;

(ii) The shares are vested in the defendant:

(iii) The defendant holds the shares in trust for the plaintiffs;

that concession presupposes that the defendant is amenable to the plaintiffs\' direction. Once the defendant denies accountability that the plaintiffs are the beneficial owners or the semblance of such a conduct to wit: that

(a) the ground upon which the plaintiffs inter alia claim Rectification of the Register of Members of the Company that the shares do not truly belong to the defendant (in whose name they are registered) but in the plaintiffs;

(b) the ground upon which the plaintiffs claim a declaration that the defendant holds the shares as Trustee for them and that they and not him are the true owners of the shares

the jurisdiction of the trial court to look into the matter from the date the enactment took effect, which I hold should operate prospectively, ought not, in my respectful view, to be ousted. In the light of this, the conclusion arrived at by the court below to the effect that

\"It is my respectful view that to that extent the jurisdiction of the court is not ousted as the respondents are not seeking to maintain a suit or proceeding against the appellant that the title of the shares are not vested in him\"

cannot, in my opinion, be faulted and should be allowed to stand along with other conclusions arrived at by it.

The result of all I have been saying is that the decisions of the two courts below being clearly concurrent findings which this court by a long line of decided cases has always held it will be loath to interfere with unless the appellant can show special circumstances either that there was a miscarriage of justice or serious violation of some principles of law or procedure or that the findings are erroneous, i.e. error in substantive or procedural law .

1. Lokoyi v. Olojo (1983)8 S.C. at 73; (1983) 2 SCNLR 127;

2. Ezewani v. Onwordi (1986) 4 NWLR (Pt.33) 27;

3. Lamai v. Orbih (1980) 5-7 S.C. 28 and

4. Balogun v. Amubikahun (1989) 3 NWLR (Pt. 107) 18, to mention

but a few, I will decline to disturb the decision in the instant case.

Finally, the case in hand being an interlocutory appeal where care and caution ought to be exercised not to make comments or findings which may have the effect of affecting the merits of the case or remove the substratum thereof, the less said about the claims disclosed in the parties pleadings which ought to be kept more or less sacrosanct before hearing is embarked upon, the better. See Obeya Memorial Hospital v. Attorney-general of the Federation (1987) 3 NWLR (Pt. 60) 325.

For these reasons and those given by my learned brother Kutigi, J.S.C., with which I had signified my concurrence, I will myself dismiss this appeal and affirm the decisions of the two courts below. The case is remitted to the trial court for the parties to continue with the hearing thereof. I award N1000.00 costs to the plaintiffs/respondents.

Judgement

Delivered by

Yekini Olayiwola Adio J.S.C

The respondents, as plaintiffs filed an action, Suit No. LD.845/87 against the appellant in the Lagos High Court. Their claim, as stated in their Amended Statement of Claim, was as follows:

\"(1) A declaration that the 2,400,000 shares and the Bonus Script and other shares attached thereto standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiffs (or alternatively) for the 2nd plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of .the plaintiff or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.\"

The appellant filed an Amended Statement of Defence and a counter-claim. For the present purpose, it is sufficient to state that the counter-claim was as follows:-

\"46. Whereupon the defendant by way of counter-claim claims against C the 2nd plaintiff the sum of N730,000.00 being money advanced to the 2nd plaintiff or to his order at his request.

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\"

Subsequently, the 2nd respondent alone, Dr. Olusola Saraki, instituted another action, Suit No. LD/938/87, in the same court against the appellant and, according to the Amended Statement of Claim, the claim was as follows:-

\"(1) a declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the E aformentioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or dealing with the aforesaid shares otherwise than as

(4) An order for rectification of the Register of Snares to give effect to F any judgment delivered herein.

(5) An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiffs behalf.\"

The Second Amended Statement of Defence filed by the appellant contained a counter-claim as follows:-

(i) A declaration that of the 6,876,840 shares standing in the name of the plaintiff in the Register of Members of Societe Generale bank Nigeria Limited 2,783,483 thereof are not held by the plaintiff beneficially but upon trust for the plaintiff and the defendant for disposal as they shall both agree to deserving Nigerians of their choice,

(ii) An injunction restraining the plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

The two suits were consolidated and hearing had commenced and had gone on for some years before the appellant, at a certain stage, filed an application which was based on section 11 of the Banks and Other Financial Institutions Decree 1991 that was promulgated in June 1991, for an order '

'Striking out the consolidated suits herein on the ground that this Honourable Court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the defendant/ applicant.\"

In order to enable one to fully understand the issues involved, it is necessary to set out the provisions of section 11 of the Banks and Other Financial Institutions Decree 1991. The provisions are as follows:

\"11. Notwithstanding anything contained in any law or in any contract or instrument, no such or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the shares vests in any person other than the registered holder.

Provided that nothing in this section shall bar a suit or other proceedings on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from mental illness.\"

The learned trial Judge after consideration of the evidence before him and the submissions of the learned counsel for each party, dismissed the application. He held that the provisions of section 11 of the Decree appeared to be capable of being interpreted in two ways and that the question whether the appellant held the shares in question in trust for both or one of the respondents was yet to be determined. On the whole, he stated, inter alia, as follows:-

If section 11 had been unambiguous, I can only take the intention of the law maker from the words, they have used in the provision. In the face of two possible constructions it is the duty of the court not only to E avoid unreasonable, artificial or anomalous construction but to adopt the more reasonable construction and hold that section 11 is intended to protect the title or the legal title of a registered shareholder in the bank. It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. I do not find that section 11 bars this suit or other proceeding F based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The question of whether or not there is a trust concerning the shares in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken.

Dissatisfied with the ruling of the learned trial Judge, the appellant appealed to the Court of Appeal which dismissed the appeal. The only issue for determi'nation in this case formulated by the learned counsel for the respondents was as follows:

Whether the claims contained in the statement of claim in this action can, strictly be regarded, be (sic) described or categorized as a claim by the plaintiff or either of them that the title to the shares registered in the name of the defendant vests in them or either of them rather than in the said defendant.

The court below pointed out that the issue before it was the correct interpretation of section 11 of the Banks and Other Financial Institutions Decree 1991, No. 25 of 1991, and applying the said interpretation to the claims in this case so as to determine whether the learned trial Judge had jurisdiction to deal with this case or not. It also pointed out that the provision was a provision that ousted the jurisdiction of the court to entertain certain matters in regard to shares in a bank and that, for that reason, the provision should be construed strictly. The court below then went on:

Thus, if any person brings an action in any court to say that title of the shares in a bank registered in A\'s name does not vest in A but in B, the jurisdiction of the court is ousted from entertaining such action. The registration of the shares of a Bank in the name of a person is absolute as to the person in whom the title to the shares vests. The Decree is clear on this and gives no room for argument or speculation. The only issue in this case is whether A in whose name the shares are registered can hold the same in trust for a third party (D). The Decree is silent on this. In interpreting a statute, a court does not import into it that it did not say. The Decree talks of title or a person registered as holder. It does not talk about beneficial interest in the said shares or whether the person in whom the title vests can or cannot hold the shares in trust for another person.

The present suit does not challenge or deny that the appellant is the registered holder of the shares in question or that the shares are vested in him. No. What I understand him to be saying is- \'I concede that the shares are vested in you but you hold it (sic) in trust for me. It is my respectful view that to that extent the jurisdiction of the court is not ousted as the respondents are not seeking to maintain a suit or proceeding against the appellant that the title to the shares is not vested in him. I therefore hold that the court below has jurisdiction to continue the consolidated suits which is the subject of this appeal.

Dissatisfied with the judgment of the court below, the appellant has lodged a further appeal to this court. The parties have, in accordance with the rules of this court, duly filed and exchanged briefs. The appellant filed the appellant\'s brief which was amended with the leave of this court. The respondents filed a respondents\' brief and the appellant filed a reply brief. The five issues for determination formulated in the appellant\'s brief are as follows:

(1) Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

(2) Did the refusal by the Court of Appeal to consider the eight issues formulated by the defendant/appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

(3) Was not the learned trial Judge obliged to accede to the defendant\'s prayer on the application having regard to

the fact that the plaintiffs who had accepted the defendant\'s main contention on the effect of section 11 of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

(4) Does the Proviso to section 11 create ambiguity or alter or effect the meaning of section 11 in anyway'

(5) Did not what the learned trial Judge said amount to accepting the case made by the defendant'\"

The respondents formulated only one issue for determination in their brief. In their view, the question for determination in this appeal as in the courts below involved a decision as to whether Decree 25 had effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in a bank. Some of the questions raised hi this appeal can be dealt with straightaway B in that they are covered by well-established legal authorities. One is that when an objection is taken that a court has no jurisdiction to hear or to continue the hearing of a suit, only the averments in the Statement of Claim of the plaintiff are relevant for the determination of the question. SeeAdeyemi v. Opeyori, (1976) 9-10 S.C. 31. The other is that an objection that a court has no jurisdiction to entertain a matter or an action is very fundamental. It can be raised at any stage of the proceedings in the High Court, Court of Appeal and in this court by the parties or by the. court. See Oloriodev. Oyebi (1984) 1SCNLR 390; (1984) 5 S.C. 1; and Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508. So, there was nothing wrong with the consideration of it by the court below especially when, in this case, the determination of the question was a main or vital issue.

The learned Senior Counsel for the appellant, in relation to the question raised under the third issue, referred to the statement made by the learned counsel for the respondents, Mr. Ladi Williams, when he was making submissions in the court of trial, and the learned senior counsel for the appellant submitted that the learned trial Judge and the court below should have granted the appellant\' s prayer in his application as the respondents who had accepted the appellant\'s main contention on the effect of section 11 of the Decree were unable to sustain the only proposition which they advanced in response to the appellant\'s argument. The alleged submissions of Mr. Ladi Williams, which were not disputed during the proceedings before us, may be classified into two paragraphs as follows:

the first point I propose to urge on the court is that we are not and do not want to be misunderstood that we are challenging the fact that the defendant is registered as the owner of the shares in F S.G.B.N. We concede the point. We also say that the title to the shares are in the defendant.

A close perusal of section 11 shows that what the section is talking about is maintaining proceedings or suit against the holder of the shares i.e. in whom the shares vest. In other words, we cannot maintain a suit or proceeding on the ground that the title to the said shares vests in us. What we are saying is that, this is not to be interpreted to mean where you have a cestui qui trust or beneficiary claiming under a trust, such beneficiary cannot direct the person in whom title vests how to deal with the shares and dividends attached thereto.

It was further submitted by the learned senior counsel for the appellant that the point on which the parties to this suit disagreed was clearly set out in the last sentence in the submissions of Mr. Ladi Williams in the second paragraph above.

In the case of the respondents, the submissions made for them was that the question for this court to determine was whether the claims contained in the Statement of Claim in this action (or any of them) could strictly be regarded, described or categorized as a claim by the respondents or either of them that the title to the shares registered in the name of the appellant vested in them or either of them rather than in the said appellant. It was argued that the Decree only precluded the court from determining a dispute as to whether title to a share vested in A (who was not the registered holder) or in B (who was the registered holder). It was conceded, on behalf of the appellant, that the Decree treated the fact that B was the registered holder of the shares as conclusive evidence of his title thereto though the Decree in no way precluded the court from deciding a claim by A that B held the shares registered in his (B\'s) name in trust for A. It was also submitted that the meaning of the relevant provisions of the Decree canvassed by the respondents should be adopted because a statute should not be interpreted in a way that would enable it to be used as an instrument of fraud.

In my view, the relevant question, in the present connection, is whether all or any of the reliefs claimed in both consolidated suits could be regarded, described or categorized as a claim by the respondents or either of them that the title to the shares registered in the name of the appellant vested in them or either of them rather than in the said appellant. This is the first aspect of this case which is whether all or any of the reliefs aforesaid came within the category of matters in relation to which an action could not be maintained. The second aspect, which will be dealt with later, is whether the Decree has a retrospective effect. I have already set out above the reliefs claimed in each of the consolidated suits. If the respondents had specifically claimed that they or any of them or any person, other than the appellant, owned the shares in question and, for that reason, they or any of them or that other person should be substituted and registered as the shareholder or shareholders, as the case might be, in place of the appellant, the situation would have been simple and straight forward; the action could not be maintained by virtue of section 11 of the Decree. In order that the provisions of sections 11 of the Decree may apply, there need not really be such a specific claim. It will be enough, whatever way in which the claim, against the registered holder of shares in a bank, is framed or presented, if the basis or the ground upon which the claim is in reality based is that the title to the shares is vested in any person other than the registered holder. Bearing the foregoing principles in mind, I now proceed to examine each of the reliefs claimed by the respondents. In doing so, I take into consideration the averments in the pleadings of the respondents in each of the consolidated suits. Also to be taken into consideration is the fact that by being registered as a holder of shares in a company the registered holder becomes entitled to certain rights, benefits and privileges. Excepts as otherwise provided by the law and the provisions of the Memorandum and Articles of Association of the company, he has the right to sell, Mortgage or otherwise dispose of the shares. He is entitled to receive dividends on the shares registered in his name and to keep the dividends so received for his own use. Dividend is the payment made out of profits to the shareholders of a company from time to time. In other words, the essence of being registered as owner or a holder of shares in a company is that one is, inter alia entitled to enjoy in one\'s right the foregoing rights, benefits and privileges. Where the situation is that the person who is the registered holder of shares in a company holds the aforesaid shares in trust for another person, all the rights, benefits and privileges can no longer be for his benefit. He may not sell, mortgage or otherwise dispose of the shares without the consent of the beneficiary or keep the money received as dividends for his own personal use. The aforesaid shares are in law and in fact owned not by him personally but by the beneficiary who, in his own right, is entitled to demand payment to him by the trustee of all moneys received as dividends on the shares. The beneficiary may also, in a proper case, demand that the shares be sold and the purchase price be handed over to him(beneficiary). In the circumstance, the relief claimed in item (1) of the respondents\' claim in each of the consolidated suits for a declaration that a certain number of shares, bonus, script and other shares attached thereto standing in the name of the appellant in the register of shareholders of the bank was held by him in trust for the respondents or alternatively for the 2nd respondent is, prima facie, caught by the provision of

section 11 of the Banks and other Financial Institutions Decree 1991. The situation is the same in the case of the relief in item (2) of the respondents\' claim in each case of the consolidated suits, for an order directing an inquiry into the amount of any dividend which might have been received by the appellant as holder of the shares in question up to the date of the judgment herein. The situation is also the same in the case of the relief in item (3) of the respondent\'s claim in each of the consolidated suits for an order of injunction restraining the appellant from holding or dealing with the shares in question otherwise than as trustee for the respondents and in accordance with the lawful direction of the respondents or the appropriate authorities. The relief claimed in item (4) of the respondents\' claim in each of the consolidated suits was clearly caught by the provisions of section 11 of the Decree. It was for an order of rectification of the register of shares to give effect to any judgment herein. The said relief clearly showed the real intention of the respondents that what was intended was to deprive the appellant of all the rights, benefits, privileges and other things which his registration as holder of the shares conferred on him. Section 11 of the Decree does not apply to item (5) of the respondent\'s claim in Suit No. LD/938/87 for a refund of the money held by the appellant on the respondent\'s behalf and items (1) and (2) of the counter-claim in Suit No. LD/845/ 87 but the provision of the section applies to item (1) and (2) of the counter-claim in Suit No. LD/938/87. The legal position in the case of the reliefs set out in the items in the claims or counter-claims in the consolidated suits, to which the F provisions of section 11 of the Decree, prima facie, applies, is as if it were in fact that the title to the shares in question, which were registered in the name of the appellant, vested in the respondents or either of them rather than in the appellant. The aforesaid claims and counter-claims in the consolidated suits could, in reality, be regarded or categorized as a claim by the respondents or either of them that the title to the shares, registered in the name of the appellant, vested in them or either of them rather than in the appellant. I have already quoted above the statement or submission credited to the learned counsel to the respondents in the trial court, Mr. Ladi Williams. If, as submitted by him, the respondents should not be misunder'stood that they were challenging the fact that the appellant was registered as the owner of the shares in S.G.B.N. and if the respondents conceded the point and also said that the title to the shares was in the appellant and that they could not maintain a suit or proceeding on the ground that the title to the said shares vested in him, then the aforesaid reliefs in the consolidated suits which, according to me, were, prima facie, affected by section 11 of the Decree were misconceived. The registration of the appellant as a holder of the aforesaid shares was unconditional. He was registered as a holder of the shares in his own right. A suit seeking to convert his registration as a holder of the shares in S.G.B.N. unconditionally as an absolute owner in his own right to a holder of the shares as a trustee for the respondents or either or of them is a suit being maintained against the appellant, a person registered as the holder of the shares in question in S.G.B.N., on the ground that the title to the shares vested in the respondents or either of them. That was, in reality, what the consolidated suits were. The question whether, since the consolidated suits were instituted in 1987, section 11 of the Decree applied to them is another matter which will be dealt with hereunder.

With reference to the contention that the implication of holding that section 11 of the Decree applied to the claims and counter-claimed mentioned above would be that shares of a bank could not be held by a registered holder in trust for a beneficiary, the relevant question is whether the provision of the section is clear on the point and I have no doubt in my mind that it is. If the law-makers, in their wisdom, thought, that that was what they wanted and made specific provisions which were clear on the point it is not the court\'s duty or business to try to avoid the consequences. See Aya v. Henshaw, (1972) 5 S.C. 87 at p. 95. So, what the court should do, in the circumstance, is to limit itself to the interpretation of the law. What the law should or should not be is outside the function of the court. See D Abioye v. Yakubu,(l991)5 NWLR (Pt. 190) 130. Consequently, if the law-makers made it clear in the law made by them that they did not like an arrangement whereby shares of a bank are held, by a registered shareholder of the shares, in trust for another person and, in order to discourage the practice, further provided, in clear-terms, restrictions of legal proceedings in respect of shares purportedly held in trust for another person as had been done in section 11 of the Decree, the court will give effect to the legislation.

The next question for consideration is whether retrospective effect should be given to the provision of section 11 of the

Decree. The view of the court below was that the learned trial Judge had jurisdiction to continue proceedings in relation to the consolidated suits which in effect meant that the provision of the section did not have retrospective effect so as to make it affect the consolidated suits instituted in 1987. The submission made for, the appellant was that the effect of the use of the word \"maintained\" in the provision of the section was that its operation was retrospective and it affected the consolidated suits.

The date of commencement of the Decree, as stated in the marginal note in it, was 20th June, 1991. The date of commencement of a statute is the date that it comes into operation. In the circumstance, the date on which the Decree itself, which included section 11 thereof, came into operation was the 20th June, 1991. There was nothing in the Decree to the effect that the Decree or any part or section thereof shall be deemed to have come into operation on a date earlier than the date of commencement stated in the Decree. Also, there was no provision in the Decree that actions or proceedings on matters to which the provision of section 11 of the Decree applied, which were pending in courts on the date of commencement of the decree, should abate or be discontinued. If it is intended by the lawmaker that any part or section of a statute should come into operation on a date earlier than the date of commencement of the statute itself provision to that effect will be made in clear term. Section 331 of the Constitution of the Federal Republic of Nigeria, 1989, provided that the constitution should come into force on the 1st day of October, 1992. It was, however, provided in section 3(2) of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1989, No. 12 of 1989, that notwith- A standing section 331 of the constitution, where circumstances so warrant, the president might, by order, appoint a date earlier than 1st October, 1992 for the coming into force of any of the provisions of the Constitution specified in the order. Where an issue arises upon proceedings before the court, the jurisdiction of the court to dispose of that issue can only be ousted by plain words. See Attorney-General v. Boden, (1912) 1 KB 539. Further, statutory provisions should not be given retrospective effect unless where it is clearly stated that they should have that effect. See Udoh v. Orthopaedic Hospital Management Board, (1993) 7 NWLR (Pt. 304) 139. The question then is whether it was clear from the provisions of the Decree or the provisions of section 11 thereof that the provisions of section 11 were to have retrospective effect. Those who contended that the provisions of section 11 were retrospective based their contention on the use of the word \"maintain\" in the section which, according to the definition in the Black\'s Law Dictionary, 5th edition meant, inter alia, continue, keep in existence or continuance, sustain, keep from collapse a suit already began. It, however, was also stated in the said Dictionary that to maintain an action or suit might mean to commence or institute it. Further, in Moon v. Durden, 2 Ex. 22, the majority decisions was that the use of the words: \"brought or maintained\" was not sufficient to make the Gaming Act, 1845 have a retrospective effect. It could well be that the meaning to be given to the word \"maintained\" depends on the context in which the word is used.

The foregoing is not all. It was the word \"maintained\" that was used in section 11 of the Decree. It cannot reasonably be said that it meant: \"shall be brought\" and at the same time also meant \"shall be continued\" which are distinct and separate expressions. If it is held that the word \"maintained\" meant \"continued\" then actions commenced before the date of commencement of the Decree (20th June, 1991) will be affected by section 11 of the Decree but those commenced after the date of commencement of the Decree (20th June, 1991) will not be affected. On the other hand, if the word \"maintained\" meant \"shall be brought\" then action instituted on or after the date of commencement of the Decree (20th June, 1991) will be affected by the provisions of section 11 of the Decree but those instituted, like the consolidated suits, before the date of commencement of the Decree will not. The interpretation which may have the effect of making section 11 of the Decree have a retrospective effect will be absurd as it cannot be reasonably inferred that the law makers intended that suits instituted before the date of commencement of the Decree should be affected and those instituted after the date of commencement should not be affected. That sort of situation will be absurd. A statute is not to be construed in such a way that it will manifestly lead to absurdity. See Udoh\'s case, (supra). Further, the right of the subject to have access to the courts may be taken away or restricted by statute, but the language of any such statute will jealously be watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. See Halsbury\'s Laws of England, Vol. 9, p.353,3rd. ed. The conclusion to which I have come is that the provision of section 11 of the Decree applies only to suits or actions brought on or after the 20th June, 1991, which was the date of commencement of the Decree, because it does not have a retrospective

effect. It is only on this ground that I hold that section 11 of the Decree did not affect the consolidated suits which has been instituted since 1987 before the Decree came into force. I, therefore, agree, for different reasons which I have just stated above, with the conclusion reached by my learned brother, Kutigi, J.S.C., in the lead judgment which he has just delivered.

Consequently, I too dismiss the appeal and, for different reasons stated in this judgment, affirm the judgment of the court below. Case is remitted to the High Court of Lagos State for the proceedings therein to continue. I abide by the order for costs in the lead judgment.

Judgement(Dissenting)

Delivered by

Michael Ekundayo Ogundare J.S.C

This is a further appeal to this Court against the judgment of the Court of Appeal Lagos Division, Coram; Sulu-Gambari, Tobi and Ubaezonu, JJ.C.A. That Court had dismissed the appeal to it of the defendant, N. A.B. Kotoye against the ruling of the High Court of Lagos State, Thomas J., that his jurisdiction to continue the hearing of the plaintiffs\' suit before him had not been ousted by Section 11 of the banks and other Financial Institutions Decree No. 25 of 1991.

The Plaintiffs, Mrs.F.M. Saraki and Dr. Olusola Saraki had in Suit No. LD/ 845/87 instituted in 1987, claimed from the defendant as per their amended Statement of Claim the following reliefs:

\"(I) A declaration that the 2,400,000 shares and the Bonus, Script and other shares attached thereto standing in the name of the Defendant in the Register of Sharesholders of Societe Generate Bank (Nigeria) Limited is held by him in trust for the Plaintiffs (or alternatively) for the 2nd Plaintiff;

(2) An order directing an inquiry into the amount of any dividends which may have been received by the Defendant as holder of the afore-mentioned shares up to the date of the judgment herein;

(3) An order of injunction restraining the Defendant from holding or dealing with the aforesaid shares otherwise than as trustee for the Plaintiff and in accordance with the lawful direction of the Plaintiff or the appropriate authorities;

(4) An order for rectification of the Register of shares to give effect to any judgment delivered herein.\"

The defendant in a counter-claim in return claims against the 2nd plaintiff as per paragraphs 46 and 47 of his amended Statement of Defence and Counter claim, as hereunder;

\"46. Whereupon the Defendant by way of counter-claim claims against G the 2nd Plaintiff the sunvof N730,000.00 being money advanced to the 2nd Plaintiff or to his order at his request.

47. The defendant also claims interest thereon at the rate of 15% per annum from the 15th day of May, 1986 until payment.\" In Suit No. LD/938/87 Dr. Olusola Saraki alone claimed against the Defendant N.A.B. Kotoye, as per his 2ndamended Statementof Claim, the following reliefs:

\"(1) A declaration that the 4,579,460 shares standing in the name of the defendant in the Register of Shareholders of Societe Generale Bank (Nigeria) Limited is held by him in trust for the plaintiff.

(2) An order directing an inquiry into the amount of any dividends which may have been received by the defendant as holder of the aforementioned shares up to the date of the judgment herein.

(3) An order of injunction restraining the defendant from holding or A dealing with the aforesaid shares otherwise than as trustee for the plaintiff and in accordance with the lawful direction of the plaintiff or the appropriate authorities.

(4) An order for rectification of the Register of Shares to give effect to any judgment delivered herein.

(5) An order for the refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf.\"

The Defendant for his part counter-claimed against Dr. Saraki as per his 2nd further amended Statement of Defence and counter-claim:

(i) A declaration that of the N6,876,840 shares standing in the name of the Plaintiff in the Register of Members of Societe Generale Bank Nigeria Limited 2,783,483 thereof are not held by the Plaintiff beneficially but upon trust for the Plaintiff and the Defendant for disposal as they shall both agree to deserving Nigerians of their choice.

(ii) An Injunction restraining the Plaintiff from dealing with the said shares as if he were sole beneficial owner.\"

At the close of pleadings the two suits were consolidated and proceeded to hearing. In the course of hearing the Banks and Other Financial Institutions Decree was, in June 1991, promulgated. Thereupon in March 1992 the defendant filed an application praying for an order of the trial High Court.

Striking out the consolidated suits herein on the ground that this honourable Court has no jurisdiction to continue to entertain same and or allow the proceedings to be maintained against the Defendant/Applicant.

The application which was supported by an affidavit was contested by the plaintiffs. In a ruling the learned trial Judge found:

In the fact of two possible constructions, it is the duty of the court not only to avoid unreasonable artificial or anomalous construction but to adopt the more reasonable construction and hold that Section 11 is intended to protect the title or the legal title of a registered share holder in the bank. It is not in dispute as far as the claims go that the titles to the shares held by the defendant in S.G.B.N. vest in him. / do not find that section II bars this suit or other proceeding based on the claim in the first four paragraphs of the consolidated suits from being maintained against the defendant. The questionof whether or not there is a trust concerning the shares held in the name of the defendant in S.G.B.N. is far from being determined and cannot be until the whole evidence is taken. The learned defence counsel had pointed out in his reply that the claim in Suit No. LD/938/87 is unaffected in any way by this motion. This is a relief for refund of the balance of certain sum allegedly held by the defendant in the plaintiffs behalf therein. I agree with him.\" (Italics mine)

On appeal to the Court of Appeal, that Court after stating, correctly, in my respectful View the issue before it in these words

The issue before the Court is the correct interpretation of Section 11 of the Banking and Other Financial Institutions Decree No. 25 of 1991 and applying the said interpretation to the claims in this case so as to determine whether the court below has the jurisdiction to continue the case or not.

went on later in its lead judgment, per Ubaezonu J.C.A. to say -

\"The only issue in this case is whether A in whose name the shares B are registered can hold the same in trust for a third party (D). (Italics mine)

It then concluded that the trial High Court had jurisdiction to continue the consolidated suits, subject matter of the appeal and dismissed the appeal.

The defendant in his further appeal to this Court filed six grounds of appeal and in his amended brief of argument set out 5 issues that is to say:

(1) Was the issue which the Court of Appeal formulated and decided the proper issue that arose for determination before it'

(2) Did the refusal by the Court of Appeal to consider the eight issues formulated by the Defendant/Appellant as arising from his Grounds of Appeal constitute a denial of fair hearing'

(3) Was not the learned trial Judge obliged to accede to the Defendant\'s prayer on the application having regard to the fact that the plaintiffs who had accepted the defendant\'s main contention on the effect of Section II of the Decree had been unable to sustain the only other proposition which they had advanced in response to the defendant\'s argument'

(4) Does the proviso to section 11 create ambiguity or alter or affect the meaning of Section 11 in anyway'

(5) Did not what the learned trial Judge say amount to accepting the case made by the defendant'\"

The plaintiffs for their part set out in their Brief one question as calling for determination in this appeal and that is:

\"..... the question for determination in this appeal as in the courts below involves a decision as to whether Decree 25 has effectively put an end to the rights of a beneficiary under a trust where the property subject to the trust are shares in a bank.\"

In my respectful view having regard to the application brought by the defendant before the trial High Court, the main question for determination in this appeal is as to whether or not the trial court could continue with the hearing of the Plaintiffs\' suits before it having regard to the provisions of Section 11 of Decree No. 25 of 1991.

As rightly pointed out by Chief Williams, S.A.N. in the plaintiffs/respondents\' brief in determining the question posed above by him, it is the Statement of Claim alone that must be looked at. Chief G.O.K. Ajayi S.A.N. conceded at the hearing of this appeal as much. I shall in the course of this judgment have regard to the penultimate paragraphs of the

plaintiffs\' pleading in the two suits. Let me begin by setting out Section II of the Decree the correct interpretation of which is the crux of this appeal. Section II provides:

\"Notwithstanding anything contained in any law or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other A than the registered holder:

Provided that nothing in this section shall bar a suit or other proceeding on behalf of a minor or person suffering from any mental illness on the ground that the registered holder holds the share on behalf of the minor or person suffering from the mental illness.\" (Italics mine)

It is the contention of the defendant, both in his brief and in his counsel\'s submissions, that the section restricts the right of the plaintiffs of access to the court in respect of the reliefs sought in Suit No. LD/845/87 and in the 1st four of the reliefs sought by Dr. Saraki the only plaintiff in Suit No. LD/938/87 and that, therefore, the court\'s jurisdiction to continue with the hearing of the consolidated suit is ousted. For the plaintiffs\' the main submission is that, although the Decree bars access to the court by a person who challenges the registered holder of a share in a bank on the ground that the title to the said share vests in someone else than the registered owner, it does not preclude a beneficiary in a trust where the property subject to the trust are shares in a bank, from suing the trustee.

I have given careful consideration to the submissions made on behalf of the parties by their respective leading counsel. The issue here relates to the correct interpretation of a Statute that restricts the citizen\'s right of access to the courts. At the stage at which the defendant brought his motion the duty before the trial High Court was to determine whether or not its jurisdiction has been ousted by Section 11 of the Decree. The principle that has been settled in a long line of cases in this country and other Common Law jurisdictions is well set out in the words of Nnaemeka-Agu,J.S.C. in Nwosuv.lmo State Environmental Authority and Others (1990) All NLR 379 at page 396; (1990) 2 NWLR (Pt. 135) 688.

\"The court had to be guided by the principle that every superior court of record guards its jurisdiction jealously. So, while a person\'s access to have his civil right adjudicated upon by a court may be restricted or ousted by statute, the language of such a statute must be construed strictly. But once, with such an approach, it is clear that an ouster or restriction of the jurisdiction was intended and that, from the facts of the particular case, it comes squarely within the four corners of the statute, the court has no alternative but to hold that its jurisdiction has been ousted. For, while a statute may provide that the jurisdiction o f a court has been ousted with respect to a particular cause, the court always has the jurisdiction to inquire whether on the facts and circumstances of the particular cause, its jurisdiction has infact been ousted or restricted: - See on this Wilkinson v. Banking Corporation (1948) 1 K.B.721 atp.725, C.A\"

Bearing this principle in mind, I shall now examine the claims before us to determine whether or not they are caught by the provisions of Section 11.

In Suit LD/845/87 the plaintiffs pleaded, inter alia, thus:

1. At all times material to this action each of the Plaintiffs and the Defendant are persons registered as shareholders in the Societe Generale Bank (Nigeria) Limited (which is hereinafter referred to as \'the Bank\') In addition the Defendant was the Chairman of the Bank.

2. The Defendant was a very close friend of the 2nd Plaintiff and his (2nd Plaintiff\'s) wife, who is the 1st Plaintiff and both Plaintiffs regarded and treated him (Defendant) as a person worthy of their trust and confidence,

3. The first Chairman of the Bank was the 2nd Plaintiff but he vacated that office on his election to the Senate of the National Assembly and nominated the Defendant to succeed him.

4. In or around 1984 the Nigerian Enterprises Promotion Board warned the Bank that unless the Nigerian shareholders, paid up their 60% shares in the Bank\'s Equity, the bank wouldte sealed up. At that time the number of shares alloted but yet unpaid for and held in the name of the defendant was 960,000 whilst that similarly held by the 2nd Plaintiff was 2,240,000. The total sum of money required to pay for the shares was thus N3,200,000 at the rate of N1 per share.

5. The second Plaintiff, although he was detained in prison by the military authorities, managed to arrange for the necessary funds to be made available. The total sum so made available was N4,000,000.00 and out of this sum payment was made for the N960,000 worth of shares in the name of the Defendant and N2,240,000 worth of shares for the 2nd Plaintiff.

6.(1) In view of the fact that the 2nd Plaintiff was in detention at the material time, the defendant advised that the 2,240,000 shares be E registered in the name of the 1st Plaintiff and they were so registered.

(2) Acting on the advice of the Defendant, the 1st Plaintiff executed two deeds of transfer (in duplicate) which were presented to her by the Defendant in 1985 in each of which the following were left blank:

(a) the amount of the price or consideration for the transfer;

(b) the name and address of the Transferee;

(c) the date of execution of the transfer;

(d) the signature of the Transferee; and

(e) the name, signature and address of the witness to the signature of the Transferee.

(3) It was the understanding of both the 1 st Plaintiff and the Defendant that at the appropriate time, the name of the 2nd Plaintiff will be inserted as Transferee.

7. As a result of the use of the money made available to the Defendant by the 2nd Plaintiff the Defendant was able to pay for

(a) 1,164,800 shares of N1 each for which share certificate No. 000025 dated 28.12.84 was issued to her, and

(b)1,075,200 shares of Nl each for which share certificate No. 000027 dated 31.12.84 was issued to her.

8.( 1) After signing the blank transfers relating to the said shares, the said transfers signed by the 1st Plaintiff were handed over to the Defendant for safe custody.

9. Differences have arisen between the Plaintiffs and the Defendant, and these differences eventually resulted in the resignation of the 1st Plaintiff and two other Nigerian directors of the Board of the Bank on 25th September, 1986. 10 At all times material to the aforesaid Board meeting of 25.9.86 and since that date, the Defendant was not on speaking terms with the Plaintiffs.

11. Acting without the authority of the Plaintiffs or either of them and in breach of the confidence reposed in him and also in breach of his fiduciary duties as agent or trustee of the 1 st Plaintiff, the Defendant fraudulently;

(i) and falsely inserted N 1,075,200.00 in words as the C amount of the price or consideration paid to the first plaintiff in two or at least one of the blank transfers kept with him and falsely inserted Nl, 164,000.00 in words as the amount of the price or consideration paid to the first plaintiff in the remaining two or at least one other of the said blank transfers;

(ii) entered his name and address on each of the blank instruments of transfer or on at least two of them as the Transferee;

(iii) and falsely inserted the 25th September 1986 as the date when the instruments of transfer were Signed sealed and delivered;

(iv) inserted his signature where the Transferee should sign; and

(v) inserted the name, signature ad address of one Adebayo Olawoyin as witness to his signature as Transferee.

12A. The price which the defendant inserted in the transfer forms was calculated at or below per value when the said shares were at all material times and to the knowledge of the defendant, worth more than par value and was certainly not worth below par.

12. By reason of the matters hereinbefore pleaded, the Defendant is accountable to the Plaintiffs (or alternatively the 2nd Plaintiff) as a trustee de son tort or as trustee or agent of the said Plaintiff of the aforesaid shares.

What these averments amount to is that the 2,240,000.00 shares in dispute in that suit belonged in fact to the 2nd Plaintiff who provided the money for their purchase but that the defendant fraudulently converted the said shares to himself and got himself registered as the owner of the said shares. This to my mind is a clear challenge to the defendant\'s ownership of the said shares.

I have examined the provisions of Section II very carefully. True enough because it seeks to restrict the citizen\'s right of access to the court, its provisions must be construed narrowly and strictly. But, as Nnaemeka-Agu, J.S.C. explained at pages 405 - 406 of the report in Nwosu\' s case (supra), this does not mean that the Section is to be interpreted capriciously. Nnaemeka-Agu had said, and I agree entirely with him:

I must advise myself that to construe a statute narrowly and strictly does not mean that the court should arbitrarily, in appropriate metaphor, wring a false meaning out of the language of the statute. Rather as applied to statutes generally, it means that the court should give a fair and natural interpretation to the statutory language as applied to the facts of the particular case and, not straining the meaning of the words unnecessarily but guided by certain prin'ciples, arrive at a reasonable construction. See Dyke v. Elliott. The Gauntlet (1872)L.R.4P.C. 184. Certain principles guide the court in such an exercise. If there should be any doubt, gap duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right: See London and Country Commercial Properties Investments Limited v. Attorney-General (1953) 1 All E.R. 436, at p. 441-442. If there is a reasonable Construction which will avoid the penalty in any particular case, the court will adopt that construction. Tuck and Sons v. Priester (1887) 19 Q.B.D. 629 atp. 638. If there is any doubt as to whether the person to be penalised or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt; I.R.C. v. Duke of Westminster (1936) A.C. 1 atp. 19. See on these Moxwe//.- On Interpretation of Statutes (12th Edn.) p.239. If after the above approach and the application of the above principles the person to be affected comes squarely and fairly within and is affected by the words the statute the court has no alternative but to apply it.

It has been argued that the plaintiffs are not challenging the fact that the defendant is the registered owner of the shares; what they say is that he is a trustee in respect of the shares whilst they particularly the 2nd plaintiff, are the beneficial owners of the shares. I see this argument rather ingenious. An examination of the claims and their pleadings will show clearly that what they set out to achieve is exactly what is covered by Section 11. Whether the defendant is a trustee-de-son-tort (or constructive trustee as such a person is usually called), or trustee or agent of the 2nd plaintiff in respect of the shares in dispute, - see paragraph 12 of the amended Statement of Claim, the substance of the plaintiffs\' case is to the effect that the defendant, although a registered holder\'is merely a notional or nominal owner of the shares while the 2nd plaintiff is the true owner. It therefore, cannot be said that the Plaintiffs are not disputing the title of the defendant, the registered holder of the shares in dispute, to the said shares on the ground that the shares truly belong to the 2nd plaintiff. Claim (1) Seeks a declaration which, if granted will hold out the plaintiffs or alternatively the 2nd plaintiff as the true owner of the shares as against the defendant who is a registered holder of the said shares. The view I hold is more reinforced, in my respectful view, by claims 2,3 & 4 which seek to vest the benefits and control of these shares in the Plaintiffs or alternatively the 2nd Plaintiff, thus making the defendant a mere notional owner and the 2nd plaintiff the substantive owner. Section 11, in my respectful view, is aimed against such a suit. In interpreting it, one cannot overlook the opening clause which reads:

\"Notwithstanding anything contained in any law or in any contract or instrument\"

Indeed, every word of a statute must be considered in order to determine the true purport of the statute. Regrettably in this case it would appear that Chief Williams closed his eyes to the opening clause of section 1 1 in urging on us his interpretation of it. A construction which would leave without effect any part of the language of the statute will normally be rejected.

In Olatunbosun v. NISER Council (1988) 1 NSCC 1025; (1988) 3 NWLR (Pt80) 25, the expression \"notwithstanding\" came up for interpretation and it was there held by this Court that the expression \"notwithstanding\" is a term of exclusion. In interpreting section 4 of Schedule 2 to NISER Act, No. 70 of 1977 which reads:

\"4. Notwithstanding the provisions of the University of Ibadan Act 1962, or of any statutes made thereunder or any provision of this Decree but subject to such directions as may be issued by the Council, any person who immediately before the date of com'mencement of this Decree held office under the Old Institute shall be deemed to have been transfered to the New Institute established under this Decree on terms and conditions not less favourable than . those obtaining immediately before the commencement of this Decree; and service under the Old Institute shall be deemed to be service under the Institute established under Decree for pension purpose.\"

Oputa, J.S.C. delivering the lead judgment Of the Court in the case (with which the other Justices agreed) observed at page 1038 of the Report:

\"The expression \"notwithstanding\" is a term of exclusion. As used in Section 4 of Schedule 2 to Act No. 70 Of 1 977, it means that no provision of the University of Ibadan Act No. 37 of 1962, or any statute made under it, or any provisions

of the Decree itself shall be allowed to prevail over the provisions of Section 4 of Schedule 2 above. These other provisions shall be no impediment to the measures outlined in the said Section 4 of Schedule 2. The only thing allowed to interfere with \'deeming service in the Old Institute to have been transferred to the New Institute\' is \'such directions as may be issued to the Council the New N.I.S.E.R./Council.\"

Applying this interpretation to the opening clause of section 1 1 , it is my respectful view, and I so hold, that trusts including the rights of beneficial owners or cestui qui trust are within the exclusion envisaged by that clause. This is made clear by the nature of a mist The learned authors of Snell\'s* Principles of Equity (27

edition) state thus, at pages 87-88:

\"1. Problems of Definition

(a) \'Trust\' No one has yet succeeded in an entirely satisfactory definition of a trust. In Underbill\'s Law of Trusts a trust is defined as \'an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestui qui trust), of whom he may himself be one, and any one of whom may enforce the obligation. But this is not altogether satisfactory, for it is not wide enough to cover trusts for purposes rather than persons. Trusts of chari'table purposes (e.g., for the repairs of a church or the prevention of cruelty to animals) may lack human ben'eficiaries who can enforce them.

Perhaps the most satisfactory definition is Professor B Keeton\'s: \'A trust..... is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui qui trust) or for some \'object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.\'

(b) Nature. Difficult, however, though it may be to give a simple yet satisfactory definition of a trust, it is easy enough to grasp the general idea of it, which is that one person in whom property is vested is compelled in equity to hold the property for the benefit of another person, or for some purposes other than his own. Thus it has been said, some what broadly, that \'all that is necessary to establish the relation of trustee and cestui qui trust is to prove that the legal title was in the plaintiff and the equitable title in the defendant.\' It is not however, always accurate to say that the trustee is the legal owner while the cestui qui trust is the equitable owner, for the interest of the trustee may be (and often is) equitable only, as where a beneficiary under a settlement himself makes a settle'ment of his interest while the legal ownership is still in the hands of the trustees of the former settlement, or for some other reason the legal estate is outstanding. It is therefore better to say that the trustee is the nominal owner of the property, while the cestui qui trust is the beneficial owner.\"

Chief Williams, for the plaintiffs, had argued in his Brief thus:

The case for the plaintiffs: The Decree, in plain terms, prohibits the maintenance of certain suits or other proceedings. The class of suits or proceedings affected are, in the exact words of the enactment -

\'Suit or other proceeding..... against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in any person other JJ than the registered holder.

To put the point very shortly, the Decree only precludes the court from determining a dispute as to whether title to a share vests in A (who is not the registered holder) or in B (who is the registered holder). This is because the Decree, in effect, treats the fact that B is the registered holder of the shares as conclusive evidence of his title thereto. But the Decree in no way precludes the court from deciding a claim by A that B holds the shares registered in his (B \'s) name in trust for A. This is because, on a true analysis, it cannot be said that in such a case A would be questioning the title of B to the Shares on the ground that title is vested in someone other than B. What A would be saying is:

I do not dispute that title to shares are vested in B who is the registered holder thereof. But I ask the court to declare that he holds those shares in trust for me.

The fact that the Decree ought to be given this meaning is reinforced by the fact that it is a well established rule of construction that a statute should not be interpreted in a way that will enable it to be used as instrument of fraud. The meaning urged upon the court by the Appellant would be tantamount to saying that where, before the enactment came into force B has agreed to and accepted to hold shares in a Bank in trust for A, he is, by the enactment, authorised to treat those shares as his own beneficial property and keep dividends accruing therefrom for his own use. This is patently absurd that such a construction ought to be rejected. In this case the facts pleaded in the Statement of Claim are such that it would be highly scandalous to suggest that, if those facts are established, the defendant would be entitled to convert to his own use all shares bought with Plaintiff\'s money which he (defendant) had agreed to hold on trust for the Plaintiff. It is well established that in construing or interpreting a statute one must avoid a meaning which results in taking away private rights of property without compensation. On the facts of this case the Appellant\'s contention is that the enactment enables Kotoye to take the beneficial rights of Saraki for his (Kotoye\'s) benefit without having to pay a kobo for the bonanza.\"

Although this argument seems to find favour with some of my brethren, I must, with profound respect, disagree. I think there should be no room for sentiments in a matter concerning interpretation of statute. What the court should be concerned With is the meaning and intention of the legislation to be gathered from the plain and unambiguous expression used therein rather than from any notions which may be entertained as to what is just or expedient. As Sir Foster Sutton, F.C.A. put it in Ahmed v kassim (1958) SCNLR 28; (1958) NSCC 11, 12.

It seems to me beyond argument that the words: \'nor shall any such order be made, at any time after the expiration of one month from the publication of the result of the election of the member of the House of Assembly to which the petition relates, are clear and unequivocal, capable of only one meaning, that held by the learned trial Judge. In other words, they mean what they say, that no order shall be made after the stipulated period.

The underlying principle is that the meaning and intention of legis'lation must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained as to what is just or expedient.

That the legislative authority intended the result stated seems perfectly clear if regard be had to the fact that regulation 142(2) of the above-mentioned regulations expressly applies the Supreme Court (Election Pe'titions) Rules of Court, 1951, rule 4(1) of which requires an intending petitioner to apply by motion ex pane for an order as to the amount of security to be given by him, before he presents his election petition, and to avoid any delay in the hearing of the motion sub-rule (2) of the same rule provides that any such application shall, \'in respect of the right to priority of hearing by the Court, enjoy (save as prescribed in section 234 of the Customs Ordinance) precedence over all other proceedings, whether civil or criminal, and whether part heard or not.\"

And in OsoAya & anor. v. Emmanuel Daniel Henshaw & Anor. (1972)1 A11NLR C 25, at 30, Lewis J.S.C. delivering the judgment of this court stated:

Moreover when there is statutory provision it should, as we have often said, be given its ordinary natural grammatical meaning and here we do not see on that basis any justification for importing into the words contained in Order 56, rule 16 any limiting words that the Judge on appeal may only exercise his discretion with the fj consent of the parties. Where there is specific statutory provision it is certainly not the duty of any court to try to avoid its consequences and interpret it in such a manner as to fit it into English practice if it is in fact differently and clearly expressed, as to our mind Order 56, rule 16 is.

As argued by Chief Ajayi, learned leading counsel for the defendant, and rightly in my respectful view, section II only takes away a remedy but does not destroy the right. And this is not unusual legislation for that matter. Statutes of Limitations are examples of such legislations. Another example is the Solicitors Act. Construing Section 26 of the Act (6 & 7 Vict. c.73) Lord Romilly, M.R. in In re Jones 9 LR Eq. 63 67 said:

It is to be observed that the clause of the statue, being a penal p enactment, must be construed strictly. It does not apply to conveyancing, or to common law business. The question is, whether the want of the certificate puts an end to the debt, or only takes away the remedy. The distinction between destroying a debt and taking away a remedy is a familiar one, as in the case of the Statute of Limitations, where there is no means of recovering a debt after six years, and yet the debt is not extinguished. I am of opinion that in this case the debt is still subsisting, although the solicitor can take no steps to enforce its payment.

In Re jones, the client had taken out an order for taxation of his solicitor\'s bill of costs, with the usual submission to pay what should be found due, and the Taxing Master had disallowed certain items for business done while the solicitor\'s certificate had not been renewed, it was held that the solicitor was entitled to be allowed the item in question since it was the client that took out the order for taxation and not the solicitor and as the debt for costs in respect of business done while uncertificated, was not extinguished, but only the solicitor\'s remedy, Lord Romilly cited with approval the dicta of

Willes, J. in Fullalore v. Parker 31LJ (C.P. 239, 240 thus:

If the attorney is really uncertificated he is not entitled to recover any costs; nor is the Plaintiff entitled to cover such costs from the Defendant, except in this case only - if the Plaintiff has made advances to the attorney, he cannot recover them back upon a condictio indebiti, as for money paid under a mistake; the attorney though uncertificated, is entitled to retain the money so advanced, and the Plaintiff would have a right to recover this amount from the Defendant.

and Byles, J.:

The objection has not been removed that part of this money may have been paid by the Plaintiff to his attorney, in which case it cannot be recovered back, and the Plaintiff would be entitled to have it repaid by the Defendant.

Lord Romilly concluded at page 68 thus:

I am of opinion that the debt was still due, and that the Act does not take away the right of the solicitor either to set off the debt, or to apply to its discharge money which was already in his hands, and the result is, that the bill must go back to the Taxing Master, with a direction that he is to tax the items which he disallowed by reason of the solicitor not being certificated.

In my respectful view, therefore, section II of the Banks and other Financial Institutions Decree is in the same category of such legislations where a person\'s right is not extinguished but only his remedy. Thus, in the case of a trust in respect of shares in a Bank, while a beneficiary\'s rights are preserved, his remedy of access to the court is taken away by the section. From the nature of trusts as discussed above coupled with the exclusion clause in section II, if interpreted as dictated by rules of construction the conclusion is inescapable that the section covers the kind of plaintiff\'s claims (1) - (4) in the consolidated suits.

It must always be borne in mind that the rule of construction is that words, phrases and sentences are to be construed in their ordinary and natural meaning. The duty of the court is to expound the law as it stands, and to \"leave the remedy (if one be resolved upon)\" to others - per Lord Birkenhead L.C. in Sutlers v. Briggs (1922) 1 AC 1,8. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. \"The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision\" - per Lord Morris of Borth-y-Crest in Shop and Store Developments Ltd. v. I.R.C. (1967) 1 AC 472,493. It was held in Cartledge v. E. Jophing & Sons Ltd. (1963) AC 758, and I agree with it, that where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however, harsh or absurd or contrary to common sense the result may be.

Example of literal construction are given in Maxwell on Interpretation of Statutes 12th edition at page 29 et seq. At page

29 the following passage appears:

It was repeatedly decided at law that the statutes of limitation which enacted that actions should not be brought after the lapse of certain periods of time from the accrual of the cause of action barred actions brought after the time so limited, even though the cause of action was not discovered, nor was practicably discover able, by the injured party at the date of accrual, and even though it was fraudulently concealed by the wrongdoer until the expiry of the statutory period. The hardship of such decisions was obvious, but the language was susceptible of no other interpretation.

There are limitations on the competence of a Judge to modify the language of an Act in order to bring it into accordance with his own views as to what is right or reasonable. The maxim is: Bonijudicis est dicere, non jus dare. As Willes J. put it in Abel v. Lee (1871) LR 6 CP 365, 371:

No doubt the general rule is that the language of an Act of Parliament is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy, or injustice. One recognises that rule where the repugnance arises between the words of the section to be construed and those of some other section in the same Act or in some other Act which is in pari materia with it. But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable. No such duty is imposed upon him.

In Young & Co. v. Mayor, etc. of Leamington (1882) 8 QBD 579; (1883) 8 App. Cas. 517, section 174 of the Public Health Act 187 5 required contracts entered into by a sanitary authority for a sum over '50 to be under seal. The plaintiff executed works approved by the defendants under the supervision of their engineer, and under a contract in writing with the engineer which was not sealed by the corporation. The Court of Appeal in England held that the defendants were not bound by the contract, although they had had the benefit of it, on the ground that to hold otherwise would be to repeal the enactment. Lindley LJ observed at page 585 of the first report:

\"The last point argued for the plaintiffs was, that as the contract has been performed and the defendants have the benefit of the plain'tiffs\' work, labour and materials, the defendants are, at all events, liable to pay for these at a fair price.

In support of this contention, cases were cited to show that corporations are liable at common law, quasi ex contractu, to pay for work ordered by their agents and done under their authority.

The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a Court of Appeal. But in my opinion, the question thus raised does not require decision in the present case. We have here to construe and apply an Act of Parliament. The Act draws a line between contracts for more than 501., and contracts for 501, and under; contracts for not more than 501, need not be sealed and can be enforced whether Executed or not, and without reference to the question whether they could be enforced at common law by reason of their trivial nature. But contracts for more than 501, are positively required to be under seal, and in a case like that before us,

if we were to hold the defendants liable to pay for what has been done under the contract, we should in effect be repealing the Act of Parliament and depriving the ratepayers of that protection which Parliament intended to secure for them. Frendv. Bennett is an authority in support of this A view, and was in my opinion rightly decided. The additional works there in question had been executed, and there was the common count for work and labour and materials, as well as a special count on the alleged contract, but the defendant was held not liable either at law or in equity.

It may be said that this is a hard and narrow view of the law: but my answer is that parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute, because it may lead to apparent hardship.

And in Coxhead v. Mullis (1878) 3 CPD 439, the defendant, during his infancy, promised to marry the plaintiff, and after coming of age, recognised without expressly repeating the promise, and eventually broke it. The infants Relief Act, 1874 section 2 came up for consideration. The section read:

\"no action shall be brought whereby to charge any person upon ..... any ratification made after full age of any promise or contract made during infancy .....\"

It was held that the section applied to promise of marriage and the plaintiff was non suited. On appeal, the order of non suit was upheld. Lord Coleridge, C.J. observed at pages 441-443:

\"It is admitted in this case that, if the Act does not apply, there is abundant evidence to fix the defendant, supposing he had been sued under the old law; therefore the question simply arises upon the recent statute. Now, the Act consists of two sections only. The 1st enacts that \'all contracts, whether by specialty or by simple contract, henceforth entered into by infants for the re-payment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. Then the 2nd section enacts that \'no action shall be brought whereby to charge any person upon any p promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age. The question is whether that does or does not apply to a case of breach of promise of marriage. The words of the 2nd section, I think, are quite sufficient to include such a promise. The argument was, that, as regards to 1st section, it is entirely confined to contracts entered into for the re-payment of money and goods supplied or to be supplied; and that the first part of the 2nd section confines itself entirely to promises made after full age to pay a debt contracted during infancy; and it is suggested that we ought to read the second part of the 2nd section as if it ran thus: \'or upon any ratification made after full age of any promise or contract made during infancy.

I believe this is the first time this section has had to be considered with reference to this matte. I should have gladly deferred to any judicial authority which could have been presented as throwing light upon the subject; but, in the absence of such authority, the tendency of my own mind, right or wrong, always is, to suppose that parliament meant what parliament has clearly said, and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ, and as to which decisions may vary. We may thus make that which is plain and simple enactment, -1 will not say inoperative, but - doubtful or obscure, if considerations are to be introduced into the

construc'tion of it, when it is entirely uncertain whether they were present to the minds of the legislature when the enactment was made. Looking at this section, I find the words change their form, and I cannot accede to the argument of the plaintiff\'s counsel, without putting a word into the statute, viz, \'such\', which parliament has deliber'ately left out, and which I am not to assume that parliament has carelessly left out, meaning that the Judge should supply it. .Therefore, upon the best consideration I can give to the matter, I think this Act of Parliament does apply to breaches of promise of marriage. It certainly is a matter which in my judgment comes within the fair contemplation of the law with regard to infants. I see nothing to limit the words of the Act, and I hold, therefore, that the defendant is entitled to succeed.\"

I agree entirely with the views expressed by these eminent Judges on the duty of a Judge and the limits placed on him in the exercise of his interpretative jurisdiction of a legislation where the words of the statute are clear and free from ambiguity as in the case with section 11 of the Decree under consideration in this appeal.

It is suggested that a statute is not to be interpreted in a way that will enable it to be used as an instrument of fraud. It is my view that this canon of construction does not apply here where there is no ambiguity in section 11 - and this is generally accepted by both parties.

The conclusion I reach is that section 11 applies to bar plaintiffs from maintaining claims (1) - (4) in each of their suits. I need point out also that the same conclusion is reached in respect of similar claims in the defendant\'s counter'claims.

If there are any lingering doubts as to the extent of the extension clause in Section 11, such doubts, in my view, are cleared by the proviso which exempts p from the prohibition or restriction in the main enactment, trusts where a minor or a person suffering from any mental illness is a beneficiary. That the proviso can be resorted to in aid of interpretation of the main enactment is supported by authorities. In Nabhan v. Nabhan (1967) All NLR 51, 59 (reprint), Brett J.S.C. delivering the judgment of this Court had this to say:

In deciding this question the cardinal rule is to look first at the wording of the statute which is being construed, and if that is found to be unambiguous it is neither necessary nor permissible to look further. If section 117(2) (a) of the Constitution stood alone the court would have to construe the words \'final decisions\' simply by ascertaining the meaning commonly given to those words in relation to appeals. But the subsection must be read as a whole, and paragraph (iv) of the proviso must be considered '

\'Provided that nothing in paragraph (a) of this sub-section shall confer any right of appeal '

(iv) in the case of a party to proceedings for dissolution or nullity, of marriage who, having had time and opportunity to appeal from any decree nisi in such proceedings, has not so appealed, from any decree absolute founded on such decree nisi.

A proviso admittedly cannot alter the plain meaning of the sub'stantive enactment; Anya and Others v. The State (1965) NMLR 62; but where words are reasonably susceptible of more than one meaning a Proviso may show which meaning they were intended to bear\" (Italics mine)

I need also refer to the speech of Lord Herschell in Western Derby Union v. Metropolitan Life Assurance Society

(1897) A.C. 647, 655-656 - a case cited by Chief Williams in his Brief were the learned and noble Lord said, inter alia:

I decline to read into any enactment words which are not to be found there, and which would alter its operative effect because of provisions to be found in any proviso. Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it; but to find it an enacting provision which enables something to be done which is not to be found in the enactment itself on any reasonable construction of it, simply because other'wise the proviso would be meaningless and senseless, would, as I have said, be in the highest degree dangerous.

In Jennings v. Kelly ( 1 939) 4 All E.R. 464, 470, Viscount Maugham observed as follows:

In coming to his conclusion, Andrews L.C.J., was influenced by his view that the first part of the section was the operative portion of it, and that the proviso could not properly be used to explain the words as to increase of population in the operative part. He therefore relied on the principle of construction to be found in Western Derby Union v. Metropolitan Life Assurance Society. The principle is thus stated by Lord Watson, at p.652:

\"..... I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso.\"

I am sure that none of your Lordships would desire to depart from this principle where it is applicable - namely, where the enacting part of the section is unambiguous and complete and is followed by a true proviso (that is, a qualification or an exception out of it). In my view, that is not the case here, and, as Lord Herschell pointed out in the Western Derby Union case, at p.655: Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it.....\' My Lords, that is precisely the method of construction which, in my view, is applicable in the present case. I will add that the words beginning \"Provided that\" are, in my opinion, additional and explanatory words, necessary for the purpose of giving a more definite meaning to the preceding words - namely, for the purpose of removing doubt as to its scope - and they might easily have been incorporated in the earlier part of the section, at the risk of making it rather more cumbrous than it is, We are not dealing here with a true proviso, or, at any rate, not with such a proviso as this House was considering in the West Derby Union case. It cannot, I think, be disputed that, in construing a section of an Act of Parliament, it is constantly necessary to explain the meaning of the words by an examination of the purport and effect of other sections in the same Act. A number of striking examples will be found in MAXWELL ON THE INTERPRETATION

OF STAT'UTES, 8th Edn., pp. 27, 28. This principle is equally applicable in the case of different parts of a single section, and none the less so because the latter part is introduced by the words \"provided that,\" or like words. There can, I think, be no doubt that the view expressed in KENT\'S COMMENTARIES ON AMERICAN LAW, 12th Edn., Vol. 1, p. 463, (cited with approval in MAXWELL ON THE INTERPRETATION OF STATUTES, 8th Edn., p.140 is correct:

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail.

Lord Wright at page 477 of the Report too, observed:

\"It is said that, where there is a proviso, the former part, which is described as the enacting part, must be construed without reference to the proviso. No doubt there may be cases in which the first part is so clear and unambiguous as not to admit in regard to the matters which are there clear any reference to any other part of the section.The proviso may simply be an exception out of what is clearly defined in the first part, or it may be some qualification not inconsistent with what is expressed in the first part. In the present case, however, not only is the first part of the section deficient in express definition, but also the second part is complementary and necessary in order to ascertain the full intention of the legislature.

The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. I do not think that there is any other rule, even in the case of a proviso in the strictest or narrowest sense, and still less where, as here, the introduction of the second part by the word \'provided\' is, in a strict sense, inapt.\" (Italics mine)

Clearly Section II in my view is expressed in clear and unambiguous language and wide enough to cover the case being put forward by the Plaintiffs. The italized portions of the above passages form the speeches of Viscount Maugham and Lord Wright accord with the decision in Irving v. National Provincial Bank Ltd. ( 1 962) 2 Q.B. 73 at pp. 81, 82 per Wilmer LJ that the main part of a section must not be construed in such a way as to render a proviso to the section redundant. Reading Section II as a whole I have no doubt that it covers the claims of the plaintiffs in the suit No. LD/845/87. While I do not say that the section takes away the rights of beneficiaries under a trust relating to shares in a bank, it certainly bars their right of access to the courts to enforce the type of reliefs being claimed by the Plaintiffs in these proceedings.

I turn to the 2nd suit, that is LD/938/87. The plaintiff in that case pleaded, inter alia, as follows:

\"4. The plaintiff came to know the defendant following his release from detention after military coup of 1966. The defendant was jobless and his legal practice was not yielding sufficient income for his needs and the plaintiff gave him financial and other assistance from time to time up to and including the period when the Bank was established to do banking business in Nigeria in 1976.

5. At all times material to the investment of funds in the Bank, the Defendant had no surplus earnings or loan facilities to enable him make any investment and understanding between the parties was that the plaintiff alone would fund the investment. It was in the contemplation of both parties that the investment would assist the plaintiff in his efforts to continue giving financial assistance to the defendant. The plaintiff also intended that, depending on the level of dividend would donate a reasonable percentage of the shares to his other friends including the defendant and sell the remainder to other Nigerians.

6(1) The defendant who is a lawyer and a former politician in the West advised the plaintiff to go to one of the existing banks to borrow money to Pay for 60% shares so that it would be easy to prove to the authorities in future that he is not being used as a front.

7. All moneys paid into the aforesaid Joint Account in the United bank for Africa Limited as well as other payments made into Societe Generale Bank (Nigeria) Limited share capital account Number 01308986 at Standard Bank of Nigeria Limited (now First bank of Nigeria Limited ) Marina Branch were paid in from moneys which belong exclusively and beneficially to the plaintiff. The plaintiff will rely on all documents relating to the said payments.

8. It was from the said Joint Account and from additional cash made available by the Plaintiff that payment were made tbrthe(N270.000) shares issued by the Bank in the name of the defendant and the (630,000) shares issued in the defendant\'s name.

8A In consequence of the facts pleaded in paragraph 8 hereof the Plaintiff has to the knowledge and with the acquiesence of the defendant exercised rights of ownership in and over the said shares. Plaintiff borrowed a large sum of money for his political party (the defunct National Party of Nigeria) around mid 1979 he called for and obtained from the defendant the Share Certificates relating to 270,000 shares and the 630,000 shares in the defendant\'s name to secure the loan with the lenders.

8B. The plaintiff was originally the only Nigerian shareholder. On the 8th of March, 1977 the plaintiff nominated the defendant as a director and upon the understanding that the defendant will hold shares in trust for him, he directed that 18% of his 60% shares be issued in the name of the defendant as a trustee. This understanding is that the 18% shares were meant for distribution by the plaintiff at the appropriate time among his close friends including the defendant who has assisted him one way or another in the formation of the Bank,

10 The defendant quickly advised the plaintiff (who was then in detention) about the danger facing the Bank and stated that in order to meet the situation he had decided to sell off some of the shares of the plaintiff as well as the shares of the plaintiff held in the name of the defendant and which he well knew were held by him in trust for the plaintiff. The defendant had in fact agreed with intending purchasers to sell the said shares and had (according to him) p collected N3.1 million from such purchasers

12 As a result of the use of the money made available to the defendant by the plaintiff through the business agents of Mr. Klaus Seemuth the defendant was able to pay for (a) the 499,200 shares covered by Certificate No. 000024 in the defendant\'s name (b) the 460,800 shares covered by Certificate No. 000026 in the defendant\'s name (c) 1,164,800 shares covered by Certificate No. 000025 in the name of the plaintiff\'s wife Mrs. P.M. Saraki and (d) 1,075,200 shares covered by Certificate No. 000027 in the name of the plaintiff\'s wife. The balance of N800,000.00 out of the said sum of Four Million Naira (N4m) was disbursed by the defendant according to the orders of the plaintiff leaving a sum of N70,000.00 still with the defendant and the plaintiff hereby claims the said sum of N70,000.00.

14. At all times material to this action the defendant was fully aware that the plaintiff was the beneficial owner of the shares standing in his (defendant\'s) name and that he was obliged to deal with the shares for the benefit and in accordance with the direction of the plaintiff. It was only recently when (for reasons best known to him) the defendant has turned round to deny the trust.

15. By reason of the matters hereinbefore pleaded, the defendant is accountable to the plaintiff as a trustee of all the shares standing in his name in the Bank particulars of which are as follows:-

| | No. of Shares | Share Certificate |
|---|---|---|
| i | 270,000 | 000003 |
| ii | 630,000 | 000006 |
| iii | 85,800 | 000011 |
| iv | 418,000 | 000018 |
| v | 330,000 | 000022 |
| vi | 499,200 | 000024 |
| vii | 460,000 | 000026 |

viii Unknown Unknown

ix Unknown Unknown

(Italics mine)

The sum total of the case being made out by the plaintiff in this suit is that the defendant a registered holder of the shares in dispute in that suit holds those shares as front for him (the plaintiff) and that he the plaintiff, is in truth and in fact the -owner of the shares in dispute and not the defendant. I cannot imagine a stronger case that falls squarely within the provisions of Section 11 than this. The 1st four reliefs sought in this case are identical with those in the 1st Suit LD/845/87 and in my humble view, in so far as those four reliefs are concerned, they are covered by Section 11. Relief 5 however, does not come within the purview of Section 11 and there can be no bar therefore, to the plaintiff pursuing that claim.

In the course of the hearing of this appeal, a member of this Court asked counsel for the parties whether Section 11 applied to bar cases pending at the time the Decree came into force. Chief Ajayi for the defendant submitted that it did and relied on the meaning of the word \"maintain\" used in the Statute. Chief Williams for the plaintiffs was silent on the issue. In view of the fact that this point has been raised, I consider it necessary to say a few words on it. The general rule relating to whether a Statute is to be treated as being prospective or retrospective is well stated in paragraph 922 of Halsbury\'s Laws of England 4th Edition Vol. 44 where the learned author states:

\"922. PRESUMPTION AGAINST RETROSPECTION.

The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. Similarly, the courts will construe a provision as conferring power to act retrospectively only when clear words are used.

By virtue of the presumption, transactions have been held to be neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. On the other hand, they have not been rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear have been held neither to impose flew liabilities in respect of events taking place before their commencement, nor to relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even

of provisions expressly prohibiting proceedings.

It is also in reliance on the presumption that the courts have frequently held pending proceedings to be unaffected by changes in the law so far as they relate to the determination of substantive rights. In the absence of a clear indication of a contrary intention amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced; and this is so whether the law is changed before the hearing of the case at first instance or while an appeal is pending.\"

See also Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) NSCC1151; (1985) 2 NWLR \"(Pt.9) 734. The law derives its prigin from the legal maxim: Nova Constitutiofuturis torman imponere. debet, non practeritis, that is, a new law ought to be prospective, not retrospective, in its operation. Thus unless there are clear words in Section 11 that will lead to the conclusion that the section is retrospective in the sense that it bars pending proceedings, it has to be held that it does not affect pending proceedings as the suits before us now. One, therefore, has to examine the

section. It reads '

\"..... ..no suit or other proceedings shall be maintained against any person ..... \" (Italics mine)

The question that arises is: what is the meaning of the word \"maintained\"' Does it render the section retrospective' The cardinal rule of construction is that words and sentences are to be constructed in their true and natural meaning anywhere the p words are clear and unambiguous effect ought to be given to them. Words are

primarily to be construed in their ordinary meaning of common and popular sense.

The word \"maintain\" is defined in Black\'s Law Dictionary 5th Edition as follows:

\"MAINTAIN. The term is variously defined as acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition, bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of; hold; or keep in an existing stage or condition; hold or preserve in any particular state or condition; keep from change; keep from falling, declining, or ceasing; keep in existence or continuance; keep in force, keep in good order; keep in proper condition, keep in repair;\' keep up; preserve, preserve from lapse,ecline, failure or cessation, provide for; rebuild; repair, replace; supply with means of support; supply with what is needed; support, sustain, uphold. Negatively stated, it is defined as not to lose or surrender; not to suffer or fail or decline El Paso County Water Imp. Dist. No. 1 v. City of El Paso, D.C.Tex.,234F2d927,931.

To \'maintain\' an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. George Moore Ice Cream Co. v. Co. Rose, Ga., 289 U.S. 373,53 S. Ct 620, 77 L.ED 1265. To maintain an action or suit may mean to commence or institute it; the term imports the existence of .a cause of action. Maintain, however, is applied to actions already brought, but not yet reduced to judgment. Smallwood v. Gallardo, g 275 U.S.

56,48 S.C.I 23.72 L.Ed. 152. In this connection it means to continue or preserve in or with; to carry on.\"

And in the Shorter Oxford English Dictionary \"maintain\" is defined as meaning \"to continue, perservering, to carry on, keep up; to have ground to sustain an action; to continue in, preserve, retain (a condition, position attitude etc.) to keep in being; to preserve unimpaired, a course right, state of things etc.

The verb \"to maintain\" in pleading has a distinct technical signfication. It signifies to support what has already been brought into existence. In my view the word \"maintained\" when used with reference to actions, means \"continued\" after they have been brought. If it is to be prospective only, the word \"brought\" would have been used.

In Smallwood & Anor. v. Gallardo; Ordinez & Ors. V. Gallardo 275 U.S. 56; an Act of March 4,1927 amending a previous Act of March 2,1917 provided in section 48 thereof that no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico \"shall be maintained\" in the District Court of United States for Porto Rico. The U.S. Supreme Court held that the provision applied to previously instituted suits pending before it. Mr. Justice Holmes, delivering the opinion of the Court observed at pages 60-62; 23-24 of the respective Reports thus:

These are suits brought in the District Court of the United States of Port Rico to restrain the collection of taxes imposed by the laws of Porto Rico. On January 7, 1927, the Circuit Court of Appeals affirmed decrees of the District Court dismissing the bills. On March 4,1927, by chapter 503,7 of the Act of that year, Congress p provided that section 48 of the act to provide a civil government for Port Rico should be amended to read as follows:

\'Sec. 48. That the Supreme and District Courts of Porto Rico and the respective Judges thereof may grunt writs of habeas corpus in all cases in which the same are grantable by the Judges of the District Courts of the United States, and the District Courts may grant writs of mandamus in all proper cases.

That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico.

( 44 Starts. 1418, 1421 (48 USCA 872)

Writs of certiorari were granted by this court on May 16, 1927, but argument was ordered on the question whether the cases had not become moot by virtue of that act.

Apart from a natural inclination to read them more narrowly there would seem to be no doubt that the words of the statute covered these cases. To maintain a suit is to uphold, continue on foot and keep from collapse a suit already

begun. And although the Circuit Court of Appeals in Gallardo v. Porto Rico Ry Light & Power Co., 18 . (2d) 918,923, with some colour of authority has B held that the act does not apply, we cannot accept that view. To apply the statute to present suits is not to give it retrospective effect but to take it literally and to carry out the policy that it embodies of preventing the Island from having its revenues held up by injunction; a policy no less applicable to these suits than to those begun at a later day, and a general policy of our law. Rev. Stat 3224 C (26 USCA 154) [Comp. St. 5947]). So interpreted the act as little interferes with existing rights of the petitioners as it does with those of future litigants. There is no vested right to an injunction against collecting illegal taxes and bringing these bills did not create one. Hallowell v. Commons, 239 U.S. 506,509,36 S. Ct. 202,60L. Ed. 409 This statute is not like a provision that no action shall be ') brought upon a contract previously valid, which in substance would take away a vested right if held to govern contracts then in force. It does not even attempt to validate previously unlawful taxes. It simply makes it plain that these cases are not excepted from the well known general rule against injunctions. It does not leave the tax'payer without power to resist an unlawful tax, whatever the difficulties in the way of resisting it.

The sequence of the clause in the amendment after others giving authority to grant writs of habeas corpus and mandamus shows that it puts a limit to the power of the court. See Dodge v. Osborn, 240 U.S. 118,119,36 S. Ct. 275,60 L.Ed. 557. That is a question of construction and common sense. Fauntleroy v. Lum, F 210 U.S. 230,235, 28 S.Ct. 641, 52 L.Ed. 1039. Therefore when the District Court required a deposit in the registry of a sum to secure payment of the tax in dispute, the money should be returned as there is no jurisdiction to dispose of it otherwise.

Of course it does not matter that these cases had gone to a higher court. When the root is cut the branches fall. McNulty v. G Batty, 10 How 72,13 L.Ed. 333.\"

In the course of our research my attention was drawn to an English case -Moon v. Durden 1 Ex.22; 154 E.R. 389. In that case, Section 18 of Gaming Act 1845 (8 & 9 Vict. C. 109) which provided that \"all contracts and agreements by way of gaming or wagering shall be null and void; and that no suit shall be. brought or maintained in any court of law or equity for recovering any sum of money or JJ valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event which any wager shall have been made\" was held, per Parke, B, Alderson, B. and Rolfe, B, (Plait, B dissentiente) that the statute had not a retrospective operation, so as to defeat an action for wager, commenced before the statute passed. In his judgment Rolfe, B. observed at page 33 of the Report:

This was an action on a wager. It was commenced on the 12th of June, 1845; and the main question in the case is, whether the effect of the stat. 8 & Vict. c. 109 s. 18, is to disable the plaintiff from maintaining the action. That statute did not receive the royal assent until August, 1845, after this action had been commenced.

After quoting section 18, the learned Baron continued-

\"The effect of this clause is to make void all wagers, and to prevent the bringing or maintaining any action for the recovery of money won on any wager; and the only question is, whether its operation is retrospective, so as to affect past transactions and existing suits.

The general rule on this subject is stated by Lord Coke, in the second Institute, 292, in his Commentary on the Statute of Gloucester, Nava constitutio futuris formam imponere debet non prqeteritis;\" and the principle is one of such obvious convenience and justice, that it must always be adhered to in the construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the legislature meant it to operate retrospectively.

On the part of the defendant it was argued, that in this statute the clause must have been intended to affect past transactions; because it not only enacts that wagers shall be null and void, but further, that no suit shall be brought or maintained for the recovery of money won on a wager. The latter branch of the clause, it was contended would have no operation if the enactment were restricted to future wagers; for it would be useless to enact that no action should be brought, and still more so that no action should be maintained, in respect of a contract already declared to be null and void; and particularly the enactment, that no action should be maintained, must, it was said, apply not only to wagers already won, but even to suits already pending for their recovery.

It must be observed that this latter part of the enactment - that, I mean which prohibits the bringing or maintaining of actions - is in no respect inconsistent with the construction which gives to the enactment an operation merely prospective. The most that can be contended is, that the words in question are unnecessary; and therefore, independent of authority, if the argument rested here, what we should have to decide would be, whether the improbability that the legislature should unnecessarily prohibit the bringing or maintaining an action on a contract already made void in a prior part of the same clause, is so great as to warrant us in saying that it must have been intended retrospectively to affect rights already vested. I think this would be a very unreasonable and strained inference, and which, considering the ordinary frame and language of acts of Parliament, would be by no means fairly deducible from the clause in question.\"

The learned Baron went on to consider cases cited by the defendant in favour of the section being retrospective and concluded that he did not think those cases were rightly decided. The main plank on which he rested his decision seems to be this that the section of the law declaring gaming or wagering contracts null and void could only be in respect of future contracts and, therefore, the section barring actions on such contracts could only be prospective as well. Alderson, B. In his own judgment observed at page 40:

Here, no doubt, the legislature were desirous of putting an end to gaming and wagers; but, unless the words imperatively require it, we ought not to make their prohibition retrospective; for it is contrary to the first principles of justice to punish those who have offended against no law, and surely to take away existing rights without compensation is in the nature of punishment The words of the statute do not, as it seems to me require this construction. The first clause of the section is probably prospective. All contracts by way of gaming or wagering are made void. It seems to me, at present, that this applies to the future; and indeed it was, as I understood, so admitted by Mr. Lush in his argument. But it was said that the next clause was not so; for that it not merely prohibited the future bringing of suits to enforce wagers, but also the future maintenance of such suits when previously brought. But I cannot give such a construction to what appear to me only redundant words in this section. If it had been stated \'that no action shall be brought\' or only\' that no action shall be maintained, it seems to me clear that we should have considered the words \'brought\' and \'maintained\' as synonymous and as prohibiting the success of future suits alone. And although the use of both in one sentence makes this less obvious, yet, when we consider that to give the more strict interpre'tation to the word \'maintained\' will compel us to suppose, without further evidence, that the legislature contemplated so gross an act of injustice as, without compensation, to take away an existing right of action already pending, and that, too, with no

provision even for the costs incurred in the enforcing of what was, before the act a legal right, I am not disposed to put such a construction on the word, but to treat it, as I think the legislature intended it, as a redundant expression only. In the 16th section, where they do speak of existing actions of another sort, they do provide for the staying another sort, they do provide for the staying them, by application to the Court and on payment of costs; and I think if they had intended to put an end to pending actions of this description, they would have shown it by introducing a similar provision in the 18th section.

Parke, B. observed at page 43:

\"The only question in this case is, whether the act (8 & 9 Vict. c. 109, s. 18) affects existing suits for the recovery of wagers or not. The clause in question having been read, it is unnecessary for me to repeat it.

I have felt a good deal of difficulty in deciding upon the true construction of this clause; but, after much consideration, I agree in opinion with my Brothers Alderson and Rolfe, that it applies to future actions only.

The language of the clause, if taken in its ordinary sense, as A in the first instance we ought to do, applies to all contracts, both past and future, and to all actions, both present and future, on any wager, whether past or future. But it is, as Lord Coke says, \'a rule and law of Parliament that regularly, nova constitutiofuturisforman imponere debet, non praeteritis\' (2 Inst. 292). This rule, which is in effect, that enactments in a statute are generally to be construed B to be prospective, and intended to \"regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases. For instance, in the construction of the Statute of Frauds, which was held not to apply to promises made before the 24th of June, 1677; Gilmore v. Shuter (T. Jones, 108; 2 show, 16; and also of the stat. 2 & 3 Vict. c. 29 which, it has been decided is not to be construed to defeat a right by relation already vested in an assignee of a bankrupt: Edmonds v. Lawley (6 M. & W. 285); Moore v. Phillips (1 M. & W. 536).

But this rule, which is one of construction only, will certainly yeild to the intention of the legislature; and the question in this and in every other similar case is, whether that intention has been sufficiently expressed. Upon that question it is that I have felt considerable doubt.

It seems a strong thing to hold, that the legislature could have meant that a party, who, under a contract made prior to the act, had as perfect a title to recover a sum of money, as he had to any of his personal property, should be totally deprived of it without compensation. It is a still stronger thing to hold, that if he has already commenced an action with an undoubted right to recover his debt and costs, he should not only forfeit both, but also be liable, as he would in the ordinary course of a suit, to pay the costs of his adversary, by being obliged to discontinue, or be nonprossed, or have his judgment arrested. These considerations afford a strong reason for limiting the operation of the words of this section, and holding that they apply to future contracts, had actions on such future contracts only - at all events, to future actions only, if any distinction can be made in the degrees of apparent injustice. But, on the other hand, it is to be recollected that the toleration of actions for wagers, on subject in which the parties have no real interest has often been made a subject of reproach to the law of England; and it is not a matter of surprise, that the legislature took an early opportunity of putting a stop to them; and also it is to be borne in mind, that the parties who would suffer by a strict construction of the clause, are often successful gamesters or speculators, not much the objects of favour with the

legislature; and one considers the clause, therefore, not quite in the same spirit, as if the enactment related to ordinary contracts.

The enactment, \'that all contracts or agreements, by way of gaming or wagering, shall be null and void,\' if it stood by itself, ought most clearly to be construed as applicable to future contracts and agreements only, by virtue of the rule of construction to which I have adverted, and the apparent injustice of putting an end to a vested right. So, if the next part stood alone, it would, I think, though not so clearly, be construed, for the same reason, to apply to future actions only; and the clause, to avoid the injustice which would otherwise be inflicted on a plaintiff, should be construed to \" mean, not that an action already brought should not be maintained, But that no action should afterwards be brought, or, if brought, maintained; and the absence of any provision that the costs of an existing action should be paid by a defendant, in my mind, strongly favours that construction. The union of the two clauses together does not appear to me to make any difference. The latter clause is surplusage, so far as it relates to bringing actions, whether we construe the former to apply to future or existing contracts; and the only observation that can be made is, that in one mode of construing the enactment the word \'maintained\' is inoperative, in the other it is not. It is redundant, unless it applies to\'the maintenance of an existing action; but this circumstance of mere redundancy does not appear to me to be sufficient to show, that the legislature meant to do so unjust a thing as to prevent the maintenance of an existing well-founded action. 1 think it best to abide by the sound rule of construction above referred to, notwithstanding the conjuctures as to the real intention of the legislature, which the nature of the subject occasions.\" (Italics mine)

In his dissenting judgment Platt, B. reasoned at pages 26-30 thus:

\"The general rule, governing the construction of statutes, is correctly stated in Bac. Abr. 439, \'Statute,\' C. It is there laid down as in general true, \'that no statute is to have a retrospect beyond the time of its commencement; for the rule and law of Parliament is, that nova constitutio futuris formam debet imponere, non praeteritis; and Gillmore v. The Executors of Shooter (2 Mod. 310) is quoted as an example. In that case, a treaty of marriage being on foot between the plaintiff and a person whom he afterwards married and had '2000 with as a portion, Shooter, who was of kin to the plaintiff, promised to give him as much, or to leave him as much by is will. This promise was made before the 24th of June, 1677. Shooter died in September following, without having paid the money, or made provision by his will for the payment thereof. An action was brought against the executors of Shooter, and the question made upon the special verdict was, whether the promise, not being in writing, was within 29 Car. 2, c. 3, whereby it is enacted, \'that, from and after the 24th of June, 1677, no action shall be brought to charge any person upon any agreement made upon consideration of marriage, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged\' Judgment was given for the plaintiff. And, per Cur., it cannot be presumed that this act was to have a retrospect, so as to take away a right of action which the plaintiff was entitled unto before the time of its commencement. It should, however, be observed, that the form of the condition, on which the right to bring an action was made to depend, imported that future agreements alone were required to be written and signed. The words are, \'unless the agreement shall be in writing, and signed.\' But the general rule is not without exception. A statute may have a retrospect to a time antecedent to that of its commencement. Thus, a statute which compels a convenantor to do an act, which before the passing of the statute he had covenanted not to do, or which forbids his doing an act, which he had before the passing of the statute covenated to do, repeals the covenant: Brewster v. Kitchell (1 Salk. 198.) The 9 Geo. 4 c. 14, S.I, enacts, \'that in actions grounded on any simple contract, no acknowledgment or promise shall be deemed sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of the 21 Jac. 1, c. 16, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable.\' That statute was to take effect on and after the 1st of January. 1829, and has been construed to render insufficient all proof, adduced after the 31st of December, 1828, of an unwritten acknowledgment or promise, although, by such a construction, the statute is made to operate retrospectively, in avoidance of all acknowledgments and promises expressed before the 1 st of January, 1829; Towler v. Chatterton (6

Bing. 258),Ansell v. Ansell (3 C. & P. 563), Gunner v. Cattle (2 M. & P. 367; 9 Bing. 258). By the 3 & 4 Will. 4, c. 42, s. 31, personal representatives failing in their suits are subject to costs. This statute has been held, by the Courts of Queen\'s Bench and Exchequer, to operate retro'spectively, and to render executors and administrators who had brought their actions before it passed, liable Freeman v. Moyes (1 Ad. & Ell. 388), Pickup v. Wharton (2C. & M. 405), Grant v. Kemp (Id. 636). The former of these two statutes intended to abolish an unsatisfactory means of proof; and the latter, the anomaly of allowing a plaintiff, because he sued in a representative character, to escape the just penalty of paying the costs occasioned by his having brought a desperate and ill-founded action.

The 8 & 9 Vict. c. 109, intended to prevent for the future her Majesty\'s courts of justice from being required to execute the unworthy office of deciding a gambling controversy, or of com'pelling, by their process, the payment of a wager.

By adhering to the express provisions of the 9 Geo. 4, c. 14, s. 1, and the 3 & 4 Will. 4, c.42, s. 31, the Courts have applied the remedies intended.

By a like course alone will this Court accomplish the object of the legislature in penning the 18th section of the 8 & 9 Vict. c. 109. In that section the legislature appears to me to have intended to deal with subsisting as well as with future, contracts by way of gaming or wagering. After annulling future contracts of that description, any furtherprovision as to them, or as to any proceedings upon them, was unnecessary. The enacting part of the section might have stopped at the end of the declaration that such contracts should be null and void. The next provision therefore, must be taken to deal with money or other valuable things alleged to be won upon such wagering contracts as subsisted on the 8th of August, 1845; and as to them, to incapacitate the winner from bringing or maintaining in any court of law or equity a suit for their recovery. The words are, \'and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.\' In any way of reading this part of the section, it is impossible to prevent its operating to defeat the rights vested in the winners to recover, if they shall have failed to bring their actions before the 8th of August, 1845. But upon what principle can it be urged, that one of two persons, each having won a bet on the same day, and upon the same event, shall be entitled to recover, because he shall have brought his suit the day next before the act received the royal assent; and the other, who shall have brought his suit two days later, shall be barred altogether' It seems to me that the legislature, contemplating the injustice of allowing such a distinction, has advisedly introduced the words \'or maintained,\' in order to extent equally to both the incapacity to recover. The legislature has used the word\' maintained\' alternatively: are we to say it has no distinct meaning' Dixit: are we to say non voluit' The verb \'to maintain' in pleading, has adistinct technical signification. It signifies to support what has already been brought into existence. Thus, a defendant, who admits the right of a plaintiff to bring, or to bring and up to the last pleading maintain, his action, but relies on matter disabling him from further proceeding, insists that the plaintiff ought not, by reason of such matter, further to maintain his action. A plea in bar of the further maintenance of the action admits the plaintiff to have properly maintained it up to the time of such plea. In this case, however, the defendant, by his demurrer, objects to the declaration. He says, \'Your action was brought properly; but you have no right to maintain it by your declaration, or, in other words, the law has intervened and deprived you of that right.\' The like intervention deprived the plaintiff in Kirkhaugh v. Herbert, and the Anonymous case also referred to in 6 Bing. 265, of his right of action, and in Grant v. Kamp (2 C. & M. 636) and Freeman v. Moyes (1 Ad. & Ell. 338) of his immunity from the defendant\'s costs.

In confirmation of the view which I have taken of the 18th section, it should be observed, that the expressions\' shall have been deposited\' and \'shall have been made\' appear to have been selected in contradistinction to the words \'shall be\'. If the section was intended to operate prospectively only, the words \'shall be\' would have been appropriate to its

object; but if retrospectively, the words \'shall have been\' would be not only appropriate, but necessary.\"

Concluding, he said at page 32:

\"Upon the whole, taking into consideration the general spirit of the act, and the nuisance the legislature sought, by the 18th section, to abate, I think they intended that, from the 8th of August, 1845, when the act received the royal assent, her Majesty\'s courts of law and equity should not be made instrumental in enforcing the payment of a wager; that the supposed vested rights of winners to recover were not contemplated as subjects of legislative projection, but, on the contrary, were absolutely annulled; that, from and after the 8th of August, the winners were barred from bringing, or, if they had been brought them, from maintaining, suits either at law or in equity, to recover the money or valuable thing alleged to be won; and consequently, that the defendant is entitled to judgment.\"

I have carefully considered all the judgments delivered in the case. I found myself unable to agree with the majority decision that the expression \"shall be brought or maintained\" is redundant. This decision ran foul of the rule that a construction which would leave without effect any part of the language of a statute will normally be rejected. I am more impressed with the dissenting judgment of Platt, B. which is in line with the decision of the Supreme Court of the united State of America in Smallwood & Anor. v. Gallardo; Ordinez & Ors. v. Gallardo (supra) with which I am in full agreement. If the legislature intending section 18 of the Gaming Act 1845 to be prospective only it would not have enacted in that section E that no action \"shall be brought or maintained.\" It would have been sufficient to enact that no action \"shall be brought\". There were other indicia in the section to lead to the conclusion that a retrospect was intended. Such expressions as \"shall have been deposited\" and \"shall have been made\" appearing in the section and the effect of which expressions was never considered by the majority in Moon v. Durden, would appear to support the dissenting judgment of Platt, B. See Williams v. Williams F (1971) 2 All ER 764 where the Court relied on a number of small indicia tending to show that Matrimonial Causes Act. 1970 had retrospective effect, even though there was no provision in the Act expressly tending to lead to that conclusion. I am of the view that Moon v. Durden was wrongly decided and I do not intend to follow it in preference to the clear decision in Smallwood v. Gallardo.

The object of section 11, in my respectful view, is to prohibit \"fronts\" being used to hold shares in a bank thus preventing such an important sector of the national economy being controlled by a few individuals. That being so, I cannot imagine that the legislature would intend that actions to enforce such arrange'ments (under the guise of trusts) made before the Act was promulgated would continue to be maintained. As revealed by cases that have come before this Court, the constant boardroom conflicts in the banking sector before the promulgation of the Banks and other Financial Institutions Decree centred around control of these institutions by powerful individuals through the use of fronts.This, the Decree set out to put an end to by the provision of section 11 in the Decree.

In the case on hand the expression \"shall be maintained\" as used in section 11, construed in its natural sense, contemplates the barring of all actions, whether pending or not, coming within the provisions of section 11.

Bearing the above in mind it is my view, and I so hold, that Section 11 applies not only to future actions but also to actions pending at the time the Decree came into force. The conclusion I arrive at is that not only are the plaintiff\'s claims in the two consolidated suits (except claims 5 of the 2nd suit) with the contemplation of Section 11, the

proceedings, although pending at the time the Decree came into force, are affected by it because by the use of the word \"maintain\" in the section it covers pending proceedings as well. I, therefore, hold the courts below are wrong to have held that the courts still had jurisdiction to entertain the Suits. In my respectful view, Section 11 has aborted the suits and as the plaintiffs no longer have any right to maintain them, they are hereby struckout except as to suit No. LD/938/87 where the 5th claim for '

\"an order for refund of the sum of N70,000.00 being balance of the N800,000.00 held by the defendant on the plaintiff\'s behalf still subsists. The 2nd plaintiff is at liberty to pursue this claim.'

I need to observe, although it is not an issue before us, that for the reasons I have stated above, the defendant\'s counter-claim in suit No. LD/938/87 also falls within the ambit of Section 11, but his counter-claim in suit No. LD/845/87 does not.

In view of the conclusion I have just reached above, I do not consider it necessary to deal in detail with the other issues raised by the defendant in his Brief. Suffice to say, however, that I do not see a case of denial of fair hearing made out against the court below. It may be that that court misconceived the defendant\'s case put before it and thereby came to a wrong conclusion. This is not to say that that court had denied the defendant a fair hearing. What it may mean where the court has asked the wrong questions is that it\'s jurisdiction in determining the matter before it might be affected; it is still no case of denial of fair hearing. As stated earlier in this judgment, that court in the lead judgment of Ubaezonu J.C.A. first asked itself the correct question but later proceeded to ask the wrong question and, as shown by my conclusion, thereby came to a wrong decision. This disposes of issues 1 and 2. As there can be no direct appeal from the high Court to this Court, the Issue posed as Issue 3 is, in my respectful view, incompetent. I say no more on it.

Finally if this appeal rests with me, I would allow it and set aside the judgment of the court below affirming that of the trial high Court. The plaintiffs claims in Suit No. LD/845/87 would be struck out, the right of the plaintiffs to continue with that suit having been taken away by section 11 of Decree No. 25 of 1991. The plaintiff\'s claims 1,2,3 & 4 in LD/938/87 would equally be struck out. The plaintiff in that suit is at liberty to proceed with the hearing of the suit in respect of claims 5 thereof. I would award N1,000.00 to the defendant being costs of this appeal.