IN THE SUPREME COURT OF NIGERIA

Suit No: SC68/1982

Petitioner: Chief Dominic Onuorah Ifezue
And
Respondent: Livinus Mbadugha The Deputy Sheriff, Onitsha

Date Delivered: 1984-05-18

Judge(s): Ayo Gabriel Irikefe, Mohammed Bello, Andrews Otutu Obaseki, Kayode Eso, Anthony Nnaemezie Aniagolu, Augu

Judgment Delivered

The outcome of this appeal hinges on the interpretation of section 258(1) of 1979 Constitution. Although the grounds of appeal encompass other issues of law and fact which were argued before the Federal Court of Appeal, the interpretation of S. 258(1) becomes the dominant issue in the appeal because should appellant\'s arguments on it be accepted, no useful purpose (other than fanciful academic peregrinations) would be served by going through the facts and issues of law arising therefrom.

Before, however, embarking upon this main issue, it is perhaps worth the while to set out in a brief outline the facts of the case between the parties bringing about this litigation.

There is a house situate in block 44, plot 18 at Onitsha commonly known as No. 12 Anyaegbunnam Street, Fegge, Onitsha. The plot of land on which this house was built was the subject of a grant to the plaintiff/appellant from government for a period of 40 years commencing from 1st January 1961. It was the appellant who erected the building on the plot of land. It contains ten rooms, four of which he occupied himself and the rest he let out to rent-paying tenants. The army took over the occupation of the house paying rents to the plaintiff. In 1973 the plaintiff gave a power of attorney (exhibit 5) to one J. U. Okeke, by reason of the fact, as stated by him, that he was travelling overseas, for Mr. Okeke to administer, manage, superintend the management, of the building with power to sub-let, mortgage, assign to himself or to any other person or persons the plot and the building. The power of attorney was stated to be given in consideration of an agreement for sale, in order to facilitate the carrying out of the contract which was said to be irrevocable. The plaintiff handed to the said Mr. Okeke the original deed of lease.

Later on 5th October 1974 a receipt (exhibit 4) was issued by Mr. Okeke to the plaintiff acknowledging payment by the plaintiff to Mr. Okeke of a sum of N8,500.00 stated there to be

\"consideration in respect of the revocation of the power of attorney granted to him in respect of No 12 Anyaegbunam Street, Fegge, Onitsha.\"

On the same day, the said J. U. Okeke in turn gave to the plaintiff/appellant an irrevocable power of attorney, clause 5 of which stated that

\"this power of attorney is necessary and given because an agreement for the sale of the plot as expressed in paragraph 11 of the power of attorney dated the 4th day of August 1973 fell through and was abandoned by mutual consent by myself and Chief Ifezue.\"

This instrument was not registered until 7th June 1977.

The appellant did not assign the plot to J.U. Okeke. Equally, J. U. Okeke did not at any time exercise the power granted to him under the original power of attorney which the appellant gave to him, to assign the property to himself or to any other person. But, he did exercise the power of mortgage contained in the instrument by mortgaging (exhibit 10) the property to a bank - a mortgage in which he described the property to be his own - as security for a loan. While the

mortgage was still subsisting, Okeke became a judgment debtor to the firm of C.F.A.O. in Suit 0/174/73. He applied to court by motion for instalmental payment of the judgment debt in the said suit 0/174/73, and in his affidavit in support named the house as his property. His creditors later applied for and obtained the leave of court to levy execution against the house as property of J. U. Okeke. The court gave leave for the property to be attached and a subsequent order of court gave leave for the property to be sold.

In April 1975 the property was sold by order of court by the Deputy Sheriff, Onitsha, to the 1st defendant (Livinus Mbadugha) for a sum of N8, 360.00. Thereafter, at the request of the Registrar of the court , Mbadugha paid an additional sum of N444.73 claimed by the bank to write off their mortgage transaction with Okeke on the property The Registrar then issued a certificate of purchase (exhibit 7) dated 3rd May 1975 to Mr. Mbadugha. The Ministry or Works and Housing approved in principle the transfer of the property to Mr. Mbadugha (exhibit 8).

The transfer in fact had not actually taken place. It is to be noted that the appellant took no part in the enforcement proceedings in the suit 0/174/73 nor did he interplead when the property was attached. There was also no direct evidence that he knew of the case, 0/174/ 73, or of the attachment of the property until the 2nd day of May 1977 when he filed in court an affidavit (exhibit 6) in which he stated that he had just learnt of the proceedings in 0/174/73 and that the attached and sold property belonged to him and not to Mr. J. U. Okeke. On 2nd May 1977 he filed this suit in the Onitsha High Court claiming:

(i) that he was the lessee of the Government of Ananbra State of the property in question;
(ii) an order setting aside or declaring void the purported sale of the property by the Deputy Sheriff to Livinus Mbadugha;
(iii) an order of injunction restraining Mbadugha and the Deputy Sheriff from interfering with the property, and
(iv) N2,000.00 damages for inconvenience and embarrassment.

These were the background facts of the case the knowledge of which, strictly speaking, is not necessary for the determination of the main legal issue on which this appeal is to be decided. It is however narrated for the purpose of completeness.

Section 258 (1) of the 1979 Constitution ' the bone of contention - reads:

\"Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof\"

(Underlines are mine for emphasis).

For the purpose of this appeal all counsel in the appeal, including Chief F. R. A. Williams, S.A.N., who appeared by leave of court as amicus curiae, have joined issue on the interpretation of the said S. 258 (1) of the Constitution. What went on in the Court of Appeal by reason of which the provisions of the said section 258 (1) are being invoked (and there is no dispute on this) was as follows: '

On Monday the 23rd day of March 1981 the appeal came up for hearing before the Federal Court of Appeal (Aseme, Belgore and Olatawura JJ.C.A.). Counsel argued the appeal which was adjourned to 26th March 1981 for continuation of hearing. At the conclusion of hearing on the said 26th March 1981 the Court adjourned for judgment with these words:

\"Judgment reserved\".

Three months from 26/3/81 would have brought the matter to 26th June 1981. But nothing was heard of the appeal until 9th November 1981 when the records show that it was resumed on that day before their Lordships. The appeal was then further adjourned to 16th November 1981 on which day appeal was reopened by court in these words:

\"Appeal is reopened and learned counsel are asked to address the court whether order of non-suit is desirable in the

circumstances of this case\".

Be it noted that on the said 16th November 1981 the undelivered judgment was then 7 months and 3 weeks away from the date (26/3/81) on which the appeal was reserved for judgement. The question poses itself:

Had the Court the power - indeed, the jurisdiction - to 'reopen' the appeal after the expiration of the three months stipulated in the delivery of judgments'

The answer to this question will come later in the course of this judgment.

After the re-opening, counsel put forward fresh arguments, adopting, in addition, their earlier arguments. Mr. Okolo counsel for the then defendant/appellant, urged the court to dismiss the plaintiff\'s case, and allow their appeal, while Dr. Ume who was appearing for the plaintiff pleaded with the court to uphold the judgment of the High Court and dismiss the defendant\'s appeal. The court then, immediately thereafter, delivered its judgement and non-suited the plaintiff. It was from this non-suit judgment that the plaintiff (appellant) has appealed to this Court.

Appellant filed 11 grounds of appeal on various and diverse matters but I will only set out one ground - namely ground 1 as only that ground of appeal is necessary for the only issue which now calls for a decision. It reads:

(1) Error in Law.

The learned Justices of the Federal Court of Appeal erred in law by given (sic) judgment in this case contrary to section 258 of the Constitution of the Federal Republic of Nigeria 1979

Particulars of Error.

(i) The learned Justices of the Federal Court of Appeal after argument and reply by counsel for both parties on 23/3/81 and 26/3/81 respectively, adjourned the case for judgment. No judgment was given within the consti'tutional stipulated period of three months.

(ii) After the said period the learned Justices continued with the case and gave judgment on the 23rd day of November 1981, non-suiting the plaintiff/appellant, contrary to the views openly expressed by the learned Justices on the day when the addresses by counsel were concluded.

(iii) The delay in delivering the judgment operated adversely against the interest of the plaintiff/appellant and affected the justice of the case.

(iv) Throughout the proceedings before the said adjournment for judgment, the question of non-suit was never raised either by the court or any of the parties. Counsel were not asked to address the court on the issue or point.\"

I am strictly not concerned here with sub-paragraphs (iii) and (iv) of the above particulars. I shall only concern myself with sub-paragraphs (i) and (ii) which are specifically germane to the issue.

I shall endeavour to narrate the argument of counsel., both from their briefs and orally before us, as succinctly as possible.

Dr. Ume, posed many questions in his brief respecting the re-opening of the appeal by the Court of Appeal; the question of non-suit; the failure of the Court of Appeal to appreciate that J. U. Okeke neither had a grant of a lease of the house from government nor an assignment to him of the lease; and the question whether the Court of Appeal had power to act contrary to the provisions of S. 258. of the Constitution either by re-opening the appeal or delivering the judgment after three months of the conclusion of evidence and final addresses. To these questions Dr. Ume answered in the negative.

He contended that the Court of Appeal was one of the courts contemplated in \"Every court\" mentioned in S. 258 (1)

and that it was bound by the Constitution to deliver its judgment within 3 months of the conclusion of evidence and final addresses; that it was a creature of statute and could not act outside the statute creating it; that there was no provision in the Court of Appeal Act creating the court (see No.43 of 1976) or in the Court of Appeal Rules (see. S. I. 10 of 1981) empowering the court to reopen a case \"suo motu' after it had adjourned -for judgment. But, on a second thought and upon further reflection, Dr. Ume conceded that the court could reopen an appeal and hear further argument but that must be done within 3 months as stipulated in section 258 (1) . He argued that the power of the Court of Appeal relating to reserved judgments is no more than as contained in S. 11 of the Court of Appeal Act and Court has no power to act outside that section. He further contended that the Constitution was the organic law of the land which must be obeyed; that it was not an ordinary Law; that S.258 (1) uses the words\" shall\" and \"not later than\" and that these words are compulsive; therefore, the argument of counsel for the respondents (supported counsel appearing amicus curiae) on whether the \"mandatory\" or \"directory\" is untenable.

He finally submitted that the case of Atolagbe v. Bukanla, FCA/L/80/83 (unreported) cited by Chief Williams supported his argument. He, therefore, urged that this Court should set aside so-called judgment of the Court of Appeal and remit the appeal to the Court of Appeal for a new and different panel of the court to hear and determine the appeal within the 3 months stipulated by 8.258 of the Constitution.

PROF. KASUMU did not deal with S. 258 in his main brief in which he dealt with the nature of the estate or interest which Mr. Okeke possessed in the property consequent upon the power of attorney granted to him by the plaintiff/appellant and whether by reason of the
subsequent revocation-power'-of-attorney which Mr. Okeke granted back to the appellant he had any estate left in the property which was capable of being passed on to the first respondent, Livinus Mbadugha, by the auction sale conducted by the second respondent, the Deputy Sheriff. Interesting, legally, as an exploration in that direction would have been, the nature of the issue before us did not permit Prof. Kasumu to address us on that aspect of the appeal. It was his reply brief which concerned 8.258 on which he based his address.

He took his argument on two limbs:

A. Whether S. 258 (1) applies to all courts or only courts of first instance which hear evidence'

B. Whether the section is 'mandatory' or 'directory"

On the first limb (A above) he argued that S.258(1) is aimed at speedy determination of cases when facts of the cases are still fresh in the minds of trial judges. Therefore, he urged that the section should be interpreted as applying to trial courts only, and not to appellate courts. He contended that the mischief which 5.258(1) was aimed at was delay in the determination of cases and submitted that although reference is made in the section to \"every court\" the section goes further to limit it to courts which take evidence. He conceded that when there is an occasion for an appellate court to sit in its original juris'diction and hear evidence (the Supreme Court for example, under S. 212 of the Constitution before the Military suspension in No.1 of 1984), 5.258(1) could then apply to the appellate court for the purpose of that exercise. Referring to AKPOR v. IGUORIGUO (1978) 2 S.C. 115 he stressed that the emphasis has been on the hearing and assessment of evidence.

If, he submitted, those words in the section, namely,

'after the conclusion of evidence and final addresses'

had been framed by the makers of the Constitution to read

'after the conclusion of evidence or final addresses'

there would then have been room for the section to be made applicable to both the courts which take evidence and to those which do not. On a clear reading of S. 258 one should give effect, he said, to the words \"EVIDENCE\" and \"ADDRESSES' as the key factors in that section.

Dealing with the second limb (B above), Prof. Kasumu argued that quite apart from the wording of the section, one should have refererence to the mischief the section is aimed at. One should not lose sight of the fact that the section also requires that duly authenticated copies of the decision be supplied to the parties the same day of the delivery of the decision. The practical difficulties in supplying the parties with the said authenticated copies the same day of the delivery of the judgment, make clear, he argued, that the section is directory only and not mandatory, and called in aid the opinion of the learned author of CRAIES ON STATUTE LAW, 7th ED. P. 250 to emphasize that point. He, therefore, finally submitted that if this Court agreed with his view that the section is directory and not mandatory, the Court of Appeal could hear further arguments after reserving judgment. He, however, agreed that this must be before the expiration of the 3 months period. CHIEF WILLIAMS (amicus curiae) prefaced his submissions by readily agreeing -that some judges though few in number were in the habit of \"preserving\" their judgments instead of \"reserving' them. The result is a long delay before judgments are delivered. Some delayed their judgments for as long as two years before delivery, resulting in the judge forgetting the facts and the impressionable nuances in the case. Chief Williams did not agree with Prof. Kasumu\'s argument that S. 258 (1) does not apply to the appeal courts.

His brief of argument - succinct, lucid and precise - is an epitome of his liberal (if not benevolent) interpretative approach to the subject. He pursues his argument from the stand'point that laws are made but laws are broken and there is no such thing as an unbreakable law. The effect of the breach or contravention of the law would vary according to the tenor of the law, and that it is not always, in our imperfect world, that the breach of a law invalidates all acts performed by a public authority on the strength of the law. Perhaps, better justice would be done to this part of his argument by a reproduction of a portion of the brief (page 2 paragraph 1.2) captioned: \"Effect of Contraven'tion of Statutes Generally\". It reads:

\"1. 2 Effect of Contravention of Statutes Generally: The provision of section 258(1) of the Constitution which is to be considered in this brief requires all courts established by the Constitution to deliver their judgments within a period of 3 months after evidence and final addresses. There can be no doubt that the provisions of the section are meant to be obeyed and and complied with. But there is no such thing as an unbreakable law. A law may be disobeyed or contravened for good reason or bad reason or for no reason. The question which the courts have to face and determine include the follow: What are the legal consequences or the breach or contravention of the law. Does the breach or contravention render what was done by the public authority or other person null and void or does it leave what done as aforesaid unimpaired or does it render it voidable at the instance or of a person interested' Is the person who contravened the law liable to a penalty' And so on and so forth. Lawyers have to consider such questions because, unfortunately, in our imperfect world, breaking or contravention of laws occur often enough and it would be unrealistic to ignore them. The authorities show that there are situations in which the law says that what was done by a public authority in breach of a statute was null and void. There are yet other situations in which the law says that what was done by a public authority in breach of a statute leaves the act performed unimpaired. In the latter case it is a misconception to suppose that the application of the rule which leaves the act of the public authority unimpaired tends to render the law useless and ineffective. It will be seen that in cases where the courts have reached this conclusion, an interpretation which would invali'date the act of the public authority concerned is apt to defeat the inten'tion of the law maker or to lead to injustice or absurdity or to advance rather than suppress the mischief aimed at by the law in question. If the law maker or the Legislature feels strongly enough about possible contraventions, it can and often does impose a penalty as sanction. But where no penalty is imposed the stipulation remains none'theless binding like any other law. Like any other law however, it is liable to be breached. In this case the Supreme Court is faced with the legal consequence of a breach or con'travention of the statute which happens to impose no penalty.\"

He contended that if the true intention constitution was to invalidate decisions delivered more than three months after address of counsel, as argued by the appellant, then an interpretation of the provision which enables them to be easily by-passed is certainly not one calculated to promote that intention. He conceded that where a court, after final addressers of counsel, announced adjournment of the case, it would be reasonable to assume that the adjournment was 'for judgment' even if the trial judge did not specifically say so. In the instant appeal, as shown by the additional proceedings later produced by appellant\'s counsel, the adjourmnet on 26th March 1981 was specifically for judgment.

Chief Williams, continuing his brief of argument, submitted that where there is a law prescribing the time within which a

public duty is to be performed, the fundamental question is whether the law is mandatory so that the failure to comply with the law renders the performance null and void, or merely directory, so that failure to comply does not render performance null and void. In the case of a mandatory law, performance in terms is imperative, absolute and obligatory. But not so where the law is mandatory or directory\". Placing reliance on the statement of principle of Lord Penzance in HOWARD And Others v. BODINGTON (1877) 2 P.D 203 at 210, Chief Williams submitted that in the case of a mandatory or directory enactment, although the provision may not have been complied with, the subsequent pro'ceedings do not fail.

One of the tests ascertaining whether a law is mandatory or directory, he said, is to be found in paragraph 933 Volume 44 Halsbury\'s Laws of England, 4th Edition, on STATUTES where it states that the practice has been to construe provisions as no more than directory if they relate to the performance of a public duty, and the case is such that to hold acts done in neglect of them null and

void would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature. He therefore, urged that this Court, in interpreting S.258 (1) of the Constitution, should adopt this approach, for the very reason that the materiality of the 3 months stipulated in S. 258 (1) relates to the pronouncement or announcement by courts of law of their decision in cases which come before them, and that although it is desirable that courts give their decisions as quickly as possible, yet material that the courts give correct decisions than that they give decisions within prescribed times.

If in a case, for example, a recondite point of is involved and a decision on that is pending before the
Supreme Court, he argued, common sense would dictate that it is better to await the judgment of the Supreme Court before a lower court decides the point even if by so doing there is a contravention of S. 258 of the Constitution. Given an option between the right of the parties to a correct judgment according to law on the one hand, and their right to have that judgment delivered within the prescribed time on the other, public interest dictates, he asserted, that the option must be exercised in favour of correct judgment according to law. By opting for a correct judgment according to law, he said, no substantial rights of either party would have been violated since, he submitted, the ultimate object of the law is to secure for the parties a correct judgment according to law.

He, therefore, strongly urged this court to lean towards the interpretation which would construe S. 258 (1) of the Construction as merely directory, especially so as the second arm the said S.258 (1) requires the court, in addition to the delivery of the judgment, to furnish parties to the case or matter determined with duly authenticated copies of the decision on the date of the delivery thereof. Although they were against his argument, Chief Williams quite properly referred to the decisions of the Court of Appeal in SUFIANU And Others v. ANIMASHAUN And Others FCA/L/80/82 delivered on 21st March 1983 and ATOLAGBE v. BUKANLA (supra) delivered on 8th February 1984.

In his oral argument, in amplification of his brief, Chief Williams contended that it must always be remembered that a legislature is entitled to make a law in the way, that it wants. When it wants to make a law of the nature of S. 258 (1) it decides on whether or not it should attach a penalty. When it attaches no penalty, contravention, though actionable, does not nullify the act. S.258 (1), he stated, was made for the judges of the superior courts. A con'travention of its provisions would be an infrin'gement by the particular judge which, possibly, could rank as a \"misconduct\" within the meaning of S. 258 of the Constitution for a judge to \"perpetually\" flout the provisions. He referred to the CONCEPT OF LAW, 1 96 1 Ed. at p. 34. by Professor Hart, and submitted that the Constitu'tion must be read as a whole. There is a Judicial Service Commission among whose duties is to discipline judges for \"misconduct\".

He finally referred to S.33 (1) and (4) of the Constitution which confers rights on litigants for a determination of their cases \"within a reasonable time\"; THE PRESIDENTIAL CONSTITUTION OF NIGERIA by Professor Nwabueze, and submitted that S.258(1) of the Constitution, which deals with judges, when read together with S.33 all go to point to the fact that litigants are entitled to have their matters decided by the courts as expeditiously as possible. What is \"reasonable time\", he stated, depends on the circumstances of each case.

The decision of the only issue in this appeal is, in my view, a very simple one once we return to basic principles and well settled canons of construction of statutes. The FIRST of these is that if there is nothing to modify, alter or qualify the

language of a statute, it must be construed in the ordinary and natural meaning of the words and sentences used. The courts have adhered to this literal rule of interpretation since the 19th century as seen from the judgments of Jessel, M. R. in ATT.-GEN. v. MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION LTD. (1876) 1 Ex. D 469 and Lord Fitzgerald in BRADLAUGH v. CLARKE (1883) 8 App. Cas. 354. The object of all interpretation is to discover the intention of the law makers which is deducible from the language used. Once the meaning is clear the courts are to give effect to it. The courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment as was done, wrongly, in D.E. OKUMAGBA v. W.G. EGBE (1965) 1 All N.L.R. 62 - a process of judicial legislation. The same goes for agreements between parties (see: ANIMASHAWUN v. ONWUTA OSUMA & 2 Ors. (1972) 1 All N.L.R. 363 at 372 in respect of which courts are to ascertain what the parties meant by the words they have used - an ascertainment in which, unless there is mani'fest ambiguity or repugnance in those words (see: R. v. TONBRIDGE OVERSEERS (1884) 13 Q.B.D. 339 at 342), they are to be given their ordinary meaning.

The salient words used by the legislature in the first part of S.258(1) of the 1979 Cons'titution are:

\"Every court shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses ...\"

\"Month\", according to section 18(1) of the Inter'pretation Act, 1964, No.1 of 1964 is defined as meaning a month reckoned according to the Grego'rian calendar.

The SECOND canon of construction is that which is often referred to as the \"Mischief Rule\" which was formulated by the Barons of the Exche'quer in 1584 in HEYDON\'S CASE 3 Co. Rep. 7a at 7b as follows:

\"that for the sure and true interpretation of all statutes in general (be they panel or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

(1st). What was the common law before the making of the Act.
(2nd). What was the mischief and defect for which the common law did not provide.
(3rd). What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And
(4th). The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mis'chief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the \"makers of the Act, pro bono publico.' (Underline is mine).

Again, where there are two choices of interpretation, the courts must avoid the choice which would reduce the legislation to futility and should rather accept the other choice on the principle that the legislature would legislate only for purpose of bringing about an effective result. So said Viscount Simon L.C. in NOKES v. DONCASTER AMALGAMATED COLLIERIES, LTD. (1940) A.C. 1014 at 1022 and to the like effect by Lord Shaw in SHANNON REALITIES LTD. v. VILLE de ST. MICHEL (1924) A.C. 185 at 192, 193. The principle is often expressed in the maxim: ut res magis valeat quam pereat.

To properly ascertain the mischief aimed at by a legislation it is sometimes helpful to look into the history of the legislation. It is not permissible for the courts in England to construe an Act of Parliament by the motives which influenced the legislature in passing the Act, but it is permissible for the courts to look into the history preceding the legislation in order to see whether the terms of the enact'ment are such as fairly carry out the object of the legislation with a view to giving effect to what the legislature intended. Hall V.-C. did this in ATT. -GEN. v. DEAN AND CANONS OF MANCHES'TER (1881) 18 Ch.D. 596; Lord Blackburn did it in RIVER WEAR COMMISSIONERS v. ADAMSON (1877) 2 App. Cas. 743, and the Earl of Halsbury L.C. took a like course in EASTMAN PHOTOGRAPHIC MATERIALS CO. LTD. v. COMPTROLLER-GENERAL OF
PATENTS (1898) A. C . 571. Eso, J. S . C., in his paper \"The problems of Interpretation and Application of the provisions of the Constitution\" delivered in March 1982, in Ilorin, cited the statement of Lord Wilberforce in Minister of Home Affairs v. Fisher (1980) A.C. 319 at 329 as representative of the attitude of the Commonwealth on the issue. He wrote

\"As of now, the present Commonwealth attitude would appear to be as stated by Lord Wilberforce in the case of the Minister of Home Affairs v. Fisher (P.C.)2 (1980).

The Law Lord laid down what he considered should be the rules of law applicable to the interpretation of a Constitution. He said '

\'A Constitution is a legal instrument giving rise, amongst other things, to, individual rights capable of enforcement in a court of law. Respect must be paid to the language which has be used and to the traditions and usage which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the
process of- interpretation a recognition of the character and origin of instrument and to be guided by the principle of giving full recognition and effect to those fundamental riqhts and freedoms with a statement of which the Constitution commences.\'

The historical setting preceding the enactment of S. 258(1) of the 1979 Constitution was, as conceded by Chief Williams, that some judges became notorious for very long adjournments of judgments leading to a deprivation from them of the advantage of forming fair impressions of witnesses and evaluation of evidence. The inordinate delays became a subject of adverse comment in this Court in R. ARIORI And Ors. V. MURAIMO B. O. ELEMO & Ors. (1983) 1 S. C. 13 and before then had been as a matter of notorious fact, a matter of public outcry ventilated through public pronouncements and the mass-media. These delays were there, the existence of the earlier provisions in S. 21(1) of the 1960 Constitution, No. 1652 of 1960 and S.22(1) of the 1963 Constitution, No. 20 of 1963, of

\"... a fair hearing within a reasonable time by a court...\" notwithstanding. It was therefore no wonder that the Drafting Committee of the 1979 Constitution (sometimes referred to as the 49 wise men) should take a definite stand against such delays by making a provision which had the effect of tying the courts down to a definite period within which judgments must be delivered after, the conclusion of evidence and final addresses. The \"mischief\" aimed at was clearly against delays in the delivery of judgments after the conclusion of hearing of cases, by the courts. Realizing that not much progress had been made by some courts by leaving the matter to the discretion of those courts by having the provision, in the earlier Constitution, of

\"a fair hearing within a reasonable time by a court\"

the makers of the 1979 Constitution must have been determined to leave nothing to chance or to some tenuous and tortuous judicial interpretation as to what was

\"a reasonable time\"

and therefore came down with a distinctive definitiveness in stipulating the exact period

There is thus a clear difference between S. 33 of the 1979 Constitution dealing with the right to fair hearing, with particular reference to subsections (1) and (4) and S. 2 58 (1) which limits the definite period for the delivery of judgments in concluded cases. Whereas S.33(1) and (4) enjoin the courts to hear cases expe'ditiously, leaving the discretion to the courts, as indeed it must do, having regard to varying attendant circumstances that can befall a case in the course of hearing - availability of wit'nesses; illness of parties and witnesses, the pressure on the courts by reason of other cases to be heard; the strain on the judges who may thereby be compelled to be absent on one or other occasion; the indigency of parties resulting in. their inability to finance promptly the monetary aspects of the litigation or criminal proceed'ings, and a whole host of other circumstances which may delay the hearing of a case or impede its progress ' S. 258 (1) deals with the situation where the hearing of a case has been concluded, including the final addresses, leaving only the judgment to be delivered, a final assignment remaining with the trial judge only, who has only to make up his mind and give expression to it in a considered judgment.

The suggestion that the provisions of S.258(1) are a mere extension of the provisions of 8.33(1) and (4) and an

amplification of them cannot, in my view, be well grounded.

And this brings me to the argument whether the provisions of the first part of S. 258(1) should be construed as Mandatory or Directory. The problem here is that S.258(1) has not declared what shall be the consequence of non-delivery of judgments within 3 months after the conclusion of evidence and final addresses, leaving room for the argument that to hold judgments delivered outside the 3 months' period null and void would work serious general inconvenience or injustice to persons who have no control over the delivery of the judgments.

One thing, however, is certain: that an absolute or mandatory (sometimes also refered to as imperative) enactment must be obeyed or fulfilled exactly; but in the case of a directory enactment, it is sufficient if it obeyed or fulfilled substantially. (See: WOODWARD v. SARSONS (1875) L.R. 10 C.P. 733 at 746 Per Lord Coleridge, C.J.). In the case of imperative enactment the courts give effect to the provisions irrespective of consequences. Devlin, J. as he then was) in ST. JOHN SHIPPING CRPN. v. J. RANK LTD. (1975) 1 Q.B. 267 at 282 was of that view when he stated that:

\" . . . one must not be deterred from enunciating the correct principle of law because it may have startling or even calamitous results. But I confess I approach the investigation of a legal proposition which has results of this character with a prejudice in favour of the idea that there may be a flaw in the argument somewhere.\"

(See also: WARBURTON v. LOVELAND d. IVlE and Others (1832) All E. Reprint 589 at 591 per Tindal, C. J.) The position, of course, would be different where the statutory provision is susceptible of more than one meaning or the words are ambiguous in which case it would be necessary to consider the effects or consequences which would result from a particular interpretation bearing always in mind the mischief which the provisions are designed to prevent.

(MAXWELL ON INTERPRETATION OF STATUTES 12th Ed. p. 105.; GARTSIDE v. INLAND REVENUE C0M'MISSIONERS (1968) A.C. 553 at 612).

S.258(1) contains the words

\"shall deliver'.in writing not later than 3 months....'

These words appear to me to be commanding enough to be regarded as mandatory rather than directory, especially against the background of all that I have already stated in this judgment. The words are clear, positive and unambigous and dictate that literal interpretation be given to them. To hold otherwise would, in my view, be for this Court to perpetuate the mischief intended by the legislators to be prevented by the enactment of that section. It is worthy of note that S.258(1) comes, in the Constitution, many sections after S.33 which deals with fair hearing within a reasonable time.

Turning now to Professor Kasumu\'s sugges'tion that S. 258 (1) should be made to apply only to courts of first instance which hear evidence, the section begins with the words

\"Every court established under this Cons'titution'.\"

Which are the courts established by the 1979 Constitution' The Judicature comes under Part 1 of Chapter VII of the Constitution. S.210 there'of creates the \"Supreme Court of Nigeria\"; while S.217 creates the \"Federal Court of Appeal\" which by the new Military Government dispensation (Constitution (Suspension and Modification) Decree, 1984 ' Schedule 3 now called the \"Court of Appeal\"; the \"Federal High Court\" was establi'shed under S.228; while the High Courts of the States were established by S.234. Apart from these traditionally recognised superior courts of record sections 240 (1) and 245 (1) also established the 'Sharia Courts of Appeal of a State' and the \"Customary Court of Appeal for the State\" res'pectively. These clearly were the courts con'templated within the term \"every court establi'shed under this Constitution\" in S.258 (1), To ignore those clear words of S. 258 (1) and to imply, and import into the section, a distinction of courts which hear evidence and those that don't, is, in my view, for the court to attempt to legislate by judicial interpretation. Clearly all the courts which I have referred to in the various sections of the Constitution come within the ambit of the words: 'every court established under this constitution" and are caught by the 3

months limitation period.

Failure by any of those courts to give its judgement within the period required by the section, is a violation of the provision and the so-called judgement delivered outside the period is no judgement at all and, accordingly, null and void and entirely of no legal effect.

It has been argued that to nullify such a judgement is to punish innocent parties. That argument is unacceptable because in every case where a judgement is set aside by an appellate court, some losing party suffers, by the appeal being decided against him. Such a subjective consideration should not, and will not deter an appeal court from deciding an appeal according to legal justice.

It is unnecessary to go through the recent decisions of the Court of Appeal as hereinbefore mentioned since I am in agreement with the ultimate results and the conclusions reached in those cases.

In conclusion, this Court has never shrunk where the words of a statute so permit, from doing equitable justice by giving liberal construction to the provisions of a statute, especially where the liberties of the subject are concerned. In NAFIU RABIU v. KANO STATE (1980) 8-11 SC.130 at 149, Udoma, J.S.C. delivering the lead judgment of this Court, advocated a leaning to broad interpretation, \"in response to the demands of justice'.wherever possible'. This was what he said inter alia:

\"And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation,. unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.'

Idigbe, J.S.C., was of the same view, adding the rider "

\"unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose.\"

It is, however, always safer, to look objectively at the statute and to see if the literal inter'pretation is available. If it is, the duty of the court is to give it the literal interpreta'tion, the consequences notwithstanding. In ADEGBENRO v. AKINTOLA And Another (196 2) 1 A.ll N.L.R. 442 where there was divided opinion, with Ademola, C.J.N. leading the liberal construction view (Bairamian and Taylor, F .JJ. agreeing with him) and Brett, F.J. (dissenting) adhering to the literal construction, the Privy Council (per Viscount Ratcliffe) settled the matter in favour of literal construction (1963 A.C. 614 at 626-633). Said Ademola, C.J.N. at page 456:

\"I believe that the Constitution contemplated proceedings in the House as being the touchstone of whether the Premier (and his Government) commands the support of a majority of the members or no longer commands such support.

I think that the House of Assembly cannot be relieved of its responsibilities and duties as the House by a letter to Governor signed by members of the House.

It will be an unduly narrow and restric'tive interpretation of the powers of the House, and a correspondingly unduly wide interpretation of the powers of the Governor, if in the circumstances, section 33(10) is interpreted in any other way except in a way which makes it clear that the evidence emanates from proceedings of the House.\"

The contrary view was expressed by Brett, F.J., adhering to -the literal interpretation at pages 458 to 459, as follows:

\"No doubt that clearest way in which it can possibly appear that the Premier no longer commands the support of a majo'rity of the members of the House of Assem'bly is by an adverse vote, or a series of adverse votes, of the House itself either expressly on the issue of confi'dence or on some other matter or matters of sufficient importance. That is the orthodox source of information and pre'ferable to any other when it is available, but it does not necessarily follow that it

is the only source from which the fact may lawfully become apparent to the Governor, particularly in a Region where the House of Assembly is less continuously in session than the House of Commons of the United Kingdom. To take an extreme example, suppose the Premier quarrels with his political associates to such an extent that all the other Ministers resign and he can find no members of the House of Assembly willing to serve on the Executive Council; or suppose that there is a coalition government dependent on the support of two poli'tical parties, the parties fallout, all the Ministers from one party resign, and it is announced that that party will unite with a third party in oppos'ing the Premier and his government. Suppose in either case that the House of Assembly has been prorogued and that the Premier declines to advise that it should be convened, so that its views may be known. If these events occurred shortly after the passing of the annual Appropriation Act, a Premier who was obstinate to the point of perversity might try to remain in office for a further twelve months or so. In such an exceptional case I cannot see why, for the purposes of s.33 (10) of the Constitution, the Governor should not be allowed to know what everyone else in the Region knows, and exercise his discretion as the public interest requires, even if it means that he has to rely on information extraneous to the proceedings of the House of Assembly in deciding whether the Premier still commands the necessary support as well as in deciding whether any other person who might be appointed Premier would be likely to command it\".

As Fataiyi -Williams, C.J.N., had observed in CHIEF OBAFEMI AWOLOWO v. ALHAJI SHEHU SHAGARI And Others (1979) 6-9 S.C.51 at page 64, authorities are often cited in favour of one inter'pretative proposition or another leading sometimes to doubts and vagueness in interpretation, yet in the context of Nigeria with its proliferation of Decrees, it would be safe to adhere to a literal construction. At pages 64 - 65 he had this to say

\"In the context of Nigeria, where the rate of promulgation of Decrees has been prolific during the last few years, it would be safe to adhere to the view once expressed by the late Lord Evershed, M.R., that "

\'the length and detail of modern legislation has undoubtedly rein'forced the claim of literal construction as the only safe rule.\"

There is no doubt in my mind that the framers of our S.258(1) intended that section to be binding on our courts by reason, obviously, of the interminable delays to which, in the past, litigants were subjected in the courts. s pointed out in SENATOR ABRAHAM ADE ADESANYA v. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA And Another (1981) 5 S.C. 112 at 134 the courts have a duty when interpreting the provisions of the 1979 Constitution to look at ,the Constitu'tion as a whole and construe the provisions in such a way as not to frustrate the \"hopes and aspirations\" of those who have made the strenuous efforts to provide the Constitution for the good government and welfare of all persons in the country on the principles of freedom, equality and justice.

Finally, having regard to all the foregoing, I am firmly of the view that on a proper cons'truction of the words of section 258 (1) of the Constitution, having regard to the mischief in'tended to be prevented, the 1979 Constitution required that the judgment of the Court of Appeal in this matter be delivered within three months of its being \"reserved\" by that court, after the hearing of the appeal and that failure to do so invalidated the so-called judgment delivered after that period. The appeal must be allowed and is hereby allowed. The so-called judgment is declared null and void and, for the avoidance of any doubt, is hereby set aside. The appeal is remitted to the Court of Appeal, before a different panel, for hearing and determination, according to law.

The appellant is entitled to the costs of this appeal which are hereby assessed N300.00.

Judgment delivered by
Irikefe JSC.

I Was Privileged With a preview of the judgment just read by my learned brother, ANIAGOLU, J.S.C. and I am in total agreement with his conclusions on the interpretation of the section of the constitution the subject of this appeal. I was also privileged to read the dissent of my learned brother, BELLO, J S.C.

Accordingl I would allow this appeal and adopt in its entirety the orders made by my learned brother, ANIAGOLU, J.S.C. inclusive of the order as to costs.

For the purpose of emphasis I should like to comment briefly on the issues with which this appeal is concerned. The facts giving rise to the appeal have been very accurately catalo'gued in the judgment of my learned brother, ANIAGOLU J.S.C. and no re-capitulation would appear to be called for.

Section 258(1) of the Constitution of the Federal Republic of Nigeria -1979 reads:

'Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter deter'mined with duly authenticated copies of the decision on the date of the delivery thereof.' (Underline supplied)

I have underlined the lower portion of the pro'vision to stress the fact that it is divided into two segments, namely: '

(a) That segment which stipulates that a decision shall be delivered not later than 3 months after adjournment for judgment and
(b) The requirement that an authenticated copy of the judgment so delivered shall be furnished to the parties at the time of such delivery.

The majority and minority versions of this judgment share agreement in the following areas,

(a) Every court within the intendment of Section 258(1) would encompass such courts within the purview of section 6 of the Constitution - and undoubtedly the State High Court, the Federal High Court, the Court of Appeal and the Supreme Court.
(b) The requirement to furnish an authenti'cated copy of a judgment at the time of delivery is, in view of the logistics involved in getting up a judgment, that is taking into account the vagaries of a third world country, merely directory and not mandatory. By this I mean that it would be unrealistic to hold other'wise as it cannot be seriously argued that irreparable harm would be done by not having the judgment supplied on that day.

The requirement that a reserved judgment should be delivered not later than 3 months after being so reserved is another matter. The mischief aimed at by the constitutional provi'sion under review is the avoidance of delayed judgments, which is the same thing as justice delayed, which is usually described as a denial of justice. The provision is merely procedural and does not belong to the area of substantive law. The learned authors of Halsburys Laws of England - 4th Edition stated thus in article 25 Vol. I under the caption '

\"Procedural requirements ' The question whether non-compliance with procedural or formal requirements renders nugatory the purported exercise of a statutory power has been in issue in a very large number of reported cases, from which but few principles can be elicited. The normal consequence of non-compliance with the requirements is invalidity. These requirements are, however, classifiable as mandatory or directory, and, where a provision is merely directory, substantial compliance will be sufficient, and in some cases total non-compliance will not affect the validity of the action taken. It is broadly true that such provi'sions will more readily be held to be directory if they relate to the per'formance of a statutory duty, especially if serious public incon'venience would result from holding them to be mandatory, rather than to the exercise of a statutory power affecting individual interests, and that the more severe the potential impact of the exercise of a power on individual interests, the greater is the likelihood of the procedural or formal provisions being held to be mandatory.\"

From the above it would appear two situations are brought into play. The first relates the performance of a statutory duty, albeit formal in nature, where serious public inconve'nience would result if there was rigid insisten'ce on compliance with such a formality. Such situation arose in the case of MONTREAL STREET RLY. COY. v. NORMANDIN - 1917 - A.C. p. 170, where at page 174 of the report - Sir Arthur Channel in delivering the opinions of their Lordships of the Privy Council stated "

\"It is necessary to consider the principles which have been adopted in construing statutes of this character, and the authorities so far as there are any on the par'ticular question arising here. The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. ----When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legis'lature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.\"

In that case non-compliance with the statutory provisions by a public officer in an area over which the party to the case had no control was held not to vitiate the trial. Where, as in the case of HOWARD & ORS. vs. BODINGTON - 1877 P.O. p. 203 a fundamental condition precedent which would have given validity to the institution of proceedings had not been complied with, the proceedings were declared incompetent on the basis of the severe impact this would have had on the the individual in that case. Such situation in PATCHET vs. LEATHEM - '1949 TIMES LAW REPORTS Vol. 45 at page 69.

In construing a statutory provision which is ambiguous, preference should be given to the view which would not lead to public mischief. The mischief to which the provision under review was aimed would be defeated if the selective or piece-meal approach advocated in the minority judgment were adopted. It is being said that if the judgment is a day or two outside the man'datory period of not later than 3 months, then such a judgment could be valid. My answer is, why stop at one or two days' Why not go on to 20 and 50 days' In my view, this would be tantamount to interpreting the provisions of the section out of existence. I can see no difficulty declaring as incompetent any judgment delivered outside the prescribed period. On the other hand, once we go the other way, by adopting the selec'tive approach the entire flood-gate would be thrown open and the evil of yester-years, that is judgments preserved for an interminable length of time, would be back with us.

Judgment delivered by
Bello JSC.

With all due respect, I am unable to agree with the decision of my learned brothers that the judgment of the Court of Appeal delivered in breach of section 258(1) of the Constitution is null and void and the Court of Appeal has to start all over again to hear and determine the appeal afresh. The argument that the Court of Appeal is not bound by the provisions of the subsection may be summarily dismissed. In his lead judgment, my learned brother, Aniagolu J.S.C., has meticulously considered the argument and I agree with his conclusion that the Consti'tution requires all courts established under it including the Court of Appeal to comply with the provisions of the subsection.

The facts of the case for the determination of the main constitutional issue and the submis'sions of learned counsel have been comprehensively stated by Aniagolu J.S.C. in his lead judgment. I do not intend to repeat them in detail. I would only reiterate their salient summary. After the Court of Appeal had concluded the hearing of the appeal in this case when the case was before it, the Court reserved judgment sine die. It did not deliver judgment within three months after the conclusion of the hearing but did so seven months and three weeks thereafter. It is obvious that the Court of Appeal committed a breach of the provision of section 258 (1) of the Constitution, which reads:

\"Every court established under this Consti'tution shall deliver its decision in writ'ing not later than 3 months after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.\" (Underline mine).

The question for determination is: What are the legal consequences of the breach of the first limb of section 258(1)' In other words, what effect should be given to the judgment of the Court of Appeal delivered outside the 3 months limit' In

his answer to the question, learned counsel for the appellant contended that compli'ance with the provisions of the subsection by the courts is mandatory and since the Court of Appeal failed to comply, its judgment is null and void. In their submissions, learned counsel for the respondent and amicus curiae responded that the subsection is only directory and hence the judgment of the Court of Appeal is valid and effect should be given to it.

It may be pointed out at this stage that the decisions of the Court of Appeal in Suf ianu & Ors v. Animashaun & Ors FCA/L/80/82- (unreported) delivered on. 21st March, 1983 and Atolagbe v. Bukanla FCA/L/80/83 (unreported) delivered on 8th February 1983 support the contention of learned Counsel for the appellant. The Court of Appeal decided in the two cases that judgments of the High Courts which had been delivered outside the 3 months period were null and void.

Now reverting to the question for adjudica'tion, I think the answer rests squarely on the interpretation of section 258(1) of the Constitu'tion and in particular on the meaning of the word \"shall\" therein. In my view, the correct meaning of the word \"shall\" within the context of the subsection is the determinant factor for the resolution of the dispute.

It is germane to the issue to state that the word \"shall\" has various meanings. It may be used as implying futurity or implying a man'date or direction or giving permission. In the case in hand, we are only concerned with its mandatory and directory meanings. The rules of construction in both respects as have been formu'lated in numerous cases may be summarised thus: Whenever a statute declares that a thing 'shall' be done, the natural and proper meaning is that a peremptory mandate is enjoined. But if the thing to be done has reference to the time of completing a public act by a public functionary, the enactment will generally be regarded as merely directory, unless there are words making the thing void if not done within the prescribed time. The law is stated in Halsbury I sLaws (4th Edn.) Vol. 44 para. 933 as follows:

\"Where a statute requires an act to be done at or within a particular time, or in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as mandatory, absolute, imperative or obligatory, if on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be directory. \"

The significance of the difference between \'\'mandatory\" and \"directory\" provisions was high-lighted by Lord Penzance in Howard v. Bodington (1877) 2 P.D. 203 at 210 in these terms:

\"Now the distinction between matters that are directory and matters that are impera'tive is well known to us all in the common language of the courts at Westminster. I am not sure that it is the most fortunate language that could have been adopted to express the idea that it is intended to convey; but still that is the recognized language, and I propose to adhere to it. The real question in all these cases is thus: A thing has been ordered by the legislature to be done. What is the consequence if it is not done' In the case of statutes that are said to be imperative, the courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the courts hold a provision to be mandatory or director , they say that, although such provision may not have been complied with, the subsequent proceedings do not fail.\" (Underline mine).

As was pointed out by Chief Williams in his brief, Lord Penzance used the two words \"mandatory or _directory\" as synonymous though clearly recogni'zing the different consequences of contravening the two distinct kinds of enactments dealt with in Halsbury. In this judgment I adopt the mean'ings ascribed to the two words in Halsbury.

I think, it is pertinent to state that although the distinction between a mandatory pro'vision and a directory provision is far reaching, there is no laid down general rule stating the formula for ascertaining precisely whether a particular provision is mandatory or directory though judges have evolved rules for guidance. It is the duty of the courts to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed and in such exercise the courts must look into the subject-matter, consider the import'ance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the statute and upon a review of the case in that aspect decide whether the provision is mandatory or only directory: Liverpool Borough Bank v.

Turner (1861) 30 L.J. Ch. 379 at p. 380 and Howard
v. Bodington (Supra), page 211.

Importantly, the consequences of holding a provision to be mandatory or directory ought to be taken into account. In Caldow v. Pixell (1877) 2 C.P.D. 562 at 566 Denman J said:

\'\'In the absence of an express provision, the intention of the legislature is to be ascer'tained by weighing the consequences of holding a statute to be directory or imperative.\"

Sir Arther Channel amplified consequential con'sideration in Montreal Steel Rail Co. v. Norman'din (1917) A.C. 170 at 174 in these words:

\"When the provisions of a statute relate to the performance of a public duty and
the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of acts done.\" (Underline mine).

The practice is illustrated by many decisions relating to the performance of public functions out of time and by many relating to the failure of public officers to comply with formal requirements.

The dicta in The Queen v. The Justices of the County of London (1893) 2 Q.B. 47 may be cited as an extreme case to show the attitude of the courts in avoiding mandatory construction of a statute that would result to injustice. The Valuation (Metropolis) Act 1869 set time limit within which the justices must hear and determine appeals under the Act. They were unable to determine the appeal within time because of the glut of business in the court. In an action for prohibition to restrain the justices from hearing the appeal out of time, Lord Esher, M.R. stated at pp. 487-489 of the report:

\"It seems to me that looking at those words which are under a heading, \'Time for proceedings\', they are a description of the time within which the justices may hold the sessions; and when you look at the purpose for which that time is fixed - that upon that valuation or upon the determination by March 31 all rates are to be calculated, and by s.45 many important taxes are to be calculated - I cannot say that in my opinion that limitation of time in sub-s.13 is merely directory. I think it is imperative; but I shall have presently to state what practical limi'tation or explanation I think can be put upon it; but I think it is a limi'tation of time enacted, and imperatively enacted, by the statute.

The justices are to administer the law, and certain things are to be done within a certain time. But then if the parties who appeal within a time which would enable the justices in the ordinary course to determine by March 30 - and if the only reason why the justices do not determine the particular case by March 30 is through some accident or some mis'fortune of the court itself with which the parties have nothing to do, and which they cannot control - is it to be said that that comes within the meaning of this section' There might be general illness among the justices, or, as in this case, an extraordinary glut of busi'ness, which was a matter with which each person desiring to appeal had nothing to do, and could not help, could not anti'cipate, and could not obviate or calcu'late upon. This Act must be read as all enactments are, subject to their not being made absurd by matters which never could have been within the calculation or consideration of the legislature, and I think we must say that the Act is satisfied if the parties have entered their appeal within such a time as, according to the ordinary practice of the court would enable that particular case to 'be heard and determined by March 30, and that therefore the glut of business in the court, and the inability of the court to cope with it, is not to be brought into play against the parties, who as far as they are concerned, have obeyed the imperative enactment of the statute by putting down their appeal at a time which would enable the court, according to its ordinary course of practice, to hear and determine the case by March 30.

I do not think therefore, that if the hearing was prevented only by the difficulties of the court itself, and the court being unable to cope with its business, that would be a sufficient ground to prohibit the magistrates from hearing the appeal.\"

In his judgment Bowen, L. J. said at pp. 491-493:

\"We must, therefore, go back to the Act of 1869 in order to consider what is the jurisdiction of the general assessment sessions under that Act. The Act prescribes the limits of time within which the court is to sit. They are to sit after February 1, and it is not intended that they should sit after March 30. The period between February 1 and March 31 is therefore the statu'tory period intended to suffice for the sittings of the court. Are those sec'tions which deal with the period and its termini, the initial terminus, and the final terminus, simple counsels of perfection directing the court to do it, but involving no consequences if the court does not do it, except that they may of course be complained of, or that a mandamus may go to them to compel them' That is an extreme view. The other extreme view is this, that this definition of the time is rigid and goes to jurisdiction, and that as soon as the midnight hour has struck on March 30 the court expires, so to speak - its jurisdiction ends; and whatever else is done by that court, or purports to be done by the court, is not done by a court at all, but is coram non judice. That is the other extreme view of the section.

Now, it seems to me that the truth lies rather between the two, and that there is no such exact division of sections in Acts of Parliament into those that are directory and those that are imperative as is ordinarily assumed to be a categorical decision which exhausts every possible class of section.
You must look at each Act of Parliament and at each section to see exactly what it means. No other rule of construction of Acts of Parliament that I know of is of much use, except to try and find out as best you can what the Act of Parlia'ment means, and that is not a rule of construction at all.

It is clear to begin with that time is of the essence of the matter - that is certain. It is necessary that the appeal should not (sic) be presented before a certain date, and it is necessary that the ministerial or mechanical operations should be performed within the periods which are assigned to them, and it is essential for the performance of public business, both for rating and taxing purposes, that March 31 should be taken as the practical limit, and time in that sense is of the essence of the matter. It cannot be said that it makes no difference to the public or to the parties whether these termini of time are observed or not. On the contrary, it makes a great deal of difference. In that sense it is not merely a recommendation to the sessions that they should do this if they like to, but that they can do something different without being mandamused or prohibited. The sessions are directed, and to my mind as regards themselves and their actions those directions are imperative: they bind the will and the discretion of the sessions.

Now take the opposite extreme. What is the ordinary rule of construction when construing Acts of Parliament and other documents' It is, that if the language is ambiguous and admits of two views you must not adopt that view which leads to manifest public mischief. Here is a broad scheme of metropolitan taxa'tion and rating by which the parochial ministerial officers are empowered in the first instance to place values on hereditaments for the purpose of taxation in the broad sense. In a free country the very essence of such a system must be that there should be an appeal to some body who can say whether those officers are doing what is just. If no appeal were possible, I have no great hesita'tion in saying that this would not be a desirable country to live in, where every parochial officer might do as he liked in this matter. It is quite true that there is enough difficulty in appealing as it is; but if there is to be no appeal at all possible the system would be intolerable. Therefore it is of the essence, the pivot of the system, that there should be a right of appeal.

Then comes this Act of Parliament, which says that the court has to sit between February 1 and March 31.

Is it conceivable that a person who is grossly over-rated, and has presented an appeal, or that those who complain of gross over-rating, and who appeal on that ground, or who appeal on the ground of other injustice done to them under the Act, are to lose their right of appeal, because the final hour has struck on March 30, so that, without any fault of their own, they are relegated to the tender mercy of the parish officers, and whatever mistake has been made cannot be corrected' That is impossible if we can find any construction of the Act of Parliament which can avoid so great an injustice. t seems to me, therefore, that reason and sense drive one to find, if we can, an exception from the impera'tive language of the Act (which is inten'ded to be imperative as regards the voluntary action of the parties, and of the courts) where the block of business is such, or such events happen, that the court cannot conclude its business before March 31. Were this otherwise, a perti'nacious advocate who chose to argue for three days might destroy the right of appeal of someone else. It seems to me that although the Court of Assessment Sessions is bound to exercise its own discretion as to fixing dates for appeals, as to regulating adjournments, and as to hearing cases, so as, if possible, to finish before

March 31, and although the parties are bound to lodge their appeals within the statutory periods given by the Act of Parliament, nevertheless, if by necessity or default of the Court itself, whether culpable or not, the time has passed, the Court continues clothed with authority to do justice, which, if it were not done by the Court, cannot be done at all.\"

I would offer no apology, with all due respect, for the foregoing voluminous quotations. I consider the dicta very relevant to what interpretation ought to be put to section 258(1) of the Constitution 8

Finally, reference may be made to Stroud\'s Judicial Dictionary, 4th Edin. Vol.5 p. 2516-2521 wherein a plethora of cases is listed in which the word \"shall\" regulating the time for the performance of judicial duties has been held directory as well as mandatory depending on the circumstances of each case.

I am not unmindful of the fact that the foregoing principles are concerned with the con'struction of statutes whereas the issue in the case in hand relates to the interpretation of a constitutional document. Nevertheless, we have for a long time appreciated since the inception of our Constitution that because of its unique character and comprehensiveness enacted in the fashion of a statute, the said principles are applicable to its interpretation in appropriate cases to supplement the rules of constitutional law. Therefore it remains to recall the rules of constitutional law enunciated by this Court.

Since the decision of this Court in the celebrated case of Rabiu v. The State (1980) 8-11 S.C. 130 followed by Adesanya v. President of Nigeria (1981) 5 S. C. 112, Attorney-General of Bendel State v. Attorney-General of the Federation (1981) 10 S.C.1 and Attorney-General of Ogun State v. Attorney-General of the Federa'tion (1982)_2 S.C.13, general principles for the interpretation of our Constitution have been laid down. The fundamental principle is that such interpretation as would serve the interest of the constitution and would best carry out its object and purpose should be preferred. To achieve this goal, its relevant provisions must be read toge'ther and not disjointly; where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the Constitution and effect must be given to those provisions without any recourse any other consideration; and where the Constitut'ion has used an expression in the wider or in the narrower sense the court should always lean where the justice of the case so demands to the broader interpretation unless there is something the content or rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose. In other words, where the provisions of the Constitution are capable of two meanings the court must choose the meaning that would give force and effect to the Constitution and promote its purpose.

It follows therefore that for the correct interpretation of section 258(1) it is necessary to appreciate its purpose. In the past some High Court judges were in the habit of reserving judgments for such long periods as to lose the advantage of having seen the witnesses and observed their demeanour for the purpose of assessing their credibility and because of such delay this Court had to set aside such judgments and remit the cases for retrial. The first limb of the subsection was intended to put a stop to that practice. See Awobiyi & Sons v. Igbalaiye Brothers (1965) 1 All NLR.163, Chief Yakubu Kakarah v. Chief Qkere Imonikhe (1974) 4 S.C. 151 and O. Ekeri & Anor. v. Edo Kimisede & Ors. (1976) 9 ' 10 S.C. 61. Again, parties used to have suffered some difficulties in getting copies of judgments within the time permitted for filing appeals and that had resulted in having appeals filed out of time. The purpose of the other limb of the subsection is to enable aggrieved parties to lodge appeals within time. It appears the main object of the subsection is to ensure speedy administration of justice.

Now section 258(1) may be construed. I may emphasize that the subsection ought to be read as a whole and its two limbs ought not be construed disjointly. It would not be right, having regard to the settled rule of construction of our constitution, to construe one limb mandatory and the other directory. For ease of reference, the two limbs of the subsection require:

'Every court'shall deliver its decision ' not later that 3 months ' and (shall) furnish all parties' with duly authenticated copies of the decision on the date of delivery\"
(Underline and bracket mine).

As I have pointed out earlier on the ordinary meaning of the word \"shall\" is mandatory and consequently the subsection may be construed prima facie mandatory. Under the circumstances the word \"shall\" may also be construed as

directory. Hence the subsection may also be construed as directory. That being the case, the subsection is capable of mandatory and directory meaning. The question then is: Which construction ought to be put to the subsection' The answer to the question is furnished by Rabiu v. The State (Supra) and the other decisions of this Court earlier mentioned. It must be the construction that would best serve the purpose of the subsection and promote its object, which is to ensure expeditious administration of justice.

For convenience sake the second limb of the subsection may be dealt with first. In my view, to construe the subsection mandatory would result in invalidating all the judgments of the superior courts where, for one reason or another, all parties to the proceedings were not furnished with authenticated copies of the judgments on the dates of their deliveries. The courts to be affected by this unsavoury situation are this Court, the Court of Appeal, the Sharia Court of Appeal, the Customary Courts of Appeal and the several High Courts. It is common knowledge that with all the secretarial staff and elec'tronic copying facilities at the disposal of this Court, we have not been complying strictly with the second limb of the subsection in respect of applications and appeals we decided summarily. If the subsection is mandatory, we are bound to comply with it strictly and, if that is the case, we have to reserve decision on every application, motion and appeal however trivial and un-meritorious ' whether opposed or not ' order to ensure that authenticated copies of our decisions will be available to the parties in compliance with the provisions of the subsection. The other alternative would be whenever we dispose of any matter summarily, we must detain the parties in court and cause our secretarial and the Registry staff to work overtime for the purpose of furnishing the parties with authenticated copies of our decisions.

The situation may be Courts where a judge on assize in a village may have no secretarial staff at all. He writes his judgment in long hand overnight, delivers it in the following morning and proceeds to try the next case. Except in special cases, judgements, are not reseved but are delivered there ansd then at the assizes. To make the subsection mandatory implies that no judgment will be delivered at assizes where there are no secretarial facili'ties. The judge must reserve all his judgments to his headquarters for compliance with the subsection.

As regards the first limb, of the subsection, I do not think, its being construed mandatory would be a deterrent to its breach by judges. I do not think a conscientious and responsible judge will disregard the oath of his office to which he swore - to wit: to discharge his duties and per'form his functions honestly to the best of his ability and faithfully in accordance with the Constitution and the law - and, without cause, deliberately commit a breach of the subsection. Situation, however, occur after he has reserved judgment in a case such as illness or unexpected event beyond his control or mere error in the calculation of the 3 months period which will cause the judge to commit the breach. If the subsection is mandatory, then the case must be tried de novo even if the judge would be out of time by one day only. The consequences of such breach in terms of inconveniences to the parties and their witnesses, extra costs of litigations, in the case of criminal cases the additional anxiety caused to the accused and the public expenditure to be incurred are very grave.

It seems to me from the foregoing, to construe the subsection mandatory will not promote but will frustrate its object and purpose. Ins'tead of being a vehicle for expeditious adminis'tration of justice, it will be a shackle to the administration of justice and hinder its speed with the consequential inconveniences and infla'tion in the costs of litigations.

On the other hand to construe the subsection directory will be a panacea for all the malaise and ills of its mandatory meaning. These are the reasons that induce me to put directory meaning to the subsection. Accordingly, I hold that the judgment of the Court of Appeal delivered in breach of the first limb of section 258(1) of the Constitution is valid.

Judgment delivered by
Obaseki JSC.
I have had the privilege of a pre'view of the judgment delivered a short while ago by my learned brother, Aniagolu, JSC. and I find myself in agreement with his opinion on the issue raised before us in this appeal.

The action which led to this appeal was filed by the appellant in the High Court of Anambra State Onitsha Judicial

Division on the 2nd day of May, 1977 (2/5/77). In the action, the plaintiff who is now the appellant before this Court claimed:

(i) A declaration that the plaintiff is a lessee of the Government of Anambra State in respect of No. 12 Anyaegbunam Street, Fegge Onitsha, also known as plot 18 in Block 44, Fegge Layout Onitsha.

(ii) An order setting aside or declaring void the purported sale of the pro'perty by 2nd defendant to the first defendant.

(iii) An order of injunction restraining the defendants, their servants and agents or any person claiming through them from interfering with the plain'tiff\'s rights over the said property.

(iv) N2,OOO.OO damages for inconvenience and embarrassment caused to the plaintiff by the defendants.

Pleadings were ordered and served and issues joined came up for hearing before Obi-Okoye, J. At the conclusion of the hearing, Obi-Okoye, J. granted claims (i), (ii) and (iii) and dismissed claim (iv). The 1st defendant being dissatisfied with the decision, appealed the Court of Appeal.

The Court of Appeal concluded the hearing counsel\'s addresses on the 23rd day of March, 1981 and reserved judgment. No date was fixed for delivery of the judgment. The court record simply shows and reads:

\"Court: Judgment Reserved.\"
A. I. Aseme,
Justice Court of Appeal
26/3/81\"

However, the 1979 Constitution set a time limit in which the judges of every court established under the Constitution are required to deliver their judgments. That provision is contained in section 258 of the Constitution of the Federal Republic of Nigeria 1979, and in extenso stipulates

\"(1) Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter determined with duly authen'ticated copies of the decision on the date of the delivery thereof.

(2) Each Justice of the Supreme Court or of the Federal Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion.

Provided that it shall not be necessary for all the Justices who heard a cause or matter to be present when judgment, is to be delivered and the opinion of a Justice may be pronounced or read by any other Justice whether or not he was present at the hearing.

(3) A decision of a court consisting of more than one judge shall be deter'mined by the opinion of the majority of its members.\"

Despite the provisions of subsection 1 of section 258 of the 1979 Constitution of the Federal Republic of Nigeria, the learned Justices of the Court of Appeal (Aseme, Belgore and Olatawura, JJCA.) did not deliver their decision in writing, till the 23rd day of November, 1981, a period of almost 8 months from the date judgment was reserved. On that day, after hearing counsel on whether an order of non-suit or an order of dis'missal demanded by the justice of the case, they delivered a unanimous judgment allowing the appeal, setting aside the decision of the High Court and entering a judgment of non-suit against the plaintiff instead.

The plaintiff being dissatisfied, appealed to this Court on several grounds but the ground which was argued before us was the ground raising questions as to the interpretation of section 258 (1) of the Constitution. The ground reads:

\"The learned Justices of the Federal Court of Appeal erred in law in giving judgement contrary to section 258 of the Constitution of the Federal Republic 1979

Particulars of Error

(i) The learned Justices of the Federal Court of Appeal after argument and reply by counsel for both parties on 23/3/81 respectively, adjourned the case for judgment. No judgment was given within the constitutional stipulated period of three months.

(ii) After the said period, the learned Justices continued with the case and gave judgment on the 23rd day of November, 1981, non-suiting the plaintiff/appellant, contrary to the views openly expressed by the learned justices on the day when the addresses by the counsel were concluded.

(iii) The delay in delivering judgment operated adversely against the interest of the plaintiff/appellant and affected the justice of the case.

(iv) Throughout the proceedings before the said adjournment for judgment, the question of non-suit was never raised either by the court or any parties. Cousel were not asked to address the court on the issue.

At the hearing of this appeal and in view of the constitutional importance of the provi'sions of section 258 of the Constitution of the Federal Republic 1979, the court invited Chief F. R. A. Williams, SAN. to address it as an amicus curiae on the issue as to the proper interpretation and effect of the said section 258 of the 1979 Constitution after hearing the submissions and arguments of Chief Dr. Ezike Ume Counsel for the plaintiff/appellant and Profes'sor A. B. Kasunmu, SAN. counsel for the respondent in elaboration of their written briefs of argument.

As my learned brother has in his judgment set out the relevant submissions extenso, I shall only refer to the important points they contain for my consideration in this judgment. Dr. Azike Ume in his submission made the points:

(1) That the Federal Court of Appeal delivered its judgment after a period of over 7 months had elapsed from the date the judgment was reserved.

(2) That the language and effect of section 258 was mandatory and not directory and accordingly the judgment cannot validly be delivered after 3 months from the date judgment was reserved.

(3) That any judgment delivered after the 3 months time limit is null and void and of no effect.

(4) That a court has no power to re-open a case after judgment has been reserved.

(5) That before the expiration of the 3 months time limit counsel for both parties can be invited by the court to address it further on certain issues not covered in the previous address.

Professor Kasunmu, inin his submission contended, after conceding the fact that the Court of Appeal on 26/3/81 adjourned for judgment, that:

(1) Section 258(1) of the Constitution does not apply to the appellate courts and accordingly it does not operate to limit the time within which the Court of Appeal shall deliver its judgment or decision in any matter to 3 months.

(2) Section 258(1) of the Constitution applies to the Supreme Court only when it is exercising original jurisdiction. This, according to learned counsel, is to enable the court to keep track of the evidence and impression of witnesses and addresses of counsel the remembrance of which are indispensable in arriving at a proper judgment and ensuring that no miscarriage of justice is done.

(3) Section 258(1) of the Constitution is directory and or mandatory.

This, according to learned counsel, is as a result of the mischief the section was designed to remedy which is the speedy determination of cases and prompt supply of authenticated copies of the judgment.

He relied on two judicial authorities - (1) (Ariori v. Elemo (1983) 1 S. C. 13 and (2) Akpor v. Iguoriguo (1978) 2 S. C. 115. He also referred to the commentaries of the learned authors of Craies on Statute Law 7th Edition p. 250.

Chief Williams, SAN. addressed us at length and made very important submissions of law.

(1) He found himself unable to agree with Professor Kasunmu that section 258 (1) of the Constitution applies only to trial courts. He submitted that on a proper interpretation of the opening words of the section to wit \"every court established under the constitution\" the section applies to the Supreme Court and the Court of Appeal.

(2) He submitted that the court has power to summon counsel for further address on specific issues at any time after judgment has been reserved but before the expiration of the 3 months time limit. He contended that no such power lies in the court after the expiration of the 3 months time limit. He cited the case of Varty v. British South Africa Company (1965) 1 Ch. 508 at 515 to support his opinion that any decision of the court to invite counsel for further address was an interlocutory decision.

(3) Learned counsel further submitted that whether the court holds that section 258(1) is directory or manda'tory the judges are in duty bound to comply with the provision of that section, the absence of a sanction in that section notwithstanding.

(4) Learned counsel also submitted that there is a relationship between sec'tion 258(1) and section 33(1) and (4) of the Constitution. While section 33(1) and (4) give a fundamental right to fair hearing within a reasonable time, section 258(1) imposes a duty on the judges to avoid exceeding the time limit of 3 months in delivering judgment in writing.

(5) Learned counsel urged the court to refrain from interpreting the section - 'section 258(1) of the Constitution '- to nullify a judgment delivered only one or two days outside the period of 3 months. He however referred to 3 cases which gave the consistent view of the Court of Appeal in favour of nullifying the judgment delivered outside the constitutional period. The cases are:]

(1) Shehu v. The State (1982) 1Nigerian Criminal Law Reports 1

(2) Sufianu & Ors. v. Animashaun & Ors. FGA/L/80/82 delivered 24th March, 1983

(3) Atolagbe v. Bukanla FCA/L/80/83 delivered 8th February, 1984.

(6) Learned counsel submitted that the contravention of the speedy trial provisions of the Constitution does not automatically nul'lify the proceedings and judgment. To have the effect of nullifying the judgment the judge must, as a result of the delay, have lost his grasp of the facts of the case and the impressions he had of the witnesses from their demeanour while testifying in the witness box.

(7) Finally, learned counsel submitted hat the provisions of section 258(1) are not a limitation on the powers of the court to act but only prescribe a code of conduct for the judges to follow. He contended that there is a presumption that the legislature does not intend to repeat itself and as delivering judgment within a reasonable time is already covered by section 33 of the 1979 Constitution, the intention of the Consti'tution makers is to impose time limit for the performance by the judges of their constitutional duty not to nullify the judgment.

The main question for determination in this appeal is, in my view, what the legal effect of a contravention of the provision of sec'tion 258(1) of the Constitution of the Federal Republic of Nigeria 1979 is. The resolution of this question however, depends on the correct and proper interpretation of section 258(1) of the Constitution. The issue thus raised arises from

a contravention of the 1st part of that subsection which sets a time limit within which judges of the superior courts of record shall deliver their decision in writing. I have already set out the subsection in full above, but the first part which is relevant in this appeal and requires interpretation by this Court in this appeal will again be set out for emphasis and easy reference. It reads:

'Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses'..'

The second part which does not arise for inter'pretation in this appeal but which was also dealt with by counsel in their addresses reads:

\""and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of delivery thereof.\"

Turning to the first part of the subsection a clear reading of it does not disclose any ambi'guity. It is not a negative provision. It is actively positive in that it imposes on the court the duty to deliver its decision. It also prescri'bes a time limit within which this duty is to be performed. In prescribing the time limit, it uses a prohibitory term, i.e. NOT LATER than 3 months. This, it should be noted, is the first time in the history of the constitutional development of Nigeria that the constitution expressly provides that the 'superior courts shall deliver their decision in writing' and prescribe a \'cut-off point of time' within which the delivery shall be made. Hitherto, it was presumed to be part of the judicial duties of a judge to deliver his decision after hearing the evidence of parties to a and the witnesses called by them and the addresses of counsel, if any, within a reasonable time. Indeed the delivery of the decision by a court brings the adjudication process to an end.

In the procedural law or adjectival law including the rules of court, the law or rule normally fixes times for the doing of an act or the taking of a step in the proceedings. Unless power is given to extend the times or period fixed by the law or Act or rule failure to do the act or take the step within the prescribed times deprives act done or step taken outside the prescribed period of any validity.

In my view, the express constitutional provision in section 258(1), by implication, prohibits any adjournment of a judgement sine die. It enjoins the court to fix date of delivery of the judgment for any day within the period of 3 months instead of leaving it in the air.

The argument that the section did not prohibit the court from delivering the judgment after the three months period has no validity. The maxim \'expressio unius personae vel rei, est exclusio alterius\' comes readily in aid. If, as provided by the section, the delivery is to be not later than 3 months, it cannot be said that the section permits delivery of the judgment after the 3 months period.

Before this constitutional provision, the Supreme Court had always frowned openly at inordinate delays in trial of cases and in delivery of judgments after the close of evidence and addresses. This is because the task before the courts of law is to administer justice speedily and not to allow any denial or mis'carriage of justice. Human memory is limited by time and space and loses its impressions or knowledge of persons, things and words with the passage of time and the rate of loss increases with time and pre-occupations. Thus, in the case of Awobiyi and Sons v. Igbalaiye Brothers (1965) 1 All N.L.R. 163, Brett, JSC. (delivering the judgment of the Supreme Court) observed at p. 166:

\"We agree with the Chief Justice as to the impression created by reading the transcript, but we are, with respect, unable to share his view that the magistrates\' decision ought not to be disturbed'. The presumption which the Chief Justice felt justified in making is further weakened by the lapse of time between 21st September when Awokoya gave evidence, the 12th October when the appellant gave evidence and 7th November, when judgment was delivered. During these intervals, the maigistrate must have had to direct his mind to numerous other cases, and in such circumstances, he must be regarded as having lost much of the advantage which he might otherwise be supposed to have derived from seeing and hearing the witnesses, so that an appeal court is in almost as good a position as he is to form an opinion of their reliability. This groung of appeal is well founded, and if it stood alone, the question would be whether we should dismiss

the pIaintiffs' claim or send the case back for retrial so that an express finding might be made by someone who had heard the evidence'

In the same vein in the case of Lawal v. Dawodu & Another (1972) 1 All N.L.R. (Part 2) 207, Coker JSC.(delivering the judgment of the Supreme Court) observed at p. 279:

\"Before considering the argument on appeal, we think it appropriate at this juncture to comment on the inordinate delay in giving the judgment of the High Court in this case. Learned counsel appearing for the parties concluded their addresses before the learned trial judge on the 4th June, 1969 on which date the judge announced and recorded that judgment was reserved sine die. Judgment was not given in the case until the 17th day of April, 1970. One of the grounds of appeal filed against the judgment complains of the inability of the learned trial judge after such a long period of delay to appreciate in their pro'per foci the issues raised or to remember clearly his own impressions of the witnes'ses and/or their evidence. This is not the first occasion when we have to express the disapproval of this court of such inexcus'able delay in writing judgment but it is well worth consideration by all courts that human recollections may lose their strength with the passage of time and that justice delayed is as bad as justice denied and may even under certain circumstances be worse.\" (Underlining mine).

Again, in February, 1978, this Court had the opportunity to stress the importance of assessing the relative value of witnesses before the memory of their demeanour and credibility fades away into oblivion. It was in the case of Chief Justus Uduedo Akpor v. Odhogu Iguoriguo (1978) S.C. 115, Idigbe, JSC. delivering the judgment of this Court observed and commented:

\"Once again, following the derictives of the Chief Justice, the learned judge took leave of his normal duties (i.e. hearing of other cases in Sapele Judicial Division) to return to Ughelli to continue hearing of a case which he left uncompleted twenty-two months earlier. Can it be seriously contended that even at this stage he undoubtedly had a complete impression of the demeanour of the witnesses he saw some twenty months ago and during which period he had had to watch the demeanor of other witnesses who gave evidence in a variety of other cases' Let it be remembered that in assessing the relative value of witnesses in order to reach a decision on their credibility a judge dealing with any given proceedings has quite often to consider inter alia not only their demeanour but sometimes their personality, their reactions to question from counsel both in the course of examination in chief and under the \'fire of cross-examination\', all these go to leave a cumulative impression with any trial judge. Then, can it be seriously expected that these cumulative impressions will necessarily remain over a period of two years in the face of intervening hearing of evidence from other witnesses in various other cases in two judicial divisions''\"
(Underlining mine).

After quoting the dictum of Brett, JSC. in Awobiyi & Sons v. Igbalaiye Brothers (supra) already referred to and set out above, the learned Justice of the Supreme Court continued at p. 128 as follows:

\"while undue delay and/or long intervals between the reception of evidence of witnesses in proceedings and the delivery of judgment therein (hereinafter referred to as a \'lapse\') can ipso facto raise , before an appellate tribunal, a strong presumption that the court of trial could not have made good use of its advantage in seeing and observing the demeanour of the witness who testified before it, it does not, however, follow that in every case where such a \'lapse\' has occurred, the appellate tribunal must necessarily set aside the decision of that court (i.e. the court of trial). If, for instance, the decision in such a case does not rest entirely or mainly on reliance by the trial court on the value placed on the witnesses who testified before it as a result of its impression of them, an appellate tribunal ought not to set aside that decision.

It therefore becomes necessary for us to examine more closely the record in the case in hand in order to find out if, in these proceedings, the 'lapse' is such as warrants interference by this Court with the judgment appealed from''''''''''''..In the event this Court is left with the conclusions on the effect of the 'lapse' (i.e. delay and long intervals between the reception of the evidence of witnesses and the judgment) in these proceedings.

Having thoroughly examined the record and listened to the argument of learned counsel on both sides (i.e. for both

the appellant and the respondent) we are satisfied that the judgment of the lower Court, based as it is principally on the relative value assigned to the evidence of the witnesses who testified before him by the learned trial judge who could not possibly, in the peculiar circumstances of these proceedings, have made good use of his having seen and observed the demeanor of the said witnesses, ought to be set aside.

The appeal succeeds. """"..It is hereby ordered that the case be remitted to the High Court of Bendel State holden at Ughelli for hearing de novo before another judge'

In this case, the period between the conclusion counsel\'s final address which was on the 14th of December, 1974 and the delivery of the judgment which was on the 18th day of January, 1975 was less than two months. It was just 5 weeks or 35 days and could not be regarded as amounting to undue delay. But the period bet'ween the testimony of some witnesses and that of the others were long intervals the effect of which was further strengthened by the dis'engagement of the learned trial judge from the hearing for a period of over a year, i. e. from July, 1973 to October, 1974.

These three cases depicted the attitude of this court to the issue of an unreasonable delay in the hearing of cases and in the delivery of judgment before the promulgation of the 1979 Constitution as the supreme law of the land. That Constitution by its provisions in section 33(1) and (4) gave to every person a right to fair trial within a reasonable time and by its provisions in section 258 (1) a right to judgment from every court established under the 1979 Constitution not later than 3 months after the conclusion of evidence and final address of counsel. Section.258 (1) expressly imposes on those courts the duty of delivering \"their decision in writing not later than 3 months after the conclusion of evidence and final addresses.

It therefore seems clear to me that the clear intention of the Constitution in the provision of section 258(1) is to ensure that there is no miscarriage of justice. In my view, a period of three months is quite a reasonable length of time to consider and set down in writing a judgment in any given case no matter how complicated. If the mischief aimed at remedying in the final analysis is miscarriage of justice any act which occasions miscarriage of justice automatically nullifies the proceedings judgment.

In my opinion, therefore, failure to comply with the provisions of the section as to time nullifies the proceedings and judgment. Similarly, failure to comply with the provisions of the section as to delivering the decision in writing nullifies the judgment. An oral not judgment will not amount to any valid judgment at all under section 258(1) of the Constitution.

Is the provision of section 258(1) mandatory or directory' The epithets \"imperative\" and \"mandatory\" are used with reference both to enabling acts and to statutes which create duties. A statute which creates a duty is called \"imperative\" if it is not optional whether that duty performed or not and the same term applies to acts imposing a condition satisfaction whereof is essential to the validity of the act or document as to which it is imposed. Ramia v. African Woods (1960) 1 WLR. 86 (PC). Section 258 (1) of the 1979 Constitution is not optional whether the duty is performed or not. The judges of the superior courts are left with no option whether or not to deliver the decision in a case the hearing of which has been concluded.

Further, they have to satisfy the condi'tions imposed by the section. These conditions are (1) that the decision must be in writing and (2) it must be delivered not later than 3 months from the date of the conclusions of evi'dence and final addresses.

There can therefore be and there is no doubt in my mind that the provisions of the first part of section 258 (1) are imperative or mandatory.

In Young v. Mayor etc. of Royal Leamington Spa. (1883) 8 App Cas 517 it was in dispute whether section 174 (1) of the Public Health Act 1875 enacting that contracts made by an urban sanitary authority, whereof the value exceed '50 should be in writing and be sealed with the com'mon seal of the authority was imperative or directory. The Court of Appeal and the House of Lords decided that it was imperative and that a contract not so sealed was void although executed, and that although the sanitary authority had obtained the benefit of it, they were free from the usual correlative obligation of payment.

If an elector\'s name is omitted from the register of electors, he cannot, in my view, con'tend that the provisions of, the Electoral Act 1982 are directory. His only remedy is by action or by appeal through the proper channels set out in the Act to the designated higher authority under the Electoral Act 1982.

When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities, those prescribed formalities which are essential to the validity of the thing when done are called. imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done are called directory.

R. v. London, JJ. (1893) 2 QB 476, 491 Bowen, LJ. Montreal Street Ry. v. Normandin (1917) AC 170, 174 Bank View Mill Ltd. V. Nelson Corporation (1943) KB 337.

In Montreal Street Ry v. Normandin (supra) Sir Arthur Channell delivering the judgment of the Privy Council observed at p. 174:

\"The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of-the statute must be looked at"". When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions directory only, the neglect of them, though punisha'ble, not affecting the validity of acts done.\" (Underlining mine).

I venture to say that the duty of adjudica'tion is in a class by itself and should not be placed in the same category as simple executive public duties. The presumption that necessarily arises from the failure to perform the public duty of adjudication within the time prescribed is that of miscarriage of justice. Justice delayed is justice denied is the favourite song of today. Any act or conduct of a judge which denies justice to the parties within the time stipulated by the Constitution amounts to miscarriage of justice in determination of a case. This miscarriage cannot but be fatal to the decision and renders it null and void. Rather than bring inconvenience and injustice to parties in a case to hold null and void a decision delivered in contravention of sec'tion 258(1) of the 1979 Constitution, it brings justice or an opportunity to see that justice is done to the parties.

The second arm of section 258 (1) which deals with furnishing of authenticated copies of the decision on the date of delivery does not affect the validity of the decision. The decision the court has to be delivered before authenticated copies of it are made available. An authenticated copy produced on days subsequent to the date of delivery do not lose their validity as authenticated copies because they were not furnished on the day the decision was delivered by the court.

As the failure to furnish authenticated copies of decision to all parties to the cause on the date of delivery does not affect the genuineness of the authenticated copies, although a breach of the constitutional provision for which the officers of the court could be disciplined, that part of the provision of section 258(1) of the 1979 Constitution is, in my view directory and I so hold. This is more so having regard to the definition of the word \'furnish\'. The word \'furnish\' is defined in Webster New Twentieth Century Dictionary as \"to supply anything wanted or necessary\". The definition imports and active demand or a request for the copies from the parties.

I will, for the reasons stated above and the reasons so ably set out in the judgment of my learned brother, Aniagolu, JSC, allow the appeal. The judgment of the Court of Appeal delivered on the 23rd day of November, 1981 is hereby declared null and void having been delivered outside the constitutional period prescribed in section 258(1) of the 1979 Constitution. The decision, together with the order for costs is accordingly quashed and the appeal is remitted to the Court of Appeal for hearing before another panel of Justices of the Court of Appeal.

The respondents shall pay the appellants costs fixed at N300.00.

Judgment delivered by
Eso JSC.

Because of the constitutional impor'tance of the point raised in this case, I have decided to add my views to the opinion so luci'dly expressed by my learned brother Aniagolu J.S.C. an opinion with which I am in complete agreement.

It is not my intention to dwell on the facts, as they have been set down in detail by my learned brother. What I will do is to deal in cursory manner with the particular facts that brought about the interpretation of the provision of the Constitution in question.

In the Court of Appeal, hearing of the appeal from the High Court was concluded on 23rd March, 1981, that is, evidence and addresses of learned counsel were completed.

The court notes read thereafter

\"Judgment Reserved.

A. I. Aseme
Justice, Court of Appeal
26/3/81

The question that follows therefore is, what is the effect of s.258 of the Constitution on the judgment thus reserved' S. 258(1) of the Constitution of the Federal Republic of Nigeria 1979, hereinafter referred to as the Constitution, which is the only subsection relevant to the determination of the issue before us provides -

\"Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authentic a copies of the decision on the date of delivery thereof\".

Without going into any detail about the various submissions of learned counsel as these submissions have been thoroughly dealt with in the aforesaid judgment of my learned brother, the issue here is whether the provision of s. 258 (1) is mandatory, in which case any judgment delivered by the court concerned outside the three-month period named in the subsection is nugatory, or the provision is directory, which will save such judgment, though there could be moral not legal sanctions attaching to the judex.

What I intend to do herein therefore is to analyse the provision of the subsection. First what are the canons of interpretation invokable' Where the words of a statute are plain and admit of one and only one meaning, there is no room for the application of any principles of inter'pretation or construction of the words. The meaning of words is a question of fact for the question is what in fact does a word mean' It is the effect of the words that constitutes a question of law. In Chatenay v. Brazilian Submarine Telegraph Co. (1891) 1 Q. B. 79, Lindley LJ. put it in such an elegant form which I would wish to adopt. The learned Lord Justice said '-

\"The expression \'construction\' as applied to a document, at all events as used by English lawyers, includes two things; first, the meaning of the words; and secondly, their legal effect, or the effect which is given to them. The meaning of the words I take to be a question of fact in all cases whether we are dealing with a poem or legal document The effect of the words is a question of law.\" p.85 - ibid
(Underlining mine).

Now, it is my view that in appropriate cases one may be an intention seeker (see the judgments of Fatayi-Williams C. J.

N., Obaseki J. S. C. and Kayode Eso J .S.C. in the celebrated case of Chief Obafemi Awolowo v. Alhaji Shehu Shagari & Ors. (1979) 6-9 S.C. 5 where Fatayi-Williams C.J.N. said - \"Not only is the meaning of the general words in s.34 (sic Electoral Amendment Decree No. 32 of 1979) plain enough, there is also no reason for doubting the intention of the Federal Military Government' Obaseki J.S.C. said that the duty of a court 'is to interprete an Act of Parliament so as to give effect to its intention' while I said that in all cases of interpretation of statutes the interpretation should be according to the intent of them that made them). In seeking such intention, there is the interpretation or construction of some words and this constitutes an issue of law as distinct from the ordinary meaning of the word.

Section 258(1) of the constitution would have posed no problem had it been a question of construing the word \"shall\" alone in the first arm of the subsection, as it would appear to me, it is in dealing with the second limb that my learned brother Bello J.S.C. dissenting from the majority judgment, finds it obviously difficult to reconcile and come to one interpretation to be placed on the two limbs of the subsection.

The sub-section provides in its first limb '
(1) That every court established under this Constitution shall deliver its decision in writing not later than three months after conclusion of evidence and final addresses.

and in its second limb that "

(2) Such court is to furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.

It is now trite that the word \"shall,\" does not always mean \"must\" - a matter of compulsion. It could be interpreted, where the context so admits, as \"may\" whereas \"may\" is also not always \"may\". It may sometimes be equivalent to \"shall\". In R v. Bishop of Oxford (1879) Q.B.D. 245, Lord Cairns was of the opinion that "

\"where power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised.\"

In the same case, Lord Blackburn made a pertinent point.

He said '

\"The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right'

Perhaps the greatest problem here is the obviousness that the word 'shall' in this subsection having regard to the two separate limbs therein, is capable of two meanings. It could be mandatory. It could also be directory. It is not one that resolves itself into a mere dictionary meaning which meaning will give one sense.

Whenever a statute creates a duty the first primary question to my mind for judicial decision is what is the sanction that has been provided for its breach. Is there any sanction' If there is, then it is mandatory' It is absolute. Where the court cannot interfere to compel performance or indeed punish the breach of duty, the Act is directory.

It is however very important to my decision that in the sub-section, the word 'shall' is used only once, and that is in the first limb. In reading the second limb that is furnishing all parties to the cause or matter determined with duly authenticated copies of the decision the word \"shall\" is definitely absent and to read the word \"shall\" therein is to import into the sub-section that which the legislator has not intended.

For this reason, I think, myself, that this is a good case of seeking the intention of the legislator. S.258 (1) is unique, and I have not been able to find the equivalent in any other Constitution throughout the Commonwealth. It is no doubt, probably to put it inellegantly, but pointedly, a question of the legislator expressing a doubt on the ability of the judi'ciary to operate reasonably within the confines of S.33(1) of the Constitution which requires hearing of a suit within a

reasonable time. The provision of s. 258 (1) is a way of imposing on the court what the legislator considers to be a reasonable time, when it comes to determination of a case. The legislator is no doubt justified in this unusual exercise and imposition having regard to the history of inordinate delays by courts in the determination of cases before them. I adopt the language of Chief Williams that what those courts did before the coming into force of the Constitution was to preserve and not just to reserve judgments. It has been scandalous! A classical example is to be found in the case of Ariori & Ors. v. Elemo & Ors.

(1983) 1S.C.N.R.1 where the trial court delayed judgment for an inexplainable period of fifteen months thus inviting caustic remarks from this court. Indeed, left with that judge, the pro'ceedings would qualify for the archives before he decided to tax his brains so as to remember the demeanour of witnesses in giving judgment in the case.

Perhaps, as the saying goes, a chronic disease requires a chronic cure, hence the unpalatable language of s.258(1). The courts concerned (and these have been well set out in the judgment of my learned brother Aniagolu J.S.C.) must deliver their judgment not just within a reasonable period and not just within three months but later than three months after the conclusion of evidence and final addresses.

The question may be asked, what is the sanction against a defaulting judge in regard thereto' The sanction is there! The case is taken away from him and assigned to a judge or panel of judges that will obey the Constitution. The defaulting judge if he makes it a habit becomes one that disobeys the Constitution, contrary to his oath. The consequences might lead justifiably to his removal from the exalted seat of being a judge over others.

My learned brother Bello J.S.C. in a powerful and persuasive dissent has been worried by the application of a different meaning to 'shall' in the second limb of s.258(1) which requires judges to furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the day of the delivery thereof. It is true this is not only impracticable but it is never done; not even by this Court! Why should the word \"shall\" have a mandatory effect in the first limb and not in the second, he asked'

For my part, my simple answer to this formidable question is, I will not read \"shall\" into the second limb again for the simple reason that, the word \"shall\" is not there. My analy'sis of the sub-section therefore is as follows '

(1) Every court concerned shall (i.e. must) deliver its decision in writing not later than 3 months after the conclusion of evidence.

Now, there is a comma after the word \"addresses\" and before the adjuncture word \"and\" thus sepa'rating this first limb from the second. In the ordinary grammatical usage if the first limb is not meant to be disjunctive of the second limb the comma will be absent for if it is adjunct only that is to be achieved the word \"and\" is suffi'cient.

I therefore construe the second limb without the word \"shall\" as follows "

(2) The court is to furnish (that is, should endeavour to furnish) all parties to the cause or matter determined, with authenticated copies of the decision on the date of delivery.

That is what the Court should do, not necessarily must do.

For the foregoing reasons and the reasons so lucidly given in the judgement of my brother Aniagolu J.S.C. I will also allow the appeal and abide by all the orders made in the aforesaid judgment of my brother, Aniagolu, J.S.C.

Judgment delivered by
Nnamani JSC.

I have had the advantage of reading in draft the judgment just read by my learned brother, ANIAGOLU, J. S. C. I am in entire agreement with the reasoning as well as the conclusion therein. My short comment hereunder is only by way of emphasis. Section 258 subsection 1 of Constitution of the Federal Republic of NIGERIA 1979 as amended by the Constitution (Suspension and Modification) Decree No.1 of 1984 provides as follows:'

\"Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authentic a copies of the decision on the date of delivery thereof\".

The emphasis is placed on the words shall deliver and not later than 3 months. The controversy was as to the proper meaning of the words in that section - are they mandatory or are they directory' It is not in dispute that one of the first rules of interpretation of statutes (and I dare say this would apply to Constitutions) is that words must be given their ordinary, plain, natural meaning. See Felix Vs. Thomas (1967) 1 A.C. 292; Virginia Vs Tennesses 148 U.S. 503. On that basis the language of the section of the Constitution seems to me clear. It says in my view that every court established under the Cons'titution must deliver its judgment within a period not spanning beyond 3 months from the close of final addresses. In determining whether the words shall deliver import a peremptory order or are merely directory I shall adopt my views in B.A. Alegbe, Speaker Bendel State House of Assembly Vs. M. O. Oloyo (1983) 7 S.C. 85 at 223.
There I said "

\"It seems settled that if a statute declares that a thing \'shall\' be done the natural and proper meaning to be given to it is that it is peremptory not directory (See Stroud\'s Judicial Dictionary of words and phrases 4th Edition Vol. 5 p.2514). Admittedly there is no general rule for deter'mining when the use of the word \'shall\' implies a peremptory or directory mandate but as Lord Campbell L.C. said in Liver'pool Borough Bank Vs. Turner (1860) 2 De G.F. & 1 502 at pp..507 and 508

\'It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed\'.

The learned author of Craies on Statute Law Seventh Edition p.250 quoted Sir Arthur Chan'ell in the Privy Council case of Montreal Street Rail Co Vs Normandin (1917) .A.C. 170, 174 where he said '

\"The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the .statute must be looked at""\"

Looking therefore at the scope of the statute or its object, it is agreed on all sides that it was to deal decisively with the mischief whereby some judges of the superior courts, in the apt words of Chief Williams, preserved judg'ment rather than reserve them. It is my view that the intention of the framers of the Constitution can only be fulfilled if the provisions are construed as mandatory. To construe them as directory thereby importing an element of discre'tion is to my mind to frustrate that intention.

Finally, it remains for me to say that while I agree with Dr. Umeh, learned counsel for the appellant that if, having regard to the provisions of section 258, a judgment is delivered on a date beyond 3 months from the close of final addresses such a judgment is null and void, I am afraid that I cannot go along with his further contention that a court cannot even reopen argument on an appeal once it has set it down for judgment. I think argument can be reopened provided this is done before the three months time limit is up. I am further of the view that if argument is so opened the 3 months period starts to run from the date on which the subsequent final addresses close. To hold otherwise would be to divert the courts from their duty to do justice since they cannot call for further argument even when important points of law are brought to their attention before judgment is delivered.

Although the Court of Appeal in England was not there construing a provision similar to sec'tion 258 of our Constitution, I still think that the case of Varty (Inspector of Taxes) Vs British South Africa Co. (1965) IC. 508 at 515 to which Chief Williams made reference, is relevant. Indeed, there the Court of Appeal had given judgment, yet, in order to take the

new points of law, it stopped its judgment from being enrolled and took further argument.

I would therefore also allow the appeal. I abide by all the orders in the judgment of ANIAGOLU, J.S.C. to which reference was earlier made.

Judgment delivered by
Uwais JSC.

I have had the advantage of read in draft the judgment read by my learned brother Aniagolu, J.S.C. I entirely agree with the reasons and conclusion therein.

There is no doubt that the mischief which section 258 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1979 intends to cure is the inordinate delay by courts in delivering judgment. In my opinion, the subsection has made it mandatory for all the courts established under the Constitution to deliver judgment at any time within three months from the conclusion of evidence (where applicable) or final addresses (in any case). This requirement cannot be circumvented by calling for further addresses by counsel after a case had been adjourned for judgment. I such further addresses are not contemplated by the subsection and where they occur, they cannot, in my view, enlarge or extend the period of three months prescribed.

It has been argued that hardship would be caused to the parties to this appeal if the pro'ceedings before the Court of Appeal are nullified due to the infringement of the provisions of section 258 subsection (1) of the Constitution and a rehearing is ordered. This may well be so. The practice of declaring void any proceedings which have been affected by unconstitutionality is well established. If the proceedings are so nullified that does not go to the merit or demerit of the case. It therefore becomes necessary for the appeal court to make an order for the case to heard de novo in order that the justice of the case may be determined. The rehearing will of course be at additional expense to the parties. The fault which leads to the infringement of the Constitution may not be due to the commission or omission of the parties concerned. It may entirely be the fault of the court, for example where the court hears a case when it has no jurisdiction to do so or where it fails to give judgment within the period prescribed as in the present case. Nevertheless I do not think that the alleviation of such hardship should be considered as a reason to justify the infringement of the mandatory provisions of the Constitution. The intendment of section 258 subsection (1) is very clear. It is to stop judges from delaying the delivery of judgments unnecessarily as had been the case prior to the enactment of the Constitution; see - Awobiyi & Sons v. Igbalaiye Brothers (1965) 1 All N.L.R. 163 at p. 166, Lawal v Dawodu & Anor. (1972) (All N.L.R. (Part 2) 207 .at p.279 Akpor v. Iguoriquo (1978)2 S.C. 115 at p. 127.Courts should therefore endeavour to give effect to the laudable provisions section 258 subsection (1) of the Constitution and any hardship arising therefrom should be regarded as one of the hazards of litigation which parties have to endure.

For these and the reasons given by my learned brother Aniagolu, J.S.C. I too allow the appeal with N3OO.OO costs to the appellant. And I agree with the order that the case should be heard by a different panel of the Court of Appeal.