IN THE SUPREME COURT OF NIGERIA

Suit No: SC11/1977

Petitioner: Chief Yeshau Popoola Oyeshile Shodehinde & Ors.
And
Respondent: The Registered Trustees of The Ahmadiyya Movement-In-Islam

Date Delivered: 1980-02-15

Judge(s): George Sodeinde Sowemimo, Chukwunweike Idigbe, Andrews Otutu Obaseki, Anthony NnaemezieAniagolu, Mu

Judgment Delivered

My Lords this appeal has come before us upon a preliminary point which as can be evinced from the proceedings in the court below, the reliefs filed by, and the arguments of counsel in this court calls for a decision on questions of considerable importance to litigants who being dissatisfied with and intending to appeal from, decisions of the High Court to the Federal Court of Appeal (which I will hereafter refer to simply, as \"the Court of Appeal\") are at the same time anxious to preserve the status quo of the subject matter of litigation pending the determination of the appeal. The questions fall into two main parts, and they are:

(1) whether, generally, the High Court has jurisdiction to stay proceedings in respect of its decision under appeal (a) where by the said decision it has dismissed a claim before it \"absolutely\"; and (b) if so, whether in any event it can exercise such jurisdiction after the order has been drawn up and enrolled'

(2) (and this has been the major issue on which arguments have centred in this appeal) whether the High Court has jurisdiction to stay proceedings, under its judgment on appeal upon application by parties to the proceedings (and, in particular, by an unsuccessful plaintiff) for \"injunction to restrain an act under the decision on appeal pending the determination of the said appeal.

The appellants have failed in their action in the High Court Lagos State in which, inter alia, they had asked for a declaration that as against the respondents, they alone are the lawful representatives of the Ahmadiyya Movement-in-Islam and are accordingly entitled to all the lands, buildings and other property belonging to the Movement. Dissatisfied with the decision of the High Court (Candido Johnson, J.) the appellants duly filed notice of appeal from that decision to the Court of Appeal. Shortly after filing the notice of appeal but before the appeal had been \"entered\" in the Court of Appeal [i.e. before the record of proceedings \"had reached the Court of Appeal\" - see Shittu Ogunremi v. Dada (1962)1 All N.L.R. 663 at 668], they applied to the Court of Appeal by a notice of motion for \"an order of injunction\" restraining the defendants (i.e. respondents) and or their agents from \"inter alia\" damaging destroying or defacing \"the buildings or parts of the buildings the subject matter of this appeal pending the determination of the appeal lodged therein\". The respondents upon an objection in limine argued that it was wrong for the applicant to have brought the application directly into the Court of Appeal; the application, they submitted, ought to have been made in the first instance in the court below (i.e. the High Court); and they urged the Court of Appeal to strike out the application. By a majority decision the Court of Appeal [Coker, Aseme, JJ.C.A. Akinkugbe, J.C.A. dissenting] upheld the contentions of the appellants and struck out the application; hence this appeal.
In this Court the appellants contend, as they did in the court below, that where the High Court has dismissed a claim \"absolutely\" (i.e. without reservations) \"there is no jurisdiction left in that court\" to restrain proceedings or actions under its decisions pursuant to an application for an order of injunction. The court could not in those circumstances by an order of injunction preserve the subject matter of litigation \"pending the determination of any appeal from its decision\". In the alternative learned counsel for the appellants, Mr. O.O. K. Ajayi, submits that even if the High Court had jurisdiction in those circumstances to entertain such an application (i.e. for injunction pending appeal or for stay of any action or proceedings pursuant to its judgment under appeal) it could not do so once the said judgment had been \"drawn up and enrolled\". Learned counsel for the appellant said, in effect, that he felt inclined to the alternative submission because (a) all the decided cases in England upon which he relied for his contention show that where the

court exercised such jurisdiction (and it was always the Court of Appeal in England) it did so before the judgment or order under appeal was \"drawn up and enrolled\"; and (b) the various dicta in these decisions justify his contention that once the order under appeal was drawn up and enrolled the court was functus officio quoad granting an injunction or otherwise suspending or interfering with actions or proceedings under the said judgment or order. We were then referred to a number of cases which include Galloway vs. The Mayor the Commonality, Citizens of London 46 E.R. 560; (2) Wilson vs. Church (1879)11 Ch. D. 576; (3) Polini vs. Gray (1879)12 Ch. D. 438; (4) Otto vs. Lindford (1881)18 Ch. D. 394; (5) Orion Property Trust Ltd. v. Du Cane Ltd. (1962)3 A.E.R. 466; (6) Eringford Properties Ltd. v. Cheshire County Council (1974) Ch. 261 and (7) (the Nigerian cases of) Ogunremi vs. Dada (Supra).

In conclusion learned counsel for the appellants submitted that the appellants\' claims having been dismissed without reservations in the High Court, that court can no longer entertain this application for an order restraining proceedings under its judgment on appeal. Consequently Order 7 Rule 37 Supreme Court Rules 1961, applicable in the Court of Appeal (hereafter referred to as \"S.C.R.\") did not apply; what applies - according to learned counsel - is Rule 36 of Order 7, S.C.R. Therefore, applying the decisions in Galloway (Supra), Wilson v. Church (Supra) the Court of Appeal erred in holding that the present application should have first been made in the High Court.

Learned counsel for the respondents, Chief F. R. A. Williams, contends that the present application of the appellants is, indeed, nothing more than one for \"suspension of rights\" and preservation of property (the subject matter of litigation) pending the determination of an appeal from an order affecting that property. The expression used in the application is immaterial; what matters is the substance. Whether the prayer in the application is for \"an injunction\" or \"stay of proceedings\" or \"stay of execution\", the High Court, learned counsel submits had in the circumstances the jurisdiction to suspend proceedings or actions under, or pursuant to the order or decision on appeal. It was wrong, he submitted, to contend that once the High Court had dismissed a claim \"absolutely\" (i.e. without reservations) it was functus officio quoad granting an order of injunction in the case or otherwise restraining proceedings or actions under or pursuant to its judgment under appeal. Learned counsel then referred to the case of Shittu Ogunremi vs. Chief Dada (Supra) relying, in particular, on the underlined passages [at (1962)1 All N.L.R. p.670j of the judgment of Brett, F.J. and with which Taylor and Bairamian, F.JJ. concurred, which I set out hereunder:

I hesitate to propound any general principle without a more complete review of the authorities and of the history of the jurisdiction, than we have had in this case, but the authorities appear to me at least to justify the proposition that a court of record whose judgments are subject to appeal has inherent power to stay the execution of any judgment against which an appeal has been brought, in order to render the right of appeal more effective. It is clearly not an appellate power, since it is possessed in England by the court from which an appeal lies as well as by those to which the appeal is brought . .

Although the italicised passages in the above quotation from Ogunremi v. Dada (Supra) appear, at first sight, to cover the matter under consideration, I regard them as obiteT dicta in so far as they relate to the main issue for determination in this appeal which is whether (a) the High Court has jurisdiction to stay proceedings or actions, by way of an order of injunction, under or pursuant to its decision or order on appeal pending the determination of that appeal and (in any event) (b) can exercise such powers after the order or decision had been \"drawn up and enrolled\". Therefore, I consider this principal issue before us res integra, and would now proceed to examine in detail the cases cited to us in the course of argument and the various points of decision therein upon which learned counsel have sought to rely in support of their respective submissions.

The head note to the case of Galloway vs. The Mayor, The Commonality and Citizens of London (1865) 46 E.R. 560 shows that a bill filed by the plaintiff to restrain the defendants from taking certain properties of his (the plaintiff) under certain statutory powers having been dismissed and the order of dismissal having been drawn u p and enrolled, the plaintiff\'s application for an interim order to preserve and protect the property, pending the determination of his appeal from the order of dismissal, was dismissed because the Court (whose judgment was on appeal) having dismissed the claim \"without any reservation\" (i.e. absolutely), had no jurisdiction to make the order prayed for in the application. Sir Hugh Cairns (afterwards the great Lord Chancellor Cairns) argued that there is no jurisdiction to make such an order in a dismissed suit and that the case had no analogy to \"that of staying proceedings under a decree pending an appeal; the court having made a decree is doing something and has control over its own proceedings . . . here it has decided

that it ought not to do anything and so has negatived its having jurisdiction\". The submission was upheld. The Attorney-General (Sir R. Palmer), Messrs. Jessel and Bristowe for the Railway Corporation argued that the court of trial cannot after deciding by decree \"that the plaintiff had no right to an injunction\" grant him one upon an interlocutory application; it was further contended that \"it is a strange notion that when the court has decided that the plaintiff is not entitled to relief, he is to have it (even if in the interim only) because he is going on appeal\". And in the same case Galloway (Supra) Turner, L.J. observed:

I think that the plaintiff if he intended to appeal to the House of Lords, ought at the hearing to have asked the court so to frame its order as to keep alive its jurisdiction pending the appeal. This not having been done, we should be departing from what I understand to be the course and practice of the court, if we were to grant the plaintiff the injunction he asks. [Italics supplied]

The contentions, submissions and judgment in Galloway (Supra) would appear to confine the basis for decision in that case to the principle that a court having dismissed or refused a claim for injunction ought no longer to have the power to entertain an application (or grant it) for the same claim (i.e. of injunction) even on an interim basis.

The head note in Wilson v. Church No. (1) (1879)11 Ch.D. 576 reads:-

When an action has become altogether dismissed by a Divisional Court no order can be made under Rules of Court of 1875 Order 58 Rules 2 and 5 to stay proceedings pending an appeal; but the Court of Appeal will, in a proper case, grant an injunction to restrain any of the parties parting with the property till the hearing of the appeal.

The argument of the applicant in that case had been that once the lower court has dismissed the claim before it absolutely that court could not, as the case of Galloway (Supra) decides, entertain an application for stay of proceedings pending an appeal from that order of dismissal; it was, he submitted, therefore, proper to bring his application for stay of proceedings pending the appeal in the Court of Appeal (England). The respondents, on the other hand, submitted that in view of Order 58 Rule 17 rules of court under the First Schedule to the Supreme Court of Judicature Act 1875 (amending The Supreme Court of Judicature Act of 1873) - hereafter referred to as the \"R.S.C. of 1875\" - and which is almost in pari materia with Order 7 Rule 37 S.C.R. the applicants ought to have brought their application in the first instance in the lower court. Sir George Jessel M.R. held in an extremely short judgment (with which Brett and Cotton, LL.J. concurred) that the court of first instance (Fry, J.) having dismissed the claim altogether (i.e. absolutely) that court had no jurisdiction to stay proceedings and the application was properly made in the Court of Appeal (England)\" it should, I think, be pointed out here that from the law journal report of the proceedings in Wikon V. Church No. (1) (i.e. Supra) it does appear that Jessel, M.R. regarded the application in question \"not\" as one for stay of proceedings but as \"an original motion for injunction\" brought directly in the Court of A p peal and which that court could always entertain (see (1879)48 L.J. Ch.D.690).

In Pelini v. Gray (Supra), a decree having been made in three suits for the administration of the personal estate of an intestate directing an inquiry as to her next of kin, a certificate later issued showing five named persons of the family named \"F\" resident abroad as being next of kin of the intestate; consequently an order was made for distribution among them of the fund in court. S. who had not been a party to the proceedings applied and alleged that she was next of kin. The Vice-Chancellor directed that the order of distribution be suspended (i.e. an order of injunction) and that inquiry be made as to whether S. had made out a prima facie case. As it was reported that a prima facie case had not been made out the Vice-Chancellor directed that the distribution of the fund should go on without prejudice to any independent proceeding by S. Four of the five shares were at once transferred to four of the five certified named next of kin; the fifth share remained in court. Two of the shares, which had been transferred, were sold out and the proceeds received by vendors. S., following a subsequent action initiated by her, obtained an order granting an injunction to restrain any dealing with the shares which had not been sold and directing an inquiry as to who were the next of kin, and this order was directed to be taken as made in the three suits as well as in the action by S. The chief clerk again found the \"F\" Family to be the next of kin. An action by S. to vary the certificate was dismissed by the Vice-Chancellor but the injunction was continued in the three suits until further order. (i.e. the injunction for suspension of distribution continued). S appealed and the Court of Appeal (England) affirmed the decision of the Vice-Chancellor and dismissed S.\'s bill, but S. desired to appeal to the House of Lords:

Held: Since if S. should succeed in the House of Lords her success would be nugatory or useless, unless in the meantime the fund was protected. The order of injunction (by the V.C.) ought to be continued until the determination of the appeal. Sir George Jessel, M. R. observed that the principle which underhes all orders for the preservation of property pending litigation is that the ultimately successful party in the litigation is to reap the fruits of that litigation, and not to obtain merely a barren success. The important point to note in Pelini V. Gray, however, is that learned counsel for the appellants from the decision of the Court of Appeal in England to the House of Lords specifically requested as follows:

We ask to have the order on appeal, which has not yet been drawn up, put in such a form as to protect the fund pending our appeal to the House of Lords. (Italics supplied)

and Sir George Jessel, MR. observed: at pp.443-444

As the order of the Court of Appeal has not been drawn up there is no question of rehearing. (Italics supplied - see [1879]. 12 Ch. D at 442-3).

It does appear from the foregoing that Pelini v. Gray and Galloway (Supra) appear, ex facie, to support the contention that once the judgment has been drawn up and enrolled, the court whose judgment is under appeal cannot restrain proceedings or actions under that judgment. However, it is desirable here, to quote a very relevant passage from the judgment of the court in the case (i.e. Pelini v. Gray); and in the first instance, I quote from that of Jessel, M.R. at p.443:

The question before us is this: An action is brought to determine the rights of claimants to a fund. The plaintiffs fail in the court of first instance and in the court of second instance, but are about, bona fide, to prosecute an appeal to the court of ultimate resort. The plaintiffs allege that that appeal will be nugatory if the fund is paid out to the defendants and that if the plaintiffs should ultimately succeed in the House of Lords, that success will be useless to them unless an interim order is made for preserving the fund'\" assuming that contention to be correct in fact, the question is, whether this court has jurisdiction to prevent such a consequence. It appears to me a principle that the court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, . . . that the ultimately successful party is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, a p plies as much to the court of first instance before the first trial, and to the Court of Appeal before the second trial as to the court of last instance before the hearing of the final appeal\". The rule under the Judicature Act is Rule 3 of Order 52 which is this: \'it shall be lawful for the court or a Judge upon the application of any party to an action, and upon such terms as may be Just, to make an order for the detention, preservation or inspection of any property being the subject of such action\'. The terms in which the jurisdiction is conferred are general and unlimited. (Italics supplied)

And yet again, I quote from the judgment of Cotton, L.J. at p.446:

'. The only question we have to consider is, whether or not the court has jurisdiction in a proper case to stay all dealings with a fund pending an appeal to the House of Lords although the court has decided against the title of the plaintiff and dismissed the

\"K\" action. I see no difference in principle between staying the distribution of a fund to which the court has held the plaintiff not to be entitled, and staying the execution of an order by

\"L\" which the court has decided that a plaintiff is entitled to a fund. In that case, as in thhis case, the court, pending an appeal to the House of Lords, suspends what it has declared to be the righ of one of the litigant parties. On

\"N\" what principle does it do so' It does so on this ground, that where there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree or the distribution of the fund, would make the appeal nugatory . . . then it is the duty of the court to interfere and suspend the right of the party who, so

\"O\" far as the litigation has gone, has established his rights. That applies in my opinion . . . to where the action has been dismissed (and) . . . to where a decree has been made establishing the plaintiff\'s rights.\" (parentheses and italics supplied)

Otto V. Lindford (1881)18 Ch. D. 394 was a straightforward case of an application for stay of execution of payment of costs awarded in the court of first instance. The plaintiffs action for alleged infringement of a patent had been dismissed with costs by the Vice-Chancellor. The plaintiff appealed from the order of dismissal. He then asked for leave in the Court of Appeal to give a short notice of motion to restrain the defendant from enforcing the order of costs pending appeal. When asked by the Master of the Rolls whether he had already applied to the court below, learned counsel for the plaintiff in reply said that \"it was laid down in Wilson v. Church (Su p ra) that where an action has been dismissed the court below has, no jurisdiction to stay proceedings, and the application must be to the Court of Appeal ".

Again, Jessel, M.R. told counsel:

That was a case of an entirely different description. The plaintiffs were asking for an injunction to restrain the trustees from parting with the trust funds pending the appeal. That was not an application for stay of proceedings under the order appealed from, for that order did not give any directions for dealing with the fund, and the court below having dismissed the action had no jurisdiction to grant the injunction sought.

The Master of the Rolls then directed that since the application was for stay of proceedings from the order appealed from it should be made in the first instance to the Vice-Chancellor in the court below. It should be pointed out that although Cotton and Brett, L.JJ. concurred with the views expressed by the Master of the Rolls, so far as the underlined portion of the quotation above is concerned, the former (i.e. Cotton, L.J.) made these rather pertinent observations: -

I have no doubt that, though the action is dismissed the court below can, pending an appeal, stay the doing (of) anything under the order of dismissal, and. . . the application for that purpose must be made to the Vice-Chancellor (i.e. the court below)\" (Italics supplied)

The above observations of Cotton, L.J. are in my humble view, a far cry from support for the view that once a court and for that matter, the Supreme Court (and in Nigeria, the High Court) has dismissed a claim it is left without jurisdiction from restraining any proceedings or actions under its order if there should be an appeal from that order.

The facts in Orion Property Trust v. Du Cane (Supra) put shortly are as follows: On the 29th January, 1962 judgment was delivered in an action, in the Chancery Division, concerned With the shareholding in, and control of, defendant company. By this judgment L. the Secretary and Manager of the defendant company was held entitled to a block of shares of the defendant company which in a small way gave him majority control of that company. On 25th May of the same year (1962) at an extraordinary general meeting of the defendant company a resolution was passed for the increase of its capital by '150,000 divided in three million shares of one shilling each; and on the same day the directors issued 800,000 of the new shares to Mrs. H. a daughter of L., who really was L.\'s nominee. Four days later (i.e. 29th May) notice of motion was given in the action on behalf of another company, which held a block of shares of the defendant com p any slightly less than that of L., against the defendant company and its directors from issuing any of the three million shares. Judgment in this action was entered, on 6th June, 1962 and on 19th June, 1962 the plaintiff gave notice of appeal; and on an application for injunction pending the appeal: Held (Pennycuick, J.) that on the principle that the court would intervene pending an appeal to restrain an act that might deprive an appellant of the results of the appeal, he had jurisdiction to grant an injunction and, in the circumstances of the case, he would grant the injunction sought. In Eringford Properties Limited v. Cheshire County Council (Supra) Megarry, J. (as he then was) took much the same line of reasoning and decision as did Pennycuick, J. in the Orion Properties Case (Supra).

Following the decision in Wilson v. Church (Supra) the Annual Practice (also sometimes referred to as \"the White Book\") has consistently (see 1962, 1973, 1976 and 1979 Annual Practice) stated (using Wilson v. Church as its authority for the statement) that:

where an action has been dismissed in the court below, that court has no jurisdiction e.g. to restrain a defendant from parting with a trust fund pending an appeal: the application for that injunction must be made to the Court of Appeal. [Italics supplied Annual Practice 1976 Vol.1 atp.880 under notes on Order 59/13/1 wherein also the endorsements \"Per centra, Orion Properties Trust Ltd. v. Du Cane Court Ltd, are added).

It is also interesting to point out that the learned authors to the Annual Practice 1976 Vol.1 at p.465 in their notes to Order 29/1/11B made the following observations [citing Eringford Properties (Supra) as their authority).

where the Judge dismisses an interlocutory motion for an injunction, he nevertheless has jurisdiction to grant the unsuccessful applicant an injunction pending an appeal against the dismissal, and it is not necessary for the applicant to apply to the Court of Appeal. (Italics supplied)

It is my humble and respectful view that the above quotation at page 880 of Vol.1 of the 1976 Annual Practice for which the case of Wilson v. Church (Supra) is cited as authority for the view expressed therein, cannot be right. The argument in Wilson v. Church (Supra) had, in effect, been that the application although, ex facie, for an order for injunction was, in substance, one for stay of proceedings pending an appeal and should, under Order 58 Rules 16 and 17 R.S.C. of 1875 [in pari materia with Order 59 Rules 13 and 14(4) of the 1976 and 1979 Rules of the Supreme Court (England)), be made in the first instance in the court below, that is, to the trial Judge. But the action in Wilson V. Church (Supra) was dismissed and therefore the question of a stay of proceedings (in regard to the nature of the application therein) could hardly have arisen; and so Order 58 Rule 17 (i.e. the current rule 14(4) of Order 59) aforesaid could not be applicable to the point in issue in Wilson (Supra). The matter before the court in Wilson was- as Sir George Jessel, M. R. has been quoted, as having stated in the Law Journal Reports - \"an original motion\" which the Court of Appeal could entertain.

Again, I would rather confine the decision in Otto v. Lindford (Supra) to what it decided which is that the application being one for a stay of execution of costs awarded in the judgment on appeal it should in accordance with the Rules of the Court then applicable to the proceedings be made in the first instance in the trial court (or court below). That is the ratio decidendi of Otto v. Lindford; Wilson v. Church (Supra) came into the case as an entirely different decision, which the court had, incidentally, to distinguish. It is my respectful view, therefore, that the comments on Wilson in Lindford are simply obiter.

Finally, I think it is settled in England (see Cropper v. Smith (1883)24 Ch. D. 305) and in Nigeria (see Shittu Ogunremi v. Dada (1962)1 All N.L.R. 663) that an application for stay of proceedings or execution under a judgment of the Supreme Court (in England) or in the High Court (in Nigeria) on appeal to the Court of Appeal must in the first instance be made to the Court of Appeal. The two courts have concurrent or co-ordinate jurisdiction in this matter. [See Brett, Cotton and Bowen, L.JJ. in Cropper v. Smith (Supra).]

What then is the position regarding an application for an order of injunction pending appeal' It does not appear to me that the position can be any different. I find considerable support for this view in that portion of the judgment of Cotton, L.J. in Polini vs. Gray (Ibidem at p.446) which I set out earlier between the marginal capital letters \"K\"-\"L\" and \"N\"-\"O\". As the learned Judge said, there is \"no difference in principle between staying the distribution of a fund to which the court has held the plaintiff not to be entitled, and staying the execution of an order by which the court has decided that a plaintiff is entitled.\" I find it difficult, therefore, to subscribe to the view that a court becomes stripped of its jurisdiction to control the proceedings to the extent of preserving the subject matter of litigation, should it become necessary to do so, as soon as the court dismisses the proceedings before it. An application for an injunction to restrain proceedings or actions under a judgment under appeal pending the determination of the appeal appears to me to be an original motion which the court whose judgment is under appeal can entertain. It was, however, argued and contended that even if the court could, in these circumstances, intervene it can no longer do so as soon as its order has been drawn up and enrolled. While, however, it is true that except by way of appeal no Court, Judge or Master has the jurisdiction to rehear, review alter or vary its judgment or order after it had been entered or drawn up either in an application made in the original action or matter, or in a fresh action brought to review such judgment or order, the sole object of the rule, it should be remembered, is to bring litigation to finality [see Halsbury Laws of England Vol.223rd Edition - Paragraph 1665 at p.785, also Flower v. Lloyd (1877)6Ch. D. 297. Re St. Naziare Co. (1879)12 Ch. D. 88]. I think it is pertinent here to draw attention to the observations of Thesiger, L.J. on the issue at p.101 in Re St. Naziare

Co. (Ibid).

I entirely agree with the conclusions at which the other members of the Court have arrived . . .1 would only add that they seem to me to harmonize entirely the practice under the Judicature Act in all Divisions of the High Court, because, whatever may have been the practice in the High Court of Chancery before the Judicature Act as to the review of their decisions or the rehearing of their decisions, nothing can be clearer than that there was nothing analogous to that in the Common Law Courts, and it is equally clear that under the Judicature Act, after once the Common Law Division of the High Court of Justice has pronounced a decision upon the matter in dispute . . . there is no power in that Division of the High Court to rehear or review that decision upon any suggestion that it has been misled, or that the parties have not brought all evidence which ought to have been brought in order to enable the Court to arrive at a just conclusion . . . [Italics supplied].

There never was any question in the Common Law Court of rehearing or reviewing a decision once delivered, let alone doing so before any of its order thereon was drawn up, entered or enrolled; this is also confirmed from the quotation above (i.e. in the judgment of Thesiger, L.J.). It is my view that the Judges of the Chancery Division of the High Court were only being mindful of the inhibition on their pristine powers by the Judicature Act when in the various cases [after Galloway (Supra) they took the precaution of finding out whether or not the orders, on appeal had or had not already been drawn up and entered before entertaining applications, before them, for stay of proceedings or actions based on the said orders pending appeal. Even then the issue in these circumstances relates to the power of the court to review, or even revoke its decision. With all respect to the various observations, in the cases cited before us, on the question where or not the order on appeal had been perfected when the courts entertained applications for stay of proceedings by injunction, I am persuaded to the view that an application simplicter, to a court for preservation of the subject matter of an appeal pending the determination of the appeal truly invites any change, alteration or review of its judgment or, to be precise, that kind of alteration of judgment (on a rehearing or review based on \"the suggestion that the court was misled, or that parties have not brought all the evidence which ought to have been brought in order to enable the court to arrive at a just conclusion\") as is contemplated under the general doctrine or principle of review of a court\'s decision prior to the order thereon being perfected. McPhillips, J.A. in the British Columbia Court of Appeal in his dissenting judgment in Andler v. Duke (1932)3 D .L.R. 210 at p.218 appears to me to be of the same view, when he observed:-

.....With great respect to all contrary opinion, even although the judgment has been taken out and entered, there remains the power to preserve the res - it is not in any way changing or altering the judgment, it is merely a preservative order from time immemorial exercised all the Courts [Italics supplied].

I would, therefore, like to conclude this judgment by making it qrnte &lear that the High Court does not lose its jurisdiction to entertain applications for stay of proceedings or actions under its judgments orders or decisions under appeal to the Court of Appeal because by the said order, decision or judgment it had dismissed the claim before it \"absolutely\" (i.e. without reservation); and it makes no difference (1) that the applicant, in the circumstances, is the plaintiff who lost his claim or (2) that his application is couched in the form of request for an order of injunction and (3), in any event, that the decision order or judgment in question (i.e. on appeal) has been drawn up and entered. I am in respectful agreement with the observations, in Polini v. Gray (Ibidem at p.446) of Cotton, L.J. wherein he said that:

It (the Court) does so (i.e. suspends, pending an appeal, what it has declared to be the right one of the litigant parties) on this ground that where there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree . . . would make the appeal nugatory . . . then it is the duty of the Court to interfere and suspend the right of the party who, so far as the litigation has gone, has established his rights. That applies . . . just as much to the case where the action has been dismissed, as to the case where a decree has been made establishing the plaintiffs title. [Italics supplied]

Further, on this issue it had also been said that:

" Courts should not be too vigilant to say that they lack jurisdiction; certainly they should not be too vigilant to say that there is no jurisdiction when the interests of justice are at stake '..

See the dissenting judgment of McPhillips, J.A. in Andler v. Duke (1932) 3 D.L.R. 210 at 218 British Columbia Court of Appeal: [Italics supplied]. Therefore, I incline to the view that unless there is manifest lack of jurisdiction (or specific statutory provision thereto) in the High Court, Your Lordships ought not, in the knowledge of the existence of the inherent power of the Court of Chancery to preserve the subject-matter of litigation before it pending an appeal from its decision - (1) as English Legal history and various court decisions in England have shown and, (2) in the face of the specific provisions of sections 10 and 18 of the High Court of Lagos State (Cap. 52 in volume 3 of the Laws of Lagos State 1973) and similar provisions of which exist in the High Court Laws of the other States in this country - to lend support to the contention that, in the circumstances under consideration in this a p peal, there is any lack of jurisdiction in the High Court of Lagos (and the High Courts in the Federation, generally) to deal with the application in issue in this appeal.

Finally, in the event, however, that I am wrong in the view I take of the effect of the drawing up and enrolment of the order, decision or judgment on appeal on the questions in issue in this appeal I would like to point out that: (1) except for one or two of the 19 States in the Federation of Nigeria there is, as far as I know, no statutory provisions in our various laws for the drawing up and enrolment of orders, decisions or judgments of the High Court in this country; and (2) for several years covering my experience the practice has always been for the High Courts to entertain applications for preservation of the subject-matter of litigation after an appeal from its judgment has been lodged, or for stay of proceedings under its judgment on appeal, pending the appeal without reference to the question whether or not the order, decision or judgment under appeal has already been drawn up and en rolled. It is, therefore, my respectful view that it is now too late in the day to lay down any principle which will involve such a consequence. Once again, I will quote with my respectful approval and concurrence from the dissenting judgment of McPhilips J A. in Andler v. Duke (Ibidem at p.219).

I may say that during some 40 years that I can speak about, the res was always p reserved in this count, allowing a judgment given . . . Now I have not had time to go into an intricate survey of all the authorities but I am satisfied that what I have said is in conformity with the practice of this court for long years, and when we have practice extending over a long period of time, why should a Court in a case so vital, refrain in preserving the res' [Italics supplied]

I am, therefore, persuaded to agree with the submissions of learned counsel for the respondents Chief F. R. A. Williams on this Accordingly, I am firmly of the view that the majority judgment of the Court of Appeal t a his application should, pursuant to the provisions of Order 7 Rule 37 of the S.C.R. have been made in the first instance in the High Court of Lagos State. I would dismiss this appeal and I agree with the order as to Costs proposed in the judgment of my learned brother, My Lord, Sowemimo J S. C.

Judgement delivered by
George Sodeinde Sowemimo. J.S.C.

I am in complete agreement with the judgment just read by my learned brother Idigbe. In the final analysis, I agree that the preliminary objection raised against the application in the Federal Court of Appeal was properly upheld. It is therefore ordered that this appeal be dismissed. The judgment of the Federal Court of Appeal is upheld and the application for injunction brought before that Court which should have been brought to the High Court of Lagos State is hereby struck out. The respondents are entitled to the cost of this appeal, which is fixed at N322 to be paid by the plaintiffs/appellants.

Judgement delivered by
Andrews Otutu Obaseki. J.S.C.

The appellants herein were plaintiffs and the respondents defendants before the High Court of Lagos State (Ademola Johnson, J.) In an action commenced by a writ of summons claiming in their particulars of claim several declarations and orders of injunction. These are in terms of the endorsement on the writ of summons:

(1) A declaration that the resolution passed by the Executive Committee of the Ahmadiyya Movement-In-Islam on the

12th day of May, 1974 whereby it purported to change the name of the Movement to Anwar-Ul-Islam Movement is null and void and is not binding on the plaintiffs.

(2) A Declaration that the plaintiffs and those who adhere to them alone lawfully represent the Ahmadiyya Movement-in-Islam Nigeria and are entitled to the whole lands and property belonging to the said Movement within Lagos State as at the 11th day of May, 1974 which were held by and vested in the 1st defendant as Registered Trustee on behalf of the plaintiffs and those adhering to them as constituting the true and lawful Ahmadiyya Movement-in-Islam and that the defendants are bound to hold and apply the same on behalf of the plaintiffs.

(3) A declaration that the plaintiffs and those adhering to them lawfully represent the Ahmadiyya Movement-In-Islam Nigeria and are entitled to all the funds and all the movable property of the said Movement as at the 11th of May, 1974 and to have the same applied for and on behalf of those adhering to them and that by adhering to a body known as Anwar-Ul-Islam the 2nd, 3rd and 5th defendants and those adhering to them had become seceders from the Ahmadiyya Movement-In-Islam and had automatically ceased to be members of the Ahmadiyya Movement-In-Islam.

(4) A declaration that all property vested as at the 11th day of May, 1974 in the Registered Trustees of the Ahmadiyya Movement-In-Islam appointed in 1974 were vested and held by them for and on behalf of the Ahmadiyya Movement-In-Islam and that no part thereof can be lawfully iverted to the use of any other association not maintaining and adhering to the whole of the fundamental principles and tenets contained in the Constitution (including the conditions of Bal\'at and the Articles of Faith) of the Ahmadiyya Movement-In-Islam without the unanimous consent of all the members of the Ahmadiyya Movement-In-Islam.

(5) A declaration that the former members of the Ahmadiyya Movement-In-Islam who had adhered to a body known as the Anwar-Ul-Islam or who now so describe themselves have thereby lost all beneficial right to such property of the Ahmadiyya Movement-In-Islam whether real or personal and that the 1st defendants cannot lawfully apply the same for the benefit of such members or of the Anwar-Ul-Islam or its members.

(6) A declaration that the 2nd, 3rd and 5th defendants had before or on the 12th day of May, 1974 become Apostates and thereby automatically ceased to be members and officers of the Ahmadiyya Movement-In-Islam Nigeria and that all acts performed as such thereafter are null and void and of no effect.

(7) An order of the return of all movable property documents (whether of title or not) records, account books and papers belonging to the Ahmadiyya Movement-In-Islam which are or have been in the possession of the defendants.

(8) An order for the payment to the plaintiffs of all sums of money belonging to the Ahmadiyya Movement-In-Islam as at the 12th day of May, 1976 which the defendants have spent or utilised whether from its Bank Accounts otherwise

(9) An Account of all rents, royalties or other sums of moneys received by the defendants in respect or on account of the properties, movable or immovable of the Ahmadiyya Movement-In-Islam including sums received on account of the operation of the printing press of the Movement.

(10) Payment over to the plaintiffs of all sums found due.

(11) An injunction restraining the defendants their servants and agents from continuing to occupy or use or in any way interfere with the plaintiffs\' right to occupy and use all the properties real and personal, of the Ahmadiyya Movement-In-Islam.

(13) An injunction restraining the 1st defendant and the 2nd to 7th defendants from applying the property of the Ahmadiyya Movement-In-Islam for the benefit of Anwar-Ul-Islam and from performing their duties as such otherwise than in accordance with directives of the plaintiffs or any Executive Committee appointed by it.

(14) An injunction restraining the defendants from taking any steps to divert the plaintiffs of their properties or from taking any steps to effect the change in the name of the plaintiffs in respect or in relation to the plaintiffs\' properties.\"

Pleadings were ordered and served and evidence was heard. At the conclusion of the hearing, the learned trial Judge held that the plaintiffs/appellants were not entitled to any of the declarations and orders claimed and dismissed the suit and then went on to discharge the interim injunction granted in respect of the building construction at the Central Mosque. More particularly, the concluding portion reads:

It is my judgment that as from the 12th May, 1974 when the legally constituted Executive Committee of the Movement passed the resolution to effect a change in the name of the Movement, the Ahmadiyya-In-Islam ceased for the time being to exist and it [was] succeeded by Anwar-Ul- Islam Movement of Nigeria. The plaintiffs therefore represent a non-existent Movement. Their only existence as of now in my considered view is as a dissident or position group in the Anwar-Ul-Islam Movement of Nigeria and the remedies which I consider open if they are dissatisfied with that position are as I have earlier stated. It follows therefore from my judgment that the plaintiffs are not entitled to any of the declarations and or orders claims. They are accordingly dismissed.

The interim injunction earlier granted in respect of the building construction at the Central Mosque is hereby discharged.

This was on the 28th day of February, 1977.

On the 7th day of March, 1977, the appellants filed their Notice of Appeal against the judgment of Ademola Johnson, J.

Before evidence was taken and on the application of plaintiffs, there was also a consent order made on the 5th day of January, 1976 by Adebiyi, J. in the matter which reads:

Application under Order 39, Rules 4 & 12 of the High Court of Lagos State (Civil Procedure) Rules "

IT IS HEREBY ORDERED, BY CONSENT AS FOLLOWS:

(i) That the parties hereto, their servants or agents shall from the 20th day of November, 1975 until the determination of this suit refrain from changing the names, titles or labels of any institutions, properties or documents which bear or have borne the name title or label of the Ahmadiyya Movement-In-Islam to any other name, title or label.

(ii) That the defendants, their servants or agents shall from the 20th day of November, 1975 refrain from interfering with the possession or control of the properties or documents of the Ahmadiyya Movement-In-Islam at present in the possession or control of the plaintiffs by whatever name described.

(iii) That the defendants, their servants or agents shall from 20th day of November, 1975 refrain from spending any funds collected for or on behalf of the building committee for the erection of the new Ahmadiyya Central Mosque at Ojo Giwa Street, Lagos.

It is further ordered:

(i) That the defendants shall within 14 days hereof file in court (serving a copy thereof on learned counsel to the plaintiffs) a list of all institutions, properties or documents which, had before the said 20th day of November, 1975, had changes of names, title or labels at the hands of the defendants; and

(ii) that the defendants shall within 14 days hereof supply to the learned counsel for the plaintiffs a copy of the bank statement of the funds collected by the building committee for the erection of the new Ahmadiyya Central Mosque at Ojo Giwa Street, Lagos. The balance in the said account shall be paid by the defendants into a savings account at a reputable bank and the passbook relating thereto deposited with the Registrar of this Court.

Soon after the Notice of Appeal was filed, the appellants filed in the Federal Court of Appeal a motion praying the court for an order of injunction restraining the defendants, their servants and or agents from

(1) preventing the plaintiffs and those adhering to them from entering, praying in and continuing to use the mosque and other premises of the Ahmadiyya Movement-In-Islam which were occupied, controlled and used by the plaintiffs as at the 24th March, 1977 pending the determination of the appeal lodged herein.

(2) interfering with the existing arrangement for the conduct of prayers and the administration of the mosques and schools belonging to the Ahmadiyya Movement-In-Islam occupied and controlled by the plaintiffs until the determination of the appeal lodged herein

(3) changing the names, labels or titles of the mosques and schools controlled and used by the plaintiffs and those adhering to them pending the determination of the appeal lodged herein.

(4) damaging, destroying or defacing the buildings or parts of buildings the subject-matter of this appeal pending the determination of the appeal lodged herein.

(5) continuing the construction of the building of the Ahmadiyya Central Mosque at No.53/57 Ojo Giwa Street, until the determination of the appeal lodged herein.

To this application: the respondents by their counsel filed a Notice of Objection on the grounds that:

(1) No application for any of the reliefs sought for in the motion was made in the first instance to the court below; and

(2) The application now made by Motion before this Honourable Court contravenes Rule 37 or Order 7 of the Rules in force in this Honourable Court.

After hearing the submissions of counsel on the objection, the Federal Court of Appeal, by a majority of two to one, i.e. (Aseme and Coker, JJ.C.A.) (Akinugbe, J.C.A. dissenting) upheld the objection and struck out the motion.

It is against this ruling on the objection that this appeal has been brought.

However, suffice it to refer to the concluding portion of the judgment of the Federal Court of Appeal (Coker, J.C.A. delivering the judgment) which reads:

Happily, Megarry, J. carefully reviewed the earlier authorities including Orion\'s case m his judgment in Eringford Properties Ltd. & Anor. V. Cheshire County Council (1974) Ch. D. 261. He stated at p.263 as follows:

Broadly, the conflict may be said to centre round dicta in two very short judgments by Sir George Jessel, M.R. in the Court of Appeal in Wilson v. Church (1879)11 Ch. D. 576 and Otto v. Lindford (1881)18 Ch. D. 394, on the one hand and on the other hand the more substantial judgments in the Court of Appeal in Wilson v. Church (No.2) (1879)12 Ch. D. 454 and Polini v. Gray (1879)12 Ch. D. 438. At least at first sight the dicta support the view that a Judge who has dismissed an action has no jurisdiction to grant an injunction restraining the successful defendants from parting with the subject matter of the action pending an a p peal. The decisions on the other hand support the opposite principle. In the words of Pennycuick J. in the Orion case (1962)1 W.L.R. 1085, 1090, the effect of the principle is that

the court of first instance has the jurisdiction to make an order preserving the subject matter of the action in the appeal, even though the action has wholly failed.

Such a principle plainly seems to be consonant with the undoubted jurisdiction of a Judge who has made an order to grant a stay of execution of that order pending an appeal, a jurisdiction which is the subject of rules of court.\"

We have earlier referred to the provisions of section 18(3) of the High Court of Lagos Law and also Order 39 Rule 13 of the High Court of Lagos (Civil Procedure) Rules 1972 and are of the view that there is nothing therein to justify the limitation of the jurisdiction of the High Court of Lagos to make an order of interl9cutory injunction pending an appeal to this court. It is sufficient for this reason to hold that this application contravenes Order 7 Rule 37 of the Supreme Court

Rules. We are therefore of the view that this application is not properly before us and must therefore be and is hereby struck out.

The appellants being aggrieved, filed, along with their Notice of Appeal, five grounds of appeal which read:

(1) Error in Law:
Having held that the statutory provisions and the jurisdiction of the High Court in England and in Lagos State were similar, the Federal Court of Appeal erred in law in not following the decisions of the English Court of Appeal on the practice and procedure relating to the court to which applications for injunctions pending appeal should be made when a plaintiff\'s case has been dismissed: when

The Rules of Court applicable to the Federal Court of Appeal enjoin it to follow the practice for the time being applicable in the said Court.

(2) Error in Law:
The Federal Court of Appeal erred in law in holding that a plaintiff whose claim has been dismissed in the High Court cannot make an application for an injunction to restrain the successful defendant pending the determination of the appeal to the Court of Appeal in the first instance when:

(a) There is no provisions in the Supreme Court Rules 1961 as to the court to which an application should first be made

(b) The practice in the Court of Appeal in England as shown by the decisions of that court is that such an application should be made to the court of appeal in the first instance.

(3) Misdirection in Law:
The Court of Appeal misdirected itself in law in holding that the case of Hyde v. Warden 1 Ex D 309 was not helpful and that it did not establish any principle of law: when

The same was reported as authority for the proposition that the court of appeal can grant injunctions pending the determination of an appeal even though no application for such an order had been made to the court below.

(4) Misdirection in Law:
The Court of Appeal misdirected itself in law when it held that the English authority cited to it could only be a guide as to the interpretation of the law and practice if these provisions are similar to those of the English courts when:

The decisions of the English Court of Appeal are binding in matters of practice and procedure on the Federal Court of Appeal in the absence of any provisions on the point in the Rules of Court applicable to the Court of Appeal.

5. Error in Law:
The Federal Court of Appeal erred in law in holding that there was nothing to Innit the provisions of s.18(3) and Order 39 Rule 12 of the High Court Law and High Court (Civil Procedure) Rules of Lagos State respectively so as to exclude power to make an order for interlocutory injunction pending appeal where the plaintiffs claim has failed when:

(i) The object of these provision were to preserve the rights of the parties to the property either before adjudication thereupon by the court or after the same shall have been established therein.

(ii) A plaintiff whose case has been dismissed has no such rights to preserve under these provisions which the High Court can protect thereunder.

(iii) The established rule of practice in England which has the same statutory provisions is that it is only the Court of Appeal that can grant injunction in the circumstances.

It seems to me that the area of controversy in this appeal is very severely limited and, besides, an examination of the

case law in the English Courts on practice and procedure in applications of this nature, it calls for a close examination of the limit and extent of the jurisdiction of the High Court in such applications for injunctions pending appeal where the court has dismissed the action.

It does seem to me that the broad view of the law is to preserve the jurisdiction of the High Court until the matter, if it goes on appeal is finally disposed of by the Court of Appeal and the Supreme Court. More so as the High Court is in the final analysis saddled with the jurisdiction to enforce all Orders made by the Appeal Courts and the legal theory supporting the jurisdiction conferred on courts of appeal postulates that the courts of appeal are in a corrective position doing exactly what the lower court should have done in exercise of its original jurisdiction.

It is not disputed that the Court of Appeal has jurisdiction but the contention is that the High Court having dismissed the action totally is functus officio. The question that arises is:

Can it be functus officio to the extent of allowing the subject matter to evaporate or pass from hand to hand before the appeal courts in their appellate jurisdiction become seised of the matter'

That is the major question.

The appellants\' contentions lucidly set out in paragraph 5 of the introductory section of their brief are:

(i) that where a plaintiff\'s case has been absolutely dismissed by the High Court, that court has no jurisdiction to entertain an application by such unsuccessful plaintiff for an injunction against the successful defendant pending the determination of his appeal to the Court of Appeal.

(ii) That there are no provisions in the said Rules governing applications for injunction pending appeal where the plaintiffs\' case is dismissed, and

(iii) Only the Federal Court of A p peal has power to entertain such applications and Order 7 Rule 37 will not be applicable in the circumstances.

Order 7 Rule 37 of the Supreme Court Rules 1961 applicable to proceedings in the Federal Court of Appeal provides that

whenever an application may be made either to the court below or to the Court, it shall be made in the first instance to the court below but if the court below refuses the application, the applicant shall be entitled to have the application determined by the Court.

The contention of the appellants that there are no provisions governing applications for injunctions pending appeal where the plaintiffs case is dismissed has brought into question the extent of the jurisdiction of the High Court of Lagos and the need for the application of the provision of Order 7 Rule 36 of the Supreme Court Rules which reads:

Where no other provision is made by these Rules: the procedure and practice for the time being in force in the Court of Appeal in England shall a ply in so far as it is not inconsistent with these Rules and the forms in use therein may be used with such adaptations as are necessary. (Italics mine)

The contention that the High Court of Lagos has no jurisdiction to entertain the application is based on the premises that there is no specific statutory provision or Rule of Court conferring jurisdiction on the High Court to entertain such applications upon a dismissal of the substantive claim.

Whether this assumption has proper foundation in law will be examined later. However, the three issues raised by the appellants in their brief predicated on the above premises are

(1) Whether having regard to Order 7 Rule 36 the Federal Court of Appeal is bound as a matter of law by the decisions

of the English Court of Appeal on matters of practice and procedure of that court (except where there is inconsistency) or whether the Federal Court of Appeal follow instead the decisions of Judges of the English High Court on the same.

In my respectful opinion, this issue does not arise having regard to the express provisions of the Rule alluded to i.e. Order 7 Rule 36. There can be no question of abandoning the decisions of the Court of Appeal for that of the High Court on practice and procedure in situations that call for the application of the Rule.

The 2nd issue raised by the appellants is:

Because the majority opinion of the Federal Court of Appeal has based its decision on the main issue upon the scope of the statutory provisions and Rules of Court applicable to the High Court of Lagos State whether having regard to the decisions of the English Court of Appeal the power to grant interlocutory in junction conferred or declared by section 18 of the High Court Law and Order 39 Rule 12 of the High Court of Lagos (Civil Procedure) Rules also empower that court also to grant an injunction pending the determination of an appeal to the Court of Appeal when the plaintiffs\' case had been dismissed absolutely and without reservation by the High Court.

In the alternative

Whether provisions of section 18 of the High Court Law and of Order 39 Rule 12 make provision within the meaning of Order 7 Rule 37 of the Supreme Court Rules 1961, for the making of an application to the High Court for an injunction pending appeal by the plaintiff whose action has been dismissed absolutely by the High Court.

It appears from arguments put before us that counsel used the term \"dismissed absolutely\" to denote a situation where the action has been dismissed and the judgment enrolled in a drawn up order. Before us it was agreed by counsel on both sides that there was no drawn up order enrolling the judgment of the High Court.

It is also necessary to observe at this stage that the arguments of counsel both before the Federal Court of Appeal and before us proceeded on the assumption that the judgment had been enrolled in drawn up order and it is on that assumption that the issue is being further examined, counsel for the appellants having conceded that the High Court has jurisdiction before the enrollment of its judgment to entertain the application.

That a judgment can always be modified before it is drawn up or perfected is not open to debate. Jenkins. L.J. in Re Harrisons Settlement (1955) Ch. 260, observed at 276:

We think that an order pronounced by the Judge can always be withdrawn or altered or modified by him until it is drawn up passed and entered. In the meantime it is provisionally effective, and can be treated as a subsisting order in cases where the justice of the case requires it, and the right to withdrawal would not be thereby prevented or prejudiced.

and at pp.283-284, he concluded that

When a Judge has pronounced judgment, he retains control over the case until the order giving effect to his judgment is formally completed.

but advised that

The control must be used in accordance with the discretion exercised judicially and not capriciously.

See also the case of Asiyanbi v. Adeniyi (1967)1 All N.L.R. 82 at 86-87 where the Supreme Court approve the above passages.

Counsel for the appellants pointed out that the pith of the decision of the Federal Court of A p peal is that the p rovisions of Section 18 of the High Court of Lagos Law and of Order 39 Rule 12 of its Civil Procedure Rules setting out the powers of the High Court to grant interlocutory injunction in general and wide enough to include a power to grant an injunction

pending appeal to a plaintiff whose claim had been dismissed by it absolutely.

He submitted that the Federal Court of Appeal was in error in so holding for a number of reasons principal among which are the following:

(1) The Federal Court of Appeal had itself found in effect, that the statutory provisions and Rules of Court applicable in the High Court of Lagos and the High Court of Justice in England were in pan materia and that their jurisdiction was similar\"

(2) Having found that:

(i) there was no specific statutory provision or rule of court directly covering the situation that arose; and
(ii) the English statutory provisions and Rules of Court applicable were inpari materia with those in Nigeria.

the Court of Appeal should have considered itself bound to follow the decisions of the English Court of Appeal.

Sections 10 and 18(3) of the High Court of Lagos State Law are relevant to this consideration and in this regard it is desirable to advert to their provisions. Section 10 reads:

The High Court shall in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment possess and exercise within the limits mentioned in and subject to the provisions of the Constitution of the Federation and this enactment all the jurisdictions, powers and authorities which are vested in or capable of being exercised by the High Court of Justice in England.

and Section 18(3) of the High Court of Lagos Law reads:

If whether before or at or after the hearing of any civil cause or matter an application is made for an injunction to prevent any threatened or apprehended waste, or trespass the injunction may be granted if the court thinks fit whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.

Order 39 Rule 12 of the High Court of Lagos (Civil Procedure) Rules 1972 provides:

In any action or matter in which an injunction has been or might have been claimed, the plaintiff may before or after judgment apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right or arising out of the same contract and the court or Judge in chambers may grant the injunction either upon or without terms as may be just.

Section 2(1) of the Law (Miscellaneous Provisions) Law Cap. 65 Laws of Lagos State is also relevant to the question of jurisdiction under consideration. It reads:

Subject to the provisions of this section and except in so far as other provision is made by any Federal or State enactment, the common law of England and the doctrines of equity shall be in force in Lagos States.

An order of injunction is an equitable remedy formerly available in the High Court of Chancery. The present position in England is that the Supreme Court of Judicature Act 1873 (now re-enacted as section 18(1) of the Supreme Court of Judicature (Consolidation) Act 1925) vested all the jurisdiction exercisable by the High Court of Chancery prior to 1875 in the then newly created High Court of Justice in England.

Thus the High Court of Lagos from provisions of section 2(1) of the Law (Miscellaneous Provisions) Law and section 10 of the High Court of Lagos Law is vested with jurisdiction to administer rules developed by the Old High Court

of Chancery in England prior to the Judicature Act of 1873 and empowered to exercise all the powers formerly exercisable by that court.

The respondents\' counsel found himself unable to agree with appellants\' counsel contention and submitted that a court was absolutely dismisses a claim nevertheless has jurisdiction to entertain an application at the instance of the claimant for an injunction pending an appeal from an order of dismissal.

He gave a number of reasons principal among which is that jurisdiction to grant injunction has always been assumed to exist as part of the general jurisdiction exercisable by the courts and it does not derive from any statutory provision. He submitted that it is the same principle that underlies the grant of a stay of execution against a successful defendant. This is to prevent the appeal from being rendered nugatory by the activity of the initially successful party if he eventually loses in the contest before the Appeal Court.

Learned counsel for the appellants based his arguments principally on the authority of Wilson v. Church (1879)11 Ch. D. 576 and the Supreme Court Practice 1979.

He referred to the case of Otto v. Lindford (1881)18 Ch. D. 394 on the question of stay proceedings, distinguished it from this case and examined the cases of

London Railway Company v. The Great Northern Railway Company (1882-3)11 Q.B.D. 30;
Richardson v. Methey SchoolBoard (1893) 3 Ch. D. 510
Cummings v. Perkins (1899)1 Ch. D. 16

to show that the provisions of the Judicature Acts relating to power to grant interlocutory injunction did not give to any court any jurisdiction which no court had before but has only dealt with procedure by giving to one division the procedure of the other division.

He also cited the case of Galloway v. The Mayor etc. of London (1865) 45 E.R. 560, where the Court of Appeal in Chancery held that it was settled practice of the Court not to grant an injunction p ending appeal where the plaintiffs failed. Similarly, he cited Hyde v. Warden(1876)1 Ex 309 in support of a direct application to the Court of Appeal where the plaintiffs\' case was dismissed.

He distinguished the case of Polini v. Gray (1879)12 Ch. D. 438 where the Court of Appeal granted an order of injunction pending appeal to the House of Lords.

He submitted that the decisions of Megarry J. in Eringford Properties Ltd. v. Cheshire County Council (1974) Ch. 261 and Pennycuick, J. in Orion Property Trust Ltd. v. Du Cane Court Ltd. & Ors. (1962)1 W.R. 1086 cannot represent the law as the practice and procedure of the Court of Appeal in England.

Learned counsel for the respondents also referred to all the authorities cited by learned counsel for the appellants and more and dealt with them at length. These are:

(1) North London Railway Co. v. Great Northern Railway Co. (1883)11 Q.B.D. 30 at p.36 where Brett, L.J. observed:
I personally have very strong opinion that the Judicature Act has not dealt with jurisdiction at all but with procedure.

(2) Holmes v. Millage (1893)1 Q.B. 551 at 553. There, Lindley, L.J. observed:
Although injunctions are granted and receivers appointed more readily than they were before the passing of the Judicature Acts, and some inconvenient rules formerly observed have been very properly relaxed, yet the principles on which the jurisdiction of the court of Chancery rested have not changed.

(3) Eringford Properties v. Cheshire County Council (1974) Ch. 261. There Megarry, J. expressed the views which indicated that a party faced with a decision that no injunction should be granted pending trial can nevertheless apply that an injunction be granted pending an appeal from an order refusing the interlocutory injunction.

(4) Missini & Ors. v. Balogun (1968)1 All N.L.R. 318.

(5) Re Harrisons Settlement (1955) Ch. 260. There at page 267 Jenkins L.J. observed:

(6) Asiyanbi v. Adeniyi (1967) All N.L.R. 82 where the Supreme Court approved the passage just above cited.

(7) Polini v. Gray XII Ch. D. 438 where Cotton L.J. at 446 stated the principles on which the Court acts as follows:
It does so on the ground that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end and that being so, be there is reasonable ground of appeal, and if not making the order to stay the execution of the decree or the distribution of the fund would make the appeal nugatory.

(8) Orion Property Trust Ltd. v. Du Cane Court Ltd. (1962)1 W.L.R. 1085. There Pennycuick J. at p.1090 said:
The Court of first instance has jurisdiction to make an order preserving the subject-matter of the action in the appeal even though the action has wholly failed.

(9) Wilson v. Church (No. 1)11 Ch. D. 576 the authority on which appellant based his application.

(10) Galloway v. Corporation of London (1865)46 E.R. 560.

(11) Andler v. Duke (1932)3 D.L.R. p.210 a decision of British Columbia Court of Appeal referred to a collection of the old cases which hand down the principle that the court cannot exercise the jurisdiction to order an injunction pending an appeal if its order has been drawn up.

Finally, learned counsel for the respondents submitted that even if the older cases such as Galloway v. London Corporation were correctly decided they do no more than prescribe a rule of practice or guideline for the courts and accordingly, since the Judicature Acts of 1873-75, the provisions of section 25(8) of the 1873 Act are wide enough to be regarded as having effectively overruled the practice. He concluded his submission by saying that in the context of Nigeria it would mean that our courts ought not to follow the older cases by reason of section 18(1) of the High Court of Lagos Law. Section 18(1) of the High Court of Lagos Law reads:

The High Court may grant a mandamus (as defined in subsection (5)) or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

Recently in the case of Third Chandris Shipping Corporation v. Unimarine S.A. (1979)1 Q.B. 645, a case where Mustill, J. refused to discharge Mareva injunctions granted and the charters went on appeal to the Court of Appeal. Lord Denning M . R. dealing with the source of jurisdiction of the High Court of Justice to grant the injunctions said at p.666:

So I take it as established that the High Court has jurisdiction to grant a Mareva injunction in appropriate cases: and that it does so by virtue of the power conferred by Parliament in 1873, when it first established the High Court of Justice. It amended the previous law by expressly declaring in section 25(8) of the Supreme Court of Judicature Act 1873:

A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made.

This provision was re-enacted in 1925 in substantially the same words in section 45(1) of the Supreme Court of Judicature (Consolidation) Act 1925. This section is similar in terms to section 18(1) of the High Court Law Cap. 52 Laws of Lagos State 1973 already quoted above which strengthened by the provisions of subsections 2 and 3 removes all merit from this appeal.

It is refreshing to see how able learned counsel for both sides have dealt with the issues raised in the appeal. I venture to say that if our statute law has been more comprehensive, counsel would have been saved a lot of energy they have dissipated in the search for the answers to the issues raised in the appeal. I venture to say that if our statute law has

been more comprehensive, counsel would have been saved a lot of energy they have dissipated in the search for the answers to the issues raised in this appeal.

The main judicial authority on which counsel for the appellant relies is Wilson v. Church (No.1)11 Ch. D. 576.

An examination of this case does not support counsel\'s contention that where action has been dismissed absolutely, the court of first instance has no jurisdiction to grant interlocutory injunction. What are the facts' It appears that there were two actions - No.1 and No.2 - the plaintiffs in No.1 were not parties in action No.2.

The claim in action No.1 was for a declaration that trust fund of a large amount in the hands of trustees should be returned to the bondholders and not applied in payment of the works on the railway.

Four days after the commencement of the action No.1, action No.2 to which the plaintiffs in action No.1 were not parties claiming a declaration that the trustees might properly pay '7,266:10:40 out of the trust fund to the plaintiffs was commence.

In the action No.1 following an application for an interlocutory injunction to restrain the defendants, the trustees, parting with the funds, the trustees gave an undertaking not to part with any portion of the funds until the trial of the action without any direction of the court.

The actions were heard by Fry, J. In action No.1 he dismissed the claim with costs.

In action No. 2 he ordered that the trustees should pay the sum of '7,266: 10s:4d to the contractors.

The plaintiffs in No.1 appealed at once against the judgment and by special leave served notice of motion for an injunction to restrain the trustees from parting with any part of the funds in their hands until the hearing of the appeal and that the appeal be advanced.

The applications were granted by the Court of Appeal, Jessel, M.R. at page 578 observing that \"the action having been dismissed absolutely by Mr. Justice Fry, he has no jurisdiction to stay proceeding pending the appeal and this application for an injunction was properly made to the Court of Appeal.\"

Brett and Cotton, L.JJ. concurred.

Explaining this judgment in Wilson v. Church (No.2)12 Ch. D. 454, Cotton L.J. dealing with the application for stay of execution said at p.458:

But then there comes the question whether or not that part of the Order which directs the payment to the Bondholders should be stayed. I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal if successful is not nugatory and acting on that principle when there was an appeal to this court from the judgment of Mr. Justice Fry dismissing the plaintiffs action altogether, and it was therefore urged that this court ha no jurisdiction to stay the execution of the order we were of the opinion that we ought to stay the execution of a judgment in another action made by Mr. Justice Fry ordering the fund to be dealt with that is to say by granting an injunction to restrain them from parting with any portion of the fund in their hands till the appeal was disposed of Wilson v. Church 11 Ch. D. 576.

That possibly was rather novel but it was right in my opinion to make that order to prevent the appeal from being nugatory.\" Acting on the same principle, I am of the opinion that we ought to take care that if the House of Lords should reverse our decision (and we must recognise that it may be reversed) the appeal ought not be rendered nugatory.\" (Italics mine)

In the case of Otto v. Lindford (1881)18 Ch. D. 394, W. N. Lawson, counsel for plaintiff asked for leave to give short notice of motion to restrain the defendant from enforcing certificate for costs pending the appeal.

Jessel, M.R. asked: \"Have you applied to the Court below'\" To which counsel replied \"\'No.\' It is laid down in Wilson v. Church 11 Ch. D. 576 that where an action had been dismissed the court below had no jurisdiction to stay proceedings, and the application must be made to the Court of Appeal.\"

Jessel, M.R. then said at p.394:

That was a case of an entirely different description. The plaintiffs there were asking for an injunction to restrain the trustees from parting with the trust fund pending appeal. That was not an application to stay proceedings under the order appealed from for that order did not give any direction for dealing with the funds and the court having dismissed the action had no jurisdiction to grant such an injunction. In the present case, the plaintiff is seeking a stay of proceedings under the order appealed from which application the Vice Chancellor has jurisdiction to entertain and it ought to be made to him in the first instance.

And to drive the point home, Cotton, L.J. said at p.395:

I was also a party to the decision in Wilson v. Church 11 Ch. D. 576 and I agree with the view taken of it by the Master of the Rolls. I have no doubt that though an action be dismissed the court below can, pending an appeal, stay the doing of anything under that order of dismissal and I agree that the application for that purpose must be made to the Vice-Chancellor.

Brett, L.J. concurred.

The only other case I need refer to supporting the view that the court of trial or first instance has jurisdiction is the case of Polini v. Gray (1879-8012 Ch. D. 438. Briefly, the facts of that case are that a decree was made in three suits for the admimstration of the personal estate of an intestate directing the usual enquiry as to her next-of-kin. Sturla alleged, contrary to findings, t at she was next-of-kin and commenced an action and obtained in it an order granting an injunction to restrain any dealing with three shares which had not been sold and directing an inquiry as to who were the next-of-kin and this order was subsequently directed to be taken as made in the three suits as well as in the action. The Chief Clerk again found the Freccia family to be the next-of-kin. The action and a summons to vary the certificate were heard by the Vice-Chancellor who dismissed the summons and action, but contained the injunction in the three causes until further order. Sturla appealed and the court affirmed the decision of the Vice-Chancellor dismissing her bill but Sturla being about to appeal asked that the fund be protected.

The three Lord Justices who heard the application stated the principles on which the court acts in such matters fully and lucidly and it will be more instructive to set out the judgment fully.

The judgment of Jessel, M.R. at p.443 does not support the contention of counsel for the appellant. It reads:

The question before us is this. An action is brought to determine the rights of claimants to a fund. The plaintiffs fail in the court of first instance and in the court of second instance but are about bona fide to prosecute an appeal to the court of ultimate resort. The plaintiffs allege that the appeal will be nugatory if the fund is paid out to the defendants and that if the plaintiffs should ultimately succeed in the House of Lords, that success will be useless to them unless an interim order is made for p reserving the fund. I say they so contend, and assuming that contention to be correct whether the court has jurisdiction to prevent such a consequence. It appears to me on principle that the court ought to possess that jurisdiction because the principle which underlies all orders for the preservation of p property pending litigation is this, that the successful party in the litigation that is the ultimately successful party is to reap the fruits of that litigation and not obtain merely a barren success. That principle as it appears to me applies as much to the court of first instance as to the court of last instance before the hearing of the final appeal. The rule under the Judicature Act is Rule 3 of Order L. 11 which is this:

It shall be lawful for the court or a Judge upon the application of any party to an action, and upon such terms as may seem just to make any order for the detention, preservation or inspection of any property being the subject of such

action.

The terms in which the jurisdiction is conferred are general and unlimited. How that jurisdiction is to be exercised is a question of judicial discretion which must be guided by proper rules founded on principles. It is not every case in which a court or Judge should interfere. It is not to be said that when a party litigant has succeeded in the two courts, he is to be in the same position as if he has never succeeded at all.\" In my opinion, it requires a strong and more special case to induce the court to interfere against him on behalf of the other party than would have been required if there had not been any trial of the action. (Italics mine)

James, L.J. in his judgment at p.445 sounded a note of warning when he said:

What I have been afraid of is that it may be said to be a precedent for holding that if anyone applies for an injunction and obtains it, the injunction ought to be kept up as long as he can keep the litigation alive.

Cotton, L.J. observed at p.446:

I see no difference in principle between staying the distribution of a fund to which the court has held the plaintiff not entitled and staying the execution of an order by which the court has decided that a plaintiff is entitled to a fund. . . On what p principle does it do so' It does so on this ground that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so if there is any reasonable ground of appeal and if not making the order to stay execution of the decree or the distribution of fund would make the appeal nugatory . . . then it is the duty of the court to interfere and suspend the right of the party who, so far as the litigation has gone has established his rights.

That applies, in my Opinion, as much to the case where the action has been dismissed as to the case where a decree has been made establishing the plaintiffs\' title.\" (Italics mine)

Having examined the cases of

Wilson v. Church (No.1) (1879)11 Ch. D. 5760tto v. Lindford(1881) l8Ch. D. 394 Wilson v. Church (No.2) (1879)12 Ch. D. 454; and Polini v. Gray (1879)12 Ch. D. 438

I find myself in entire agreement with Megarry, J. when he said in Eringford Properties v. Cheshire County Council (1974)1 Ch. at 264:

At least at first sight the dicta support the view that a Judge who has dismissed an action has no jurisdiction to grant an injunction restraining the successful defendants from parting with the subject-matter of the action pending an appeal. The decisions on the other hand support the opposite principle. In the words of Pennycuick, J. in the Orion Case (1962)1 W.L.R. 1085, 1090, the effect of the principle is that

the court of first instance has the jurisdiction to make an order preserving the subject matter of the action in the appeal even though the action has wholly failed. (Italics mine)

Even the old case of Gallowaay v. Mayor of London (1865) 46 E.R. 560 decided by a panel of Lord Justices consisting of Knight-Bruce and Turner, L.JJ. the court refused the injunction reluctantly. Knight-Bruce, L.J. saying

I have at least as much inclination as plaintiffs\' application

and Turner, L.J. making the observation:

I confess however that on looking at the case of Oddie V. Woodford, I cannot but think that by reason of his dismissal of the Bill the power of the court is gone. I think that the plaintiff if he intended to appeal to the House of Lords ought at the hearing to have asked the court so to frame its order as to keep alive its jurisdiction pending the appeal. This not having been done we should be departing from what I understand to be the course and practice of the court if we were to grant

the plaintiff the injunction he asks.

The facts of the case are according to the reports, 46 ER. 560

A bill filed by the plaintiff to restrain the defendants from taking certain property of his under their statutory powers had been dismissed and the order of dismissal enrolled.

The order of dismissal in this matter before us has not been enrolled and, as already explained above, the practice and procedure in England has since the Judicature Act 1873-75 been modified by those Acts.

The question which which does not arise in this appeal but which is worthy of mention and consideration in the light of the arguments before, us is this:

Can the fact that an order of dismissal is enrolled deprive the court of first instance jurisdiction to entertain the application having regard to the Nigerian Constitutional provisions and other statutory provisions including those in the High Court Law and Rules of Court regulating appeals'

The right of appeal conferred by the Constitution of the Federal Republic and Constitutions of the States cannot tolerate drawn up and enrolled judgments and orders before the expiration of time limited for appeal for in my view the right cannot be properly and profitably exercised if drawn up and enrolled judgments and orders are signed before the time limited for filing Notice of Appeal expires. Fortunately, the Constitution of the Federal Republic is the Supreme Law of Nigeria and no rule of practice and procedure operating in the Court of Appeal in England can operate to deprive the High Court here in Nigeria of its jurisdiction to entertain applications for injunction pending appeal and frustrate the profitable exercise of the right of appeal conferred by the Constitution. See section 1 of the Constitution of the Federal Republic 1963.

Whichever way this matter is looked at i.e. from the provisions of English law as it stands today and from the provisions of the Nigerian law, the High Court of Lagos has jurisdiction to entertain an application for injunction pending the determination of appeal and by Rule 37 of Order 7 of the Supreme Court Rules 1961 such an application should in the first instance be made to the High Court and in the event of a refusal, the application can then be made to the Federal Court of Appeal.

The appellants having failed to make their application in the first instance in the High Court as directed by the Rules of Supreme Court, the Federal Court of Appeal was justified in striking out the application as being improperly before them.

This appeal fails and is hereby dismissed with costs to the respondents assessed at N322 (Three Hundred and Twenty-two Naira).

Judgement delivered by
Anthony Nnaemezie Aniagolu. J.S.C.

The matter on which this appeal was heard by us was subsidiary and ancillary to the main case whose appeal is not yet before us. In that main writ of summons the appellants had taken out, in the High Court of Lagos, an action calling for the court\'s declaration of six items; orders for return of movable property documents and payments of some sums of money; an Account of rents, royalties and other sums alleged due; and orders for injunction on four specific items. The High Court of Lagos dismissed all the various items of claims. The plaintiffs/appellants then applied to the Federal Court of Appeal directly, without first a p plying to the High Court of Lagos, seeking for an order of the Federal Court of Appeal for an injunction restraining the successful defendants/respondents, their servants or agents from:

(i) preventing the plaintiffs and those adhering to them from entering praying in and continuing to use the Mosques and other premises of the Ahmadiyya Movement-In-Islam which were occupied controlled and used by the plaintiffs as at the 24th of March, 1977 pending the determination of the appeal lodged herein

(ii) interfering with the existing arrangement for the conduct of Prayers and the administration of the Mosques and Schools belonging to the Ahmadiyya Movement-In-Islam occupied and controlled by the plaintiffs until the determination of the appeal lodged herein

(iii) changing the names, labels or titles of the Mosques and Schools controlled and used by the plaintiffs and those adhering to them pending the determination of the appeal lodged herein

(iv) damaging destroying or defacing the buildings or parts of buildings the subject-matter of this appeal pending the determination of the appeal lodged herein

(v) continuing the construction of the building of the Ahmadiyya Central Mosque at No.53/57 Ojo-Giwa Street until the determination of the appeal lodged herein.\"

Objection was taken by the defendants/respondents that the application before the Federal Court of A p peal was not competent since, pursuant to Order 7 Rule 37 of the Supreme Court Rules 1961, the application ought first to have been made to the High Court of Lagos before being brought before the Federal Court of Appeal. Order 7 Rule 37 provides as follows:

Wherever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, if the Court below refused the application, the applicant shall be entitled to have the application determined by the Court.

To this objection the plaintiffs/appellants countered by submitting that having dismissed the plaintiffs\' case absolutely ,the High Court of Lagos had no more jurisdiction to grant an order or entertain an application, for an injunction against the successful defendants pending the determination of an appeal lodged against the decision of the High Court. They argued that the appropriate Rule was Order 7 Rule 36 of the Supreme Court Rules 1961 which provides that:

Where no other provision is made by these Rules the procedure and practice for the time being in force in the Court of Appeal in England shall apply in so far as it is not inconsistent with these Rules, and the forms in use therein may be used with such adaptations as are necessary.

The majority Ruling of the Federal Court of Appeal (Aseme and Coker, JJ.C.A.) held that the objection of the defendants/respondents was well founded; that the application ought first to have been made before the High Court of Lagos which had the jurisdiction to entertain it and not having been so made, the application was not properly before the Federal Court of Appeal and must be struck out. The minority dissenting Ruling (Akinkugbe, J.C.A.) upheld the appellants\' contention that the High Court of Lagos was in the circumstances, without jurisdiction and therefore the application was properly brought before the Federal Court of A p peal which was properly seised with the matter. He therefore dismissed the defendants/respondents preliminary objection.

The issue therefore before us was whether

(i) The High Court of Lagos which dismissed the plaintiffs\' case in toto had jurisdiction to entertain the application of the said plaintiffs against the successful defendants for an injunction pending the determination of the plaintiffs\' appeal against the High Court\'s dismissal judgment; and if so whether

(ii) the plaintiffs ought not, pursuant to Order 7 Rule 37 aforementioned, to have applied first to the High Court of Lagos and if there refused, then to make their application to the Federal Court of Appeal.

The appellants formulated the issue in their brief as follows:

The main issue arising for determination in this Appeal is:

Whether the High Court of Lagos State which has dismissed the claim of the plaintiff absolutely has it (sic) jurisdiction to entertain an application against the successful defendant by the plaintiff for an injunction pending the determination of an appeal to the Federal Court of Appeal.

The appellants say the High Court has no jurisdiction in which case Rule 36 which refers us to the practice and procedure in England would apply while the respondents say it has jurisdiction and that it is Rule 37 which applies in which case the appellants must first apply to the High Court of Lagos. An examination of the source and extent of the jurisdiction of the Lagos High Court to grant injunctions, whether permanent or interlocutory, is compelled by the above contentions of the parties. But before this, it is well to bear in mind the general principle governing the jurisdiction of superior courts of Record. Although the limits of the authority of a court, be it a superior or an inferior court, are imposed by the statute, charter or commission under which the court is created or constituted and may be extended or restricted by similar means: it is the recognized general law that, prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless, on the face of the proceedings, it is expressly shown that the particular matter is within the cognisance of the particular court. Willes, J. emphasised this in his speech in the House of Lords in London Corpn. v. Cox (1867) L.R. 2 H.L. 239 at 262 in which he said:

If the decision were in favour of the plaintiff it is still not conclusive because the rule, that in inferior courts and proceedings by magistrates the maxim omnia praesumuntur rite esse acta does not apply to give jurisdiction, never has been questioned

The principle was applied in R. v. Judge Pugh Exparte Graham (1951)2 K.B. 623 where Lord Goddard cited and applied the above passage of Willes, J. And so, the principle enunciated way back in 1775 in Mosiyn v. Fabrigas (1775) Cowp. 161, Ex Ch.) still holds that an objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. In other words an objector to the general jurisdiction of a superior court must show what other court jurisdiction in the matter is reposed, otherwise the presumption is that the superior court has jurisdiction. Bearing the above in mind I will now proceed to have a critical look at the jurisdiction of the High Court of Lagos in relation too the arguments put forward m this appeal.

The jurisdiction of the High Court of Lagos is traceable, as a matter of legal history of this country, to the general jurisdiction granted to the Supreme Courts (as the High Courts in Nigeria were then known) by the Supreme Court Ordinance Cap. 211 Volume VI Laws of Nigeria 1948 which was

An Ordinance for the constitution of a Supreme Court of Justice for the Colony and Protectorate of Nigeria and for other purposes relating to the administration of justice in Nigeria.

and came into force on 1st June, 1945 having brought together earlier Ordinances No.23 of 1943 which repealed Chapter 3 of the 1923 edition and the Protectorate Courts Ordinance No.45 of 1933, and No.33 of 1943. Sections 11and 12 of the said Cap.211 spelt out the jurisdiction of all the Supreme Courts in Nigeria (now High Courts), including Lagos, in these words:

(11) The Supreme Court shall be a superior court of record, and in addition to any other jurisdiction conferred by this or any other Ordinance shall, within the limits and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities which are vested in or capable of being exercised by His Majesty\'s High Court of Justice in England.

(12) Subject to such jurisdiction as may for the time being be vested by Ordinance in native courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty\'s civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty\'s criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crime or offences or for the maintenance of order; and all such jurisdiction shall be

exercised under and according to the provisions of this Ordinance and not otherwise:

Provided that, except in so far as the Governor in Council may by order otherwise direct and except in suits transferred to the Supreme Court under the provisions of section 25 of the Native Courts Ordinance, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a native court nor in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

By section 14 of the Ordinance the Common Law, the doctrine of equity and the Statutes of general application which were in force in England on 1st January, 1900 were all made to be within the jurisdiction of the Courts. By section 18, the Supreme Court was empowered to administer L aw and Equity concurrently in the same manner as they were administered in the High Court of England. These powers included power to grant injunctions as equitable relief, whether simpliciter or as having the effect as a stay of execution and included an injunction which the Court, in its own discretion when asked by a party, was satisfied should be granted, in the interest of justice, having regard to the facts of a particular case: M. D. Ogbe v. Sam Warn Esi & Anr. (1943) 9 W.A.C.A. 76.

The powers of the former Supreme Court (now High Courts) in Nigeria continued to be governed by the laws aforementioned until 1955 when constitutional changes were made in the Country bringing in Regional Governments which ultimately came to be known as the Northern, Western, Eastern, Mid-Western and Lagos Regional Governments. The Supreme Court in Nigeria became known as the High Courts and each Region, including Lagos, enacted its High Court Law. This accounted for the emergence of the law establishing the High Court of Lagos then called the High Court of Lagos Ordinance Cap.80 contained in Volume III Laws of the Federation of Nigeria and Lagos 1958 which came into force on 31st December, 1955, and which was subsequently re-enacted and amended in several laws from 1958 to 1972 resulting ultimately, after the creation of States, in the High Court Law of Lagos State Cap.52 Volume III Laws of the Lagos State of Nigeria 1973 and the Law (Miscellaneous Provisions) Law ibid Cap. 65. Part 3 of the said Lagos High Court Law deals with jurisdiction and contains sections 10 to 27. But most relevant to this appeal are sections 10, 11(1)(a), and 18(1) and (3). For their relevance and importance I set out these sections:

10. The High Court shall, in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment, possess and exercise, within the limits mentioned in, and subject to the provisions of, the Constitution of the Federation and this enactment, all the jurisdiction, powers and authorities which are vested in or capable of being exercised by the High Court of Justice in England.\"

11(1) To the extent that such jurisdiction may be conferred by the legislature of the State, the jurisdiction vested in the High Court shall include -

(a) all the civil jurisdiction which immediately before the twenty-seventh day of May, 1967, was, or at any time thereafter may be, exercisable in the Lagos State, for the judicial hearing and determination of matters in difference, or for the administration or control of property and person:

18(1) The High Court may grant a mandamus as defined in subsection(5) or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(3) If whether before, or at, or after the hearing of any civil cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession un an claim of title or otherwise, or if out of possession) does or does not claim a right to do the act sought to b e restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

By section 13, Law and Equity are to be administered concurrently (as was provided for in the Old Supreme Court Ordinance) and by section 15, the rules of equity are to prevail when they are in conflict or at variance with the rules of common law.

Having regard to the provisions of the foregoing sections I am unable to accept, or appreciate, the argument p ut forward by Chief Williams in his brief-an argument by which he jettisoned his earlier submission before the Federal Court of Appeal-that the true source of jurisdiction of the High Court of Lagos to issue, inter alia orders of injunction, is to be found, not in the above sections of the High Court Law but in section (2)1 of the Law (Miscellaneous Provisions) Law Cap. 65 Laws of Lagos State. In the said brief before us at page 4 he wrote:

It will accordingly be respectfully submitted that the majority and minority decisions are both wrong to the extent to which they treat the statutory provisions or rules as sources of the jurisdiction of the court. The true source of jurisdiction would appear to be section 2(1) of the Law (Miscellaneous Provisions) Law Cap. 65 Laws of Lagos State) read along with sections 13 and 15 of the High Court Law.

In fairness to him he later, in his oral argument before us, conceded that his reference to the said Law (Miscellaneous Provisions) Law as the source of jurisdiction was wrong.

I am clearly of the view that without the Law (Miscellaneous Provisions) Law Cap. 65, the Lagos High Court had jurisdiction under sections 10, 11, 13 and 15 to make orders for injunction and other equitable reliefs and that their true source for the exercise of that jurisdiction was, and had been, the said High Court Law which gave them power to exercise the equitable jurisdiction exercisable by the High Court of England - a High Court which before the fusion of Law and Equity in England exercised, in Chancery, the equitable reliefs, and after the said fusion by the Judicature Acts, exercised the same concurrently with the rules of common law. For practice and procedure, section 12 of the High Court Law empowered the Court to have recourse to the Lagos High Court Law or the rules and orders made thereunder, but in the absence of any such provisions, to have recourse to the practice and procedure for the time being of the High Court of Justice in England. By section 10 of the High Court Law, the High Court was granted all the jurisdiction, powers and authorities which were vested in, or capable of being exercised by the High Court of Justice in England, in addition to any other jurisdiction conferred by the Constitution of the Federation, and by 5. 11(1)(a) all the civil jurisdiction which immediately before the 27th May, 1967 was, or at any time thereafter might be exercisable in Lagos State. Those powers clearly included power to grant injunctions. Specifically, s.18(3) gave the High Court power to grant injunctions, on applications \"whether before, or at, or after\" the hearing of any civil cause or matter, in order \"to prevent any threatened or apprehended waste or trespass . . . whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.\"

The Law (Miscellaneous Provisions) Law Cap. 65, among other things not relevant to our present consideration, made provisions for the extent to which the law of England (which had already been made applicable by s.10 aforementioned) shall in orce in the Lagos State. By section 2 thereof this limit was put at the first day of January, 1900. The common law of England and the doctrines of equity, together with statutes of general application which were in force in England as of that date were made applicable to the Lagos State. Laws of England which were enacted beyond that date were not to apply.

The Legislature, in its wisdom, had rightly felt that unless such a limit was p laced, Lagos State would then be governed, not by the laws of the Nigerian Legislature, but by those of the British Parliament, making nonsense of the whole concept of the independence of Nigeria, albeit, then, only internal self-government. By putting that ceiling of first January, 1900, the Law (Miscellaneous Provisions) Law (L.S.L.N. 16 of 1972) was not creating new jurisdiction of the Lagos High Court - jurisdiction already conferred in 1955 by the Lagos High Court Ordinance - but was merely spelling out the limit to which the laws of England. Which had been included in the jurisdiction of the High Court of Lagos, could be imported in the said jurisdiction. It could, therefore, not properly be described as the true source of the jurisdiction of the Court but as the law specifying the ambit of the incorporation of English law within the jurisdiction of the Lagos High Court. This limitation which Lagos had failed to insert in its original High Court Law in 1955 (thus necessitating in respect thereof the enactment of the Law (Miscellaneous Provisions) Law, 1972) had been common to the High Court Law of Eastern and Northern Regions of Nigeria (see: S.15(1) of the High Court Law of Eastern Nigeria Cap. 61 Volume IV Laws of Eastern Nigeria 1963; and s.28 of the High Court Law of Northern Nigeria Cap. 49 Volume II Laws of Northern Nigeria 1963).

In the case of Western Region the same omission as in Lagos was made in their original High Court Law. (See: sections 8,9 and 13 of the High Court Law of Western Nigeria Cap.44 Volume II Laws of the Western Region of Nigeria 1959.) So much for the source of the jurisdiction.

I now turn to the main issue in contention in this appeal, namely, whether the High Court of Lagos had jurisdiction to entertain and grant or refuse the
injunction application which Mr. Ajayi felt comnpelled, on his view of the state of the law, to make before the Federal Court of Appeal instead of first to the High Court. In this regard I must return to s.18(3) of the High Court Law of Lagos to emphasize the power of the Court as therein contained to grant injunctions

before, or at, or after the hearing of any civil cause or matter

Mr. Ajayi had argued, quite impressively, that the High Court having dismissed the plaintiffs\' case absolutely without reserving for itself any residual jurisdiction by leaving the door open by some special wording of its judgment, was functus officio and could not entertain an application for injunction against the defendants in whose favour it had dismissed the plaintiffs\' case especially so as the plaintiffs\' writ of summons was for several declarations, orders for account and payment of monies; and orders for permanent injunctions. He referred to the practice in England where applications could be made to the High Court until orders of the court are drawn up after which the court is no more seised with the matter.

Both Counsel agreed that in this case the High Court of Lagos had not drawn up any order an exercise which it could carry out under Order 37 of the Lagos High Court Rules Cap.52 Vol.111 Laws of Lagos State of Nigeria s.3. Mr Ajayi, however, argued that the effect was the same because the High Court dismissed their case absolutely and without any reservations. I must observe here that s.18(3) of the Lagos High Court Law does not contain words which have, or could be interpreted to have,a meaning containing this abridgement effect on the wide provisions of that section. Indeed, Order 39 of the High Court of Lagos State (Civil Procedure) Rules has provided for the procedure for making applications under s.18 of the High Court Law.

A resolution of the issue, and the contention, in this appeal must depend on the view one takes on, and a harmonisation of, the decisions in (among others) the earlier cases of Polini V. Gray (1879)12 Ch. D. 438; Wilson V. Church (No.1) (1879) 11 Ch. D. 576: Otto V. Lindford (1881)18 Ch. D. 394, and the later cases of O,ion Properly Ltd. V. Du Cane Court Ltd. & Other (1962)1 W.L.R. 1085 and Erinford Properties Ltd. V. Cheshire County Council (1974) Ch. D. 261 to which we have been referred. This Court is not bound by any of these cases which have been rightly persuasively cite d. They must however, be seriously considered especially so, as the provisions of s.18(3)of the High Court Law of Lagos are inpari materia with s.25(8) of the Judicature Act, 1873 (later replaced by s.45(3) of the Judicature Act, 1925 which by reason of the limit placed by the Law (Miscellaneous Provisions) Law, Cap. 65 hereinbefore stated, does not concern us here). The said s.25(8) of the Judicature Act, 1873 reads:

A mandamus or an injunction may be granted to a receiver a p pointed by an interlocutory Order oft he Court in all cases in which it sha a ear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Polini V. Gray and Wilson V. Church (No.1) were decided in 1879 while Otto V. Lindford was decided in 1881. The three were Court of Appeal decisions. On the other hand, Orion Property Trust Ltd. & Ors. V. Du Cane Court Ltd. & Ors. (hereinafter simply referred to as \"Orion\'s case\" and Erinford Properties Ltd. & Anor. V. Cheshire County Council (later herein referred to as \"Erinford case\") were High Court cases decided by Pennycuick, J. and Megarry, J. respectively.

Mr. Ajayi had submitted that the rationale of those Court of Appeal decisions was that where an order had been drawn up or where no order was drawn up but the case was dismissed absolutely, as in the instant appeal, the Court was functus officio and had no jurisdiction to entertain thereafter an application for an injunction, whereas the decisions in the two High Court cases was that the Court had jurisdiction to entertain such an application and, therefore, were in conflict with the Ap p eal Court decisions. In effect, he said, the High Court Judges had challenged the decision and authority of the Court of Appeal and in effect sat on appeal on the decisions of the said Court of Appeal -an impudent act which we must not allow to pass unrebuked. We must in any case, he said, ignore those High Court decisions since by the principle of judicial precedents these High Court Judges (and the the High Court of Lagos by reason of the provisions of the High Court Law of Lagos) were bound by those decisions of the Court of Appeal.

Mr. Ajayi appears to rely heavily (for his proposition that the High Court having dismissed the case absolutely it has no jurisdiction to entertain an application for injunction pending appeal) on a two-line sentence of Jessel M.R. in his very short judgment in Otto V. Lindford at p.395 where he said:

..... and the Court below having dismissed the action, had no jurisdiction to grant such an injunction.

Jessel, M.R. was referring to the earlier decision in Wilson V. Church (No.1) in which, he said, the plaintiffs were asking for an injunction to restrain the trustees from parting with the trust funds pending the appeal. He gave the ruling - again, a very short ruling - in Wilson V. Church (No.1) at page 578 and Brett and Cotton, LL.J. simply concurred. He had ruled that the action having been absolutely dismissed by Justice Fry, he (Fry, J.) had no jurisdiction to stay proceedings p ending the appeal, and the application for injunction was properly made to the Court of Appeal. This Ruling was made on 7th May, 1879.

The same three Justices together with James L.J. heard the application in Polini V. Gray: Sturla V. Freccia (referred to herein only as Polini V. Gray) two months after, on 23rd July, 1879. The first instance Court, presided over by the Vice-Chancellor, had continued the injunction to stop the distribution of the funds in litigation even though he dismissed the plaintiff\'s action. The four Justices of the Court of Appeal - this time in a lengthy Ruling - held he had jurisdiction and was justified in continuing the injunction. What Jessel, M.R. and Cotton, L.J. said in their Rulings showed clearly that they had not intended to say in Wilson V. Church, that the court had no jurisdiction. This is part of what Jessel, MR. said in his own Ruling:

It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party in the litigation, that is, the ultimately successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of Appeal before the second trial, as to the Court of last instance before the hearing of the final appeal.

Cotton, L.J. who had concurred with Jessel, M.R. in Wilson V. Church giving the impression in that case that he was of the view that the court had no jurisdiction, certainly gave lie to that impression in the following passage of his own Ruling:

I see no difference in principle between staying the distribution of a fund to which the Court has held the plaintiff not to be entitled, and staying the execution of an order by which the Court has decided that a plaintiff is entitled to a fund. In that case, as in this case, the Court, pending an appeal to the House of Lords, suspends what it has declared to be the right of one of the litigant parties. On what principle does it do so' It does so on this ground, that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree or the distribution of the fund would make the appeal nugatory, that is to say, would deprive the appellant, if successful, of the results of the appeal, then it is the duty of the Court to interfere and suspend the right of the party who, so far as the litigation has gone, has established his rights. That applies, in my opinion, just as much to the case where the action has been dismissed, as to the case where a decree has been made establishing the plaintiffs title.

I think, therefore, that there is jurisdiction to do what we are asked to do. (Italics supplied)

James, L.J.,was not a party to the Ruling in Wilson V. Church but agreed that the court had jurisdiction and expressed the view that the jurisdiction should be exercised in very special and exceptional circumstances. He said:

What I have been afraid of is that it may be said to be a precedent for holding that if anyone a p plies for an injunction and obtains it the injunction ought to be kept up as on as he can keep the litigation alive. If, however, it is distinctly understood that, as stated by the Master of the Rolls, that granting such an injunction pending an appeal is a thing to be done only under very special and exceptional circumstances, then probably the danger that I have been afraid of will not exist. Certainly, having regard to the cases cited today, I cannot adhere to my doubt as to the existence of the jurisdiction.

It is significant that three of the Justices - Jessel, M.R. Brett and Cotton, LL.J. - all sat in the three Rulings of Otto V. Lindford; Wilson V. Church and Polini V. Gray - Rulings from which it cannot be rightly stated that the Justices had decided that the first instance Court had no jurisdictidn to entertain application for injunction where the case had been dismissed absolutely.

On a calm and careful study of these cases, and also, if I may say so, the strong dissenting judgment in the Federal Court of Appeal of Justice Akinkugbe; having regard to the clear provisions of s.18(3) of the High Court of Law of Lagos with particular emphasis on the words \"before, or at, or after the hearing of any civil cause or matter . . .\"; and bearing in mind the general principle that to deny a High Court jurisdiction the words doing so in a Statute must be unambiguously clear otherwise jurisdiction is presumed, I respectfully agree with the view expressed by Pennycuick, J. in Orion\'s Case (1962)1 W.L.R. 1085 at 1090 that, \"the Court of first instance has the jurisdiction to make an order preserving the subject-matter of the action in the appeal, even though the action has wholly failed,\" and with the statement of Megarry, J. in Eringford Case that there is no real inconsistency in any of these cases.

It has been conceded by Mr. Ajayi that the High Court has jurisdiction to entertain a defendant\'s application for an injunction to restrain a successful plaintiff in an action for permanent injunction from enforcing the judgment
pending the defendant\'s appeal against the judgment. Mr. Ajayi, in effect, is asking us to place ourselves in the awkward position of having to state that the Court of first instance has jurisdiction to entertain an injunction application, of a defendant pending an appeal when the Court has given judgment for the plaintiff, but not an injunction application of the plaintiff, pending the determination of an appeal when the court has dismissed the claim. It appears to me incongruous and devoid of defensible principle that the jurisdiction of the Court is to depend invariably on the way the decision of the court goes, that is, if it is in favour of the plaintiff there is jurisdiction to entertain defendant\'s application for an injunction pending the determination of an appeal against the judgment but if the judgment is in favour of the defendant the court has no jurisdiction to entertain plaintiff\'s application for an injunction pending such an appeal against the judgment. Such a bifurcation of the court\'s jurisdiction, in my view, could not be the intention of the law as it now stands. It runs counter to the opmion of Cotton, L.J. in Polini V. Gray, hereinbefore cited. I am of the respectful view that the jurisdiction of the High Court of La Os exists in this matter, under its prevailing law, whether the application is ma e by the plaintiff or the defendant, and whether the order preserving the subject-matter of the action pending the determination of the appeal is made pursuant to an application the form of which is couched as an injunction or as a stay of execution. I therefore see no valid distinction to be drawn in respect of the jurisdiction of the Court where the application is for stay of execution as in Cropper V. Smith(1884) 24 Ch. D. 305, and where it is for an injunction as in Polini v. Gray.

Having agreed in this appeal with the conclusion of the majority, I cannot, however, do justice to the minority judgment (Akinkugbe, J.) without giving it some particular consideration. The minority judgment reasoned, and held that, on the decided cases, under s.25(8) of the Judicature Act, 1873 or s.45(3) of the 1925 Act, the Court has a duty to protect legal rights which have been established either at law or in equity and that a party whose case has been dismissed without any reservation, with costs against him, has nothing existing in the judgment to protect under the said sections of the Judicature Acts. A dormant right of a p peal is not such a right to be protected under the sections. Again, it reasoned and held that an application brought after an appeal has been lodged is not interlocutory qua the judgment appealed against.

On the issue of jurisdiction, citing Galloway V. The Mayor Commmonality And Citizens of London (1865) 45 E.R. 560

and other cases, the minority judgment came to the conclusion that in either case where the bill of the court had been enrolled or where a case has been dismissed without reservation, the court would have no jurisdiction to deal with an application for stay of execution or for injunction as the court would be junctus officio. The learned Justice of Appeal came to the conclusion that the High Court lacked jurisdiction in this matter. Indeed, he appeared to support the opinion which he cited, and which was expressed by Brett, L.J. in The North London Railway Company V. The Great Northern Railway Company (1882-3)11 Q.B.D. at p .36 that s.25(8) of the Judicature Act, 1873, did not confer any jurisdiction but dealt merely with procedure. The minority judgment further argued that in deciding those long line of cases - the earlier Polini V. Gray series and the later Orion and Eringford series - the Judges did not deal with s.25(8) of the 1873 Act and s.45(3) of the 1925 Act respectively, and since they could not have forgotten them or be unaware of them, they must have considered them as not being the foundation on which to found jurisdiction. Finally, the minority Justice expressed his inability to lay his hands on any local Nigerian decisions on the subject.

I have already dealt with most of the issues the minority judgment has raised. I wish, however, to point out, on the issue of jurisdiction, that s.25(8) of the Supreme Court of Judicature Act, 1873,36 and 37 Vict. Ch. 66 came under Part II of the Act headed \"Jurisdiction and Law\" and that the marginal note (although not part of the Statute) against sub-section 8, has it as \"injunctions and receivers\". The preamble to the said s.25 reads:

And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be in enacted as follows: (Italics supplied)

It is difficult to see, and I say so with much respect, upon the reading of the entire Act, Brett, L.J. could have had the \"very strong opinion that the Judicature Act has not dealt with jurisdiction at all, but only with procedure;\", when the entire Act dealt with the fusion of jurisdiction of the various courts. Be that as it may, s.18(3) of the Lagos High Court Law deals squarely with jurisdiction and there can be no doubt, in my view, on that. Indeed, both counsel had agreed, before the Federal Court of Appeal and before us, that in an appropriate case (the issue in the instant case is whether it is the appropriate case the High Court has jurisdiction under s.18(3) of the Lagos High Court Law to issue an order for an injunction after judgment in a case.

The final point is to consider locally decided cases of which the minority judgment did not take account, the learned Justice not being aware of them. Orion\'s Case was considered by the Federal Supreme Court in 1962 in Chief Ogunremi V. Chief Dada (1962)1 All N.L.R. 663 in which it was decided that the Western Region of Nigeria High Court, which had all the powers of the
High Court of England by reason of the provisions of s.8 of the High Court Law of Western Nigeria, had by reason thereof, inherent power, as a court of record, to stay execution of its own judgment pending an appeal to the Federal Supreme Court against the judgment. Therefore it was held that by Order VII Rule 37 of the Federal Supreme Court Rules the application for stay of execution must first be made to the said High Court before going to the Federal Supreme Court. Delivering the judgment of the Court - a judgment with which Taylor and Bairamian, F.JJ. concurred, Brett, F.J. held at p.672 that:

It also follows that if the High Court of any other territory in Nigeria has been vested with the jurisdiction, powers and authorities of the High Court in England it possesses the power to order a stay of its own judgment pending an appeal to this Court.

Ogunremi V. Dada was a case of an application for stay of execution pending appeal. Orion\'s Case which was for injunction was therein cited with approval and the power of the Court to order stay of execution pending a p peal was therein described as \"An allied power\" to that of injunction. In the case of Missini And Ors. V. Balo gun And Anor. (1968)1 All N.L.R. 318 it was, an application for injunction to restrain disposal of the assets of a company pending appeal. The application was made to the High Court of Lagos which dismissed it. An application by motion was then made to the Supreme Court which dismissed it on the merits. The Supreme Court did not question the power of the High Court to grant the application if the merits of the matter had justified its grant. Daniel Asiyanbi & Ors. V. Emmanuel Adeniji (1967)1 All N.L. R. 82 dealt with the power of the Supreme Court to vary its judgment after the formal order is drawn u p and it was therein held, whether under its inherent jurisdiction or under the rule of court, that it had no power

to vary its judgment by a subsequent formally drawn up order.

In the result, having held, in agreement with the majority judgment of the Federal Court of Appeal, that the High Court had jurisdiction to entertain and grant or refuse the appellants\' application for injunction pending the determination of the appeal filed against t judgment of the High Court, I rule that the Appellants were obligated to make the application first to the High Court under Rule 37 of Order VII. Not having done so the majority judgment of the Federal Court ofAppeal rightly, in my view, struck out the application as not having been properly brought before it. Accordingly, I would dismiss, and hereby dismiss, this appeal with N322 costs to the Respondents.

Judgement delivered by
Muhammadu Lawal Uwais. J.S.C.

This is an appeal from the majority ruling of the Federal Court of Appeal rejecting the application of the appellants which prayed for the grant of interlocutory injunctions against the respondents. The nature of the injunctions sought is to restrain the respondents as follows, p ending the determination of the appeal filed by the appellants in the Federal Court of Appeal:

(i) preventing the plaintiffs and those adhering to them from entering, praying in and continuing to use the Mosques and other premises of the Ahmadiyya Movement-In-Islam which were occupied controlled and used by the plaintiffs as at the 24th of March, 1977 pen in the determination of the appeal lodged herein

(ii) interfering with the existing arrangement for the conduct of Prayers and the administration of the Mosques and Schools belonging to the Ahmadiyya Movement-In-Islam occupied and controlled by the plaintiffs until the determination of the appeal lodged herein

(iii) changing the names, labels or titles of the Mosques and Schools controlled and used by the plaintiffs and those adhering to them pending the determination of the appeal lodged herein

(iv) damaging, destroying or defacing the buildings or parts of buildings the subject-matter of this appeal pending the determination of the appeal lodged herein

(v) continuing the construction of the building of the Ahmadiyya Central Mosque at No. 53/57 Ojo-Giwa Street until the determination of the appeal lodged herein

It is pertinent to mention that the application was sequel to the dismissal of the action brought in the High Court, Lagos State by the appellants against the respondents.

In their writ of summons as amended, the appellants, claims are -

1. A declaration that the resolution passed by the Executive Committee of the Ahmadiyya Movement-In-Islam on the 12th day of May, 1974 whereby it purported to change the name of the Movement to Anwar-Ul-Islam Movement is null and void and is not binding on the plaintiffs.

2. A declaration that the plaintiffs and those who adhere to them alone lawfully represent the Ahmadiyya Movement-In-Islam Nigeria and are entitled to the whole lands and property belonging to the said Movement within Lagos State as at the 11th day of May, 1974 which were held by and vested in the 1st defendants as Registered Trustees on behalf of the plaintiffs and those adhering to them as constituting the true and lawful Ahmadiyya Movement-In-Islam and that the defendants are bound to hold and apply the same on behalf of the plaintiffs.

3. A declaration that the plaintiffs and those adhering to them lawfully represent the Ahmadiyya Movement-In-Islam Nigeria and are entitled to all the funds and all the movable property of the said Movement as at the 11th day of May, 1974 and to have the same ap p lied for and on behalf of those adhering to them and that by adhering to a body known

as Anwar-Ul-Islam the 2nd, 3rd and 5th defendants and those adhering to them had become secedes from the Ahmadiyya Movement-In-Islam and had automatically ceased to be a member of the Ahmadiyya Movement-In-Islam.

4. A declaration that all property vested as at the 11th day of May, 1974 in the Registered Trustees of the Ahmadiyya Movement-In-Islam appointed in 1974 were vested and held by them for and on behalf of the Ahmadiyya Movement-In-Islam and that no part thereof can be lawfully diverted to the use of any other association not maintaining and adhering to the whole of the fundamental principles and tenets contained in the Constitutions (including the Conditions of Baist and the Articles of Faith) of the Ahmadiyya Movement-In-Islam without the unanimous consent of all the members of the Ahmadiyya Movement-In-Islam.

5. A Declaration that the former members of the Ahmadiyya Movement-In-Islam who had ahered to a body known as the Anwar Ul-Islam or who now so described themselves have thereby lost all beneficial right to such property of the Ahmadiyya Movement-In-Islam whether real or personal and that the 1st Defendant cannot lawfully apply the same for the benefit of such members of the Anwar-Ul-Islam or its members.

6. A declaration that the 2nd, 3rd and 5th defendants had before or on the 12th of May, 1974 become Apostates and thereby automatically ceased to be Members and Officers of the Ahmadiyya Movement-In-Islam Nigeria and that all acts performed as such thereafter are null and void and of no effect.

7. An Order for the return of all movable property documents (whether of title or not) Record, Account Books and papers belonging to the Ahmadiyya Movement-In-Islam which are or have been in the possession of the defendant.

8. An Order for the payments to the plaintiffs of all sums of money belonging to the Ahmadiyya Movement-In-Islam as at the 12th day of May, 1974 which the defendants have spent or utilised whether from its Bank Accounts or otherwise.

9. An Account of all rents, royalties or other sums of money received by the defendants in respect or on account of the properties, movable or immovable of the Ahmadiyya Movement-In-Islam including sums received on account of the operation of the Printing Press of the Movement.

10. Payment over to the plaintiffs of all sums found due.

11. An injunction restraining the 2nd defendant from entering or leading prayers in any of the Mosques belonging to the plaintiffs.

12. An injunction restraining the defendants their servants and agents from continuing to occupy or use or in any way interfere with the plaintiffs\' right to occupy and use all the properties real and personal, of the Ahmadiyya Movement-In-Islam.

13. An injunction restraining the 1st defendants and the 2nd to 7th defendants from applying the property of the Ahmadiyya Movement-In-Islam for the benefit of Anwar-Ul-Islam and from performing their duties as such otherwise than in accordance with directives of the plaintiffs or any Executive Committee appointed by it.

14. An injunction restraining the defendants from taking any steps to divest the plaintiffs of their properties or from taking any steps to effect the change in the name of the plaintiffs in respect or in relation to the plaintiffs\' properties.

Now to return to the motion before the Federal Court of Appeal. At the hearing of the application a preliminary objection was raised by learned counsel for the respondents to the effect that by virtue of Order 7 Rule 37 of the Supreme Court Rules, 1961 (applicable to the Federal Court of Appeal) the application was incompetent and ought to have been brought in the first instance in the High Court which dismissed the action since the High Court had jurisdiction to entertain such application. In reply learned counsel for the appellants argued that since the action brought by the appellants had been dismissed by the trial court in toto, the High Court, like the High Court in England, could not grant an order of interlocutory injunction against a successful plaintiff and therefore the application was competent before the Federal Court of Appeal by reason of Order 7 Rule 36 of the Supreme Court Rules, 1961, for in England the English

Appeal Court has jurisdiction to deal with the application.

In a dissenting ruling Akinkugbe, J.C.A. (as he then was) agreed with the submissions made by learned counsel for the appellants and overruled the objection; while Aseme and Coker, JJ.C.A. upheld the objection and concluded their ruling thus:

We have earlier referred to the provisions of s.18(3) of the High Court of Lagos Law and also Order 39 Rule 13 of the High Court of Lagos (Civil Procedure) Rules, 1972 and are of the view that there is nothing therein to justify the limitation of the jurisdiction of the High Court of Lagos to make an order of interlocutory injunction pending an appeal to this Court. It is sufficient for this reason to hold that this application contravenes Order 7 Rule 37 of the Supreme Court Rules. We are therefore of the view that this application is not properly before us and must therefore be and is hereby struck out.

The Notice of Appeal filed by the appellants contains five grounds of appeal which read as follows:

1. ERROR IN LAW:
Having held that the statutory provisions and the jurisdictions of the High Court in England and in Lagos State were similar the Federal Court of Appeal erred in law in not following the decisions of the English Court of Appeal on the practice and procedure relating to the court to which applications for injunctions pending appeal should be made when a plain-tiff\'s case has been dismissed when:

The Rules of Court applicable to the Federal Court of Appeal enjoin it to follow the practice for the time being applicable in the said Court.

2. ERROR IN LAW.
The Federal Court of Appeal erred in Law in holding that a plaintiff whose claim has been dismissed in the High Court cannot make an application for an injunction to restrain the successful defendant pending the determination of the appeal, to the Court of Appeal in the first instance when:

(a) There is no provisions in the Supreme Court Rules 1961 as to the Court to which an application should first be made.

(b) The practice in the Court of Appeal in England as shown by the decisions of that Court is that such an application should be made to the Court of Appeal in the first instance.

3. MISDIRECTION IN LAW
The Court of Appeal misdirected itself in law in holding that the case of Hyde v. Warden (1876)1 Ex D. 309 was not helpful and that it did not establish any principle of law when:

The same was Reported as authority for the proposition that the Court of Appeal can grant injunctions pending the determination of an A p peal even though no application for such Order had been made to the Court below.

4. MISDIRECTION IN LAW
The Court of Appeal misdirected itself in law when it held that the English authorities cited to it could only be a guide as to the interpretation of the law and practice if these provisions are similar to those of the English Courts when:

The decisions of the English Court of Appeal are binding in matters of practice and procedure on the Federal Court of Appeal in the absence of any provisions on the point in the Rules of Court applicable to the Court of Appeal.

5. ERROR IN LAW
The Federal Court of Appeal erred in law in holding that there was nothing to limit the provisions of S.18(3) and Order 39 Rule 12 of the High Court Law and High Court (Civil Procedure) Rules of Lagos State respectively so as to exclude power to make an order for interlocutory injunction pending Appeal where the plaintiffs\' claim has failed when:

(i) The object of these provisions were to preserve the rights of the parties to property either before adjudication thereupon by the Court or after the same shall have been established therein.

(ii) A Plaintiff whose case has been dismissed has no such rights to preserve under these provisions which the High Court can protect thereunder.

(iii) The established rule of practice in England which has the same statutory provisions is that it is only the Court of Appeal that can grant an injunction in the circumstances.

These grounds were all argued together by Mr. Ajayi, learned counsel for the appellants. The crux of his contention being that although it is a general and well established principle that courts should intervene to preserve the subject matter of dispute when necessary, not all courts in all circumstances have jurisdiction to apply the principle. He expatiated on that by saying that the court of first instance which dismissed an action can only grant an interlocutory injunction if such dismissal was not absolute or where the order on the judgment was not drawn up and enrolled. This point is based on. the practice in England. He is of the view, following the minority ruling of Akinkugbe, J .C. A. that section 18 of the High Court Law of Lagos State, Ca p .52 and Order 39 Rule 12 of the High Court of Lagos State (Civil Procedure) Rules,Cap.52 are similar in content to section 25(8) of the Judicature Act, 1873 of England and as such they do not confer any jurisdiction on the High Court which the High Court in England did not have before, 1873. He cited in support of this proposition a number of English authorities including The North London Rail way Company V. The Great Northern Railway Company (1882-3)11 Q.B.D. 30, Richardson v. Mathey School Board (1893) 3 Ch. D. 510, Cummings V. Perkins (1889)1 Ch. D. 16, Galloway V. The Mayor etc. of London (1865) 46 E.R. 560, and Otto V. Lindfcrd (1881)18 Ch. D. 394, and then referred to the erstwhile Order 58 Rule 16 of the English Rules of the Supreme Court which are in pari materia with Order 59 Rule 13 of the English Rules of the Supreme Court, 1965.

In his reply, Chief Williams learned counsel for the respondents drew an analogy between an application for stay of execution pending appeal and application for interlocutory injunction pending appeal. He said that while the former is usually asked for by an unsuccessful defendant the latter is available to a plaintiff whose claim is dismissed, so that both parties are placed on the same lane. He therefore submitted that the two are aspects of the same thing because they apply to the suspension of the rights of a successful party. He cited the following cases in support of the submission: Ogunremi V. Dada (1962)1 All N.L.R. 663 at pp.669 and 670, Vaswani Trading Corn v.Savalakh & Co., (1972)1 All N.L.R. (Part 2)483 at pp.487 and 488, Polini v. Gray 12 Ch. D. 438 at p.446 and Eringfords Properties Ltd. V. Cheshire C. C. (1974) Ch. 268.

Learned counsel then submitted further that there could be hardship and considerable delay in practical sense if one were to hold that only an appeal court as opposed to trial court could grant an injunction pending appeal, for unlike the trial court, an appeal court has to be acquainted with the facts of the case before it gets in a position to deal with the application.

It seems to me that the issue involves both questions of jurisdiction and procedure. It becomes necessary therefore to ask the question whether the High Court of Lagos State has the jurisdiction to grant an injunction pending appeal. Happily both learned counsel for the appellants and the respondents have conceded that the general jurisdiction to do so is vested in the High Court.

Sections 10 and 13 of the High Court Law, Cap. 52 together with section 2(1) of the Law (Miscellaneous Provisions) Law, Cap. 65 vest the High Court with the jurisdiction to inter alia grant injunction. These sections read:

10. The High Court shall, in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment possess and exercise, within the limits mentioned in, and subject to the provisions of, the Constitution of the Federation and this enactment, all the jurisdiction, powers and authorities which are vested in or capable of being exercised by the High Court of Justice in England.\"

13. Subject to the express provisions of any enactments, in every civil cause or matter commenced m the High Court law and equity shall be administered by the High Court concurrently and in the same manner as they are administered

by the High Court of Justice in England.\"

2.(1) Subject to the provisions of this section and except in so far as other provision is made by any Federal or State enactment, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the first day of January, 1900 shall be in force in the Lagos State.

The jurisdiction to exercise the powers possessed by the High Court in England is, as has been observe , and as relevant here, subject to the limitations and provisos I italicised in the sections quoted above.

Section 18 subsection (1) of the High Court Law, Cap. 52 specifically provides the High Court with the power to grant interlocutory injunction. This section in my view (notwithstanding the fact that section 25(8) of the Judicature Act, 1873 which is in pari materia with section 18 had been interpreted in England to the contrary) vests jurisdiction in the High Court and does not lay down the procedure for granting the injunction. Subsections (2) and (3) of section 18 however deal with the procedure by which the injunction may be granted. The section as relevant reads:

(1) The High Court may grant . . . injunction . . . by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(2) Any such order may be made either conditionally or on-such-terms and conditions as the court thinks just.

(3) If, whether before, or at, or after the hearing of any civil cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or if (out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable. (Italics mine).

The procedure laid down in section 18 subsection 3 is further made explicit by Order 39 Rule 12 of the High Court of Lagos State (Civil Procedure) Rules Cap. 52 which states:

In any action or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right or arising out of the same contract; and the Court or a Judge in Chambers may ~ant the injunction, either upon or without terms, as may be just. (Italics mine)

It follows from the foregoing that injunction could be applied for in the first instance in and be granted by the High Court \"after judgment\". With respect, nowhere in the Laws referred to or the High Court of Lagos State (Civil Procedure) Rules, is any limitation imposed either expressly or impliedly that no injunction could be granted by the High Court where its decision is \"absolute\" or where \"order is drawn up and enrolled\" after judgment. In fact the procedure of drawing up order as applicable to the High Court in England is
alien to the High Courts of this Country. To my knowledge it is not done in any of our courts.

Since the practice and procedure by which an interlocutory injunction may be granted is clearly stated and adequately provided in section 18 sub-section 3 of the High Court Law, Cap. 52 read together with Order 39 Rule 12 of the High Court of Lagos State (Civil Procedure) Rules, there is, in my opinion, no need whatsoever to have recourse to the practice in England; I am strengthened in this view by section 12 of the High Court Law, Cap. 52 which provides:

The jurisdiction vested in the High Court shall so far as practice and procedure are concerned, be exercised in the manner provided by this or any other enactment, or by such rules and orders of court as may be made pursuant to this or any other enactment, and in the absence of any such provisions in substantial conformity with the practice and procedure for the time being of the High Court of Justice in England. (Italics mine)

It is apposite to mention that Order 1 Rule 2(1) of the High Court of Lagos State (Civil Procedure) Rules, Cap. 52 states

that the provisions of section 12 apply to the Rules.

Finally, having been established that the High Court is competent to deal with the application and its jurisdiction to do so is concurrent with that of the Federal Court of Appeal, I am of the view that the preliminary objection raised by the respondents was well founded and the majority ruling of the Federal Court of Appeal was right in the light of the provisions of Order 7 Rule 37 of the Supreme Court Rules, 1961.

I will accordingly dismiss the appeal and it is hereby dismissed. Costs in favour of the respondents jointly are assessed at N322.