IN THE SUPREME COURT OF NIGERIA

Suit No: SC147/2002

Petitioner: The Attorney General of Lagos State
And
Respondent: Eko Hotels Limited,Oha Limited.

Date Delivered: 2006-09-22

Judge(s): Salihu Modibbo Alfa Belgore, Umaru Atu Kalgo, Niki Tobi, Mahmud Mohammed, Walter Samuel Nkanu Onnoghen.

Judgment Delivered

This is an appeal against the judgment of the Court of Appeal, Lagos Division in appeal No CA/L/222/2000 delivered on the 27th day of September, 2001 in which the Court dismissed the appeal and Cross-appeal for lack of merit.

The Respondents instituted an action in the Federal High Court, Lagos Division in suit No FHC/L/CS/1089/99 against the Appellants who were then the Defendants by way of originating summons in which the Plaintiffs sought the determination of the following questions:

1. Whether the statutory office of the Governor of Lagos State is vested with/seised of constitutional legislative, authority/vires to make subsidiary/delegated legislation which empowers the conduct of an inquiry into matters that pertain to the business - conduct of the sale of shares in a private limited liability Company deemed to have been incorporated under the Companies and Allied Matters Act (Cap 59), Laws of the Federation of Nigeria, 1990.

2. Whether the legislative appointment, constitution and empanelling of a Standing Tribunal of Inquiry into the Sale and Acquisition of shares in Eko Hotel in 1995 lately made by subsidiary/delegated legislation under the land of the Governor of Lagos State deserves to be adjudged invalid in this action on all or any of the following grounds:

(i) the subject matter content delegated to that quasi-judicial body/organ for inquiry;

(ii) the questioned jurisdiction/competence of the quasi-judicial body/organ empanelled to make the inquiry over its Terms of Reference subject -matter; and

(iii) the membership - composition of the quasi-judicial body/organ so empanelled to embark upon the inquiry.

The Plaintiff prayed the Court for the following reliefs: -

1. A declaration to the effect that in so far as Eko Hotels Limited is a private limited liability Company deemed to have been incorporated under the Companies and Allied Matters Act, (Cap. 59 Laws of the Federation of Nigeria 1990), only the National Assembly for The Federal Republic of Nigeria stands and remains vested with legally cognisable legislative powers, to the exclusion of the House of Assembly of Lagos State, to make, or to be deemed to have made, legislation (be this enabling legislation, or subsidiary legislation, or delegated legislation, or legislation of any other specie) that they may lawfully empower an inquiry into the establishment, the ascertainment, and the determination of all and any questions pertaining to the sale of shares in Eko Hotels Limited.

2. A consequential declaration to the effect that in so far as the Governor of Lagos State purports, by statutory instrument made under his land (on 20th August, 1999) to have passed subsidiary/delegated legislation (to wit, Lagos State Legal Notice No 10 of 1999) constituting, appointing, and empanelling a Standing Tribunal of Inquiry Into The Sale And Acquisition of shares of Eko Hotels in 1995 ostensibly/professedly in the exercise of powers thought to have been conferred upon his statutory office by the Tribunals of Inquiry Law/Cap. 190, Laws of the Lagos State of 1994), the said Lagos State Legal Notice No 10 of 1999 is null, void, and of no legal effect whatsoever; for inconsistency with adverse

provisions of the Constitution of the Federal Republic of Nigeria, 1999 (Promulgated by the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No 24 of 1999).

3. A declaration to the effect that in so far as the substantive subject-matter content of the Terms of Reference contained in Lagos State Legal Notice No 10 of 1999 (made on 20th August, 1999 under the hand of the Governor of Lagos State) purportedly constituting and empowering of quasi-judicial enquiry into all or any matters pertaining to the sale of shares in Eko Hotels Limited, a private limited liability Company, are matters-

'(2) arising from the operation of the Companies and Allied Matters Act ..... regulating the operation of ..... (a Company) ..... incorporated under the Companies and Allied Matters Act,'

Only the Federal High Court of Nigeria is vested with, and can exercise jurisdiction, to the exclusion of all other Courts and tribunals whatsoever including the Standing Tribunal of Inquiry Into The Sale And Acquisition of Shares of Eko Hotel in 1995 over the aforesaid subject-matter of the within-named statutory instrument Terms of Reference.

4. A declaration to the effect that in so far as the statutory instrument (to wit, Lagos State Legal Notice No 10 of 1999 dated 20th August, 1999) by which the Standing Tribunal of Inquiry Into The Sale And Acquisition of shares of Eko Hotel in 1995 purports to have been constituted (under the Chairmanship of a Serving Honourable Judge in the employment of the Judiciary in the public service of the Government of The Lagos State of Nigeria) was so constituted and made under the hand of the Governor of Lagos State, qua Chief Executive Officer of the Lagos State Government, in its continuing capacity as/of the minority share holding - owner of twenty-five (25) per centum of the paid-up capital in Eko Hotels Limited; the questioned Tribunal of Inquiry is aforesaid manner of constitution and empowerment into a quasi-judicial body and organ with vires, authority, and Terms of Reference that purport to enable it to enquire into, to deliberate upon, and to determine any questions pertaining to the Sale of Shares in Eko Hotels Limited, does not consummate an act of constitution of a Tribunal in a manner guaranteed to secure its independence and impartiality as against Oha Limited, the majority share holding - owner of seventy-five (75) per centum of the paid-up capital in Eko Hotels Limited, and/or against the said Eko Hotels Limited, the private limited liability Company the shares in whose capital from the subject-matter of the threatened inquiry.

5. Order(s) of Prohibition and Perpetual Injunction Prohibiting, restraining, and enjoining the Standing Tribunal of Inquiry Into The Sale And Acquisition of Shares of Eko Hotel in 1995 presently constituted and presided over by His Lordship, Justice Ayo Phillips, a serving Honourable Judge in the employment of/in the judiciary/the public service of the Government of Lagos State of Nigeria, and in addition/otherwise constituted with Messrs Dapo Durosinmi-Etti, Seyi Bickersteth, Fola Oyekan, and Eric Ekumankama as members, or by whomsoever else that Panel of Inquiry might hereafter be variously presided over and otherwise constituted, and whether holden at/sitting in its current Committee Room 2, Women Development Centre, Oba Ogunji Road, Ogba, Agege venue, or wherever else, from enquiry into and deliberating upon, or from continuing to enquire into and to deliberate upon, or from further enquiring into and deliberating upon, whether by compelling the attendance before it, under the potential penalty of corporal punishment for disobedience (by the issuance of witness summons(es) or Warrant(s) of Arrest, or howsoever otherwise) of functionaries of Eko Hotels Limited and Oha Limited to render assistance to it in its enquiries, deliberations, and determinations, or howsoever else, and/or from otherwise determining or from continuing to determine all and any questions concerning the procedural irregularity, the terms and conditions for the disposal, the fairness of the sale/purchase - price, the prior - approval for, the ownership structure of, the purchase of, and any and all other matters pertaining to the sale of shares in Eko Hotel Limited.

The facts of this case are not really in dispute. They include the following: -

Eko Hotels Limited was incorporated in 1972 as a private limited liability Company with the Appellant, the Lagos State Government owning the majority shareholding of 51% of the entire equity in the fully paid and issued capital while the 2nd Respondent, Oha Limited owned 49% thereof. This situation continued until the 30th day of January, 1997 when the Appellant, represented by the Military Governor of Lagos State and the Secretary to the Military Government by a Share Purchase Agreement disposed of 26% of the total number of shares owned by the Appellant in the 1st Respondent, Eko Hotels Ltd by sale to the 2nd Respondent - Oha Limited. By the said sale transaction, the Appellant became a minority

shareholder while the 2nd Respondent replaced the Appellant as the majority shareholder in the 1st Respondent.

However on the 23rd day of August, 1999 the Appellant published a Lagos State Legal Notice No 10 of 1999 setting up a Standing Tribunal of Inquiry Into The Sale And Acquisition of Shares of Eko Hotel in 1995, which year (1995) was subsequently corrected to read 1997 - see Lagos State Legal Notice No 87. The aforesaid Legal Notice No 10 of 1999 was made pursuant to powers conferred on the Governor of Lagos State by section 12 of the Tribunals of Inquiry Law, Cap 190, Laws of Lagos State of Nigeria, 1994.

The terms of reference of the Tribunal are stated therein as follows: -

1. To determine the regularity or otherwise of the procedure of sale of the shares.

2. To establish the terms and conditions under which the sale and disposal of the shares took place.

3. To ascertain whether the price of the shares was fair.

4. To determine whether the appropriate approvals were received for the sale and acquisition of the shares.

5. To ascertain the identity and the ownership of the Company that acquired the shares.

6. To make necessary recommendations to the Lagos State Government based on the Panel's findings.

7. To ascertain any other matter(s) that may be pertinent to this inquiry.

The panel was composed of five members with Hon. Justice Ayo Phillips (Mrs) as Chairman. The Panel, in the course of executing its duties issued summonses to four witnesses to appear before it; these were the Company Secretary, Eko Hotels Ltd, Mr Samuel Alabi, Mr. Olumide Adewunmi, Mr Richard Herb and Mr Mark Devroye, who were, apart from Mr Alabi, Director, Chairman and General Manager respectively of the 1st Respondent. The summonses warned the witnesses to attend the Tribunal proceedings, or 'fail at their peril.' The receipt of the summonses resulted in Counsel for the 2nd Respondent writing a protest to the Tribunal against the summonses issued to its officials and functionaries.

When the four witnesses so summoned by the Tribunal failed to attend the proceedings of that body on 2nd September, 1999, the Tribunal issued warrants of arrest against them as a result of which Mr. Alabi, the Company Secretary of the 1st Respondent was arrested and put in police custody and later produced before the Tribunal. It was at this stage that the Respondents filed the action at the Federal High Court, Lagos claiming the reliefs earlier reproduced in this judgment. The Federal High Court decided the matter in favour of the Plaintiffs and granted the reliefs claimed which decision resulted in an appeal to the Court of Appeal, Lagos Division which dismissed same for lack of merit. The present appeal is therefore a further appeal by the Appellants.

The issues for determination as distilled by learned Counsel for the Appellant, Oluseye Opasanya Esq in the Appellant's brief filed on 31/3/05 and adopted in argument of the appeal, are stated as follows:

1. Whether the terms of reference of the Tribunal of Inquiry complained about by the Respondents pertain to civil causes or matters arising from the operation of the Companies and Allied Matters Act.

2. Whether the Respondents had the necessary locus standi to maintain the action against the Appellant.

3. Whether the Tribunal of Inquiry Set up by the Appellant via Legal Notice No 10 of 1999 was a quasi-judicial body liable to an order of prohibition.

4. Whether the lower Court was right in holding that Legal Notice No 10 of 1999 was null and void having regard to its finding that terms of reference No 4 in said notice is within the internal affairs of Lagos State Government.

5. Whether the Lagos State Government can in 1999 validly set up a Tribunal of Inquiry pursuant to Tribunal of Inquiry Law, Cap 190 Laws of Lagos State to inquire into the conduct or affairs of persons who at all material times relevant to the enquiry were officers in the public service of the state.

On the other hand, learned Counsel for the Respondents, Babatunde Fagbohunlu Esq, in the Respondents' brief filed on 11/5/05 and also adopted in argument of the appeal, formulated four issues, which were substantially the same with the issues formulated by learned Counsel for the Appellant and reproduced supra. The said issues are as follows: -

'1. Whether the Court of Appeal was right to have held that the Tribunal of Inquiry into the sale of shares set up by the Lagos State Legal Notice No 10 of 1999 was a quasi-judicial body liable to judicial orders of prohibition.

2. Whether the Court of Appeal was right in holding that the Respondents had the necessary locus stand to maintain the action against the Appellant and to complain or institute the action regarding the summons to witness and warrants of arrest issued by the Tribunal of Inquiry.

3. Whether the Court of Appeal was right to affirm the decision of the trial Court by holding that the making of the legal Notice No 10 of 1999 as well as the composition and proceedings of the Tribunal of Inquiry are ultra vires, unconstitutional, null and void as the Lagos State Government has no legislative competence to prescribe the Terms of Reference prescribed for the Tribunal of Inquiry.

4. Whether the Court of Appeal was right in holding that the employees of the Respondents against whom the Tribunal issued and served summons(es) to witness and Warrant of Arrest are not officers in the public service of Lagos State who may lawfully be made subject to the Tribunal of Inquiry within the legislative intendment of the Tribunal of Inquiry Law, Cap. 190 Laws of Lagos State of Nigeria, 1999(1994).'

It is important to note that the Respondents did file a Cross-appeal against the said judgment of the Court of Appeal. In the Cross-Appellant brief also filed on 11/5/05, the following two issues have been formulated for determination:

'1. Whether the Court of Appeal was right to have held that the Lagos State Government is free to attempt to find out whether those who sold the shares had the required approval when the question whether required regulatory approvals were obtained is an item exclusively reserved for Federal Legislative competence under item 32 of the Exclusive Legislative List of the 1999 Constitution of the Federal Republic of Nigeria'

2. Whether the Court of Appeal was right to have held that the Tribunal of Inquiry was constituted in such a manner as secure its independence and impartiality''

Looking at the issues as formulated in the main appeal, it is my considered view that Appellant's issue No 2 ought to have come first while No 3 comes second to be followed by 1, 4 and 5. The above opinion is advised by the fact that since issue No 2 deals with locus standi of the Respondents to institute the action in the first place, it challenges the competence of the action so instituted and therefore it is a peripheral matter that ought to be discussed and determined first before proceeding to consider the substance or meat of the appeal. If at the conclusion of the discussion it is found that the Respondents have no locus standi, then the action is consequently incompetent and would be struck out thereby rendering any further consideration of the other issues unnecessary or an exercise in futility. On the other hand, if the determination of the issue is that the Respondents have locus standi, then the other issues would be considered and determined on merit. This approach is dictated by common sense. I will therefore treat the issues in the following order:

1. Whether the Respondents had the necessary locus standi to maintain the action against the Appellant.

2. Whether the Tribunal of Inquiry set up by the Appellant via Legal Notice No 10 of 1999 was a quasi-judicial body liable to an order of prohibition.

3. Whether the terms of reference of the Tribunal of Inquiry complained about by the Respondents pertain to civil

causes or matters arising from the operation of the Companies and Allied Matters Act.

4. Whether the lower Court was right in holding that Legal Notice No 10 of 1999 was null and void having regard to its finding that terms of reference No 4 in the said Notice is within the internal affairs of Lagos State Government.

5. Whether the Lagos State Government can in 1999 validly set up a Tribunal of Inquiry, pursuant to Tribunal of Inquiry Law, Cap 190 Laws of Lagos State to inquire into the conduct or affairs of persons who at all material times relevant to the enquiry, were officers in the public service of the State.

In arguing the present issue No 1, learned Counsel for the Appellant referred to the decision of the Court of Appeal at page 506 of the record in respect of his submission on the locus stand of the Respondents and submitted that there is nothing in the findings of the Court below to support the finding that the Respondents have locus standi to institute the action particularly as the law is that a Company has distinct and separate personality from its shareholders and officers and that the lower Court was wrong in holding that '.... such separate interest can converge and become one inseparable as was the case here,' that in any event, there is no evidence of such convergence before the Court; that the law enjoins the decision of the Court to be based on facts, not intuition or conjecture etc relying on Sagay vs. Sajere (2000) 2 NWLR (pt. 661) 360 at 370.

Learned Counsel further submitted that for a person to invoke the jurisdiction of the Court to determine the constitutionality of legislative or executive action, he must show that either his personal interest is adversely affected that his interest or injury is over and above that of the general public, for which Counsel cited and relied on Owodunni vs Registered Trustees of CCC (2000) 10 NWLR (pt.657) 315 at 338; Adesanya vs President of the Federal Republic of Nigeria (1981) 2 SCNLR 358 or (1981) 1 All NLR 1; Gamioba vs. Ezezi II, (1961) 2 SCNLR 237 or (1961) All NLR 608.

Learned Counsel further submitted that the persons who have any justiciable interests are those summoned by the Tribunal and not the Respondents and that the Respondents have separate interests and personality from those persons summoned by reason of incorporation relying on section 37 of Companies and Allied Matters Act a.k.a CAMA and Solomon vs. Solomon & Co. Ltd (1897) A.C 22. Learned Counsel further submitted that there is no evidence before the Court that the persons summoned were summoned in their capacity as representatives, agents and/or officers of the Respondent and urged the Court to resolve the issue in favour of the Appellant.

On his part, learned Counsel for the Respondents concedes that a Company's legal rights, obligations and interest are separate and distinct from that of its staff, officer and directors but submits that a Company being a corporate and artificial entity with no human personality is incapable of being summoned by a witness summons to appear before a Tribunal of Inquiry; that since a Company functions and operates through its staff, officers and Directors, these officials are by parity of reasoning answerable to any quarters for the Company's commissions and omissions, that evidence of the Respondents' locus standi to institute the action and the convergence of the separate interests abound in the record and that there is no other capacity in which the four witnesses would have been invited to appear before the Tribunal of Inquiry other than in their capacities as members of staff, officers, directors and directing minds of the Respondents, there being no evidence that the four witnesses had any dealings with the sale and acquisition of the shares of Eko Hotel in 1997 in their personal capacities, but that they are all officials of the Respondents, that there is evidence of the Respondents locus standi and convergence of the separate interests of the Respondents and those of the persons summoned by the Tribunal of Inquiry.

Finally learned Counsel submitted that the Respondents have shown sufficient interest and locus standi in the terms of reference of the Tribunal of Inquiry particularly as any of the determinations or recommendations which the Tribunal may make might one way or another have effect on their civil rights and therefore urged the Court to resolve the issue against the Appellant.

To resolve the issue under consideration, it is important to remind ourselves of the fact that the relevant facts of this case are not in dispute at all. From the terms of reference of the Tribunal of Inquiry earlier reproduced in this judgment, it is very clear that the subject matter of the inquiry is the sale and acquisition of some of the shares belonging to the Appellant in the 1st Respondent private limited liability Company by the 2nd Respondent yet learned Counsel for the

Appellant contends that the Respondents have no locus standi to institute the action claiming the reliefs earlier reproduced in this judgment. The shares of the Appellant in the 1st Respondent which were sold to and purchased by the 2nd Respondent resulting in the constitution of the Tribunal of Inquiry with the terms of reference earlier reproduced is said not to constitute sufficient interest of the Respondents in instituting the action or in other words in challenging the constitutionality of the constitution and jurisdiction of the Tribunal of Inquiry with the said terms of reference.

That apart, both parties agree that in law, the interests of a Company and its staff or officers etc are distinct and separate. However whereas learned Counsel for the Appellant contends that the lower Court erred in holding that in the instant case the interest of the staff or officials of the Respondents converge with those of the Respondents thereby conferring on the Respondents the locus standi to institute the action because, according to learned Counsel there is no evidence of such convergence thereby rendering the finding/holding speculative or a mere conjecture, learned Counsel for the Respondents has contended the contrary. It is not disputed that the immediate cause of instituting the action was the issuance of a warrant of arrests on Mr Alabi, the Company Secretary of the 1st Respondent and one of the four persons who are officers of the 1st Respondent summoned to appear before the Tribunal of Inquiry, and the actual arrest and detention of Mr. Alabi in police custody coupled with the fact that the said arrest and detention was in fulfilment of a warning or threat contained in the summons to the effect that failure to attend the Tribunal of Inquiry would be so visited. There is evidence that the four witnesses summoned by the Tribunal of Inquiry are officers of the 1st Respondent and that the 2nd Respondent is the person who purchased the shares resulting in the constitution of the Tribunal of Inquiry with the terms of reference. Also not disputed is the fact that a Company being an artificial entity with no human personality is incapable of being summoned by a witness summons; to appear and testify to any fact in issue or otherwise and that its operations are carried out by staff, officers, directors etc, such as the four persons summoned by the Tribunal of Inquiry who are in effect the directing minds of the Company and are therefore answerable for the companies acts of omissions and/or commissions. Yet learned Counsel for the Appellant argued that those persons served with the witness summons were not summoned as representatives of the Respondents. The question then is in what capacity were they then summoned and for what there being no evidence of what role they played as individuals and in their personal capacities in the sale and acquisition of the shares in issue neither are they alleged to be the purchasers thereof. I hold the view that it is in realization of these hard facts that the Tribunal of Inquiry issued and served the summons on the four officers of the 1st Respondent instead of directly on the Respondents. I hold the further view that the actualisation of the threat of punishment for failure to attend the Tribunal of Inquiry by arrest and detention of one of the witnesses so summoned is a direct pointer to the convergence of the interests of those so summoned and the Respondents. All are agreed that the 1st Respondent is the Company whose shares are the subject-matter of the Inquiry to be conducted by the Tribunal of Inquiry established by the Lagos State Government vide Legal Notice No 10 of 1999 while the 2nd Respondent is the majority shareholder of the shares of the 1st Respondent having acquired 26% of the shares of the Appellant and that the terms of reference of the Tribunal of Inquiry are concerned with the shares of the 1st Respondent particularly those purchased by 2nd Respondent from the Appellant. It is therefore very clear that the Respondents interests are squarely within the terms of reference of the Tribunal of Inquiry and that the determination or recommendation of the Tribunal of Inquiry on any of the terms of reference may one way or the other have effect on the civil rights and obligations of the Respondents and therefore I hold the view that the Court below is right in holding that the Respondents have locus standi to institute the action particularly as the interests of the staff or officials of the Respondents converge, in the instant case, with the interest of the Respondents. In consequence, I agree with the submission of learned Counsel for the Respondents on this issue and resolve the same against the Appellant.

On issue No 2 learned Counsel for the Appellant submitted that it is only a judicial and/or quasi-judicial body that is liable to an order of prohibition relying on LDPC vs. Fawehinmi (1985) 2 NWLR (pt. 7) 300 at 363 & 370 and Clifford v. O\'Sullivan (1921) AC 370 at 582; Electricity Commissioners (1924) 1 K.B 171 at 204-205; R v Legislative Committee of the Church Assembly (1928) 1 KB 411 at 416 and that the lower Court was in error in holding that the Tribunal of Inquiry is a quasi-judicial body particularly as the said finding was predicated on irrelevant considerations; that rather than the nature of the complaint against the Tribunal as held by the Court below determining the issue as to whether a body is judicial or quasi-judicial, it is the nature of the function of the statutory body that determines the issue relying on LPDC vs Fawehinmi supra at 332, 347, and 363 and that the function of the Tribunal of Inquiry in this case is merely investigatory and inquisitorial, particularly as section 14 of cap 190, Laws of Lagos State of Nigeria 1994 makes the findings of Tribunal subject to the decision of the Governor.

Learned Counsel further submitted that the combined effects of section 1 of cap 190 under which the Tribunal of Inquiry was set up and the terms of reference of the said Tribunal show that the function of the Tribunal of Inquiry is investigatory, advisory and inquisitorial in nature, and urged the Court to resolve the issue in favour of the Appellant.

On his part, learned Counsel for the Respondents stated that the Courts below have concurrently found that the Tribunal of Inquiry set up by the Lagos State Government is a quasi-judicial body liable to order of prohibition. Learned Counsel then submitted that there are several tests for ascertaining whether statutory functions of a body are of a judicial nature, which tests learned Counsel stated relying on De Smith's Judicial Review of Administrative Actions 4th Edition at page 80 to be (a) Conclusiveness (b) Trappings and Procedure and (c) Interpretation and Declaration and submitted that the Tribunal of Inquiry Law itself envisages the empanelling of a quasi-judicial body every time a Tribunal of Inquiry is constituted under the said law, that the act of ordering the arrest of a person who refuses to respond to witness is judicial in nature.

Learned Counsel further submitted that a proceeding may be subject to prohibition even though it is subject to confirmation or approval and the approval has to be that of the Houses of Parliament relying on Halsburry's Laws of England 4th edition vol. 1 paragraph 146; R v. Kent Police Authority (1971) 2 QBD 662. Finally learned Counsel submitted that from the facts of the case, the Tribunal of Inquiry was a quasi-judicial body liable to judicial orders of prohibition.

Learned Counsel further submitted that the Supreme Court will not normally interfere with the concurrent findings of facts of the lower Court except the Appellant has shown that the findings are perverse or were made erroneously or were arrived at through a wrongful evaluation of the facts or the applicable laws relying on Texaco Overseas (Nig) Petroleum Co. Unlimited vs. Pedmar Nigeria Ltd (2002) 13 NWLR (pt. 785) 526 at 546, that the Federal High Court found as a fact that the Tribunal of Inquiry was a quasi-judicial body based on affidavit evidence before it and that the said finding was confirmed by the Court of Appeal; that the question whether or not the Tribunal of Inquiry is a quasi-judicial body is a question of fact which the lower Courts had to inquire into and determine but Appellant has not put before this Court any facts or evidence to show that the concurrent findings of the lower Courts were perverse or were made erroneously and urged the Court to refrain from determining whether the Tribunal of Inquiry was a quasi-judicial body, the question having been concurrently determined by the lower Courts, and urged the Court to resolve the issue against the Appellant.

In the reply brief filed by learned Counsel for the Appellant on 20/5/05, learned Counsel reiterated the test for conclusiveness of the performance of the function of the statutory body by stating that the proper test is whether the performance of the function terminates in an order that has conclusive effect and that the terms of reference of the Tribunal of Inquiry does not contemplate issuance of an order by the Tribunal let alone an order with finality; that the decision in R. v Kent Police Authority supra, does not support the case of the Respondents; that the issue of the quasi-judicial character of the Tribunal of Inquiry is that of law not facts and that even though the lower Courts had reached concurrent decisions on the matter, it does not prevent this Court form exercising its own independent judgment in order to reach a correct decision; that in any event Appellant has shown sufficient cause why this Court should depart from the concurrent findings of the lower Courts.

I will commence the resolution of this issue by taking the sub-issue as to whether the concurrent findings by the lower Courts as to the quasi-judicial nature of the functions of the Tribunal of Inquiry is a finding of fact or law as contended by both Counsel before proceeding to determine the main issue as to whether the said Tribunal of Inquiry is a quasi judicial body, if need be.

It is not in dispute that the matter was instituted by way of an originating summons supported by affidavits filed by both parties in support of their contending positions. It is also not disputed that before the trial Court arrived at the decision that the Tribunal of Inquiry was a quasi-judicial body, it evaluated the affidavit evidence produced by both parties on the issue before making the finding that the said Tribunal of Inquiry is a quasi-judicial body. Having regard to the facts of this case I agree with learned Counsel for the Respondents that the question as to whether or not the Tribunal of Inquiry is a quasi-judicial body is a question of fact which the trial Court and the Court of Appeal had to enquire into and duly determined, based on the facts as contained in the affidavit evidence on record. I hold the further view that the findings

qualify in law to what we term concurrent findings of facts which the law has further settled that this Court will not normally interfere with unless the Appellant satisfies this Court that the findings so made by the lower Courts are perverse or were made erroneously or were arrived at through a wrongful evaluation of the facts or the applicable law. Learned Counsel for the Appellant has submitted that this Court has held that it is at liberty to exercise its independent judgment to construe the true meaning of a document and that the grounds of appeal pertaining to this involve a question of law, inspite of the concurrent conclusions of the High Court and the Court of Appeal on the same meaning relying on the case of Nwadike vs. Ibekwe (1987) 4 NWLR 718 at 744 and Ogbonna vs. A-G Imo State (1992) 1 NWLR 647 at 677. I must hasten to state that though what learned Counsel has stated supra represents the correct statement of the law, it is my considered opinion that the principles of law so stated relate to construction or interpretation of the true meaning of a document and does not extend to a determination of the status of a statutory body as to whether it is an administrative, executive or judicial or quasi judicial body for the purposes of the exercise of the High Court's supervisory jurisdiction of judicial review of the actions and decisions of such bodies, which is one of the primary issues in the instant case.

The next sub-issue for determination is whether learned Counsel for the Appellant has shown sufficient cause why this Court should depart from the concurrent findings of the two lower Courts on the question of quasi-judicial status of the Tribunal of Inquiry. The answer to that is clearly in the negative particularly as in no where in the briefs of the Appellant has learned Counsel for the Appellant demonstrated that the findings of fact by the lower Courts is perverse or was made erroneously or was arrived at through a wrongful evaluation of the facts disclosed in the affidavits or the applicable laws thereto as laid down by this Court.

By the way, is it not now anachronistic for one to continue to propound the dichotomy between judicial/quasi-judicial and administrative or executive bodies for the purposes of judicial review particularly when all such bodies are now required to observe the rules of natural justice in the discharge of their duties' See the case of Ridge vs. Baldwin (1964) A.C. 40 and others, which decided that if a Tribunal of Inquiry in the exercise of its power to investigate and recommend, determines questions that affect the rights of individuals or I may add, corporate entities, it is under a duty to act judicially and is thereby subject to judicial review. For instance in the case of R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1924) 1 K.D. 171 where the Electricity Commissioners were empowered by statute to formulate schemes for the improvement of electricity supply, and to hold local inquiries for the purpose and any order made by the said commissioners could not take effect until confirmed by the Board of Trade and then approved by resolution of both Houses of Parliament, which make their determinations purely recommendatory and inconclusive in nature, the English Court of Appeal held that Prohibition would nevertheless lie against the body because it was bound to observe the rules of natural justice. At pages 206 to 207 of Lord Atkins had these to say.

'In the present case the Electricity Commissioners have to decide whether they .... Constitute a joint authority in the district in accordance with law, and with what powers they will invest that body ..... The Commissioners are proposing to create such a new body in violation of the Act of Parliament and are proposing to hold a possibly long and expensive inquiry into the expediency of such a scheme, in respect of which they have the power to compel representatives of the prosecutors to attend and produce papers. I think in deciding upon the scheme, and in holding the inquiry, they are acting judicially .....'

When one looks at the provisions of section 14 of Cap 190 of the Laws of Lagos State of Nigeria 1994 - the Tribunals of Inquiry Law which provides inter alia as follows: -

'14 (1) A Tribunal shall make and furnish to the Governor a full report in writing of its proceedings, findings and recommendations and record an opinion and reasons leading to its conclusion .....

(2) The Governor may, if he is of the opinion that it is necessary so to do, make any order in relation to any property or other matter dealt with in the report; and such order when made may be delivered to the Registrar of a High Court (which order the Registrar is empowered and required to receive and register without payment of fee) and when so delivered the order shall have effect as a judgment of that High Court and may be enforced accordingly but shall not be reviewed in any Court by prerogative order or otherwise howsoever and no appeal shall lie thereon.'

One becomes very sad indeed.

The law arrogates to the Governor of Lagos State judicial powers equivalent to the powers exercisable by a High Court in its judgment but unlike the High Court Judges' decision which is constitutionally subject to appeal not only by the loser put also an interested party, the decision of his counterpart, the Governor of Lagos State, is not subject to appeal - it is as it were final, not even the Supreme Court of Nigeria can take a look at it! It is with this background knowledge that the submission of learned Counsel for the Appellant that the Tribunal of Inquiry set up under Legal Notice No 10 of 1999 and as empowered by Cap. 190 of the Laws of Lagos State of Nigeria 1994 is administrative and therefore not subject to judicial review by way of an order of prohibition becomes very worrisome indeed particularly as it is a sure way to enthrone dictatorship of the highest order in a democratic society governed by Constitution and the rule of law. Learned Counsel for the Appellant wants a stamp of approval for his submission, which I am sure, he can never have from any civilized and modern judiciary. To hold that the Tribunal of Inquiry is an administrative body not subject to judicial review will make the recommendations or decisions or whatever of that body if accepted or approved by the Governor not subject to judicial review or appeal, thereby leaving those who are dissatisfied with such decision, recommendations with no legal remedy but a recourse to possible self help which amounts to an open invitation to anarchy. I must state that section 14 (2) of Cap 190 of the Laws of Lagos State of Nigeria is glaringly unconstitutional.

So, in any way one looks at the issue under consideration, it must fail woefully and I hereby resolve same against the Appellant.

On issue No 3 learned Counsel for the Appellant submitted that though section 251(1) (e) of the 1999 Constitution vests exclusive jurisdiction in civil causes or matters arising from the operation of the Companies And Allied Matters Act on the Federal High Court, it does not imply that the Court has jurisdiction over every matter or cause relating to or connected with a limited liability Company contrary to the decision of the lower Court; that the jurisdiction so conferred does not extend to a dispute arising from ownership of shares in a limited liability Company. Learned Counsel then proceeded to define the phrase 'arising from' as well as the word 'operation' as used in section 251 (i) (e) of the 1999 Constitution and urged the Court to adopt the definitions and consequently hold that the sale of shares of the Appellant in the 1st Respondent is not a cause or matter arising from the operation of the Companies And Allied Matters Act a.k.a CAMA; that the questions for determination and the reliefs claimed clearly show that the action is not about the management of the 1st Respondent and or assets of 1st Respondent but the constitutionality of legal Notice No 10 of 1999 vis-a-vis item 32 of the Exclusive Legislative List; that whereas item 32 confers power on the National Assembly to legislate on 'incorporation regulation and winding up of bodies corporate .....' the Legal Notice in issue does not directly or indirectly deal either with incorporation, regulation or winding up of the 1st Respondent. Learned Counsel then submitted that it is rather the State High Court that is clothed with jurisdiction in this case. Learned Counsel further submitted that the Respondents' attack on the Legal Notice in issue was not predicated on whether or not the Notice as a subsidiary legislation is cognizable under the provision of section 1(i) of the Tribunals of Inquiry Law Cap. 190, Laws of Lagos State 1994 but on sale of shares of the Appellant in the 1st Respondent and therefore that the question as to whether the Tribunal of Inquiry was set up to inquire into any of the matters stated in section 1(i) of Cap 190 is academic and irrelevant; that assuming without conceding that the question is relevant, the existence of any of the factors contained in section 1(i) is sufficient to sustain and justify the validity of Legal Notice No 10 as a subsidiary legislation under Cap 190; that the view of the lower Court that each of the terms of reference except the 4th deal directly or indirectly with the incorporation and regulation of bodies corporate is not justified by the facts and evidence before the Court, and urged the Court to resolve the issue in favour of the Appellant.

On his part, learned Counsel for the Respondents conceded that the making of the Legal Notice No 10 of 1999 in exercise of the powers conferred on the Governor of Lagos State by section 1(i) of Cap. 190 is not ultra vires, unconstitutional, null and void but submitted that to the extent that the Tribunal of Inquiry empanelled; by the said Legal Notice No 10 of 1999 purports to go outside the parameters of persons and functions prescribed in section 1 of the law to conduct an enquiry, the making of the Legal Notice in question is ultra vires the powers of the Governor, unconstitutional, null and void. Learned Counsel then proceeded to set out the terms of reference of the Tribunal of Inquiry and submitted that the central motive behind the empanelling of the Tribunal of Inquiry was the sale and Acquisition of the shares of Eko Hotels Ltd which were sold by the Lagos State Government to the 2nd Respondent in 1997.

Referring to the terms of reference No 1, learned Counsel submitted that since the Articles of Association of the 1st Respondent permits transfer of shares between shareholders and constitutes the contract governing the relationship between shareholders, any infraction of such articles may confer on the shareholder who is adversely affected, a right of action; that where any shareholder perceives that shares were transferred in an irregular manner, the Companies and Allied Matters Act is the legislation to which recourse must be had and that the forum for resolving such dispute is the Federal High Court as provided in section 251(1) (e) of the 1999 Constitution and section 50 of the Companies and Allied Matters Act.

As regards term of reference No 2, learned Counsel submitted that Appellant is deemed to be conversant with the terms and conditions under which the sale and disposal of the shares took place and that in any event, any query into the sale and disposal of shares in a private Company limited by shares is governed by the Companies and Allied Matters Act. On the third term of reference, learned Counsel submitted that the terms of reference which calls on the Tribunal of Inquiry to determine the adequacy of the consideration received by Appellant when it sold the shares smacks of inequity for Appellant who voluntarily sold its shares to revert, four years after the transaction to a Tribunal of Inquiry to determine the fairness or otherwise of the price.

On the fourth term of reference, learned Counsel submitted that the lower Court was right in holding that the proper place to find out whether approval of the Lagos State Executive Council was obtained prior to the sale is by looking at the relevant minutes of that council and not by constitution of a Tribunal of Inquiry but that the lower Court erred in not considering and deciding that another approval allegedly not obtained as canvassed by the Appellant is that of the Security and Exchange Commission since the 2nd Respondent who purchased the shares is a foreign Company and legally needed the approval, that if this aspect had been taken into consideration by the Court it would have seen that such an approval is not within the legislative competence of the Lagos State Government the matter being within the Exclusive Legislative List and thereby rendering nugatory the subsidiary legislation which concerned the regulation of a corporate body, an item under item 32 of the Exclusive Legislative List.

On term of reference No 5, learned Counsel submitted that the identity of the purchaser of the shares was known to the Appellant and that in any event such information can on request be obtained from the Corporate Affairs Commission, Abuja.

On the 6th and 7th terms of reference learned Counsel stated that since the terms are predicated on the outcome of the findings of the Tribunal of Inquiry on the 1st - 5th terms of reference and the Tribunal of Inquiry never made any findings in respect of those terms or at all before the action was instituted, they cannot be considered, but concluded that since three of the terms of reference come within the purview of the Companies and Allied Matters Act while the other two concern matters which were or should already be in the possession of the Appellant, the establishment of the Tribunal of Inquiry to enquire into such matters was unnecessary.

Turning to the legislative competence of the Governor of Lagos State to make subsidiary legislation, learned Counsel submitted that such competence is limited to the ambit of the powers vested in the Concurrent Legislative List of the 1999 Constitution which does not include powers to legislate on matters within item 32 of the Exclusive Legislative List and as such lacked the vires to make the subsidiary legislation which concerned the regulation of a corporate body and urged the Court to resolve the issue against the Appellant.

Now section 20 of the Tribunal of Inquiry Law, Cap 190 of tie Laws of Lagos State under which the Governor of Lagos State constituted the Tribunal of Inquiry in issue provides that:

'The powers conferred by this Law upon the Governor may be exercised by him in respect of any matter within the legislative competence of the Lagos State.'

Both Counsel agree that the Governor of Lagos State has the legislative competence to make a subsidiary legislation as empowered by section 1(i) of the Tribunals of Inquiry Law, Cap 190, Laws of Lagos State, 1994. The dispute however, is whether Legal Notice No 10 of 1999 made by Lagos State Governor under the Tribunals of Inquiry Law is an invasion of

the exclusive legislative domain of the National Assembly as the Notice is alleged to have been made on a matter contained in item 32 of the Exclusive Legislative List of the 1999 Constitution.

Item 32 of the said List provides as follows: -

'Incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any law enacted by a House of Assembly of a State.'

The question is whether Legal Notice No 10 of 1999 can be said to be on incorporation, regulation and winding up of bodies corporate so as not to be within the legislative competence of the Lagos State Governor to make. The term regulation is defined in Black's Law Dictionary 8th Edition page 1311 inter alia as:

'The act or process of controlling by rule of restriction.'

From the terms of reference as contained in the Legal Notice No 10 of 1999, the Tribunal of Inquiry is to carry out the duties in relation to the sale and acquisition of the shares of the Appellant in the 1st Respondent, a private limited liability Company incorporated under the Companies and Allied Matters Act Cap 59, Laws of the Federation, 1990. It is the contention of learned Counsel for the Appellant that the matter is simply a transaction of sale of shares which have nothing to do with the regulation of the Company neither is it within the term 'arising from the operation' of the Companies and Allied Matters Act so as to confer exclusive jurisdiction on the Federal High Court - as provided under section 251 (i) (e) of the 1999 Constitution.

When one looks at the provisions of the Companies and Allied Matters Act particularly sections 151 to 157 thereof which deals with and makes provisions for transfer and transmission of shares of a Company and how such transfers can be entered in the register of transfers, it becomes very clear that Legal Notice No 10 of 1999 deals with matters 'arising from the operation' of the Companies and Allied Matters Act and as such only the Federal High Court has exclusive jurisdiction to entertain the suit. The sections of the Act referred to supra provide for what is to be done for a transfer of shares of a Company to be effective 'not withstanding anything in the Articles of a Company.' I hold the view that one of the ways a transfer of shares of a Company can be effected is by sale and since the Tribunal of Inquiry was constituted to investigate among others the sale of shares it falls within the operation of the Companies and Allied Matters Act, contrary to the submission of learned Counsel for the Appellant.

At this stage, let me reproduce section 151 of Cap 59, Laws the Federation 1990.

151. (1) The transfer of a Company's share shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restrictions.

(2) Notwithstanding anything in the articles of a Company, it shall not be lawful for the Company to register a transfer of shares in the Company, unless a proper instrument of transfer has been delivered to the Company:

Provided that nothing in this section shall prejudice any power of the Company to register as shareholder, any person to whom the right to any shares in the Company has been transmitted by operation of law.

(3) The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the share.

(4) Subject to such of the restrictions of a Company's articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

From the provisions of sub-section 1 of section 151, it is very clear that the question of the validity or otherwise of a transfer of shares by sale as in the instant case is within the operation of the Act. Also from the provisions of the

sections of Cap 59 earlier referred to, it is obvious that Legal Notice No 10 of 1999 is a subsidiary legislation, which concerned the regulation of a corporate body contrary to item 32 of the Exclusive Legislative List and to that extent unconstitutional, null and void. I therefore resolve issue 3 against the Appellant.

On issue No 4 learned Counsel for the Appellant submitted that the lower Court erred in holding that the Legal Notice No 10 was invalid having regard to the fact that the same Court had held that the terms of reference No 4 'is an internal affairs of the LSG' and should have been sufficient to validate Legal Notice No 10 of 1999 particularly as the Lagos State has the competence to inquire into any cause arising from its internal affairs and that the said term of reference No 4 is severable from the other terms of reference and that the lower Court ought to have applied the blue pencil rule to strike out only the portions affected and pronounce the Legal Notice valid relying on A-G Ondo State vs. A-G Federation (2002) 9 NWLR (pt. 772) 310 at 344, 420, 474; A-G Abia State vs. A-G Federation (2002) 3 SC 106; that the power to compel attendance of witnesses is of no moment as to the competence of the Governor of a state to set up a Tribunal of Inquiry Law and urged the Court to set aside the finding by the lower Court and resolve the issue in favour of the Appellant.

As can be seen from this judgment particularly during the consideration of the third issue, learned Counsel for the Respondents argued that in addition to the approval of the Lagos State Executive Council, another approval which Appellants had in mind had to do with the Security and Exchange Commission and that since the question as to whether such an approval was obtained prior to the sale was within the Exclusive Legislative List, terms of reference No 4 is invalid. That apart, it has to be pointed out that this issue under consideration forms the basis of the Cross-Appellants' issue No 1 which is therefore considered together with Appellant's issue No 4.

In arguing the issue, learned Counsel for the Cross-Appellants referred to the holding of the lower Court on the 4th term of reference and submitted that on the evidence on record, the nature of requisite approvals into which the Tribunal of Inquiry was required by term of reference No 4 to conduct the inquiry was not limited to the approval of the State Executive Council but included that of regulatory approval such as that of the Security and Exchange Commission. Learned Counsel then referred to paragraph 14 of the Counter Affidavit Sworn to by Abiola Fatoye on 4th October, 1999 and Exhibits B - B2 referred to in paragraph 15 of the said Counter Affidavit the relevant portion of which exhibit was reproduced and submitted that the lower Court misdirected itself on the facts and the evidence on record to have confined its definition of requisite approval to State Executive Council approval as opposed to regulatory approvals such as the approval of the Security and Exchange Commission; that the legislative competence of the Governor of Lagos State to make subsidiary legislation is limited to the powers vested on the government of the state under the concurrent Legislative List and that the Governor has no powers to make subsidiary legislation on any subject in the Exclusive Legislative List particularly with regard to item 32. That the Governor has no power to make the term of reference No 4 since it offends item 32 of the Exclusive Legislative List.

Learned Counsel further submitted that the question of the Blue Pencil Rule was not at anytime raised as an issue before the Court of Appeal and that the question does not relate to any of the grounds of appeal filed in this Court and as such the issue as argued bears no relevance to the appeal and should be discountenanced, Counsel further submitted, relying on Momodu vs. Momodu (1991) 1 NWLR (pt. 169) 608 at 620 - 621. In the alternative, learned Counsel submitted that the Blue Pencil Rule is applied to sever a part of a legislation that is good in the sense that it is valid from the part that is bad, in that it is invalid but that the rule does not apply where what remains after running the pencil through the bad side cannot stand on its own, in which case the impugned legislation should be declared invalid, relying on A-G Abia State vs. A-G Federation (2002) Vol. 17 WRN 1 at 140 ' 141, that since the term of reference No 4 forms part of a piece of bad subsidiary legislation it remains invalid and cannot be salvaged by the Blue Pencil Rule.

On his part, learned Counsel for the cross Respondent in the Cross-Respondent's brief filed on 20/5/05 raised a Preliminary Objection to the effect that what had been made a subject of the Cross-appeal and an issue for consideration is actually a mere passing remark, an obiter dictum that played no part in the decision and that such a dictum is not appealable relying on Abacha vs. Fawehinmi (2000) 6 NWLR (pt. 660) 228 at 297 and prayed the Court to strike out issue No 1.

Learned Counsel further submitted that the argument that the approvals referred to in item No 4 of the terms of

reference include approval of the Security and Exchange Commission is misplaced as the point was neither raised in the trial Court nor in the Court below neither have the Cross-Appellants obtained the requisite leave to do so', that Exhibit B2 conveys the opinion of the writer and has no bearing on regulatory measures and that it is 'elementary that where shares are purchased by foreigner in foreign currency, the purchase must be with the approval of SEC', that item 32 cannot be stretched to include contract of sale of shares held by a member of a Company to another.

In the Cross-Appellants' Reply brief filed on 13/6/05 learned Counsel for the Cross-Appellants submitted that the holding of the lower Court constituting ground one of the grounds of the Cross-appeal on which issue No 1 was formulated is not obiter dictum and that its being so characterized by Counsel for the cross Respondent is a misconception; that the holding by the lower Court that 'the Lagos State Government is free to attempt to find out whether those who sold the shares had the requisite approval' forms the basis of Appellant's ground No 2 at page 525 of the record and argued at pages 1 and 2 of the brief.

On the sub-issue as to whether leave ought to be obtained before raising issue No 1 as argued by Counsel for the cross Respondent, learned Counsel for the Cross-Appellants submitted that the contention is misconceived in that the question whether the Governor of Lagos State is authorised to institute a Tribunal of Inquiry into the regularity or otherwise of the sale of shares was canvassed before the lower Courts referring to question No 1 for determination at the trial Court at page 3 of the record and the arguments thereon at pages 432 to 445 of the record, that ground one of the Cross-appeal buttressed the argument by amplifying the point that the Tribunal of Inquiry was established to enquire into regulatory matters affecting an incorporated limited liability Company, and therefore not a new issue but a new line of argument in support of an issue already canvassed before the lower Court and that leave of the Court is not required relying on Ogunbadejo vs. Owoyemi (1993) 1 NWLR (pt. 271) 517 at 524.

It must be noted that Appellant's issue No 4 and the Cross-Appellants' issue No 1 are being considered together in this judgment because they have the same substratum. Learned Counsel for the Respondents/Cross-Appellants has submitted that there is no ground of appeal on the matter of application of the Blue Pencil Rule and that the question was never raised at anytime before the Court of Appeal apart from the issue not being related to any ground of appeal. I have carefully gone through the reply brief filed by the Appellant and the cross Respondent's brief and have been unable to find any answer to these grave charges levelled by learned Counsel against Appellant's issue No 4 under consideration. I have also gone through the grounds of appeal filed in the main appeal and not found any ground to which the said Appellant's issue No 4 can be related.

It is settled law that issues formulated for determination must be based on the grounds of appeal filed by the parties and that where issues formulated are not related to the grounds of appeal, they become irrelevant in the determination of the appeal and thereby ground to no issue. It is further settled law that any argument in any brief in support of an issue or issues not grounded on any ground of appeal filed will be discountenanced by the Court - see Godwin vs. The Christ Apostolic Church (1998) 14 NWLR 584 at 174 Momodu vs. Momodu (1991) 1 NWLR (pt. 169) 608 at 620 to 621; Government of Gongola State vs. Tukur (No 2) (1987) 2 NWLR (pt. 56) 308; Osinupebi vs. Saibu (1982) 7 S.C. 104 at 110-113; Western Steel Works Ltd vs. Iron and Steel Worker Union (No. 2) (1987) 1 NWLR (pt. 49) 284; A-G Anambra State vs. Onuselogu Enterprises Ltd (1987) 4 NWLR (pt. 66) 547; Oniah vs. Oniah (1989) 1 NWLR (pt. 99) 514 at 529. In the circumstances of this case Appellant's issue No 4 not being backed by or grounded on any ground(s) of appeal is hereby declared incompetent in law and argument thereon discountenanced by this Court. In consequence, Appellant's issue No 4 is hereby struck out.

On the Preliminary Objection in relation to issue No 1 of the Cross-appeal, I have carefully gone through the record and the applicable law. I hold the considered view that ground one of the Cross-appeal is not based on obiter dictum as canvassed by learned Counsel for the Cross-Respondent but on the ratio decidendi of the lower Court which decision also forms the basis of Appellant's ground of appeal No 2 which complains as follows: -

'Ground Two: Error in law.

Having held that:

' .... the Lagos State Government is free to attempt to find out whether those who sold the shares had the requisite approval if one was necessary,'

The Court of Appeal erred in law such that a miscarriage of justice was occasioned thereby, in proceeding to further hold that,

'However, this cannot be done under powers derived from the Tribunal of Inquiry Law Cap 190 Laws of Lagos State. It can only be done by an administrative or domestic inquiry such that only persons intending of their free will to testify can do so.'

'Particulars of Error

(a) The Court of Appeal was not called upon to decide under what powers the Lagos State Government could inquire into its own internal affairs.

(b) The question under what powers the Lagos State Government could inquire into its own internal affairs was raised and decided suo motu by the Court of Appeal.

(c) The Respondent's challenge was restricted by clear words in its originating processes to the validity of a statutory instrument (Lagos State Legal Notice No 10 of 1999) and actions taken thereunder as it affects Eko Hotel Limited a private limited liability Company.

(d) It was never the case of the Respondents' that the said instrument or anything done in pursuance thereof was invalid for any other purpose.

(e) A matter pertaining to the internal affairs of the Lagos State Government is outside the jurisdictional competence of the Federal High Court.

(f) The Court of Appeal wrongfully failed to give any reason for holding that such inquiry could only be done by an administrative or domestic tribunal, without powers to compel the attendance of witnesses.'

On the other issue raised as to whether leave of Court is needed for the Cross-Appellants to file ground one of the grounds of Cross-appeal I agree with the submission of learned Counsel for the Cross-Appellants that the question as to whether the Governor of Lagos State is authorised to constitute a Tribunal of Inquiry into the regularity or otherwise of the sale of shares in question was clearly canvassed before the lower Courts as can be seen in the first question for determination in the originating summons earlier reproduced in this judgment. There is evidence of argument on the issue from learned Counsel for the Cross-Appellants as can be found at pages 432 - 445 of the record. I therefore agree with the submission of learned Counsel for the Cross-Appellants that ground one of the grounds of Cross-appeal merely buttresses the argument by amplifying the point that the Tribunal of Inquiry was established to inquire into regulatory matters affecting an incorporated limited liability Company and as such it is not a new issue being canvassed which would have required prior leave of this Court, but a new line in argument in support of an issue already canvassed before the lower Court, which is very lawful; see Ogunbadejo vs. Owoyemi (1993) 1 NWLR (pt. 271) 517 at 524. I therefore hold that Cross-Appellants- ground 1 is valid and properly before this Court.

Now to the merit of issue No 1 of the Cross-appeal. It is not disputed that term of reference No 4 of Lagos State Legal Notice No 10 of 1999 enjoined the Tribunal of Inquiry -'To determine whether the appropriate approvals were received for the sale and acquisition of the shares.'

Also not disputed is the fact that the lower Court limited its consideration of the said item 4 of the said terms of reference to approval by the Lagos State Executive Council. Both parties are contending the competence of the Governor of Lagos State to make Legal Notice No 10 of 1999 including terms of reference No 4 thereon.

There is evidence on record that in exhibit B attached to the counter affidavit of the Appellant/cross Respondent as

evidence of complaint received by the Appellant necessitating the constitution of the Tribunal of Inquiry, it was stated, inter alia, as follows:

'As an international Company, regulations demand that OHA pay for the shares in foreign exchange instead of naira after securing the approval of Security and Exchange Commission.'

Learned Counsel for the Cross-Appellants has submitted forcefully that one of the 'appropriate approvals' contemplated by terms of reference No 4 is the Securities and Exchange Commission approval for the transfer of the shares and not only that of the Lagos State Executive Council as found by the Court below and I tend to agree with him. This position is supported by learned Counsel for the Appellant/cross-Respondent in his submission in the Cross-Respondent\'s Brief to the effect that

'it is only elementary that where shares are purchased by foreigner in foreign currency, the purchase must be with the approval of SEC.'

That being the case it is very obvious that item 4 of the terms of reference which enjoins the Tribunal of Inquiry to determine whether appropriate approvals includes the approval of the Security and Exchange Commission, necessary for the sale and acquisition of the shares and clearly impinges on the regulatory functions of the Companies and Allied Matters Act 1990 outside the legislative competence of the Governor of Lagos State having regard to the provisions of item 32 of the Exclusive Legislative List. I hold the view that the purported making of Lagos State Legal Notice No 10 of 1999 is ultra vires and therefore resolve issue No 1 of the Cross-appeal in favour of the Cross-Appellants.

On the issue No 5, learned Counsel for the Appellant referred the Court to section 1(1) of Cap 190, Laws of Lagos State and section 318(1) of the 1999 Constitution and submitted that the Governor of Lagos State is authorised to institute inquiries into the affairs of any officer in the public service of the state etc while the term 'public service of a state' includes staff of any Company or enterprise in which the government of a State or its agency holds controlling shares or interest, and submitted that Appellant can validly inquire into the activities of the officials of the 1st Respondent, irrespective of the fact that as at the time of institution of the action or the constitution of the Tribunal of Inquiry, Appellant's share holding had dropped from the position of majority share holder to that of a minority shareholder since the time relevant to the inquiry is in the past, that is prior to the date of the sale and acquisition of the shares of the Appellant, because, according to learned Counsel the material time relevant to an inquiry is always the time before the happening of the event enquired into.

Learned Counsel further submitted, in the alternative, that by the terms of reference the inquiries are limited to all times before 30/1/97 when the sale of shares took place and being the time Appellant held controlling shares of the 1st Respondent and that none of the terms required an investigation of the staff of the 1st Respondent after 30/1/97.

Arguing further in the alternative, learned Counsel submitted that though the staff of the 1st Respondent are no longer in the public service of the Appellant for the purpose of section 1(1) of Cap 190, on the grounds of public policy the Appellant could still validly inquire into their activities which took place at the time when they were persons in the public service, particularly as every regime has powers to inquire into the activities of its predecessor in office, that if the decision of the lower Court is upheld by this Court it will lead to absurdity as no new government will be able to investigate the activities of its predecessor(s) and that directors and officers of a Company in which any government holds a controlling share or interest could conspire and sell off all the shares of such government or sell such number of shares as to make the government a minority shareholder and such government would be incapable of investigating them as they no longer belong to the public service. Finally learned Counsel submitted that the Lagos State Governor can in 1999, validly set up a Tribunal of Inquiry, pursuant to Cap 190, Laws of Lagos State to inquire into the conducts of persons who at all material times relevant to the enquiry, were persons in the public service of Lagos State and urged the Court to resolve the issue in favour of the Appellant.

On his part, learned Counsel for the Respondents referred to section 1(1) of Cap 190 of the Laws of Lagos State and section 318(1) of the 1999 Constitution and submitted that the pertinent question to be determined is whether at the material time to the institution of the action, the employees of the Respondents were public officers within the service of

the Lagos State Government; that the constitution of the Tribunal of Inquiry that led to the institution of the action took place in 1999 and as such it is the position of the 1st Respondent at the time the cause of action arose that must be used to determine whether the employees of the Respondent were public officers. Learned Counsel then cited the case of Adimora vs Ajufo (1988) 3 NWLR (Pt. 80) 1 at 17 on the definition of cause of action and submitted that the cause of action when the Tribunal of Inquiry issued warrants of arrest for the four employees of the Respondents and actually arrested the Company Secretary of the 1st Respondent, and that at that time the Appellant was no longer the majority shareholder in the 1st Respondent and therefore the officers of the 1st Respondent were no longer in the public service of Lagos State.

Learned Counsel further submitted that if the Appellant felt that there was a justiciable cause of action which cause of action accrued before 30/1/97 as alleged, they reserve the right to institute an action in the appropriate forum, not empanelling a Tribunal of Inquiry; that Appellant has cited no authority in support of the submission that inquiries are set up to inquire into activities that occurred in the past. Submitting further and in the alternative, learned Counsel stated that in such an inquiry into the past, the terms of reference must confine to matters that fall within the legislative competence of the Governor. Finally on the argument on public policy, learned Counsel countered by submitting that though the government may have to inquire or investigate the activities of its predecessor or indeed any person who has held or is holding public office, the issue remains whether the government can constitute a Tribunal of Inquiry to inquire into matters which are ultra vires its legislative competence and urged the Court to resolve the issue against the Appellant.

In his Reply brief, learned Counsel for the Appellant had nothing of significance to urge on the Court on this issue.

The question as to what, a cause of action is and when it is said to have accrued have long been settled by the Court and it has been held that a cause of action consists of every fact which It would be necessary to prove, if traversed, in order to support his claim for judgment and that the accrual of the cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action. It is very clear from a community reading of decisions of the Courts on the issue that cause of action always deals with events in the immediate past, not in the future. This explains the contention of both Counsel as to when the cause of action arose in the instant case, while learned Counsel for the Appellant puts the time of its accrual on events immediately before 30/1/97, learned Counsel for the Respondents fixes it immediately after 30/1/97 but most importantly in 1999 when the facts leading to the institution of the action occurred.

I hold the view that the real issue in the issues under consideration is actually not when the cause of action accrued which is however relevant, but whether the terms of reference of the Tribunal of Inquiry is within the legislative competence of the Governor of Lagos State to make. It is in an attempt to justify the making of that Legal Notice with the terms of reference that has brought in the secondary issue as to when the cause of action accrued. I hold the view that having held that Lagos State Legal Notice No 10 of 1999 together with the terms of reference therein is ultra vires the powers of the Lagos State Governor to make in that it infringes on item 32 in the Exclusive Legislative List of the 1999 Constitution, the sub-issue as to accrual of cause of action becomes comatosed.

The above notwithstanding, I hold the view that from the facts of the case and the applicable law, the relevant time to the accrual of the cause of action in this case is when the Tribunal of Inquiry was constituted by Lagos State Legal Notice No 10 of 1999 with the terms of reference which Tribunal of Inquiry in attempts to carry out its functions issued a warrant of arrest on four of, the employees of the Respondents and proceeded to even arrest and detain one of them for failure to attend to witness upon summons to that effect. From the facts on record and as agreed by both Counsel, at that time the Appellant no longer held the majority shares in the 1st Respondent, a condition needed for officers of the Respondents to continue to be regarded as being in the public service of the Lagos State Government as defined in section 318(1) of the 1999 Constitution and which would have empowered the Governor of Lagos State under section 1(1) of Cap 190, Laws of Lagos State to set up a Tribunal of Inquiry with terms of reference within the Governors legislative competence. Having lost its status of majority shareholder in the 1st Respondent, the 1st Respondent and its staff, officials ceased to be legally part of the public service of Lagos State from 30/1/97. The 1st Respondent and its staff/officers became fully in the private sector and out of reach by way of Tribunal of Inquiry. That does not leave the Appellant without a remedy, as it would want us to believe. Appellant still has the right to proceed against those staff or

officers who might have committed any crime in relation to the transaction leading to the sale of its shares in the 1st Respondent or who committed any civil wrong in the matter in an appropriate Court of law, definitely not by way of Tribunal of Inquiry with consequences of approval of its recommendation as stated in section 14(2) of Cap 190, Laws of Lagos State supra.

The facts of this case has once again brought to the fore the need for government to stay clear of operating strictly business concerns as the government has the tendency to act in business as if it is acting in government. The government really has no business being in or running a business and should allow the private sector to take over what rightly belongs to them. The Government however can continue to hold shares, definitely not controlling shares of a purely business concern. This position is advised by the changes in the world economy, policies and ideology.

It should not be thought that I have not taken into consideration the desire to enthrone accountability in the psyche of the nation. I have; what I have been trying to say all along is that the desire to enthrone accountability must not be at the expense of the rule of law. This country operates a constitution, which has defined the powers and the limits of each constituting organ of the state, and it is desirable, nay, compellable that each operates within the sphere allotted by the constitution, which is the supreme law of the land. This is a Court of law, not sentiments or morality or emotion. I therefore resolve the issue against the Appellant.

What is now left is the second issue in the Cross-appeal.

In arguing the issue, learned Counsel for the Cross-Appellants referred to the fact that it was the Governor of Lagos State who set up the Tribunal of Inquiry to inquire into the sale and acquisition of the shares of Lagos State Government in the 1st Respondent by the 2nd Respondent and that the Governor also composed the said Tribunal of Inquiry with a serving judicial officer as chairman. Learned Counsel then submitted that from the facts, the Governor of Lagos State as the Chief Executive of the State was the complainant, the prosecutor and Judge particularly as the Tribunal of Inquiry was to make recommendations to - the Governor for final decision all to the exclusion of the Respondents; that by virtue of the provisions of section 36(l) of the 1999 Constitution no one is to be a Judge in his own cause and that a person is entitled to fair hearing in the determination of his civil rights and obligations; that the Tribunal of Inquiry as constituted cannot be said to be independent and impartial. Submitting in the alternative, learned Counsel stated that an administrative tribunal is bound to observe the rules of natural justice relying on Adegun vs. A-G Oyo State (1987) 1 NWLR (pt. 53) 678 at 707, 719-720 and that once a person can show that there is an infringement of natural justice against him, he needs show nothing more as the finding is sufficient to grant him relief. Learned Counsel then urged the Court to resolve the issue in favour of the cross-Appellants and allow the Cross-appeal.

On his part, learned Counsel for the Cross-Respondent submitted that in appointing the Chairman of the Tribunal of Inquiry, the Governor was acting pursuant to powers conferred on him by the Tribunal of Inquiry Law and that by designating a serving High Court Judge as Chairman of the Tribunal of Inquiry no breach of the principles of nemo judex in causa sua was thereby committed.

Turning to the second arm of the submission of Counsel for the Cross-Appellants which was in the alternative learned Counsel submitted that looking at the law under which the Tribunal of Inquiry was constituted it is clear that the said Tribunal of Inquiry is not a declaration making panel with powers to affect any settled rights of third parties, and urged the Court to resolve the issue against the Cross-Appellants and dismiss the Cross-appeal for being frivolous.

In his reply to the cross Respondent's brief, learned Counsel for the Cross-Appellants cited and relied on Ridge vs. Baldum (1964) AC 40, supra and submitted that Tribunals of Inquiry are susceptible to the rules of natural justice even when their function is merely to investigate and recommend. Learned Counsel also cited and relied on the following: R vs. Electricity Commissioners, Ex Parte London Electricity Joint Committee Co. Supra; The Attorney-General Canada and Canadian Tobacco Manufacturer's Council (1886) 26 DLR (4th) 677 and Adegun vs. A-G of Oyo State also supra.

To begin with I have to observe that I find the issue under consideration not to be a serious one at all - it is an anti climax. I find it hard to agree with learned Counsel for the Cross-Appellants that from the facts of this case and the law applicable thereto the rules of natural justice, particularly that of nemo judex in causa sua ' 'No one shall be a Judge in

his own cause' - has been breached in the instant case. May I ask learned Counsel for the Cross-Appellants whether he would maintain his position if the Government of Lagos State in an appropriate case decides to proceed say for fraud in the transaction leading to the sale against staff or officers of the Respondents in the High Court of Lagos State. Would he say that the government is a Judge in its own cause' What of if the Federal Government were to sue or is sued in the Federal High Court, which very often happens'

I however agree with learned Counsel for the Cross-Appellants that as far as the applicability of the rules of natural justice to Tribunals of Inquiry is concerned the dichotomy between administrative and judicial or quasi-judicial Tribunals of Inquiry has long been consigned to the rubbish leap of legal history, the new trend being that such bodies, however described, must obey the rules of natural justice in the performance of their duties; they have the duty to at least act fairly.

I therefore resolve the second issue in the Cross-appeal against the Cross-Appellants.

In conclusion I find no merit in the main appeal, which is accordingly dismissed. The Cross-appeal fails and it is also dismissed. In all the circumstances, there will be no order as to costs.

Judgement delivered by Salihu Modibbo Alfa Belgore, C.J.N.

The subsidiary legislation by Government of Lagos State setting up an inquiry into how a Company is run or how its share capital is arranged is ultra vires as such subjects are within the competence of Federal High Court to try being a matter in the Exclusive List relating to Company Legislation.

I therefore agree entirely that this appeal, based on concurrent decisions of the two lower Courts, is without merit and 1 dismiss it. The Cross-appeal, as held in the judgment of my learned brother, Onnoghen. J.S.C. also fails. I make the same consequential order as to costs as in the judgment of Onnoghen. J.S.C.

Judgement delivered by Umaru Atu Kalgo, J.S.C.

I have had the privilege of reading in draft the judgment just delivered by my learned brother Onnoghen JSC in this appeal. I agree with him that there is no merit in the appeal and it ought to be dismissed. I also agree that the Cross-appeal therein ought to be allowed in part only. I accordingly dismiss the appeal and allow the Cross-appeal in part. I abide by the order of costs made in the said judgment.

Judgement delivered by Niki Tobi, J.S.C.

I read in draft the judgment of my learned brother, Onnoghen, J.S.C. and I agree with him. I add this bit of mine.

The Appellant was the Defendant in the Federal High Court. The Respondents were the Plaintiffs. The crux of this matter is shares in the Respondents. The case of the Respondents is that the Lagos State Government owned 51% of the shares in the 1st Respondent. By January 1997, the State Government had reduced its shareholding to 25% by selling 1,040,000 of its previously held shares to the 2nd Respondent. Consequently, the shareholding of the 2nd Respondent grew from 49% to 75%, whilst that of Lagos State Government reduced to 25% of 1st Respondent's authorised share capital.

The Governor of Lagos State, by virtue of a Lagos State of Nigeria Official Gazette No 26 of 23rd August, 1999, set up a Tribunal of Inquiry in the 1st Respondent. The Terms of reference of the Tribunal of Inquiry are as follows:

' (i) To determine the regularity or otherwise of the procedure of sale of the shares;

(ii) To establish the terms and conditions under which the sale and disposal of the shares took place;

(iii) To ascertain whether the price of the shares was fair;

(iv) To determine whether the appropriate approval were received for the sale and acquisition of the shares;

(iv) To ascertain the identity and ownerships structure of the Company that acquired the shares;

(v) To make necessary recommendations to the Lagos State Government based on the Panel's findings;

(vii) To ascertain any other matter(s) that may be pertinent to this enquiry.'

Before the date of sitting of the Tribunal of Inquiry chaired by Philips, J. of the Lagos State High Court, the solicitors of the 2nd Respondent in a letter dated 1st September, 1999 to the Chairman questioned '... the legal basis and validity of constituting a panel of inquiry into the sale and acquisition of shares of Eko Hotels Limited, purely civil matter'. Following the failure of the Company Secretary of the 1st Respondent. Mr. Samuel Alabi, one Mr. Olumide Adewunmi, Mr. Richard Herb and Mr. Mark Devroye and others to appear before the Tribunal of Inquiry, the Tribunal issued warrant for their arrest. It is in evidence that Mr. Samuel Alabi was arrested and put in custody on 8th September 1999. He was released the following day, 9th September 1999.

On 17th September, 1999, the Respondents commenced an action by way of originating summons at the Federal High Court, Lagos seeking the determination of questions, a number of declarations and orders as set out at pages 138-156 of the Record of Appeal. The gravamen of the action is that the Legal Notice No 10 of 1999 by which the Lagos State Governor constituted a Standing Tribunal of Inquiry is null and void and of no effect. The Respondents based their contention on the premise that the Governor of Lagos State has no authority or vires to make subsidiary legislation empowering the conduct of an inquiry into the sale of shares of the Appellant in the 1st Respondent, being a matter or cause arising out of the operation of the Companies and Allied Matters Act (CAMA) and also that only the Federal High Court is competent to adjudicate on the subject matter of sale of shares. The Respondents further contended that the empanelling of the Tribunal by the Governor was contrary to the rules of natural justice and that the powers the Tribunal sought to exercise, particularly that of compelling witnesses did not extend to functionaries of the Respondents, not being public officers.

The Federal High Court granted the reliefs of the Respondents but refused the Respondents application for leave to amend their originating processes. The Court held that the Legal Notice is a subsidiary legislation on the affairs of a limited liability Company and that such being an item on the Exclusive Legislative List is ultra vires the powers of the Governor. The Court consequently declared the Legal Notice null, void and of no effect. The Court also held that the Tribunal is a quasi-judicial body. On impartiality, the learned trial Judge held that as the Tribunal was constituted by the Governor himself (the complainant) its impartiality cannot be guaranteed. The Court therefore issued an order of prohibition against the Tribunal. The Court also held that the Directors of the 1st Respondent were not public officers at the time the cause of action arose, and therefore cannot be subjected to an inquiry.

An appeal to the Court of Appeal was dismissed. Dissatisfied, this is a further appeal to this Court. There is a Cross-appeal. As usual, briefs were filed and exchanged. The Appellant formulated five issues for determination:

'3.1 Whether the terms of reference of the Tribunal of Inquiry complained about by the Respondents pertain to civil causes or matters arising from the operation of the Companies and Allied Matters Act.

3.2 Whether the Respondents had the necessary locus standi to maintain the action against the Appellant.

3.3 Whether the Tribunal of Inquiry set up by the Appellant via Legal Notice No 10 of 1999 was a quasi-judicial body liable to an order of prohibition.

3.4 Whether the lower Court was right in holding that Legal Notice No 10 of 1999 was null and void having regard to its finding that terms of reference No 4 in the said Notice is within the internal affairs of Lagos State Government.

3.5 Whether the Lagos State Government can in 1999 validly set up a Tribunal of Inquiry, pursuant to Tribunal of Inquiry Law, Cap 190 Laws of Lagos State to inquire into the conduct or affairs of persons who at all material times relevant to the enquiry, were officers in the public service of the State.'

The Respondents formulated the following issues for determination:

'1. Whether the Court of Appeal was right to have held that the Tribunal of Inquiry into the sale of shares set up by the Lagos State Legal Notice No 10 of 1999 was a quasi judicial body liable to judicial orders of prohibition'

2. Whether the Court of Appeal was right in holding that the Respondents had the necessary locus standi to maintain the action against the Appellants and to complain or institute the action regarding the Summons to Witness and Warrants of Arrest issued by the Tribunal of Inquiry'

3. Whether the Court of Appeal was right to affirm the decision of the trial Court by holding that the making of the Legal Notice No 10 of 1999 as well as the composition and proceedings of the Tribunal of Inquiry are ultra vires, unconstitutional null and void as the Lagos State Government has no legislative competence to prescribe the Terms of Reference prescribed for the Tribunal of Inquiry'

4. Whether the Court of Appeal was right in holding that the employees of the Respondent against whom the Tribunal of Inquiry issued and served Summon(es) to Witness and Warrants of Arrest are not officers in the public service of Lagos State who may lawfully be made subject to the Tribunal of Inquiry within the legislative intendment of the Tribunal of Inquiry Law, Cap. 190 Laws of Lagos State of Nigeria, 1999'

The Cross-Appellants formulated two issues for determination:

'1. Whether the Court of Appeal was right to have held that the Lagos State Government is free to attempt to find out whether those who sold the shares had the required approval when the question whether required regulatory approvals were obtained is an item exclusively reserved for Federal Legislative competence under Item 32 of the Exclusive Legislative List of the 1999 Constitution of the Federal Republic of Nigeria'

2. Whether the Court of Appeal was right to have held that the Tribunal of Inquiry was constituted in such a manner as to secure its independence and impartiality''

Learned Counsel for the Appellant, Mr. Oluseye Opasanya, submitted on Issue No 1 that although the Federal High Court is vested with exclusive jurisdiction in civil causes or matters arising from the operation of the Companies and Allied Matters Act, by virtue of section 251(i)(e) of the 1999 Constitution, the constitutional provision does not imply that the Federal High Court has jurisdiction over every matter or cause relating to or connected with a limited liability Company contrary to the decision of the Court of Appeal.

Citing FBN Plc v. Jimike Farms Ltd. (1997) 5 NWLR (Pt. 503) 81 and Shell Petroleum Co. Ltd, v. Maxon (2001) 9 NWLR (Pt. 719) 541, learned Counsel urged the Court to hold that the sale of shares of the Appellant in the 1st Respondent being the kernel of Legal Notice No 10 of 1999 is not a cause or matter arising from the operations of CAMA and accordingly the Respondents action does not come and cannot come within the purview of section 251(1)(e) of the 1999 Constitution.

Learned Counsel submitted that as the reliefs claimed by the Respondents are not about the management of the 1st

Respondent and or assets of the 1st Respondent, but the constitutionality of Legal Notice No 10 of 1999 vis-a-vis Item 32 of the Exclusive Legislative List, the action does not come within the purview of section 251(1)(e) of the 1999 Constitution. He cited Farinne v. Coker (2003) 7 WRN 22.

On Issue No 2, learned Counsel submitted that as the Company has distinct and separate personality from its shareholders, the Respondents had no locus standi in the matter. He cited Adesanya v. President of the Federal Republic of Nigeria (1981) 2 SCNLR 358 and Gamioba v. Ezezi II (1961) All NLR 608.

On Issue No 3, learned Counsel submitted that the Tribunal of Inquiry is by its functions not a judicial or quasi-judicial body and therefore not liable to order of prohibition. He cited Re Clifford and O'sullivan (1921) AC 370; LPDC v. Fawehinmi (1985) 2 NWLR (Pt. 7) 300 at 331; Ortese v. Military Government of Benue State (1991) 4 NWLR (Pt. 183) 107 and de Smith, Judicial Review of Administrative Action. 4th edition, Chapter 2, pages 68-89.

On Issue No 4, learned Counsel urged the Court to apply the blue print rule to save Term of Reference No 4, a term of reference which the Court of Appeal held as an internal affair of Lagos State Government. He contended that the Court ought to have taken that position, as the term of reference, was severable from the other terms of reference. He cited Fawehinmi v. Babangida (2003) 3 NWLR (Pt. 808) 604.

On Issue No 5, learned Counsel submitted that the persons that the Tribunal of Inquiry was set up to inquire into their conduct or affairs were at all material times relevant to the enquiry, officers in the public service of the State. He cited section 1(1) of the Tribunal of Inquiry Law and section 318(1) of the 1999 Constitution. Counsel submitted further that assuming the staffs of the 1st Respondent are no longer in the public service of the Appellant for the purpose of section 1(1) of Cap. 190, the Appellant could still validly inquire into the activities, which took place at the time when they were still persons in the public service that is to any time before 30th January 1979. Counsel contended that the simple fact that the staffs of the 1st Respondent are no longer persons in the public service of the Appellant should not deprive the Appellant its right to investigate their activities when they did at the time they were still in its public service. He urged the Court to allow the appeal.

Learned Counsel for the Respondents, Mr. Babatunde Fagbohunlu, submitted on Issue No 1 that the Tribunal is a quasi-judicial body liable to orders of prohibition. He examined what he regarded as the major tests for identifying judicial functions, namely the conclusiveness test, trappings and procedure and interpretation and declaration. He cited LPDC v. Fawehinmi (1985) 2 NWLR (Pt. 7) 300 at 331. He urged the Court not to interfere with the concurrent findings of the two lower Courts.

On Issue No 2, learned Counsel submitted that the Respondents had the necessary locus standi to institute the action against the Appellant. He pointed out that as the 1st Respondent is the Company whose shares were the subject matter of the enquiry to be conducted by the Tribunal of Inquiry and the 2nd Respondent is the 75% majority shareholder of the shares of the 1st Respondent, they have locus standi to institute the action. To learned Counsel, they have shown sufficient interest in the Terms of Reference to justify the conclusion that the Respondents have the requisite locus standi to institute and to maintain the action against the Appellant.

Taking Issue No 3, learned Counsel contended that the extent that the Tribunal of Inquiry empanelled by the Legal Notice No 10 of 1999 purports to go outside the parameters of persons and functions prescribed in section 1 of the Tribunals of Inquiry Law to conduct an inquiry, the making of the Legal Notice is ultra vires the powers of the Governor, is unconstitutional, null and void. He examined the Terms of Reference from page 15 to page 20 of the brief.

Dealing with Issue No 4, learned Counsel contended that the argument that at all times to the sale of the shares, all functionaries of the 1st Respondent were persons in the public service of the Appellant must necessarily collapse because the very basis of the constitution and jurisdiction of the Tribunal and the empanelling thereof is ultra vires the Governor of Lagos State and therefore unconstitutional, null and void. He called in aid section 1(1) of the Tribunals of Inquiry Law of Lagos State and section 318(1) of the 1999 Constitution. He also examined when the cause of action accrued to the Respondents to buttress his argument that the functionaries of the 1st Respondent were persons in the public service of the Appellant. He urged the Court to dismiss the appeal.

Learned Counsel for the Appellant, in his reply brief, said that the Respondents did not properly situate the tests for identifying judicial functions. He therefore took time to situate the tests in his own way from page 1 to page 3 of the reply brief. He cited Reid v. Secretary of State of Scotland (1999) 2 AC 512.

On concurrent findings of fact, learned Counsel submitted that the rule on concurrent findings does not apply to errors of law made by the two lower Courts or to conclusions of such Courts or questions of law, but rather concurrent findings of facts. He referred to Grounds 1, 2, 3, 4, 7, 9, and 10 of the Appellants Notice of Appeal.

Responding to the submission of Counsel for the Respondents in respect of composition and proceedings of the Tribunal being ultra vires, learned Counsel pointed out that by virtue of section 5(a) of the Tribunal of Inquiry Law, the Tribunal is empowered to procure all such evidence, written or oral, and to examine all such persons as witnesses as the tribunal may think necessary or desirable to procure or examine. Citing Attorney General v. Great Eastern Rv (1880) 5 App. Cas. 473, learned Counsel argued that the exercise of the Governor's discretion pursuant to the Tribunal of Inquiry Law and the exercise of the power of the Tribunal of Inquiry pursuant to the Legal Notice issued by the Governor can therefore not be said to be ultra vires.

Learned Counsel for the Cross-Appellant, submitted on Issue No. 1 of the brief that on the evidence, before the Court of Appeal, the nature of requisite approval into which the Standing Tribunal of Inquiry was, by Item 4 of the Terms of Reference, authorised to conduct the inquiry, was not limited to the approval of the State Executive Council but included that of regulatory approval such as that of the Security and Exchange Commission. He referred to paragraph 14 of the Counter-affidavit of Abiola Fatoye in the Federal High Court Lagos on 4th October 1999 and Exhibits B-B2 attached to the counter-affidavit in paragraph 15 thereof. In the circumstances, Counsel contended that the Court of Appeal misdirected itself on the facts and the evidence on the record to have confused its definition of requisite approval to State Executive Council approval as opposed to regulatory approvals such as the approval of the Security and Exchange Commission. He examined the relevant provisions of the 1999 Constitution, in particular Part 1 of the 2nd Schedule of the Exclusive Legislative List and section 20 of the Tribunals of Inquiry Law Cap. 190, Laws of Lagos State.

Counsel pointed out that the question of the Blue Pencil Rule was not at anytime raised as an issue before the Court of Appeal and the question does not relate to any of the grounds of appeal filed by the Appellants in this Court. Citing Godwin v. The Christ Apostolic Church (1998) 14 NWLR (Pt. 584) 162 at 174, learned Counsel urged the Court to discountenance the issue of Blue Pencil Rule.

Learned Counsel submitted on Issue No 2 that as the Governor played the role of prosecutor, and the fact that the Chairman of the Tribunal, a judicial officer in the service of the Lagos State Government, was appointed by the Governor, the Court of Appeal was right to have held that the Tribunal of Inquiry was not constituted in such a manner as to secure its independence and impartiality. He relied on section 36(1) of the 1999 Constitution and the twin maxims of nemo judex in causa sua and audi alterem partem in the constitutional context of fair hearing. Counsel urged the Court to set aside the findings of the Court of Appeal on the issue and hold that the nemo judex in causa sua principle of naturaJ justice was breached in constituting, appointing and empanelling of the Standing Tribunal of Inquiry. He urged the Court to allow the Cross-appeal.

In his reply to the Cross-appeal, learned Counsel contended that Ground one in the Respondent's/Cross-Appellant's Notice of Cross-appeal challenges the lower Court's holding that the 'Lagos State Government is free to attempt to find out whether those who sold the shares had the requisite approval.' He submitted that the Appellants/Cross-Respondents characterisation of the holding as a mere obiter dictum and as a mere passing remark is misconceived.

Still on Ground one, learned Counsel submitted that the ground is competent. He opined that leave of Court is not required to canvass the point and the ground of cross-appeal is competent. He cited Ogunbadejo v. Owoyemi (1993) 1 NWLR (Pt. 271) 517 at 524.

Taking the ambit of Terms of Reference Nos. one and four, learned Counsel submitted that they clearly fall within Item 32 in the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, 1999. He cited Williams v.

Dawodu (1988) 4 NWLR (Pt. 87) 189. As pages 7 to 13 of the reply brief which deals with the need of the Tribunal of Inquiry to comply with the rules of natural justice is repetitive of Issue No 2 of the Cross-Appellants' brief, I shall not take it, although Counsel used the opportunity of the reply brief to cite more cases.

I should take the issue of locus standi of the Respondents first. This is because if I come to the conclusion that the Respondents have no locus standi to institute the action, the matter ends there and no other issue will be available for consideration. It is the law that to have locus standi to sue, the Plaintiff must show sufficient interest in the suit before the Court. One criterion of sufficient interest is whether the party could have been joined as a party to the suit. Another criterion is whether the party seeking for the redress or remedy will suffer some injury or hardship arising from the litigation. If the Judge is satisfied that he will so suffer, then he must be heard as he is entitled to be heard as he has the locus standi to be heard. See Chief Ojukwu v. Governor of Lagos State (1985) 2 NWLR (Pt. 10) 806. The interest of the Plaintiff must be real and tangible in law. It must be cut-and-dry and without the least equivocation. It must not be a caricature of an interest, not a make-believe interest, not one of personal or self-aggrandisement but one which is clearly and unequivocally donated to the Plaintiff in the light of the facts of the case and the law.

A person who is in imminent danger of any conduct of the adverse party has the locus standi to commence an action. See Olawoyin v. Attorney General of Northern Region (1961) 1 All NLR 269; Gamioba v. Ezesi (1961) 1 All NLR 584.

By W.S.N. Onnoghen, J.S.C.A person has locus standi not only because he is connected or in close proximity, with the suit or action but that the result of any litigation outside him will directly affect his legal rights and to his detriment. Of course, the person must prove that his civil rights and obligations will be affected or are affected in the matter. That is the essence of section 6(6)(b) of the 1999 Constitution, which provides as follows:

'The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that persons.'

Let me take some paragraphs of the verifying affidavit and the counter affidavit. I reproduce hereunder paragraphs 8, 9, 11, 12, 13, 18 and 19 of the verifying affidavit:

'8. By 31st day of December, 1996, EHL's, Nominal Share Capital was N8, 000,000.00 only, divided into 4,000,000 ordinary shares of N2.00 nominal value as to each individual share, all of which had been issued and fully paid as at that date. The registered holders of those 4,000,000 ordinary shares as at the relevant date were the following two entities: -

Name of Shareholder
Number of Shares Held
Percentage Share-Holding

1.
Lagos State Government of Nigeria
2,040,000
51%
2.
OHA Limited
1,960,000
49%

Total
4,000,000
100%

There is now produced and shown to me herewith delivered, and marked Exhibit EHL. 5, in proof, a copy of EHL's Annual Returns made up to 31st December, 1996 obtained from the Corporate Affairs Commission at a time contemporaneous with that of its filing.

9. In other words, the two shareholding proprietors/registered owners of the entire issued and fully paid share capital of EHL at the close of its 1996 accounting-year were the Government of the Lagos State of Nigeria, and Oha Limited, the Second (2nd) Applicant above-named in the respective percentage shareholding ratios shown depicted in the table at the foot of the preceding paragraph.

11. By a Share Purchase Agreement executed on 30th January, 1997 on behalf of the Lagos State Government, as the 'Seller', and on behalf of Oha Limited, as 'The Purchaser', and so executed on the part of each by their respective Chief Executives, in the presence of witnesses, the Lagos State Government sold, while Oha Limited bought and acquired, in exchange for the valueable consideration in the Agreement's body there mentioned: -

The 1,040,000 shares: The 1,040,000 ordinary shares of EHL owned by seller which are to be sold by seller to purchaser pursuant to this Agreement and which constitute 26% of EHL's authorised, issued and outstanding ordinary shares'.

There is now produced and shown to me herewith delivered, and marked Exhibit EHL. 6, a duly executed copy of the Share Purchase Agreement.

12. I am reliably informed by Oha Limited, and I verily believe, that their decision to purchase the subject 1,040,000 shares from the Lagos State Government was informed, in part, by a number of representations and warranties solemnly made by the Lagos State Government to Oha Limited, for the latter's comfort, all of which were advisedly written into the Agreement's text as an integral part of the contracting parties' joint and mutual understanding(s)...

13. It was on the foregoing footing that the Share Purchase Agreement was conceptualised. By virtue of its execution, as the Agreement itself states, Oha Limited acquired from the Lagos State Government, in pursuance, -

'... all its rights, title and interest in and to the 1,040,000 shares... free and clear from any lien, option, or claim whatsoever'.

I most humbly invite the attention of this Honourable Court to Exhibit EHL. 6's pages 11 to 12, and to its page 13, where may be found all the requisite subscriptions and corporate-seals of due execution separately endorsed by the parties' duly accredited paramount functionaries, both at the foot of the substantive Agreement itself, as well as on the Instrument of Transfer of its Article II, Clause 1.1's, deliberate separate mention.

18. Finally, by way of preliminaries, by the 31st day of December, 1997, EHL's Nominal Share Capital remained at N8, 000,000.00 only, still divided into 4,000,000 ordinary shares of N2.00 nominal value as to each, all of which had been issued and fully paid as at that date. In due reflection, however, of the revised ownership structure of all the shares in EHL that had, by the Exhibit EHL. 6 Share Purchase Agreement, been effectuated, the proportionate distribution in ownership of those 4,000,000 ordinary shares as at the relevant date, although still vested in the Lagos State Government, and Oha Limited only, had, however, become so vested in them in the following altered ratios: -

Name of Shareholder

Number of Shares Held
Percentage Share-Holding

1.
Lagos State Government Of Nigeria
1,000,000
25%
2.
OHA Limited
3,000,000
75%

Total
4,000,000
100%

There is now produced and shown to me herewith delivered, and marked Exhibit EHL. 9. a copy of EHL's Annual Returns made up to 31st December, 1997 obtained from the Corporate Affairs Commission at a time contemporaneous with that of its filing in proof of the within stated facts.

19. On 23rd August 1999, a Lagos State of Nigeria Official Gazette No 26, Volume 32, dated 23rd August, 1999, was published. Its text includes a Lagos State Legal Notice No 10 of 1999, the same having been made on 20th August 1999 under the hand of the Governor of Lagos State, who entitled it-

'Instrument Constituting The Standing Tribunal Of Inquiry Into The Sale And Acquisition of Shares of Eko Hotel in 1995'

The Appellant responded to the above paragraphs in their Counter-affidavit:

'4. The Defendant admit paragraph.... 19 of the Verifying Affidavit of the Plaintiffs.

6. The Defendant admits paragraphs 11, 12,13... and 18 of the Verifying Affidavit only to the extent that the documents referred to therein exist, and are attached as Exhibits - but state that they raise issues and matters that are subject matter of the inquiry at the Tribunal.'

By the above the Appellant admitted paragraphs 8, 9 and 19 of the Verifying Affidavit of the Respondent. He also admitted paragraphs 11, 12, 13 and 18 to some extent as exhibits. In the light of the above the following facts are admitted: (1) As at 31st December, 1996 the 1st Respondent's nominal share capital was N8, 000,000.00 divided into 4,000,000 ordinary shares of N2.00 nominal value. (2) The Lagos State Government owned 2,040,000, which is 51%. (3) The Oha Limited owned 1,960,000, which is 49%. By Gazette No. 26, volume 32 dated 23rd August 1999, the Governor of Lagos State by an instrument constituted the Standing Tribunal of Inquiry into the sale and Acquisition of Shares of Eko Hotel in 1995. (4) By agreement executed on 3rd January 1997, the Lagos State Government as the seller and the Oha Limited as the buyer, the Lagos State Government sold to Oha Limited, 1,040,000 shares. (5) The transaction was informed, in part, by a number of representations and warranties made by the Lagos State Government to Oha Limited. (6) The agreement of the sale and purchase of the shares provided inter alia that Oha Limited acquired from Lagos State Government '... all its rights, title and interest in and to the 1,040,000 shares... from and clear from any lien, option, or claim whatsoever. (7) As at 31st December 1997, the revised ownership structure of Lagos State

Government was 1,000,000, which is 25%. (8) As at the same date the revised ownership structure of Oha Limited was 3,000,000, which is 75%.

From the above-admitted facts, it beats me hollow and hands down for the Appellant to argue that the Respondents have no locus standi to institute the action. I am of the view that the Respondents have proprietary pecuniary interest, the movement and holding of shares and therefore have locus standi to seek redress in a Court of law. The submission of learned Counsel for the Appellant is a big joke and I do not think I am in the mood to share in that joke.

It is in the light of the above factual position that I agree with the learned trial Judge when he said at page 236 of the Record:

'The locus standi of the two Plaintiffs to maintain this action for judicial review and declaratory orders is unimpeachable since the 1st Plaintiff is the Company whose shares are to be the subject-matter of the enquiry while the 2nd Plaintiff is the 75% majority shareholder of the shares.'

The Court of Appeal, per Oguntade, JCA (as he then was) said on the issue at page 506 of the Record:

'In the above deposition it was made clear that the four persons against whom the Tribunal issued witness summons were the principal officers of the 1st Respondent. It is correct statement of the law that each of the four officials has interest and capacity distinct and separate from the 1st Respondent, which is a body corporate. But such separate interests can converge and become inseparable, as was the case here. Even if no witness summons had been issued, the 1st Respondent, if it perceived that the Tribunal of Inquiry was invalidly set up, could bring proceeding for prohibition. The foundation of the Respondents' suit was the alleged invalidity in the manner the Tribunal of Inquiry was set up... It is my view that the Respondents had standing to bring the suit.'

I entirely agree with the Courts below. It is the law that the proper Plaintiff in respect of share holding in a Company is the Company itself. It is only when claim of a shareholder is related to his personal claim in the Company that the Company will be denied to sue on the ground that it has no locus standi.

I should take the Rule in Foss v. Harbottle (1843) 2 Ha. 461, because it is applicable here. The Rule is that the Company or association is the proper Plaintiff in all actions in respect of injuries done to it. No individual will be allowed to bring actions in respect of acts done to the Company, which could be ratified by a simple majority of its members. The Rule has been applied in our Courts. Thus in Tanimola v. Surveys and Mapping Geodata Ltd. (1995) 6 NWLR (Pt. 403) 617 the Court held that the operation of a Company is principally by the will of the majority shareholders. Where there is litigation in respect of the affairs of the Company, the principle as to the competence of such action is generally governed by what has become known as the rule in Foss v. Harbottle. The rule applies in Nigeria in that (1) 'The proper Plaintiff in an action in respect of a wrong alleged to be done to a Company or association of persons is prima facie the Company or the association of persons itself...'

Learned Counsel for the Appellant in his effort to fault the conclusion of the Court of Appeal on locus standi, submitted that the Court was wrong in holding that the Respondents had locus standi 'without specifying the factual basis upon which the Respondents possess such standing'. I have given the factual basis above and I hope that learned Counsel will be satisfied. I am rather surprised and totally flabbergasted at the submission of Counsel that 'the Respondents have no justiciable interest which may be affected by the setting up of the Tribunal of Inquiry.' With the greatest respect, the Respondents have bundles of interests and the interests are clearly justiciable under section 6 of the 1999 Constitution. Learned Counsel, in my humble view, clearly missed the point. I think I can now drop the issue of locus standi and move to other issues. I should first deal with the issue of constitutionality, which takes me to the Constitution.

While the Appellant built its case on section 1 of the Tribunal of Inquiry Law and section 318 of the Constitution, the Respondents built their case on section 20 of the Tribunal of Inquiry Law, Item 32 of the Exclusive Legislative List of the 1999 Constitution and the Terms of Reference.

The legislative powers of a State Government are contained in section 4(7) of the Constitution. The subsection provides

as follows:

'(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say -

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.'

As it is, the House of Assembly of a State is restricted to make laws on matters not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. It can only make laws in matters included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto. There is also a third arm which is omnibus and it is that the House of Assembly of a State can make laws on any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution. The subsection clearly vindicates the concept of federalism and it should be so because the country operates a Federal Constitution. See generally Attorney-General of Abia State v. Attorney-General of the Federation (2002) 2 NWLR (Pt. 763) 264; Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 9 NWLR (Pt. 772) 222; Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 6 SC Pt. 1) 61. Item 32 of the Exclusive Legislative List inter alia provides as follows:

'Incorporation, regulation and winding up of bodies corporate...'

I have no difficulty in coming to the conclusion that the Respondents qualify as bodies corporate within the meaning of Item 32 as they are companies within the meaning of the Companies and Allied Matters Act, Cap. 59, Laws of the Federation, 1990.

It is the argument of learned Counsel for the Appellant that although Item 32 confers on the National Assembly power to legislate on '... incorporation, regulation and winding up of bodies corporate...', there is nothing within Legal Notice No 10 of 1999 which deals, whether directly or indirectly, with either incorporation, regulation or winding up of 1st Respondent. Counsel for the Respondents thinks differently. To him, Item 32 removes the matter totally from the State Government.

Generally, words in a Constitution bear their ordinary grammatical meaning, when the intention of the maker of the Constitution is clear and can be captured at a glance of the language. However, where the meaning is not directly obvious on the face of the language, the Court will investigate the intention behind the use of the language and come out with an interpretation or construction that best fits the apparently hidden intention. That is one principle of constitutional interpretation. Another principle is that Courts are enjoined to give a liberal interpretation to the language of the Constitution in order to achieve the desired purpose of the maker of the Constitution. The Court will not embark upon such an exercise where the language is exact, precise and concise and therefore not able to admit a liberal interpretation the Court will succumb to the clear meaning. The Court takes this position of least resistance because it cannot wear gloves for battle with the makers of the Constitution as that will vex or annoy their intention. After all, the law of statutory interpretation is clear that Courts invoke their interpretative jurisdiction to vindicate the intention of the law-makers. They cannot plant their judicial mind or thought in place of the intention of the law-makers.

Three expressions in Item 32 attract my attention. They are incorporation, regulation and winding up. I do not think I should waste my time in respect of the first and third expressions because they do not in any way apply to the matter before us. While incorporation brings about a Company in terms of establishment, winding up seems to be the opposite, as it closes down the Company, if I may use that commonplace expression to capture the meaning for my purpose. Both expressions convey their technical meanings in Item 32 and not their daily market-place meaning in society. For

instance, the word incorporation in the context does not mean to make something a part of a group or of something larger or include, simpliciter. So too the word 'winding' does not mean having a twisting turning shape. These are what I mean by their daily marketplace meaning. I think I have made myself clear.

I am done with the two expressions. I now come to the middle expression and it is regulation. It is a word of large purport and meaning. The expression generally means official rule or order, as one can relevantly say \"regulations governing the issuance, allotment and sale of shares within the provisions of Parts V and VI of the Companies and Allied Matters Act, 1990. The word also has a synonym in 'control'. The word 'control' means to have a directing influence over something or to regulate or have power over something as one can relevantly say 'the Government owns controlling shares in the Company. 'I should also mention to complete my position that Part II of the First Schedule to the Companies and Allied Matters Act bears the heading: 'Regulations for the management of a private Company limited by shares'.

In the light of the above, and the fact that the Companies and Allied Matters Act, 1990 has comprehensively and copiously provided for the floatation and all that of shares, it is my humble view that the Terms of Reference fall within the precinct and purview of Item 32 of the Exclusive Legislative List.

And that takes me to section 20 of the Tribunal of Inquiry Law, Cap. 20 Laws of Lagos State. It provides:

'The powers conferred by this Law upon the Governor may be exercised by him in respect of any matter the legislative competence of the Lagos State.'

By the section, the Governor of Lagos State is only competent to set up a Tribunal of Inquiry in respect of matters, which the House of Assembly of Lagos State can legislate under section 4(7) of the Constitution. The Governor of Lagos State cannot set up a Tribunal of Inquiry in respect of matters in the Exclusive Legislative List, which are reserved for the National Assembly to legislate.

I have carefully examined the seven terms of reference and I am of the view that they are outside the powers of the Governor of Lagos State. Let me give one example and it is Term of Reference No (V). How can Governor of a State ask a Tribunal of Inquiry to ascertain and identify ownership structure of the Company that acquired the shares, when matters in respect of companies is in the Exclusive Legislative List' For the avoidance of doubt, I want to make my position clear that while section 1(1) of the Tribunals of Inquiry Law vests in the Governor of Lagos State to constitute by instrument a tribunal, he cannot go outside the provisions of the Law.

I do not know whether I should go into any other issue in the light of the above. Perhaps, I should, in the event that I am wrong. And that takes me to the argument of learned Counsel for the Appellant on the section 251(1)(e) of the 1999 Constitution jurisdiction of the Federal High Court. By the subsection, the Federal High Court has jurisdiction over matters 'arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.'

The operative and telling word is 'operation'. Another expression is our familiar one, this time around, the verb of 'regulating'. Contextually, the word operation means the carrying on or managing a trade or business as one can say 'our Company operates in several branches in the country.' As I have already dealt with the meaning of the noun 'regulation', I do not intend to take the verb variant 'regulating'. But I should quickly make the point that the expression, 'regulating the operation of Companies incorporated under the Companies and Allied Matters Act', covers the provisions of Parts V and VI of the Act.

Accordingly, the Federal High Court is vested with exclusive jurisdiction to entertain the suit, and I so hold. I also hold that the Terms of Reference of the Tribunal of Inquiry pertain to civil causes or matters arising from the operation of the Companies and Allied Matters Act for which the Federal High Court is vested with exclusive jurisdiction.

I should now take the issue of whether the Tribunal of Inquiry set up by the Governor of Lagos State was a quasi-judicial body liable to an order of prohibition. It is the submission of learned Counsel for the Appellant that it is the nature of the

functions of a statutory body that determines whether a body is a judicial or quasi-judicial body and not the nature of complaints against the Tribunal as held by the Court of Appeal. To Counsel, the Tribunal of Inquiry, by its functions, is not a judicial or quasi-judicial body and therefore not liable to order of prohibition. Learned Counsel for the Respondents holds the opposite view. To him, the Tribunal of Inquiry is a quasi-judicial body and therefore liable to order of prohibition.

I entirely agree with learned Counsel for the Appellant that the nature of the complaints is not the criterion or determinant of whether a Tribunal of Inquiry is a judicial, quasi-judicial or purely administrative body. On the contrary, the functions exercised by that body are the basis for determination. After all, Plaintiff can ambitiously package all sorts of complaints, relevant or irrelevant, or completely outrageous, to make or buttress his case and that cannot be basis for determination whether the body is a judicial, quasi-judicial or purely administrative one.

In LPDC v. Chief Fawehinmi (1985) 2 NWLR (Pt. 7) 300, this Court held as follows: (1) The exercise of judicial powers by a statutory body is determined largely by the nature of its functions. (2) The test necessary for determination whether a statutory body has judicial powers are: (a) whether it has before it a lis inter parties; (b) whether the decision of the statutory body is binding; and (c) whether the decision is conducive or final. One other criterion for determining whether a Tribunal of Inquiry exercises a judicial, quasi-judicial or purely administrative function is to examine the order or likely order as it relates to and affects the legal rights of the parties. If the terms of reference affect or capable of affecting the legal rights of the parties, the Court will not be wrong in coming to the conclusion that it exercises either judicial or quasi-judicial functions, depending on the weight or pendulum towards judicialism in relation to the facts of the matter. Even where a Court finds one out of a number of functions bearing or having the content of quasi-judicial function, the Court is entitled to treat the matter as quasi-judicial and make an order of prohibition if appropriate.

Both parties agree that a Tribunal of Inquiry that exercises quasi-judicial functions is liable to order of prohibition. They are correct. That is the law.

My duty here therefore is to examine whether, from the functions conferred on the Tribunal of Inquiry, it exercised quasi-judicial functions or purely administrative functions. I have carefully examined the functions conferred on the Tribunal of Inquiry and I have no difficulty in coming to the conclusion that they are quasi-judicial in nature, and I so hold.

The above apart, I entirely agree with the submission of learned Counsel for the Respondents that the power of arrest of a person, who refuses to attend the Tribunal, is a judicial venture. Summons to appear as a witness is a known Court process which has an inbuilt psychology of restricting the movement of the witness, and I emphasise here the expression 'inbuilt psychology'. When the refusal on the part of the person to honour the summons and attend the Tribunal to give evidence, is followed by an arrest and possible incarceration, the punitive and penal nature of the process is complete. Such a suffocating order, which lands the contemnor in prison, cannot be interpreted as a mere administrative function but a judicial or quasi-judicial one.

In the instant case, there is evidence that warrants of arrest were issued by the Tribunal against four persons. There is also evidence that 'on 8th September, 1999, Mr. Samuel Alabi, the Company Secretary of the 1st Respondent, was arrested and put in police custody until 9th of September, 1999 when his body was produced before the Tribunal by the Police'. I had earlier said this. Can there be a better example of a Tribunal undertaking quasi-judicial functions than the above' The power was not exercised arbitrarily by the Tribunal of Inquiry but duly vested in it by the Tribunals of Inquiry Law Cap. 190, Laws of Lagos State of Nigeria, 1990.

And that takes me to Issues Nos 4 and 5 in the Appellants brief, which I should take together because they are related. In so far as section 1(1) of the Tribunals of Inquiry Law empowers the Governor of Lagos State to set up a Tribunal of Inquiry, the act of setting up the Tribunal cannot be said to be ultra vires, null and void. That is not the end of the matter. The powers conferred on the Tribunal, being related to shares in companies, are ultra vires the Tribunal of Inquiry Act, vide section 1(1) of the Tribunal of Inquiry Law.

There is still another aspect as it affects or relates to section 1(1) of the Tribunal of Inquiry Law. The subsection vests in the Governor of Lagos State with power to constitute a Tribunal of Inquiry inter alia, to inquire into the conduct or affairs

of any officer in the public service of the State, or any officer in a local authority in the State...'.

It is the submission of learned Counsel for the Appellant that the material time relevant to the inquiry for which the Tribunal was set up by the Appellant is any time before 30th January 1997 and not thereafter. Relying on Mosojo v. Oyetayo (2003) 5 SC 134, learned Counsel submitted that a cause of action arises on the date of occurrence, neglect or default complained of and not the consequence or the result of the above. Accordingly, the staff of the 1st Respondent were at all material times, persons in the public service of the Appellant to whom section 1(1) of the Tribunal of Inquiry Law applied.

Learned Counsel submitted in the alternative that if Tribunals of Inquiry do not usually relate to past events, they are bound by their terms of reference as contained in their respective enabling instruments. Relying on the terms of reference, Counsel contended that they are clearly limited to all times before 30th January, 1997 which was the time the Appellant still held controlling shares in the 1st Respondent.

Counsel also made another submission in the alternative without conceding the main issue that on grounds of public policy, even though the staff of the 1st Respondent are no longer in the public service of the Appellant for the purpose of section 1(1) of the Tribunal of Inquiry Law, the Appellant could still validly inquire into their activities which took place at the time when they were still persons in its public service, that is anytime before 30th January, 1997.

Learned Counsel for the Respondents pointed out that the Standing Tribunal of Inquiry into the sale and acquisition of shares of the 1st Respondent was empanelled in 1999 and it was at the point when the Tribunal sought to compel the attendance of the employees of the Respondents that caused or motivated the Respondents to institute the action in the Federal High Court, Lagos. He submitted that at the time the cause of action accrued to the Respondents in 1999, the Lagos State Government was not a majority shareholder in the 1st Respondent, having transferred 1,040,000 of its shares in the 1st Respondent to the 2nd Respondent two years earlier in 1997.

In response to the submission of Counsel for the Appellant on the 30th January 1997 date; learned Counsel contended that if the Appellant felt that there was a justiciable cause of action which had accrued to it before 30th January 1997, the Appellant reserved the right to institute an action in the appropriate form.

It appears to be common ground that the definition of public service of the Federation in section 318(1) of the 1999 Constitution is appropriate and applicable. I will not therefore go into that aspect. The aspect I should take is the relevant date. The law is most elementary that a cause of action arises from the date of the wrong, which is the subject of the grievance resulting in the relief. While I appreciate all the arguments of Counsel for the Appellant, main and in the alternative, they do not go anywhere to help the case of the Appellant. Certainly, 30th January 1997 is too remote a date for this case. That date is not applicable at all. I am with learned Counsel for the Respondents that the cause of action in this matter accrued to the Respondents in 1999 and not in 1997. And in 1999, the Lagos State Government was clearly not a majority shareholder in the 1st Respondent and therefore not within the provision of section 318(1) of the 1999 Constitution which defined public officers of a State to mean staff of any Company or enterprise in which the government of a State or its agency holds controlling shares or interest.

Learned Counsel for the Appellant made so much of the fact that a serving Judge was appointed Chairman of the Tribunal of Inquiry. To him, this affects the independence of the Tribunal. I ask: in what way' By this submission, learned Counsel is indirectly questioning, if not directly, serving Judges of States doing cases in which the State is involved. Can he really say this' As long as the Tribunal of Inquiry Law does not disqualify a serving Judge to preside over Tribunals of Inquiry, the Governor is free to make such appointment. Such appointment should not give rise to subtle attack based on bias or likelihood of bias on the part of the Judge. While Counsel has the legal right to raise issue of bias or likelihood of bias based on specific factual situation or situations, they cannot do so just for the fun of it to run down a judicial officer who is not in a position to defend himself. Accordingly, I condemn the insinuation of learned Counsel for the Appellant as it lacks merit. Let public officers be trusted to do the right thing, even for once. Why not the Judge the public officer that he is, or should I say she is'

I think I can stop here. It is for the above reasons and the more comprehensive reasons given by my learned brother,

Onnoghen, J.S.C., in his judgment that I too dismiss the appeal. The Cross-appeal is also dismissed. I make no order as to costs.

Judgment delivered by Mahmud Mohammed, J.S.C.

I had the opportunity to read in advance the judgment of my learned brother Onnoghen J.S.C. with which I entirely agree that the appeal and the cross-appeal be dismissed. I shall express the same opinion in my own words in supporting the said judgment.

The dispute between the parties in this appeal arose over the operation of the 1st Respondent Eko Hotels Limited, a-Limited Liability Company jointly owned by the Lagos State Government, which before the dispute owned 51% shares of the Company and the second respondent owned 49% thereof.

However, in January 1997, the Appellant decided to vacate its position of owner of controlling shares in the Company by reducing its shares to 25% as the result of selling 26% of its shares to the 2nd Respondent whose shares consequently increased from 49% to 75% bringing it to occupy the position of owner of the controlling shares in the Company. The sale agreement for the transfer of shares from the Appellant to the 2nd Respondent was signed or executed by no other officials of the Appellant than the Governor of the State and the Secretary to the Government.

When the new civilian elected Government of Lagos State (the Appellant) came into power in May 1999, the Governor, in exercise of the powers conferred in him by Section 1 of the Tribunal of Inquiry Law, Cap 190, Laws of Lagos State of Nigeria 1994, constituted a standing Tribunal of Inquiry into the sale and acquisition of the Appellant's shares in the 1st Respondent by the 2nd Respondent. The terms of Reference of the Standing Tribunal include-

'1. To determine the regularity or otherwise of the procedure of the sale of the shares.

2. To establish the terms and conditions under which the sale and disposal of the shares took place.

3. To ascertain whether the price of the shares was fair.

4. To determine whether the appropriate approvals were received for the sale and acquisition of the shares.

5. To ascertain the identity and ownership structure of the Company that acquired the shares.

6. To make necessary recommendations to the Lagos State Government based on the panel\'s findings.

7. To ascertain any other matter(s) that may be pertinent to this enquiry.'

The standing Tribunal had 30 days to conclude its assignment and submit its report and findings to the Governor. It was in the course of this assignment that the Tribunal in exercise of its powers under the Instrument constituting it as published in the Lagos State Gazette, issued witnesses summons to the officers of the 1st Respondent to appear and testify on the subject of the inquiry. When these officers protested against their appearance and failed to show up as required by the summons served on them, warrants for their arrest were issues by the Tribunal. However, before the execution of these warrants of arrest on the officers concerned, the Respondents went to the Federal High Court Lagos Division and instituted an action by way of Originating Summons against the Appellant challenging the validity of the power exercised by the Governor in constituting the Tribunal of Inquiry on the subject of the sale of the affidavit to the Respondents Originating Summons and the action was subsequently heard and determined by the trial Federal High Court which granted all the reliefs claimed by the Respondent against the Appellant after refusing the Respondents' application to amend their Originating Summons. The trial Court in its judgment having found the Lagos State Legal Notice No 10 of 1999 constituting the standing Tribunal of Inquiry a subsidiary legislation on the affairs of a Limited Liability Company, an item on the Exclusive Legislative List under the 1999 Constitution, is ultra vires the powers of the

Governor of Lagos State, and therefore declared the legislation null and void and of no effect. The Appellant's appeal against this judgment to the Court of Appeal was duly heard and dismissed resulting in the present further final appeal.

From the 10 grounds of appeal filed by the Appellant, 5 issues were identified in the Appellant's brief of argument for the determination of the appeal. The issues are-

'1. Whether the terms or reference of the Tribunal of Inquiry complained above by the Respondents pertain to civil causes or matters arising from the operation of the Companies and Allied Matters Act.

2. Whether the Respondents had the necessary locus standi to maintain the action against the Appellant.

3. Whether the Tribunal of Inquiry set up by the Appellant via Legal Notice No of 1999 was a quasi-judicial body liable to an order of prohibition.

4. Whether the lower Court was right in holding that the Legal Notice No 10 of 1999 was null and void having regard to its finding that terms of reference No 4 in the said Notice is within the internal affairs of Lagos State Government.

5. Whether the Lagos State Government can in 1999 validly set up a Tribunal of Inquiry, pursuant to Tribunal of Inquiry Law, Cap 190 Laws of Lagos State to inquire into the conduct or affairs of persons who at all material times relevant to the enquiry, were officers n the public service of the state.'

The Respondents who have also cross-appealed against the judgment of the Court below have formulated two issues in their cross-Appellants' brief of argument for the determination of their Cross-appeal. The issues are-

'1. Whether the Court of Appeal was right to have held that the Lagos State Government is free to attempt to find out whether those who sold the shares had the required approval when the question whether required regulatory approvals were obtained is an item exclusively reserved for Federal Legislative competence under item 32 of the Exclusive Legislative List of the 1999 Constitution of the Federal Republic of Nigeria'

2. Whether the Court of Appeal was right to have held that the Tribunal of Inquiry was constituted in such manner as to secure its independence and impartiality''

This appeal and the cross-appeal arose from the proceedings and judgment of the trial Court where the Respondents filed their action against the Appellant essentially challenging the right or power of the Appellant to set up the Tribunal of Inquiry to investigate the sale of the Appellant's shares in the 1st Respondent, a Limited Liability Company incorporated under the Companies and Allied Matters Act. The trial Court in its judgment having held that the Appellant lacked the power to promulgate the instrument constituting the Tribunal of Inquiry and proceeded to declare the action of the Appellant in this respect a nullity, which decision was affirmed by the Court in the Respondents\' third issue. The issue reads-

'Whether the Court of Appeal was right to affirm the decision of the trial Court by holding that the making of the Legal Notice No 10 of 1999 as well as the composition and proceedings of the Tribunal of Inquiry are ultra vires, unconstitutional null and void as the Lagos State Government has no legislative competence to prescribe the terms of Reference prescribed for the Tribunal of Inquiry'.

Resolving this issue one way on the other will take care of the remaining issues which only came into being as the result of the exercise of the powers of the Appellant under the Tribunal of Inquiry law of Lagos State to bring the Tribunal of Inquiry into being.

In the Appellant's brief of argument, it was argued that by virtue of the provisions of Section 1 (1) of the Tribunal of Inquiry Law CAP 190 Laws of Lagos State and the definition of the term 'Public service of a State' under Section 318(1) of the 1999 Constitution, the Appellant rightly under the Law and the Constitution, exercised its power in constituting the

Tribunal of Inquiry for the purpose stated. The case of Okomu Oil Palm Limited v. Iserhienrhien (2001) 6 NWLR (pt. 710) 660 was cited. This argument is based on the fact that prior to the sale of the Appellant\'s shares in the 1st Respondent on 30-1-97 the Appellant held controlling shares in the 1st Respondent, all the functionaries of the 1st Respondent being persons in the public could be inquired into by the Appellant.

The Respondents have however contended that since the 1st Respondent whose shares the sale of which are in issue in the terms of reference of the Tribunal is a private Limited Liability Company deemed incorporated under the Companies and Allied Matters Act deemed enacted by the National Assembly, the Appellant had no power to make subsidiary legislation on any subject matter contained in the Exclusive Legislative List particularly on item 32 which expressly covers the incorporation regulation and winding up of companies such as the 1st Respondent.

The legislative powers conferred by Section 1 (1) of the Tribunal of Inquiry Law of Lagos State on the Appellant to constitute a Tribunal of Inquiry are quite clear. Those powers do not reflect any power to constitute a Tribunal to enquire into any sale or transfer of shares in a Limited Liability Company deemed incorporated under the Companies and Allied Matters Act resulting in divesting a share holder of his seat in holding controlling shares in such Company. The subject matter on which the Appellant was purported to have exercised its legislative powers is completely within the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, 1999 thereby bringing the matter outside the legislative tribunal of Inquiry Law itself, the Appellant is not competent to legislate upon. This of course means that the Appellant has no power under Constitution and consequently under the Tribunal of Inquiry Law to promulgate the instrument constituting the Standing Tribunal of Inquiry into the Sale and Acquisition of shares of Eko Hotel Limited published as Lagos State Legal Notice No 10 of 1999. Thus, in the absence of power to legislate under the Constitution and the law, the instrument constituting the Tribunal of Inquiry made by the Appellant is null and void as declared by the trial Court and affirmed by the Court below. In line with the decision of this Court in Fawehinmi & Ors v. Babangida & Ors (2003) 3 NWLR (or 808) 604 at 651, the need to examine the other issues in this appeal and the cross-appeal may not even be necessary.

Accordingly with these few comments, both the appeal and cross-appeal are hereby dismissed. I abide by the order on costs made in the lead judgment.