IN THE SUPREME COURT OF NIGERIA

Suit No: SC135/2003

Petitioner: Arewa Paper Converters
And
Respondent: N.I.D.C. (Nig. Universal Bank Ltd)

Date Delivered: 2006-07-14

Judge(s): Idris Legbo Kutigi, Niki Tobi, George Adesola Oguntade,Mahmud Mohammed, Walter Samuel Nkanu Onnoghen.

Judgment Delivered

This is an appeal against the decision of the Court of Appeal Kaduna delivered on 22-5-2003, allowing the Preliminary Objection raised by the Respondent in that Court to the appeal of the appellant at the Court of Appeal against the decision of the Federal High Court of 7-3-2000, refusing to set aside the judgment of the Failed Banks Tribunal Kano Zone given on 24-4-98 in the sum of N969, 572.01 with interest at 21%, against the appellant.

The appellant being a customer of the Nigeria Universal Bank Limited was indebted to the Bank in its current account to the tune of N969, 572.01 which remained unpaid up to the time the Failed Banks Tribunals were established under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994. The Respondent therefore as plaintiff, filed an action for the recovery of the debt from the appellant under the undefended list procedure before the Failed Banks Tribunal, Kano Zone. In the course of the hearing of the matter, the Tribunal granted the Respondent\'s application to serve the appellant by means of substituted service which on return, the Tribunal was satisfied that the appellant was duly served. In the absence of any notice of intention to defend the action in accordance with the rules, the Tribunal entered judgment against the appellant in terms of the amount claimed.

This judgment was entered on 24-4-98. There was no appeal against this judgment by the appellant up to 28-5-99 when the Tribunals (Certain Consequential Amendments etc) Decree No 62 of 1999 dissolving the Tribunals and transferring all pending part heard matters to the Federal High Court for hearing and determination, came into force.

On 22-10-99, five months after the coming into force of Decree 62 of 99, the appellant filed an application at the Federal High Court Kaduna, asking the Court to set aside the judgment of the Failed Banks Tribunal delivered against it since 24-4-98. In the same application, the appellant also sought for an interim relief of staying the execution of the same judgment pending the determination of the application to set aside the judgment. After hearing the parties in this application, the Federal High Court in its ruling delivered on 7-3-2000, dismissed the appellant\'s application. Dissatisfied with the dismissal of its application, the appellant appealed to the Court of Appeal. However, before the Appeal could be heard, the Respondent filed a Notice of Preliminary Objection to the hearing of the appeal. When the appeal came up for hearing, the Court below decided to take the Preliminary Objection first and upon hearing of the same, upheld it and struck out the appellant\'s appeal. Therefore the appellant\'s further appeal to this Court now is against the striking out of its appeal by the Court below on the ground that the Court has no jurisdiction to entertain the appeal.

In the appellant\'s amended Notice of Appeal filed on 25-10-2004, the appellant challenged the decision of the Court of Appeal on three grounds of appeal from which three issues for determination were framed in the appellants brief. The issues are:-

\"1. Whether the appellant\'s appeal from the Federal High Court to the Court of Appeal was incompetent by reason of the provisions of section 5(2) of decree No 18 of 1994 (as amended) and Tribunals (Certain Consequential Amendments, etc) Decree No 62 of 1999, which prescribes finality for the judgment of the defunct Failed Banks Tribunal'

2. Whether the appellant\'s right of appeal from the Federal High Court to the Court of Appeal guaranteed by the 1999 Constitution can be defeated by the provisions of the Failed Banks Decree No 18 of 1994 when the decision being

appealed against was that of the Federal High Court and not that of the Tribunal'

3. Whether the Court below was not in error when it failed to decide the appeal in the alternative on its merit regardless of the fact that it had hinged its decision on a preliminary jurisdictional point, which could be set aside by the Supreme Court'\"

Although the respondent had raised a Preliminary Objection to all the three grounds of appeal contained in the appellant\'s amended notice of appeal, the respondent appeared to have also agreed with the appellant that there are three issues for determination in this appeal. The versions of the respondent\'s issues are:-

'1. Whether the Court of Appeal rightly upheld the Respondent\'s Preliminary Objection to the Appellant\'s Appeal' Ground 1 of the amended Grounds of Appeal

2. Whether the refusal of the Federal High Court in exercise of the jurisdiction of the Failed Banks Tribunal, to set aside the final judgment of the Failed Banks Tribunal is appeallable' Ground 2 of the amended Notice of Appeal

3. Whether the Court of Appeal must consider in all cases, the merit of an appeal after holding that it lacked jurisdiction to entertain the appeal' Ground 3 of the amended Notice of Appeal.\"

Starting with the respondent\'s Preliminary Objection to the appellant\'s three grounds of appeal, the grounds of the objection are that ground one is uncertain, vague and general in terms; ground two read with the particulars is also vague. Ground three on the other hand was attacked on the basis that it does not challenge the ratio decidendi of the decision of the Court of Appeal being appealed against. The essence of a ground of appeal is to appraise the opposite party of the nature of the complaint being raised therein. The overriding consideration is whether the ground being attacked is clearly stated or is vague. See Aderounmu v. Olowu (2000) 4 NWLR (pt 652) 253. Bearing this principle in mind, although the appellant\'s three grounds of appeal are drawn in such a way that they contained long quotations from the judgment of the Court below with very lengthy particulars covering a number of pages, all the same, the grounds cannot be described as vague because they clearly convey to the respondent, the nature of the complaint of the appellant being raised in the grounds of appeal.

Ground one is only complaining against the upholding of the respondents Preliminary Objection by the Court below. In ground two the appellant is complaining against the refusal of the Court below to exercise its jurisdiction to hear the appellant\'s appeal. All the appellant is saying in ground three on the other hand is that the Court below not being a final Court on issue of jurisdiction, acted in error in not proceeding to hear the appellant\'s appeal after upholding the respondent\'s Preliminary Objection. With this observation, I say all the three grounds of appeal contained in the appellant\'s amended Notice of Appeal are competent.

I now proceed to look into the issues arising for determination in this appeal with one issue formulated from each of the three grounds of appeal. Issues one and two in this appeal are interrelated. I will take them together. While the first issue is dealing with the competence or otherwise of the appellant\'s appeal struck out by the Court below, the second issue is mainly dealing with the appellant\'s right of appeal from the decision of the Federal High Court under the 1999 Constitution to the Court of Appeal. Learned Senior Counsel to the appellant citing Section 5(1) and (2) of the Failed Banks Decree No 18 of 1994 relied upon by the Court of Appeal in upholding the respondent\'s Preliminary Objection, argued that the decision of the Court of Appeal particularly where it held that a prayer addressed to the Federal High Court to set aside the judgment of the Failed Banks Tribunal where refused should be treated exactly as a lapsed decision of the Failed Banks Tribunal, is erroneous. Senior Counsel explained that the appellant\'s application at the Federal High Court was based on the provisions of the Tribunals (Certain Consequential Amendments, etc) Decree No 62 of 1999, which made the Federal High Court successor of the Failed Banks Tribunal; that as the application was based on or predicated on non-service of process, it was quite in order and rightly heard by the Federal High Court which ought to have set aside the judgment of the Failed Banks Tribunal, being a nullity as it was given without due service of process on the respondent. Several cases cited in support of the submission of the appellant include Adigun v. Attorney General of Oyo State (1987) 1 NWLR (pt 53) 678. Learned senior Counsel observed that the Court below in its ruling now on appeal, absolutely misconceived the scope and the jurisdiction of the Federal High Court vis-a-vis the

provisions of Decree No 62 of 1999, the provision of Section 2 (3) of which states that the Court process filed before the abrogated Tribunal under Decree No 18 of 1994, shall be deemed to have been filed before the Federal High Court.

With regard to the right of the appellant to appeal against the decision of the Federal High Court to the Court of Appeal and ultimately to this Court, learned senior Counsel asserted that the right of the appellant is guaranteed under the 1999 Constitution read along with Section 2 (3) of the Tribunal (Certain Consequential Amendments, etc) Decree No 62 of 1999 and the case of Eyesan v. Sanusi (1984) 4 SC 15; (1984) 1 SCNLR 353. Learned Counsel emphasised that the appellant\'s right of appeal can only be obstructed or expressly taken away where a statute or the Constitution expressly provides as stated in the cases of Onigbede v. Balogun (1975) 4 SC; Ugwuh v. A.G. East Central State (1975) 6 SC 13; Boardman v. Sokoto N.A. (1965) 1 All NLR 214; Obiyan v. Governor of Mid-West (1972) 4 SC 248 and Mohammed v. CO.P. (1999) 12 NWLR (pt 630) 331. In conclusion, learned senior Counsel urged this Court to allow the appeal as it is not the intention of the law makers that provisions of Section 5 (1) and (2) of Decree No 18 of 1994 should deprive the appellant of its right of appeal duly conferred by another statute and the Constitution.

For the respondent, it was submitted by its Counsel after narrating the undisputed facts of this case and relying on Section 5 (1) and (2) of the Failed Banks Decree No 18 of 1994 and the case of Onuaguluchi v. Ben Collins Ndu & Ors (2001) 7 NWLR (pt 712) 309 at 321, that where a statute renders any judgment of a Court or Tribunal final, both the Court of Appeal and this Court lack appellate jurisdiction to entertain the appeal: that it is the statute that conferred the jurisdiction that had taken it away; that in the present case the judgment of the Tribunal against the appellant which was sought to be set aside before the Federal High Court, had been preserved by statute, namely Decree No 62 of 1999 and therefore cannot be set aside or appealed against. With regard to the complaint of the appellant that it went before the Federal High Court to have the judgment of the Failed Banks Tribunal obtained in default against it set aside mainly on the grounds of denial of fair hearing which cannot be waived, learned Counsel to the respondent observed that since the appellant was given opportunity to be heard but failed to avail itself before the Failed Banks Tribunal, it cannot complain of any denial of fair hearing which can be waived having regard to the decision of this Court in Governor of Oyo State v. Folayan (1995) 8 NWLR (pt 413) 292 at 306. Learned Counsel further observed that as the appellant was not before the Federal High Court to enforce its Fundamental Rights, most of the cases cited in that line are not relevant in the present case.

On the relevance of the provisions of sections 2 and 3 of Decree No 62 of 1999, learned Counsel to the respondent quoted the provisions and submitted that the application of the appellant before the Federal High Court not being in respect of a part heard matter or new proceeding instituted before that Court but for proceeding in respect of suit No FBT/KNZ/CV/242/98, the Federal High Court lacked jurisdiction to entertain the application: that although the trial Court heard the application and dismissed it, the decision of the trial Court was still not appealable to the Court of Appeal being a final decision of a Court which is a successor of the Failed Banks Tribunal under Decree No 62 of 1999, particularly when the relief sought in the appeal was to set aside the judgment of the Failed Banks Tribunal delivered on 24-4-98. Learned Counsel concluded by asking this Court to dismiss the appeal.

On 24-2-2003, the Court below heard the appeal in the course of which learned Counsel adopted their respective briefs of argument which also contained arguments on Preliminary Objection raised by the respondent that the Court below lacked jurisdiction to entertain and determine the appellant\'s appeal. The Notice of Preliminary Objection dated 13-2-2003 and filed the same day at the Court below is in terms set out below:-

'(a) This Honourable Court has no jurisdiction to entertain and determine this appeal.

(b) The Notice and Grounds of Appeal are incompetent.

AND TAKE NOTICE that the grounds of the said objection are as follows:

1. The original grounds of appeal contained in the Notice of Appeal together with additional ground 3 complaint against an order of substituted service made by the Failed Banks Tribunal on 1st April, 1998 and the subsequent service by substituted means effected by the Bailiff of the Failed Banks Tribunal on the Appellant on 6th April, 1998

2. Section 5(1) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree, 1994 (as amended) provides right of appeal against the decision of the Tribunal within 21 days after the decision: while section 5 (2) of the aforesaid Decree provides for finality of the decision after 21 days of the decision in the absence of appeal.

3. The Notice and grounds of appeal challenging the decision of the Failed Banks Tribunal filed without leave and out side the statutory period allowed for appeal, is incompetent.

4. The grounds of appeal read together with their particulars infringed the provisions of Order 3 Rule 2(4) of the Court of Appeal Rules, 2002 for being vague or general or disclosed no reasonable grounds of appeal.'

In its judgment delivered on 22-5-2003, the Court of Appeal upheld the Preliminary Objection of the respondent challenging the competence of the appeal and the jurisdiction of that Court to entertain and determine it and accordingly struck out the appeal.

The undisputed facts agreed by the parties in this appeal part of which I have earlier narrated in this judgment are that the proceedings of the Failed Banks Tribunal in the course of which the respondent\'s application for substituted service on the appellant was heard and granted on 1-4-98, is not in dispute. So also is the fact on the return of service by substituted means, the Tribunal heard the respondent\'s suit in accordance with the rules of Court on the undefended list and delivered its judgment against the appellant on 24-4-98. There was also no appeal against this judgment of the Failed Banks Tribunal within 21 days to the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunals) Decree 1984 as amended. The parties are also not disputing the fact that with the coming into force of the Tribunals (Certain Consequential Amendments, etc) Decree No 62 of 1999, the Tribunal (which heard the appellant\'s case had been dissolved and all part-heard matters before it had been transferred to the Federal High Court as from 28-5-99 for continuation and disposal.

The Preliminary Objection raised by the respondent at the Court below to the competence of appellant\'s appeal and the jurisdiction of that Court to entertain and determine the appeal was rightly raised. See Pan Asian Co. Ltd v. N.I.C.O.N (1982) 9 SC I and Tukur v. Gongola State (1989) 4 NWLR (pt 117) 517. The law is also trite that a Court of law is said to be competent to entertain and determine a matter placed before it if:-

(a) It is properly constituted as regards members and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

(c) The case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

This is because any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided, the defect being extrinsic to the adjudication. See Western Steel Works Ltd v. Iron and Steel Workers Union (1986) 3 NWLR (pt 30) 617 and Madukolu & Ors v. Nkemdilim & Ors (1962) 2 SCNLR 314, (1962) 1 All NLR (pt. 4) 587, where it was Stated at page 595 that where all the three conditions listed above for the exercise of jurisdiction co-exist, such a Court is said to have competence and jurisdiction.

In the case at hand, the appellant\'s application filed at the Federal High Court on 22-10-99, was brought under the Tribunals (Certain Consequential Amendments, etc) Decree No 62 of 1999, which dissolved the Failed Banks Tribunals constituted under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No 18 of 1994, under which the respondent\'s suit No. FBT/KNZ/CV/242/98 against the appellant was heard and determined. The relief sought by the appellant before the Federal High Court which before the coming into force of Decree No 62 of 1999 had no jurisdiction in suits connected with Failed Banks, was the setting aside of the judgment of the Failed Banks Tribunal delivered since 24-4-98. The question is whether the Federal High Court was competent to entertain and determine the appellant\'s application. Decree No 62 of 1999 which conferred jurisdiction on the Federal High Court with effect from

28-5-1999, contains the following provisions in sections 2 and 3 as follows:-

2. (1) The Federal High Court or the High Court of a State, as the case may be, shall have jurisdiction to try the offences created under the enactments specified in the schedule to this Decree.

(2) Accordingly, a tribunal established in any of the enactments specified in the schedule to this Decree is hereby dissolved.

(3) A charge, claim or Court process filed before a Tribunal established under any of the enactments specified in the schedule to this Decree shall be deemed to have been duly filed or served before the Federal High Court or High Court of a State, as the case may be and such charge, claim and Court process shall be deemed amended as to title, venue, and such other matter as may be appropriate to give effect to this sub-section without further assurance than this Decree.

(4) Any order, remand, decision or judgment made by a Tribunal before the commencement of this decree is hereby preserved.

(5) A decision or judgment of a tribunal made before the commencement of this Decree shall be enforced in accordance with the procedure or law relating to the enforcement of a decision or judgment of the Tribunal before the commencement of this Decree.

(6) Where before the commencement of this Decree, a matter has been concluded in a Tribunal and the Tribunal was for any reason whatsoever unable to deliver the judgment, the judgment may be delivered by a judge of the Federal High Court or the High Court of a State, as the case may be: Provided the judgment shall have been written.

3. (1) Where any part heard matter is pending before any Tribunal on the date of making this Decree, the judge:-

(a) may, if the parties to the proceedings agree in a civil cause, adopt the proceedings of the Tribunal concerned;

(b) shall, in a criminal case, try the matter de novo pursuant to this Decree

(2) All new proceedings shall be brought before the Court in accordance with the rules of procedure of the Court concerned.\"

These are the provisions of the Tribunals (Certain Consequential Amendments etc) Decree 1999, otherwise known as Decree No. 62 of 1999, that conferred specific jurisdiction to the Federal High Court in all criminal and civil matters that were within the jurisdiction of the Failed Banks Tribunals which were in operation under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994 otherwise known as Failed Banks Decree No 18 of 1994. In other words by section 2(1) of Decree No 62 of 1999, the Federal High Court with effect from the date of the commencement of the Decree being 28-5-1999, had stepped into the shoes of the Failed Banks Tribunals in respect of all matters within the jurisdiction of the Tribunals under the Failed Banks Decree which had been consequentially amended to bring the life of the Failed Banks Tribunals to an end. Thus, the jurisdiction of the Federal High Court to entertain and determine matters under the Failed Banks Decree commenced on 28-5-99.

Next is to determine from the provisions of the new Decree No 62 of 1999, the types of matters transferred from the defunct Failed Banks Tribunals to the Federal High Court. By sub-section (3) of section 2 of the Decree, a charge in respect of a criminal matter, a claim in the process for recovery of debts of banks, or Court process filed before any Failed Banks Tribunal under the Failed Banks Decree are deemed to have been duly filed or served before the Federal High Court. The provision of sub-section (4) of section 2 of the Decree on the other hand preserved any order, remand, decision or judgment made by any dissolved Failed Banks Tribunal before the commencement of the Decree on 28-5-99. With regard to the decision or judgment of a Tribunal made before the commencement of the Decree, it is to be enforced in accordance with the procedure or law relating to the enforcement of a decision or judgment of Tribunal

before the commencement of the Decree. This section 2 of the Decree has also taken care of situation where any dissolved Tribunal had concluded the hearing and determination of a matter before it in a judgment which had been written but was not delivered before 28-5-99, when the Decree came into force. The Federal High Court by sub-section (6) of the section was invested with the jurisdiction to deliver the judgment.

The nature of the jurisdiction conferred on the Federal High Court by Decree No. 62 of 1999 is further specifically stated in section 3(1) and (2) of the Decree earlier quoted in this judgment. The jurisdiction under this provision is confined to part-heard matters pending before the dissolved Failed Banks Tribunal on the date of the making of the Decree on 28-5-99. The jurisdiction also covers all new proceedings that shall be commenced before the Federal High Court. The provisions of sections 2 and 3 of Decree No. 62 of 1999 conferring additional jurisdiction on the Federal High Court in respect of matters under the jurisdiction of the dissolved Failed Banks Tribunals, are quite plain and unambiguous. It is in line with the provision of section 251 of the constitution of the Federal Republic of Nigeria 1999, which recognised this type of additional jurisdiction conferred by statute in specifying the general jurisdiction of the Federal High Court under the Constitution.

What I have to examine now is where the case of the appellant can be accommodated under the provisions of sections 2 and 3 specifying the jurisdiction of the Federal High Court with effect from 28-5-99, since the appellant claimed to have brought its application before the Federal High Court under section 3 of the Decree. The undisputed facts of this case contained in the record of appeal, show that the suit No FBT/KNZ/CV/242 against the appellant for the recovery of a bank debt, was commenced before the Kano Zone Failed Banks Tribunal on 1-4-98. The suit was heard on the undefended list in accordance with the rules applicable before the Tribunal and concluded with a judgment against the appellant for the sum of N969, 572.01, on 24-4-98. The case was heard under the Failed Banks Decree No. 18 of 1994 before it was amended by Decree No. 62 conferring jurisdiction in such cases on the Federal High Court, which on 22-10-99, about 5 months after the commencement of the Decree, received the application of the appellant to set aside the judgment of the dissolved Tribunal against it. Is this application by the appellant within the maters that can be taken and determined by the Federal High Court under Sections 2 and 3 of Decree No. 62 of 1999' Clearly, the jurisdiction of the Federal High Court under those sections of statute is confined to part-heard matters left behind by the defunct Failed Banks Tribunals at various stages of proceedings right from the date of filing of the change or suit, to the stage of delivery of judgment written and left behind undelivered by the Tribunal. Any charge or claim out side this area cannot fall into the category of part-heard matters pending before a Tribunal before its life was brought to an end by the Decree. In other words the case of the appellant in which judgment had been delivered by the Tribunal since 24-4-98, more than one year before the commencement of Decree No 62 of 1999, is certainly not available for the Federal High Court to pick up and determine under its new jurisdiction not being a part-heard matter pending before the Tribunal as at 28-5-99. It would have been a different situation if the judgment of the Tribunal against the appellant was only written and not delivered before the commencement of Decree No. 62 of 1999. The judgment then could have been delivered by the Federal High Court under Section 2 sub'section (6) of the Decree thereby qualifying the judgment as a part-heard matter under Section 3 of the Decree, which would have brought the appellant\'s case squarely within the jurisdiction of the Federal High Court and afortiori within the jurisdiction of the Court below.

Whether the case of the appellant can be accommodated under section 3 (2) of Decree No. 62 of 1999 as a new proceeding being commenced before the Federal High Court may be examined to see if the Court could have jurisdiction to entertain it. On close examination, the answer of course is in the negative on the face of the judgment of the Failed Banks Tribunal delivered against the appellant in suit No. FBT/KNZ/CV/242/98 since 24-4-98. As the case of the appellant was not being commenced as a new proceeding before the Federal High Court under the provisions of Decree No. 62 of 1999, that Court cannot be clothed with the jurisdiction to entertain and determine the claim. See Moore v. Tayee 2 WACA 43 at 45 and Mandara v. A.G. Federal (1984) 1 SCNLR 8. In other words the case of the appellant having been instituted, heard and determined by the Failed Banks Tribunal under the Failed Banks Decree No 18 of 1994, before the amendment to divest the Tribunal of its jurisdiction, the appellant cannot now come before the Federal High Court which had taken over the jurisdiction of the Tribunal with effect from 28-5-99 for any relief. This is because the rights and obligation of the parties in this case had been effectively determined by the Tribunal under the repealed provisions of Decree 18 of 1994 Section 5 of which States:-

\"5. (1) A person convicted or against whom judgment is given under this Decree may, within 21 days of the

conviction or judgment, appeal to the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunals) Decree 1984, as amended, in accordance with the provisions of that Decree.

(2) The decision of the Special Appeal Tribunal shall be final and, where there is no appeal, the decision of the Tribunal shall be final.\"

The appellant not having availed itself of the remedies at its disposal under Decree No. 18 of 1994 before the amendment to either apply before the Tribunal to set aside its judgment given against the appellant in suit No. FBT/KNZ/CV/242/98 on 24-4-98, on grounds of improper service, or appeal against the judgment within the time prescribed by Section 5 (1) of the Decree, the appellant is no longer clothed with any right to seek remedy before the Federal High Court under the new dispensation brought about by Decree No. 62 which on its commencement on 28-5-99, swept away not only the Failed Banks Tribunal but also the Special Appeal Tribunal to which the appellant ought to have sought remedy on appeal. Since there is no provision in Sections 2 and 3 of Decree No. 62 of 1999 to deal with any matter already heard and disposed off by the dissolved Tribunal, the Federal High Court clearly, is without jurisdiction to entertain and determine the appellant\'s application. In this respect, the issue of whether or not the judgment of the Tribunal against the appellant was final in the absence of any appeal against it within 21 days which was heavily flogged by the parties before this Court, is no longer important on the face of the clear provisions of Sections 2 and 3 of Decree No. 62 of 1999 which conferred jurisdiction on the Federal High Court. With this situation, the Federal High Court has no jurisdiction to hear the application filed by the appellant, which formed the basis of this appeal. Following this ouster of the jurisdiction of the Federal High Court to entertain the appellant\'s application, the judgment of the Failed Banks Tribunal against it being a judgment of a Court of competent jurisdiction against which there was no appeal, subsists. The rights created, preserved or determined in that judgment remain valid until set aside. However, the trial Federal High Court by virtue of the provisions of Decree No. 62 of 1999, is incompetent to vary and/or reject rights thus established by the Court of competent jurisdiction namely, the Failed Banks Tribunal. This means even if there were some errors in the judgment of the Tribunal against the appellant, it is for the competent Court to which an appeal lies against the judgment, in this case the Special Appeal Tribunal, to correct it or so declare. The result of the proceedings undertaken in the absence of jurisdiction by the trial Court is of course obvious as the law on the situation is trite.

Coming back to the appeal filed by the appellant against the decision of the Federal High Court in exercise of its jurisdiction under Sections 2 and 3 of Decree No. 62 of 1999 dismissing the appellant\'s application, the right of appeal does not stem out of or derive exclusively from the provisions the 1999 Constitution as argued on behalf of the appellant. The true position is that the right of appeal of the appellant from the decision of the Federal High Court on a matter originating from the decision of a Failed Banks Tribunal with effect from 28-5-99 to the Court of Appeal lies in Section 7(1) of Decree No. 62 of 1999 which states:-

\"7. (1) A person convicted or against whom a judgment is given under this Decree may, within 30 days of the conviction or judgment, appeal to the Court of Appeal.\"

This specific right of appeal is of course, in addition to the general right of appeal conferred by Sections 241 and 242 of the1999 Constitution. Therefore the appellant's appeal to the Court of Appeal having its roots from the decision of the Failed Banks Tribunal handed down since 24-4-98 and which was not properly or rightly placed before the Federal High Court for adjudication thereby affecting the proceedings of that Court, also affected the competence of the appellant\'s appeal. This is because although the trial Federal High Court heard the appellant\'s application to set aside the judgment of the Failed Banks Tribunal on the merit, as by virtue of the provisions of Section 2 and 3 of Decree No. 62 of 1999, that Court lacked jurisdiction to entertain and determine the application, the proceedings in the matter including the ruling being appealed against by the appellant are a complete nullity leaving nothing at all to support any appeal. In other words when the Court below in its judgment said at page 134 of the record that:-

\"This Court in my humble view is without jurisdiction to entertain an appeal whether directly or indirectly from the decision of the Failed Banks Tribunal given on 24th April 1998 or before 29-5-99.\"

All that Court was saying is that as at 29-5-99, when Decree No. 62 of 1999 was in force, the judgment of the Failed

Banks Tribunal of 24-4-98, against the appellant was not a pending part-heard matter that could have gone before the Federal High Court for any form of adjudication under the Decree. This is because the case of the appellant was governed by the provisions of the Failed Banks Decree 1994 before its amendment in 1999 and therefore the rights and obligation of the parties in this appeal in respect of the case must be determined in accordance with the law prevailing before the amendment. See A.G. Lagos State v. Dosunmu (1989) 3 NWLR (pt 111) 552; Alao v. Akano (1988) 1 NWLR (pt 71) 431; Uwaifo v. A.G. of BendelState (1982) 7SC, 124; Utih v. Onoyivwe (1991) 1 NWLR (pt 166) 166 at 201; Rossek v. A.C. B. Ltd (1993) 8 NWLR (pt 312) 382 at 474 and the recent decision of Adah v. N. Y.S.C. (2004) 13 NWLR (pt 891) 639 at 648 where Uwaifo, JSC observed:-

\"It ought to be understood that the law which supports a cause of action is not necessarily co'extensive with the law which confers jurisdiction on the Court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose where as the jurisdiction of the Court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was constituted and heard.\"

Thus, in the case at hand, upon the state of the law conferring jurisdiction on the Federal High Court as at 22-10-99 in respect of matters arising from the Failed Banks Decree No 18 of 1994 as amended, the Federal High Court was deprived of the jurisdiction to entertain and determine the appellant\'s application. Therefore the Court below having found the appellant\'s appeal incompetent, after striking out the appeal for lack of jurisdiction to entertain it, the Court ought to have proceeded to make the consequential order of declaring the proceedings and ultimate ruling of the Federal High Court being appealed against a nullity having been conducted and given without jurisdiction. All the same, although the Court below did not make specific finding that the trial Court has no jurisdiction to entertain the appellant\'s application, its decision upholding the objection of the respondent and striking out the appellant\'s appeal, is quite in order. With the conclusion I have arrived at in the determination of this appeal on issues 1 and 2, it no longer necessary to look into the complaint of the appellant in issue No 3 which is no longer a life issue.

In the final analysis, having regard to the circumstances of this case, I completely agree with the Court below in striking out the appellant\'s appeal before it on the grounds that it has no jurisdiction to entertain and determine the appeal. Consequently the appellant\'s appeal against the order of the Court of Appeal striking out its appeal is hereby dismissed.

The respondent is entitled to costs which I assess at N10,000.00 against the appellant.

Judgment delivered by Idris Legbo Kutigi, J.S.C.

I have read before now the judgment just rendered by my learned brother Mohammed, J.S.C. I agree with his reasoning and conclusions. The appeal completely lacks merit. Both the Federal High Court and the Court of Appeal were right in their decisions. The appeal is dismissed with costs as assessed.

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

I have read in draft the judgment of my learned brother, Muhammed, JSC, and I agree with him that the appeal be dismissed.

The respondent is the plaintiff. The appellant is the defendant. The respondent applied to the Kano Zone of the Failed Banks Tribunal for the issuance of a writ of summons on the undefended list for the sum of N969,572.01 with interest at 21%. The respondent applied for leave to serve the appellant by substitution, that is, by pasting the civil processes on her last known address at No. 4, Light Industrial Layout, Kawo, Kaduna. Although the application was granted, the

service was not effected at the appellant\'s last known address.

Judgment was entered for the respondent on 24th April 1998 in respect of the above sum and in the above term of 21% interest. On 22nd October 1999, the appellant filed a motion at the Federal High Court, Kaduna, seeking the Court to set aside the judgment of the Failed Banks Tribunal which was obtained in default of appearance. The motion was dismissed. The appeal to the Court of Appeal was struck out. This is a further appeal to the Supreme Court.

Briefs were filed and exchanged. The appellant formulated three issues. So too the respondent. The respondent raised a preliminary objection urging this
Court to strike out Ground 1 on the ground that it is uncertain, vague and/or general in terms. I have carefully examined the objection and I do not see any merit in it. The objection is accordingly refused.

On the merits of the appeal, learned Senior Advocate for the appellant, Mr. J. B. Daudu, submitted that the Court of Appeal was in error for denying the appellant his constitutional right of appeal from the Federal High Court on the ground that a Decree put a stamp of finality on the judgment of the Failed Bank Tribunal. He also submitted that the Court of Appeal was wrong for not considering in the alternative the appeal on its merits after its decision on the preliminary objection.

Learned Counsel for the respondent, Umaru Mohammed, Esq. submitted that as the appellant failed, refused and or ignored to take advantage of the right of appeal granted it by section 5(1) of the Failed Banks Decree within 21 days after the judgment, it was rendered a final judgment by virtue of section 5(3) of the Decree. He also submitted that the delay for 18 months after the judgment constitutes a deliberate withholding of unfavourable material facts and waiver of right of appeal and of fair hearing guaranteed by the Constitution. He finally submitted that failure of the Court of Appeal to determine the appeal on its merit after holding that it has no jurisdiction is not a decision and the Supreme Court has no jurisdiction to entertain appeal against non-decision by the Court of Appeal.

The Court of Appeal held that it has no appellate or supervisory jurisdiction over the Failed Banks Tribunal or the Special Appeal Tribunal. The Court said at pages 132 and 133 of the Record:

\"Where, as in this appeal, the substance of the appeal is actually in respect of the decision of the Failed Banks Tribunal, whatever errors of a procedural nature or of a procedural vice as to jurisdiction or competence, cannot be corrected by this Court or the Federal High Court. They can only be corrected by the Failed Banks Tribunal or the Special Appeal Tribunal itself or else they will remain uncorrected, unresolved as this Court cannot intervene since it has no appellate or supervisory jurisdiction over the Failed Banks Tribunal or the Special Appeal Tribunal. It is my respectful view that this Court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Failed Banks Decree has in clear and unambiguous language made the Failed Banks Tribunal or the Special Appeal Tribunal, the final Court.\"

I entirely agree with the Court of Appeal. The position cannot be otherwise. The position of the law is as stated above as it vindicates section 5(1) and (2) of the Failed Banks Tribunal Decree No. 18 of 1994. The sub-sections provide as follows:

\"(1) A person convicted or against whom judgment is given under this Decree may, within 21 days of the conviction or judgment appeal to the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunal) Decree 1984, as amended, in accordance with the provisions of that Decree.

(2) The decision of the Special Appeal Tribunal shall be final and, where there is no appeal, the decision of the Tribunal shall be final.\"

The appellate procedure is clearly stated above in section 5(1) and (2) of the Decree. There is no Court of Appeal in the provision. There is also no Federal High Court in terms of having original jurisdiction in the matters in the Failed Banks Tribunal Decree No. 18 of 1994 or any other jurisdiction for that matter.

The above apart, section 5(1) says appeal shall lie to the Special Appeal Tribunal within 21 days. As there was no appeal within the statutory period of 21 days in section 5(1), the decision of the Failed Banks Tribunal became final under the second leg of section 5(2) of the Decree. Jurisdiction is a sensitive matter dealing with the hierarchy of Courts in any democracy. As a threshold issue, Courts lean sentimentally to their jurisdiction and feel bad when other Courts encroach upon their jurisdiction. Because of the jurisdictional hierarchy in our Court system, Courts are satisfied with the position of jurisdiction vested in them and will not have the hunger or gluttony for what is not within their jurisdiction. That is exactly what the Court of Appeal did and I cannot see my way clear in faulting the Court. The Court has enough to do in the Constitution by way of jurisdiction and it does not need a failed bank jurisdiction.

The word final really means final in section 5(2) of the Failed Banks Tribunal Decree No. 18 of 1994. It means end, last, terminate or complete. In relation to legal action, the word is used in contradistinction with \"interlocutory\". In other words, an interlocutory process or decision is not final. An interlocutory matter is provisional, interim, temporary; not final. In the circumstances, the Court of Appeal, nay this Court, have nothing to do with this matter, which is final by virtue of section 5(2) of the Decree.

Let me take the issue on taking the merits of the matter after the Court of Appeal had decided that it had no jurisdiction to hear the appeal. Normally, where a Court of law lacks jurisdiction to hear a matter and comes to that decision, the Court has nothing to do with the merits of the matter because the exercise will be in futility. However, Courts below the Supreme Court will not be wrong to take the merits of the matter in the alternative. This exercise is useful and becomes very handy in the event that the Court wrongly ruled that it had no jurisdiction when in law it had. This helps in no little way in saving litigation period. Instead of sending the case back to the Court to hear the matter because it has jurisdiction, a decision in the alternative will stop such a procedure.

In the instant case, I hold that the Court of Appeal correctly came to the conclusion that it lacked the jurisdiction to hear the case and accordingly struck it out.

In sum, this appeal fails and it is dismissed. I abide by the costs awarded by my learned brother, Mohammed, JSC, in his judgment.

Dissenting Judgement delivered by
George Adesola Oguntade, J.S.C.

The Respondent, as the Plaintiff before the Failed Banks Tribunal, Kano Zone had brought a claim against the appellant as the defendant for the sum of N969, 572.01 with interest at 21% per annum. The claim was brought under the undefended list procedure.

The appellant was served by means of substituted service. The return filed indicated that the appellant was duly served the process. On 24-4-98, the Tribunal gave judgment in favour of the respondent.

On 28-5-99, the Tribunals (Certain Consequential Amendments etc.) Decree, 1999 came into force. By the provisions of that Decree, the Failed Banks Tribunal became extinct. Its jurisdiction was transferred to the Federal High Court. On 22-10-99, the appellant as applicant brought an application before the Federal High Court, Kano praying for the following:

\"1. Setting aside the judgment of the afore-described tribunal in this suit delivered on the 24th of April, 1998 which said judgment was obtained in default of appearance.

2. Staying the execution of the judgment of the afore-described tribunal in this suit pending the determination of this application.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.\"

There was deposed to an affidavit in support of the application.

Because of the importance of this affidavit, I reproduce the same in full:

\"I, Shade Oloyede (Mrs.), Female, Adult, Xtian, Litigation Secretary in the employment of J. B. Daudu & Co. presently residing at No. 2 Cele Road, Kaduna do hereby make oath and declare as follows:

1. That by virtue of my position aforesaid, I am familiar with all the facts leading to this application.

2. That I have the authority of both my employer and the defendant to depose to the following facts.

3. That I am informed by the Managing Director of the judgment debtor/applicant and I verily believe the following facts which emanated from him.

a. That the alleged writ of summons was not served on the Judgment Debtor/Applicant by substituted means i.e. (Pasting it at Plot 4 Light Industrial Layout, Kawo, Kaduna as ordered by the Kano zone of the Failed Banks Tribunal. A Certified Copy of the proceedings is annexed herewith and marked as Exhibit \'A\'.

b. That the premises with the above address is manned by security guards who would have seen the writ if actually pasted.

c. That the address of service in the affidavit of service is different from the address ordered by the Court. A copy of the affidavit of service is annexed as Exhibit \'B\'.

d. That the judgment debtor/applicant was never aware of this suit, hence did not enter defence.

e. That the judgment delivered on 24/4/98 by the afore-described tribunal, is a default judgment as it was obtained in default of appearance.

f. That the judgment debtor/applicant has a valid defence to this action.

g. That it will be in the interest of justice to set aside the judgment.

4. That I swear to this affidavit conscientiously believing same to be true and correct in accordance with the Oaths Act Cap. 333 LFN 1990.\"

The respondent deposed to a counter-affidavit, which said counter-affidavit reads:

\"I, Abdullahi I. Ebba, Male, Muslim, Nigerian Citizen of BZ 55, Abuja/Danmusa Road, Sardauna Crescent, Kaduna doth hereby solemnly and sincerely declare that:

1. I am the Litigation Secretary in the Chambers of Messrs. Y. I. Yahuza and Company, Solicitors to the judgment Creditor/Respondent in this suit.

2. By virtue of my aforesaid position, I am quite conversant with the facts of this suit and I have the authority of both the judgment Creditor/Respondent and my employers to depose to the facts herein.

3. I am informed by Umoru A. Mohammed, Esq. of Counsel handling this case in our Chambers in the ordinary course of business on 14th January, 2000 at 2.30pm and I verily believed same to be true and correct as follows:-

3.1 He perused through the affidavit in support Motion dated 21st October, 1999 deposed to by one Mrs. Shade Oloyede and paragraph 3 is false and/or half truth.

3.2 The Application for Debt Recovery (i.e. writ of summons) together with the other processes of the defunct Failed Banks Tribunal were pasted on the Judgment Debtor/Applicant\'s address at Plot 4, Light Industrial Layout, Kawo, Kaduna as ordered by the defunct Failed Banks Tribunal as evidenced by Exhibit \'B\' attached to the Judgement Debtor/Applicant\'s affidavit.

3.3 He acted as pointer to the Bailiff of the defunct Failed Banks Tribunal and was present when the Applica'tion for Debt Recovery and other processes were pasted at the Judgment Debtor/Applicant\'s address at Plot 4, Light Industrial Layout, Kawo, Kaduna.

3.4 An old man who manned the gate and can only communicate in Hausa Language unsuccessfully attempted to prevent the \'Failed Banks Tribunal\'s Bailiff from pasting the Application for Debt Recovery and other processes on the Judgment Debtor/Applicant\'s address as there was no any other official of the abandoned industry of the judgment Debtor/Applicant at Plot 4, Light Industrial Layout, Kawo, Kaduna.

4. AND I make to this solemn declaration conscien'tiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1990.\"

It is apparent from the affidavit and counter-affidavit above that the bone of contention was whether or not the appellant was duly served with the processes leading to the judgment against it by the tribunal. The Federal High Court in its ruling on the application considered the affidavit evidence before it and came to the conclusion that the appellant was duly served with the writ of summons. It then dismissed the application.

Dissatisfied, the appellant brought an appeal before the Court below. The respondent, before the Court below, filed a notice of preliminary objection wherein it was contended that the Court below had no jurisdiction to hear the appeal. The grounds relied upon read thus:

\"1. The original grounds of appeal contained in the Notice of Appeal together with the additional ground 3 complained against an order of sub'stituted service made by the Failed Bank Tribunal on 1st April, 1998 and the subsequent service by substituted means effected by the Bailiff of the Failed Bank Tribunal on the Appellant on 6th April, 1998.

2. Section 5(1) of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Decree 1994 (as amended) provides right of appeal against the decision of the tribunal within 21 days after the decision; while section 5(3) of the aforesaid Decree provides for finality of the decision after 21 days of the decision in the absence of an appeal.

3. The Notice and grounds of appeal challen'ging the decision of the Failed Bank Tribunal filed without leave and outside the statutory period allowed for appeal, is incompetent.

4. The grounds of appeal read together with their particulars infringed the provision of Order 3 Rule 2(4) of the Court of Appeal Rules, 2002 for being vague or general or disclosed no reasonable grounds of appeal.\"

The Court below in its judgment on 22-5-03 upheld the preliminary objection. The appeal was accordingly struck out. The appellant has come before this Court on a final appeal. In the appellant\'s brief filed before this Court, the issues for determination in the appeal were formulated thus:

\"4.1. Whether the appellant\'s appeal from the Federal High Court to the Court of Appeal was incompetent by reason of the provisions of Section 5(2) of Decree No. 18 of 1994 (as amended) and Tribunals (Certain Consequential Amendments, etc.) Decree No. 62 of 1999, which prescribes finality for the judgment of the defunct Failed Bank Tribunal'

4.2. Whether the appellant\'s right of appeal from the Federal High Court to the Court of Appeal guaranteed by the

1999 Constitution can be defeated by the provisions of the Failed Banks Decree No. 18 of 1994 when the decision being appealed against was that of the Federal High Court and not that of the Tribunal'

4.3. Whether the Court below was not in error when it failed to decide the appeal in the alternative on its merit, regardless of the fact that it had hinged its decision on a preliminary jurisdictional point, which could be set aside by the Supreme Court'\"

The respondent formulated its own issues. But those issues are similar to the appellant\'s. I shall be guided in this appeal by the appellant\'s issues. All the three issues can be conveniently taken together. I shall so take them. The main issue in this appeal is whether or not the Court below lacked the jurisdiction to hear and determine the appeal by reason of section 5(2) of Decree No. 18 of 1994 (as amended) and Tribunals (Certain Consequential Amendments, etc.) Decree No. 62 of 1999.

Now section 5(1) and (2) of Decree No. 18 of 1994 provides:

\"5 (1) A person convicted or against whom judgment is given under this Decree may, within 21 days of the conviction or judgment, appeal to the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunal) Decree 1984, as amended in accordance with the provisions of that Decree.

(2) The decision of the Special Appeal Tribunal shall be final and where there is no appeal, the decision of the Tribunal shall be final.\"

The contention of the respondent in support of its notice of preliminary objection is that, the appellant not having appealed against the decision of the Failed Bank Tribunal within 21 days, could no longer validly appeal to the Court below.

The provisions of Decree No. 62 of 1999 Sections 2 and 3 were also relied upon to show that, as the suit against the appellant was not a pending one as at 28/5/99 when Decree No. 62 of 1999 came into force, the appellant could not bring the application it did before the Federal High Court. Sections 2 and 3 of Decree No. 62 of 1999 provide:

\"2. (1) The Federal high Court of the High Court of a State, as the case may be, shall have jurisdiction to try the offences created under the enactments specified in the schedule to this Decree.

(2) Accordingly, a Tribunal established in any of the enactments specified in the schedule to this Decree is hereby dissolved.

(3) A charge, claim or Court process filed before a Tribunal established under any of the enact'ments specified in the schedule to this Decree shall be deemed to have been duly filed or served before the Federal High Court, or High Court of a State, as the case may be and such charge, claim and Court process shall be deemed amended as to title, venue, and such other matter as may be appropriate to give effect to this sub-section without further assurance than this Decree.

(4) Any order, remand, decision or judgment made by the tribunal before the commencement of this decree is hereby preserved.

(5) A decision or judgment of a Tribunal made before the commencement of this Decree shall be enforced in accordance with the procedure or law relating to the enforcement of a decision or judgment of the Tribunal before the commencement of this Decree.

(6) Where before the commencement of this Decree, a matter has been concluded in a Tribunal and the Tribunal was for any reason whatsoever unable to deliver the judgment, the judgment may be delivered by a Judge of the Federal High Court or the High Court of a State, as the case may be: Provided the judgment shall have been written.

3. (1) Where any part-heard matter is pending before any Tribunal on the date of making this Decree, the Judge:-

(a) may, if the parties to the proceedings agree in a civil cause, adopt the procee'dings of the Tribunal concerned;

(b) shall, in a criminal case, try the matter de novo pursuant to this Decree.

(2) All new proceedings shall be brought before the Court in accordance with the rules of procedure of the Court concerned.\"

There is no doubt from the undisputed facts before us that judgment was given against the appellant by the Failed Banks Tribunal on 24-4-98. The appellant did not appeal against the judgment. Rather, it brought an application before the Federal High Court praying that the judgment be set aside on the ground that it was not served with the Writ of Summons and processes leading to the judgment. The application was brought on 28-10-99, which was beyond the 21 days it had, within which to appeal against the judgment.

In considering the merits of this appeal, it is of fundamental importance to bear in mind that the appeal before the Court below was not one directed against the judgment of the Failed Bank Tribunal. Rather, the appeal was against the refusal of the Federal High Court to set aside the judgment of the Failed Bank Tribunal. The Federal High Court did not have to consider whether or not it had jurisdiction to entertain the application on the ground that the judgment was final, the appellant not having appealed against it within 21 days as provided under section 5 of Decree No. 18 of 1994 as reproduced above. The Federal High Court considered the application on its merits and came to the conclusion that the appellant was served with the processes leading to the judgment, contrary to the assertion of the appellant.

I am not in any doubt that the issue of jurisdiction could be raised at any stage of a litigation and even for the first time on appeal as was done in this case. Let there be no doubt therefore that the respondent was within its rights to raise it. But was the Court below right to uphold the respondent\'s notice of preliminary objection' I think not.

It is my humble view that the Court below had not given full attention to the effect in law of a judgment given against a person who had not been served with a Writ of Summons. I do not say here that the appellant was not served with the Writ of Summons. But that was the contention it raised in asking that the judgment of the Failed Banks Tribunal be set aside. The appellant\'s Counsel J. B. Daudu Esq. S.A.N. in his written brief made this point so succinctly in these words:

\"It is submitted with the utmost respect that the appellant\'s application to the FHC was predicated on the non-service of the initiatory processes, which led to the judgment by the FBT. The affidavit of service was relied upon as clear proof that the service was not effected in the manner ordered by the Tribunal. Faced with such revelation or disclosure, did the appellant lack any remedy even though a hollow judgment had been given against him' In answer, it is respectfully submitted that a Court of law is competent to aside its own judgment in a number of circumstances including where a judgment is a nullity, due to a funda'mental defect which goes to the issue of jurisdiction and competence of the Court. See the following cases. J. A. Folorunso v. Shaloub 1994 3 NWLR (Pt. 233) pg. 413 at 422 paragraphs G ' H. Skenconsult Nig. Ltd. V. Ukey [1981] 1 SC 6. Maiwada v. Pate [1995] 8NWLR (Pt.412) pg. 191, 198. A.C.B. v. Losada [1992] 5 NWLR (Pt.222) pg. 572. Akere v. Adesanya [1993] 4 NWLR (Pt. 288) pg. 484. Adegoke Motors Ltd. V. Adesanya [1989] 3 NWLR (Pt. 109) pg. 250 at 273. Sanusi v. Ayoola [1992] 9NWLR (Pt.265) pg. 275. Edem v. Akamkpa L.G. [2000] 4 NWLR (Pt. 651) pg. 70, pg. 81 paragraphs B-C. It is further submitted that failure to serve process or serve them properly raises the presumption that there has been a breach of the rules of fair hearing. See Adigun v. Attorney-General of Oyo State [1987] 1 NWLR (Pt.53) Pg.678. The appellant therefore possessed the appropriate platform to protest his denial of the right to fair hearing. This cause of action is shielded by the Decree so trenchantly protected by the Court below. See paragraph 25(2) & (3) of the 1st schedule to Decree No 18 of 1994. So where the said Decree itself contains procedure for the setting aside \'of any proceeding for irregularity' which in the circumstances includes any nullity situation, the only constraint is if \'the party applying has taken any fresh step after knowledge of the irregularity\'. In this instance, the appellant has clearly shown that he did not have any knowledge the judgment until attempts were made to levy execution on its assets. That this happened 18 months after the lower Tribunal gave judgment is not the appellant\'s fault. All that is significant is that the appellant reacted immediately it

became aware of the judgment of the FBT.\"

In Skenconsult (Nig.) Ltd. & Anor. V. Godwin Sekondy Ukey [1981] 1 S.C.4 at 15-16, this Court per Nnamani JSC said:

\"A Court can only be competent if among other things all the conditions precedent for its having jurisdiction are fulfilled. In Madukolu and Ors. v. Nkemdilim [1962] 1 All N.L.R. 587 at 594 Bairamian, FJ., (as he then was) Stated the principles which have been accepted in successive cases in this Court.

\'A Court is competent\', he said, \'when:-

(1) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another, and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and

(3) the case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication.'

The service of process on the defendant so as to enable him appear to defend the relief being sought against him and appearance by the party or any Counsel must be those fundamental conditions precedent required before the Court can have competence and jurisdiction. This very well accords with the principles of natural justice.

The importance of service of process has been underlined by Lord Greene M.R. in Craig v. Kanssen [1943] K.B. 256 at pp. 262 -263; (1943) 1 All E.R. 108, at p. 113. This was a case in which the issue was whether the High Court could set aside an order made by another Judge of the same High Court giving the plaintiff leave to enforce a judgment under the Courts (Emergency powers) Act, (1939) of England or whether the remedy lay only in appeal. In the course of his speech holding that the Court could set aside its own order, the learned Master of the Rolls observed:

""The question we have to deal with is whether the admitted failure to serve the summons upon which the order in this case was based was a mere irregularity, or whether it was something worse, which would give the defendant the right to have the order set aside. In my opinion, it is beyond question that failure to serve process where service of process is required, is a failure which goes to the root of our conception of the proper procedure in litigation. Apart from proper ex parte proceedings, the idea that an order can validly be made against a man who has had no notification of any intention to apply for it is one which has never been adopted in England. To say that an order of that kind is to be treated as a mere irregularity and not something which is affected by a fundamental vice, is an argument which, in my opinion, cannot be sustained.'

(See also White v. Weston [1968] 2 All ER 824 at 846 C.A.) It is fair to say that that had always been the conception of the Nigerian Courts on the issue of proper procedure. In the instant case, the appellants were not properly served in law with the writ of summons. They were neither served with the motions pursuant to which the two orders were made nor were they present or represented by Counsel when the said orders were made. My Lords, I am of the view that on all these grounds the first arm of Chief Williams\' argument must succeed and the orders ought to be set aside.\"

There is no doubt that if the appellant was able to establish that it was not served with the processes leading to the judgment against it at the Failed Banks Tribunal, it would be entitled ex debito justiciae to have the judgment set aside.

The Court below, at page 131 to 132, in expressing its decision to strike out the appeal said:

\"By virtue of Section 5(1) and (2) of the Failed Banks Tribunal, the ruling and judgment delivered by the Failed Banks Tribunal on 1st April and 24th April, 1998 for which there was no appeal for 21 days, the right of appeal in any form was extinguished. The appellant argues that his application of 22nd October 1999 was not an appeal but an application to

set aside the said judgment. By arguing that he was not appealing but was applying for setting aside the judgment, the learned Counsel was by implication admitting that he had lost his right of appeal in the Failed Banks Tribunal in respect of this cause or matter. Even though the present grounds of appeal in this present appeal are couched and expressed to be against the decision of the Federal High Court, Kaduna refusing to set aside its judgment, the purport of the same in this Court is still being asked to REVIEW the decision of the Failed Banks Tribunal, a request which the Court of Appeal has no jurisdiction to grant by virtue of the said Section 5(1) and (2) of the Failed Banks Tribunal which makes the decision of the Failed Banks Tribunal or the Special Appeal Tribunal FINAL, where there was no appeal within 21 days. Once such decision is final, it cannot be the subject of an appeal to this Court. The word \'final\' in this regard means that the journey of the case is concluded, terminated, completed and is without further appeal. I can say that a prayer addressed to the Federal High Court in such matters to set aside the decision of the Failed Banks Tribunal, when refused is treated exactly like the decision in the appeal; it is not appealable, it is final.\"

It is my firm view, with respect that, the Court below needlessly aborted the course of a journey it was invited to undertake, and then proceeded to determine whether or not it had jurisdiction to hear the appeal. In Barclays Bank v. Central Bank of Nigeria [1976] 6 S.C. 115 at 124, this Court said:

\"Moreover, there is a clear distinction between stating that the Court has no jurisdiction to hear a case, and stating that that Court has no jurisdiction to determine whether or not it has jurisdiction to hear the case. Thus, a Court may, by statute, lack jurisdiction to deal with a particular matter, but it has jurisdiction to decide whether or not it has jurisdiction to deal with such matters. (See Wilkinson v. Banking Corporation [1948] 1 K.B. 721 (C.A.) at p. 725.'

It cannot be disputed that if indeed the appellant was duly served with the writ of summons and other processes leading to the judgment of the Failed Banks Tribunal, the judgment would be final and any one dissatisfied under it had to appeal within 21 days. But if, as the appellant deposed to an oath, it was not served with the Writ of Summons and so was not aware of the proceedings, it could not have appealed against it within 21 days when it did not even know that such judgment existed.

According to the appellant, the first indication it had of the existence of the judgment was when an attempt was made to execute it.

In Federal Republic of Nigeria & Anor. V. Lord Chief Udensi Ifegwu [2003] 15 N. W.LR. (Part 842) at 113 this Court had to construe the effect of the same section 5 of Decree No 18 of 1994 in a case where the respondents had successfully challenged his conviction before the Court of Appeal on the ground that the Failed Banks Tribunal had no jurisdiction to convict on an offence unknown to the law. It was the contention of the appellants in the case before the Court of Appeal, that as the appellant had not appealed his conviction within the 21 days prescribed under section 5 of Decree No 18 of 1994, he could no longer bring a suit to enforce his fundamental rights, which were hinged on the facts of his conviction. This Court held that notwithstanding the fact that Section 5 of Decree No 18 of 1994 makes the judgment of the Failed Banks Tribunal final, a person who contended that the judgment was given without jurisdiction could challenge it. At pages 181-182 of the report, Uwaifo JSC who wrote the lead observed:

\"The learned Senior Advocate for the respondent in his submission contends that where the jurisdiction of a Tribunal is being challenged, the fact that the statute which set up the said Tribunal says that its decision shall be final does not foreclose the jurisdictional issue. He cited Nigerian Ports Authority v. Panalpina World Transport (Nig.). Ltd. (1974) 1 NMLR 82 at 95; Udosen v. National Electoral Commission (1997) 5 NWLR (Pt.506) 570, 571. I find myself in agreement with this submission. It should be remembered that the action brought by the respondent in the Federal High Court is not to further appeal from the decision of the Special Appeal Tribunal. It is an action brought under the fundamental rights procedure to show that the prosecution was done, in violation of the right guaranteed to the respondent under section 33(8) of the 1979 Constitution. In other words, that his fundamental right under that section had been contravened by the Tribunal sitting in Lagos State when it convicted him of acts not constituting any offence at the time they were done. I am fully aware that the decision of that Tribunal or of the Appeal Tribunal is said to be final. I do accept that fact. But it is only final in regard to the proceedings which gave rise to the appeal. The appeal finally terminated those proceedings. But that did not terminate the respondent\'s entitlement to seek appro'priate redress for the alleged breach of his fundamental right arising from those proceedings in a competent Court. This is not unusual. In R. v Medical Appeal

Tribunal, exparte Gilmore (1957) 1 QB 574 at p.589, a case where certiorari was sought, Parker, L.J. in considering the situation vis-a-vis application for certiorari where statute provides that the decision of a Tribunal shall be final, put it thus:

\'Sometimes, as here, the statute provides that subject to a specific right of appeal the decision shall be final. In such a case it may be said that the expression \'shall be final\' is merely a pointer to the fact that there is no further appeal, and the remedy by way of certiorari is not by way of appeal... .In other cases the expression is used in the statutes when no rights of appeal are provided. In such a case it could be said that the expre'ssion was of no effect unless it was intended to oust the remedy by way of certiorari. Be that as it may, I am satisfied that such an expression is not sufficient to oust this impor'tant and well established jurisdiction of the Courts.\'

Again, in R. v. Nat.Bell Liquor Ltd. (1922) 2 AC 128 at 159-160, Lord Summer observed:

\'Long before Jervis\'s Acts statutes had been passed which created an inferior Court, and declared its decisions to be \'final\' and \'without appeal,\' and again and again the Court of King\'s Bench had held that language of this kind did not restrict or take away the right of the Court to bring the proceedings before itself by certiorari.'

In his concurring judgment at pp. 199-200, Ayoola JSC observed:

\"Where the jurisdiction of the High Court is invoked under sub-section (1) of section 46 of the 1999 Constitution (which is in the same terms as subsection (1) of section 42(1) of the 1979 Constitution) for redress for alleged contravention or likely contra'vention of the Fundamental Human Rights Provision of the Constitution, the jurisdiction that the High Court exercises is a special jurisdiction and not a general supervisory jurisdiction or a general power of judicial review. When an agency of State by its act or omission contravenes the fundamental right of a citizen, the right of the citizen to seek redress is not excluded merely because the act is manifested by a decision of a tribunal, whether declared final or otherwise. That the agency of State that had occasioned the alleged contravention is a tribunal that had done so in the course of a proceeding would not make the exercise of the special jurisdiction of the High Court one of judi'cial review. In this case the declaration of finality of the decision of the Special Appeal Tribunal would not make the decision of the tribunal less of a contravention of the fundamental right of the respondent if it were in reality and otherwise, a contravention. It is because the Special Appeal Tribunal had given a decision which the respondent alleged amounted to a contravention of his fundamental right that the respondent had invoked the special juris'diction of the Federal High Court pursuant to subsection (1) of section 46 of the 1999 Constitution in the first place. For these reasons I hold that the Federal High Court had jurisdiction, not affected by the exclusion of power of judicial review, to entertain the mater and, therefore, to make a reference to the Court below.\"

It is only necessary for me to say here that, whereas the respondent in Federal Republic of Nigeria & Anor. V. Ifegwe (supra) based his contention on the unconstitutionality of the judgment convicting him on the ground that he was convicted of a charge that did not exist in law and that in the process his constitutional rights were breached, the appellant in this case is basing the issue of absence of jurisdiction in the Failed Banks Tribunal to give judgment against it, on the ground of non-service of the writ. On a strict analysis, the issues in contest in the two cases are the same. A Court has no jurisdiction to give judgment against a person who has not been served with a writ of summons. See Section 36(1) of the Constitution. A person who was not served with a writ of summons in a case in which judgment was later given against him could not be said to have had a fair hearing. It is therefore my view that the decision in the Federal Republic of Nigeria & Anor v. Ifegwu (supra) which has not been overruled remains binding on this Court.

It seems to me that the proper approach for the Court below was to have determined the appeal before it on the issue whether or not the appellant was served. It is only when the decision is reached, that appellant was properly served, that the Court could come to the conclusion, that the judgment against the appellant was final. Regrettably, the Court below peremptorily decided the appeal on the question of jurisdiction. If the Court below, on a proper enquiry, found that the appellant was not served with the writ of summons, the judgment of the Failed Banks Tribunal would amount to a nullity. When a judgment is a nullity, it has no effect in law. This would then lead to the conclusion that the suit against the appellant was a fresh matter to be tried by the Federal High Court as a pending suit pursuant to section 3(2) of the Decree No. 62 of 1999. It is settled law that a judgment which is a nullity cannot create estoppel per res judicata.

Accordingly, I would allow this appeal. The judgment of the Court below is set aside. In its place, I make an order that the Court below hear and determine appellant\'s appeal on its merit. I award N10,000.00 costs in appellant\'s favour against the respondent.

Judgement delivered by Walter Samuel Nkanu Onnoghen, JSC

This is an appeal against the judgment of the Court of Appeal, Kaduna Division delivered in appeal No. CA/K/257/2000 on the 22nd day of May, 2003 in which the Court sustained the preliminary objection of the respondent as to the competence of the appeal before that Court in respect of the decision of the Federal High Court refusing to set aside the judgment of the Failed Banks Tribunal Kano Zone delivered on the 24th day of April, 1998 against the appellant.

By a writ of summons issued in suit No. FBT/KNZ/CV/242/98, the present respondent, then plaintiff, claimed against the appellant, then defendant, the following reliefs:

\"(a) The sum of N969,572.01 (Nine Hundred and Sixty Nine Thousand, Five Hundred and Seventy Two Naira, One Kobo only) being debit, balance against the Respondent/Debtor as at 30th September, 1997 on its account No. 30000720 with the Nigeria Universal Bank Limited, Kaduna main Branch arising from at overdraft/loan facilities granted to the Respondent/Debtor and which has remained unpaid.

(b) 21% per annum interest on the said outstanding sum of N969, 572.01 DR from 1st October, 1997 until total liquidation of the debt.

(c) The cost of filing, services and prosecuting this application.'

The suit was entered under the Undefended list and the originating processes were served by substituted service on the appellant upon a grant of an application to that effect. The appellant took no steps to defend the suit, so on the 24th day of April 1998, after satisfying itself that service of the processes had been effected on the appellant and that appellant had taken no steps evincing its intention to defend the suit, entered judgment in favour of the present respondent. There is no appeal against that judgment.

On the 28th day of May 1999, the Tribunals (Certain Consequential Amendments etc) Decree No. 62 of the 1999 was promulgated which decree dissolved the tribunals and transferred all part-heard matters pending before them to the Federal High Court for hearing and determination. On the 22nd day of October 1999, appellant filed an application before the Federal High Court, Kaduna, praying the Court for an order setting aside the judgment of the Failed Banks Tribunal, Kano Zone delivered on 24/4/1998 and in addition, prayed the Court to order stay of execution of the said judgment pending the determination of the motion to set aside, which application was dismissed by that Court in its ruling of 7th March, 2000.

Upon appeal to the Court of Appeal against that ruling, the respondent filed a Notice of Preliminary Objection in which it challenged the jurisdiction of the Court of Appeal to hear and determine the said appeal which objection was sustained by the Court of Appeal resulting in that appeal being struck out. The present appeal is against the decision of the Court of Appeal striking out the appeal for lack of jurisdiction.

Learned senior Counsel for the appellant, Daudu. Esq, SAN in the appellant\'s brief of argument filed on 28/10/04 and adopted in argument of the appeal, formulated three issues for the determination of the appeal. The issues are as follows:-

\"4.1 Whether the appellant\'s appeal from the Federal High Court to the Court of Appeal was incompetent by reasons of the provisions of section 5(2) of Decree No. 18 of 1994 (as amended) and Tribunals (Certain Consequential Amendments, etc) Decree No. 62 of 1999, which prescribes finality for the judgment of the defunct Failed Bank Tribunal'

4.2 Whether the appellant\'s right of appeal from the Federal High Court to the Court of Appeal guaranteed by the 1999 Constitution can be defeated by the provisions of the Failed Bank Decree No. 18 of 1994 when the decision being appealed against was that of the Federal High Court and not that of the Tribunal.

4.3 Whether the Court below was not in error when it failed to decide the appeal in the alternative on its merits, regardless of the fact that it had hinged its decision on a preliminary jurisdictional point which could be set aside by the Supreme Court"

Learned Counsel for the respondent, Umoru A. Mohammed. Esq. in the respondent\'s brief of argument filed on 16/5/05 also formulated three issues for determination. The issues are as follows:-

\"1. Whether the Court of Appeal rightly upheld the Respondent\'s Preliminary Objection to the Appellant\'s Appeal' Ground 1 of the amended Grounds of Appeal.

2. Whether the refusal of the Federal High Court in exercise of the jurisdiction of the Failed Banks Tribunal, to set aside the final judgment of the Failed Banks Tribunal appealable' Ground 2 of the amended Notice of Appeal.

3. Whether the Court of Appeal must consider in all cases the merit of an appeal after holding that it lacked jurisdiction to entertain the appeal' Ground 3 of the amended Notice of Appeal.'

In arguing the appeal, learned senior Counsel for the appellant submitted that the provision of section 5(2) of Decree No 18 of 1994 (as amended) which provides that decisions of the Failed Banks Tribunal is final if not appealed against within 21 days does not impede a party affected thereby from seeking other means of setting aside the decision by way of application to set aside as in the instant case, and certiorari in appropriate situations, contrary to the position adopted by the Court of Appeal; that the appellant\'s application to set aside the judgment of the Failed Banks Tribunal on the ground that there was improper service of the originating process on the respondent was a proper step in the circumstances and that the Federal High Court was competent to hear same particularly as that Court is also empowered to set aside, ex debito justiciae any processes invalidly issued or served; that denial of fair hearing is remediable by application to set aside which is not an appeal against the decision; that the Court of Appeal erred in denying the appellant his constitutional right of appeal from the decision of the Federal High Court on the ground that a Decree put a stamp of finality on the judgment of the Failed Banks Tribunal, when the proceeding before the Federal High Court was not an appeal but an application to set aside the judgment of the Failed Banks Tribunal on the ground of defect in service; that the right of appeal of the appellant as regards the refusal of the Federal High Court to set aside the judgment of the Tribunal was a vested constitutional right which could not be taken away by an Act of the National Assembly, such as Decree No. 18 (as amended); that the Court of Appeal erred in not considering the appeal on its merit as an alternative to its decision on the preliminary objection since it is only the Supreme Court that can chose to resolve an appeal solely on the issue of jurisdiction, being the final Court, and urged the Court to allow the appeal.

Learned Counsel for the respondent on his part submitted that appellant failed and or neglected to take advantage of the right of appeal granted it by section 5(1) of the Failed Banks Decree within 21 days after judgment and thereby rendered the said judgment final by operation of section 5(3) of the said Decree; that the application to set aside the judgment was on the ground of errors of a procedural nature as to jurisdiction which only Failed Banks Tribunal or its successor, the Federal High Court by operation of Decree No. 62 of 1999 has inherent powers to remedy as no appellate Court can intervene on account of the finality of the decision; that the 1999 Constitution has no retrospective effect and consequently inapplicable to the instant case and that failure of the Court of Appeal to decide the appeal on its merit after coming to the conclusion that it has no jurisdiction is not a decision of that Court and as such the Supreme Court has not jurisdiction to entertain an appeal against non-decision by the Court of Appeal for which learned Counsel cited and relied on section 233(2) of the Constitution of the Federal Republic of Nigeria (hereinafter called the 1999 Constitution); and urged the Court to dismiss the appeal.

Having gone through the submissions of Counsel for the parties, the authorities cited and relied upon in support of their respective contentions, I hold the view that this appeal can be determined on the proper construction of section 5(1) and

(2) of Decree No. 18 of 1994 and sections 2 and 3 of Decree No. 62 of 1999.

Section 5 provides thus:

\"5. (1) A person convicted or against whom judgment is given under this Decree man, within 21 days of the conviction or judgment, appeal to the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunal) Decree 1984, as amended, in accordance with the provisions of that Decree.

(2) The decision of the Special Appeal Tribunal shall be final and, where there is no appeal, the decision of the Tribunal shall be final.'

From the above provisions, it is very clear that Decree No. 18 of 1994 confers a right of appeal on a party against whom judgment is entered by the Tribunal but that right ought to be exercised within 21 days of the said judgment. The appeal against the said judgment goes to the Special Appeal Tribunal whose decision thereon is stated to be final. However, what is very relevant to our case is the provision that where the party against whom judgment has been entered failed or neglected to appeal within the time allotted by section 5(1), the decision of the Tribunal not so appealed against shall be final.

From the facts of the case, it is not disputed that judgment in this case was delivered by the Kano Zone of the Failed Banks Tribunal on the 24th day of April, 1998 and that no appeal was filed against that judgment either within or outside the 21 days allowed by the relevant statute. It is therefore clear and I hold without fear of contradiction that by operation of section 5(2) of Decree No. 18 of 1994, the decision of the Tribunal delivered on 24/4/98 after 21 days of its delivery became final since no appeal was filed against same.

Learned senior Counsel for the appellant has argued strenuously that appellant was not properly served with the originating processes thereby robbing the Tribunal of the requisite jurisdiction to entertain the matter since the failure to properly serve the appellant constitutes a fundamental defect which also resulted in the appellant being denied the constitutionally guaranteed right to fair hearing. The above is said by learned Counsel for the appellant to constitute the basis of the application to the Federal High Court to set aside the said judgment of the Tribunal. Jurisdiction is a matter of law since it is always donated by the Constitution or Statute. It must be noted that the application was not filed in the Federal High Court in its normal or usual jurisdiction but as a successor to the Failed Banks Tribunal. The question is whether the Federal High Court has the requisite jurisdiction to entertain the application in the first place. To determine that question one has to look closely at the provisions of sections 2 and 3 of Decree No. 62 of 1999. The said sections provide as follows:-

\"2. (1) The Federal high Court of the High Court of a State, as the case may be, shall have jurisdiction to try the offences created under the enactments specified in the schedule to this Decree.

(2) Accordingly, a Tribunal established in any of the enactments specified in the schedule to this Decree is hereby dissolved.

(3) A charge, claim or Court process filed before a Tribunal established under any of the enact'ments specified in the schedule to this Decree shall be deemed to have been duly filed or served before the Federal High Court, or High Court of a State, as the case may be and such charge, claim and Court process shall be deemed amended as to title, venue, and such other matter as may be appropriate to give effect to this sub-section without further assurance than this Decree.

(4) Any order, remand, decision or judgment made by the tribunal before the commencement of this decree is hereby preserved.

(5) A decision or judgment of a Tribunal made before the commencement of this Decree shall be enforced in accordance with the procedure or law relating to the enforcement of a decision or judgment of the Tribunal before the commencement of this Decree.

(6) Where before the commencement of this Decree, a matter has been concluded in a Tribunal and the Tribunal was for any reason whatsoever unable to deliver the judgment, the judgment may be delivered by a Judge of the Federal High Court or the High Court of a State, as the case may be: Provided the judgment shall have been written.

3. (1) Where any part-heard matter is pending before any Tribunal on the date of making this Decree, the Judge:-

(a) may, if the parties to the proceedings agree in a civil cause, adopt the procee'dings of the Tribunal concerned;

(b) shall, in a criminal case, try the matter de novo pursuant to this Decree.

(2) All new proceedings shall be brought before the Court in accordance with the rules of procedure of the Court concerned.\"

From the above provisions it is clear that from the commencement of the Decree, the Failed Banks Tribunal and other Tribunals ceased to exist and all matters pending before them were transferred to either the Federal High Court or State High Court as the case may be, to be dealt with in accordance with the provisions of the Decree. It is also clear from the above provisions that the Decree made provisions for the commencement of new proceedings after the commencement of Decree No. 62 of 1999. There is however, no provision dealing with completed matters except the ones awaiting the delivery of judgments after completion of trial or hearing and, of course, enforcement of the judgments already entered by the Tribunal before the commencement of the Decree. It is very clear, and I hereby hold that the jurisdiction conferred on the Federal High Court by the provisions quoted supra does not include the hearing and determination of an application to set aside a judgment of the Failed Banks Tribunal for any reason whatsoever particularly as the same cannot be said to fall within the term part heard matters nor is it an enforcement process. It is important to note that the judgment in this case was delivered more than a year before the promulgation of Decree No. 62 of 1999.

It is unfortunate that appellant did not appeal against the judgment of the Tribunal before that judgment became, by operation of law, final and the Tribunal that entered same, extinct also by operation of law. I hold the view that appellant\'s right of appeal is as provided in Decree No. 18 of 1994 which is the applicable law at the time the right of appeal accrued. I hold the further view that appellant cannot hide under the cloak of appealing against the decision of the Federal High Court refusing the application to set aside the judgment of the Tribunal which decision (as) has been demonstrated in this judgment is without jurisdiction particularly as Decree No. 62 of 1999 only conferred jurisdiction on the Federal High Court to deal with part heard matters from the Tribunals and fresh or new matters, apart from enforcement of already existing judgments of the Tribunals.

In short I agree with the conclusion of my learned brother, Mohammed, J.S.C. in the lead judgment that this appeal lacks merit and should be dismissed. I order accordingly and abide by all consequential orders contained in the said lead judgment including the order as to costs.

Appeal dismissed.