IN THE SUPREME COURT OF NIGERIA

On Friday, the 13th Day of December 2002

Before their Lordship

Muhammadu Lawal Uwais (CJN) ..... Justice Supreme Court
Salihu Modibbo Alfa Belgore (JSC) ..... Justice Supreme Court
Uthman Mohammed (JSC) ..... Justice Supreme Court
Sylvester Umaru Onu (JSC) ..... Justice Supreme Court
Anthony Ikechukwu Iguh (JSC) ..... Justice Supreme Court
Samson Odemwingie Uwaifo (JSC) ..... Justice Supreme Court
Akintola Olufemi Ejiwunmi (JSC) ..... Justice Supreme Court

SC137/2001,SC189/2001,SC253/2001,SC277/2001,SC296/2001,(Consolidated)

Between

Attorney-General of Ogun State & Ors .... Appellant

And

Attorney-General of The Federation .... Respondent

Judgment of the Court

Delivered by

Sylvester Umaru Onu, J.S.C.

The five Suits considered together herein are so considered because of similarity as to facts and for facility and convenience of trial. I have decided to consolidate them, as I shall shortly demonstrate.

Be that as it may, I wish to commence their considerate observing that as the Lagos State Attorney-General's case is Comprehensive albeit that the other States are asking for less the same I will dwell more on the Lagos State case while forgetting to treat the other States' matters in due course. In dealing with the reliefs claimed in all these cases one cardinal point that remains uppermost in my mind, however, is the fact that our decision in this court reported as Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors. (No. 2) (2002) 6 (Pt. 764) 542 SC, has answered most questions in the present case. That case having thus answered many points raised in the case in hand, what remains to be considered will be confined within a narrow compass.

In the Lagos State case, the reliefs claimed by the Attorney-General in his amended statement of claim, which I regard as the fulcrum upon which this action revolves, are pleaded in paragraph 18 thereof thus:

"18. Whereof the plaintiff claims the following Reliefs:

1. A declaration that it is illegal and unconstitutional being contrary to Section 162(3) of the Constitution of the Federal

Republic of Nigeria 1999 for the defendant to make deductions as a first line charge on the Federation Account to fund the following to wit:

(a) NNPC joint venture projects;

(b) NNPC priority projects;

(c) Central Bank of Nigeria (CBN) priority projects;

(d) The National Judicial Council;

(e) Foreign Debts incurred by, the Federal Government;

(f) 1% of the Federation Account said to be statutory allocation to the Federal Capital City, Abuja.

2. A declaration that the defendant is under Section 162(3) of the Constitution of the Federal Republic of Nigeria, 1999 to distribute the amount standing to the credit of the Federation Account between the Federal, State and Local Government Councils and to no other party or Fund.

3. A declaration that the defendant is not entitled to make any deductions whatsoever from the Federation Account before the amount in the Account is distributed among the Federal, State and Local Government Councils on the terms and in the manner prescribed by the National Assembly, and that any prior deductions before such distribution as being made at present by the defendant is illegal and unconstitutional being contrary to section 162(3) of Constitution of the Federal Republic of Nigeria, 1999.

4. A declaration that on a proper construction and interpretation of Sections 80, 81 and 162 of the Constitution of the Federal Republic of Nigeria, 1999 the payment of salaries of Judicial Council is not a charge on the Federation Account and it is illegal and unconstitutional to deduct those salaries directly from the Federation Account as first line charge or at all.

5. A declaration that the Federal Government is mandatorily obliged by the combined effect of Section 162(i) and (iv) of the Constitution of the Federal Republic of Nigeria 1999 to pay into Federation Account all the proceeds and income, save those exempted under Section 162(i), accruing from the privatisation of government enterprises, from stamp duties, capital gains and other income accruing to or derived by Federal Government from any other source.

6. A declaration that it is unconstitutional and illegal for the defendant whether by itself, its office agents, privies, or otherwise howsoever to withhold and not pay into the Federation Account proceeds and/or income, save those exempt under Section 162(i), accruing from privatisation of government enterprises and other income accruing to or derived by the Federal Government from any other source.

7. A declaration that the defendant is not entitled within the proper meaning of Section 162(5) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 to pay the amount standing to the credit of the Local Government Councils in the Federation Account directly to the Government Councils and that such payments by the defendant is illegal and unconstitutional.

8. An order directing the Federal Government Nigeria, whether by herself, her officers, servants, and/or privies or otherwise howsoever to pay such sums or amount as are standing credit of the Local Government Councils Federation Account from time to time to the plaintiff for the benefit of the States and Local Government Councils in accordance with the provisions of Section 162(5) of the Constitution of the Federal Republic of Nigeria, 1999.

9. A declaration that the deduction of funds from the Federation Accounts by the defendant to fund and maintain a Stabilisation Account is illegal and unconstitutional.

10. A declaration that it is illegal and unconstitutional for the defendant to deduct any sums of money from the Federation Account for the purpose of servicing foreign or external debts incurred by the Government.

11. A declaration that Section l (d) (i - v) of the Allocation of Revenue (Federal Account, etc.) Cap. 16, Laws of the Federal Republic of Nigeria as amended by Decree No. 106 of 1992 is inconsistent with Section 162(3) of the Constitution of the Federal Republic of Nigeria, 1999 and is to that extent invalid, unconstitutional, null and void and of no effect.

12. A declaration that Section 3 and 6(1), (2) and (3) of the Allocation of Revenue (Federation Account) Act, Cap. 16, Laws of the Federal Republic of Nigeria as amended by Decree No. 106 of 1992 are inconsistent with Section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and are invalid, unconstitutional, null and void and of no effect.

13. An order directing the federal government to render a full and proper account of all the monies properly payable into the Federation Account and or mandatory/required to be paid into the Federation Account as stipulated by Section 162(1) and (10) of the Constitution of the Federal Republic of Nigeria, 1999 from 29th May, 1999 till Judgment.

14. An order directing the Federal Government of Nigeria to pay to the plaintiff all sums properly found due and unpaid to the plaintiff in respect of its share from the Federation Account on the proper and lawful distribution amongst the States of

the appropriate and true amount standing to the credit of States in the Federation Account.

15. An order of injunction restraining all officers, servants and functionaries of the Government of the Federal Republic of Nigeria or any other public officer whomsoever and howsoever from keeping.

16. An order of injunction restraining the Federal Government of Nigeria whether by herself, servants, and/or agents or otherwise howsoever from breaching the clear provisions of Section 81 (3) and 162 of the Constitution.

17. An order of injunction restraining all office servants, and functionaries of the Government of the Federal Republic of Nigeria or and other put officer of the said Government whomsoever; howsoever from deducting or taking any money whatsoever from the Federation Account for the purpose of funding any project or effecting any payment whatsoever except for the pi of distributing such monies amongst the Federal, State and Local Government as provided by law.

18. An order of injunction restraining all officers, servants and functionaries of the Government of the Federal Republic of Nigeria or any other public officer of the said Government whomsoever and howsoever from withholding and not paying into the Federation Account all the revenue collected by the Government of the Federal Republic Nigeria from any source whatsoever.

19. An order of injunction restraining the Government of Nigeria whether by its servants and functionaries whomsoever howsoever from breaching the provisions of Section 162 of the Constitution of the Federal Republic of Nigeria, 1999."

A 13-paragraph statement of defence was filed on behalf of the defendant, thus joining issues with the plaintiff, as follows:

"Save and Except as is hereinafter specifically admitted, the Honourable Attorney-General of the Federation and Minister of Justice (hereinafter referred to as the defendant) denies each and every allegation of fact contained in the plaintiff's statement of claim as if same were specifically set out and traversed seriatim:

1. The defendant admits paragraphs 1, 2 and 3 of the plaintiff's statement of claim.

2. The defendant admits paragraph 4 of the statement of claim only to the extent that the President shall table before the National Assembly proposals for revenue allocation, upon receipt of advice from the Revenue Mobilisation, Allocation and Fiscal Commission.

3. The defendant admits paragraph 5 of the statement of claim.

4. The defendant admits paragraph 6 of the statement of claim only to the extent that the Federation Account Allocation Committee meets monthly to ensure that allocation made to the States from the Federation Account are promptly and fully paid into the Treasury of each State on the basis and terms prescribed by the Allocation of Revenue (Federation Account, etc) Act, as amended, and the 1999 Constitution.

5. The defendant in further rebuttal of the averments in 6 (i - v) of the statement of claim state as follows:

(i) That any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

(ii) The distribution of any amount standing to the credit of the Federation Account is subject to the prescription of the terms and manner of such distribution by the National Assembly, and the latter has not prescribed such terms and manner.

(iii) That all debts currently being charged on the Federation Account are the debts previously charged before 29th May, 1999 and which shall continue to be so charged by virtue of Section 314 of the 1999 Constitution.

6. The defendant in response to paragraph 8 of the statement of claim state that the payment to the States Primary Education Board and the Education Tax Fund is in compliance with the extant statute on this Subject.

7. The defendant States in response to paragraph 9 of the statement of claim that the deductions made either as first line charges on the Federation Account or otherwise are not illegal -and unconstitutional. This is because pending the Act of the National Assembly in this regard the system of revenue allocation in existence shall continue to apply.

8. The defendant avers in response to paragraphs 10 and 11 of the statement of claim that until the Act of the National Assembly comes into force, deductions or disbursements from the Federation Account Under the existing distribution System put in place pursuant to the existing laws continue to be in force constitutionally by virtue of Sections 313, 314 and 315(4) (b) of the 1999 Constitution.

9. The defendant denies paragraph 12 of the statement of claim and state that in so far as the National Assembly has not made any prescription as to the allocation and distribution of the amount standing to the credit of the Federation Account, the existing laws continue to be in force.

10. The defendant denies paragraph 12 of the statement, of claim and state that the retention by the Federal Government

since June, 1999 Constitution which provides that the National Assembly in exercise of its powers, shall prescribe the manner for distribution of such funds; and that the National Assembly has not made any Act specifying manner for distribution of such funds described herein.

11. The defendant denies paragraph 14 of the statement of claim and state that the claim for account in this suit is wrongful as the plaintiff's Commissioner of Finance is a member of the Federation Account Allocation Committee, which was established pursuant to Section 5(1) of the Allocation of Revenue Account, etc. Act, Cap. 16, L.F.N. 1990. By virtue of Section 2 of the revenue Allocation and Fiscal Commission Act, Cap.392, LFN, 1990, the plaintiff is also represented in the composition of the Revenue Mobilisation Allocation and Fiscal Commission and there is no allegation that the said Commission failed or refused to supply to the plaintiff the Statement of Federation Account on request.

12. In response to paragraph 15 of the statement of claim, the defendant shall contend at the hearing of this suit:

(a) that pursuant to Section 162(9) of the 1999 Constitution, any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federating States under Section 6 of the Constitution.

(b) That the payment of 1 % of the proceeds from the Federation Account to the Federal Capital is lawful by virtue of the provisions of Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, L.F.N. 1990. The said 1% deduction is accordingly not unconstitutional by virtue of Sections 313 and 315(4) (b) of the 1999 Constitution.

(c) That Section 162(5) of the 1999 Constitution provides that the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefits of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.

13. Whereof the defendant prays the court to hold that:

(a) Until the relevant Act of the National Assembly for the distribution from the Federation Account comes into force, any claim for shares of the Federation Account under Section 162 of the 1999 Constitution as being claimed by the plaintiff in this suit is incompetent before this Honourable Court.

(b) Until the said Act of the National Assembly comes into force, deduction for priority projects, 1st line charges, service for external debts, 1% deduction for the service of the Federal Capital Territory, etc. under the existing distribution system put in place pursuant to the existing laws continue to be in force constitutionally by virtue of Sections 313, 314 and 315(4) (b) of the Constitution of the Federal Republic of Nigeria, 1999."

After pleadings were delivered by the plaintiffs to these consolidated suits namely, Ogun, Lagos, Oyo, Ondo and Osun States, each of them went ahead to file and exchange briefs and some other affidavit evidence verifying their cases with the defendant. I wish first of all to consider the case of the Attorney-General of Lagos State whose case is more comprehensive in presentation and outlay.

I shall hereafter consider the cases of Ogun, Oyo, Ondo, and Osun States in order of sequence. The lone issue submitted as arising for our determination in the Lagos state case:

‘The issues for determination especially turn on questions whether or not the provisions of Section 162, in particular and other relevant provisions of Constitution of the Federal Republic of Nigeria, have been breached in the circumstances by defendant and whether the plaintiff is not entitled to the reliefs sought in the event of such breach or violation being established.’

On 16th September, 2002, when the hearing of this case took place, Honourable Attorney-General of Lagos State, Mr. Yemi Osinbajo, SAN adopting his brief dated 18th March, 2002 and filed the same day, expatiated and relied thereon. On reliefs (I), (II) and (III), it was Submitted that Section 102(3)) clearly stipulates that any amount in the Federation Account shall be distributed among the Federal, State and Local Governments on such terms and in such manner as may be prescribed by the National Assembly. It is next contended that such amount cannot properly or constitutionally be distributed in favour of any other party/fund.

Secondly, it was submitted that the provisions of any law of the National Assembly, which require that the distribution of the amount in the Federation Account be made among any parties other than the Federal Government, State Government and Local Government Councils, will be inconsistent with Section 162(3) and are therefore invalid, null and void.

Thirdly, that to include other parties in the distribution of the said amount will effectively deprive the plaintiff of its appropriate share in the amount in the Federation Account.

Fourthly, it is contended, that in its Statement of defence the defendant admittedly made as a first line charge on the Federation Account, which the plaintiff complains about in paragraphs 6, 9,10 and 11 of its statement of claim, are consistent with the provisions of the Allocation of Revenue (Federation Account, etc) Act, Cap. 16, Laws of the Federal Republic of Nigeria, 1990 as amended by The Revenue Act and the 1999 Constitution and that the action of the Federal Government and its agents in the circumstance, is not illegal or unconstitutional. The learned Attorney-General from the foregoing, first argued that the Revenue Act makes no provisions for deducting any sums as a first line charge or on the Federation Account. Indeed, he contended, the relevant provisions of the Act. i.e. Section 1 provides as follows:

"The amount standing to the credit of the Federation Account as specified in subsection (1) of Section 149 of the Constitution of the Federal Republic of Nigeria shall be distributed by the Federal Government among the various governments in Nigeria and the funds concerned on the following basis, that is to say:"

(a)

the Federal Government

48.5%

(b)

the State Governments

24%

(c)

the Local Governments

20%

(d)

special Funds

7.5%

(i)

Federal Capital Territory

1% of the Federation Account

(ii)

Development of Minerals Producing areas

3% of the Revenue accruing to the Federation derived from Minerals

(iii)

General ecological problems

2% of the Federation Accounts

(iv)

Derivation

1% of the revenue accr-uing to the Federation Account de-rived from minerals

(v)

Stabilisation Account

0.5% of the Federation Account, plus the revenue arising out of using minerals revenue, instead of the Federation Account, as the base for allocation to the fund for development of the mineral producing areas and derivation."

Consequently, the learned Attorney-General argued, such deduction do not, in the first place, have any basis or support in any Act of the National Assembly and is illegal. Secondly, the 1999 Constitution itself does not provide for any deduction as a first line charge on the Federation Account while the act of deduction, he argued, is inconsistent with the provision of the Constitution. Indeed, he contended Section 163(3) of the Constitution stipulates how the amount in the Federation Account shall be distributed. This, he pointed out, demonstrated how unilateral the Federal Government of Nigeria was. The Constitution he argued, expressly mentioned those to have a share in the money in the Federation Account. The word "shall" used by the section, it is contended, makes it mandatory that the money be distributed amongst the parties mentioned only. The defendant, it is further submitted, purportedly relied on Sections 313, 314 and 315(4) of the Constitution to contend that:

"Until the Act of the National Assembly comes into force deductions or disbursements from the Federation Account under the existing distribution system put in place pursuant to the existing laws continue to be in force constitutionally ....." See paragraph 8 of the statement of defence).

Section 313 of the Constitution of the Federal Republic of Nigeria, 1999 on the other hand, it is asserted, provides as follows:

"Pending any Act of the National Assembly for the provision of a system of Revenue allocation between the Federation and the States, among the States, between the States and Local Government Councils in the States, the system of revenue allocation in existence for the financial year beginning from 1st January, 1998 and ending on 31st December, 1998 shall, subject to the provisions of this Constitution and as from the date when this Section comes into force, continue to apply:

Provided that where functions have been transferred under this Constitution from the Government of the Federation to the States and from the States to the Local Government Councils the appropriations in respect of such functions shall also be

transferred to the States and the Local Government Councils, as the case may require."

Clearly therefore, it is further argued, the application with effect from 29th May, 1999 of the system of revenue allocation in existence between 1st January, 1998 and 31st December, 1998 under the Constitution, is subject to the provisions of the 1999 Constitution. The case of Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) 139 at 164 A - B wherein this Court (per Karibi-Whyte, JSC) stated the true meaning of the expression "subject to" to be as follows:

"In other words, where the expression is used at the commencement of a statute as in section 1(2) of Decree No 1 of 1984, it implies that what this subsection is 'subject to' shall govern, control and prevail over what follows in that section or subsection of the enactment. See also Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 529" which was called in aid.

It is next submitted that the existing Law under which the system of revenue allocation was put in force and effect, as rightly contended by the defendants in paragraph 8 of their defence, is the Allocation of Revenue (Federation Account, etc Act) Cap. 16, Laws of the Federal Republic of Nigeria, 1990 as amended by Decree 106 of 1992 (supra). The effective application and use of that system from 29th May, 1999 under section 313, to the provisions of Section 162(3) of the same Constitution which requires that the distributions of any amount in the Federation Account, on the terms and in the manner prescribed by the National Assembly, shall be amongst the Federal State and Local Governments. No other body, fund or institution, it, is argued, is contemplated as a recipient or beneficiary of the amount in the Federation Account; the division being amongst three parties only. Consequently, it is next contended, any system of Revenue Allocation whereby the amount in the federation Account is distributed from time to time amongst other bodies or persons apart from or outside of the Federal, State and Local Governments, will be unconstitutional. The argument that such distribution is being applied pursuant to the provisions of the Revenue Act, it is fur maintained, is of no moment as the said provisions are inconsistent with the provisions of Section 162(3) as earlier demonstrated. If the system of revenue allocation for 1st January, 1988 to 31st December 1988 provides for distribution of money direct from the Federation Account to other Funds or groups, that will only continue to apply subject to the provisions of the 1999 Constitution i.e. in so far as it inconsistent with any of the provisions of the Constitution. In the instant case, learned Attorney-General asserted that such application would be clearly inconsistent with Section 162(3) and therefore, prohibited by Section 313. Any continuance of such distribution from 29th May, 1999, he added, would therefore be consistent with the provisions of the Constitution whether such system is provided by any Act or not. Thus, clearly it is argued, Section 1 (d) (i-v) of the Allocation of Revenue (Federation Account, etc) of 1990 as amended which is existing law under Section 315 is inconsistent with Section 162(3) among the beneficiaries of the distribution of the amount in the Federation Account. The Supreme Court, it is pointed out, has effectively decided on the proper way to approach the subject of the inconsistencies of any law with the provisions of the Constitution. In the very recent case of Edjerode v. Ikine (2001) 18 NWLR (Pt. 745) 446, it is stressed, the court held that if any existing laws or any of their provisions are inconsistent as from 1st October, 1979 with the 1979 Constitution, such laws or any of their provisions whether or not pronounced upon by the court as being inconsistent with the said Constitution, are impliedly repealed or modified to conform with its provisions.

After we were referred to the dictum of Ejiwunmi, JSC in the latter case reference was also made to the Uwaifo v. Attorney-General of Bendel State (1982) 7 SC 124 where Idigbe, JSC succinctly stated the law thus:

"It is important to note that the preclusion or prohibition is limited and confined to existing laws. It therefore becomes abundantly clear that if such laws or any of their provisions are inconsistent as from 1st October, 1979 with 1979 Constitution, such laws or any of their provisions whether or not pronounced upon by the Courts as being inconsistent with

the said Constitution, are impliedly repealed or modified to conform to its provisions. Likewise, all things done or purported to be done under such impliedly repealed or modified laws after 1st October, 1979, are equally of no effect...." (Italics mine for emphasis).

Section 274 of the 1979 Constitution which was the subject of interpretation in Ikine and Uwaifo cases (supra), it was argued, is in pari materia with Section 315 of the present 1999 Constitution upon which the defendant relies, adding that the same construction and interpretation must a fortiori be given to Section 315 of the Constitution. The case of Okon & Ors. v. The State (1988) NWLR (Pat.69) 172 (1988) 1 NSCC 156 at 161 was called in aid thereof. Nnaemeka-Agu, JSC stating the laws on the subject in that case, it is pointed out, held as follows:

"With respect, I think that the principle on which a previous legislation has been relevant to the interpretation of a later statute is fairly well settled. A previous legislation may be relevant to the interpretation of a later legislation in two ways:

"First, the course which legislation on a particular point has followed often provides an indication as to how the present statute should be interpreted. It is in such cases presumed that the interpretation in the former must have been known to those who drafted the later. Hence in the case of Armah v. Government of Ghana (1968) A.C. 192 it was applied by the House of Lords, per Reid at page 226 et seq. See also Minister of Housing and Local Government v. Hartneil (1965) A.C. 1134. I believe that the commonsense dictates that courts should as far as possible encourage uniformity of meaning of particular words or expressions unless it appears from the wordings of a particular statute under construction that the legislator intended to vary the meaning.

Secondly, it is accepted that the light may be thrown on the meaning of a phrase or word in a statute under construction by reference to a similar phrase or word in an earlier statute dealing with the same or cognate subject matter. See Registrar of Restrictive Trading Agreements v. W. H. Smith & Sons Ltd. (1968) 1 WLR 1541."

It is therefore submitted that all actions of the defendant pursuant to the said provisions are unconstitutional, null and void and of no effect whatsoever.

Moreover, it is contended, under Section 315(3) of the Constitution, the Supreme Court as any other court is constitutionally empowered to declare those provisions invalid as being inconsistent with provisions of the Constitution.

The learned Attorney-General submitted that consequently, the distribution made from the Federation Account pursuant to the said provisions of the Revenue Act or at all are therefore unconstitutional, null and void and we are respectfully invited to so hold.

Relief IV

In respect of this relief, the learned Attorney-General submitted that Section 81(3) of the Constitution of the Federal Republic of Nigeria provides as follows:

"Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judiciary Council for disbursement to the heads of the courts established for the Federation and the States under Section 6 of the Constitution."

The learned Attorney-General next submitted how the Consolidated Revenue Fund (CRF) itself is constituted under Section 80(1) which requires that all revenue received by the Federation i.e. the Federal Government of Nigeria (except such moneys as are payable under the Constitution or any valid Act of the National Assembly into any other public fund) shall be paid into and from one consolidated fund for the Federation. He further submitted that it is where the expenditure for the judiciary has been authorised by law under Section 80(2) of the Constitution as charged upon the Consolidated Revenue Fund that the authorized amount can be said to be standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation under Section 81(3) of the Constitution. That amount, he pointed out, is then required to be paid directly to the National Judicial Council for disbursement to the heads of the courts for payment of salaries of judicial officers and other requisite payments to maintain the Judiciary.

It is further submitted that this will in the light of Section 162(1) (10) of the Constitution, which defines the Revenue to be paid into the Federation Account, be limited to:

(a) Those exempted under Section 162(2);

(b) All those moneys due to the Federation (i.e.) the Federal Government of Nigeria under Section 162(3) of the Constitution.

As regards the provisions of Section 162(9) of the Constitution, the learned Attorney submitted that although that Section stipulates that "any amount standing to the credit of the Federation Account shall be paid directly to the National Judicial Council..." in so far as the Judiciary is not a beneficiary of the Federation Account and Section 81(3) has already dealt with the subject-matter it is difficult to give any sensible meaning to that provision. We were urged therefore to discountenance it. The case of the Board of Customs and Excise v. Barau (1982) 10 SC 98 at page 190 per Idigbe, JSC quoting with approval and adopting Maxwell on Interpretation of Statutes 11th Edition, page 228 that:

"Notwithstanding the general rule that effect must be given to a word or phrase or if it would defeat the real object of the enactment, it may or rather it should be eliminated. The words of a statute must be construed so as to give a sensible meaning to them if possible."

For this reason, it is submitted that it is clearly not permissible and indeed unconstitutional to deduct and pay any money or

fund to the National Judicial Council directly from the Federation Account for the payment of salaries of judicial officers as the defendant presently admittedly does.

It is therefore the plaintiff's submission that a careful and painstaking reading and construction of sections 80, 81(3) and 162 of the Constitution will show that the payment of salaries of judicial officers which is effected through the National Judicial Council is not a charge on the Federation Account. Indeed, it is further asserted, it can only be a charge on the Consolidated Revenue Fund of Federal Government of Nigeria within the meaning and intendment of the aforesaid provisions.

Reliefs (V) and (VI)

Section 162(1) it is contended, provides that the Federal Government shall pay into the Federation Account all revenues collected by it. What constitutes "Revenue" is defined in Section 162(1) as meaning:

"Any income or return accruing to or derived by Government of the Federation from any source includes:

(a) any receipt, however described, arising from i operation of any law;

(b) any return, however described arising from respect of any property held by the Government of the Federation;

(c) any return by way of interest on loans dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body."

Proceeds from Stamp Duties and Capital Gains Tax, it is further maintained, arise from the operation of Stamp Duties Act, Cap. 411 and Capital Gains Tax Act, Cap. 42 and therefore come within Section 162(10) (a) (ibid). Income accruing to or derived by the Federal Government from any other source, it is asserted, is covered by Section 162(10) and 162(10) (c). None of the above proceeds, it is further maintained, falls under the exceptions in section 162(1) It follows therefore, it is argued, that Federal Government is obliged to pay such proceeds into the Federation Account. Section 162(1), it is stressed, uses the word "shall" thereby making it mandatory to have such proceeds paid into the Federation Account. Failure to lodge the proceeds as required, it is maintained, is in conflict with the provisions of section 162(1) of Constitution and is therefore unconstitutional. This must be so, it is stressed, because notwithstanding Section 163(b) which provides that where an Act of the National Assembly imposes Capital Gains Tax or Stamp Duty, the net proceeds of such tax or duties shall be distributed among the States on the basis of derivation; and that accordingly; where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to such States at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State. Although Section 163(b) provides for the allocation of capital gains tax and stamp duties by the Federal Government, it is argued, does not provide how the proceeds are kept pending their distribution. It is therefore submitted that the same constitutes revenue collected by the Federal Government, which must be paid into the Federation Account within the proper meaning and intendment of Section 162(1) and (10) of the Constitution. Section 162(3), it is added, provides that the money in the

Federation Account shall be distributed to the Federal and State Governments and the Local Government Councils in such State "on such terms and in such manner as may be prescribed by the National Assembly."

It is the submission of learned Attorney-General in addition, that the effect of these provisions properly interpreted and construed, is that when such proceeds are paid into the Federation Account, the amount accruing to the Federation Account Shall be distributed "on such terms as may be prescribed by the National Assembly. The effect of all these provisions properly interpreted and construed, it is emphasised, is that when such proceeds are paid into the Federation Account, the amount accruing to the Federation Account directly from such proceeds, must be reflected in the allocation formula to be prescribed by the National Assembly in the same way as the amount accruing directly from natural resources are to be reflected and taken into account to the benefit of the States producing the natural resources.

In his oral submission, the learned Attorney-General urged that all moneys paid into Federal Government coffers called Federation Account since June, 1999 and any amount standing to the credit of the Federation Account shall be distributed among the Federal; State Governments as well as the Local Government Councils in each State on such terms and in manner as may be prescribed by the National Assembly vide Section 162(3) of the Constitution. Further, any amount standing to the credit of the States in the Federation Account, shall be distributed among the States on such terms; such manner as may be prescribed by the National Assembly Section 162(4) of the Constitution. That the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Government Councils on such terms and such manner as may prescribed by the National Assembly vide Section 162(5) of the Constitution. Thus, while not conceding all of claim (5), we are i to allow the plaintiffs' action to succeed.

Reliefs (VII) and (VIII)

Section 162(2) of the 1999 Constitution provides that each State shall maintain a special account to be called "State Joint Government Account" into which shall be paid all allocations to the Local Government Councils of the State from the Federation Ac and from the Government of the State. It is not in dispute that the defendant maintains such an account. This Act is supplemented by:

(i) Revenue Act of 1982 (Cap. 16 as amended).

(ii) The Revenue Mobilisation, Allocation and Fiscal Commission Act, No.98 of 1993.

The two Acts above are still in force as duly upheld by Section 313 of the 1999 Constitution which provides that:

"Pending any Act of the National Assembly for provision of a system of revenue allocation between the Federation and the States and Local Government Councils and among the Local Government Councils in the States, the system of revenue allocation in existence for the financial year beginning from 1st January, 1998 shall, subject to the provisions of this Constitution and as from the date when this Section comes into force continue to apply."

Section 5(2) of Act No. 106 of 1992 provides that each State should pay into its State Joint Local Government Account 10% of its internally generated revenue to be distributed among the Local Government Councils in the State on such terms and in such manners as the State House of Assembly may prescribe.

The defendant's defence for paying the money directly or in any other manner to the Local Government Councils is that the National Assembly has not made any new prescription as to the allocation and distribution of the amount standing to the credit of the Federation Account, and therefore the existing distribution system should continue in the interim under the existing law. This, in my opinion, cannot be faulted in view of this court's decision in Attorney-General, Federation v. Attorney-General, Abia & 35 (No.2) (supra). See per Uwais, CJN at page 760.

Section l(c) of Act No. 16 (supra), it is contended, provides that the Local Government Council shall be allocated and is entitled to 10% of any amount in the Federation Account.

Section 3 of the Act (ibid), it is pointed out, provides that:

"3. For the allocation from the Federation Account among the Local Government the same factors and weights as those used for sharing revenue from the Federation Account among the States shall apply."

The learned Attorney-General thereafter argued that neither Section 1 (a) nor 3 of the Act nor any other provisions of the Act can be interpreted to mean that the Federal Government is empowered to distribute as it presently does the amount standing to the credit of the Local Government Councils. Indeed, it is argued, Section 3 talks about allocation not distribution. There is a clear distinction between them, adding that they are not interchangeable since allocation is made before distribution. That exercise of jurisdiction, it is further stated, is clearly the prerogative of the States as prescribed by the law of the State House of Assembly in accordance with Sections 162(8) of the Constitution. Section 3 properly construed, it is argued, deals only with the manner of allocation of the amount standing to the credit of the Local Government Councils in the Federation Account amongst the Local Government Councils. However, the use of the expression, "amongst the Local Government Councils in Section 3 of the Revenue Act, it is maintained, appears to suggest that the Federal Government is empowered to make the allocation directly in favour of the Local Government Councils. It is therefore submitted that the provisions of Section 3 in so far as it purports to regulate the allocation of any amount standing to the credit of the Local Governments in the Federation Account directly to the Local Government Councils is inconsistent with Section 162(5) of the Constitution and it is void and unconstitutional. The National Assembly, it then contended, cannot validly make a law permitting direct allocation to the Local Government Councils, adding that such money must be allocated direct to the States, which shall in turn pay the same into the "State Joint Local Government Account" vide Section 162(6). Moreover, it is argued, Section 6(1) of Act No. of 1982, which provides for the establishment of a Joint Local Government Account Allocation Committee (JLGAAC for short) for each State, is clearly inconsistent with Section 162(8) of the Constitution in so far as it seeks to regulate the manner the amount allocated to the State for the benefit of the Local Governments i that State is to be distributed. I cannot agree more.

Relief IX

On Stabilisation Account, it is submitted that there is clearly no constitutional warrant for creation of such Account as a charge on the Federation Account. This is because whatever Account the Federal Government wishes to keep, plaintiff argued, can only lawfully operated with funds emanating from her own share of the amount in the Federation Account subsequent to the distribution among the 3 tiers of government. To do otherwise as is presently being done, it is argued, is contrary to Section 162(3) Constitution. Clearly, as has been argued, the provisions of the Law i.e. Revenue Act, (Cap. 16) (ibid) supporting the creation and Maintenance of a Stabilisation Account, is unconstitutional, again, this argument is flawless and is incontrovertible.

Relief (X)

After the learned Attorney-General had observed that it is not disputed that the Federal Government makes deductions from the Federation Account to service her foreign/external debts, the c he pointed out, is that such debts were charged on the Federation Account between 28th May, 1999 and would continue to be 36 charged by virtue of Section 314 of the Constitution. Section 314 (ibid), it is maintained, provides that any debt of the Federation or of a State which immediately before the date when the Section comes into force was charged on the revenue and assets of the Federation or a State, shall as from the date when the Section comes into force, continue to be so charged, it is maintained.

The money in the Federation Account, it is submitted, belongs to the three tiers of Government and cannot be properly described as the money of the federal Government. The Federal Government Revenue, it is therefore contended, is her share out of the Federation Account from which she is obliged to pay her debts. There can be no basis, it is argued, for saddling the other tiers of government with the responsibility for sharing in the payment of the debts incurred by the Federal Government and Section 314 cannot be so interpreted. It follows, it is finally submitted, that the charging of the Federal Government debts on the Federation Account as opposed to the Federal Government Revenue, is in conflict with Section 162(3) and (9) of the Constitution and is unconstitutional. The argument herein cannot, in my opinion, be faulted also.

Relief (XI)

The clear postulation of Section 163(3) of the Constitution, argued the plaintiff is that any amount in the Federation Account shall be distributed among the Federal, State and Local Governments on such terms and in such manner as may be prescribed by the National Assembly. Such amount it is pointed out cannot properly or constitutionally be distributed in favour of any other party or fund. It will clearly be unconstitutional, it is asserted, for the National Assembly to make any provisions for any distribution of any amount in the Federation Account in favour of any other party or fund. It will, it is observed constitute a deprivation of the right of the plaintiffs to their appropriate share in the Federation Account. The defence put forward by the defendant in its statement of defence that the deductions made as a first line charge on the Federation Account which the plaintiff complains about in paragraphs 6,9,10 and 11 of its statement of claim, it is maintained, is consistent with the Provisions of the Allocation of Revenue (Federation Account, etc) Act, Cap. 16, Laws of the Federal Republic of Nigeria, 1990, as amended and the 1999 Constitution and that the action of the Federal Government and its agents in the circumstance is neither illegal and unconstitutional., Consequently, the learned Attorney-General submitted, Section l(d) (i - v) of Act No. 16 of 1990 as amended, which is an existing law under Section 315 of the 1999 Constitution, is inconsistent with Section 162(3) of the Constitution in so far as it makes provision for distribution of money in the Federation Account amongst those bodies/institutions not cognisable by that Section.

Relief (XII)

Under this relief the submission is that there is no warrant for the National Assembly to make any provisions for the creation or maintenance of a State Joint Local Government Account (SJLGA). The responsibility, it is contended, is clearly that of the State House of Assembly under Section 4(7) of the Constitution, being a matter in respect of which the Constitution has impliedly, if not expressly empowered the State to make laws. The point, it is stressed, is clearly re-enforced by the provisions of section 162(8) of the Constitution which states:

"the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State."

The plaintiff therefore submitted that it is clear that sections 3 and 6(1), (2) and (3) of the Revenue Act are inconsistent with sections 162(5), (6) and (8) of the Constitution and is to that extent, invalid, null and void. As I shall seek to show hereafter there is merit in this argument.

Reliefs (XIII) and (XIV)

The plaintiff, it is submitted, is asking for an account while the defence is that there is no allegation that the plaintiff ever requested for a Statement of Federation Account and it was refused. The issue as contended on plaintiff's behalf is not a statement of Federation Account but a full account of how the money in the Federation Account which ought to have been paid into the Federation Account is being utilized or applied or disbursed. This, as can be seen,; is quite different from an ordinary statement of account, it is argue Should this court hold that the plaintiff is entitled to a share in Federation Account and has established that the account has not been constitutionally managed by the defendant then, it will be entitled to an account and the money properly standing to its credit. When claim XIV was being argued, it was abandoned. There the matter ended and rightly so.

Reliefs (XV), (XVI), (XVIII) and (XIX)

The plaintiff finally submits that the injunctive reliefs sought necessarily follow from the declaration sought in this suit. Thus, once the court is satisfied that the plaintiff is entitled to the declarations sought, it must follow that he will be entitled as of right to the injunctions sought. The plaintiff in conclusion urged us to grant all the reliefs sought because of the reasons articulated herein. The argument proffered here, to my mind, is non-sequitur.

I will now consider the reliefs (Claims) made out in the respective plaintiffs' amended statements of claim/statements of claim and/or briefs vis-a-vis the defence to see whether or not they deserve to be sustained or refused in the light of the reliefs

(claims) earlier considered in the case decided by this court and now reported as Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors. (No.2) (2002) 6 NWLR (Part 764) 542. In this wise, I wish to commence with Lagos State again but, this time from its penultimate paragraph 18 of the amended statement of claim, which after due consideration I have arrived at the irresistible conclusion that of the nineteen claims (reliefs) therein, the following need to be examined and answers proffered thereon by me to wit: Claims 5, 7, 12, 14, 15 and 18 respectively. This claim avers as follows:

"A declaration that the Federal Government is mandatorily obliged by the combined effect of Section 162(i) and (iv) of the Constitution of the Federal Republic of Nigeria, 1999 to pay into the Federation Account all the proceeds and income, save those exempted under Section 162(1), accruing from the privatisation of government enterprises, from stamp duties, capital gains tax and other income accruing to or derived by the Federal Government from any other source." (Italics is mine for comment later on).

"Revenue" is defined in Section 162(10) of the 1999 Constitution as follows:

"For purposes of sub-section (1) of this Section "revenue" means any income or return accruing to or derived by the Government of the Federation from any source and includes:

(a) any receipt, however described, arising from the operation of any law;

(b) any return, however described arising from or in respect of any property held by the Government of the Federation;

(c) any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body."

Section 163 of the 1999 Constitution takes care of what the plaintiff here is asking for. That Section (163 (ibid)) stipulates:

"Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item of part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly:

(a) where such tax or duty is collected by the Government of the State, the net proceed shall be treated as part of the Consolidated Revenue Fund of that State;

(b) where such tax or duty is collected by the Government of the Federation or other author of the Federation, there shall

be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State."

Accordingly, claim 5 cannot be granted for two reasons:

(i) There is no section like Section 162(i) and 162(iv) rather Section 162(1) and 162(4) respectively of 1999 Constitution.

(ii) The National Assembly is yet to pass a law (an Act of the National Assembly) pending which the provisions of Section 313 of the Constitution will have sway.

Claim 7

Under claim 7 the plaintiff asks for:

"A declaration that the defendant is not entitled within the proper meaning of Section 162(5), (6) and (8) the Constitution of the Federal Republic of Nigeria 1999 to pay the amount standing to the credit of the Local Government Councils in the federation Account directly to the Local Government Councils and that such payments by the defendant is illegal and Unconstitutional."

The claim being straight forward, factual and unequivocal should, in my opinion be granted. Accordingly, I hereby grant it.

Claim 12

Under this claim the plaintiff pleaded thus:

"A declaration that Section 3, Section 6(1), (2) and (3) of the Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, Laws of the Federal Republic of Nigeria as amended by Decree No. 106 of 1976 are inconsistent with Section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and are invalid, unconstitutional, null and void and of no effect."

As Section 162(5), (6) and (8) of the Constitution apply, there is an inconsistency. That being so, the relief is allowable and I

accordingly grant it.

Claim 14

This claim is covered by an averment for:

"An order directing the Federal Government of Nigeria to pay the plaintiff all sums properly found due and unpaid to the plaintiff in respect of its share from the Federation Account on the proper and lawful distribution amongst the States of the appropriate and true amount standing to the credit of States in the Federation Account on the taking of such account."

This claim was abandoned during argument in court. Accordingly, I strike it out and it is struck out.

Claim 15

In this claim the plaintiff pleaded for:

"An order of injunction "restraining all officers, servants and functionaries of the Government of the Federal Republic of Nigeria or any other public officers whomsoever and howsoever from keeping and/or maintaining or sustaining any other Account save the Federation Account for the purpose of receiving all revenue as defined by Section, 162(10) of the Constitution collected by the Government of the Federation."

As this claim is not founded on any of the declarations sought; also as there are no facts or materials in support thereof in the light of the grant of claims 7 and 12, this claim must be and is accordingly refused.

Claim 18

This claim asking for some injunctive reliefs having been abandoned is accordingly struck out.

Ogun State

The plaintiff here commenced this action (along with the others whose cases were consolidated in this suit) against the defendant by a writ of summons and a statement of claim both dated 21st May, 2001. Standing out glaringly for our consideration are claims (iv), (xi), (x), (xii) and (xiv).

Claim (iv)

The claim here as couched reads:

"A declaration that it is illegal and unconstitutional for the defendant to deduct funds due to the Local Government Councils in Ogun Sate from the Federation Account and pay same directly to the Local Government councils rather than into the State Joint Local Government Account."

Comment:

As this claim is well grounded with firm roots, it is accordingly granted as in the case of Lagos.

Claim (xi)

The declaration sought states:

"A declaration that it is unconstitutional and illegal for the defendant to withhold proceeds from privatisation of Federal Government Agencies, Stamp Duties, Capital Gains Tax and all other income accruing to or derived by the Government of the Federation from any other source."

Comment:

As no Act of the National Assembly has yet been passed take care of this claim, it is my view that it must be refused. It is accordingly refused by me.

Claim (Ix)

Under this claim the plaintiff asks for:

"A declaration that it is illegal and unconstitutional for the defendant to maintain and keep any other account for the purpose of receiving revenue collected by the Federation other than as prescribed by Section 162(1) of the Constitution."

Comment:

As this claim is clearly against the provisions of Section 163 of the Constitution it cannot certainly be granted.

Claim (xii)

Under this claim the plaintiff asks for:

"An order of perpetual injunction restraining the defendant by itself, agents, officers or privies from repeating or further committing such or similar unconstitutional acts in violation of any of the provisions of Section 162 of the Constitution."

Comment:

This order as sought is, in my opinion, vague, too wide and cannot be granted It is therefore accordingly refused.

Claim (xiv)

The claim as made out here is for:

"A further order compelling the defendant to pay to the plaintiff its legitimate and correct share of the Federation Account less all monies already paid to the plaintiff from the said account, within the period 29th May, 1999 till the date of judgment in this suit."

Comment:

The order sought here is glaringly vague and cannot, with due respect, be made. An order should not be made in vacuo.

See J.S. Olawoyin v. Attorney-General, Northern Region (1961) 2 SCNLR 5 (1961) 1 All NLR (Pt. 2) 269 at 271,276. It is therefore accordingly refused.

Oyo State

Invoking the original jurisdiction of the Supreme Court under Section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 the plaintiff commenced this action by a writ of summons dated 8th day of August, 2001 under the hand of the Honourable Attorney-General of Oyo State, Mr. A.A. Lawal.

On 24th October, 2001 an affidavit of 26 paragraphs was filed in support of the plaintiff's claim. The plaintiff, in addition filed in support of his claim a brief of argument dated 5th February, 2002 and filed on 8th February, 2002. Furthermore, plaintiff submitted and attached as document called Wrongful Deductions from Federation Account June 1999 - July 2001 (marked exhibit 'A'); otherwise called FGN Creditors amounting to Billions of Naira.

Claims

In plaintiff's penultimate paragraph 17, five reliefs claimed therein, need be considered here namely, reliefs 2, 3, 4, 5 and 10.

Claim 2

As this claim wherein the plaintiff asks for a declaration that it is illegal and unconstitutional for the defendant to maintain or keep any other account apart from the Federation Account etc was abandoned, it is accordingly struck out.

Claims 3

As under this claim it is argued that it is unconstitutional and illegal for the defendant to deduct funds from the Federation Account and pay same over to Local Government Councils etc and moreover, since I had granted to some of the other plaintiffs a similar relief in this Consolidated Suit, the present claim succeeds.

Comment

The claim is accordingly granted.

Claims 4 and 5

As these claims were abandoned, they are accordingly struck out.

See the case of Attorney-General, Federation v. Attorney-General, Abia & 35 Ors. (supra).

Claim 10

I will not grant this claim in as much as it is similar to claim 5 of the Lagos State case (supra) and which we earlier considered and refused.

Ondo State

Of the fifteen reliefs sought by the plaintiff, Chief Dele Ogedengbe, Hon. Attorney-General for Ondo State, sequel to his, paragraph 10 of the statement of claim we need only to consider claims (iv), (xi), (xii) and (xiii) thereof as hereunder set out thus:

Claim (iv)

Under this claim the plaintiff is asking for:

"A declaration that it is illegal and unconstitutional for the Defendant to deduct funds due to the Local Government Councils in Ondo State from the Federation Account and to pay same directly to the Local Government councils rather than into the State Joint Local Government Account."

Comment

I am of the opinion that this claim is in order and ought therefore to be granted as in the case of Lagos State (supra).

Claim (xi)

For this head of claim, the plaintiff asks for:

"A declaration that it is illegal and unconstitutional for the defendant to maintain and keep any other account for the purpose of receiving revenue collected by the Federation other than as prescribed by Section 162(1) of the Constitution."

Comment

I am of the view that this claim ought not to be granted. This is because it overlooks other provisions of Section 162(1) of the Constitution which, for purposes of emphasis, provides thus:

"162(1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of Government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja."

Further, the claim ignores Section 163 of the Constitution which provides:

"Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly:

(a) Where such tax on duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;

(b) Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State."

Comment

I am of the view that this claim should not be granted. Accordingly I refuse it.

Claim (xii)

This claim is for an injunctive relief. It seeks for:

"An order of perpetual injunction restraining the defendant by itself (sic), agents, officers, privies from repeating or further committing such or similar unconstitutional acts in violation of any of the provisions of Section 162 of the Constitution."

Comment

I am inclined to refuse this claim which being unspecific and vague, will be impossible to supervise. Moreover, the amount involved is not specific. See the case of Attorney-General of the Federation v. Attorney-General, Abia State & 35 Ors. (supra).

Claim (xiii)

This claim asks for:

"An order directing the defendant to render an account of all the monies received into and disbursed from the Federation Account from 29th day of May, 1999 till the date of judgment in this suit, and furnish the plaintiff with copies of the said Statement of Account."

Comment

I am of the view that it being impossible to supervise; this wide and unmanageable claim ought to be and is hereby refused by me. See the case of Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors. (No.2) (supra).

Osun State

For this Suit wherein the plaintiff in the penultimate paragraph 10 of his statement of claim asks for two reliefs worthy of

consideration, I will consider them seriatim as follows:

Claim (iv)

Under claim (iv) the plaintiff asks for:

"A declaration that it is illegal and unconstitutional for the defendant to deduct funds due to the Local Government Councils in Osun State from the Federation Account and pay same directly to the Local Government Councils rather than into the State Joint Local Government Account."

Plaintiff in support of his statement of claim filed an affidavit of 21 paragraphs and other papers of Accounts involving millions of Naira said to be owing by the defendant to him (plaintiff) and denoting statutory distribution by the Central Bank of Nigeria to Local Government Councils.

Comment

I am of the opinion here that this relief is meritorious and ought to be granted. I accordingly grant it since this claim has been established on the balance of probability. See Chief Frank Ebba v. Washi Ogodo & Anor. (1984) 1 SCNLR 372 at 379 and Omoregie v. Omigie (1990) 2 NWLR (Pt. 130) 29 at 39.

Claim (x)

Under this claim, the plaintiff averred:

"A declaration that it is unconstitutional and illegal for the defendant to withhold proceeds from privatisation of Federal Government Agencies, Stamp Duties, Capital Gains Tax and all other income accruing to or derived by the Government of the Federation from any source."

Comment

I am of the opinion that as there is no law under Section 162(5) and (6) that provide for this claim, it must be refused and it is accordingly refused. See Onobruchere v. Esegine (1986) 1 NWLR (Pt. 19) 799.

Conclusion

It is for all I have been saying above that I arrive at the conclusion that the respective plaintiff's cases partially succeed. Reliefs 5 and 15 are refused for reasons that, in regard to relief 5, under Section 163(b) of the Constitution, where tax or duty of the type envisaged in item D of Part II of the second schedule is collected by the Government of the Federation or other authority of the Federation, the money ought not to be paid into the Federation account since once that is done, it will be subject to the distribution pattern provided in section 162(3) of the Constitution. Whereas under section 163(b) the money is meant to be paid to each State in due course in the proportion of which it was derived from that State. Therefore such money should be advisedly kept in an account different from the Federation Account. A declaration in the manner sought in relief 5 overlooks the fact of section 163(b) as for relief 15, it cannot be granted in view of what has been said of relief 5.

In view of the relevant provisions of the Constitution cited in relief 7 and 12 whose meanings are clear, the declarations sought therein are hereby granted.

For the 2nd plaintiff namely, Attorney-General of Lagos State, claims 7 and 12 are accordingly granted. Both claims provide as follows:

1. "Declaration that the defendant is not entitled within the proper meaning of Section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 to pay the amount standing to the credit of the Local Government Councils in the Federation Account directly to the Local Government Councils and that such payments by the defendant is illegal and unconstitutional."

2. “A declaration that Sections 6(1), (2) and (3) of the Allocation of Revenue (Federation Account) Act Cap. 16, Laws of the Federal Republic of Nigeria as amended by Decree 106 of 1976 are inconsistent with Section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and are invalid, unconstitutional, null and void and of no effect."

For the 1st plaintiff, namely Ogun State, the only successful claim is claim (iv) and it is accordingly granted. For the avoidance of doubt it provides as follows:

"(iv) A declaration that it is illegal and unconstitutional for the defendant to deduct funds due to the Local Government Councils in Ogun State from the Federation Account and pay same directly to the Local Government Councils rather than into the State Joint Local Government Account."

For the 3rd plaintiff, namely Oyo State the lone claim in which he is successful is claim 3 which is in pari materia with 2nd plaintiffs claim (iv) above. For the 4th plaintiff namely, Ondo State Claim (iv) which is similar to 1st plaintiff's claim (iv) and

3rd plaintiff's claim 3, succeeds and it is accordingly granted. See Awomuti v. Salami & Ors. (1978) 3 SC 105.

Finally, the 5th plaintiff's (Osun State's) claim (iv) like 1st plaintiff's claim (iv); 3rd plaintiff's claim 3 and 4th plaintiff's claim (iv), must perforce succeed and they are accordingly granted.

Subject to the above, the rest of plaintiffs' respective claims fail and are accordingly refused.

I make no order as to costs. Each party to bear his own costs.

Judgement delivered by

Muhammadu Lawal Uwais, C.J.N.

The Attorneys-General of Ogun, Lagos, Oyo, Ondo and Osun States severally brought action against the Attorney-General of the Federation. As their claims are identical and in some respects the same, we decided to consolidate the actions. This was done on the 24th day of September, 2001.

Most of the claims in this case were dealt with in an earlier case brought in this court by the Attorney-General of the Federation against the 36 States of the Federation the plaintiffs herein inclusive. That case is A.-G. of the Federation v. A.-G. of Abia State & 35 Ors. (No. 2) (2002) 6 NWLR (Pt. 764) 542. Most of the claims in this case are repetitions of the counter-claims set up by some of the defendants in the former case. As a result the plaintiffs herein had in the course of hearing this case abandoned some of their claims as shown in the judgment of my learned brother Onu, JSC.

I have had the opportunity of reading in draft the judgment read by my learned brother Onu, JSC. I entirely agree with it.

Of significance, are the novel claims by the 2nd and 3rd plaintiffs. These are claims Nos. 5 and 10 respectively. Claim No. 5 by the Attorney-General of Lagos State reads:

"5. A declaration that the Federal Government is mandatorily obliged by the combined effect of section 162 (i) and (iv) (sic) section 162(1) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 to pay into the Federation Account all the proceeds and income, save those exempted under section 162(i) (sic 162 (1) accruing from privatisation of government enterprises, from stamp duties, capital gains tax and other income accruing to or derived by the Federal Government from any

other source."

And claim No. 10 by the Attorney-General of Oyo State reads:

"10. A declaration that withholding of proceeds from Stamp Duties, Capital gains tax, Federal Government privatisation programmes and any other income accruable to or derived by the Government of the Federation from being paid to the Federation Account is illegal and unconstitutional."

Now by the provisions of section 162 subsection (1) of the 1999 Constitution –

"162 (1) The Federation shall maintain special account to be called "Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or Department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja."

The word "revenue" in this subsection has been defined by subsection (10) of section 162 of the Constitution as follows:

"162 (10) For the purposes of subsection (1) of this section, "revenue" means any income or return accruing to or derived by the Government of the Federation from any source and includes –

(a) any receipt, however described, arising from the operation of any law;

(b) any return, however described, arising from or in respect of any property held by the Government of the Federation;

(c) any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body."

On the other hand, section 163 of the 1999 Constitution provides:

"163. Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly –

(a) Where such tax or duty is collected by the Government of a State or other authority of the state, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;

(b) Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State."

Item D of Part II of the Second Schedule to the Constitution consists of paragraphs 7-10 under the Concurrent Legislative List in the Constitution. (See Section 4(4) and (5) of the Constitution).

Paragraph 7 thereof provides:-

"7. In exercise of its powers to impose any tax or duty on –

(a) capital gains, incomes or profits of persons other than companies; and

(b) documents or transactions by way of stamp duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State."

It seems to me that the provisions of section 162 subsections (1) and (10) of the 1999 Constitution are general in nature while those of section 163 (b) of the Constitution, which deal in particular with capital gains tax and stamp duties, are specific. Therefore, the latter provisions override the former for generalibus specialia derogant (i.e. special things derogate from general things). There are the Capital Gains Act, Cap. 42 of the Laws of the Federation of Nigeria, 1990 and the Stamp Duties Act, Cap. 411 which are "existing laws" under section 315 of the 1999 Constitution. However, the Acts do not contain provisions pursuant to section 163 of the 1999 Constitution and as at now the National Assembly has not prescribed how the net proceeds of such tax or duty are to be distributed among the States on the basis of derivation.

Therefore, it follows that there is no basis on which capital gains tax and stamp duties collected by the Government of the Federation could for the time being be paid to the States or into the Federation Account as being claimed by the 2nd and 3rd plaintiffs. It is, in fact, clear by the provisions of section 163 that capital gains tax and stamp duties are supposed to be paid, when applicable to the States from which they are derived and not for the benefit inter alia of all the States, which will be the case were the tax and duties to be paid into the Federation Account (see section 162 subsection (3) of the Constitution).

From the foregoing it is clear that the declarations in question being sought by the 2nd and 3rd plaintiffs cannot succeed. With regard to privatisation of government enterprises by the Government of the Federation, section 20 of the Public Enterprises (Privatisation and Commercialisation) Decree No. 28 of 1999 provides that the Bureau of Public Enterprises shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Bureau. The fund so established is to be financed by subvention from the Government of the Federation loan or grant to the Bureau by the Governments of the Federation or State or Local Government; all subventions, fees and charges for services rendered by the Bureau including publications, and all other assets which may from time to time accrue to the Bureau. By section 21 subsections (2) of the Decree the Bureau shall cause the net surplus of receipts and payments made to it in every year to be paid to the Government of the Federation. The privatisation of public enterprises cannot be dealt with in isolation from capital gains tax and stamp duties since all constitute a single claim for declaration by the 2nd and 3rd plaintiffs respectively. Once the declaration with respect to the latter is untenable then so also the declaration with regard to the privatisation of government enterprises because all are lumped together in the declarations being sought and are not severable.

It is for the aforesaid reasons and the more detailed reasons contained in the judgment of my learned brother Onu, JSC that the plaintiffs' claims do not succeed in part. I grant the claims granted in the said judgment and also make no order as to costs.

Judgement delivered by

Salihu Modibbo Alfa Belgore, J.S.C.

These suits brought under the original jurisdiction of the court were consolidated for hearing with their pleadings as well as briefs of argument which were exchanged 1 the parties. They were filed before this court gave judgment in t suit, Attorney-General of the Federation v. Attorney-General of Abia State and 35 Others (now reported in (2002) 6 NWLR (Pt. 764) 542, delivered on 5th day of April, 2002. When these suits were being heard, it is apparent that most of the issues in them had been decided in the above case by this court. When this was pointed out to the parties fifteen of the reliefs were abandoned by Lagos State leaving four to be contested. What therefore remained to be decided in Lagos State's suit are three declarations and a prayer for injunction, to wit:

"5. A declaration that the Federal Government is mandatorily obliged by the combined effect of section 162(i) and (iv) of the Constitution ... to pay into the Federation Account all the proceeds and income, save those exempted under section 162(i) accruing from the privatization of government enterprises, from stamp duties, capital gains tax and other income accruing to or derived by the Federal Government from any other source.

"7. A declaration that the defendant is not entitled within the proper meaning of section 162 (5), (6) and (8) of the Constitution of the Federal Republic of Nigeria 1999 to pay the amount standing to the credit of the Local Government Councils in the Federation directly to the Local Government Councils and that such payments by the defendant is illegal and unconstitutional.

"12. A declaration that Section 3 and 6(i), (2) and (3) of the allocation of Revenue (Federation Account) Act (Cap. 16) Laws of the Federation of Nigeria, 1990 as amended by Decree 106 of 1992 are inconsistent with Section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria 1999 and invalid, unconstitutional, null and void and of no effect.

"15. An order of injunction restraining all officers, servants, and functionaries of the Government of the Federal Republic of Nigeria or any other public officer whomsoever and howsoever from keeping and/or maintaining or sustaining any other Account save the Federation Account for the purpose of receiving all revenue as defined by Section 162 (10) of the Constitution collected by the Government of the Federation."

Under S.163(b) of the Constitution in regard to tax or duty envisaged in Part II, Second Schedule, item D is collected by the Government of the Federation or any other authority of the Government of the Federation, such money will not go into Federation Account. This is because if it is paid into Federation Account it will be subject to distribution formula envisaged in section 163(3) of the Constitution i.e. to Federal government, State Governments and Local governments.

The provisions of s. 163 (b) envisage that such money should be paid to each state in the proportion of derivation from each state. Thus such money should not go into Federation Account g but a different account. This equally applies in respect of declaration sought in paragraph 15. In view of this, declarations 5 and 15 cannot be granted as it will clearly conflict with s. 163 (b) of the Constitution. Therefore no injunction can be granted. There is no problem with reliefs 7 and 12 as they are clearly in consonance with this court's C decision in Attorney-General of the Federation v. Attorney-General of Abia and 35 Others (supra) and are granted.

In Ogun State's suit relief iv is the same as relief 7 sought by Lagos State and I grant it. Relief xi is the same as relief 5 of Lagos State and it is similarly refused. Relief xii and xiv praying for "perpetual injunction to restrain the defendants etc from committing unconstitutional acts in violation of any of the provisions of Section 162 of the Constitution" and "order compelling the defendant to pay the plaintiff its legitimate and correct share of the Federation Account less monies already paid to the plaintiff from the said Account within period 29th May, 1999 till date of the judgment" respectively are not only too vague but very wide for this court to grant. The reliefs cannot be granted and are therefore refused.

The suit by Oyo State, the reliefs No. 3 and 10 were the only ones pursued in the fifteen reliefs sought, others being abandoned. The relief No. 3 is similar to relief 7 of Lagos State, which I have granted. I grant this relief 3 for the same reason. The relief No. 10 by this state is on all fours with relief No. 5 of Lagos State and it is similarly refused for reasons I advanced in regard to relief 5 of Lagos State.

Ondo State in its suit (SC. 277/2001) set out 15 reliefs but it abandoned 11 of them, leaving only four reliefs which were fully argued. Relief iv is the same in vein to Lagos State relief 7 which I earlier granted. I grant this relief iv. Relief xi is similar to relief 5 of Lagos State, which is refused. This relief iv is also refused. Relief xii and xiii are virtually the same with Ogun State relief xii and xiv which I held to be vague and too wide and refused to grant. I also refuse these two reliefs. As there is no Act of National Assembly passed in respect of Revenue Allocation in view of this court's decision in Attorney-General of the Federation v. Attorney-General of Abia State & 35 Others (supra) it is obviously premature to grant the relief No. xiv in Ondo State's suit.

Eleven of the fourteen reliefs sought by Osun State (suit No. SC 296/2001) were abandoned leaving only three which were fully argued. Relief No. iv is the same as relief No.7 of Lagos State, it is hereby granted for the same reasons early advanced. Reliefs x and xiv are similar to reliefs xii and xiv of Ogun State and are therefore refused for the same reasons as given in Ogun State's claim.

I had discussed in conference and have read in draft the judgment of my learned brother, Onu, JSC and I agree with the conclusions. I make no order as to costs.

Judgement delivered by

Uthman Mohammed, J.S.C

I have had a preview of the judgment of my learned brother, Onu, JSC in draft in these consolidated suits and I am in entire agreement with the conclusions expressed in that judgment. He expressed fully and accurately my own views and I do not find it necessary to repeat what he had adequately considered. I therefore grant the following claims,

1.

Ogun State

-

claims

4

2.

Lagos State

-

claims

7 and 12

3.

Oyo State

-

claims

3

4.

Ondo State

-

claims

4

5.

Osun State

-

claims

4

All the rest of the claims from the respective five plaintiffs have failed and they are dismissed.

I make no order as to costs.

Judgement delivered by

Anthony Ikechukwu Iguh, J.S.C

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Onu, JSC and I am in complete agreement with the conclusions therein reached.

He has considered all the claims before the court together with the various issues that arise from the consolidated suits in great detail and I do not think there is any thing more I can usefully add. It suffices to say that I abide by his decisions in all the claims in the respective suits. I also endorse all the orders therein made. I agree that in all the circumstances of these cases, each party ought to bear his own costs.

Accordingly, there will be no order as to costs.

Judgement delivered by

Samson Odemwingie Uwaifo, J.S.C

The five suits filed by each of the plaintiffs were consolidated for hearing and determination. They were filed and the pleadings as well as briefs of argument exchanged before the judgment of this court in Attorney-General of the Federation v. Attorney-General o fAbia State and 35 Ors. (2002) 6 NWLR (Pt. 764) 542 was given on 5 April, 2002. In the event, most of the reliefs sought in these consolidated suits which had in effect been pronounced on in the said judgment did not need any further resolution. I shall consider the claims individually.

Lagos State

In regard to the claim in SC. 189/2001, which my learned brother Onu, JSC decided to use as a guide, of the 19 reliefs sought 15 were accordingly abandoned while 4 were considered. Those considered were:

"5. A declaration that the Federal Government is mandatorily obliged by the combined effect of section 162 (i) and (iv)

[sic: 162 (1) & (4)] of the Constitution of the Federal Republic of Nigeria, 1999 to pay into the Federation Account all the proceeds and income, save those exempted under section 162 (i), accruing from the privatisation of government enterprises, from stamp duties, capital gains tax and other income accruing to or derived by the Federal Government from any other source.

7. A declaration that the defendant is not entitled within the proper meaning of section 162(5), (6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999 to pay the amount standing to the credit of the Local Government Councils in the Federation Account directly to the Local Government Councils and that such payments by the defendant is illegal and unconstitutional.

12. A declaration that sections 3 and 6(1), (2) and (3) of the Allocation of Revenue (Federation Account) Act, Cap. 16 Laws of the Federal Republic of Nigeria as amended by Decree No. 106 of 1976 (sic: 1992) are inconsistent with section 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and are invalid, unconstitutional, null and void and of no effect.

15. An order of injunction restraining all officers, servant and functionaries of the Government of the Federal Republic of Nigeria or any other public officer whomsoever and howsoever from keeping and/or maintaining or sustaining any other Account save the Federation Account for the purpose of receiving all revenue as defined by section 162 (10) of the Constitution collected by the Government of the Federation."

Reliefs 5 and 15 are refused for reasons that, in regard to relief 5, under section 163 (b) of the Constitution, where tax or duty of the type envisaged in item D of Part II of the Second Schedule is collected by the Government of the Federation or other authority of the Federation, the money ought not to be paid into the Federation Account since once that is done, it will be subject to the distribution pattern provided in section 162(3) of the Constitution. Whereas under section 163(b) the money is meant to be paid to each State in due course in the proportion in which it was derived from that State. Therefore such money is better kept in an account different from the Federation Account. A declaration in the manner sought in relief 5 fails to take cognisance of section 163 (b). As to relief 15, it cannot be granted in view of what has been said in respect of relief 5.

In view of the relevant provisions of the Constitution cited in reliefs 7 and 12 whose meanings are clear, the declarations sought therein are granted.

Ogun State

In suit No. SC. 137/2001, 15 reliefs were sought. Out of these 11 were abandoned and 4 were pursued as follows:

"(iv) A declaration that it is illegal and unconstitutional for the defendant to deduct funds due to the Local Government Councils in Ogun State from the Federation Account and pay same directly to the Local Government Councils rather than into the State Joint Local Government Account.

(xi) A declaration that it is illegal and unconstitutional for the defendant to maintain and keep any other account for the purpose of receiving revenue collected by the Federation other than as prescribed by section 162(1) of the Constitution.

(xii) An order of perpetual injunction restraining the defendant by itself, agents, officers or privies from repeating or further committing such or similar unconstitutional acts in violation of any of the provisions of section 162 of the Constitution.

(xiv) A further order compelling the defendant to pay to the plaintiff its legitimate and correct share of the Federation Account less all monies already paid to the plaintiff from the said Account, within the period 29th May, 1999 till the date of judgment in this suit."

I consider relief (iv) as the same as relief 7 sought by the Attorney-General of Lagos State which I have granted. I accordingly grant relief (iv). Relief (xi) is similar to relief 5 by Lagos State. It is refused. Reliefs (xii) and (xiv) are either vague or too wide. They are refused.

Oyo State

In suit No. SC. 253/2001, 15 reliefs were sought. Only reliefs 3 and 10 were pursued while the rest were abandoned.

Those pursued read:

"3. A declaration that it is illegal and unconstitutional for the defendant to deduct funds from the Federation Account and pay same over to Local Government Councils instead of State Joint Local Government Account."

I grant this relief for the reason I have granted relief 7 by Lagos State.

“10. A declaration that withholding of proceeds from Stamp Duties, Capital gains tax, Federal Government privatisation programmes and any other income accruable to or derived by the Government of the Federation from being paid to the Federation Account is illegal and unconstitutional."

I refuse this relief having regard to the implication of what I have said in regard to relief 5 by Lagos State.

Ondo State

In suit No. SC.277/2001, 15 reliefs were stated out of which 11 were abandoned. Although 4 were argued, it is only relief (iv) I hereby grant for the same reason I have granted relief 7 by Lagos State. The relief reads:

"(iv) A declaration that it is illegal and unconstitutional for the defendant to deduct funds due to the Local Government Councils in Ondo State from the Federation Account and pay same directly to the Local Government Councils rather than into the State Joint Local Government Account."

Relief (xi) which was like relief 5 by Lagos state is refused. Reliefs (xii) and (xiii) similar to reliefs (xii) and (xiv) by Ogun State are refused either for being vague in respect of relief (xii) or that in respect of relief (xiv) it is unnecessary as there is no law yet on the matter by the National Assembly.

Osun State

In suit No.SC.296/2001, 14 reliefs were sought out of which 11 were abandoned. Relief (iv) which is the same as relief 7 by Lagos State is hereby granted. Reliefs (x) and (xiv) similar to reliefs (xii) and (xiv) by Ogun State are refused.

I have reached the same conclusions as my learned brother Onu, JSC, whose judgment I had the opportunity of reading in advance and with which I formally say I agree.

I make no order as to costs.

Judgement delivered by

Akintola Olufemi Ejiwunmi, J.S.C

The several suits referred to above were initiated at the instance of the Attorneys-General of Ogun, Lagos, Oyo, Ondo and Osun States against the Attorney-General of the Federation. In view of the fact that their claims are similar, the several actions were consolidated on the 24th day of September, 2001. Some of these claims however do not need to be considered in this action, as they have been dealt with and pronounced upon in the case of Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (No.2) of (2002) 6 NWLR (Pt. 764) 542. In the course of the hearing of the case, the plaintiffs in recognition of the fact that several of their claims have been pronounced upon in the said case abandoned

their claims in this action.

However, it is manifest that two claims by the 2nd and 3rd plaintiffs remained to be considered. The Attorney-General of Lagos State had in his own action in claim No.5, sought for the following declaration. It reads: -

"5. A declaration that the Federal Government is mandatorily obliged by the combined effect of section 162 (i) and (iv) (sic) section 162 (1) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 to pay into the Federation Account all the proceeds and income, save those exempted under section 162 (i) (sic) 162(1) accruing from privatization of government enterprises, from stamp duties, capital gains tax and other income accruing to or derived by the Federal Government from any other source."

The Attorney-General of Oyo State, in its claim No. 10, is seeking for the following:

"10. A declaration that withholding of proceeds from Stamp Duties, Capital Gains Tax, Federal Government privatization programs and any other income accruable to or derived by the Government of the Federation from being paid to the Federation Account is illegal and unconstitutional."

Now, in order to determine the veracity of these two claims, it is necessary to consider whether or not they fall within the constitutional provisions in our 1999 Constitution. The appropriate sections of the Constitution that are relevant, are in my view, sections 162 (1), 162(10), 163; Item D of Part II of the Second Schedule (Paragraphs 7-10) under the Concurrent Legislative List.

"162 (1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja."

"162 (10) For the purposes of subsection (1) of this section, "revenue" means any income or return accruing to or derived by the Government of the Federation from any source and includes –

(a) any receipt, however described, arising from the operation of any law:

(b) any return, however described, arising from or in respect of any property held by the Government of the Federation;

(c) any return by way of interest on loans and dividends in respect of shares or interests held by the Government of the Federation in any company or statutory body."

163. Where under an Act of the National Assembly, tax duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly,

(a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State,

(b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State."

Par. 7 In the exercise of its powers to impose any tax or duty on-

(a) capital gains, incomes or profits of persons other than companies; and

(b) documents or transactions by way of stamp duties the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of; State or other authority of a State."

A careful perusal of the provisions of section 162 subsection (1) and (10) of the 1999 Constitution, in my humble view reveal that those sections of the Constitution appear to be general in nature while those of section 163 (b) of the Constitution which deal particularly with Capital Gains Act, are specific. It is very clear from the reading of the provisions of section 163(b) that proceed from the collection of such tax or duty collected by the Government of the Federation are to be paid at such times as the Nation; Assembly may prescribe and in the manner that is deemed proper in accordance with the said section 163 (b).

It is necessary to also advert to the Capital Gains Act, Cap. 4 of the Laws of the Federation of Nigeria, 1990 and the Stamp Duties Act Cap. 411, which are existing laws under, section 315 of the 1999 Constitution. These acts do not contain provisions pursuant to section 163 of the 1999 Constitution, and as the National Assembly has not prescribed by any legislation how the net proceeds of such tax or duty are to be paid, distributed among the States on the basis of derivation, it must therefore follow that in the absence of such claims in this regard are not sustainable. It must be pointed out also that by virtue of the provisions of section 163 capital gains tax and stamp duties are expected to be paid, when applicable to the States from which they are derived and not for the general benefit of all the States (see section 162 subsection (3) of the Constitution).

I now would answer briefly the claim with regard to the privatization of government enterprises by the Government of the Federation. S.20 of the Public Enterprises (Privatization and Commercialisation) Decree No. 28 of 1999 provides that the Bureau of Public Enterprises shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Bureau. The fund so established is to be financed by subvention from the Government of the Federation or State or Local Government, all subventions, fees and charges for services rendered by the Bureau including publications, and all other assets, which from time to time accrue to the Bureau, By section 21 subsection (2) of the Decree, the Bureau shall cause the net surplus of receipts and payments made to it in every year to be paid to the Government of the Federation.

In the face of this legislation, it does not appear that the claim of the plaintiffs can be upheld. Interestingly, plaintiffs perhaps acting in the belief that the Federal Government had been the sole beneficiary from the privatization of public enterprises, capital gains tax and stamp duties, had in this action joined these various complaints under one claim. Having done so, it became impossible to sever them in the consideration of the claim. It follows then that these several complaints must fall together in the circumstances.

For the reasons given above and the fuller reasons given in the lead judgment of my brother Onu, JSC, I also make the declaratory reliefs that were granted in the said lead judgment. And I also make no order as to costs

Plaintiffs' claims succeed in part.