Uwais Through The Cases

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Chapter Three

CONSTITUTIONAL LAW

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Introduction

When Hon. Justice M. L. Uwais exits from the Supreme Court in June, 2006, he would have served as a Justice of the Supreme Court of Nigeria for approximately 27 years. Out of the years that his Lordship spent at the Supreme Court of Nigeria, his Lordship served as the Chief Justice of Nigeria for about 10 years.

In the history of the Supreme Court of Nigeria, Hon. Justice M. L. Uwais stands out clearly as one of the longest serving Justices of the Court. His Lordship evidently passed through the Supreme Court. He was gracious to also allow the Court to pass through him.

In this chapter, an attempt is made to examine Hon. Justice Uwais' contributions to the development of Nigeria's Constitutional Law between August 1979 and September, 2005. The cases examined in this chapter are some (but definitely not all) of the Constitutional cases decided by his Lordship while serving as a Justice of the apex Court.

Adesanya v President of Nigeria[1] remains the guiding light on *Locus standi* in Nigeria despite various attempts to diminish its potency. The case has survived judicial onslaughts and outlived the criticisms of the academia. The plaintiff was defeated on the floor of the Senate with respect to the Motion on the appointment of Hon. Justice Ovie-Whiskey as the Chairman of the defunct Federal Electoral Commission. The plaintiff thereafter, challenged the said appointment made by President Shehu Shagari, in Court. The plaintiff lost at the High Court and Court of Appeal. He therefore appealed to Supreme Court. Hon. Justice Uwais did not

[1] (1981) N.S.C.C. 146.

write the lead judgment. His Lordship's supporting judgment was as insightful as the lead judgment. While agreeing that the Appeal should be dismissed, his Lordship emphasised the need to strike a fair equilibrium between the requirements of access to justice and the need to discourage meddlesome interlopers, busy-bodies and professional litigants from litigating over matters which do not directly affect them. Hear his Lordship:

> "It is of paramount importance and indeed most desirable to encourage citizens to come to court in order to have the Constitution interpreted. However, this is not to say, with respect, that meddlesome interlopers, professional litigants or the like should be encouraged to sue in matters that do not directly concern them. In my view, to do that is to open the floodgate to frivolous and vexatious proceedings. I believe such latitude is capable of creating undesirable state of affairs"[2].

His Lordship also relied on Professor De Smith's *Administrative Law*, to hold that *infraction of private right of a litigant* is the basic test of *locus standi*. He concluded thus:

> "...the interpretation to be given to Section 6 Subsection 6(b) of the Constitution will depend on the facts or special circumstances of each case. So that no hard and fast rule can really be set up. But the watchword should always be the "civil rights and obligations" of the plaintiff concerned"[3].

In *Attorney-General of Bendel State v. Attorney- General of the Federation*[4], the plaintiff challenged the constitutionality of a Money Bill passed by the National Assembly and which was assented to by Mr. President in a manner which violated the

[2] Ibid, p.179.
[3] Ibid, p.180.
[4] (1981) 12 NSCC 314; (1981) 10 S C P1

provisions of the Constitution on the resolution of conflicts between the two Houses of the National Assembly on Money Bill. The National Assembly (without a joint sitting of the two Houses to resolve the differences between the two Houses on the Money Bill) delegated its power to a Joint Finance Committee (which consisted of members of both Houses) for the resolution of these differences. On the strength of the Committee's Report, the Bill was passed by the Senate and assented to by Mr. President. On the basis of the irregularly passed Bill, funds were also disbursed to various tiers of government (including the plaintiff) from the Federation Account. The Supreme Court held that notwithstanding Mr. President's assent to the Bill, the Act was null and void. Hon. Justice Uwais who sat in the panel made useful contributions.

His Lordship rejected the invitation to give primacy to provisions of the Authentication Act of 1961. His Lordship held that the Authentication Act, which curtailed the Court's power to inquire into the processes which resulted in passing of the Money Bill, was inconsistent with Section 4(8) of the 1979 Constitution and consequently void by virtue of Section 1(3) of the same Constitution. His Lordship further rejected the sentiments expressed by Prof. Ben Nwabueze that the signature of Mr. President and those of the presiding Officers constitute solemn assurance to the Court and the Nation that all necessary formalities had been observed by the National Assembly before the passing of the Bill. His Lordship also disagreed with Nwabueze's views that "great uncertainty and instability in statute Law would result if an enrolled Order and duly authenticated Act were to be subjected to impeachment on the basis of some evidence of lack of passage."[5] Hear his Lordship on the supervisory role of our Courts:

> "The jurisdiction of the Court to supervise the exercise of legislative power of the National Assembly as already stated is quite clear under Section 4(8) of the Constitution, and with respect, will not accommodate the

[5] Nwabueze, *Judicialism in Commonwealth Africa*, pp.259-260.

sentiments expressed in the above quotation. Solemn assurance to the Court is no substitute for proof and the principle of respect to the separation of power as well as the principle of public policy cannot override the express provisions of this Constitution that this Court should examine the making of any Law by the National Assembly when called upon to do so. I see no uncertainty or any instability arising from the challenge in Court of the validity of an enrolled and authenticated Act because such situation has been taken care of under Section 6 of the interpretation Act...."[6]

His Lordship further rejected the submission made by the 1st Defendant's Counsel, to the effect that the two Houses had delegated their powers to resolve their differences to the Joint Committee. According to his Lordship:

"...The overall consequence of these provisions of the Constitution is that only the Senate and the House of Representatives can make Laws and not any other group of persons. Therefore it follows that the presentation of the 1980 Bill to the President for assent, without the 2 Houses ratifying the decision of the Committee, is tantamount to the National Assembly delegating to the Committee the power to legislate on their behalf. That is one of the functions that the Constitution specifically enjoined that they must never delegate to a Committee."[7]

In *Uwaifo v. Attorney General of Bendel State*[8], the validity of the Public Officers (Special Provisions) Decree of 1976 was the primary issue for consideration. The Decree contained an ouster of jurisdiction clause which precluded the Courts from inquiring into its validity or the validity of any act done under it. According to the Decree "if any action or other proceedings whatsoever has been or is instituted in any Court in respect of any such Edict or Subsidiary instrument or act or thing the action shall be void." The Appellant nonetheless challenged the decision of the investigating panel set up under the Decree on the grounds that it (the panel) exceeded its jurisdiction/the terms of reference and its failure to observe the Rule of Law and principles of natural justice. The Supreme Court upheld the validity of the Decree and things done under it.

[6] opp cit, at pp.427-428.
[7] opp cit, at p.434.
[8] (1982) 13 NSCC 221

Hon. Justice Uwais agreed with the judgments of Hon. Justices Sowemimo and Idigbe that the appeal should be dismissed. While agreeing that the ouster provision in Section 2(2) of the Decree would ordinarily be void on account of inconsistency with Section 4(8) of the 1979 Constitution, his Lordship rightly declined nullifying the offending provisions of the Decree because in 1977, when the appellant's cause of action arose, "Section 2(2) of the Act was extant and the appellant could not at that time bring his claim to Court." His Lordship consequently held that "the jurisdiction which the Courts now enjoy by virtue of S.2 sub-section 2 becoming void can only be invoked, in my opinion, in respect of a cause of action which arose as from or after 1st day of October 1979 when the Constitution came into operation"[9]. His Lordship further relied on Section 6(6) (d) of the 1979 Constitution to hold that the Courts were prohibited from challenging the legislative competence of the then Federal Military Government to enact the Decree or any other Decree. Listen to Hon. Justice Uwais:

"The effect of the provisions of Section 6, subsection (6)(d) is clearly to retain the fetter previously placed on the Courts by the successive Military Regimes which ruled this country from 15th January 1966 to 30th September 1979, not to question the efficacy of the Laws which they promulgated. I am of the opinion that no

[9] *Ibid* at p. 277

> Court can in view of the provisions of Section 6(6) (d) of the Constitution have any jurisdiction to declare that the appropriate authority that promulgated a Decree or Edict had no power to do so."[10]

While acknowledging that Courts lack the jurisdiction to challenge the legislative competence of the Military Governments to promulgate Decrees or Edicts, His Lordship rightly held that our Courts are not prohibited from declaring a Decree or an Edict invalid on ground of inconsistency with other superior Laws. According to His Lordship:

> "... It is quite clear from the provisions of S.274 subsection (3)(a) of the 1979 Constitution that despite the limitation imposed by S.6 subsection (6)(d) the Courts now have jurisdiction to pronounce on the validity of any Decree or Edict on the ground of its inconsistency with other Laws."

The scope of the Attorney General's power to discontinue criminal proceedings through *nolle prosequi* procedure under Section 191(3) of the 1979 Constitution was the lone issue decided in *State v Ilori*[11]. The plaintiff instituted the action in order to demonstrate that the Attorney-General of Lagos State was biased in criminal proceedings initiated against him and therefore incompetent to discontinue the proceedings. The High Court, the Court of Appeal and the Supreme Court upheld the Attorney-General's power to terminate the proceedings. Hon. Justice Uwais in his supporting judgment said:

> "I am also of the opinion that in entering a nolle prosequi under Section 191 of the Constitution of the Federal Republic of Nigeria 1979, the Attorney-General of Lagos State was not obliged to state that he was doing so after

[10] *Ibid* at p. 278
[11] (1983) 14 NSCC 69

> having "regard to public interest, the interest of justice and to prevent abuse of legal process" as envisaged by sub-section (3) of the Section. His power to terminate criminal proceedings is absolute under the common Law as well as the 1979 Constitution. The exercise of the power is not therefore subject to the fiat of the Court which is seized with the proceedings to be terminated..."[12]

Must we then assume that despite being a public officer, the Attorney-General's decision is absolute and is incapable of judicial review by the Court, even in a glaring case of abuse of the power vested in him? His Lordship was unprepared to give such a blank cheque to the Attorney-General. According to his Lordship:

> "..., the occasion may sometimes arise when for certain reasons, such as abuse of office or misconduct, in the exercise of the Attorney General's power to enter nolle prosequi may be questioned in Court. In such event the proceedings will of course be different and separate from the criminal proceedings which have been terminated."[13]

The Constitutional validity of some of the provisions of the Allocation of Revenue (Federation Account, etc.) Act No. 1 of 1982 was the focal point in *Attorney-General of Bendel State v Attorney-General of the Federation*[14]. The plaintiff challenged the power of the Federal Government to withhold part of the monies due to the Bendel State Government and the Federal Government's failure to give periodic account of funds in the Federation Account to the three tiers of Government. The plaintiff relied on the doctrine of non-mutual interference, which is the cornerstone of Federalism, to also challenge the power of the National Assembly to enact an Act which imposed duties on State functionaries. The

[12] Ibid, p. 85
[13] Ibid, p. 85
[14] (1983) 14 NSCC 181

task of writing the lead judgment fell on Uwais J.S.C. (as he then was). His Lordship discharged the onus creditably in his brilliant lead judgment.

His Lordship held that notwithstanding the principles of Federalism, there were adequate provisions in the 1979 Constitution, which supported the imposition of duties by the National Assembly on the State functionaries and vice-versa. His Lordship further held, that the Federal Government as Trustee of the Federation Account must render periodic account to the beneficiaries of the Account and that the Federal Government also lacked the power to withhold part of the funds in the Federation Account. His Lordship held:

> "By S. 149(2) of the Constitution, the amount in the Federation Account is public revenue accruing to the Federal Government, State Governments and the Local Governments in each State. S.149(3) contemplates that the amount standing to the credit of State Governments will be distributed among them. This provision is mandatory, for the subsection says the amount 'shall be distributed'. There is no provision under S.149 or indeed any other part of the Constitution which expressly or impliedly authorises the Federal Government to retain on behalf of the beneficiary States any portion of the revenue due to the States from the Federation Account.
> It seems to me therefore that once the Federation Account is divided amongst the three tiers of government, the State Governments collectively become the absolute owners of the share that is allocated to them (i.e. 35 percent). So that it would normally be their prerogative to exercise full control over the share. Consequently, it will not be appropriate for the Federal Government to administer the share without the authorisation of the State Governments. This appears to be logical and in keeping with the fundamental principle of Federalism on the autonomy of the constituent States:"[15]

Despite the agreement by all other defendants (except the 1st Defendant) and the plaintiff that Section 6(1) of Act No. 1 of 1982 was void because it (Federal Act) imposed duties on State functionaries, His Lordship still endorsed the validity of the Act. According to His Lordship:

> "...in character the Constitution makes it possible for both the National Assembly and a State House of Assembly to impose duty on or invest power in State and Federal functionaries respectively where there is an express or implied provision under the Constitution that gives the enabling power..."[16]

Turning to the duties of the Federal Government as Trustee of the Federation Account, His Lordship further held:

> "The position of the Federal Government in maintaining the Federation Account is, by virtue of S.149(1) of the Constitution, that of a trustee for the State Governments and Local Government Councils of the States. It is settled that it is the duty of a trustee to keep a proper account of the trust he administers. And the beneficiary has a right to call upon the trustee for accurate information as to the state of the trust. Consequently, it is imperative for the Federal Government to render accurate and regular account to the beneficiaries of all moneys paid into the Federation Account when requested to do so."[17]

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[15] Ibid P.190
[16] Ibid, p.192
[17] Ibid at p. 1931

In *Ukaegbu v. Attorney General of Imo State*,[18] the Supreme Court examined the right of an individual and non-governmental bodies to establish private Universities and the relationship which should exist between such Universities and the Joint Admission and Matriculation Board. The trial Court had found in favour of the plaintiff. On appeal, the Court of Appeal referred the matter to the Supreme Court by way of case stated. Hon. Justice Uwais who concurred with the lead judgment delivered by Hon. Justice Idigbe, made the following contributions in his supporting judgment:

> "... it is necessary to stress that the omission by the National Assembly and the Imo State House of Assembly to enact the appropriate Act or Law which will provide the guidelines for the establishment of a University, as envisaged by the Constitution of the Federal Republic of Nigeria 1979 - (See Item L of Part II of the Second Schedule thereof) leaves it open, for the time being, for any person to establish a University of his whims or caprice in exercise of his right under Section 36 of the Constitution. Although the situation is now fluid and an individual is not in any way inhibited from forming a University; it should be pointed out that once the University is established, the powers conferred upon the Joint Admission and Matriculation Board under Section 5 of Act No.2 of 1978 (which created the Board) comes into play. So that, amongst other things, the conduct of the examination for admission into the university and the determination of the requirements for matriculation become the responsibility of the Board and not of the new University or its proprietor"[19].

In *Alegbe v. Oloyo*[20] one of the issues which the Supreme Court decided was whether the 1979 Constitution empowered the Speaker of the State House of Assembly to declare as vacant, the

[18] (1983) 14 NSCC 160
[19] Ibid at p.178
[20] (1983) Vol.14 N.SCC, p.315

seat of a member of the House on the ground that such a member (without just cause) absented himself for a period amounting to more than one third of the total number of days during which the House met.

Honourable Justice Uwais agreed with the lead judgment of Hon. Justice Eso, that the jurisdiction to determine any question connected with the Seat of a member of a State House of Assembly becoming vacant is exclusively conferred on State High Courts. However, the jurisdiction of the Court becomes exercisable only when there is a dispute which has been referred to the appropriate High Court for determination. Since the appellant's cause of action was the denial of the right to participate in House meeting of 5/10/81 as opposed to the letter of 15/9/81 declaring his seat as vacant, the trial Court should not have granted the declaration sought. His Lordship held:

> "Although the respondent declared the appellant's seat in the House vacant in his letter of 15th September, 1981, I believe that no harm was actually done. The seat was in any event vacant by the operation of the provisions of Section 103(1)(f) of the Constitution if the appellant had been absent from the meetings of the House as alleged. The declaration was therefore otiose and of no legal effect. There was in my view no usurpation of the jurisdiction of the State High Court under Section 237 of the Constitution since the declaration was not made in consequence of any dispute. As already stated, the dispute between the parties arose only after the appellant was not allowed to participate in the proceedings of the House."[21]

The competence of a Suit filed in a wrong judicial division of a High Court was the focal point in *Ukpai v. Okoro*[22]. The

[21] Ibid, p.369.
[22] (1983) 14 NSCC 599.

petitioner filed an Election petition in the Umuahia Judicial Division of the High Court of Imo State instead of filing same in the Afikpo Judicial Division where the Federal Constituency was located. The decision of the trial Court which overruled the objection was set aside by the Court of Appeal which held that the petition ought to have been tried in the Afikpo Judicial Division. The petitioner's Appeal against the decision of the Court of Appeal was dismissed by the Supreme Court. The Court held that an action filed in a wrong judicial division is valid. However, such action should be transferred to the appropriate Judicial Division. Hon. Justice Uwais who agreed with Hon. Justice Kayode Eso's lead judgment made the following contributions:

> "In the present case the fact that the petition was filed in the Umuahia Judicial Division is not fatal because the division like the one at Afikpo or any other part of Imo State constitutes the High Court of Imo State as defined in Section 237 subsection (2)(c) of the Constitution. However, the convenience of the parties ought to be considered in deciding whether or not to hear the petition in Umuahia Judicial Division. As Section 41 subsection (1) of the High Court Law of Eastern Nigeria, (Cap. 61 Laws of Eastern Nigeria, 1963 applicable to Imo State) provides, the High Court of Imo State sits in divisions 'For the more convenient dispatch of business'. Therefore, where an election petition is filed or commenced in the wrong Judicial Division, as in this case, the provisions of Order 7 Rules 5 and 6 of the High Court Rules, Cap. 61 (Laws of Eastern Nigeria 1963) will come into play....
>
> It follows, notwithstanding the superfluous constitution of the panels of Judges by the Chief Judge of Imo State to hear all election petitions, that where a petition is commenced outside the judicial division where the constituency is located, such petition may be transferred by virtue of Order 7 Rules 5 and 6 of the High Court Rules to the judicial division which covers the constituency. In my opinion, when the objection on jurisdiction was raised by the 1st respondent before the trial Court at Umuahia, it should have transferred the case to Afikpo Judicial Division after ruling that it had jurisdiction, since it had the power to do so under Order 7 Rules (5) and (6)"[23]

In *Kadiya v. Lar & Others*[24], the question which the Supreme Court had to resolve was the constitutionality of the time limit imposed by the National Assembly on the Courts for the disposal of Election Petitions. The Supreme Court resolved the question against the backdrop of the requirement of fair hearing of cases within a reasonable time as enshrined in Section 33(1) of the 1979 Constitution. Viewed against the backdrop of the aforesaid Constitutional provision on fair hearing within a reasonable time, the Supreme Court held that Section 140(2) of the Electoral Act of 1982 which prescribed a time limit for the disposal of Election cases by the Court was null and void. Hon. Justice Uwais relied on his pronouncement in the earlier case of *Paul Unongo v. Aper Aku and two ors*[25] to hold that the above provisions of the Electoral Act 1982 which prescribed an immutable time frame for disposing of election petition by the Courts were *ultra vires* the power of the National Assembly and consequently unconstitutional. His Lordship concluded thus, "... the National Assembly has power under Section 73 of the Constitution to legislate in respect of election petitions but such power does not extend to prescribing or limiting the time within which the Courts must hear and determine an election petition."

In *Unongo v. Aper Aku*[26], the Supreme Court was faced with the issue of the constitutional validity of the provision of the Electoral Act which prescribed a time limit for the hearing and determination of an election petition by an Election Tribunal. The

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[23] Ibid, p.618
[24] (1983) 14 NSCC 591
[25] 1983) 14 NSCC 563
[26] (1983) 14 NSCC 563

constitutional question raised in the Appeal was whether the provision of the Electoral Act did or did not violate the petitioner's right to fair hearing. The Supreme Court unanimously held that the provision of the Electoral Act violated the petitioner's right to fair hearing and was consequently void to the extent of its inconsistency with the fair hearing provision of the Constitution.
Hon. Justice Uwais delivered the lead judgment. His Lordship acknowledged the legislative power of the National Assembly to prescribe the practice and procedure to be followed by a Court/Tribunal which hears an Election Petition. His Lordship was however unprepared to hold that the legislation passed by the National Assembly which adversely affected fair trial of cases could not be judicially reviewed by the Court. His Lordship reasoned that the legislative powers of the National Assembly "cannot, in view of the doctrine of separation of powers of the three arms of government, that is the executive, legislature and judiciary, extend to the limitation of the time within which a case properly instituted in a Court can be heard and determined. If the power were so to apply, as it indeed applies under the Electoral Act, then it would, in my opinion, be *ultra vires* because it amounts to unconstitutional interference with judicial functions"[27]
Turning specifically to the relationship between the Electoral Act and the fair hearing provision of the 1979 Constitution, His Lordship held as follows:

> "I do not see how a reasonable person will have the impression that a party has a fair hearing where his petition which has been instituted within the time limit stipulated by the Electoral Act cannot be concluded because the time available to the Court for the petition to be heard will not be sufficient for either or both parties to the petition to present their cases or will not allow the Court at the close of the parties' cases sufficient time to deliver its judgment. There can be no doubt that the

[27] Ibid, op.568

> provisions of Sections 129(3) and 140(2) of the Electoral Act 1982 neither allow a petitioner or respondent reasonable time to have fair hearing, nor give the Court the maximum period of 3 months to deliver its judgment after hearing a petition as envisaged by Sections 33 subsection (1) and 258 subsection (1) of the Constitution, respectively"[28]

The decision in the case of *Bronik Motors Limited & Anor v. Wema Bank Ltd.*[29] settled the jurisdictional tussle between the Federal and State High Courts. Prior to the decision, there were conflicting decisions on the scope of the jurisdiction of Federal and State High Courts. The Supreme Court held that under the 1979 Constitution, the State High Courts were courts of unlimited jurisdiction while the Federal High Court functioned as a Court of restricted original jurisdiction. His Lordship delivered a supporting judgment where he held:

> "... I am with respect unable to agree with the contention of Chief Williams that the Federal High Court has, by virtue of the provisions of Sections 6 and 7 (Section 230 in particular) of the Constitution, the exclusive power to exercise jurisdiction in causes and matters pertaining to all the subject matter listed under the Exclusive Legislative List of the Constitution. Although it is true that Section 6 draws a distinction between the judicial powers of the Federation and those of States, I do not think that the provisions of Section 230 or any other provisions of the Constitution are wide enough to confer jurisdiction in the Federal High Court in respect of all federal causes...
> It appears to me that the provisions of subsection (2) of S.230 give to the Federal High Court all the powers and jurisdiction enjoyed by the defunct Federal Revenue Court. But a careful study of the Federal Revenue Court

[28] Ibid, p.569
[29] (1984) 14 NSCC 226

> Act, 1973 will show that the subjects enumerated by it do not cover all the items contained in the Exclusive Legislative list ...
> From the foregoing, I am of the opinion that the jurisdiction that is presently vested in the Federal High Court does not extend to all federal causes or matters with regard to which the National Assembly is competent to make Law. It is pertinent to mention that by virtue of the provisions of Sections 236 and 250 of the Constitution any other jurisdiction in federal causes which is not vested in the Federal High Court lies for the time being with State High Courts and other State Courts subordinate to them"[20]

The cautious approach of the Supreme Court to the jurisdiction of the Federal High Court was however subsequently jettisoned by the legislature. Section 230(1) of the Constitution (Suspension and Modification) Act No. 107 of 1993 and Section 251 of the 1999 Constitution have extended the scope of the jurisdiction of the Federal High Court to virtually all matters within the legislative competence of the National Assembly and to all cases in which the Federal Government and its Agencies are parties. More perturbing is the fact that the jurisdictions are exclusive to the Federal High Court. Section 251(1) of the 1999 Constitution provides:

> "Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters – (a) ..."

The result of the expansion of the jurisdiction of the Federal High Court is that the Court presently entertains more cases than it can

[20] ibid, p.279-280

conveniently cope with. It currently experiences congestion. Apart from the loss of its specialist status, the lack of competent judicial and not non-judicial officers is the obvious negative effects of the expansion of the Federal High Court's jurisdiction. Litigants must for now, come to terms with the problems of delay and lack of ready access to justice in some of the States and Judicial Divisions where there is either no Federal High Court or insufficient infrastructure and facilities.

On 31st December 1983, Nigeria experienced another Military intervention. The 1979 Constitution was partly suspended and partly modified. The Constitution (Suspension and Modification) Decree No. 1 of 1984 replaced the 1979 Constitution as Nigeria's Grundnorm. Incidentally, Constitutionalism and Military dictatorship are strange bedfellows. The negative effect of military dictatorship is the suffocation of the growth of Constitutionalism. Indeed under Military rule, constitutional principles are put in abeyance. The Courts are frequently faced with ouster of jurisdiction clauses which are usually embedded in most military Decrees and Edicts. The Courts were also expected to blow and indeed blew "muted trumpets" between 1st January 1984 and 29th May 1999. This explains the drought of Constitutional cases in Nigeria between January 1984 and May 1999.

On 29th May 1999, Democracy was restored in Nigeria when the General Abubakar Abdulsalami's Military Administration voluntarily handed over powers to a democratically elected Government. Hon. Justice Uwais had by then assumed Office as the Chief Justice of Nigeria. Since May 1999, Nigeria has experienced a harvest of constitutional cases. It is significant that Hon. Justice Uwais presided over virtually all the constitutional cases decided by the Supreme Court since 1999. When His Lordship did not write lead judgments in these constitutional cases, His Lordship still found time to write supporting judgments, which are as powerful and insightful as the lead judgments.

In *Peoples Democratic Party v. Independent Electoral Commission*[31], the question which the Supreme Court was requested to answer, was whether in the event of a Governor-elect not being able to take his Oath of Office by reason of having been elected as the Vice President, the Deputy Governor elect could automatically step into the shoes of the Governor-Elect and consequently be sworn in as a Governor or whether the Independent Electoral Commission must conduct a fresh Gubernatorial election?

Uwais C.J.N. presided and read the lead judgment. He held that the Governor and his Deputy hold a joint ticket. Consequently where the Governor is unable to take his Oath of Office for whatever reason, a fresh Election is unnecessary. In such a situation, the Deputy Governor would be sworn in as the Governor. Hear His Lordship:

> "...for the purpose of contesting gubernatorial election under Decree No. 3 of 1999, the interests of a gubernatorial candidate and those of his running mate, that is, the candidate for election to the office of Deputy Governor are joint and inseparable. They swim or sink together... The gubernatorial candidate cannot stand for the election without a running mate and vice-versa. However once the two succeed in being elected and are duly returned as so elected, they acquire rights under the Constitution (that is, Decree No.3 of 1999) that are joint as well as separate. For instance, if an election petition is successfully brought against them and they are found by the Election Tribunal not to have been validly elected on the vote cast in the election, their election will be nullified - see Section 37 of Decree No.3 of 1999. On the other hand, the rights acquired by the Governor-elect are not the same as those of the Deputy-Governor-elect. For example, the Governor-elect cannot become a Deputy-Governor but the Deputy-Governor-elect can under certain circumstances, become Governor - see Sections 37(1) and 45(1) of Decree No.3 of 1999"[32]

[31] (1999) 11 NWLR (pt.626)200

His Lordship also used the opportunity of the case to restate the duty of the Courts to liberally and purposively interpret the Constitution. According to his Lordship, for the Supreme Court "to perform its functions under the Constitution effectively and satisfactorily, it must be purposive in its construction of the provisions of the Constitution"[33]

The constitutionality of the Corrupt Practices and Other Related Offences Act 2000, vis-à-vis the Law making powers of the National Assembly to legislate against corruption in Ondo and other States of the Federation was the focal point in the case of *Attorney-General of Ondo State v. Attorney-General of the Federation*[34]

As a result of the passing of the Anti-Corruption Act by the National Assembly and the universal application of the Act to all the States of the Federation and the Federal Capital Territory, the Attorney-General of Ondo State challenged the legislative competence of the National Assembly to pass such an all-embracing Act. Hon. Justice Uwais had no difficulty in endorsing the constitutionality of the Anti-Corruption Act. His Lordship relied on Sections 4(4)(b), 15(5) and items 60(a) and 68 of the 1999 Constitution to arrive at the conclusion that the National Assembly has the legislative competence to legislate for the whole Federation on corruption. Hear His Lordship:

> "Section 15 subsection (5) directs the National Assembly to abolish all corrupt practices and abuse of power. The question is how can the National Assembly exercise such powers? It can only do so effectively by legislation. Item 67 under the Exclusive Legislative List read together with the provisions of Section 4, subsection (2)

[32] Ibid, pp.239-240
[33] Ibid, p.241
[34] (2002) 9 NWLR (pt.772)222

> provide that the National Assembly is empowered to make law for the peace, order and good government of the Federation and any part thereof. It follows, therefore, that the National Assembly has power to legislate against corruption and abuse of office even if it applies to persons not in authority under public or government office... The power of the National Assembly is not therefore residual under the Constitution but might be concurrent with the powers of State House of Assembly and Local Government Council, depending on the interpretation given to the word 'State' in section (5) of the Constitution, which I will deal with anon."[35]

The interpretation of the proviso to Section 162(2) of the 1999 Constitution was the core issue for resolution in the case of *Attorney-General of the Federation v. Attorney-General of Abia State and Others (No.2)*[36] The proviso in question reads:

> "Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation account directly from any natural resources."

There was a dispute between the Federal Government and the littoral States (Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States) on the boundary of each State for the purpose of calculating the amount of revenue accruing to the Federation Account directly from natural resources derived from the States pursuant to Section 162(2) of the Constitution. The Federal Government contended that the southern (or seaward) boundary of each of these littoral States is the low-water mark of the land surface of such State or the seaward limit of inland waters within the State as the case so requires. The Federal Government insisted that natural resources located within the Continental Shelf

[35] Ibid, p.306
[36] (2002) 6 NWLR (pt.764) 542

of Nigeria are not derived from any of the States of the Federation. The derivation principle would therefore not apply to such natural resources.

Each of the littoral States however claimed that its territory extends beyond the low water mark into the territorial water and even onto the Continental Shelf and the Exclusive Economic Zone. They maintained that natural resources derived from both onshore and offshore are derived from their respective territories and each is therefore entitled to "not less than 13 percent" allocation on such revenue.

Hon. Justice Uwais presided during the hearing of the Suit. His Lordship also wrote the lead judgment. How did His Lordship resolve the difficult questions which arose in the Suit? His Lordship noted the distinction between natural and mineral resources and concluded that the former is more embracing than the latter. After noting that the words "seaward boundary" are not defined in the Constitution, his lordship relied on English Dictionaries, judicial decisions, rules of International Law and the Convention on the Law of the Sea to hold that, "... the seaward boundary of a littoral State could be the dry land or the fresh water abutting the sea."[37]
Against this backdrop, His Lordship concluded thus:

> "...the seaward boundary of the littoral States is 'the sea' which means the low-water mark abutting the States. So that any natural resources derived from such area will attract not less than 13% of revenue directly derived from the natural resources when a formula for distribution of the Federation Account is evolved by the National Assembly pursuant to Section 162(2) of the 1999 Constitution."[38]

[37] 732
[38] Ibid, p.732

The scope of the legislative powers of the National Assembly and State Houses of Assembly with respect to Local Government Councils in the various States was the central issue in *Attorney-General of Abia State and Others v. Attorney-General of the Federation*[39]

The National Assembly enacted the Electoral Act, 2001 to which the President assented. Among the issues covered by the Act are National Register of Voters and Voters' Registration, Procedure at Election, Political Parties, Procedure for Election to Local Government, Electoral Offences, Determination of Election Petitions and the Tenure of Elected Local Government Officers, or Councillors of Local Government Councils in Nigeria.

The plaintiffs contended that the provisions of the Act transgressed the legislative competence of the Federal Government and made serious incursions into the legislative and executive functions of the States/plaintiffs as contained in the 1999 Constitution. The plaintiffs consequently claimed some declaratory reliefs against the defendants. Hon. Justice Uwais who presided and read the lead judgment partly allowed the plaintiffs' claims. His Lordship rightly identified Sections 4(4), 7(1), Item 22 of the Exclusive Legislative List to the 1999 Constitution, Items 11 and 12 of the Concurrent Lists of the same Constitution as the relevant provisions regulating the powers of the National Assembly and a State House of Assembly with respect to Local Government Councils.

His Lordship held that some of the provisions of the Electoral Act 2001 "go beyond" registration of voters and the procedure relating to Elections to Local Government Council as provided under item 11 of the Concurrent Legislative List. The provisions were inconsistent with the provisions of the Constitution and therefore void.

His Lordship also examined the relationship between the doctrine of "covering the field" and the inconsistency rule and concluded that:

[39] (2002) 6 NWLR (pt.763) 264

> "...where the doctrine of covering the field applies it is not necessary that there should be inconsistency between the Act of the National Assembly and the Law passed by a House of Assembly. The fact that the National Assembly has enacted a Law on the subject is enough for such Law to prevail over the Law passed by a State House of Assembly but where there is inconsistency, the State Law is void to the extent of its inconsistency."[40]

His Lordship further held:

> "... the doctrine of covering the field can conveniently be extended to a situation where the Constitution has covered the field vis-à-vis a Federal or State legislation, such legislation is not void *simpliciter* but will not be operative in view of the provisions of the Constitution. However, if the legislation is inconsistent with the provisions of the Constitution, then, the legislation is void to the extent of the inconsistency vide Section 1 subsection (3) of the Constitution. Applying the aforesaid position, I have no difficulty in holding that the provisions of Section 25, subsection 2(b), (c), (g), (h), (m), (n), (o), (p) of the Electoral Act are either void for being inconsistent with the provisions of the Constitution or inoperative for repeating what the Constitution has provided."[41]

On the proviso to Section 110 of the Electoral Act which attempted to alter the Tenure of Office of elected Local Government officers, His Lordship held that it was *ultra vires* the powers of the National Assembly to pass such a Law. According to his lordship,

> "... the proviso to Section 110 subsection (1) of the Electoral Act 2001, is *ultra vires* the powers of the National Assembly. It is inconsistent with the provisions'

[40] Ibid, p.391
[41] Ibid, p.391-392

of the Constitution. The National Assembly has no power whatsoever under item 11 of the Concurrent Legislative List or indeed under any provision of the Constitution, to increase or alter the tenure of the elected officers of the Local Government Councils. Only the House of Assembly of a State has such power in view of the provisions of section 7, subsection (1) of the Constitution and Item 12 of the Concurrent Legislative List in Part II of the Second Schedule to the Constitution."[42]

The scope of the power of the President of the Federal Republic of Nigeria to constitute a Judicial Commission, the Human Rights Violations (Investigation) Commission was the issue for consideration in *Fawehinmi v. Babangida*[43]

The Commission which was set up by the Federal Government pursuant to the Tribunals of Inquiry Act was empowered to investigate Human Rights abuses during Military rule in Nigeria. The 1st Appellant submitted a petition to the Commission which resulted in summonses being served on the Respondents to appear to answer the allegations made against them. The Respondents challenged the power of the Commission to issue summonses to compel their attendance at its sittings. Although Hon. Justice Uwais who presided during the hearing of the Appeal did not write the lead judgment, his contributory judgment positively impacts on the development of our Constitutional Law.

His Lordship held that the Tribunals of Inquiry Act, Cap 447 Laws of the Federation 1990 Edition, operates as an existing Law by virtue of Section 315 of the 1999 Constitution. The Act, when applied to the Federal Government, is only applicable to the Federal Capital Territory, Abuja. In order to arrive at the above decision, His Lordship relied on the earlier decision in *Balewa v.*

[42] Ibid, p.401
[43] (2003)3NWLR (pt.808) p.604

Doherty[44] where it was stated that the National Assembly could be empowered to establish a Tribunal of Inquiry into any matter within its legislative competence and that this can only be achieved by adding the establishment of Tribunals of Inquiry to the Exclusive Legislative List. His Lordship noted that unlike the 1963 Constitution, which expressly accorded recognition to Tribunals of Inquiry under the Federal Government's Exclusive Legislative List, there is no corresponding provision under the 1999 Constitution.

His Lordship consequently had no difficulty in holding that:

"... by the provisions of Section 4 Subsection (7) of the 1999 Constitution the House of Assembly of a State has the power to make laws for the peace, order and good government of the State with respect to matters not included in the Exclusive Legislative List. Since the establishment of Tribunals of Inquiry is not a subject under the Exclusive Legislative List, it seems to me that a State House of Assembly has the power to enact the Tribunals of Inquiry Act Cap 447 and therefore the Act qualifies as an "existing Law" under Section 315 subsection (1)(b) of the 1999 Constitution and is valid as a State Law...

It follows that the National Assembly has the power to enact the Tribunals of Inquiry Act Cap 447 in so far as it operates in the Federal Capital Territory only. To this limited extent the Act is an "existing Law" under the provisions of Section 315 of the Constitution. However, this does not make the Act operative throughout Nigeria as implied by the 2nd and 3rd appellants by issuing summons to be served outside the Federal Capital Territory, for witnesses to appear before it in Abuja.

It is clear therefore, that though the Tribunals of Inquiry Act is an 'existing Law' its application is limited and has no general application."[45]

[44] (1963) 1 WLR p.960
[45] Supra at p.666

In *Attorney-General of Abia State v. Attorney-General of the Federation*[46] the Supreme Court was requested to determine whether the powers of Mr. President to modify an existing Law pursuant to Section 315 of the 1999 Constitution violates the principles of separation of powers as enshrined in Sections 4, 5 and 6 of the 1999 Constitution.

As a result of the decision of the Supreme Court in Attorney-General of the Federation V Attorney General, Abia State(No. 2) (2002)6 NWLR (part 764) p.542 (where the Court found some provisions of the Revenue Allocation (Federation Account, etc. (Modification) Decree No. 106 of 1992 incompatible with Section 162 of the 1999 Constitution), Mr. President issued an order titled: "Allocation of Revenue (Federation Account, etc.)(Modification) Order, Statutory Instrument No. 9 of 2002." The Order sought to modify Cap 16 (as amended), which had been declared by the Court as inconsistent with the Constitution. The plaintiffs challenged the Order as being ultra vires the powers of the President and a negation of the principles of separation of powers under which legislative powers are reserved exclusively for the legislature. Hon. Justice Uwais agreed with the lead judgment of Hon. Justice Belgore that the claim be dismissed. In his supporting judgment, His Lordship cautioned against restrictive interpretation of the provisions of the Constitution thus:

> "The word "modification" has been defined by the Constitution to include addition, alteration, omission and repeal. Surely these words go beyond mere textual changes. For instance, the repeal of a legislation cannot be limited or even equated to textual change for it is the abrogation of an existing legislation or part of it. The wordings of the Constitution are to be given liberal interpretation. (See *Nafiu Rabiu v. The State* (1981) 2 NCLR 293). To interpret "modification" to mean textual change only, is to give a very narrow meaning to the word." [47]

[46] [2003] NWLR (pt.809)p.124

On whether the modification power given to Mr. President under Section 315 of the Constitution violates the principle of separation of powers, His Lordship was not prepared to allow constitutional law principles to override the express provisions of the Constitution. Relying on his previous decision in *Attorney General of Ondo State v. Attorney General of the Federation & Others*[48], His Lordship held:

> "Ideally propounded principles of Constitutional Law should be applied in the interpretation of the Constitution; but where such principles are expressly or impliedly excluded by the Constitution itself, I am afraid it will be difficult or untenable for the Courts to follow the dictates of the principles."[49]

One of the constitutional provisions considered by the Supreme Court in the case of *Attorney-General of Anambra State v. The Attorney-General of the Federation and 35 Others*[50] was Section 232(1) of the 1999 Constitution, which deals with the original jurisdiction of the Supreme Court. As a result of the failed attempt to forcibly remove Governor Ngige from the Government House by an Assistant Inspector-General of Police and the withdrawal of his police and security personnel, the plaintiff as the representative of the Anambra State Government commenced an action against the 1st and other Defendants as representatives of the Federal and State Governments respectively. There was however no life issue between the plaintiff and the other State Governments. His Lordship disapproved the *joinder* of these other defendants thus:

[47] Ibid at 183
[48] Supra at p.13
[49] Ibid at p.183
[50] (2005)9 NWLR (pt.931)572

> "It is significant to observe that the claim for declaration is not limited to the Government of Anambra State but extended to the Governors of other States of the Federation with whom there is no any dispute whatsoever brought before this Court with the Federal Government or the 1st Defendant. In this regard, no declaration could be granted in respect of the other States since by Section 232 Subsection (1) of the 1999 Constitution it is only when a dispute exists between the States and the Federation that this Court could assume its original jurisdiction."[51]

His Lordship endorsed the power of the State Governor (under the 1999 Constitution) to give lawful orders to the State Commissioner of Police, thus:

> "The Constitution in Section 215 subsection (1) clearly gives the Governor of Anambra State the power to issue lawful direction to the Commissioner of Police, Anambra State, in connection with securing public order safety and order in the State."[52]

The status of the provisions of the Urban and Regional Planning Act No. 88 of 1992 was the bone of contention in *Attorney-General of Lagos State v. The Attorney-General of the Federation*[53]. The plaintiff contended that Act No. 88 of 1992 which provides for a new Urban and Regional Planning Development and Administration for the whole of Nigeria renders it impossible for the Lagos State Government to carry out and implement the already prepared master plan of the State for each division of the State.

[51] Ibid, p.616
[52] Ibid at p.616
[53] (2003)12 NWLR (pt.833) 1

The plaintiff also stated that the Act (an existing Law) was intended to interfere with the powers of Lagos State under its existing laws especially the Lagos State Town and Country Planning Law (Cap.188 Laws of Lagos State 1994), Building Lines Regulations of 1936 (Cap.16 Laws of Lagos State 1994) and Land Development (Provision for Roads) Law (Cap 110) Laws of Lagos State 1994) which are applicable to all urban and regional planning development and control over all lands within the territory of Lagos State. Against the backdrop of the above Laws, the plaintiff challenged the constitutionality of Act No. 88 of 1992.
Hon. Justice Uwais rightly identified Act No.88 of 1992 as an existing law by virtue of Section 315(1) of the 1999 Constitution. His Lordship also held that the National Assembly and a State House of Assembly are both empowered to pass Laws aimed at protecting and safeguarding the environment. According to His Lordship:

> "It is clear then that the power of the National Assembly to legislate in respect of Chapter II, and in particular Section 20 of the Constitution is both Concurrent and Exclusive, in the context of this case; but I prefer, with respect, to hold that it is concurrent in view of the definition of the word "State" in Section 318 of the Constitution. No matter whichever way one looks at it, there is no gain saying that the National Assembly has the power to legislate on safeguarding land and therefore by extension on the subject of Urban and Regional Planning. It follows that the submission by the plaintiff and the 1st defendant that the power to legislate on "urban and regional planning" is residual under Section 4 subsection (7) of the Constitution is clearly untenable.
> It then follows that the National Assembly has the power to enact an Act to protect and safeguard land. Therefore, in general, the 1992 Act is not inconsistent with the Constitution. The power to protect and safeguard land is concurrent with that of State Houses of Assembly - See *Attorney-General, Ondo State v. Attorney General,*

Federation and 35 others (supra) at pp.29; 306-307 and 371, as such both the National Assembly and State Houses of Assembly can legislate on "safeguarding land" under Section 20 of the Constitution. The fulcrum, on which the plaintiff's case rests cannot therefore stand."[54]

His Lordship however refused to endorse the Constitutionality of the whole of the provisions of Act No. 88 of 1992. Some of the provisions that were found incompatible with the provisions of the Constitution and the principles of Federalism were struck down under the "blue pencil rule". For example, His Lordship struck down subsections (2) and (3) of section 1 of Act No.88 of 1992 and held thus:

> "Section 1 subsection (2) of the 1992 Act, which makes provisions on types and levels of physical plans, provides that at State level there shall be - a regional plan; a sub-regional plan; an urban plan, a local plan and a subject plan. The provisions place duty on State Governments with regard to physical developments in their territories. By Section 2(2) of the 1999 Constitution Nigeria shall be a Federation and by the doctrine of federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the Federal Government, is essential to federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs free from direction by another government – See *The Presidential Constitution of Nigeria* by B. O. Nwabueze at pp. 39 - 42 and the case of *Attorney-General of Ogun State and others v. Attorney-General of the Federation and others* (1982) 1-2 SC 13 at pp.72-73 per Udoma J.S.C; (1982) 3 NCLR 166.

[54] Ibid, pp.118-119

> It follows, therefore, that the National Assembly cannot impose on the plaintiff in this case, or determine for the plaintiff the types and levels of physical-plans the plaintiff or any State of the Federation should have. It is only in the context of the Federal Capital Territory that the National Assembly could make such enactment by virtue of the provision of Section 299 of the 1999 Constitution. Consequently I hold that Section 1 subsection (2) of the 1992 Act is unconstitutional, and therefore null and void.
> Similarly, Section 1, subsection(3) which provides that at the Local (Government) level there shall be a town plan, a rural area plan, a local plan and a subject plan, wrongly imposes duties on Local Government Councils. The provisions offend against the principles of federalism. Accordingly, I hold that Section 1 Subsection 3 of the 1992 Act is unconstitutional and therefore null and void." [55]

The right of Mr. President to withhold from the Lagos State Government, statutory allocations due to Local Government Councils from the Federation Account pursuant to Section 162(5) of the 1999 Constitution, was the bone of contention in *Attorney General of Lagos State v. Attorney General of the Federation*[56]. Pursuant to Section 8(3) of the 1999 Constitution, Lagos State Government created 57 Local Government Areas, by breaking up the existing 20 Local Government Areas.

However, before the National Assembly passed the necessary Law to reflect a consequential amendment of the Schedule to the Constitution, the new Local Government Areas started to function. Local government elections were also held in the newly created Local Government Areas. The Federal Government viewed the steps taken by the Lagos State Government as a breach of the Constitution. Mr. President therefore withheld the statutory allocations payable to the Local

[55] Ibid, pp.119-120
[56] (2004)18 NWLR (pt.904)1

governments (through the State Government). Mr. President insisted that until the National Assembly passed the enabling consequential law, the State Government must revert to the original 20 Local Governments specified in Part 1 of the Schedule to the 1999 Constitution.

The Lagos State Government consequently challenged the withholding of the funds by Mr. President. In a lead judgment, Hon. Justice Uwais upheld the plaintiff's claim by declaring that Mr. President lacks the Constitutional power to withhold statutory funds due from the federation account.

His Lordship upheld the validity of the Law passed by the Lagos State House of Assembly with a *caveat* that the Law should remain inchoate until the National Assembly makes the necessary consequential Amendment to Section 3(6) and part 1 of the First Schedule to the Constitution.

On the withheld funds, His Lordship held:

> "It has been argued that the President by virtue of the 'Oath of Office' which he took on assumption of office is bound 'to protect and defend the Constitution'. In addition, the 'executive powers of the Federation' is vested in the President by Section 5 Subsection (1)(a) of the Constitution and such powers extend to the execution and maintenance of the Constitution. This is certainly so, but the question is does such power extend to the President committing an illegality? Certainly the Constitution does not and could not have intended that. As I have already shown, the creation of new Local government areas or Councils is supported by the provisions of the Constitution. In other words, the taking of such a step or act by Lagos State is not unconstitutional as thought by the President. The Constitution fully recognizes the steps taken except that there is still one more step or hurdle to be taken or crossed by the National Assembly for the plaintiff to actualise the creation of the new local government areas. Our attention has not been drawn to any other provision of the Constitution which empowers the President to exercise the power of withholding or suspending any payment of allocation from the Federation Account to Local Government Councils or to State Government on behalf of the Local Government Councils as provided by Section 162 subsections (3) and (5) of the Constitution."[57]

In *Attorney-General of the Federation v. Attorney-General of Abia State and 35 Others*[58] the Plaintiff requested the Supreme Court to interpret Section 162(2) of the 1999 Constitution with respect to the application of the derivation principle to natural resources located within a State. The various preliminary objections filed by 11 out of the 36 defendants to the Suit, challenging the original jurisdiction of the Supreme Court to entertain the suit, were the focal points in the above case.

Hon. Justice Uwais delivered the lead judgment in which he dismissed the preliminary objections. His Lordship outlined the conditions for the exercise of the original jurisdiction of the Supreme Court thus:

"... for this Court to exercise its original jurisdiction in a civil case between the Federation and State(s) or between States, there must be:-

(a) a dispute between the Federation and a State or States;
(b) the dispute must involve a question of Law or fact or both; and
(c) the dispute must pertain to the existence or extent of a legal right."[59]

Having found that the above requirements were satisfied, His Lordship held that the dispute falls within the scope of the original jurisdiction of the Supreme Court.

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57 Ibid, pp.91-92
58 (2001) 11 NWLR (pt.725) 689
59 Pp.728-729

Turning to the objection that the Court lacks the jurisdiction to determine boundaries between States and coastal boundaries of States, His Lordship held:

> "The main thrust of this suit is the interpretation of the Constitution and not the determination of inter-state boundaries as provided by the National Boundary Commission etc. Act Cap 238 of the Laws of the Federation, 1990. Section 3 subsection (1) of the Constitution provides that there shall be 36 States in Nigeria; and subsection (2) thereof provides -
> (2) Each State of Nigeria named in the first column of part 1 of the first Schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that schedule.
> Surely, this Court is competent to interpret these provisions of the Constitution. In doing so it is not usurping the powers of the Legislature or the Executive but exercising its interpretative power as given to it by the Constitution. In such a situation the Court is not also exercising the powers given to the National Boundary Commission under the National Boundary Commission Act, Cap 238 but exercising its powers under the Constitution which could be same or concurrent with that of the Commission."[60]

In *Director of State Security Service v. Olisa Agbakoba*[61] the Supreme Court focused on the legality of the seizure of the Respondent's Passport by officials of the appellant. The Respondent, a legal practitioner who was the president of the Civil Liberties Organisation, a non-governmental organisation, was on his way to the Netherlands to attend a Conference when officials of the appellant, who did not give any reason for the seizure, seized his International Passport. The Respondent was consequently

[60] Ibid. p.732
[61] (1999) 3NWLR pt. 595 p.314.

unable to attend the Conference. When he was unable to secure the release of his Passport, he sued the appellant for the enforcement of his fundamental right contending that the seizure restricted his freedom of movement as guaranteed under the Constitution. The suit was dismissed by the High Court. The Appeal Court allowed his appeal and also upheld the right of every Nigerian to hold a Passport as a necessary concomitant of the exercise of the right to freedom of movement enshrined in Section 38(1) of the 1979 Constitution, which includes the right of ingress to and egress from Nigeria. The appellant, (who did not defend the appeal in the Court of Appeal), consequently appealed to the Supreme Court.

Hon. Justice M. L. Uwais who presided during the hearing of the appeal also wrote the lead judgment. His Lordship rightly identified the lone issue for determination as *whether Federal Government officials are entitled to seize a citizen's passport, and if so, under what Law*? In answering the above questions, His Lordship relied on Section 5 of the Passport (Miscellaneous Provision) Act, Cap 343 to arrive at the conclusion that there is no absolute right to hold a Passport. His Lordship rightly concluded that the provision empowers the Honourable Minister of Internal Affairs to cancel or withdraw a Passport on account of any of the reasons stated in Section 5 of the Act. The Minister is however obliged to publish the name, and particulars of the Passport holder in the Federal Gazette. His Lordship also acknowledged that the Minister could delegate his powers to cancel or withdraw a passport. There must however be evidence of such delegation. In view of the absence of evidence of such delegation to the Respondent, the Respondent acted *ultra vires* when he seized the appellant's passport. His Lordship held thus:

> "I am satisfied that the official of the SSS concerned in this case had no power to impound or withdraw the respondent's passport in the manner he did. The impounding was, therefore, unconstitutional and illegal since it offended the provisions of Section 38 subsection (1) of the Constitution and Section 5 Subsection (1) of

the passport (Miscellaneous Provisions) Act. The right to have freedom of movement and the freedom to travel out of Nigeria is guaranteed by the Constitution but the right to hold a passport is subject to the provisions of the Act. In determining the issues in the present case, it is not, with respect, necessary to indulge in the academic exercise of whether the right to travel abroad is concomitant with the right to hold a passport. The real issue in contention here is not whether the respondent had a right to hold a passport. He in fact had a Passport already but which was impounded by an official of the SSS. It is whether such an act by the official was legal and constitutional."[62]

Tinubu v. IMB Securities Plc[63] was a suit where the scope of the immunity enjoyed by a State Governor under the 1999 Constitution was the issue for consideration. The suit is significant for two reasons. First, is the fact that the suit, which resulted in the Appeal, had commenced prior to the election of Governor Tinubu as the Governor of Lagos State. Secondly, the interlocutory appeal in question was at the instance of Governor Tinubu. The question therefore, was whether, the appellant who is like a plaintiff in a Court proceeding was estoppel by Section 308(1) of the 1999 Constitution from pursuing the Appeal. Hon. Justice Iguh in the lead judgment held that the interlocutory appeal arose from the Suit which was instituted against the Governor by the Respondent to the High Court, and that the pursuit of the appeal will promote the prosecution of the substantive suit against the Governor ,contrary to Section 308(1) of the Constitution. Hon. Justice Uwais endorsed the decision of Hon. Justice Iguh by holding that:

[62] Ibid, p. 352
63 [2000] 16 NWLR (pt. 740) 670.

"The provisions of Section 308 subsections (1)(a) and (3) of the Constitution of the Federal Republic of Nigeria are very clear and are not therefore ambiguous.
The proceedings against the appellant cannot continue for as long as he remains in office as the Governor of Lagos State – see *Rotimi and others v. Macgregor* (1974) 11 SC 133"[64]

Conclusion

In this Chapter, a modest attempt has been made to focus on some of the constitutional cases decided by the Supreme Court during the period when Hon. Justice Mohammed Lawal Uwais served as a Justice of the Supreme Court and Chief Justice of Nigeria.

The picture that has emerged from the above cases is that of the Chief Justice of the Federation who did not allow the demand of his office to prevent him from giving practical effect to leadership by example. His Lordship passed through the Supreme Court and graciously allowed the Court to pass through him. Such is the legacy of Hon. Justice Uwais which I whole heartedly commend to his successors-in-office, present and future Presidents of the Court of Appeal, present and aspiring Chief Judges of Federal and State High Courts and all judicial officers who are saddled with the responsibility of administering justice at home and abroad.

[64] Ibid, p. 698